COURT OF APPEALS STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms UL 4 and 5 of the Judicial Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on September 5, 2019.

Members present:

Hon. Alan M. Wilner, Chair

Kenneth Armstrong, Esq.
Julia D. Bernhardt, Esq.
Sen. Robert G. Cassilly
Hon. John P. Davey
Mary Anne Day, Esq.
Del. Kathleen Dumais
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Alvin I. Frederick, Esq.
Pamela Q. Harris, State Court Administrator
Irwin R. Kramer, Esq.
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Stephen S. McCloskey, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Hon. Paula A. Price
Scott D. Shellenberger, Esq.
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Assistant Reporter
Shantell K. Davenport, Esq., Assistant Reporter
Hon. John P. Morrissey, Chief Judge, District Court of Maryland
Hon. Norman Stone, Senior Judge
Del. Erek Barron, District 24, Maryland House of Delegates
Nadine Maeser, Public Infomation Officer, Maryland Judiciary
Amber Herrmann, Deputy Director, Disctrict Court Administrative Services
Polly Harding, District Court Administrative Services
Terri Charles, Assistant Public Information Officer, Maryland Judiciary
Janice Bledsoe, Esq., Deputy State's Attorney, Baltimore City
Derek Bayne, Esq., Commission on Judicial Disabilities
Tanya Bernstein, Esq., Director, Commission on Judicial

Disabilities
Gillian Tonkin, Esq., Staff Attorney, District Court Chief Clerk's Office
Heather Cobun, The Daily Record
Caryn York, Job Opportunities Task Force
Suzanne Pelz, Esq., Senior Government Relations and Public Affairs Officer, Maryland Judiciary
Kelley E. O'Connor, Assistant State Court Administrator
Michele McDonald, Esq., Office of the Attorney General
Rebecca Snyder, Executive Director, Maryland, Delaware, DC Press Association
Initia Lettau, Esq., Office of the Public Defender

The Chair convened the meeting. He welcomed three new members to the Rules Committee. Julia Bernhardt is an Assistant Attorney General and the Chief of the Civil Division of the Attorney General's Office. Stephen McCloskey is an attorney with the Semmes, Bowen & Semmes law firm in Baltimore. Irwin Kramer is an attorney with Kramer & Connolly in Reisterstown, Maryland.

The Chair stated that the Rules Committee had a busy summer. A significant amount of time was spent revising the Title 16, Chapter 900 Rules (Access to Judicial Records). There was a review of the 2019 legislation, which requires several Rules changes, including a complete re-write of the Rules governing receiverships and assignments for the benefit of creditors.

The Chair said that the Rules Committee office began a preliminary review of the Attorney Grievance Rules at the request of Bar Counsel and the Attorney Grievance Commission.

The Judicial Disabilities Rules are being reviewed in light of an issue that arose after the most recent revisions were submitted to the Court of Appeals in the 199th Report.

The Chair also said that the Rules Committee received a request from Chief Judge Barbera to consider the development of Rules regarding eyewitness identifications. Extensive research has been done on this issue and materials have been compiled.

The Chair noted that the 201st Report of the Rules Committee has been prepared and should be ready for filing next week. The 201st report will include most of the Rules changes that were approved at the June Rules Committee meeting.

The Chair also announced that the Rules Committee office will be moving in December. The new office will be located somewhat adjacent to the Court of Appeals building. Rules Committee meetings will be held at a different location to accommodate the number of attendees. Information regarding the move will be sent at a later time.

The Chair explained that minor changes to the parenting plan Rules were sent to the Committee in an email. Those changes emanated from the recent Style Subcommittee meeting. He asked whether there were any comments or objections to the changes proposed. By consensus, the Committee approved the proposed changes. The Chair said that the parenting plan Rules will be included in the Committee's 201st Report.

Agenda Item 1. Consideration of proposed amendments to Rule 6-417 (Accounts) and Rule 6-171 (Entry of Order of Judgment).

Mr. Laws presented Rules 6-417, Accounts, and 6-171, Entry of Order of Judgment, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 – ADMINISTRATION OF ESTATES

AMEND Rule 6-417 by adding a Committee note following subsection (b)(4) and by revising sections (d) and (f) to provide that the time for filing exceptions runs from the docketing of the order approving the account, as follows:

Rule 6-417. ACCOUNTS

(a) Time for Filing

The personal representative shall file with the register an initial account (1) within nine months after the date of the appointment of the personal representative or (2) if the decedent died before October 1, 1992, within the later of ten months after the decedent's death or nine months after the date of the first publication. The personal representative shall file subsequent accounts until the estate is closed at intervals of the first to occur of: six months after the prior account is approved or nine months after the prior account is filed.

(b) Contents of Account

A personal representative's account shall include the following items, to the extent applicable to the accounting period:

(1) In an initial account, the total value of the property shown on all inventories filed prior to the date of the account; and in the case of a subsequent account, the total value of any assets retained in the estate as shown in the last account, together with the total value of the assets shown in any inventory filed since the last account.

(2) An itemized listing of all estate receipts during the accounting period, setting forth the amount, and a brief description of each receipt, including:

(A) each receipt of principal not included in an inventory of the estate;

(B) each purchase, sale, lease, exchange, or other transaction involving assets owned by the decedent at the time of death or acquired by the estate during administration, setting forth the gross amount of all gains or losses and otherwise stating the amount by which the transaction affects the gross value of the estate;

(C) each receipt of income including rents, dividends, and interest.

(3) The total gross value of the estate's assets to be accounted for in the account.

(4) An itemized listing of all payments and disbursements related to the satisfaction of estate liabilities during the accounting period, setting forth the amount, and a brief description of each payment or disbursement, including: funeral expenses; family allowance; filing fees to the register; court costs; accounting fees; expenses of sale; federal and state death taxes; personal representative's commissions; attorney's fees; and all other expenses of administration.

Committee note: Code, Estates and Trust Article, § 2-206 (a) requires the register to waive fees under certain circumstances. A

form to request the waiver is available on the website of the Maryland Office of the Register of Wills.

(5) The total amount of payments and disbursements reported in the account, and the amount of the net estate available for distribution or retention.

(6) Distributions and proposed distributions to estate beneficiaries from the net estate available for distribution, including adjustments for distributions in kind, and the amount of the inheritance tax due with respect to each distribution.

(7) The value of any assets to be retained in the estate for subsequent accounting, with a brief explanation of the need for the retention.

(8) The total amount of the estate accounted for in the account, consisting of all payments, disbursements, distributions, and the value of any assets retained for subsequent accounting, and equaling the amount stated pursuant to subsection (3) of this section.

(9) The personal representative's verification that the account is true and complete for the period covered by the account; together with the personal representative's certification of compliance with the notice requirements set forth in section (d) of this Rule. The certification shall contain the names of the interested persons upon whom notice was served.

(c) Affidavit in Lieu of Account

If an estate has had no assets during an accounting period, the personal representative may file an affidavit of no assets in lieu of an account.

Committee note: In some cases an estate may be opened for litigation purposes only and there is no recovery to or for the benefit of the estate.

(d) Notice

At the time the account or affidavit is filed the personal representative shall serve notice pursuant to Rule 6-125 on each interested person who has not waived notice. The notice shall state (1) that an account or affidavit has been filed, (2) that the recipient may file exceptions with the court within 20 days ~~from~~ after the court's order approving the account is docketed, (3) that further information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the personal representative or the attorney, (4) that upon request the personal representative shall furnish a copy of the account or affidavit to any person who is given notice, and (5) that distribution under the account as approved by the court will be made within 30 days after the order of court approving the account becomes final.

(e) Audit and Order of Approval

The register shall promptly audit the account and may require the personal representative to furnish proof of any disbursement or distribution shown on the account. Following audit by the register and approval of the account by the court, the court immediately shall execute an order of approval subject to any exceptions.

(f) Exception

An exception shall be filed within 20 days after ~~entry of~~ the order approving the account is docketed and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(g) Disposition

If no timely exceptions are filed, the order of the court approving the account becomes final. Upon the receipt of exceptions, the court shall set the matter

for hearing and notify the personal representative and such other persons as the court deems appropriate of the date, time, place, and purpose of the hearing.

Cross reference: Code, Estates and Trusts Article, §§ 7-301, 7-303, 7-305, 7-501, and 10-101 (a).

Rule 6-417 was accompanied by the following Reporter's note:

REPORTER'S NOTE

Chapter 233, 2018 Laws of Maryland (HB 556) provided that the Register of Wills may waive certain estate administration fees in decedents' estates where real property subject to administration: (1) is to be transferred to an heir of the decedent who resides on the property; or (2) is encumbered by a lien and subject to sale, and the estate is unable to pay the fees by reason of poverty. Chapter 224, 2019 Laws of Maryland (SB 261) changed this provision to remove discretion and require the Register of Wills to waive the same fees under the same circumstances.

The Probate and Fiduciary Subcommittee recommends amending Rule 6-417 by adding a Committee note following subsection (b)(4) that explains that the register must waive fees in certain cases. The Committee note also indicates that a form to request a waiver can be found on the Register of Wills' website.

The Subcommittee, during its July 23, 2019 meeting, noted that there was ambiguity in the time-counting provisions of sections (d) and (f), and that the provisions were not internally consistent. The notice required by subsection (d)(2) advises the recipient of an account or affidavit that

exceptions may be filed "...within 20 days from the court's order approving the account." Section (f) requires that an exception be "filed within 20 days after entry of the order approving the account."

The Subcommittee recommends that the time-counting provisions in this Rule commence upon "docketing," and not upon filing or approval by the court. Accordingly, amendments are proposed to subsection (d)(2) and section (f) to clarify that time for filing exceptions runs from docketing of the court's order approving the account.

Mr. Laws said that the Probate/Fiduciary Subcommittee is recommending several amendments to Rule 6-417. The first amendment is the addition of a Committee note following subsection (b)(4). The General Assembly amended Code, Estates and Trusts Article, §2-206 (a) to clarify the circumstances under which a Register of Wills may waive fees. The Committee note references the statute and includes information about where the form to request a waiver is available.

Mr. Laws explained that the other minor changes to Rule 6-417 resolve an ambiguity regarding when exceptions are required to be filed. The current language in sections (d) and (e) provides that exceptions may be filed within 20 days of the court's order. Amendments to those sections make it clear that the recipient has 20 days from the date the court's order is

docketed. This resolves any issues that may arise if there is a delay in docketing the order from the time the order is signed.

The Chair invited comments about Rule 6-417.

Ms. Lindsey commented that she is pleased with the amendments that clarify the timeline for filing exceptions. She said that the clerks are often asked questions about when appeals and exceptions need to be filed. The Chair responded that the issue regarding the delay in docketing of court orders is one that has arisen in other contexts. He stated that the Rules Committee has not resolved all of the timing ambiguities that appear in the Rules, but the goal is to do so.

The Chair invited further comment on Rule 6-417. There being no motion to amend or reject the Rule, it was approved as presented.

Mr. Laws presented Rule 6-171, Entry of Order or Judgment, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 6-171 (b) by deleting language pertaining to paper docketing and by adding language pertaining to electronic docketing, as follows:

Rule 6-171. ENTRY OF ORDER OR JUDGMENT

(a) Direction by the Court

After determination of an issue, whether by the court or by the circuit court after transmission of issues, the court shall direct the entry of an appropriate order or judgment.

Cross reference: Rule 6-434.

(b) Entry by Register

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

Rule 6-171 was accompanied by the following Reporter's note:

REPORTER'S NOTE

Proposed amendments to Rule 6-417 (d) and (f) provide that the time for filing exceptions to an order approving an account runs from the date the order is docketed by the register of wills and not from the date the order is signed by the court.

In conjunction with the changes to Rule 6-417, conforming amendments to Rule 6-171 (b) are proposed for consistency and to bring the language in the Rule into harmony with the actual practice statewide. Since the late 1990's, the registers of wills throughout the State have used the same

> electronic docketing software. Therefore, the language in Rule 6-171 referring to paper docketing and the practice in each court is no longer necessary and is deleted. The language is replaced with language concerning electronic docketing similar to the language of Rule 2-601 (b)(2).

Mr. Laws stated that the amendment to Rule 6-171 (b) updates the language of the Rule to align with the current practice. When paper files were used, the Register of Wills would note the entry of an order or judgment by physically marking the jacket or docket in the file. The Registers now maintain an electronic case management system, which allows for orders and judgments to be entered into a case electronically. The amendment to Rule 6-171 (b) reflects that practice.

The Chair invited comments on Rule 6-171. There being no motion to amend or reject the Rule, it was approved as presented.

Agenda Item 2. Consideration of proposed new Rule 4-333 (Motion to Vacate Judgement of Conviction or Probation Before Judgment)

Mr. Marcus presented Rule 4-333 Motion to Vacate Judgment of Conviction or Probation Before Judgment, for consideration. He explained that a "handout" version of the Rule was distributed via email. Changes from the version in the meeting materials are in bold.

"HANDOUT"

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

ADD new Rule 4-333, as follows:

Rule 4-333. MOTION TO VACATE JUDGMENT OF CONVICTION OR PROBATION BEFORE JUDGMENT

(a) Scope

This Rule applies to a motion by a State's Attorney pursuant to Code, Criminal Procedure Article, § 8-301.1 to vacate a judgment of conviction or the entry of a probation before judgment entered in a case prosecuted by that office.

Committee note: Rule 4-102 (l) defines "State's Attorney" as "a person authorized to prosecute an offense." That would include the State Prosecutor and the Attorney General with respect to cases they prosecuted.

(b) Filing

The motion shall be filed in the criminal action in which the judgment of conviction or probation before judgment was entered. If the action is then pending in an appellate court, that court may stay the appeal and remand the case to the trial court for it to consider the State's Attorney's motion.

Committee note: Code, Criminal Procedure Article, § 8-301.1 (a) permits the State's Attorney to file the motion "at any time after the entry of a probation before judgment or judgment of conviction," and permits "the court with jurisdiction over the case" to act on it. If an appeal is pending when the motion is filed, the appellate court would have jurisdiction over

the case but no practical ability to take evidence with regard to the State's Attorney motion. If the appeal is successful, it could make the motion moot, but if the motion were to be granted and the State's Attorney then enters a *nolle prosequi*, the appeal may become moot, at least with respect to the judgments vacated. The simplest solution in most cases would be for the appellate court to remand the case for the trial court to consider the motion. Rule 8-604 (d) permits the appellate courts to remand cases "where justice will be served by permitting further proceedings."

(c) Timing

The motion may be filed at any time after entry of the judgment of conviction or probation before judgment.

(d) Content

The motion shall be in writing, signed by the State's Attorney, and state:

(1) the file number of the action;

(2) each offense included in the judgment of conviction or probation before judgment that the State's Attorney seeks to have vacated;

Committee note: This Rule anticipates that the State's Attorney may seek to vacate the entire judgment of conviction or probation before judgment or only parts of it.

(3) whether any sentence or probation before judgment includes an order of restitution to a victim and, if so, the name of the victim, the amount of restitution ordered, and the amount that remains unpaid;

(4) if the judgment of conviction or probation before judgment was appealed or was the subject of a motion or petition for post judgment relief, (A) the court in which the appeal or motion or petition was filed, (B) the case number assigned to the proceeding, if known, (C) a concise

description of the issues raised in the proceeding, (D) the result, and (E) the date of disposition;

(5) a particularized statement of the grounds upon which the motion is based;

(6) if the request for relief is based on newly discovered evidence, (A) how and when the evidence was discovered, (B) why it could not have been discovered earlier, (C) if the issue of whether the evidence could have been discovered in time to move for a new trial pursuant to Rule 4-331 was raised or decided in any earlier appeal or post-judgment proceeding, the court and case number of the proceeding and the decision on that issue, and (D) that the newly discovered evidence creates a substantial or significant probability that the result would have been different **[with respect to the conviction or probation before judgment, or part thereof, that the State's Attorney seeks to vacate,]** and the basis for that statement;

(7) if the basis for the motion is new information received by the State's Attorney after the entry of the judgment of conviction or probation before judgment, a summary of that information and how it calls into question the integrity of the judgment of conviction or probation before judgment **[,or part thereof, that the State's Attorney seeks to vacate];**

(8) that the interest of justice and fairness justifies vacating the judgment of conviction **[or probation before judgment or part thereof that the State's Attorney seeks to vacate]** and the basis for that statement; and

(9) that a hearing is requested.

(e) Notice to Defendant

Upon the filing of the motion, the State's Attorney shall send a copy of it to the defendant, together with a notice

informing the defendant of the rights, within 30 days after the notice was [sent][served][received], (1) to file a response, (2) to request and attend a hearing, and (3) to seek the assistance of an attorney regarding the proceedings.

Committee note: Although the defendant may not seek affirmative relief under this Rule, nothing in the Rule precludes the defendant from contemporaneously seeking affirmative relief under any other applicable Rule. The court, on motion, may consolidate the two proceedings.

(f) Initial Review of Motion

Before a hearing is set, the court shall make an initial review of the motion. If the court finds **that the motion does not comply with section (d) of this Rule or that,** as a matter of law, it fails to assert grounds on which relief may be granted, the court may dismiss the motion**, without prejudice,** without **holding a** hearing. **Otherwise, the court shall direct that a hearing on the motion be held.**

(g) Notice of Hearing

(1) To Defendant

[The State's Attorney] [The clerk] shall send written notice **of the date, time, and location of the hearing to the defendant.**

(2) To Victim or Victim's Representative

Pursuant to Code, Criminal Procedure Article, § 8-301.1(d), the State's Attorney shall send written notice of the hearing to each victim or victim's representative, in accordance with Code, Criminal Procedure Article, § 11-104 or § 11-503. The notice shall contain a brief description of the proceeding and inform the victim or victim's representative of the date, time, and location of the hearing and the right to attend the hearing.

Committee note: Because a motion under Code, Criminal Procedure Article, § 8-301.1 may be filed years after the judgment of conviction or probation before judgment was entered, locating defendants, victims, and victim's representatives may be difficult. Reasonable efforts, beyond merely relying on the last known address in a court record, should be made **by the State** to locate **defendants, victims, and victims' representatives and provide the required notices.**

(h) Conduct of Hearing

(1) Absence of Defendant, Victim, or Victim's Representative

If the defendant or a victim or victim's representative entitled to notice under section **(g)** of this Rule is not present at the hearing, the State's Attorney shall state on the record the efforts made to contact that person and provide notice of the hearing.

(2) Burden of Proof

The State's Attorney has the burden of proving grounds for vacating the judgment of conviction or probation before judgment.

(3) Disposition

If the court finds that the State's Attorney has proved grounds for vacating the judgment of conviction or probation before judgment and that the interest of justice and fairness justifies vacating the judgment of conviction or probation before judgment, the court shall vacate the judgment of conviction or probation before judgment. Otherwise, the court shall deny the motion and advise the parties of their right to appeal. If the motion is denied and the defendant did not receive actual notice of the proceedings, the court's denial shall be without prejudice **[to refile the motion when the defendant has been located and can receive actual notice]**. The court shall

state its reasons for the ruling on the record.

Cross reference: For the right of a victim or victim's representative to address the court during a sentencing or disposition hearing, see Code, Criminal Procedure Article §11-403.

(i) Post-Disposition Action by State's Attorney

Within 30 days after the court enters an order vacating a judgment of conviction or probation before judgment as to any count, the State's Attorney shall either enter a *nolle prosequi* of the vacated count or take other appropriate action as to that count.

Source: This Rule is new.

The handout to Rule 4-333 was accompanied by the following Reporter's note:

REPORTER'S NOTE

Code, Criminal Procedure Article § 8-301.1 was added by Chapter 702, 2019 Laws of Maryland (HB 874). The new statute authorizes a court with jurisdiction over a case to vacate a probation before judgment or conviction, on motion of the State. The bill establishes requirements for filed motions, requires notification of the defendant and the victim or the victim's representative, and authorizes a defendant to file a response to the motion.

Proposed new Rule 4-333 sets forth procedure requirements pertaining to the new statute.

Section (a) provides the scope of Rule 4-333. The Committee note following section (a) makes clear that the term "State's Attorney" includes the State Prosecutor and the Attorney General.

Section (b) requires that the motion be filed in the criminal action in which the judgment of conviction or probation before judgment was entered. See Code, Criminal Procedure Article, § 8-301.1(a). The Committee note following section (b) addresses the filing of a motion to vacate when an appeal is pending.

Section (c) provides that the motion may be filed at any time after entry of the judgment of conviction or probation before judgment. See Code, Criminal Procedure Article, § 8-301.1(a).

Section (d) sets forth the required contents of the State's Attorney's motion to vacate and identifies the two grounds upon which a motion may be based. The first ground is when there is newly discovered evidence that could not have been discovered by due diligence in time to move for a new trial and creates a substantial or significant possibility that the result would have been different. See Code, Criminal Procedure Article, § 8-301.1(a)(1)(i). The second ground is when the State's Attorney has received new information after the entry of a probation before judgment or judgment of conviction that calls into question the integrity of the probation before judgment or conviction. See Code, Criminal Procedure Article, § 8-301.1(a)(1)(ii). The State's Attorney must also state that the interest of justice and fairness justifies vacating the probation before judgment or conviction. See Code, Criminal Procedure Article, § 8-301.1(a)(2).

