COURT OF APPEALS STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held via Zoom for Government on Friday, October 15, 2021.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Hon. Vicki Ballou-Watts
Julia D. Bernhardt, Esq.
Hon. Pamila J. Brown
Stan Derwin Brown, Esq.
Hon. Yvette M. Bryant
Sen. Robert G. Cassilly
Del. Luke Clippinger
Hon. John P. Davey
Mary Ann Day, Esq.
Alvin I. Frederick, Esq.
Pamela Q. Harris, State Court Administrator
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Stephen S. McCloskey, Esq.
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., Deputy Reporter
Meredith E. Drummond, Esq., Assistant Reporter
Heather Cobun, Esq., Assistant Reporter

Josephine Bahn, Esq.
Tanya Bernstein, Esq., Director, Commission on Judicial Disabilities
Ronald Canter, Esq.
Leslie Dickinson, Esq., Disability Rights Maryland
Tom Dolina, Esq., MSBA
Michael Donnelly, Esq., Maryland Consumer Rights Coalition
Samuel Feder, Esq., Assistant Public Defender
Brian Field, Esq., MSBA, Chair, Business Law Section
Brandon Floyd, Policy Analyst, Maryland Hospital Association
Faye Gaskin, Deputy State Court Administrator, Maryland

Judiciary
Hon. Kathryn Graeff, Court of Special Appeals
Aaron Greenfield, Esq.
Nancy Harris, Analyst, Judicial Information Systems, Maryland Judiciary
Greg Hilton, Esq., Clerk of the Court of Special Appeals
Kathy Howard, Esq., Maryland Multi-Housing Association
Daniel Jawor, Esq., Assistant Attorney General
Suzanne Johnson, Esq., Clerk of the Court of Appeals
Kendra Jolivet, Esq., Commission on Judicial Disabilities
James P. Kelly-Lieb, Esq.
Steven Klepper, Esq.
Connie Kratovil-Lavelle, Esq., Executive Director, Public Interest and Legal Advocacy, Maryland Collaborative Law and Justice Centers
Lisa Mannisi, Esq., Civil and Criminal Case Administrator, Anne Arundel County Circuit Court
Richard Montgomery, Esq., MSBA
Hon. John Morrisey, Chief Judge, District Court
Douglas Nivens, Esq., Maryland Legal Aid
Hon. Michael Reed, Court of Special Appeals
Thomas Robins, Esq., Assistant Public Defender
Phillip Robinson, Esq.
Peter Sabonis, Esq., Partners for Dignity and Rights
Jane Santoni, Esq.
Suzanne Schneider, Esq., Chief of Staff, Court of Appeals
Melanie Shapiro, Esq., Public Policy Director, Maryland Network Against Domestic Violence
Stacy Smith, Esq., Center for Dispute Resolution, University of Maryland School of Law
Scott Stevens, Esq., Director, Law Library, Baltimore County Circuit Court
Michael Wein, Esq.
Jer Welter, Esq., Office of the Attorney General
Grason Wiggins, Esq., Maryland Multi-Housing Association
Carrie Williams, Esq., Office of the Attorney General
Brian Zavin, Esq., Chief Attorney, Office of the Public Defender

The Chair convened the meeting. The Reporter reminded Committee members and other attendees that the meeting is being recorded to assist with the preparation of meeting minutes. An

individual who speaks is consenting to the recording of the individual's comment.

Agenda Item 1. Consideration of proposed amendments to Rule 16-207 (Problem-Solving Court Programs)

Mr. Frederick presented Rule 16-207, Problem-Solving Court Programs, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-207 by replacing the phrase "post-termination" with the phrase "violation of probation" in the Committee note after section (f), by expanding the Committee note after section (f) concerning disqualification of a judge, and by adding a case citation to the Committee note, as follows:

RULE 16-207. PROBLEM-SOLVING COURT PROGRAMS

(a) Definition

(1) Generally

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

(2) Exceptions

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

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

(b) Applicability

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

(c) Submission of Plan

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

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

(d) Approval of Plan

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

(e) Acceptance of Participant into Program

(1) Written Agreement Required

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

(A) the requirements of the program;

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

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

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

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

(2) Examination on the Record

The court may not accept the prospective participant into the program until, after examining the prospective participant on the record, the court

determines and announces on the record that the prospective participant understands the agreement and knowingly and voluntarily enters into the agreement.

(3) Agreement to be Made Part of the Record

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

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

If permitted by the program and in accordance with the protocols of the program, the court, for good cause, may impose an immediate sanction on a participant, except that if the participant is considered for the imposition of a sanction involving the loss of liberty or termination from the program, the participant shall be afforded notice, an opportunity to be heard, and the right to be represented by an attorney before the court makes its decision. If a hearing is required by section (f) of this Rule and the participant is not represented by an attorney, the court shall comply with Rule 4-215 in a criminal action or Code, Courts Article, § 3-8A-20 in a delinquency action before holding the hearing.

Committee note: In considering whether a judge should be disqualified pursuant to Rule 18-102.11 of the Maryland Code of Judicial Conduct from ~~post-termination~~ violation of probation proceedings involving a participant who has been terminated from a problem-solving court program, the judge should be sensitive to any exposure to ex parte communications or inadmissible information that the judge may have received while the participant was in the program. Even in cases where the judge does not have personal bias or prejudice that would require disqualification, if presiding over the violation of probation proceedings might reasonably create the appearance of

impropriety, the judge should disqualify himself or herself. *See Conner v. State*, Md. (2021).