Section (e) contains provisions pertaining to notice to the defendant. See Code, Criminal Procedure Article, § 8-301.1(c). A committee note following section (e) addresses affirmative relief that the defendant may seek in a contemporaneously filed proceeding, which may, on motion, be consolidated with a proceeding under this Rule.

Section (f) requires the court to make an initial review of the motion to determine whether a hearing will be held. See Code, Criminal Procedure Article, § 8-301.1(e).

Section (g) pertains to notices of the hearing that must be sent to the defendant and to the victim or victim's representative. See Code, Criminal Procedure Article, § 8-301.1(d). A Committee note following section (g) recognizes the difficulties that may be encountered in locating defendants, victims, and victim's representatives when the motion is filed many years after the judgment of conviction or probation before judgment was entered.

Section (h) governs conduct of the hearing.

Subsection (h)(1) requires that the State's Attorney state on the record the efforts made to contact a defendant, victim, or victim's representative who is not present at the hearing.

Subsection (h)(2) states that it is the State's Attorney's burden to prove grounds for vacating the judgment of conviction or probation before judgment. See Code, Criminal Procedure Article, § 8-301.1(g).

Subsection (h)(3) governs disposition of the motion. If the court finds that the State's Attorney has met the burden of proof and that the interest of justice and fairness justifies vacating the judgment of conviction or probation before judgment, the court is required to vacate the conviction or probation before judgment. Otherwise, the court must deny the motion and advise the parties of their right to appeal. The court is required to state its reasons on the record. See Code, Criminal Procedure Article, § 8-301.1(f). If the court denies the State's Attorney's motion, and the defendant had not received actual notice of the proceedings, the denial is without prejudice.

> A cross reference to Code, Criminal Procedure Article §11-403 is included after section (h) to highlight the right of the victim or victim's representative to address the court during a sentencing or disposition hearing.
>
> Section (i) governs post-disposition action by the State's Attorney. Under this section, the State's Attorney is required to enter a nolle prosequi of the vacated count or take other appropriate action as to that count within 30 days after the court enters an order vacating the judgment of conviction of probation before judgment.

Mr. Marcus explained that proposed Rule 4-333 is a new Rule necessitated by a statute that takes effect on October 1, 2019. Code, Criminal Procedure Article, §8-301.1 provides a method for the State's Attorney to file a motion seeking to have a conviction or probation before judgment vacated at the trial court level. The term "State's Attorney" is used in the broad sense because it includes the State Prosecutor and the Attorney General. Mr. Marcus said that the statute enumerates certain grounds for filing a motion to vacate a conviction or probation before judgment. Proposed Rule 4-333 establishes a process for the trial court to adjudicate the State's motion.

Mr. Marcus noted that there are two grounds for filing a motion under the statute. The first ground is new evidence discovered after the conviction which creates a substantial or significant probability that the result of the case would have

been different. The newly discovered evidence must be outcome determinative. The second ground is new information received by the prosecutor that calls into question the integrity of the probation before judgment or the conviction. If the State's Attorney becomes aware of new information and believes the interests of justice warrant the conviction or probation before judgment to be vacated, then the State's Attorney can file a motion with the trial court.

Mr. Marcus stated that the handout draft of Rule 4-333, which was circulated last night, provides for a preliminary determination to be made by the court. The court must determine whether the motion meets the content requirements of section (d) of the Rule and whether proper notice required under section (e) was provided. If the court finds that the State's Attorney has complied with sections (d) and (e), then a hearing on the motion must be held. At the hearing, the State's Attorney has the burden to demonstrate the existence of one of the two grounds that justify vacating the conviction or probation before judgment.

Mr. Marcus pointed out that there are a number of competing interests that may present themselves in the adjudication process. On the one hand, there is the defendant who is directly affected by the judgment of conviction or probation before judgment. On the other hand, there are potential victims

whose rights may be affected if the court grants the State's Attorney's motion. There is a constitutional commitment and a statutory commitment to victims' rights in Maryland. If a conviction is vacated in a case where the defendant has paid restitution to the victim, that opens up questions regarding what, if anything, can be done about the restitution that was paid. Mr. Marcus stated that the Committee does not have all the information regarding what discussions occurred before the General Assembly. Mr. Marcus stated that while the statute is not without potential problems, it is incumbent on the Rules Committee to do its best to put forth a Rule that facilitates the adjudication of these types of motions. He said that further legislation and refinement of the statute may be required in the event significant problems with the process arise.

Mr. Marcus pointed out that one of the key provisions in Rule 4-333 is the notice requirement in section (e). Upon filing the motion to vacate, the State's Attorney is required to notify the defendant and the victim or the victim's representative. Since the motion can be filed at any time, there is the potential that significant time will have passed since the conviction or probation before judgment was entered. Finding the victim or the defendant to provide the required notice may be difficult. Mr. Marcus stated that during the

Subcommittee meeting, a discussion arose about who should be responsible for notifying the defendant and the victim that a motion was filed. Ultimately, it was agreed that the State's Attorney should be responsible for providing notice. In the event that the defendant, victim, or victim's representative is not present at the hearing on the motion, the State's Attorney would be required under subsection (h)(1) to state on the record the efforts made to contact that person and provide notice. If there is no confirmation that the defendant has received notice of the motion and hearing, and the court decides to deny the motion, the denial must be without prejudice. Mr. Marcus said that the notice and disposition provisions are the most salient features of the Rule. He reiterated that the statute goes into effect October 1, 2019.

The Chair commented that there was a lot of discussion at the Subcommittee level about the issues highlighted by Mr. Marcus. He said that the Criminal Rules Subcommittee tried to do the best it could with the language of the statute. However, there are some gaps that cannot yet be addressed.

The Chair called for comments on Rule 4-333.

Janice Bledsoe, Deputy State's Attorney of Criminal Justice for the Office of the State's Attorney for Baltimore City, addressed the Committee. Ms. Bledsoe stated that she has primarily been in charge of handling the situation in Baltimore

City that prompted the legislation on this issue. She pointed out that section (e) of the Rule requires the State's Attorney to provide notice to the defendant. She questioned whether the notice provision includes notice to the defendant's attorney where there is still an attorney of record in the case. There are also instances where the Office of the Public Defender decides to represent the defendant on the State's Attorney's motion. The Chair responded that the statute only refers to the defendant and not the defendant's attorney. He said that the Rule can be expanded to include the defendant's attorney if the Committee agrees. Ms. Bledsoe explained that her preference is for the Rule to require that notice be given "to the defendant or the defendant's attorney." She said that just yesterday, she was in the process of filing a motion in a case and noticed that the attorney of record was available. She called the attorney to ask whether the attorney was still representing the defendant in the case.

Ms. Lindsey commented that an attorney's appearance is usually automatically terminated 30 days after the final judgment is entered. In this context, the fact that the defendant was previously represented by an attorney should not come into consideration after the automatic termination of the attorney's appearance has gone into effect. Ms. Bledsoe replied that sometimes the defense attorney has a better knowledge of

where the defendant is located and may wish to represent the defendant in the matter raised by the State's Attorney's motion.

The Chair stated that he would be concerned with changing the language of section (e) to require that notice be provided to the defendant "or" the defendant's attorney. While the last attorney of record for the defendant may have knowledge of where the defendant is, the statute requires that the defendant receive the notice. Mr. Marcus commented that the issue raised by Ms. Bledsoe is one that was discussed at length during the Subcommittee meeting. Ultimately, the Subcommittee decided not to require the defendant's attorney to be notified. One could argue that once the defense attorney receives notice of the State's Attorney's motion, then the attorney has an affirmative obligation to make known that they do not intend to represent the defendant or to track down the defendant and inform him or her of the motion. The Subcommittee did not want to create that affirmative obligation on the previous defense counsel.

The Chair asked Ms. Bledsoe if the proposed language of section (e) will present a problem for her when filing motions on behalf of the State's Attorney's office. Ms. Bledsoe answered that her office would continue to contact the last defense counsel, even if the Rule did not require her to do so. If her office is unable to locate the defendant to provide notice, then at the hearing on the motion, she would state on

the record that the last defense attorney of record was contacted. That would show the efforts made to find the defendant.

Ms. Blesdoe commented that she has another practical suggestion regarding section (e) of the Rule. She said that out of the three options presented in the fourth line of section (e) that reads, "within 30 days after the notice was [sent] [served] [received]," she prefers that the word "sent" be used. She explained that her office currently has 791 motions to vacate waiting to be filed and it would be nearly impossible to serve all 791 defendants. The Chair questioned whether all 791 motions are based on wrongful convictions. Ms. Bledsoe replied that a majority of those cases are based on previous federal indictments and subsequent federal indictments which call into question the integrity of the convictions at issue.

The Reporter stated that the bolded and bracketed language in section (e) is being presented as an option to the Committee and it is up to the Committee to decide which word should be selected. She noted that the statute states that "the defendant may file a response to the motion within 30 days after the receipt of the notice" that the motion was filed. Unless the defendant is served with a notice with return receipt requested, there is no way for the State's Attorney or the court to know when the defendant received the notice.

Mr. Shellenberger said that he agrees with Ms. Bledsoe's preference to use the word "sent" rather than "served" or "received." He said that he encourages the members of the Committee to remember that the statute and Rule are all about the State's Attorney doing the right thing. There will be instances where the State's Attorney is unable to locate the defendant or the victim. Efforts made to send notice to the defendant should be enough. It has nothing to do with impinging on the defendant's right to file a civil complaint or take other action after the conviction is vacated.

Mr. Zollicoffer posed a hypothetical to the Committee where a defendant is incarcerated at the time that the motion is filed. If the defendant does not get notice and the motion is granted, he questioned how the Division of Corrections is informed that the defendant's conviction has been vacated. Ms. Bledsoe said procedurally, the first thing that her office does is attempt to find the defendant. If the defendant is incarcerated, she immediately files a motion and contacts the trial judge to inform the judge that the defendant is incarcerated. In Baltimore City, it is the trial judge who must issue the jail card and the trial judge wants to ensure that the defendant is present at the hearing on the motion. It would be counterintuitive for the State's Attorney's office to seek to

vacate a conviction because of a belief that the conviction lacks integrity, yet want to keep the defendant incarcerated.

The Chair reiterated that the statute requires the State to notify the defendant but does not say how the defendant must be notified.

Judge Nazarian said that he agrees with the use of the word "sent" in section (e). He noted that his concern with Ms. Bledsoe's original suggestion to notify defense counsel is that there will be an overwhelming number of defendants who were previously represented by the Office of the Public Defender. If we get to a point where the State's Attorney is automatically sending the notice to Public Defender's Office, then the likelihood that the defendant will be notified may depend on how old the conviction is. Judge Nazarian stated that the disposition provision in subsection (h)(3) makes clear that if the court denies the State's motion and the defendant did not receive notice, then the denial must be without prejudice.

Ms. Blesdoe said that the provision in Rule 4-333 that places the burden on the State to make reasonable efforts to contact the defendant addresses the point raised by Judge Nazarian. She said that, as a State's Attorney, she wants to do everything possible to locate the defendant. Her office has already begun contemplating how to show that reasonable efforts were made to locate the defendant. She pointed out that if the

judge denies the motion and it is not based on the lack of notice to the defendant, the Rule does not address whether that denial is with or without prejudice.

The Chair said that the notice to the defendant presented a dilemma at the Criminal Rules Subcommittee meeting. Section (c) of the statute requires the State to notify the defendant in writing of the filing of the motion and states that the defendant may file a response within 30 days after receipt of the notice. The problem is that the court and the State may not know when the defendant received the notice or if the defendant ever received notice. Whatever the Court of Appeals decides to do by Rule may ultimately trump the language of the statute, which the Court can do as a part of its authority to set forth Rules of practice and procedure in the courts.

The Chair asked the Committee for a decision about the alternatives presented in section (e). There was a consensus among the Committee to use the word "sent."

The Chair invited further comment on Rule 4-333.

Del. Barron addressed the Committee. He stated that he was one of the sponsors of HB 874 and that he wanted to address the language included in section (i) of Rule 4-333. The third line of that section reads, "the State's Attorney shall enter either a *nolle prosequi* of the vacated count or take other appropriate action as to that count." Del. Barron said that he can think of

only two actions that the State's Attorney would take as to the vacated count, which is to either enter a *nolle prosequi* or possibly a stet. He added that he submitted a letter to the Committee outlining some suggested edits to section (i) (see Appendix 1). The first suggestion is to remove the word "either" and the language "or take other appropriate action" from the section. The other suggestion is to delete section (i) in its entirety.

Mr. Shellenberger said that a ten-count indictment could include counts that are based on questionable information as well as counts with a good faith basis. 0 The State may seek to vacate convictions for only certain counts. A judge may decide to vacate all counts and give the defendant a new trial on those which the State believes are supported by evidence and good faith. The Rule gives the State's Attorney discretion to take appropriate action. Del. Barron pointed out that the State obtained a conviction on all counts, and the State's motion to vacate is only for the counts that the prosecutor finds to lack integrity.

The Chair commented that section (i) arose because the Subcommittee recognized that merely vacating a conviction does not wipe out the charging document. The matter ordinarily would be set in for a new trial, absent the State's Attorney entering a *nolle prosequi* of the vacated count. At the Subcommittee

meeting, Michael Schatzow, Chief Deputy State's Attorney for Baltimore City, was asked whether his office routinely enters a *nolle prosequi* of the vacated counts. Mr. Schatzow indicated that his office normally enters a *nolle prosequi,* but that is not always the case. The charging document would remain open and the matter would be unresolved if a *nolle prosequi* is not entered. The Subcommittee decided that a provision giving the State's Attorney 30 days to take "other appropriate action" is the best way to address that issue. Del. Barron responded that it is fair to say that the legislature intended the court's vacating of a conviction or probation before judgment to be the final say on the matter. He reiterated that the only other appropriate action for the State's Attorney to take is to enter a stet. He said that he could not foresee a situation where the State would decide to retry a case after going through extensive lengths to vacate the conviction. Del. Barron added that there also is the issue of the defendant's interests in getting the vacated conviction expunged. He said that he believes the expungement Rules are broad enough to account for vacated convictions. However, reasonable minds could differ. By entering a *nolle prosequi* of the vacated counts, the State's Attorney would be allowing the defendant to be entitled to expungement, subject to the expungement Rules.

Mr. Kramer questioned whether Del. Barron's suggestion to require the State to enter a *nolle prosequi* of any vacated count would serve as a disincentive for prosecutors to file motions to vacate. Del. Barron responded that his suggestion would incentivize the State to be certain that it wishes to vacate the conviction or probation before judgment. He added that the State's Attorney's motion would only apply to those counts that the State's Attorney believes should be vacated. Any other counts on which the State has secured a conviction would remain. Del. Dumais stated that she agreed with Del. Barron's comments. Mr. Kramer responded that it is possible for the State's Attorney to feel that there was tainted evidence applicable to the vacated counts and to the other counts. The State may wish to vacate the other counts as well, and retry the case as to those counts.

The Chair inquired as to what the State's Attorney would do with uncharged lesser-included offenses. Mr. Shellenberger replied that there is no statute of limitations for felonies. The State could vacate a conviction one day, and the next day indict the defendant on lesser included offenses that were not previously charged. Del. Dumais commented that some of the potential scenarios that are being discussed could happen regardless of the language included in section (i). She moved

to remove the language "either" and "or take other appropriate action" from section (i). The motion was seconded.

The Chair called for comments on Del. Dumais's motion.

Sen. Cassilly commented that it has been pointed out numerous times that the statute is premised on the State's Attorney wanting to do the right thing and a judge agreeing with the State. He said that he takes issue with the idea of cutting off the discretion of the State's Attorney by requiring a *nolle prosequi* on the vacated counts. There may be a good reason for the State to take "other appropriate action." Limiting the discretion of the State's Attorney may disincentivize the State from filing a motion to vacate in the first place. Ms. Bernhardt also expressed concern about taking away the discretion of the State's Attorney by Rule.

Mr. Laws said that he agrees with both Sen. Cassilly and Ms. Bernhardt's comments. He added that the statute requires the victim to receive notification of the State's motion and have a right to be present at the hearing. It is possible that the State's Attorney may hear from the victim, who may have independent evidence or convince the State to retry the case. Del. Dumais commented that section (i), as amended by her motion, would in no way take away the prosecutorial discretion of the State's Attorney. She said that the language "or take other appropriate action" serves no real purpose other than to

open the door to the idea that something may happen after the count is vacated. She said that the Rule should be specific in requiring the State to enter a *nolle prosequi* of the vacated counts. Ms. Day commented that if the legislature intended to require the State to enter a *nolle prosequi* of any vacated counts, then the legislature should have included that requirement in the statute.

The Chair called for a vote on Del. Dumais's motion to delete certain language in section (i). The motion failed.

The Chair invited further comment on Rule 4-333.

Mr. Shellenberger said that there is one issue that he forgot to address at the Subcommittee level. He said that under the statute, there are two reasons that the State may file a motion to vacate. One reason is based on the ground that the possibility exists that the outcome would have been different. The second ground is that there is new information that calls into question the integrity of the judgment. Subsection (d)(7) of the Rule requires that there be new information. Subsection (d)(8) should also require new information.

The Reporter explained that the two grounds for filing the motion to vacate are identified in subsections (d)(6) and (d)(7) of the Rule. Subsection (d)(6) corresponds with subsection (a)(1)(i) of the statute. That is the first ground for filing a motion. There must be newly discovered evidence that could not

have been discovered by due diligence in time to move for a new trial and creates a substantial probability that the result would have been different. The second ground for filing the motion is provided in subsection (d)(7) of the Rule, which corresponds to subsection (a)(1)(ii) of the statute. The second ground requires the motion to be based on the State's Attorney receiving new information after the entry of the probation or judgment of conviction that calls into question the integrity of the probation before judgment or conviction. Since the statute includes an "and" after the two grounds, the State always must affirmatively state that the interest of justice and fairness justifies vacating the probation before judgment or conviction. Mr. Shellenberger responded that whatever the State's Attorney's basis for filing the motion to vacate is, there must be new information that the State did not have before.

Judge Price moved to add the language "based upon such new information" to the beginning of subsection (d)(8).

The Reporter noted that the motion can be based on either new information or newly discovered evidence. She stated that the first ground, under subsection (d)(6), is based on actual evidence that could have been admissible at trial, which creates a substantial or significant probability that the result could have been different. The second ground, under subsection (d)(7), talks about new information that calls into question the

integrity of the conviction or probation before judgment. There is a distinction between the two grounds. The Chair commented that there is a slight difference between the alternative grounds for filing the motion.

Judge Price modified her motion to provide that subsection (d)(8) state, "based upon information provided in (6) or (7), the interests of justice and fairness justifies vacating the probation before judgment or conviction." The motion was seconded.

The Chair called for comment on Judge Price's motion. The motion carried by a majority vote.

The Chair called for further comment on Rule 4-333.

Ms. Lettau, Chief Attorney of the Post Conviction Defenders Division of the Office of the Public Defender, addressed the Committee. She said that her office would have preferred section (e) to require that the defendant be served with notice of the State's motion but understands the Committee's decision to use the word "sent" instead. She stated that there is additional language in section (e) that is concerning. Specifically, the 30-day timeframe provided for the defendant to respond and to request a hearing. She said that presumably a response to the State's Attorney's motion is not required. Additionally, most defendants do not know how to properly request a hearing. The Chair responded that subsection (c)(2)

of the statute provides that the defendant may file a response to the motion within 30 days after receipt of the notice. Ms. Lettau explained that her concern is with the language advising the defendant to request a hearing. She reiterated that many defendants may not know how to request a hearing and if that burden is placed on them, the defendants may be discouraged from doing anything. The Chair asked Ms. Lettau whether she could foresee a defendant objecting to the State's motion. She replied that she does not think a defendant would object, unless Mr. Shellenberger's scenario came true and the State wished to retry the case on other counts. She recommended deleting the language "request and" from the fifth line of section (e). She pointed out that subsection (e)(1) of the statute requires the court to hold a hearing on the motion if the motion satisfies the statutory requirements.

The Reporter stated that section (e) will have to be restyled to make clear that the 30-day timeframe only applies to the defendant's right to respond to the motion. The portion regarding the defendant's right to attend the hearing and to seek the assistance of counsel will be included separately since there is no timeframe that applies to those rights. The Reporter asked if the Committee agreed with the recommendation made by Ms. Lettau. The Committee agreed by consensus.

Ms. Lettau said that her final comment applies to subsection (g)(1) of the Rule. There is a choice presented between having the State's Attorney or the clerk's office send written notice of the hearing to the defendant. Ms. Lettau recommended that the clerk's office be responsible for sending the hearing notices. She acknowledged that there have been discussions about how difficult it may be to locate the defendants. She said that one solution may be to add a provision to the Rule encouraging the State's Attorney to provide any updated information regarding the defendant's location to the clerk's office. She added that the clerk's office is the entity responsible for sending all hearing notices.