(g) Credit for Incarceration Time Served

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

(h) Continued Program Operation

(1) Monitoring

Each problem-solving court program shall provide the Office of Problem-Solving Courts with the information requested by that Office regarding the program.

(2) Report and Recommendation

(A) The Office of Problem-Solving Courts shall submit to the Chief Judge of the Court of Appeals, through the State Court Administrator, annual reports and recommendations as to the status and operations of the various problem-solving court programs. The Office of Problem-Solving Courts shall provide to the Chief Judge of the District Court a copy of each report and recommendation that pertains to a problem-solving court program in the District Court.

(B) The Chief Judge of the Court of Appeals may require information regarding the status and operation of a problem-solving court program and may direct that a program be altered or terminated.

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

Rule 16-207 was accompanied by the following Reporter's note:

> On March 26, 2021, Conner v. State, __ Md. __ (2021) was filed. In Conner, the Court of Appeals held that, under the specific facts of the case, a drug court participant was not denied his right to an impartial tribunal when a judge who presided over the participant in drug court proceedings also presided over the participant's revocation of probation proceeding. At the conclusion of the Opinion, the Court "refer[red] to the Rules Committee the issue of whether specific additional or different guidance for recusal of judges who have participated in Drug Court proceedings, whether by presiding or by receiving communications as a member of the therapeutic team, should be incorporated into Rule 18-102.11 and/or Rule 16-207." Slip Op. at 30. After considering input from several judges and others involved in problem solving courts, amendments are proposed to Rule 16-207.
>
> The Subcommittee was advised that the term "post-termination proceedings" is inaccurate because termination from the program may occur simultaneously with a violation of probation hearing, as demonstrated in Conner. A proposed amendment to the Committee note after section (f) eliminates the reference to "post-termination proceedings" and substitutes the phrase "violation of probation proceedings."
>
> An additional amendment to the Committee note provides further guidance to judges in problem solving courts considering motions for disqualification. The new sentence emphasizes that judges must consider whether presiding over the violation of probation proceedings of a former problem solving court participant might reasonably create the appearance of

impropriety. A citation to Connor v. State is also added to the Committee note.

Mr. Frederick explained that the materials include a draft Rule and a Court of Appeals opinion (*Conner v. State*, 472 Md. 722 (2021)). In the opinion, the Court referred to the Rules Committee the issue of guidance to judges that are involved in problem-solving courts, such as drug court, who then later preside over violation of probation proceedings for a participant. He explained that Rule 18-102.11 deals with recusal of judges and Rule 16-207, which is before the Committee, deals with problem-solving courts.

Mr. Frederick said that in the *Conner* case, a Montgomery County judge oversaw a violation of probation proceeding involving a drug court participant. He explained that a participant in drug court receives a sentence. That sentence is stayed pending successful completion of the program. Drug court involves many *ex parte* communications between the treatment team and the court, including failed drug tests, like in the *Conner* case. The defendant in *Conner* asked to disqualify a drug court judge from hearing his violation of probation because of the judge's knowledge of these *ex parte* communications. The judge determined that recusal was not required by the Maryland Rules and proceeded to hear the matter. Mr. Frederick noted that according to the Court of Appeals, the judge acted correctly

under the Rules. The matter was referred to the Rules Committee to consider "whether specific additional or different guidance for recusal of judges who have participated in Drug Court proceedings... should be incorporated [into the Rule]" (*Id.* at 336).

Mr. Frederick said that the matter was referred to the Attorneys and Judges Subcommittee for consideration. After discussion with the Maryland Office of the Public Defender (OPD) and judges who sit on problem-solving courts, the Subcommittee unanimously recommended the proposed changes to Rule 16-207, which amend a Committee note following section (f). Mr. Frederick said that there are two additional changes to the proposal for clarity. In the third line, the word "conducting" should be inserted before "violation of probation" and in the fourth line, "participant" should be stricken and replaced with "defendant." He stated that the Subcommittee discussed mandatory recusal or automatic recusal if it is requested by the defendant, but those proposals were rejected. There was concern about practicalities in less populous counties where there are fewer judges to hear matters if recusals were to become more common.

The Chair pointed out that in the *Conner* case, the Court looked at a manual produced by the National Drug Court Institute which provides guidance to judges regarding the ethics of a drug

court judge hearing the proceeding to terminate a participant from the program, which is a different issue. He noted that in *Conner*, the defendant already had been terminated from the program when he appeared before a judge on the violation of probation. The Chair also questioned whether there should be different standards between circuit court and District Court matters, in part due to problems finding another judge in certain rural areas. He said that the plan required under section (c) of Rule 16-207 could require that each jurisdiction address the issue. He said that neither issue should preclude the Committee from adopting the recommendations before it today but asked for the issues to be considered.

Mr. Feder, the assistant public defender who represented Mr. Conner, told the Committee that his office is advocating for the "hybrid" approach as proposed to the Subcommittee, which requires recusal in cases where the defendant requests it. He explained that merely adding language to a Committee note does not meaningfully address the policy concerns raised by the Court of Appeals. He noted that Rule 18-102.11 already requires recusal where impartiality could be reasonably questioned. He said that the position of the Office of the Public Defender is not meant to be critical of drug court judges, but he explained that he has concerns about a chilling effect on defendants in problem-solving courts who must be open and honest with the

treatment team for the program to be effective. He said that defendants may be reluctant to share information if there is a concern that a judge could later preside over a violation of probation proceeding. He pointed out that counties currently have policies in place governing recusals and unavailability of judges.

Judge Brown commented that in her county, defendants who are invited to participate in drug court sign an agreement acknowledging that if they fail to complete the program, they will be brought before her. She said that the Subcommittee recommendation is adequate.

The Chair called for a motion to amend the proposed Rule. Judge Bryant moved to adopt Mr. Frederick's style amendments. The motion was seconded and passed by majority vote. There being no further motion to amend or reject the proposed Rule, it was approved as amended.

Agenda Item 2. Consideration of proposed amendments to Rule 3-731 (Peace Orders)

Judge Wilson presented Rule 3-731, Peace Orders, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 700 – SPECIAL PROCEEDINGS

AMEND Rule 3-731 by deleting the text of the form from section (b) and by requiring that the petition be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the District Court, as follows:

RULE 3-731. PEACE ORDERS

(a) Generally

Proceedings for a peace order are governed by Code, Courts Article, Title 3, Subtitle 15.

(b) Form of Petition

A petition for relief under the statute shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the District Court. ~~in substantially the following form:~~

~~(Caption)~~

~~PETITION FOR PEACE ORDER~~

~~*(Note: Fill in the following, checking the appropriate boxes. IF YOU NEED ADDITIONAL PAPER, ASK THE CLERK.)*~~

~~1. I want protection from~~
~~_____~~
~~_____~~

~~Respondent~~

~~The Respondent committed the following acts against _____~~

~~_____~~
~~_____~~
~~_____~~
~~_____~~

within the past 30 days on the dates stated below.

(Check all that apply)

☐ kicking ☐ punching ☐ choking ☐ slapping

☐ shooting ☐ rape or other sexual offense (or attempt)

☐ hitting with object ☐ stabbing ☐ shoving

☐ threats of violence ☐ harassment ☐ stalking

☐ detaining against will ☐ trespass

☐ malicious destruction of property

☐ other

_____

The details of what happened are: *(Describe injuries. State the date(s) and place(s) where these acts occurred. Be as specific as you can):*

_____

2. I know of the following court cases involving the Respondent and me:

Court Kind of Case Year Filed Results or Status

(if you know)

_____

3. Describe all other harm the Respondent has caused you and give date(s), if known.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

4. I want the Respondent to be ordered:

[X] NOT to commit or threaten to commit any of the acts

listed in paragraph 1 against _____
_____

_____ Name

☐ NOT to contact, attempt to contact, or harass _____

_____
_____
_____
_____

Name

☐ NOT to go to the residence(s) at _____
_____

_____
_____
_____
_____

Address

☐ NOT to go to the school(s) at _____
_____

_____
_____
_____
_____

Name of school and address

☐ To go to counseling ☐ To go to mediation

☐ To pay the filing fees and court costs

☐ Other specific relief: _____

I solemnly affirm under the penalties of perjury that the contents of this Petition are true to the best of my knowledge, information, and belief.

_____
_____
_____

Date
Petitioner

NOTICE TO PETITIONER

Any individual who knowingly provides false information in a Petition for Peace Order is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding 90 days or both.

(c) Modification; Rescission; Extension

Upon the filing of a motion, a judge may modify, rescind, or extend a peace order. Modification, rescission, and extension of peace orders are governed by Code, Courts and Judicial Proceedings Article, § 3-1506 (a). If a motion to extend a final peace order is filed before the original expiration date of the peace order, and the hearing is not held by that date, the peace order shall be automatically extended until the hearing is held. The motion shall be presented to a judge forthwith.

Committee note: Although Code, Courts and Judicial Proceedings Article, § 3-1506 (a) automatically extends a peace order under certain circumstances, judges are encouraged

to issue an order even when the automatic extension is applicable.

Source: This Rule is new.

Rule 3-731 was accompanied by the following Reporter's note:

> Subtitle 15 of the Courts Article sets forth the requirements for a peace order, including who is eligible for relief and what qualifying acts may be alleged. Chapter 341, 2021 Laws of Maryland (HB 289), enables an employer to file a petition for a peace order based on a respondent's actions towards the petitioner's employee. A petition by an employer must allege the commission of an act listed in Code, Courts Article, § 3-1503 against the petitioner's employee at the employee's workplace.
>
> Rule 3-731 concerns petitions for peace orders filed in the District Court. Proposed amendments delete the form from section (b) and instead require the petition to be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the District Court. By removing the form from the Rule, the Committee will no longer need to transmit proposed amendments to the Court of Appeals every time a change occurs.

Judge Wilson explained that the proposed amendments are in response to legislation that changed the peace order statute to allow an employer to file a petition on behalf of an employee under certain circumstances. She said that the District Court

Subcommittee considered amending the form in the Rule to match current law, which could be cumbersome later because the statutes frequently change. The Subcommittee opted to recommend removing the form from the Rule and instead referring to a form approved by the State Court Administrator, which can be more easily amended as the law changes.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 3. Consideration of proposed new Rule 1-314 (Disclosure Statement)

Judge Bryant presented Rule 1-314, Disclosure Statement, for consideration.