The Chair noted that subsection (g)(2) requires the State's Attorney to notify the victim or victim's representative of the hearing. He asked why the State's Attorney should not be responsible for providing the same notice to the defendant. Ms. Lettau explained that the State's Attorney has a statutory obligation to notify the victim of what is happening in the case and whether there are any hearings set.

The Reporter commented that in normal situations, when the defendant is arrested, the court has the defendant's address. In the context of Rule 4-333, the State's Attorney may have to track down the location of the defendant to provide notice that

the motion was filed. She said that she is not sure the Rules can require the State to provide the defendant's location to the clerk's office. It may make more sense to have the State's Attorney send the hearing notice to the defendant since the State's Attorney also is obligated to send the initial notice of the filing of the motion.

Judge Price questioned how the State's Attorney would know of the date and time of the hearing to notify the defendant. She explained that the court schedules the hearings, and the clerk's office sends the hearing notices to the parties to the case. Usually, the clerk's office sends all notices to the last known address in the court record unless the State notifies the clerk's office that the defendant is somewhere else.

By consensus, the Committee agreed that the clerk should be responsible for sending written notice of the date, time, and location of the hearing to the defendant.

The Reporter asked the Committee whether additional language should be added to the Rule to require the State's Attorney to advise the clerk's office of the location of the defendant if the defendant is actually located. She reminded the Committee that many years could pass between the last proceeding in the case and the filing of the motion to vacate. Del. Dumais said that she does not believe additional language is necessary. She noted that the court has the power to vacate

the conviction or probation before judgment with or without the defendant's presence at the hearing on the motion. She also said that she cannot imagine the State's Attorney being aware of the Defendant's location but failing to provide that information to the court. Mr. Shellenberger commented that it is not unreasonable to require the State's Attorney to advise the court of the defendant's location if the State has knowledge. He said that he cannot imagine the State's Attorney would go through all of the effort to attempt to locate the defendant and not inform the court. Judge Nazarian questioned whether a provision can be added to section (d), which sets forth the contents of the motion. As a part of the motion itself, the State's Attorney can be required to identify the location of the defendant, if known. Mr. Shellenberger said that he agreed with Judge Nazarian's suggestion.

The Chair asked whether Judge Nazarian's suggestion is satisfactory to the Committee. By consensus, the Committee agreed with the proposed change.

Sen. Cassilly asked for clarification about the two grounds for vacating a conviction that are contained in subsections (d)(6) and (7). The Reporter explained that each subsection reflects one of the grounds stated in the statute. She suggested adding cross references to the relevant subsections of

the statute after subsections (d)(6) and (d)(7) for clarity. No motion to amend the Rule was made.

The Chair noted that bolded language in brackets in subsection (d)(6) was added to the draft to allow for the State to seek to vacate only a part of a conviction. By concensus, the Committee approved the language.

The Chair called for further comments on Rule 4-333. By consensus, the Committee approved the Rule as amended.

Agenda Item 3. Consideration of proposed amendments to Rule 4-245 (Subsequent Offenders).

Mr. Marcus presented Rule 4-245, Subsequent Offenders, for consideration.

MARYLAND RULES

TITLE 4 – CRIMINAL CASES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-245 by adding language to sections (b) and (c) requiring the State's Attorney to serve notice of an alleged prior conviction on the defendant in substantially a form approved by the State Court Administrator and posted on the Judiciary website, as follows:

Rule 4-245. SUBSEQUENT OFFENDERS

. . .

(b) Required Notice of Additional Penalties

When the law permits but does not mandate additional penalties because of a specified previous conviction, the court shall not sentence the defendant as a subsequent offender unless the State's Attorney serves notice of the alleged prior conviction on the defendant or counsel before the acceptance of a plea of guilty or nolo contendere or at least 15 days before trial in circuit court or five days before trial in District Court, whichever is earlier. The notice required under this subsection shall be substantially in the form approved by the State Court Administrator and posted on the Judiciary website.

(c) Required Notice of Mandatory Penalties

When the law prescribes a mandatory sentence because of a specified previous conviction, the State's Attorney shall serve a notice of the alleged prior conviction on the defendant or counsel at least 15 days before sentencing in circuit court or five days before sentencing in District Court. If the State's Attorney fails to give timely notice, the court shall postpone sentencing at least 15 days unless the defendant waives the notice requirement. The notice required under this subsection shall be substantially in the form approved by the State Court Administrator and posted on the Judiciary website.

. . .

Source: This Rule is derived from former Rule 734 and M.D.R. 734.

Rule 4-245 was accompanied by the following Reporter's note:

> Proposed amendments to Rule 4-245 (b) and (c) require State's Attorneys to serve notice of an alleged prior conviction on defendants in substantially the form approved by the State Court Administrator and posted on the Judiciary website. This requirement is intended to facilitate compliance with this Rule and to assist the courts in accurately tracking subsequent offender data pursuant to Code, Criminal Law, § 14-101(d)(2)(i).

Mr. Marcus explained that in criminal cases, the State's Attorney may seek enhanced penalties where the defendant has a previous conviction. The State's Attorney is required to serve notice of the alleged prior conviction on the defendant. The amendment to Rule 4-245 reflects the standardization of the form of notice that will be given to the defendants and included in the case file. The form will be approved by the State Court Administrator and will allow for easier tracking of individuals who may be subject to enhanced punishments and give the courts the ability to ensure that the defendant was provided proper notice of enhanced penalties.

The Chair invited comments about Rule 4-245.

Judge Eaves asked if the form has been developed. Judge Norman Stone, Chair of the Forms Subcommittee, said that there are drafts of the form. He explained that the Forms Subcommittee consulted with current prosecutors and judges who are former prosecutors in developing the form. Several revisions have been made and the form will be presented later

today at the State's Attorney's Association meeting. The Chair asked Judge Stone whether the Committee can be assured that by the time Rule 4-245 is approved by the Court of Appeals, the form will be finalized and available. Judge Stone responded in the affirmative. He added that once the State's Attorneys' Association reviews the form, any necessary tweaks will be made, then the form will be presented to the Forms Subcommittee for approval.

The Chair called for further comments about Rule 4-245. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 4. Consideration of proposed amendments to Rule 4-345 (Sentencing - Revisory Power of the Court).

Mr. Marcus presented Rule 4-345 Sentencing - Revisory Power of the Court, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-345, by adding a Cross reference following section (c), as follows:

Rule 4-345. SENTENCING—REVISORY POWER OF THE COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Cross reference: See *State v. Brown*, ___ Md. ___ (2019) concerning an evident mistake in the announcement of a sentence.

. . .

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

Rule 4-345 was accompanied by the following Reporter's note:

Reporter's Note

The addition of the Cross reference following Rule 4-345 (c) is proposed in light of *State v. Brown*, ___ Md. ___ (No. 65, September Term, 2018, filed June 24, 2019), concluding that for a mistake in the announcement of a sentence to be "evident," the mistake must be clear or obvious.

Mr. Marcus said that the proposed amendment to Rule 4-345 is the addition of a cross reference to a recent Court of

Appeals decision in *State v. Brown*, 464 Md. 237 (2019). In that case, the trial judge announced the defendant's sentence as to multiple counts. The transcript indicates that there was some confusion between the lawyers as to the sentence announced by the trial judge. The judge engaged in a dialogue with counsel regarding the sentence and each lawyer drew a different conclusion as to the defendant's sentence. Mr. Marcus said that ultimately, the Court of Appeals reaffirmed the concept that a trial judge's mistake in announcing a sentence must be clear and obvious. The trial judge can correct an evident mistake in announcing a sentence before the defendant leaves the courtroom following the sentencing hearing. The trial court must acknowledge that it made a mistake in the announcement of the sentence and indicate that it is correcting the mistake. The reference to the *Brown* case hopefully will alert attorneys and judges of the standard for correcting a mistake in the announcement of a sentence.

The Chair called for any comment about Rule 4-345. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 5. Consideration of proposed revisions to the Rules in Title 16, Chapter 900 (Access to Judicial Records).

The Chair presented the Rules in Title 16, Chapter 900 Access to Judicial Records, for consideration.

The Chair explained that this is the first comprehensive review of the Title 16, Chapter 900 Rules ("the Access Rules") since they were adopted in 2004. There have been many changes since that time, including changes to the Public Information Act, which was substantially rewritten in 2014.

The Chair said that in 2004, the Rules dealt primarily with paper records that were kept at the courthouse, which are now called "case records." At that time, if an individual wanted to see a case record, that individual would have to go to the clerk's office at the courthouse. The clerk would give the file to the individual unless the file was protected in some way. There were very few electronic records. Most electronic records were administrative records kept at the Administrative Office of the Courts. The Chair explained that by December of 2020, nearly all judicial records, except for archived ones, will be stored electronically. There has been an explosion of social media use, inventive ways of hacking into electronic databases, and new methods of mass transmission and distribution of records that contain sensitive information. There are privacy and security concerns, which have always existed but will be heightened by the state-wide transition into an electronic filing system.

The Chair said that the General Court Administration Subcommittee was sensitive to the need to maintain a proper balance between the traditional openness of court operations and documents and certain legitimate restrictions on openness, which may be necessary to protect other equally important values. He noted that the news media was invited to the Subcommittee's discussion of the proposed Access Rules revisions, as they also were a part of the discussion of the 2004 Access Rules.

The Chair acknowledged a joint letter that was received from the Georgetown University American Civil Liberties Union, the Maryland-Delaware-D.C. Press Association, and The Reporters Committee for Freedom of the Press (see Appendix 2). He said that he believes the Subcommittee has addressed the concerns made in the letter regarding Rules 16-922 through Rule 16-932. The Subcommittee has also worked closely with Michele McDonald from Attorney General's Office, State Court Administrator Pam Harris, the Government Relations Office of the Administrative Office of the Courts ("the AOC"), the Legal Affairs Office of the AOC, and Maryland State Bar Association ("MSBA") liaisons Tom Dolina and Tom Stahl.

The Chair stated that one major purpose of the Access Rules revisions is to clarify the relationship between the Rules and the Public Information Act ("the PIA"). The PIA deals with "public records," which, as defined, may include judicial

records. The principal focus of the PIA since its enactment is records collected by or created by executive branch agencies, both State and local. With the exception of adoption cases, juvenile cases, and a few others, case records were always open to the public. The focus of the PIA was to create public access to executive branch records. The Chair said that some point, the Court of Appeals recognized that the PIA did not fit well with judicial records. The Court decided to deal with access to judicial records through Rules. The 2004 Access Rules made clear that under Article 4, Section 18 of the Maryland Constitution, the Court has the power to regulate access to judicial records as an integral part of practice and procedure in the courts and the administration of the courts. The General Assembly has recognized that by including in the PIA the requirement that a custodian deny inspection of any public record if the inspection would be contrary to a Rule adopted by the Court of Appeals. The Subcommittee tried in every possible way to craft Rules that are not inconsistent with the PIA.

The Chair explained that for convenience, the Access Rules have been divided into four divisions: General Provisions (Rules 16-901 through 16-905), Limitations on Access (Rules 16-911 through 16-919), Procedures (Rules 16-921 through 16-924), and Resolution of Disputes (Rules 16-932 and 16-933). The fourth division departs the most from the PIA.

The Chair presented Rule 16-901, Scope of Chapter, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 16-901, as follows:

Rule 16-901. SCOPE OF CHAPTER

(a) Generally

Except as expressly provided or limited by other Rules, the Rules in this Chapter govern public access to judicial records, whether in paper or electronic form, that are in the custody of a judicial agency, judicial personnel, or a special judicial unit.

(b) Access by Judicial Employees, Parties, Attorneys of Record, and Certain Government Agencies

The Rules in this Chapter do not limit access (1) to judicial records by authorized judicial officials or employees in the performance of their official duties or to government agencies or officials to whom access is permitted by law, or (2) to a case record by a party or attorney of record in the action, or to government agencies or officials to whom access is permitted by law.

Cross reference: (1) See For other Rules that affect access to judicial records, see Rule 16-504 governing access to electronic recordings of court proceedings (Electronic Recording of Circuit Court Proceedings) and

Rule 20-109 (Access to Electronic Records in MDEC Actions) governing access to electronic records under the system of electronic filing and case management established by the Court of Appeals (MDEC). (2) See Rule 16-902 (h) defining "judicial record." (3) The Public Information Act (Code, General Provisions Article, §§ 4-101 through 4-601) deals generally with public access to public records, as defined in § 4-101 (h)(j). See Code, General Provisions Article, § 4-301 (a)(2)(iii), requiring a custodian of a public record to deny inspection if the inspection would be contrary to the rules adopted by the Court of Appeals.

Source: This Rule is new.

The Chair said that Rule 16-901 sets forth the scope of the chapter. Most of the contents of Rule 16-901 are contained in the current Rule. The amendments that are proposed are clarifying amendments.

The Chair invited comments about Rule 16-901. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented Rule 16-902, Preamble, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO JUDICIAL RECORDS

DIVISION 1. GENERAL PROVISIONS

ADD new Rule 16-902, as follows:

Rule 16-902. PREAMBLE

(a) Constitutional Authority

Article IV, § 18(a) of the Md. Constitution authorizes the Court of Appeals to adopt Rules concerning the practice and procedure in and the administration of the courts of this State that have the force of law. Control over access to judicial records in the custody of judicial agencies, judicial units, or judicial personnel is an integral part of the practice and procedure in and administration of the courts.

Committee note: The Public Information Act (Code, General Provisions Article, § 4-301 (2)(iii)) recognizes that authority by requiring a custodian of a public record to deny inspection of a public record if inspection would be contrary to a Rule adopted by the Court of Appeals.

(b) General Intent

The intent of this Chapter is (1) to adopt comprehensive principles and procedures that will maintain the traditional openness of judicial records, subject only to such shielding or sealing that is necessary to protect supervening rights of privacy, safety, and security, and (2) to provide an efficient, credible, and exclusive system for resolving disputes over inspection decisions by custodians of judicial records.

(c) Categories of Judicial Records

(1) Generally

Judicial records fall into five categories:

(A) Notice Records - those, such as land records, that are filed with circuit court clerks for the sole purpose of

recording, preserving, and providing public and constructive notice of them;

(B) Administrative Records - those that relate to personnel, budgetary, or operational administration, information technology, the safety and security of judicial personnel, facilities, equipment, or programs, the development and management of electronic data, or that constitute judicial work product;

(C) License Records - those that relate to the issuance of licenses by Circuit Court clerks pursuant to statutes;

(D) Case Records - those that were filed with the clerk of a court in connection with litigation that was filed in or transferred to the court; and

(E) Special Judicial Unit Records - those maintained by four special judicial units that are subject to special rules of confidentiality.

(2) Treatment

(A) Although there is a presumption of openness applicable to all five categories of judicial records, some present special concerns that require more focused treatment with respect to shielding decisions.

(B) Because the principal function of notice records is to give public notice of them, very few exceptions to public access are warranted. Case records and certain kinds of administrative records may contain very sensitive information that needs to remain confidential for overarching privacy, safety, and security purposes and not be subject to public inspection.

(C) License records are similar to public records maintained by Executive Branch licensing agencies, and public inspection of them is generally consistent with what is allowed under the Public Information Act or other statutes.

Source: This Rule is new.

The Chair said that Rule 16-902 is new and contains the preamble. Section (a) sets forth the constitutional basis for the Access Rules under Article 4, Section 18 of the Maryland Constitution. Section (b) expresses the general intent to preserve the balance between openness of judicial records and the protection of privacy, safety, and security. Subsection (c)(1) identifies the five categories of judicial records which were previously only discussed in the 2004 Committee Report. Subsection (c)(2) explains that while there is a presumption of openness applicable to all five categories of judicial records, there are different considerations when determining the level of access granted for each category.

The Chair said that the recognition of different categories of judicial records was prompted by the news media at the time the original Access Rules were developed in 2004. The original draft of the Rules simply referred to judicial records as a single category. Carol Melamed, an attorney for the Washington Post and the local press association, pushed the idea that there are different types of judicial records and there should be different levels of access to each category. For example, land records are judicial records, but there should not be any restrictions on the access to land records because the purpose

of the record itself is to give constructive notice to the public. Case records are different and may contain sensitive information.

The Chair called for comments about Rule 16-902. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented Rule 16-903, Definitions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 16-902, as follows:

RULE ~~16-902~~ 16-903. DEFINITIONS

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

~~(k)~~ (a) Access; Remote Access

(1) ~~Generally~~ Access

"Access" means the right to inspect, search, or obtain a copy of a judicial record. "Access" and "Inspection" are used interchangeably.

(2) Remote Access

(A) Generally

"Remote access" means the ability to inspect, search, or obtain a copy of a judicial record~~, as defined in section (h) of this Rule,~~ by electronic means from a device not under the control of the Maryland Judiciary.

~~(2)~~ (B) Case Records

Remote access to case records means access through the CaseSearch program operated by the Administrative Office of the Courts or through the MDEC System established by the Court of Appeals. Access to electronic case records through a terminal or kiosk located in a courthouse of the District Court, ~~or~~ a circuit court, or an appellate court of this State and made available by the court for public access does not constitute remote access.

Cross reference: See Title 20 of the Maryland Rules.

~~(a)~~ (b) Administrative Record

(1) Except as otherwise provided in this Rule, "administrative record" means a record that:

(A) pertains to the administration or administrative support of a court, a judicial agency, or the judicial system of the State; and

(B) is not a case record.

(2) "Administrative record" includes:

(A) a rule adopted by a court pursuant to Rule 1-102;

(B) an administrative order, policy, or directive that governs the operation of a court or judicial agency;

(C) an analysis or report, even if derived from other judicial records, that is:

(i) prepared by or for the use of a court or judicial agency; and

~~(ii) used by the court or judicial agency for purposes of judicial administration; and~~

~~(iii)~~ (ii) not filed, and not required to be filed, with the clerk of a court for inclusion as or in a case record.

(D) judicial education materials prepared by, for, or on behalf of a ~~unit of the Maryland Judiciary~~ judicial agency for use by Maryland judges, magistrates, clerks, or other judicial personnel in the performance of their official duties;

(E) a jury plan adopted by a court;

(F) a case management plan adopted by a court;

(G) a continuity of operations plan;

(H) an electronic filing plan adopted by a court;

~~(I) an administrative order issued by the Chief Judge of the Court of Appeals pursuant to Rule 16-903;~~

~~(J)~~ (I) policies, procedures, and plans adopted or approved by the ~~State Court Administrator~~ SCA, the Court of Appeals, ~~or~~ the Chief Judge of that Court, the administrative judge of a circuit court, the Chief Judge of the District Court, an orphans' court, or a register of wills pursuant to a Maryland Rule or ~~a~~ statute; ~~and~~

~~(K)~~ (J) judicial or other professional work product, and ~~including drafts of documents, notes, and memoranda prepared by a judge or other Judicial Branch personnel at the direction of a judge or other judicial official and intended for use in the preparation of a decision, order, recommendation, or opinion~~.

(K) policies, procedures, directives, or designs pertaining to the security or safety of judicial facilities, equipment,

operations, or personnel, or members of the public while in or in proximity to judicial facilities or equipment.

Cross reference: See Rule 16-911 (f) precluding the inspection of the kinds of records included in subsections (b)(1)(G) and (K) of this Rule.

(3) "Administrative record" does not include a document or information gathered, maintained, or stored by a person or entity other than a court or judicial agency, to which a court or judicial agency has access but which is not a case record.

~~(b)~~(c) Business License Record

(1) "Business license record" means a judicial record pertaining to an application for a business license issued by the clerk of a court~~,~~ and includes the application for the license and a copy of the license.

(2) "Business license record" does not include a judicial record pertaining to a marriage license.

~~Committee note: A marriage license record is included as a case record under subsection (c)(1)(B) of this Rule. It does not fit neatly within the scope of either a business license record or a case record, but, with respect to issues of public access, it is better treated in the manner of case records. See Rule 16-907 (b).~~

~~(c)~~(d) Case Record

(1) Except as otherwise provided in this Rule, "case record" means:

(A) all or any portion of a court paper, document, exhibit, order, notice, docket entry, or other record, whether in paper, electronic, or other form, that is made, entered, filed, or maintained by the clerk of a court in connection with an action or proceeding; and

~~(B) a record pertaining to a marriage license issued and maintained by the court, including, after the license is issued, the application for the license~~;

~~(C)~~(B) a miscellaneous record filed with the clerk of the court pursuant to law that is not a notice record.

(2) "Case record" does not include a document or information described in subsection ~~(a)(3)~~ (b)(3) of this Rule.

(e) Clerk

"Clerk" means the clerk of a Maryland court and includes (1) deputy and assistant clerks authorized to act for the clerk with respect to inspection requests, and (2) a register of wills when acting as the custodian of a judicial record filed with or created by the register or the orphans' court.