MARYLAND RULES

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

ADD New Rule 1-314, as follows:

Rule 1-314. DISCLOSURE STATEMENT

(a) Required Filing; Contents

(1) Nongovernmental Corporate Party

A nongovernmental corporate party shall file a disclosure statement that:

(A) identifies any parent corporation and any publicly held corporation owning 10%

or more of its stock, or states that there is no such corporation; and

(B) if the party is a close corporation or a limited liability company, identifies each stockholder or member.

(2) Required Filing by Other Entities

Other than a party required to file a disclosure statement under subsection (a)(1) of this Rule, a nongovernmental party that is a business entity established under the law of any state, a joint venture, or an unincorporated association shall file a disclosure statement that:

(A) if the party is a partnership or a limited liability partnership, identifies each partner;

(B) if the party is a joint venture, identifies each member;

(C) if the party is an unincorporated association, identifies each corporate member, or states that there is no such corporate member; or

(D) if the party is a nongovernmental business entity established under the law of any state identifies the owners or members of that entity.

(b) Time to File; Supplemental Filing

A party shall:

(1) file the disclosure statement (A) with its first appearance, pleading, petition, motion, response, or other request addressed to the court or (B) promptly after learning of the information to be disclosed; and

(2) promptly file a supplemental statement if any required information changes.

[QUERY: Should the Rule specify that it only applies prospectively?]

Cross reference: See Code, Courts Article, §6-412.

Source: This Rule is new.

Rule 1-314 was accompanied by the following Reporter's note:

> Chapter 428 (SB 335), 2021 Laws of Maryland, requires a nongovernmental entity to file, when specified, a disclosure statement regarding certain ownership interests. The statute was modeled after Fed. R. Civ. P. 7.1 and various local Rules established in federal District Courts which expand the Rule to include additional entities. The stated goal of the statute, and the Federal Rule, is to notify judges of potential conflicts of interest which may necessitate recusal.
>
> Subsection (a)(1) is derived from the statute. It applies to nongovernmental corporate parties, including close corporations and limited liability companies.
>
> Subsection (a)(2) is derived from the statute but separates non-corporate entities from those in subsection (a)(1). If a party was not required to file a disclosure under subsection (a)(1) but is another kind of business entity, subsection (a)(2) applies. Subsections (a)(2)(A) through (D) are derived from the statute.
>
> Section (b) is derived from the statute but modeled after the structure of the Federal Rule. It requires the disclosure statement to be filed by the party with the first appearance, pleading, petition, motion, response, or other request. Additionally, the Rule provides for the statement to be filed promptly once the information required to be disclosed is

learned. This addition permits a party to provide the required information soon after the filing if it was not yet known.

Judge Bryant said that the proposed new Rule is designed to address a new statute which requires certain disclosures by business entities in litigation. She explained that the legislation appears intended to assist judges in identifying potential conflicts of interest. She said that the comments received by the Committee on the proposed Rule appear to fall into two categories: the increased workload associated with disclosing all of the required information that is called for and confidentiality for individuals and entities who do not want their ownership or participation known. There is also the question of whether the Rule should apply prospectively only. Judge Bryant said that she has concerns about the proposals put forth in the comments. She said that the notion of shielding individual interests by having the Administrative Office of the Courts ("AOC") maintain a repository of disclosure forms for individual entities that judges must then check appears to shift the burden to judges to seek out the information and could be difficult for the AOC to put in place.

The Chair called for comment on the proposed Rule. Ms. Howard, an attorney for the Maryland Multi-Housing Association ("MMHA"), said that she appreciates the concern about the fiscal

impact on AOC, but explained that the filing requirement does not account for caseload or case type differences between the District Court and the circuit courts. She noted that landlords are frequent litigants in District Court and those cases are not filed electronically. She stated that adding a disclosure form to every landlord-tenant case will add paper to the files and that, without a shielding requirement, the information will be open to public inspection. She said that MMHA asks for a shielding provision and an option to allow frequent litigants to keep a disclosure form on file. Judge Bryant asked if the burden would be on the judge to look for a disclosure if it is not physically in the file. She requested that District Court judges provide insight into how the process might work for them. Mr. Nivens, an attorney with Maryland Legal Aid who handles landlord-tenant matters, said that he understands the paperwork burden, but it is important – for advocates as well as the judges – to have access to the disclosed information to raise potential conflicts requiring recusal. He said that landlord-tenant dockets are typically expedited, and attorneys for tenants need prompt access to the information.

Ms. Harris requested that the Committee defer the proposal to allow her and Chief Judge Morrissey to discuss what is being asked of the AOC.

Mr. Robinson said that the statute requires the disclosure to be filed as of October 1. He explained that the issue of frequent filers did come up in the legislative process, and it was determined that those parties can have a form disclosure that is used in every case. He also said that the disclosure is not intended to be viewed only by judges. The Chair said that a draft form has been developed by the Judicial Council's Forms Subcommittee.

The Chair asked if there was any opposition to deferring the matter until the November meeting.

Mr. Field, chair of the Maryland State Bar Association Business Law Section, said that his comment to the Committee raised different issues. The proposal includes definitions for "parent corporation" and "publicly held" from the Corporations and Associations Article. He explained that a company trying to comply may have problems learning who owns its equity, and that information may change with each trading day. He requested that publicly held companies have a 10 percent ownership interest threshold to trigger disclosure.

Ms. Santoni, an attorney who handles landlord-tenant matters, said that she does not object to deferring the matter but asked that the Committee not "water down" the statute, particularly by allowing disclosures to be shielded. Ms.

Dickinson, of Disability Rights Maryland, echoed Ms. Santoni's concerns about making disclosures private.

Judge Ballou-Watts moved to defer the matter for one month. The motion was seconded and passed by majority vote. The Chair stated that Rule 1-314 will be placed on the agenda for November.

Agenda Item 4. Consideration of proposed amendments to Rule 1-205 (Address of Participant in Address Confidentiality Program) and Rule 9-402 (Action)

Judge Bryant presented Rules 1-205, Address of Participant in Address Confidentiality Program, and 9-402, Action, for consideration.

MARYLAND RULES

TITLE 1 – GENERAL PROVISIONS

CHAPTER 200 – CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-205 by updating a cross reference following section (a), as follows:

Rule 1-205. ADDRESS OF PARTICIPANT IN ADDRESS CONFIDENTIALITY PROGRAM

(a) Generally

If an individual who is a participant in the Address Confidentiality Program presents an address designated by the State Secretary of State as a substitute address,

the court shall accept that address as the individual's address.

Cross reference: See Code, ~~Family Law Article, §§4-519 through 4-530 and~~ State Government Article, §§ 7-301 through 7-313, establishing an Address Confidentiality Program for victims of domestic violence, sexual assault, stalking, harassment, or human trafficking.

. . .

Rule 1-205 was accompanied by the following Reporter's note:

Chapter 124 (SB 109), 2021 Laws of Maryland, merges and expands eligibility for the state's programs for address confidentiality. The Address Confidentiality Program is now governed solely by Title 7, Subtitle 3 of the State Government Article. In addition to victims of domestic violence and human trafficking, the program applies to victims of sexual assault, stalking, or harassment. The cross reference following section (a) is updated to reflect the repeal of the Family Law Article provisions and the expanded eligibility.

MARYLAND RULES

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 400 – TERMINATION OF PARENTAL RIGHTS UNDER CODE, FAMILY LAW ARTICLE, TITLE 5, SUBTITLE 14

AMEND Rule 9-402 by updating a cross reference following section (b), as follows:

Rule 9-402. ACTION

. . .

(b) Where Action Filed

The action shall be brought in a circuit court.

Cross reference: See Code, ~~Family Law Article §4-519, et seq., and~~ State Government Article, § 7-301, et seq.

. . .

Rule 9-402 was accompanied by the following Reporter's note:

Chapter 124 (SB 109), 2021 Laws of Maryland, merges and expands eligibility for the state's programs for address confidentiality. The Address Confidentiality Program is now governed solely by Title 7, Subtitle 3 of the State Government Article. Proposed amendments to Rule 9-402 delete the repealed statutory provisions.

Judge Bryant explained that recent legislation altered the Code references to the Address Confidentiality Program. The proposed amendments reflect those changes. There being no

motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 5. Consideration of proposed amendments to Rule 7-104 (Notice of Appeal – Times for Filing)

Judge Nazarian presented Rule 7-104, Notice of Appeal – Times for Filing, for consideration.

MARYLAND RULES

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-104 by adding to the cross reference following section (a), by adding a new subsection (c)(2) pertaining to the time for filing an appeal under certain circumstances, by amending the Committee note following section (c) to clarify the time for filing certain motions, and by making stylistic changes, as follows:

Rule 7-104. NOTICE OF APPEAL – TIMES FOR FILING

(a) Generally

Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.

Cross reference: For shorter appeal times provided by statute, see Code, Real Property

Article, §§ 8-332, 8-401, 8-402, 8-402.1, 8A-1701, 8A-1702, 8A-1703, 14-109, ~~and~~ 14-120, and 14-132.

(b) Criminal Action – Motion for New Trial

In a criminal action, when a timely motion for a new trial is filed pursuant to Rule 4-331(a), the notice of appeal shall be filed within 30 days after the later of (1) entry of the judgment or (2) entry of a notice withdrawing the motion or an order denying the motion.

(c) Civil Action – Post Judgment Motions

(1) Generally

~~In~~ Except as provided in subsection (c)(2) of this Rule, in a civil action, when a timely motion is filed pursuant to Rule 3-533 or Rule 3-534, the notice of appeal shall be filed within 30 days after entry of ~~(1)~~ (A) a notice withdrawing the motion or ~~(2)~~ (B) an order denying a motion pursuant to Rule 3-533 or disposing of a motion pursuant to Rule 3-534. A notice of appeal filed before the withdrawal or disposition of either of these motions does not deprive the District Court of jurisdiction to dispose of the motion.

(2) Shorter Appeal Time Provided by Statute

(A) Between Ten and 29 Days

Where a statute provides for an appeal time between ten and 29 days, inclusive, and a timely motion is filed pursuant to Rule 3-533 or Rule 3-534, the notice of appeal shall be filed within the time stated in the statute after (i) a notice withdrawing the motion or (ii) an order denying a motion pursuant to Rule 3-533 or disposing of a motion pursuant to Rule 3-534.

(B) Less than Ten Days

Where a statute provides for an appeal time of less than ten days and a motion pursuant to Rule 3-533 or 3-534 is filed within the time to appeal stated in the statute, the notice of appeal shall be filed within ten days after (i) a notice withdrawing the motion or (ii) an order denying a motion pursuant to Rule 3-533 or disposing of a motion pursuant to Rule 3-534.