~~(d)~~(f) Court

"Court" means the Court of Appeals of Maryland, the Court of Special Appeals, a circuit court, the District Court of Maryland, and an orphans' court of Maryland.

~~(e)~~(g) Custodian

Subject to subsection (3) of this section, "Custodian," with respect to a judicial record, means:

(1) for a case record, notice record, or ~~business~~ license record, the clerk of the court in which the record was filed or the license was issued or~~, in the absence of the clerk,~~ an employee of the clerk's office authorized to act for the clerk in determining administratively whether inspection of the record or any part of the record may be denied; and

(2) for an administrative record or special judicial unit record, the individual ~~or individuals~~, or an employee authorized to act for the individual, with legal control

over the record and authority to determine administratively whether inspection of the record or any part of the record may be denied.

(3) Judicial records that are in electronic form may have more than one custodian. They may be in the custody or control of the person who created them or with whom they initially were filed and in the custody or control of the Administrative Office of the Courts or a unit of that Office. In that situation, where it may be more convenient and efficient for an employee of the Administrative Office of the Courts to locate the records requested, determine whether there are any impediments to inspection, and communicate with the requester, the SCA or the SCA's designee may delegate those functions to an employee of the Administrative Office of the Courts.

(4) For administrative records within the custody or control of the Administrative Office of the Courts, the SCA may designate, by general or specific directive, which unit or employee within the Administrative Office of the Courts should receive the request or perform the function of custodian.

Committee note: ~~This definition of "custodian" focuses on who has authority to make the administrative decision whether, for purposes of the Rules in this Chapter, inspection of a particular judicial record may be denied. It is not intended to foreclose the application of a different definition that may be relevant for other purposes.~~ The objective of subsection (g)(3) is both efficiency in locating the judicial record and uniformity in determining whether there are any impediments to allowing inspection of the record or records of that kind. It is not intended to supplant the ability of the clerks or other custodians to accept and deal with requests for case records, notice records, license records, or local

administrative records that easily may be located and present no issues of access as to which a uniform policy is desirable. This approach is not inconsistent with the PIA. Code, General Provisions Article, § 4-101 (d) defines "custodian" as the "official custodian," defined in § 4-101 (f), and "any other authorized individual who has physical custody and control of a public record."

~~(f)~~ (h) Individual

"Individual" means a human being.

~~(g)~~ (i) Judicial Agency

"Judicial agency" means a unit within the Judicial Branch of the Maryland Government other than a special judicial unit. Judicial agency includes an orphans' court and a register of wills.

~~(h)~~ (j) Judicial Record

"Judicial record" means a record that is the original or copy of any documentary material that:

(1) is made or received by, and is in the possession of, a judicial agency in connection with the transaction of judicial business,

(2) is in any form, including the forms listed in Code, General Provisions Article, § 4-101 (j)(1)(ii), and

(3) includes:

~~(1)~~ (A) an administrative record;

~~(2)~~ (B) a ~~business~~ license record;

~~(3)~~ (C) a case record;

~~(4)~~ (D) a notice record; or

~~(5)~~ (E) a special judicial unit record.

(k) Judicial Work Product

"Judicial work product" has its common law meaning. It includes (1) documents, notes, and memoranda prepared by a judge or other Judicial Branch personnel at the request of a judge or other judicial official, and (2) research, requests for information, and communications by or on behalf of a judge or other judicial official, and responses thereto, intended for use in the preparation of a decision, order, recommendation, opinion, or other judicial action or pronouncement.

Committee note: Judicial personnel sometimes may send or receive information by e-mail or other electronic means that would not constitute judicial work product and was not intended to constitute a judicial record. Upon an inspection request, the custodian of such records will need to determine whether a particular communication falls within the definition of judicial record and, if so, judicial work product.

(l) License Record

"License record" means a judicial record of a business license or a marriage license issued by the clerk of a circuit court pursuant to statute.

Cross reference: For business licenses issued by the clerk, see Code, Business Regulation Article, Titles 16, 16.5, and 17. For marriage licenses issued by the clerk, see Code, Family Law Article, Title 2, subtitles 4 and 5.

~~(i)~~ (m) Notice Record

"Notice record" means a record that is filed with the clerk of a court pursuant to statute for the principal purpose of giving public notice of the record. It includes deeds, mortgages, and other documents filed among the land records; financing statements filed pursuant to Code, Commercial Law Article, Title 9; and tax and other liens filed pursuant to statute.

~~(j)~~(n) Person

"Person" means an individual, sole proprietorship, partnership, firm, association, corporation, or other entity.

(o) PIA

"PIA" means the Maryland Public Information Act (Code, General Provisions Article, Title 4).

~~(l)~~(p) Special Judicial Unit

"Special Judicial Unit" means (1) the State Board of Law Examiners, the Accommodations Review Committee, and ~~the Character Committees~~ character committees; (2) the Attorney Grievance Commission and Bar Counsel; ~~and~~ (3) the Commission on Judicial Disabilities, the Judicial Inquiry Board, and Investigative Counsel, and (4) the Client Protection Fund.

Cross reference: See Rule 20-109 (c).

(q) SCA

"SCA" means the State Court Administrator.

Cross reference: See Rule 16-111 regarding the authority and duties of the State Court Administrator.

~~Committee note: The Rules in this Chapter recognize that judicial records can be of five types: (1) those, like land records, that are filed with the court, not necessarily in connection with any litigation, but for the principal purpose of providing public notice of them; (2) those that are essentially administrative in nature--that are created or maintained by the court or judicial agency itself and relate to the administration or operation of the court or agency; (3) those that are filed or created in connection with business licenses (excluding marriage licenses) issued by the clerk; (4) those that are filed with the court in connection with a~~

judicial action or the issuance of a marriage license; and (5) records of three special judicial units that are subject to special rules of confidentiality. The premise of the Rules in this Chapter is that, although the presumption of openness applies to all four kinds of records, they need to be treated differently in some respects.

Land records and other similar kinds of records that are filed with the clerk for the principal purpose of giving public notice of them are judicial records, but, because the court's only function with respect to those records is to preserve them and make them available for public inspection, there is no justification for shielding them from public inspection. Those kinds of records are defined as "notice records," and it is the intent of the Rules in this Chapter that, except as otherwise required by statute, there be no substantive (content) restrictions on public access to them. One such statute is Code, Real Property Article, § 3-111, prohibiting the disclosure of certain identifying information in recordable instruments.

The Rules in this Chapter assume that the kinds of internal administrative records maintained by a court or other judicial agency, mostly involving personnel, budgetary, and operational management, are similar in nature and purpose to those kinds of administrative records maintained by Executive Branch agencies and that records pertaining to business licenses issued by a court clerk are similar in nature to records kept by Executive Branch agencies that issue licenses of one kind or another. The Rules in this Chapter thus treat those kinds of records more or less the same as comparable Executive Branch records. The Public Information Act ("PIA") provides the most relevant statement of public policy regarding those kinds of records, and, as a general matter, the Rules in this Chapter

~~apply the PIA to those kinds of records, at least with respect to the substantive issue of access. Rule 16-912 provides the procedure to be used to resolve disputes over access to all judicial records, including administrative records.~~

~~A different approach is taken with respect to access to case records--most of which come into the court's possession as the result of their having been filed by or with respect to litigants in judicial actions. As to them, the Rules in this Chapter carve out only those exceptions to public access that are felt particularly applicable. The exceptions, for the most part, are more particular than those provided by the PIA. Categorical exceptions are limited to those that (1) have an existing basis, either by statute other than the PIA, or by specific Rule, or (2) present some compelling need for non-access. In an attempt to remove discretion from clerical personnel to deny public access and require that any dispute over closure be examined by a judge on a case-by-case basis, the Rules in this Chapter require that all other exclusions be by court order.~~

~~To achieve the differentiation between these various kinds of court records, five categories are specifically defined in this Rule--"administrative records," "business license records," "case records," "notice records," and "records of special judicial units". Some principles enunciated in the Rules in this Chapter apply to all five categories, and, for that purpose, the term "judicial records," which includes all five categories, is used.~~

Source: This Rule is derived from former Rule ~~16-1001 (2016)~~ 16-902 (2019).

The Chair said that Rule 16-903 contains definitions. Most of the definitions are taken from current Rule 16-902. He

pointed out that the definition of "clerk" in new section (e) and an amendment to re-lettered section (i) make it clear that the orphans' court and Register of Wills are covered by the Access Rules. The orphan's court is an Article IV court. The Office of the Register of Wills performs the same function for the orphans' court as the clerk's offices do for the courts.

The Chair said that a significant change is reflected in re-lettered section (g), which defines "custodian." In 2004, when nearly all records were in paper form, the custodian was the clerk of the court or the person who had physical control over the paper record. The custodian could either produce the record or determine that the record was not subject to inspection. Under MDEC, and with respect to several kinds of non-MDEC electronic records, there is now more than one custodian of a record. The clerk with whom a case record is filed will continue to be a custodian, but the electronic record also exists in an AOC computer which is controlled by one or more AOC employees. The Chair explained that when multiple records or records that require the reformatting of other records are requested, it may be more efficient for an AOC employee, designated by the State Court Administrator or her designee, to handle that request. At the Subcommittee level, it was discussed in great detail that in some instances, it is better to have an AOC employee gather requested records and

communicate with the requestor. There are requests that may be better fulfilled by the Government Relations Office or another division of the AOC. The Chair said that in 2004, complex records requests and multiple record requests were not an issue. Now, it is better for the Government Relations Office or another AOC designee to handle these requests because those offices can respond better and faster. If there is a decision that something cannot be provided, the decision is uniform rather than jurisdiction-dependent. This is consistent with the definition of custodian in the PIA.

The Chair explained that new section (k) is a clarification that judicial work product is never public and new section (l) reclassifies a business or marriage license as a "license record" but does not change their public accessibility.

The Chair called for comments about Rule 16-903. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented Rule 16-904, General Policy, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 16-903, as follows:

Rule ~~16-903~~ 16-904. GENERAL POLICY

~~(a) Purpose of Rules~~

~~The Rules in this Chapter are intended to provide public access to judicial records while protecting the legitimate security and privacy rights of litigants and others who are the subject of those records.~~

~~(b)~~ (a) Presumption of Openness

Judicial records are presumed to be open to the public for inspection. Except as otherwise provided by the Rules in this Chapter or by other applicable law, the custodian of a judicial record shall permit an individual ~~appearing in person in the office of the custodian during normal business hours~~ to inspect ~~the~~ a judicial record in accordance with Rules 16-922 through 16-924. Subject to the Rules in this Chapter, inspection of case records through the MDEC program is governed by Title 20 of the Maryland Rules.

Cross reference: See Rule 16-922, 16-923, 16-924, and 20-109.

~~Committee note: (1) For normal business hours, see Rule 16-403. (2) The definition of "business day" in Rule 20-101 (b) has no application to this Rule. (3) Remote access to case records is provided for, in part, by Rule 16-910.~~

~~(c)~~ (b) Protection of Records

To protect judicial records and prevent unnecessary interference with the official business and duties of the custodian and other judicial personnel, a clerk is not required to permit ~~in-person~~ public inspection of a case record filed with the clerk for docketing in a judicial action or a notice record filed for

recording and indexing until the document has been docketed or recorded and indexed.

~~(d)~~(c) Exhibit Pertaining to Motion or Marked for Identification

Unless a judicial proceeding is not open to the public or the court expressly orders otherwise and except for identifying information shielded pursuant to law, a case record that consists of an exhibit (1) submitted in support of or in opposition to a motion ~~that has been ruled upon by the court~~ or (2) marked for identification at a trial or hearing or offered in evidence, whether or not admitted, is subject to inspection, notwithstanding that the record otherwise would not have been subject to inspection under the Rules in this Chapter.

Cross reference: See Rule 2-516.

Committee note: Section ~~(d)~~(c) is based on the general principle that the public has a right to know the evidence upon which a court acts in making decisions, except to the extent that a superior need to protect privacy, safety, or security ~~privacy interest~~ recognized by law permits particular evidence, or the evidence in particular cases, to be shielded.

~~(c)~~(d) Fees

(1) In this Rule, "reasonable fee" means a fee that bears a reasonable relationship to the actual or estimated costs incurred or likely to be incurred in providing the requested access.

(2) Unless otherwise expressly permitted by the Rules in this Chapter, a custodian may not charge a fee for providing access to a judicial record that can be made available for inspection, in paper form or by electronic ~~access~~ means, with less than two hours of effort by the custodian or other judicial employee.

(3) A custodian may charge a reasonable fee if two hours or more of effort are required to provide the requested access. In determining the level of effort required, the custodian may consolidate separate requests by the same or affiliated requesters for similar or affiliated categories of records filed within a close proximity of time, as determined by the custodian.

Committee Note: The intent of subsection (d)(3) is to deal with the situation in which a requester or affiliated requesters seek a significant number of records or parts of records that would take far more than two hours to locate and produce and arbitrarily break up the request into multiple separate smaller requests in order to avoid having to pay what would be a legitimate fee for the overall effort required. When this becomes apparent, the custodian may aggregate the separate requests and treat them as a single request for all of the records. This authority is not intended to curtail the ability of the custodian and the requester to negotiate in good faith a narrowing of the request.

(4) The custodian may charge a reasonable fee for making or supervising the making of a copy or printout of a judicial record.

(5) The custodian may waive a fee if, after consideration of the ability of the person requesting access to pay the fee and other relevant factors, the custodian determines that the waiver is in the public interest.

(6) A dispute concerning the assessment of a reasonable fee shall be determined in accordance with Rule 16-932.~~:~~

Cross reference: See Code, Courts Article, §§ 7-202 and 7-301.

~~(A) if the record is in an appellate court or an orphans' court other than in~~

~~Harford or Montgomery County, by the chief judge of the court, and in the orphans' court in Harford or Montgomery County, by the County Administrative Judge of the circuit court for that county;~~

~~(B) if the record is in a circuit court, by the county administrative judge;~~

~~(C) if the record is in the District Court, by the District administrative judge; or~~

~~(D) if the record is in a judicial agency other than a court, by the State Court Administrator.~~

~~(f) New Judicial Records~~

~~(1) Except as expressly required by other law and subject to Rule 16-909, a custodian, court, or judicial agency is not required by the Rules in this Chapter to index, compile, re-format, program, or reorganize existing judicial records or other documents or information to create a new judicial record not necessary to be maintained in the ordinary course of business. The removal, deletion, or redaction from a judicial record of information not subject to inspection under the Rules in this Chapter in order to make the judicial record subject to inspection does not create a new record within the meaning of this Rule.~~

~~(2) If a custodian, court, or judicial agency (A) indexes, compiles, re-formats, programs, or reorganizes existing judicial records or other documents or information to create a new judicial record, or (B) comes into possession of a new judicial record created by another from the indexing, compilation, re-formatting, programming, or reorganization of other judicial records, documents, or information, and there is no basis under the Rules in this Chapter to deny inspection of that new judicial record or some part of that judicial record, the new judicial record or a part for which~~

~~there is no basis to deny inspection shall be subject to inspection.~~

Source: This Rule is derived from former Rule ~~16-1002 (2016)~~ 16-903 (2019).

The Chair noted that current Rule 16-904 (a) is shown as deleted. That language was moved to Rule 16-902 (b). New section (a) takes into account the MDEC system and clarifies that the inspection of case records through the MDEC program is governed by the Title 20 MDEC Rules.

The Chair explained that an addition to subsection (d)(3) of Rule 16-904 addresses a problem that was brought to the Subcommittee's attention by the AOC. If it is determined that a record request will take more than two hours to locate and assemble, a fee can be charged. There are requestors who seek multiple records but break up a request into several smaller segments to avoid paying the fee. Subsection (d)(3) permits the custodian to combine separate requests by the same requestor so that a fee can be charged.

The Chair said that the remaining deleted language shown in Rule 16-904 represents conforming amendments. The creation of new judicial records in response to a record request is addressed in new Rule 16-919. Dispute resolution is dealt with in new Rule 16-932.

The Chair called for comments about Rule 16-904.

Mr. Laws commented that the use of the term "individual" in the fourth line under section (a) is more narrow than using the term "person." An "individual" is defined elsewhere in the Rules as a natural person or human being. He questioned whether the use of that term was intentional by the Subcommittee. The Chair explained that the term "individual" was originally used in section (a) in connection with the language "appearing in person in the office of the custodian during normal business hours." He said that having stricken the language regarding appearing in person, the term "person" can replace the term "individual." The Chair asked whether there is any objection to replacing the term "individual" with "person." There being no objection to the recommendation, the Committee approved the amendment by consensus.

The Chair called for further comments on Rule 16-904.

Ms. Snyder, Executive Director of the Maryland-Delaware-DC Press Association, addressed the Committee. She explained that changes to the Maryland Public Information Act in 2015 changed the term "reasonable fees" to be actual fees. She noted that in subsection (d)(1) of Rule 16-904, the term "reasonable fee" is defined as "a fee that bears a reasonable relationship to the actual or estimated costs incurred or likely to be incurred in providing the requested access." She suggested that for the Rule to align more with the PIA, "reasonable fees" should be

defined as actual costs. The Chair asked Ms. Snyder about the use of the phrase "estimated costs." He explained that it would be difficult for the AOC to know upfront the actual costs for completing the record request. Ms. Snyder responded she understands that until the time is taken to produce the records, the actual costs will be unknown. The goal is to get as close to the actual cost of producing the records as possible. She added that the language "estimated costs" feels more accurate than "reasonable costs." Ms. Snyder said that in most cases the requestor is at the mercy of the custodian when "reasonable fees" are being determined. The PIA Compliance Board has found there are inconsistencies in fee determinations. The Chair invited comments on Ms. Snyder's suggestion to delete "a fee that bears a reasonable relationship to" from subsection (d)(1). By consensus, the Committee approved the recommended amendment.

Chief Judge Morrissey asked whether the reference to "reasonable fee" in subsection (d)(3) would also be changed. Ms. Snyder suggested that the word "reasonable" be removed from subsection (d) and language be added to indicate that the fee should be as close to the actual costs as possible. Judge Price suggested that a reasonable fee would be preferred over the actual costs since there would presumably be no limits to the actual costs. Ms. Snyder responded that under the PIA, it is the lowest salaried staffer who must do the work in response to

the record request, which prevents the custodian from providing a fee based on the salary of an employee who makes, for example, $500 an hour. The Chair said that he agrees with the suggestion to define "reasonable fee" as the actual or estimated costs. Ms. Snyder said that the spirit of the PIA is to keep the costs down. The goal is to avoid the "sponginess" of the word "reasonable." She said that her experience with agency custodians has been that the reasonableness of fees can be manipulated. There are some instances when copies of records are being made or file transfers are done, and the custodian will charge a higher rate than one would reasonably assume for the work being done. Ms. Snyder also asked what the fee procedure would be for material that has already been prepared. For example, if one requestor asks for certain information and a second requestor asks for the same information. Would the second requester still be charged a fee, or would the information be provided without charge? Ms. Harris responded that the current practice of the AOC is that the second requester would be charged for copies of the information, but no additional fee would be charged for locating and compiling the information.

The Chair asked for additional comments on Rule 16-904. There being no motion to amend or reject the proposed Rule, it was approved as amended.

The Chair presented Rule 16-905, Copies, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1. GENERAL PROVISIONS

AMEND Rule 16-904, as follows:

Rule ~~16-904~~ 16-905. COPIES

(a) Entitlement

Except as otherwise ~~expressly~~ provided by the Rules in this Chapter or by other law, a person entitled to inspect a judicial record is entitled to have a copy or printout of the record. The copy or printout may be in paper form or, subject to ~~Rule 16-909 (c)~~ Rules 16-917 and 16-918 and the Rules in Title 20, in electronic form. A judge's signature may be redacted or otherwise withheld on a copy.

(b) Certified Copy

To the extent practicable and unless the court determines otherwise for good cause, a certified copy of the case record shall be made by any authorized clerk of the court in which the case was filed or to which it was transferred.

Committee note: The court may direct the custodian not to certify a copy of a case record upon a determination that the certified copy may be used for an improper purpose.

(c) Uncertified Copy

Copies or printouts in paper form that are obtained from a terminal or kiosk located in a courthouse are uncertified.

(d) Metadata

(1) Definition

(A) In this Rule, "metadata" means information generally not visible when an electronic document is printed that describes the history, tracking, or management of the electronic document, including information about data in the electronic document that describes how, when, or by whom the data was collected, created, accessed, or modified and how the data is formatted.

(B) Metadata does not include (i) a spreadsheet formula, (ii) a database field, (iii) an externally or internally linked file, or (iv) a reference to an external file or a hyperlink.

(2) Removal

A custodian may remove metadata from an electronic document before providing the electronic document to an applicant by using a software program or function or converting the electronic document into a different searchable and analyzable format.

(e) Conditions

The custodian may set a reasonable time schedule to make copies or printouts and may charge a reasonable fee for the copy or printout.

Source: This Rule is derived, in part from former Rule ~~16-1003 (2016)~~ 16-904 (2019), and in part from Code, General Provisions Article, § 4-205.

The Chair said that Rule 16-905 governs copies. He noted that the amendments to section (a) permit a judge's signature to

be redacted or otherwise withheld. He said that many courts currently provide for the redaction of judges' signatures. The Chair stated that the amendment to section (b) was in response to an issue brought to the Subcommittee's attention by the clerks of the courts. He said that the clerks expressed concerns that some sovereign citizens were filing requests for liens and obtaining certified copies of the lien. The liens are eventually wiped out, but the filer would have a certified copy of the lien, which looks legitimate. The clerks wanted the ability to provide copies of certain documents without being required to certify the copies. Mr. Armstrong questioned why section (b) only applies to case records and not judicial records. The Chair responded that he is not aware of any other records that would be certified. Case records are certified by the clerks. Ms. Day said that clerks also provide certified copies of land records and marriage licenses. The Chair said that section (b) can be amended to include "judicial records filed with the clerk," which would include land records and marriage licenses. The Chair asked whether there is any objection to that amendment. By consensus, the Committee approved the amendment.

The Chair said that sections (d) and (e) were taken from the PIA. The provisions on metadata and conditions were not previously included in the Access Rules.

The Chair invited further comment on Rule 16-905. By consensus, the Committee approved the Rule as amended.

The Chair presented Rule 16-911, Required Denial of Inspection – In General, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-906, as follows:

Rule ~~16-906~~ 16-911. ~~CASE RECORDS –~~ REQUIRED DENIAL OF INSPECTION – IN GENERAL

(a) When Inspection Would be Contrary to Federal Law, Certain Maryland Law, Maryland Rules, or Court Order

A custodian shall deny inspection of a ~~case~~ judicial record or any part of a ~~case~~ judicial record if inspection would be contrary to:

(1) ~~The~~ the Constitution of the United States, a Federal statute, or a Federal regulation adopted under a Federal statute and ~~having~~ that has the force of law;

(2) ~~The~~ the Maryland Constitution;

(3) ~~A~~ a provision of the ~~Code, General Provisions Article, Title 4 (PIA)~~ PIA that is ~~expressly adopted in~~ made applicable to judicial records by the Rules in this Chapter;

(4) ~~A rule~~ a Rule adopted by the Court of Appeals; or

(5) ~~An~~ an order entered by the court having custody of the ~~case~~ judicial record or by any higher court having jurisdiction over

(A) the ~~case~~ judicial record, ~~or~~

(B) the custodian of the judicial record, or

(C) the person seeking inspection of the ~~case~~ judicial record.

(b) When Inspection Would be Contrary to Other Maryland Statutes

Unless inspection is otherwise permitted by the Rules in this Chapter, a custodian shall deny inspection of a ~~case~~ judicial record or any part of a ~~case~~ judicial record if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than ~~Code, General Provisions Article, Title 4~~ the PIA ~~(PIA)~~, that expressly or by necessary implication applies to a judicial record.

(c) When Record is Subject to Lawful Privilege or Confidentiality

Unless otherwise ordered by a court, a custodian shall deny inspection of a judicial record or part of a judicial record that, by law, is confidential or is subject to an unwaived lawful privilege.

(d) Judicial Work Product

A custodian shall deny inspection of a judicial record or part of a judicial record that contains judicial work product.

(e) Record Subject to Expungement Order

A custodian shall deny inspection of a judicial record that has been ordered expunged.

(f) Security of Judicial Facilities, Equipment, Operations, Personnel

A custodian shall deny inspection of:

(1) a continuity of operations plan; and

(2) judicial records or parts of judicial records that consist of or describe policies, procedures, directives, or designs pertaining to the security or safety of judicial facilities, equipment, operations, or personnel, or of the members of the public while in or in proximity to judicial facilities or equipment.

Cross reference: For an example of a statute enacted by the General Assembly other than the PIA that restricts inspection of a case record, see Code, Criminal Procedure Article, Title 10, Subtitle 3.

Committee note: Subsection (a)(5) of this Rule allows a court to seal a record or otherwise preclude its disclosure. So long as a judicial record is under seal or subject to an order precluding or limiting disclosure, it may not be disclosed except in conformance with the court's order. The authority to seal a judicial record must be exercised in conformance with the general policy of these Rules and with supervening standards enunciated in decisions of the United States Supreme Court and the Maryland Court of Appeals.

Source: This Rule is derived from former Rule ~~16-1005 (2016)~~ 16-906 (2019).

Rule 16-911 governs the required denial of inspection of records. The Chair said that sections (a) and (b) are derived from the current Rule 16-906, but have been expanded to apply to all judicial records, not just case records. The general principle is that if inspection of a record is contrary to federal law or the Maryland Constitution, the request for

inspection must be denied. He said that sections (c) through (f) are new.

The Chair called for comments about Rule 16-911. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented Rule 16-912, Access to Notice, Special Judicial Unit, and License Records, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-905, as follows:

Rule ~~16-905~~ 16-912. ACCESS TO NOTICE, SPECIAL JUDICIAL UNIT, ~~ADMINSTRATIVE,~~ AND ~~BUSINESS~~ LICENSE RECORDS

(a) Notice Records

Except as otherwise provided by statute, a custodian may not deny inspection of a notice record that has been recorded and indexed by the clerk.

Cross reference: See Code, Real Property Article, § 3-111, precluding certain personal information from being included in recordable documents after June 1, 2010 and providing for the redaction of such information if included.

(b) Special Judicial Unit Records

Access to judicial records of special judicial units is governed by the

confidentiality Rules applicable to those particular units.

Cross reference: See Rule ~~18-409~~ 18-407, applicable to records and proceedings of the Commission on Judicial Disabilities ~~Commission~~, the Judicial Inquiry Board, and Investigative Counsel; Rule 19-105, applicable to the State Board of Law Examiners, the Accommodation Review Committee, and the Character Committees; and Rule 19-707, applicable to records and proceedings of the Attorney Grievance Commission and Bar Counsel.

(c) ~~Administrative and Business~~ License Records

(1) Business License Records

Except as otherwise provided by the Rules in this Chapter, the right to inspect ~~administrative and~~ business license records is governed by the applicable provisions of ~~Code, General Provisions Article, Title 4~~ Parts II, III, and IV of the PIA.

(2) Marriage License Records

A custodian shall deny inspection of the following records pertaining to a marriage license:

(A) certificate of a physician or certified nurse practitioner filed pursuant to Code, Family Law Article, § 2-301, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license; and

(B) until the license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a minor party to be married who is 15 years old or older.

Cross reference: See Code, Family Law Article, § 2-301, which lists the conditions necessary to permit a minor between 15 and 17 years old to legally marry and Code, Family Law Article, § 2-402 (e), which

permits disclosure to a parent or guardian of such a minor prior to the license becoming effective.

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

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

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

~~(C) After a source pool of qualified jurors has been emptied and re-created in accordance with Code, Courts Article, § 8-207, and after every individual selected to serve as a juror from that pool has completed the individual's service, a trial judge, upon request, shall disclose the name, zip code, age, sex, education, occupation, marital status, and spouse's occupation of each person whose name was selected from that pool and placed on a jury list, unless, in the interest of justice, the trial judge determines that this information remain confidential in whole or in part.~~

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

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

~~(E) At intervals acceptable to the jury commissioner, a jury commissioner shall~~

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

(2) Unless otherwise directed in a court order, a custodian shall deny inspection of an administrative record that constitutes all or part of a continuity of operations plan drafted or adopted pursuant to Rule 16-803.

(d) Personnel Records — Generally

Except as otherwise permitted by Code, General Provisions Article, Title 4 (PIA) or by this Rule, a custodian shall deny to a person, other than the person who is the subject of the record, inspection of the personnel records of an employee of the court or judicial agency or of an individual who has applied for employment with the court or other judicial agency. The following records or information are not subject to this exclusion and, unless sealed or otherwise shielded pursuant to the Maryland Rules or other law, shall be open to inspection:

(1) the full name of the individual;

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

(3) the date employment commenced;

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

(5) the current and previous job titles and salaries of the individual during employment by the court or judicial agency;

~~(6) the name of the individual's current supervisor;~~

~~(7) the amount of monetary compensation paid to the individual by the court or judicial agency and a description of any health, insurance, or other fringe benefit that the individual is entitled to receive from the court or judicial agency;~~

~~(8) unless disclosure is prohibited by law, other information authorized by the individual to be released; and~~

~~(9) a record that has become a case record.~~

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

~~(e) Personnel Records—Retirement~~

~~Unless inspection is permitted under Code, General Provisions Article, Title 4 (PIA) or the record has become a case record, a custodian shall deny inspection of a retirement record of an employee of the court or other judicial agency.~~

~~(f) Certain Administrative Records~~

~~A custodian shall deny inspection of the following administrative records:~~

~~(1) judicial work product, including drafts of documents, notes, and memoranda prepared by a judge or other court personnel at the direction of a judge and intended for use in the preparation of a decision, order, or opinion; unless otherwise determined by the State Court Administrator, judicial education materials prepared by, for, or on behalf of a unit of the Maryland Judiciary for use in the education and training of Maryland judges, magistrates, and other judicial personnel;~~

~~(3) an administrative record that is:~~

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

~~(B) either (i) purely administrative in nature but not a local rule, policy, or directive that governs the operation of the court or (ii) a draft of a document intended for consideration by the author or others and not intended to be final in its existing form; and~~

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

Source: This Rule is derived from former Rule ~~16-1004 (2016)~~ 16-905 (2019).

The Chair said that there are seven different kinds of business occupations licenses that are issued by the clerks and they are all authorized by statute. He noted that administrative records have been deleted from Rule 16-912 because they are addressed in new Rule 16-913.

The Chair called for comments about Rule 16-912.

Ms. McDonald noted that special judicial units have other records that are not covered by confidentiality Rules. For example, judicial units have personnel records, budget records, and administrative records. She said that the other records would need to be covered by the Access Rules. The Chair asked Ms. McDonald how she would suggest amending Rule 16-912 to resolve that issue. She responded that she would suggest language be added to indicate that "other records of the special judicial units are otherwise covered by these Rules." Judge

Eaves suggested adding a Committee note following section (b) to clarify Ms. McDonald's point. The Chair replied that the other records of the special judicial units which are not covered by the confidentiality Rules would presumably fall into other categories defined in the Access Rules. He asked Ms. McDonald whether the types of records she listed would fall into the category of administrative records. She responded in the affirmative. The Chair said that the Access Rules governing administrative records would apply to those records. Ms. McDonald reiterated that the Rule should be made clear that special judicial units have other types of records, mostly administrative records, that are not covered by the confidentiality Rules but are covered by the Access Rules.

Ms. Bernstein, Investigative Counsel for the Commission on Judicial Disabilities, said that she agrees with Ms. McDonald. The Commission has records that are administrative in nature, records regarding the budget, and personnel records. She said that those records would not be covered by the Commission's confidentiality rules, which govern their investigations, proceedings before the inquiry board and proceedings before the Commission. She suggested amending section (b) or the cross reference following section (b) to make clear that records not covered by confidentiality are still subject to the other Access Rules. The Chair said that the definition of "administrative

record" may need to be amended to include the administrative records of the special judicial units.

Judge Nazarian commented that he believes Rule 16-913 addresses some of the concerns raised by Ms. McDonald. For example, subsection (b) includes personnel records of a special judicial unit. The Chair responded that the administrative records of special judicial units may be covered by other provisions in the Access Rules. He said that ultimately, Ms. McDonald's concerns can be resolved by the Style Subcommittee. The Chair asked the Committee whether they agree that as a policy, the administrative records of special judicial units need to be addressed by Style Subcommittee. By consensus, the Committee agreed to refer Rule 16-912 to the Style Subcommittee to address the issue.

The Chair called for further comments about Rule 16-912. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented Rule 16-913, Access to Administrative Records, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

ADD new Rule 16-913, as follows:

Rule 16-913. ACCESS TO ADMINISTRATIVE RECORDS

(a) Records Pertaining to Jurors

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

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

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

(3) After a source pool of qualified jurors has been emptied and re-created in accordance with Code, Courts Article, § 8-207, and after every individual selected to serve as a juror from that pool has completed the individual's service, a trial judge, upon request, shall disclose the name, zip code, age, sex, education, occupation, marital status, and spouse's occupation of each person whose name was selected from that pool and placed on a jury list, unless, in the interest of justice, the trial judge determines that this information should remain confidential in whole or in part.

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

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

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

(b) Personnel Records — Generally

(1) Not open to inspection

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

(2) Open to inspection

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

(A) the full name of the individual;

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

(C) the date employment commenced;

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

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

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

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

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

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

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

(c) Personnel Records — Retirement

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

(d) Judicial Work Product

A custodian shall deny inspection of a judicial record or part of a judicial record that constitutes judicial work product.

(e) Educational and Training Materials

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

(f) Procurement Records

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

(g) Interagency and Intra-agency Memoranda

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

(h) Problem-Solving Court Program Records

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

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

judicial records regarding the creation, governance, or evaluation of problem-solving court programs that do not identify participants.

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

Rule 16-913 governs access to administrative records. The Chair said that the bulk of the language is derived from current Rule 16-905. Sections (f), (g), and (h) are new.

Mr. Laws asked whether the language of section (a) would preclude attorneys from using juror records when exercising strikes during jury selection. The Chair clarified that the language in section (a) is contained in the current Rules and applies to selecting the venire. There have been no substantive changes made regarding access to records pertaining to jurors.

The Chair said that section (f) governs access to procurement documents. He noted that there is nothing in the current Rules that address the inspection of procurement documents. However, there have been requests for procurement records. The PIA does not directly address procurement records but there are some indirect references. The Judicial Procurement Manual is prepared by the Procurement Department of the AOC and approved by the Chief Judge of the Court of Appeals. The Judicial Policy Manual tends to follow the State Finance and

Procurement Article of the Maryland Code. The language included in section (g) has been approved by both the Procurement Department and Legal Affairs office of the AOC.

The Chair said that section (g) covers interagency and intra-agency memoranda. That provision was taken directly from the PIA. The current Rules do not address these types of memoranda. However, the PIA provides an exception. The Subcommittee added this provision to the Rule to close a gap between the PIA and the Access Rules.

The Chair stated that section (h) deals with problem-solving court program records. Section (h) is intended to fill a gap in the current Rules. Most of the records relating to the problem-solving court programs are protected by other provisions. However, the current Rules do not address these types of records. Examples of records relating to a participant in a problem-solving court program can include therapy records, drug test results, and school records in juvenile cases. If any of those documents become a part of the case file, then the document would be considered a case record and subject to the Rules governing case records. The Committee note following section (h) provides an explanation for when records will be covered under this provision versus the provision governing case records.

The Chair invited comments about Rule 16-913. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented Rule 16-914, Case Records – Required Denial of Inspection – Certain Categories, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-907, as follows:

Rule ~~16-907~~ 16-914. CASE RECORDS – REQUIRED DENIAL OF INSPECTION – CERTAIN CATEGORIES

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) adoption;

(B) guardianship; or

(C) ~~to revoke~~ revocation of a consent to adoption or guardianship for which there is no pending adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, child in need of supervision, and truancy actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, §

3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection unless the record was ordered expunged.

Committee note: In most instances, the "child" or "children" referred to in this section will be minors, but, as Juvenile Court jurisdiction extends until a child is 21, in some cases, the children legally may be adults.

~~(b) The following case records pertaining to a marriage license:~~

~~(1) A certificate of a physician or certified nurse practitioner filed pursuant to Code, Family Law Article, § 2-301, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.~~

~~(2) Until a license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.~~

~~Cross reference: See Code, Family Law Article, § 2-402 (f).~~

~~(c)~~(b) Case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, § 4-504, which shall be sealed until the earlier of service or denial of the petition.

~~(d)~~(c) Case records ~~required to be~~ shielded pursuant to Code, Courts Article, § 3-1510 (peace orders), ~~or~~ Code, Family Law Article, § 4-512 (domestic violence protective orders), or Code, Public Safety Article, § 5-602 (c) (extreme risk protective orders).

~~(e)~~(d) In any action or proceeding, a record created or maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

Committee note: Statutes that require child abuse or neglect records to be kept

confidential include Code, Human Services Article, §§ 1-202 and 1-203 and Code, Family Law Article, § 5-707.

~~(f)~~(e) Except for docket entries and orders entered under Rule 10-108, ~~Papers~~ papers and submissions filed ~~by a fiduciary or a guardian of the property of a minor or disabled person pursuant to~~ in guardianship actions or proceedings under Title 10, Chapter 200, 300, 400, or 700 of the Maryland Rules ~~that include financial information regarding the minor or disabled person~~.

Committee note: Most filings in guardianship actions are likely to be permeated with financial, medical, or psychological information regarding the minor or disabled person that ordinarily would be sealed or shielded under other Rules. Rather than require custodians to pore through those documents to redact that kind of information, this Rule shields the documents themselves subject to Rule 16-933, which permits the court, on a motion and for good cause, to permit inspection of case records that otherwise are not subject to inspection. There may be circumstances in which that should be allowed. The guardian, of course, will have access to the case records and may need to share some of them with third persons in order to perform his or her duties, and this Rule is not intended to impede the guardian from doing so. Public access to the docket entries and to orders entered under Rule 10-108 will allow others to be informed of the guardianship and to seek additional access pursuant to Rule 16-933.

~~(g)~~(f) The following case records in criminal actions or proceedings:

(1) A case record that has been ordered expunged pursuant to Rule 4-508.

(2) The following case records pertaining to search warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601, except as authorized by a judge under that Rule.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d)(3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, § 4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) Unless entered into evidence at a hearing or trial or otherwise ordered by the court, a case record pertaining to (i) a pen register or trace device applied for or ordered pursuant to Rule 4-601.1, (ii) an emergency order applied for or entered pursuant to Rule 4-602, (iii) the interception of wire or oral communications applied for or ordered pursuant to Rule 4-611, or (v) an order for electronic device location information applied for or entered pursuant to Rule 4-612.

~~(4)~~ (5) A case record maintained under Code, Courts Article, § 9-106, of the refusal of an individual to testify in a criminal action against the individual's spouse.

~~(5)~~ (6) Subject to Rules 16-902 (c) and 4-341, a presentence investigation report prepared pursuant to Code, Correctional Services Article, § 6-112.

~~(6)~~(7) Except as otherwise provided by law, ~~A~~ a case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, § 15-108, (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, § 14-110, or (D) the Attorney General when acting pursuant to Article V, § 3 of the Maryland Constitution or other law or a federal law enforcement agency.

Cross Reference: See Code, Criminal Procedure Article §§ 1-203.1, 9-101, 14-110, and 15-108, and Rules 4-612 and 4-643 dealing, respectively, with electronic device location, extradition warrants, States' Attorney, State Prosecutor, and grand jury subpoenas, and Code, Courts Article, §§ 10-406, 10-408, 10-4B-02, and 10-4B-03 dealing with wiretap and pen register orders. See also Code, Criminal Procedure Article, §§ 11-110.1 and 11-114 dealing with HIV test results.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of judicial records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

~~(7)~~(8) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3 (Incompetency and Criminal Responsibility).

Cross reference: See Code, Criminal Law Article, § 5-601.1 governing confidentiality of judicial records pertaining to a citation issued for a violation of Code, Criminal Law Article, § 5-601 involving the use or possession of less than 10 grams of marijuana.

~~(h)~~(g) A transcript or an audio, video, or digital recording of any court proceeding

that was closed to the public pursuant to Rule, order of court, or other law.

~~(i)~~(h) Subject to the Rules in Title 16, Chapter 500, backup audio recordings, computer disks, and notes of a court reporter that ~~are in the possession of the court reporter and~~ have not been filed with the clerk.

~~(j)~~(i) The following case records containing medical or other health information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health-General Article, § 18-338.1, ~~or~~ § 18-338.2, or §18-338.3.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health-General Article, § 5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, § 18-201 or § 18-202.

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled individual, declared confidential by Code, Health-General Article, § 7-1003.

(6) A case record relating to a petition for an emergency evaluation made under Code, Health-General Article, § 10-622 and declared confidential under § 10-630 of that Article.

~~(k)~~(j) A case record that consists of the federal, ~~or~~ ~~Maryland~~ state, or local income tax return of an individual.

~~(l)~~(k) A case record that:

(1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or

(2) in accordance with Rule ~~16-912~~ 16-933 (b) is the subject of a pending petition ~~motion~~ to preclude or limit inspection.

~~(m)~~(l) A case record that consists of a financial statement filed pursuant to Rule 9-202, a Child Support Guideline Worksheet filed pursuant to Rule 9-206, or a Joint Statement of Marital and Non-marital Property filed pursuant to Rule 9-207.

Cross reference: See also Rule 9-203.

~~(n)~~(m) A document required to be shielded under Rule 20-203 (e)(1).

~~(o)~~(n) An unredacted document filed pursuant to Rule 1-322.1 or Rule 20-203 (e)(2).