Committee note: In cases involving a statutory appeal time that is shorter than the time to file a motion under Rule 3-533 or 3-534 (e.g. Code, Real Property Article, §§8-401 and 8A-1701), such motions must be filed within the statutory appeal time in order to toll the time to appeal pursuant to subsection (c)(2)(B). A motion filed under Rule 3-533 or 3-534 that is not filed within the statutory appeal time may still be timely if filed within the time permitted by those Rules, but it does not toll the time to appeal.

A motion filed pursuant to Rule 3-535, if filed within ten days or, if applicable, in the time stated in subsection (c)(2)(B) after entry of judgment, will have the same effect as a motion filed pursuant to Rule 3-534, for purposes of this Rule. *Unnamed Attorney v. Attorney Grievance Commission*, 303 Md. 473, 494 A.2d 940 (1985); *Sieck v. Sieck*, 66 Md.App. 37, 502 A.2d 528 (1986).

(d) Appeals by Other Party – Within Ten Days

If one party files a timely notice of appeal, any other party may file a notice of appeal within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by this Rule.

(e) Date of Entry

"Entry" as used in this Rule occurs on the day when the District Court enters a

record on the docket of the electronic case management system used by that court.

Source: This Rule is in part derived from former Rule 1312 and in part new.

Rule 7-104 was accompanied by the following Reporter's note:

Proposed amendments to Rule 7-104 address an issue raised in a recent Court of Appeals case (*Lee v. WinnCompanies LLC*, No. 25, Sept. Term 2020 (cert. petition dismissed)) regarding the appropriate time to appeal a District Court summary ejectment decision where timely post-trial motions have been filed pursuant to Rules 3-533 and 3-534. The Court of Appeals referred the matter to the Rules Committee for consideration.

Proposed amendments to the cross reference following section (a) add an additional statute which requires an appeal to be noted in less than the default time of 30 days.

Proposed amendments to section (c) create a new subsection (c)(2). The new subsection announces an exception to the general Rule that, where motions pursuant to Rules 3-533 and 3-534 are timely filed, the time to appeal a civil decision is tolled until the motions are withdrawn or disposed of, at which time the parties have 30 days to appeal.

Subsection (c)(2)(A) applies to cases where the time to appeal, by statute, is at least ten days but less than 30 days. In those matters, the time to appeal following the withdrawal or disposition of motions is the time to appeal stated in the statute.

Subsection (c)(2)(B) applies to cases where the time to appeal, by statute, is less than ten days. In such cases, where post judgment motions are filed within the statutory appeal period, the time to appeal is tolled. Once the motions are ruled on, the parties have ten days to note an appeal.

The summary ejectment law at issue in *Lee* (Code, Real Property Article, §8-401) requires an appeal to be filed within four days of the rendition of judgment. A mobile home park repossession judgment (Code, Real Property Article, §8A-1701) must be appealed within two days. The Appellate Subcommittee was advised that it is impractical to apply these statutory appeal times to the time to appeal following the disposition of post judgment motions. These cases are not electronically filed and frequently involve unrepresented parties. Where a judge denies post judgment motions in chambers and the decision is mailed, the parties will not receive the ruling in time to note an appeal. It was agreed that ten days is a practical time to permit parties to receive notice of the ruling while still expediting the appeal timeline.

Practitioners opposed restricting timely motions under Rule 3-533 and 3-534 to the statutory appeal time when that time is less than ten days because they advised that parties may learn of the judgment against them too late to appeal but do still want to file post judgment motions. An order denying those motions is appealable and subject to an abuse of discretion review. The proposed new language in the Committee note following section (c) emphasizes that subsection (c)(2)(B) will only apply if post judgment motions are filed during the time to appeal, but such motions can still be filed timely and are ripe for consideration even if the time to appeal the underlying judgment has passed. The existing Committee note is amended to extend its concept to

circumstances outlined in subsection (c)(2)(B).

Judge Nazarian explained that this item and the next item deal with appeals from the District Court to the circuit court. Proposed amendments to Rule 7-104 clarify the deadline to file a notice of appeal when a timely post-judgment motion has been filed and there is a shortened appeal time by statute. Section (c) is amended to add new subsection (c)(2) to address this situation. Subsection (c)(2)(A) addresses statutory appeal times between ten and 29 days, and subsection (c)(2)(B) addresses statutory appeal times of less than ten days. He explained that the Court of Appeals referred the question of the appropriate time to file a notice of appeal following disposition of post-judgment motions after the issue was raised by a case before the Court. The Appellate Subcommittee recommends that the notice be filed within the statutory appeal time except where the time to appeal is less than ten days. In those cases, due to concerns about parties receiving timely notice of the ruling on motions, the time to appeal is proposed to be ten days. Mr. Nivens, who served as counsel for the petitioner in the Court of Appeals case, said that he supports the proposed changes, which clarify an ambiguity in the Rule.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 6. Consideration of proposed amendments to Rule 7-112 (Appeals Heard De Novo) and Rule 7-114 (Dismissal of Appeal)

Judge Nazarian presented Rules 7-112, Appeals Heard De Novo, and 7-114, Dismissal of Appeal, for consideration.