(o) A parenting plan prepared and filed pursuant to Rules 9-401.1 and 9-401.2.

Source: This Rule is derived in part from former Rule ~~16-1006 (2016)~~ 16-907 (2019).

Rule 16-914 governs case records. The Chair said that most of the language in Rule 16-914 is taken from current Rule 16-907. Aside from a few updates to the Rule, there is one significant change: the provision governing marriage licenses

has been deleted because marriage licenses are now addressed in Rule 16-912, which covers license records.

The Chair called for comments about Rule 16-914. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented Rule 16-915, Case Records – Required Denial of Inspection – Specific Information, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-908, as follows:

Rule ~~16-908~~ 16-915. CASE RECORDS – REQUIRED DENIAL OF INSPECTION – SPECIFIC INFORMATION

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

(a) The name, address, telephone number, e-mail address, or place of employment of an individual who reports the abuse of a vulnerable adult pursuant to Code, Family Law Article, § 14-302.

(b) Except as provided in Code, General Provisions Article, § 4-331, the home address, telephone number, and private e-mail address of an employee of the State or a political subdivision of the State.

(c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or ~~motion~~ petition filed under Rule ~~16-912~~ 16-933.

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

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

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

Cross reference: See Rule ~~16-912 (g)~~ 16-933 (h) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions.

Source: This Rule is derived from former Rule ~~16-1007 (2016)~~ 16-908 (2019).

Rule 16-915 deals with specific information contained in case records. The Chair said that the language in Rule 16-915 is taken from current Rule 16-908. No substantive changes have been made to the Rule. A few references have been updated.

The Chair called for comments about Rule 16-915. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented Rule 16-916, Case Records – Procedures for Compliance, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-913, as follows:

Rule ~~16-913~~ 16-916. CASE RECORDS – PROCEDURES FOR COMPLIANCE

(a) Duty of Person Filing Record

(1) A person who files or authorizes the filing of a case record shall inform the custodian, in writing, whether, in the person's judgment, the case record, any part of the case record, or any information contained in the case record is confidential and not subject to inspection under the Rules in this Chapter.

(2) The custodian is not bound by the person's determination that a case record, any part of a case record, or information contained in a case record is not subject to inspection and shall permit inspection of a case record unless, in the custodian's independent judgment, subject to review as provided in Rule ~~16-914~~ 16-932, the case record is not subject to inspection.

(3) Notwithstanding subsection (a)(2) or (b)(2) of this Rule, a custodian may rely on a person's failure to advise that a case record, part of a case record, or information contained in a case record is not subject to inspection, and, in default of such advice, the custodian is not liable for permitting inspection of the case

record, part of the case record, or information, even if the case record, part of the case record, or information in the case record is not subject to inspection under the Rules in this Chapter.

Cross reference: See Rule 1-322.1 and 20-201.

(b) Duty of Clerk

(1) In conformance with procedures established by administrative order of the Chief Judge of the Court of Appeals, the clerk shall make a reasonable effort, promptly upon the filing or creation of a case record, to shield any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian by the person filing or authorizing the filing of the case record.

Cross reference: See Rule 20-203.

(2) Persons who filed or authorized the filing of a case record filed prior to July 1, 2016 may advise the custodian in writing whether any part of the case record is not subject to inspection. The custodian is not bound by that determination. The custodian shall make a reasonable effort, as time and circumstances allow, to shield from those case records any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian. The duty under this subsection is subordinate to all other official duties of the custodian.

Committee note: In subsections (a)(1) and (b)(2) of this Rule, the requirement that a custodian be notified "in writing" is satisfied by an electronic filing if permitted by Rule 1-322 or required by the Rules in Title 20.

Source: This Rule is derived from former Rule ~~16-1010 (2016)~~ 16-913 (2019).

Rule 16-916 governs the procedures for compliance. The Chair said that Rule 16-916 is taken from current Rule 16-913. There have been a few updates made, but no substantive changes were made to the Rule.

The Chair called for comments about Rule 16-916. There being no motion to amend or reject the Rule, it was approved as presented.

The Chair presented Rule 16-917, Conversion of Paper Records, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-909, as follows:

Rule ~~16-909~~ 16-917. CONVERSION OF PAPER RECORDS

(a) Construction of Rule

This Rule is subject to and shall be construed harmoniously with the other Rules in this Chapter, the Rules in Title 20, other applicable law, and administrative orders of the Chief Judge of the Court of Appeals.

Cross reference: Remote access to case records by the general public is governed predominantly by the CaseSearch program. See

Rules 20-102 (a)(2) and 20-106 regarding the conversion of paper records under MDEC.

~~(b) In General~~

~~Subject to the Rules in this Title and Title 20, to other applicable law, and to administrative orders of the Chief Judge of the Court of Appeals, a custodian, court, or other judicial agency, for the purpose of providing public access to judicial records in electronic form, is authorized but not required:~~

~~(1) to convert paper judicial records into electronic judicial records;~~

~~(2) to create new electronic records, databases, programs, or computer systems;~~

~~(3) to create the ability to inspect or copy judicial records through remote access; or~~

~~(4) to convert, supplement, modify, or replace an existing electronic storage or retrieval system.~~

~~(c)~~ (b) Limiting Access to Judicial Records

A custodian may limit access to judicial records in electronic form to the manner, form, and program that the electronic system used by the custodian, without modification, is capable of providing.

~~(d)~~ (c) Facilitating Access to Judicial Records

If a custodian, court, or other judicial agency converts paper judicial records into electronic judicial records or otherwise creates new electronic records, databases, or computer systems, it shall, to the extent practicable, design those records, databases, or systems to facilitate access to judicial records that are open to inspection under the Rules in this Chapter.

Cross reference: See Rule 16-904 (e).

~~(c)~~(d) Current Programs Providing Electronic Access to Databases

Any electronic access to a database of judicial records that is provided by a court or other judicial agency and is in effect on July 1, 2016 may continue in effect, subject to review by the ~~Judicial Council~~ SCA for consistency with the Rules in this Chapter. After review, the ~~Council~~ SCA may recommend to the Chief Judge of the Court of Appeals any changes that ~~it~~ the SCA concludes are necessary to make the electronic access consistent with the Rules in this Chapter.

~~(f) New Requests for Electronic Access to or Information from Databases~~

~~(1) A person who desires to obtain electronic access to or information from a database of judicial records to which electronic access is not then immediately and automatically available shall submit to the State Court Administrator a written request that describes the judicial records to which access is desired and the proposed method of achieving that access.~~

~~(2) The State Court Administrator shall review the request and without undue delay shall take one of the following actions:~~

~~(A) Approve a request that seeks access to judicial records subject to inspection under the Rules in this Chapter or Title 20 that will not directly or indirectly impose significant fiscal or operational burdens on any court or judicial agency.~~

~~(B) Conditionally approve a request that seeks access to judicial records subject to inspection under the Rules in this Chapter or Title 20 but will directly or indirectly impose significant and reasonably calculable fiscal or operational burdens on a court or judicial agency on condition of the requestor's prepayment in full of all additional expenses reasonably incurred as a result of the approval.~~

~~(C) Deny the request and state the reason for the denial if:~~

~~(i) the request would impose significant and reasonably calculable operational burdens on a court or judicial agency that cannot be overcome merely by prepayment of additional expenses under subsection (f)(2)(B) of this Rule or any other practicable condition;~~

~~(ii) the requester fails or refuses to satisfy a condition imposed under subsection (f)(2)(B) of this Rule;~~

~~(iii) the request seeks access to judicial records not subject to inspection under the Rules in this Chapter or Title 20; or~~

~~(iv) the request directly or indirectly imposes a significant but not reasonably calculable fiscal or operational burden on any court or judicial agency.~~

~~(3) Upon receipt of a denial, the requester may ask for referral of the request or any proposed but rejected amendment to the request to the Judicial Council for its review and recommendation to the Chief Judge of the Court of Appeals.~~

~~(4) Upon referral to the Judicial Council, the Council, in accordance with its internal procedures or as otherwise directed by the Chief Judge of the Court of Appeals, shall consider each of the stated grounds for denial of the request by the State Court Administrator and any previously proposed but rejected amendment thereof, and also consider, to the extent relevant thereto:~~

~~(A) whether the data processing system, operational system, electronic filing system, or manual or electronic storage and retrieval system used by or planned for the court or judicial agency that maintains the records can currently provide the access requested in the manner requested and in conformance with Rules 16-~~

~~901 through 16-908, and, if not, any changes or effort required to enable those systems to provide that access;~~

~~(B) whether any changes to the data processing, operational electronic filing, or storage or retrieval systems used by or planned for other courts or judicial agencies in the State would be required in order to avoid undue disparity in the ability of those courts or agencies to provide equivalent access to judicial records maintained by them;~~

~~(C) any other fiscal, personnel, or operational impact of the proposed program on the court or judicial agency or on the State judicial system as a whole;~~

~~(D) whether there is a substantial possibility that information retrieved through the program may be used for any fraudulent or other unlawful purpose or may result in the dissemination of inaccurate or misleading information concerning judicial records or individuals who are the subject of judicial records and, if so, whether there are any safeguards to prevent misuse of disseminated information and the dissemination of inaccurate or misleading information; and~~

~~(E) any other consideration that the Judicial Council finds relevant.~~

~~(5) Upon consideration of the factors set forth in subsection (f)(4) of this Rule and without undue delay, the Judicial Council shall inform the Chief Judge of the Court of Appeals of its recommendations. The Chief Judge shall determine and inform the State Court Administrator and the requester whether the request is:~~

~~(A) approved, because it complies with the requirements of subsection (f)(2)(A) of this Rule;~~

~~(B) conditionally approved, because it complies with the requirements of subsection~~

~~(f)(2)(B) of this Rule and the requester has agreed to comply with the conditions established by the Chief Judge; or~~

~~(C) denied under subsection (f)(2)(C) of this Rule.~~

Source: This Rule is derived from former Rule ~~16-1008 (2016)~~ 16-909 (2019).

Rule 16-917 covers the conversion of paper records. The Chair noted that sections (b) and (f) have been deleted from this Rule and are addressed in Rule 16-919. He added that the remaining language is contained in current Rule 16-909.

The Chair called for comments on Rule 16-919. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented Rule 16-918, Access to Electronic Records, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-910, as follows:

Rule ~~16-910~~ 16-918. ACCESS TO ELECTRONIC RECORDS

(a) In General

Subject to the other Rules in this Title and in Title 20 and other applicable law, a judicial record that is kept in electronic form is open to inspection to the same extent that the record would be open to inspection in paper form.

(b) Denial of Access

(1) Restricted Information

A custodian shall take reasonable steps to prevent access to restricted information, as defined in Rule 20-101 ~~(t)~~ (r), that the custodian is on notice is included in an electronic judicial record.

(2) Certain Identifying Information

(A) In General

Except as provided in subsection (b)(2)(B) of this Rule, a custodian shall prevent remote access to the name, address, telephone number, date of birth, e-mail address, and place of employment of a victim or nonparty witness in:

(i) a criminal action,

(ii) a juvenile delinquency action under Code, Courts Article, Title 3, Subtitle 8A,

(iii) an action under Code, Family Law Article, Title 4, Subtitle 5 (domestic violence), or

(iv) an action under Code, Courts Article, Title 3, Subtitle 15 (peace order).

(B) Exception

Unless shielded by a protective order, the name, office address, office telephone number and office e-mail address, if any, relating to law enforcement officers, other public officials or employees acting in their official capacity, and expert witnesses, may be remotely accessible.

(C) Notice to Custodian

A person who places in a judicial record identifying information relating to a witness shall give the custodian written or electronic notice that such information is included in the record, where in the record that information is contained, and whether that information is not subject to remote access under this Rule, Rule 1-322.1, Rule 20-201, or other applicable law. Except as federal law may otherwise provide, in the absence of such notice a custodian is not liable for allowing remote access to the information.

(c) Availability of Computer Terminals

Clerks shall make available at convenient places in the courthouses computer terminals or kiosks that the public may use ~~free of charge in order~~ to access judicial records and parts of judicial records that are open to inspection, including judicial records as to which remote access is otherwise prohibited. To the extent authorized by administrative order of the Chief Judge of the Court of Appeals, computer terminals or kiosks may be made available at other facilities for that purpose.

Cross reference: Rule 20-109.

Committee note: Although use of a courthouse computer terminal or kiosk is free of charge, the cost of obtaining a copy of the records is governed by Rule 16-904 (d).

Source: This Rule is derived from former Rule ~~16-1008.1 (2016)~~ 16-910 (2019).

Rule 16-918 governs access to judicial records. The Chair said that the language in Rule 16-918 is contained in current Rule 16-910. He explained that this Rule covers existing records that are in electronic format. He pointed out that a

Committee note following section (c) has been added, which clarifies that access to electronic records is free when using a courthouse computer terminal, but copies of electronic records are still subject to a fee.

Ms. Harris commented that the reference to Rule 16-904 (d) in the Committee note is a typo. The correct reference is to Rule 16-905 (e). The Chair said that the typo can be corrected by the Style Subcommittee.

The Chair asked whether there are any other comments about Rule 16-918.

Mr. Kramer asked how this Rule would impact requests for the video recordings of courtroom proceedings. The Chair replied that the Access Rules do not address requests to inspect video recordings of courtroom proceedings. He noted that at least one case is currently pending in federal court and another in Baltimore City regarding that issue. He added that the Committee is going to see how those cases play out.

The Chair called for further comment on Rule 16-918. By consensus, the Committee approved the Rule, subject to the correction of the typo by the Style Subcommittee.

The Chair presented Rule 16-919, Creation of New Judicial Records, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

ADD NEW Rule 16-919, as follows:

Rule 16-919. CREATION OF NEW JUDICIAL RECORDS

(a) Scope

This Rule applies to requests for the creation of a new judicial record from (1) electronic databases maintained by a judicial agency or (2) a reformatting of existing judicial records.

Cross reference: See Rule 16-918 for electronic access to existing electronic records.

(b) Definition

In this Rule, "reformatting" includes indexing, compilation, programming, or reorganization of existing judicial records, documents, or information.

(c) Generally

(1) Except as required by other law, a custodian or judicial agency is not required to create a new judicial record or reformat existing judicial records not necessary to be created or reformatted for judicial functions.

(2) The removal, deletion, or redaction from a judicial record of information not subject to inspection under the Rules in this Chapter in order to make the judicial record subject to inspection does not create or reformat a new record within the meaning of this Rule.

(3) If a custodian or other judicial agency (A) reformats existing judicial records or other documents or information to

create a new judicial record, or (B) comes into possession of a new judicial record created by another from the reformatting of other judicial records, documents or information, and there is no basis under the Rules in this Chapter to deny inspection of that new judicial record or some part of that judicial record, the new judicial record or part for which there is no basis to deny inspection shall be subject to inspection.

(d) Request

A person who desires to obtain electronic information pursuant to this Rule shall submit to the custodian a written request that describes with particularity the information that is sought. If there is no known custodian, the request shall be made to the SCA, who shall designate a custodian.

(e) Review and Response

(1) Generally

The custodian shall review the request, may consult with other employees, legal counsel, or technical experts, and, within 30 business days after receipt of the request, shall take one of the following actions:

(A) Approve the request to the extent that the information requested is subject to inspection under the Rules in this Chapter or Title 20 and that will not directly or indirectly impose significant fiscal or operational burdens on any court or judicial agency.

(B) Conditionally approve a request to the extent that the information requested is subject to inspection under the Rules in this Chapter or Title 20 but will directly or indirectly impose significant and reasonably calculable fiscal or operational burdens on a court or judicial agency, on condition of the requester's prepayment in

full of all additional expenses reasonably expected to be incurred as a result of the approval.

(C) Deny the request and state the reason for the denial if or to the extent that:

(i) the request seeks inspection of information from judicial records that is not subject to inspection under the Rules in this Chapter or Title 20;

(ii) the requester fails or refuses to satisfy a condition imposed under subsection (e)(1)(B) of this Rule;

(iii) granting the request would impose significant and reasonably calculable operational burdens on a court or judicial agency that cannot be overcome merely by prepayment of additional expenses under subsection (e)(1)(B) of this Rule or any other practicable condition; or

(iv) the request directly or indirectly imposes a significant but not reasonably calculable fiscal or operational burden on any court or judicial agency.

(2) Considerations

In determining whether to grant or deny the request, the custodian shall consider the following, to the extent relevant:

(A) whether the data processing system, operational system, electronic filing system, or manual or electronic storage and retrieval system used by or planned for the court, other judicial agency, or special judicial unit that maintains the judicial records can currently provide the inspection requested in the manner requested and in conformance with the Rules in this Chapter, and, if not, any changes or effort required to enable those systems to provide that inspection;

(B) whether any changes to the data processing, operational electronic filing, or storage or retrieval systems used by or planned for other courts, other judicial agencies, or other special judicial units in the State would be required in order to avoid undue disparity in the ability of those courts or agencies to provide equivalent inspection of judicial records maintained by them;

(C) any other fiscal, personnel, or operational impact of the proposed program on the court, other judicial agency, or special judicial unit or on the State judicial system as a whole;

(D) whether there is a substantial possibility that information retrieved through the program may be used for any fraudulent or other unlawful purpose or may result in the dissemination of inaccurate or misleading information concerning judicial records or individuals who are the subject of judicial records and, if so, whether there are any safeguards to prevent misuse of disseminated information and the dissemination of inaccurate or misleading information; and

(E) any other consideration that the custodian finds relevant.

(3) Notice of Denial

If the custodian denies the request, the custodian shall give written notice to the requester and summarize the reasons for the denial.

Source: This Rule is derived from former Rule 16-909 (f) (2019).

Rule 16-919 covers the creation of new judicial records. The Chair said that many record requests are for information that does not currently exist as a record. Rule 16-919 combines

parts of current Rules 16-904 and 16-910. Section (c) carries forward current Rule 16-904 (f). This provision explains that the Judiciary is not required to create new judicial records or to reformat existing judicial records that the Judiciary does not need for its own judicial purposes. The Chair explained that there are instances when the Judiciary will create a new record in response to a record request if it will not take much time and expense. He said that there was one situation in which a requester asked for a large volume of information that would require JIS to do an enormous amount of work. That request was denied because it would have taken three or four MDEC employees to fulfill the request. A request can be denied based on the amount of work required to fulfill the request, regardless of the costs.

The Chair called for comments about Rule 16-919. There being no motion to amend or reject the Rule, it was approved as presented.

The Chair presented Rules 16-921, Exclusive Procedures for Requesting Access; 16-922, Request; 16-923, Decision on Request; and 16-924, Conditions on Granting Request, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 3. PROCEDURES – REQUESTS AND RESPONSES

ADD NEW Rule 16-921, as follows:

Rule 16-921. EXCLUSIVE PROCEDURES FOR REQUESTING ACCESS

Except as provided in Rule 16-919, the Rules in this Division 3 constitute the exclusive procedures for requesting inspection of judicial records.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 3. PROCEDURES – REQUESTS AND RESPONSES

ADD NEW Rule 16-922, as follows:

Rule 16-922. REQUEST

(a) Identification of Records

A request to inspect a judicial record shall identify the record in sufficient detail to permit the custodian to locate the record efficiently.

(b) Form of Request

(1) Case, Notice, and License Records

A request to inspect a case record, a license record, or a notice record may be made in person at the clerk's office, electronically in accordance with the Rules in Title 20, or in paper form. For good cause, the custodian may require a request to be in writing and to state more clearly the document being requested. If the request is not made in person, it shall be in writing.

(2) Administrative and Special Judicial Unit Record

A request to inspect an administrative or special judicial unit record shall be in writing and may be made electronically or in paper form addressed to the custodian.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 3. PROCEDURES – REQUESTS AND RESPONSES

ADD NEW Rule 16-923, as follows:

Rule 16-923. DECISION ON REQUEST

(a) Generally

Subject to Rule 16-922 and section (e) of this Rule, the custodian shall grant or deny a request promptly, but not later than 30 days after receiving the request.

(b) Request Submitted to Non-Custodian

Subject to section (e) of this Rule, if the individual to whom the request is submitted is not the custodian of the judicial record, the individual, within 10 business days after receiving the request, shall give the requestor (1) notice of that fact, and (2) if known, the name of the custodian and the location or possible location of the judicial record.

Cross reference: See Code, General Provisions Article, § 4-202(c).

(c) Procedure for Approval

A custodian who approves a request for inspection shall produce the judicial record promptly or within a reasonable period that is needed to retrieve the judicial record, but not more than 45 days after receipt of the request.

(d) Procedure for Denial

A custodian who denies a request for inspection shall (1) promptly notify the requestor of the denial; (2) within 10 business days give the requestor a written statement that includes the reasons and legal authority for the denial, and (3) allow inspection of any part of the judicial record that is subject to inspection and is reasonably severable.

(e) Extension of Custodian's Time to Respond

With notice to the requestor and for good cause, the custodian may extend time limits imposed by this Rule for not more than 30 days.

Cross reference: See Code, General Provisions Article, § 4-203.

Source: This Rule is new.

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 3. PROCEDURES – REQUESTS AND RESPONSES

ADD NEW Rule 16-924, as follows:

Rule 16-924. CONDITIONS ON GRANTING REQUEST

(a) Generally

Except as otherwise permitted by the Maryland Rules, other applicable law, or court order entered for good cause, a custodian may not condition the grant of a request for inspection on the identity of the requestor, any organizational or other affiliation of the requestor, or a disclosure by the requestor of the purpose of the request.

(b) Exceptions

This Rule does not preclude a custodian from considering the identity or organizational or other affiliation of a requestor or the purpose of the request if the requestor has requested a waiver of allowable fees or that information is relevant to a determination of whether, under other Rules or applicable law, the requestor is not entitled to inspect the requested judicial record or some part of it. A custodian may request the identity of a requestor for the purpose of contacting the requestor.

Cross reference: Compare Code, General Provisions Article, § 4-204.

Source: This Rule is new.

The Chair said that the Rules in Division 3 address concerns raised by members of the media regarding the procedures for requesting access to judicial records and the response to the request. Rules 16-921 through 16-924 generally follow the procedure set forth in the PIA, although there are some differences.

The Chair asked Ms. Snyder if she would like to comment on the Division 3 Rules. Ms. Snyder said that her concerns have been addressed by the Subcommittee. The Chair invited further comment on the Division 3 Rules. There being no motion to amend or reject the Rules, they were approved.

The Chair presented Rule 16-931, Exclusive Method to Resolve Disputes Over Access, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 4. RESOLUTION OF DISPUTES

ADD NEW Rule 16-931, as follows:

Rule 16-931. EXCLUSIVE METHOD TO RESOLVE DISPUTES OVER ACCESS

Except as provided in Rule 16-919, the Rules in this Division constitute the exclusive methods of resolving disputes regarding access to judicial records. The provisions of Code, General Provisions

Article, Title 4, Subtitles 1A and 1B and § 4-362 are not applicable.

Committee note: As noted in Rule 16-902 (a), pursuant to its Constitutional Rule-making authority, the Court of Appeals has created a dispute resolution process that is efficient and credible and relies on the administrative expertise of judicial officials, with ultimate judicial review. There is no need in that process for actions for monetary damages, costs, and attorneys' fees against custodians.

Source: This Rule is new.

The Chair said that Division 4 is where policy issues are addressed. In 2004, when the Access Rules were adopted, the PIA contained two dispute resolution provisions: administrative review through the State Administrative Procedure Act ("the APA") or an action for injunctive relief and damages filed in the circuit court. The Judiciary is not subject to the APA. Rule 16-931 states that the Rules in Division 4 are the exclusive method of resolving disputes regarding access to judicial records.

The Chair called for comments on Rule 16-931. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair presented Rule 16-932, Resolution of Disputes, for consideration.

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 4. RESOLUTION OF DISPUTES

AMEND Rule 16-914, as follows:

Rule ~~16-914~~ 16-932. RESOLUTION OF DISPUTES ~~BY ADMINISTRATIVE OR CHIEF JUDGE~~

~~(a) Application by Custodian~~

~~If, upon a request for inspection of a judicial record, a custodian is in doubt whether the record is subject to inspection under the Rules in this Chapter or other applicable law, the custodian, after making a reasonable effort to notify the person seeking inspection and each identifiable person who is the subject of or is specifically identified in the record shall apply in writing for a preliminary judicial determination whether the judicial record is subject to inspection.~~

~~(1) If the record is in an appellate court or an orphans' court other than in Harford or Montgomery County, the application shall be to the chief judge of the court.~~

~~(2) If the record is in a circuit court or in the orphans' court for Harford or Montgomery County, the application shall be to the county administrative judge.~~

~~(3) If the record is in the District Court, the application shall be to the district administrative judge~~.

~~(4) If the record is in a judicial agency other than a court, the application shall be to the Chief Judge of the~~ that ~~Court of Appeals, who may refer it to the county administrative judge of a circuit court.~~

~~(b) Preliminary Determination~~

~~After hearing from or making a reasonable effort to communicate with the person seeking inspection and each person who is the subject of or is specifically identified in the record, the court shall make a preliminary determination of whether the record is subject to inspection. Unless the court extends the time for good cause, the preliminary determination shall be made within 10 days after the court receives the written request.~~

~~(c) Order; Stay~~

~~If the court determines that the record is subject to inspection, the court shall file an order to that effect. If a person who is the subject of or is specifically identified in the record objects, the judge may stay the order for not more than five business days in order to allow the person an opportunity to file an appropriate action to enjoin the inspection.~~

~~(d) Action to Enjoin Inspection~~

~~An action under section (c) of this Rule shall be filed within 30 days after the order is filed, and the person who requested inspection of the record shall be made a party. If such an action is timely filed, it shall proceed in accordance with Rules 15-501 through 15-505.~~

~~(e) Order; Action to Compel Inspection~~

~~If the court determines that the judicial record is not subject to inspection, the court shall file an order to that effect, and the person seeking inspection may file an action under Code, General Provisions Article, Title 4 (PIA) or on the basis of the Rules in this Chapter to compel the inspection. An action under this section shall be filed within thirty days after the order is filed.~~

~~(f) When Order Becomes Final and Conclusive~~

~~If a timely action is filed under section (d) or (e) of this Rule, the preliminary determination by the court shall not have a preclusive effect under any theory of direct or collateral estoppel or law of the case. If a timely action is not filed, the order shall be final and conclusive.~~

(a) Administrative Review

(1) If a custodian denies a request for inspection of a judicial record or for the creation of a new judicial record pursuant to Rule 16-919, fails to respond to such a request within the time allowed by these Rules for a response, or proposes to charge a fee for producing the judicial records that the requester believes is inappropriate, the requester may file a request with the SCA or the SCA's designee for administrative review.

(2) The request for review shall be in writing, filed with the SCA within 30 business days after the custodian's final decision, and served on the custodian. The request shall identify the judicial records or information requested and set forth with particularity the reasons why the custodian's decision was incorrect.

(3) The custodian shall file a written response within 30 business days after service of the request for review.

(4) The custodian has the burden of (A) sustaining the decision to deny inspection, production, or creation of the requested information or judicial record, or to delay a decision on the request, and (B) justifying the proposed fee, if that is in dispute.

(5) The SCA may appoint a designee to consider the request and make a final

administrative decision on behalf of the SCA.

(6) The SCA or designee may direct the custodian to produce a copy of a judicial record at issue for in camera inspection to determine whether the record or any part of the record may be withheld pursuant to these Rules.

(7) The SCA or designee shall render a decision within 30 business days after receipt of the request for review. The SCA's or designee's decision shall be the final administrative decision in the matter.

(8) A person aggrieved by the custodian's decision is not required to seek administrative review under this section but may proceed directly under section (b) of this Rule.

(b) Declaratory and Injunctive Relief

(1) Right to File

If a custodian or SCA denies a request for inspection of a judicial record or for the creation of a new judicial record, fails to respond to such a request within the time allowed by these Rules for a response, or proposes to charge a fee for the inspection or creation of judicial records that the requester believes is inappropriate, the requester may file a complaint for declaratory and injunctive relief pursuant to the Maryland Declaratory Judgment Act.

(2) Court costs for the action shall be waived.

(3) Failure to seek administrative review under section (a) of this Rule shall not be grounds to dismiss the action.

(c) Where Filed; Service

The complaint shall be filed in the circuit court for the county in which the

custodian is employed and shall be served on the custodian in accordance with Rule 2-121.

(d) Response

The custodian shall file a response within 30 days after service.

(e) Expedited Treatment

The court shall schedule a hearing promptly, if one is requested, and give expedited treatment to the action.

(f) Burden

The custodian or SCA shall have the burden of (1) sustaining the decision that the custodian or SCA made to deny inspection or production of the requested information or judicial record, or to delay a decision on the request, and (2) justifying the proposed fee, if that is in dispute.

(g) In Camera Inspection

The court may direct the custodian to produce a copy of the judicial record at issue for in camera inspection to determine whether the record or any part of it may be withheld pursuant to these Rules.

(h) Order

If the court finds that the requester has a right to inspect all or any of the record or to have a new judicial record created, it shall enter an order (1) directing the custodian to produce or create the record or the part of the record subject to inspection for inspection by the requester within a specified time, and (2) if in issue, determine the appropriate fee for producing or creating the record. Otherwise, the court shall dismiss the complaint. Willful disobedience of an order issued under this Rule may be enforced by contempt. No money damages or attorneys' fees may be awarded to any party.

Source: This Rule is derived from former Rule ~~16-1011 (2016~~ 16-914 (2019).

Rule 16-932 governs resolution of disputes. Current Rule 16-914 provides that if a custodian is in doubt about whether a record is subject to inspection, he or she could request a preliminary judicial determination from the appropriate administrative judge. Only the custodian is permitted to make such a request. If the judge found that the record is subject to inspection, the judge would issue an order to that effect and any person could file an action in circuit court to enjoin the inspection. If a preliminary judicial determination is made to deny inspection of the record, under the current Rules the requestor could file an action under the PIA to compel inspection. The preliminary review by the administrative judge could only be triggered by the custodian, and requesters could not seek an administrative remedy. Anyone aggrieved by the administrative judge's preliminary determination could file an action for injunctive relief if the decision was to allow inspection or an action under the PIA if the decision was to deny inspection.

The Chair said that the Subcommittee wrestled with how to deal with this issue because members were not satisfied with the process provided in the current Rule. The Subcommittee felt that there should be some form of administrative review of the custodian's decision to deny inspection. There also needed to

be a form of judicial review of the final administrative decision to deny inspection. The Chair stated that the Subcommittee agreed that both forms of review should be quick, inexpensive, efficient, and focus on whether the record is subject to inspection and what, if any, fee should be charged for producing the record if it is subject to inspection. The problem with the PIA format was that the administrative remedy was vested in the executive branch officials, who are not knowledgeable about judicial records. The Rules should not subject the determination of access to judicial records to executive branch officials. The Chair noted that this may have been a violation of Article 8 of the Declaration of Rights but, even if it was not, it was not a good policy. The Chair stated that under the current Rules, an action under the PIA could become mired in arguments over damages and attorney's fees when the sole objective is to get a quick and definitive judicial determination about whether the record is able to be inspected and what fee should be charged. The current Rules do not provide for a preliminary judicial determination if the custodian denies inspection outright. Proposed Rule 16-932 (a) provides for administrative review of a custodian's decision by the State Court Administrator or his or her designee.

The Chair said that, under proposed section (b), judicial review of the final administrative decision happens through a

declaratory judgment action, seeking only a determination of whether the record was subject to inspection, and what fee, if any, may be charged. Requestors could seek declaratory relief and ancillary injunctive relief in that action but not damages or attorney's fees.

The Chair stated that two additional issues have been raised about the proposed dispute resolution process. The first issue is whether is it appropriate for the State Court Administrator to designate a custodian under Rule 16-932 (a), then be allowed to review that custodian's decision. The Subcommittee saw no problems with that provision. Circuit court judges refer cases to magistrates and auditors, then review the decisions of the magistrates and auditors. Similarly, the Court of Appeals designates circuit court judges to hold hearings and to make findings of fact in Attorney Grievance Commission cases, and then reviews the trial court's determinations. The Subcommittee takes the position that so long as the State Court Administrator is not involved in the custodian's decision-making process, the State Court Administrator can review the custodian's decision.

The Chair stated that the second issue involves requests to inspect a judge's emails. The judge, as a custodian of his or her emails, can grant or deny inspection of emails. Presumably, if the email is sent from the judge's email address, the email

also exists on a server with the AOC, so there could be more than one custodian. However, if it is the judge who denies inspection of the email, then the State Court Administrator would review the judge's denial and make the final administrative decision on inspection. The requestor could then seek judicial review of the State Court Administrator's decision or file for declaratory injunctive relief.

The Chair noted that there are many reasons why a judge may deny inspection of his or her emails. The email may be subject to judicial privilege or another provision that makes the email non-disclosable. He said that some judges may be nervous about the State Court Administrator or her designee having the authority to review a judge's denial of inspection. The Subcommittee feels that it is important for the process to be uniform, regardless of who the custodian is.

The Chair invited comments about Rule 16-932.

Ms. McDonald commented that the Rule 16-932 gives the requestor 30 business days to file a request for administrative review of the custodian's decision. The custodian then has 30 days after being served with the request to administrative review to file a response. Subsection (a)(7) only gives the State Court Administrator 30 business days after receipt of the request for review to render a decision. She suggested that the time for the State Court Administrator to render a decision

should be 30 business days after receipt of the response by the custodian. If the State Court Administrator is going to review the request and possibly order an in-camera inspection of the document, that process could take longer than 30 business days. The Chair suggested that subsection (a)(7) could be changed to provide that "the SCA or designee shall render a decision within 30 business days after receipt of the response or 60 days from the receipt of the request, whichever is earlier." The Chair asked whether that suggestion is acceptable to the Committee. By consensus, the Committee approved the Rule as amended.

The Chair presented Rule 16-933, Case Records – Court Order Denying or Permitted Inspection Not Otherwise Authorized by Rule, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 4. RESOLUTION OF DISPUTES

AMEND Rule 16-912, as follows:

Rule ~~16-912~~ 16-933. CASE RECORDS – COURT ORDER DENYING OR PERMITTING INSPECTION NOT OTHERWISE AUTHORIZED BY RULE

(a) Purpose; Scope

(1) Generally

This Rule is intended to authorize a court to permit inspection of a case record

that is not otherwise subject to inspection, or to deny inspection of a case record that otherwise would be subject to inspection, if the court finds, by clear and convincing evidence, (1) a compelling reason under the particular circumstances to enter such an order, and (2) that no substantial harm will come from such an order.

(2) Exception

This Rule does not apply to, and does not authorize a court to permit inspection of, a case record where inspection would be contrary to the United States or Maryland Constitution, a Federal statute or regulation that has the force of law, a Maryland statute other than the PIA, or to a judicial record that is not subject to inspection under Rule 16-911(c),(d),(e),or (f).

~~(a)~~(b) ~~Motion~~ Petition

(1) A party to an action in which a case record is filed, ~~[including a person who has been permitted to intervene as a party,]~~ and a person who is the subject of or is specifically identified in a case record may file a ~~motion~~ petition:

(A) to seal or otherwise limit inspection of a case record filed in that action that is not otherwise shielded from inspection under the Rules in this Chapter or Title 20 or other applicable law; or

(B) subject to subsection (a)(2) of this Rule, to permit inspection of a case record filed in that action that is not otherwise subject to inspection under the Rules in this Chapter or Title 20 or other applicable law.

(2) Except as provided in subsection ~~(a)(3)~~ (b)(3) of this Rule, the ~~motion~~ petition shall be filed with the court in which the case record is filed and shall be served on:

(A) all parties to the action in which the case record ~~is~~ was filed; and

(B) each identifiable person who is the subject of the case record.

(3) A petition to shield a judicial record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 shall be filed in the county where the judgment of conviction was entered. Service shall be ~~provided~~ made and proceedings shall be held as directed in that Subtitle.

(4) The petition shall be under oath and shall state with particularity the circumstances that justify an order under this Rule. Unless the court orders otherwise, the petition and any response to it shall be shielded.

~~(b)~~(c) Shielding of Record Upon ~~Motion~~ Petition

This section does not apply to a petition filed pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3. Upon the filing of a ~~motion~~ petition to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue.

~~(c)~~(d) Temporary Order Precluding or Limiting Inspection

(1) The court shall consider a ~~motion~~ petition filed under this Rule on an expedited basis.

(2) In conformance with the provisions of Rule 15-504 (Temporary Restraining Order), the court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other

statement under oath that (A) there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection pursuant to this Rule, and (B) immediate, substantial, and irreparable harm will result to the person seeking the relief or on whose behalf the relief is sought if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.

(3) A court may not enter ~~a temporary~~ an order permitting inspection of a case record that is not otherwise subject to inspection under the Rules in this Chapter in the absence of an opportunity for a full adversary hearing.

~~(d)~~(e) Final Order

(1) After an opportunity for a full adversary hearing, the court shall enter a final order:

(A) precluding or limiting inspection of a case record that is not otherwise shielded from inspection under the Rules in this Chapter;

(B) permitting inspection, under such conditions and limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under the Rules in this Chapter; or

(C) denying the ~~motion~~ petition.

(2) A final order shall include or be accompanied by findings regarding the interest sought to be protected by the order.

(3) A final order that precludes or limits inspection of a case record shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected by the order.

(4) A final order granting relief under Code, Criminal Procedure Article, Title 10, Subtitle 3 shall include the applicable provisions of the statute. If the order pertains to a judgment of conviction in (A) an appeal from a judgment of the District Court or (B) an action that was removed pursuant to Rule 4-254, the order shall apply to the records of each court in which there is a record of the action, and the clerk shall transmit a copy of the order to each such court.

(5) In determining whether to permit or deny inspection, the court shall ~~consider~~ determine, upon clear and convincing evidence:

(A) ~~if the motion seeks to preclude or limit inspection of a case record that is otherwise subject to inspection under the Rules in this Chapter,~~ whether a special and compelling reason exists to preclude, ~~or~~ limit, or permit inspection of the particular case record, and, if so, a description of that reason;

(B) ~~if the motion seeks to permit inspection of a case record that is otherwise not subject to inspection under the Rules in this Chapter, whether a special and compelling reason exists to permit inspection~~ whether any substantial harm is likely to come from the order and, if so, the nature of that harm; and

(C) if the ~~motion~~ petition seeks to permit inspection of a case record that has been previously sealed by court order under subsection ~~(d)(1)(A)~~ (e)(1)(A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections ~~(d)(2)~~ (e)(2), (3), and (5)(A) of this Rule.

(6) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order

within 30 days after a hearing was held or waived.

~~(e)~~(f) Filing of Order

A copy of any temporary or final order shall be filed in the action in which the case record in question was filed and, except as otherwise provided by law, shall be subject to public inspection.

~~(f)~~(g) Non-Exclusive Remedy

This Rule does not preclude a court from exercising its authority under other law ~~at any time~~ to enter an appropriate order that seals, shields, or limits inspection of a case record or that makes a case record subject to inspection.

~~(g)~~(h) Request to Shield Certain Information

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

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

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

Committee note: If a court or District Court Commissioner grants a request to shield information under section ~~(g)~~ (h) of this Rule, no adversary hearing is held

unless a person seeking inspection of the shielded information files a ~~motion~~ petition under section ~~(a)~~ (b) of this Rule.

Source: This Rule is derived from former Rule ~~16-1009 (2016)~~ 16-912 (2019).

The Chair said that Rule 16-933 is largely taken from current Rule 16-912, which was an important Rule in 2004. There may be circumstances in which the Rule does not permit inspection of a record but there is a good reason to permit inspection. The Rule authorizes a court to permit inspection if the court finds by clear and convincing evidence that there is a compelling reason to warrant inspection and that no substantial harm will come from granting inspection.

The Chair invited comments about Rule 16-933. There being no motion to amend or reject the Rule, it was approved as presented.

The Chair said that there are a number of conforming amendments necessitated by the revisions to the Access Rules (see Appendix 3). He called for any other comments on the Access Rules or the conforming amendments. Ms. Harris suggested that the provision regarding public access through Case Search contained in subsection (e)(1) of Rule 20-109 should be moved to Rule 16-903. She said that Title 20 deals with MDEC, and the provision in subsection (e)(1) would fit better with the Access Rules.

The Chair asked whether there is any objection to that suggestion. By consensus, the Committee agreed with the change.

By concensus, the Committee approved the conforming amendments as amended.

There being no further business before the Committee, the meeting was adjourned.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-322.1 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 1-322.1. EXCLUSION OF PERSONAL IDENTIFIER INFORMATION IN COURT FILINGS

(a) Applicability

This Rule applies only to pleadings and other papers filed in an action on or after July 9, 2013 by a person other than a judge or judicial appointee. The Rule does not apply to administrative records, business license records, or notice records, as those terms are defined in ~~Rule 16-902 (a)~~ Rule 16-903.

Committee note: Although not subject to this Rule, judges and judicial appointees should be aware of the purpose of the Rule and refrain from including personal identifier information in their filings, unless necessary.

Cross reference: For the definition of "action," see Rule 1-202. For the prohibition against including certain personal information on recordable instruments, see Code, Real Property Article, § 3-111. For the prohibition against publicly posting or displaying on an Internet Website certain personal information contained in court records, including notice records, see Code, Courts Article, § 1-205.

. . .

Source: This Rule is in part derived from Fed. R. Civ. P. 5.2 (2007) and is in part new.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-512 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 2-512. JURY SELECTION

. . .

(c) Jury List

(1) Contents

Before the examination of qualified jurors, each party shall be provided with a list that includes each juror's name, address, age, sex, education, occupation, spouse's occupation, and any other information required by Rule. Unless the trial judge orders otherwise, the address shall be limited to the city or town and zip code and shall not include the street address or box number.