MARYLAND RULES

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-112 by amending subsection (f)(1) to make dismissal discretionary where the appellant fails to appear, by adding a Committee note pertaining to dismissals pursuant to subsection (f)(1), by adding a Committee note following subsection (f)(3) pertaining to a motion to reinstate an appeal, and by making stylistic changes, as follows:

Rule 7-112. APPEALS HEARD DE NOVO

. . .

(f) Dismissal of Appeal; Entry of Judgment

(1) An appellant may dismiss an appeal at any time before the commencement of

trial. The court ~~shall~~ may dismiss an appeal if the appellant fails to appear as required for trial or any other proceeding on the appeal.

Committee note: If the court is not presented with information explaining the defendant's absence, the court may presume that the absence is voluntary and consider the appeal dismissed by the appellant. If the court is presented with information that could amount to good cause for the absence and there is a request for a postponement, the court ordinarily should grant a continuance in order to assess the merits of that information. See *Tengeres v. State*, Md. at (2021).

(2) Upon the dismissal of an appeal, the clerk shall promptly return the file to the District Court. Any statement of satisfaction shall be docketed in the District Court.

(3) On motion filed in the circuit court within 30 days after entry of a judgment dismissing an appeal, the circuit court, for good cause shown, may reinstate the appeal upon the terms it finds proper. On motion of any party filed more than 30 days after entry of a judgment dismissing an appeal, the court may reinstate the appeal only upon a finding of fraud, mistake, or irregularity. If the appeal is reinstated, the circuit court shall notify the District Court of the reinstatement and request the District Court to return the file.

Committee note: A motion to reinstate an appeal for good cause is to be liberally granted. *Mobuary v. State*, 435 Md. 417 (2013).

(4) If the appeal of a defendant in a criminal case who was sentenced to a term of confinement and released pending appeal pursuant to Rule 4-349 is dismissed, the circuit court shall (A) issue a warrant directing that the defendant be taken into

custody and brought before a judge of the District Court or (B) enter an order that requires the defendant to appear before a judge. If a judge is not available on the day the warrant or order is served, the defendant shall be brought before a judge the next day that the court is in session. The warrant or order shall identify the District Court case by name and number and shall provide that the purpose of the appearance is the entry of a commitment that conforms to the judgment of the District Court.

Source: This Rule is derived in part from former Rule 1314 and in part new.

Rule 7-112 was accompanied by the following Reporter's note:

Proposed amendments to Rule 7-112 address the recent Court of Appeals decision in *Tengeres v. State*, __ Md. __ (2021). In that case, the appellant did not appear for a status hearing in circuit court on her appeal from District Court. Counsel for the appellant informed the court that the appellant did not receive actual notice of the hearing until that day and could not arrange for transportation and childcare. Counsel requested a postponement. The court denied the request and dismissed the appeal at the request of the State. The court later denied a motion to reinstate the appeal and a motion to reconsider the denial. The Court of Appeals reversed, finding that given the totality of the circumstances, there was good cause to reinstate the appeal and reemphasizing that such motions should be liberally granted. The Court also determined that where a court is presented with information explaining the

appellant's absence, the court ordinarily should grant a continuance to assess the merits of that information.

Amendments to subsection (f)(1) alter the standard for dismissal for failure to appear from "shall" to "may." Committee notes following subsections (f)(1) and (f)(3) cite the holdings in *Tengeres* and *Mobuary v. State*, 435 Md. 417 (2013), respectively. The Committee note following subsection (f)(1) addresses the required considerations when the appellant fails to appear, as stated in *Tengeres*. The Committee note following subsection (f)(3) emphasizes that motions to reinstate appeals should be liberally granted as stated in *Mobuary* and reiterated in *Tengeres*.

MARYLAND RULES

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT

TO THE CIRCUIT COURT

AMEND Rule 7-114 by altering subsection (b)(3) to refer to dismissal of an appeal by the appellant, by adding new subsection (f)(4) pertaining to discretionary dismissal by the court where the appellant fails to appeal, by adding Rule 7-112 (f)(1) and its Committee note to the cross reference following section (c), and by making stylistic changes, as follows:

Rule 7-114. DISMISSAL OF APPEAL

. . .

(b) When Mandatory

The circuit court shall dismiss an appeal if:

(1) the appeal is not allowed by law;

(2) the notice of appeal was not filed with the District Court within the time prescribed by Rule 7-104; or

(3) an appeal to be heard de novo was ~~withdrawn~~ dismissed by the appellant pursuant to Rule 7-112 (f)(1).

(c) When Discretionary

The circuit court may dismiss an appeal if:

(1) the appeal was not properly taken pursuant to Rule 7-103;

(2) the record was not transmitted within the time prescribed by Rule 7-108, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, a court reporter, or the appellee; ~~or~~

(3) the case has become moot; or ~~.~~

(4) the appellant fails to appear for trial or any other proceeding on appeal.

Cross reference: See Rule 7-105 allowing the District Court to strike a notice of appeal for certain reasons, including failure to file the notice of appeal within the time prescribed by Rule 7-104. See Rule 7-112 (f)(1) and its Committee note regarding dismissal where the appellant fails to appear.

Source: This Rule is derived from former Rule 1335.