(2) Dissemination

(A) Allowed

A party may provide the jury list to any person employed by the party to assist in jury selection. With permission of the trial judge, the list may be disseminated to

other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.

(B) Prohibited

Unless the trial judge orders otherwise, a party and any other person to whom the jury list is provided in accordance with subsection (c)(2)(A) of this Rule may not disseminate the list or the information contained on the list to any other person.

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 2-516, a jury list is not part of the case record.

Cross reference: See Rule ~~16-910~~ 16-912 concerning motions to seal or limit inspection of a case record.

. . .

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rules 754 a and Rule 543 c and in part new.
Section (b) is derived from former Rule 751 b and former Rule 543 b 3.
Section (c) is new.
Section (d) is derived from former Rules 752, 754 b, and 543 d.
Section (e) is derived from former Rules 753 and 543 a 3 and 4.
Section (f) is new.
Section (g) is derived from former Rule 751 d.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-601 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 2-601. ENTRY OF JUDGMENT

. . .

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

(1) Applicability

Section (b) of this Rule applies to judgments entered on and after July 1, 2015.

(2) Entry

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

(3) Availability to the Public

Unless shielding is required by law or court order, the docket entry and the date of the entry shall be available to the public through the case search feature on the Judiciary website and in accordance with Rules ~~16-902 and~~ 16-903 and 16-904.

. . .

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

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-601 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 3-601. ENTRY OF JUDGMENT

. . .

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

(1) Applicability

Section (b) of this Rule applies to judgments entered on and after July 1, 2015.

(2) Entry

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

(3) Availability to the Public

Unless shielding is required by law or court order, the docket entry and the date of the entry shall be available to the public through the case search feature on the Judiciary's

website and in accordance with Rules ~~16-902 and~~ 16-903 and 16-904.

. . .

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

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-262 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

. . .

(d) Disclosure by the State's Attorney

(1) Without Request

Without the necessity of a request, the State's Attorney shall provide to the defense all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged and all material or information in any form, whether or not admissible, that tends to impeach a State's witness.

Cross reference: See Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419 (1995); Giglio v. U.S., 405 U.S. 150 (1972); U.S. v. Agurs, 427 U.S. 97 (1976); Thomas v. State, 372 Md. 342 (2002); Goldsmith v. State, 337 Md. 112 (1995); and Lyba v. State, 321 Md. 564 (1991).

(2) On Request

On written request of the defense, the State's Attorney shall provide to the defense:

(A) Statements of Defendant and Co-defendant

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(B) Written Statements, Identity, and Telephone Numbers of State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (i) the name of the witness; (ii) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule ~~16-1009(b)~~ Rule 16-933, the address and, if known to the State's Attorney, the telephone number of the witness, and (iii) the statements of the witness relating to the offense charged that are in a writing signed or adopted by the witness or are in a police or investigative report;

(C) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(i) specific searches and seizures, eavesdropping, or electronic surveillance including wiretaps; and

(ii) pretrial identification of the defendant by a State's witness;

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant by a State's witness also may be required. See Green v. State, 456 Md. 97 (2017).

(D) Reports or Statements of Experts

As to each State's witness the State's Attorney intends to call to testify as an expert witness other than at a preliminary hearing:

(i) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(ii) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(iii) the substance of any oral report and conclusion by the expert;

(E) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(F) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

. . .

Source: This Rule is new.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-263 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided

under Code, Criminal Procedure Article, § 11-205 or Rule ~~16-912 (b)~~ Rule 16-933, the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged;

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

Cross reference: See Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419 (1995); Giglio v. U.S., 405 U.S. 150 (1972); U.S. v. Agurs, 427 U.S. 97 (1976); Thomas v. State, 372 Md. 342 (2002); Goldsmith v. State, 337 Md. 112 (1995); and Lyba v. State, 321 Md. 564 (1991).

(7) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's witness;

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant by a State's witness also may be required. See Green v. State, 456 Md. 97 (2017).

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

. . .

Source: This Rule is new and is derived in part from former Rule 741 and the 1998 version of former Rule 4-263.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-312 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 4-312. JURY SELECTION

. . .

(c) Jury List

(1) Contents

Subject to section (d) of this Rule, before the examination of qualified jurors, each party shall be provided with a list that includes each juror's name, city or town of residence, zip code, age, gender, education, occupation, and spouse's occupation. Unless the trial judge orders otherwise, the juror's street address or box number shall not be provided.

(2) Dissemination

(A) Allowed

A party may provide the jury list to any person employed by the party to assist in jury selection. With permission of the trial judge, the list may be disseminated to other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.

(B) Prohibited

Unless the trial judge orders otherwise, a party and any other person to whom the jury list is provided in accordance with subsection (c)(2)(A) of this Rule may not disseminate the list or the information contained on the list to any other person.

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 4-322, a jury list is not part of the case record.

Cross reference: See Rule ~~16-905 (c)~~ Rule 16-913 (a) concerning disclosure of juror information by a custodian of court records.

(d) Nondisclosure of Names and City or Town of Residence

(1) Finding by the Court

If the court finds from clear and convincing evidence or information, after affording the parties an opportunity to be heard, that disclosure of the names or the city or town of residence of prospective jurors will create a substantial danger that (i) the safety and security of one or more jurors will likely be imperiled, or (ii) one or more jurors will likely be subjected to coercion, inducement, other improper influence, or undue harassment, the court may enter an order as provided in subsection (d)(2) of this Rule. A finding under this section

shall be in writing or on the record and shall state the basis for the finding.

(2) Order

Upon the finding required by subsection (d)(1) of this Rule, the court may order that:

(A) the name and, except for prospective jurors residing in Baltimore City, the city or town of residence of prospective jurors not be disclosed in voir dire; and

(B) the name and, except for jurors residing in Baltimore City, the city or town of residence of impaneled jurors not be disclosed (i) until the jury is discharged following completion of the trial, (ii) for a limited period of time following completion of the trial, or (iii) at any time.

Committee note: Nondisclosure of the city or town in which a juror resides is in recognition of the fact that some counties have incorporated cities or towns, the disclosure of which, when coupled with other information on the jury list, may easily lead to discovery of the juror's actual residence. The exception for Baltimore City is to take account of the fact that Baltimore City is both an incorporated city and the equivalent of a county, and because persons are not eligible to serve as jurors in the Circuit Court for Baltimore City unless they reside in that city, their residence there is necessarily assumed.

Cross reference: See ~~Rule 16-905 (c)~~ Rule 16-913 (a).

(3) Extent of Nondisclosure

An order entered under this section may direct that the information not be disclosed to (A) anyone other than the judge and counsel; (B) anyone other than the judge, counsel, and the

defendant; or (C) anyone other than the judge, counsel, the defendant, and other persons specified in the order. If the court permits disclosure to counsel but not the defendant, the court shall direct counsel not to disclose the information to the defendant, except pursuant to further order of the court.

(4) Modification of Order

The court may modify the order to restrict or allow disclosure of juror information at any time.

Committee note: Restrictions on the disclosure of the names and city or town of residence of jurors should be reserved for those cases raising special and legitimate concerns of jury safety, tampering, or undue harassment. See United States v. Deitz, 577 F.3d 672 (6th Cir. 2009); United States v. Quinones, 511 F.3d 289 (2nd Cir. 2007). When dealing with the issues of juror security or tampering, courts have considered a mix of five factors in deciding whether such information may be shielded: (1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment. See United States v. Ochoa-Vasquez, 428 F.3d 1015 (11th Cir. 2005); United States v. Ross, 33 F.3d 1507 (11th Cir. 1994). Although the possibility of a lengthy incarceration is a factor for the court to consider the court should not shield that information on that basis alone. In particularly high profile cases where strong public opinion about a pending case is evident, the prospect of undue harassment, not necessarily involving juror security or any deliberate attempt at tampering, may also be of concern.

. . .

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rule 754 a and in part new.
Section (b) is derived from former Rule 751 b.

Section (c) is new.
Section (d) is new.
Section (e) is derived from former Rule 752 and 754 b.
Section (f) is derived from former Rule 753.
Section (g) is new.
Section (h) is derived from former Rule 751 d.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY,

CHILD SUPORT, AND CHILD CUSTODY

AMEND Rule 9-203 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 9-203. FINANCIAL STATEMENTS

. . .

(d) Inspection of Financial Statements

Except as provided in this section, inspection of a financial statement filed pursuant to the Rules in this Chapter is governed by Code, General Provisions Article, § 4-328 and § 4-336. A financial statement is open to inspection if it is an exhibit (1) attached to a motion that has been ruled upon by the court or (2) marked for identification at trial, whether or not offered in evidence, and if offered, whether or not admitted. A party who does not want the financial statement open to public inspection pursuant to this section may make a motion at any time to have it sealed.

Cross reference: See Rule ~~16-903 (d)~~ 16-904 (c) and Rule ~~16-910~~ 16-918.

Source: This Rule is new.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY,

CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-205.2 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 9-205.2. PARENTING COORDINATION

. . .

(i) Confidential Information

(1) Access to Case Records

Except as otherwise provided in this subsection, the parenting coordinator shall have access to all case records in the action. If a document or any information contained in a case record is not open to public inspection under the Rules in Title 16, Chapter 900, the court shall determine whether the parenting coordinator may have access to it and shall specify any conditions to that access.

Cross reference: See Rule ~~16-902~~ 16-903 for the definition of "case record."

(2) Other Confidential Information

(A) A parenting coordinator may not require or coerce the parties or an attorney for the child to release any confidential information that is not included in the case record.

(B) Confidential or privileged information received by the parenting coordinator from a party or from a third person with the consent of a party may be disclosed by the parenting coordinator to the other party, to an attorney for the child, and in court pursuant to subsections (g)(7) and (8) of this Rule. Unless otherwise required by law, the parenting coordinator may not disclose the information to anyone else without the consent of the party who provided the information or consented to a third person providing it.

. . .

Source: This Rule is new.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-108 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 10-108. ORDERS

(a) Order Appointing Guardian

(1) Generally

An order appointing a guardian shall :

(A) state whether the guardianship is of the property, the person, or both;

(B) state the name, sex, and date of birth of the minor or disabled person;

(C) state the name, address, telephone number, and e-mail address, if available, of the guardian;

(D) state whether the appointment of a guardian is solely due to a physical disability, and if not, the reason for the guardianship;

(E) state (i) the amount of the guardian's bond or that a bond is waived and (ii) the date by which proof of any bond shall be filed with the court;

Cross reference: See Rule 10-702 (a), requiring the bond to be filed before the guardian commences the performance of any fiduciary duties.

(F) state the date by which any annual report of the guardian shall be filed; and

Cross reference: See Rule 10-706 (b).

(G) state the specific powers and duties of the guardian and any limitations on those powers or duties either expressly or by referring to the specific sections or subsections of an applicable statute containing those powers and duties; and

(H) except as to a public guardian, unless the guardian has already satisfied the requirement or the court orders otherwise, direct the guardian to complete an orientation program and training in conformance with the applicable Guidelines for Court-Appointed Guardians attached as an Appendix to the Rules in this Title.

Committee note: An example of an appointment as to which waiver of the orientation and training requirements of subsection (a)(1)(H) may be appropriate is the appointment of a temporary guardian for a limited purpose or specific transaction.

Cross reference: Code, Estates and Trusts Article, §§ 13-201 (b) and (c), 13-213, 13-214, 13-705 (b), 13-708, and 15-102 and Title 15, Subtitle 6 (Maryland Fiduciary Access to Digital Assets Act).

(2) Confidential Information

Information in the order or in papers filed by the guardian that is subject to being shielded pursuant to the Rules in Title 16, Chapter 900 shall remain confidential, but, in its

order, the court may permit the guardian to disclose that information when necessary to the administration of the guardianship, subject to a requirement that the information not be further disclosed without the consent of the guardian or the court.

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

Cross reference: See Rule ~~16-907 (f) and (j)~~ 16-907 (e) and (i) and Rule ~~16-908~~ 16-915 (d).

. . .

Source: This Rule is derived as follows:
Section (a) is derived in part from Code, Estates and Trusts Article, §§ 13-208 and 13-708 and is in part new.
Section (b) is new.
Section (c) is derived from former Rules V71 f 1 and f 2.
Section (d) is derived in part from former Rule R78 b and is in part new.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

AMEND Rule 15-1103 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 15-1103. INITIATION OF PROCEEDING TO CONTEST ISOLATION OR QUARANTINE

(a) Petition for Relief

An individual or group of individuals required to go to or remain in a place of isolation or quarantine by a directive of the Secretary issued pursuant to Code, Health--General Article, § 18-906 or Code, Public Safety Article, § 14-3A-05, may contest the isolation or quarantine by filing a petition for relief in the circuit court for the county in which the isolation or quarantine is occurring or, if that court is not available, in any other circuit court.

Committee note: Motions to seal or limit inspection of a case record are governed by Rule ~~16-910~~ 16-918. The right of a party to proceed anonymously is discussed in Doe v. Shady Grove Hosp., 89 Md. App. 351, 360-66 (1991).

. . .
Source: This Rule is new.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1302 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 15-1302. PETITION FOR APPROVAL

. . .

(c) Contents of Petition

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

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

(A) a copy of the structured settlement agreement;

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

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

(D) a copy of the transfer agreement;

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

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

Cross reference: For shielding requirements applicable to identifying information contained in the payee's Consent, see Rule ~~16-1007 (f)~~ 16-914 (e).

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

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

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

(2) if the petitioner is not an individual, state (i) the legal status of the petitioner, (ii) whether it is registered to do business in Maryland; and (iii) the name, address, e-mail address, and telephone number of any resident agent in Maryland;

(3) state the names and addresses and, if known, the telephone numbers and email addresses of all interested parties, as defined in Code, Courts Article, § 5-1101 (e);

(4) state whether, to the best of the petitioner's knowledge, information, and belief, the structured settlement arose from (A) a claim of lead poisoning, or (B) any other claim in which an allegation was made in a court record of a mental or cognitive impairment on the part of the payee;

(5) identify any allegations or statements in any complaint attached under subsection (c)(1)(H) of this Rule that describe the nature, extent, or consequences of the payee's cognitive injuries or disabling impairment;

Committee note: To comply with subsection (c)(5) of this Rule, the petitioner should refer to places in the complaint containing the allegations or statements, rather than repeating the allegations or statements in the petition.

(6) state whether there have been any prior transfers or proposed transfers of any of the payee's structured settlement payment rights, and for each prior transfer or proposed transfer:

(A) state whether the transferee in each transfer agreement was the petitioner, an affiliate or predecessor of the petitioner, or a person unrelated in any way to the petitioner;

(B) identify the court and the number of the case in which the transfer or proposed transfer was submitted for approval;

(C) state the disposition of the requested approval; and

(D) include as an exhibit a copy of (i) the transfer agreement, (ii) any disclosure statement provided to the payee

by the transferee, and (iii) a copy of any court order approving or declining to approve such transfer or otherwise finally disposing of an application for approval of such transfer.

(7) state the amounts and due dates of the structured settlement payments to be transferred and the aggregate amount of these payments;

(8) state (A) the total amount to be paid under the transfer agreement; (B) the net amount to be received by the payee, after deducting all fees, costs, and amounts chargeable to the payee; and (C) the discounted present value of the payments that would be transferred as determined in accordance with Code, Courts Article, § 5-1101 (b); and

(9) contain a calculation and statement in the following form: "Based on the net amount that the payee will receive from the transferee and the amounts and timing of the structured settlement payments that the payee is transferring to the transferee, the payee will be paying an implied, annual interest rate of _____ percent per year on this transaction, if it were a loan transaction";

(10) state whether, prior to the filing of the petition, there have been any written, oral, or electronic communications between the petitioner and the independent professional advisor selected by the payee with respect to the transfer and, if so, the dates and nature of those communications; and

(11) state whether, to the best of the petitioner's knowledge after making reasonable inquiry, the proposed transfer would not contravene any applicable law, statute, Rule, or the order of any court or other government authority.

. . .

Source: This Rule is new.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – JUDGMENT

AMEND Rule 16-203 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 16-203. ELECTRONIC FILING OF PLEADINGS, PAPERS, AND REAL PROPERTY INSTRUMENTS

. . .

(c) Criteria for Adoption of Plan

In developing a plan for the electronic filing of pleadings, the County Administrative Judge or the Chief Judge of the District Court, as applicable, shall be satisfied that the following criteria are met:

(1) the proposed electronic filing system is compatible with the data processing systems, operational systems, and electronic filing systems used or expected to be used by the judiciary;

(2) the installation and use of the proposed system does not create an undue financial or operational burden on the court;

(3) the proposed system is reasonably available for use at a reasonable cost, or an efficient and compatible system of manual filing will be maintained;

(4) the proposed system is effective, secure, and not likely to break down;

(5) the proposed system makes appropriate provision for the protection of privacy and for public access to public records in accordance with the Rules in Chapter 900 of this Title; and

(6) the court can discard or replace the system during or at the conclusion of a trial period without undue financial or operational burden.

The State Court Administrator shall review the plan and make a recommendation to the Chief Judge of the Court of Appeals with respect to it.

Cross reference: For the definition of "public record," see Code, General Provisions Article, § 4-101 (h). See also Rules 16-901--~~16-914~~ 16-933 (Access to Judicial Records).

. . .

Source: This Rule is derived from former Rules 16-307 and 16-506 (2016).

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-204 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 16-204. REPORTING OF CRIMINAL AND MOTOR VEHICLE INFORMATION

. . .

(b) Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings

Criminal history record information contained in court records of public judicial proceedings is subject to inspection in accordance with Rules 16-901 through ~~16-914~~ 16-933.

Cross reference: See Code, Courts Article, §§ 2-203 and 13-101 (d) and (f), Criminal Procedure Article, §§ 10-201, 10-214, 10-217, and General Provisions Article, Title 4. For the definition of "court records" for expungement purposes, see Rule 4-502 (d). For provisions governing access to judicial records generally, see Title 16, Chapter 900.

Source: This Rule is derived from former Rules 16-308 and 16-503 (2016).

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-505 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 16-505. ADMINISTRATION OF CIRCUIT COURT RECORDING PROCESS

. . .

(c) Supervision of Court Reporters

Subject to the general supervision of the Chief Judge of the Court of Appeals, the County Administrative Judge shall have the supervisory responsibility for the court reporters and persons responsible for recording court proceedings in that county. The County Administrative Judge may delegate supervisory responsibility to the supervisory court reporter or a person responsible for recording court proceedings, including the assignment of court reporters or other persons responsible for recording court proceedings.

Cross reference: Rule ~~16-907 (i)~~ 16-914 (g) provides that backup audio recordings made by any means, computer disks, and notes of a court reporter that have not been filed with the clerk or are not part of the official court record are not ordinarily subject to public inspection.

Source: This Rule is derived from former Rule 16-404 (2016).

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS

AND CHARACTER COMMITTEES

AMEND Rule 19-104 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

Rule 19-104. SUBPOENA POWER

(a) Subpoena

(1) Issuance

In any proceeding before the Board or a Character Committee pursuant to Rule 19-204 or Rule 19-216, the Board or Committee, on its own initiative or the motion of an applicant, may cause a subpoena to be issued by a clerk pursuant to Rule 2-510. The subpoena shall issue from the Circuit Court for Anne Arundel County if incident to Board proceedings or from the circuit court in the county in which the Character Committee proceeding is pending. The proceedings shall be docketed in the issuing court and shall be sealed and shielded from public inspection.

(2) Name of Applicant

The subpoena shall not divulge the name of the applicant, except to the extent this requirement is impracticable.

(3) Return

The sheriff's return shall be made as directed in the subpoena.

(4) Dockets and Files

The Character Committee or the Board, as applicable, shall maintain dockets and files of all papers filed in the proceedings.

(5) Action to Quash or Enforce

Any action to quash or enforce a subpoena shall be filed under seal and docketed as a miscellaneous action in the court that issued the subpoena.

Cross reference: See Rule ~~16-906~~ 16-911 (a)(4).

. . .

Source: This Rule is derived from former Rule 22 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

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

. . .

(e) Public Access

(1) Access Through CaseSearch

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

(2) Unshielded Documents

Subject to any protective order issued by the court, members of the public shall have free access to unshielded case records and unshielded parts of case records from computer terminals or kiosks that the courts make available for that purpose. Each court shall provide a reasonable number of terminals or kiosks for use by the public. The terminals or kiosks shall not permit the user to download, alter, or forward the information, but the user is entitled to a copy of or printout of a case record in accordance with Rule ~~16-903 (d)~~ 16-904 (c).

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

. . .

Source: This Rule is new.

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-203 to conform to the revision of the Rules in Title 16, Chapter 900, as follows:

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

. . .

(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(h)(2), a filer has filed electronically a redacted and an unredacted 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.

(3) Shielding on Motion of Party

A party aggrieved by the refusal of the clerk to shield a filing or part of a filing that contains restricted information may file a motion pursuant to Rule ~~16-912~~ 16-933.

Source: This Rule is new.

REPORTER'S NOTE