Rule 7-114 was accompanied by the following Reporter's note:

> Proposed amendments to Rule 7-114 address the recent Court of Appeals decision in *Tengeres v. State*, __ Md. __ (2021). See the Committee note following Rule 7-112 for more information.
>
> Section (b) is updated to conform the language regarding dismissal of an appeal by the appellant to the language in Rule 7-112 (f)(1). Such an action was previously referred to as a withdrawal of an appeal but is now called dismissal.
>
> Section (c) is amended to conform it with proposed amendments to Rule 7-112 (f)(1), which makes dismissal by the court discretionary when the appellant fails to appear. The cross reference following section (c) is updated to refer to Rule 7-112 (f)(1) and its Committee note, which explains the considerations for the court when contemplating dismissal under that subsection.

Judge Nazarian said that the proposed amendments are in response to the Court of Appeals opinion in *Tengeres v. State*, 474 Md. 126 (2021) involving the absence of a defendant at a proceeding on a *de novo* appeal to circuit court. Rule 7-112 is amended to make dismissal discretionary, and a Committee note states the holding of *Tengeres*. A second Committee note following subsection (f)(3) instructs the court to liberally grant a motion to reinstate an appeal for good cause. Rule 7-114 is amended to reflect the changes in Rule 7-112.

There being no motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 7. Consideration of proposed Rules changes requested by the Clerk of the Court of Appeals

Judge Nazarian presented Rules 8-305, Certification of Questions of Law to the Court of Appeals; 20-102, Application of Title; and 20-402, Transmittal of Record, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 300 – OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-305 by deleting the requirement from section (b) requiring seven copies to accompany an original certification order, as follows:

RULE 8-305. CERTIFICATION OF QUESTIONS OF LAW TO THE COURT OF APPEALS

. . .

(b) Certification Order.

In disposing of an action pending before it, a certifying court, on motion of any party or on its own initiative, may submit to the Court of Appeals a question of

law of this State, in accordance with the Maryland Uniform Certification of Questions of Law Act, by filing a certification order. The certification order shall be signed by a judge of the certifying court and state the question of law submitted, the relevant facts from which the question arises, and the party who shall be treated as the appellant in the certification procedure. The original order ~~and seven copies~~ shall be forwarded to the Court of Appeals by the clerk of the certifying court under its official seal, together with the filing fee for docketing regular appeals, payable to the Clerk of the Court of Appeals.

. . .

Cross reference: Code, Courts Article, §§ 12-601 through 12-609.

Source: This Rule is derived from former Rule 896.

Rule 8-305 was accompanied by the following Reporter's note:

The Clerk of the Court of Appeals has requested that Rule 8-305 be amended to remove the requirement that seven copies of the Certification Order be sent to the Court. The Clerk no longer requires seven copies of the order.

MARYLAND RULES OF PROCEDURE
TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT
CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-102 by changing the requirement in subsection (b)(2) that Title

20 is applicable only by order of the Court of Appeals so that Title 20 is automatically applicable to "other proceedings" in the Court of Appeals, and by adding a Committee note following subsection (b)(2) as follows:

RULE 20-102. APPLICATION OF TITLE

...

(b) Appellate Courts

(1) Appellate Proceedings

(A) Generally

Except as provided in subsection (b)(1)(B) of this Rule, this Title applies to all appellate proceedings in the Court of Special Appeals or Court of Appeals seeking the review of a judgment or order entered in any action.

(B) Exception

For appeals from an action to which section (a) of this Rule does not apply, the clerk of the lower court shall transmit the record in accordance with Rules 8-412 and 8-413, and, upon completion of the appellate proceeding, the clerk of the appellate court shall transmit the mandate and return the record to the lower court in accordance with Rule 8-606 (d)(1).

(2) Other Proceedings ~~If so ordered by the Court of Appeals in a particular matter or action, the~~

This Title also applies to (A) a question certified to the Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act, Code, Courts Article, §§ 12-601-12-613; and (B) an original action in the Court of Appeals allowed by law.

Committee note: After the Court of Appeals has received and docketed a certification

order pursuant to Rule 8-304 or Rule 8-305, parties who are registered users must file any subsequent papers electronically.

...

Source: This Rule is new.

Rule 20-102 was accompanied by the following Reporter's note:

The Clerk of the Court of Appeals has requested that Rule 20-102 be amended so that Title 20 applies more generally to "other proceedings" in the Court of Appeals as set forth in subsection (b)(2). In the current version of this Rule, Title 20 only applies to "other proceedings" when specifically ordered so by the Court of Appeals.

A Committee note is proposed to be added following subsection (b)(2), clarifying that parties who are registered users in certification of question matters must file papers electronically.

MARYLAND RULES

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 – APPELLATE REVIEW

AMEND Rule 20-402 by clarifying a provision regarding certification of the record in subsection (a)(1), as follows:

Rule 20-402. TRANSMITTAL OF RECORD

(a) Certification and Transmittal

(1) Certification

Upon the filing of a notice of appeal, application for leave to appeal, or notice that the Court of Appeals has issued a writ of certiorari directed to ~~the trial~~ a lower court, the clerk of the trial court shall comply with the requirements of Title 8 of the Maryland Rules and prepare a certification of the record.

(2) Transmittal of the Record to the Appellate Court

(A) Transmittal through MDEC

For purposes of Rule 8-412, the record is deemed transmitted to the appellate court when the lower court dockets and transmits to the appellate court through the MDEC system a certified copy of the docket entries ("Case Summary"), together with a statement of the cost of preparing and certifying the record, the costs assessed against each party prior to the transmission of the record, and the cost of all transcripts and of copies, if any, of the transcripts for each of the parties.

(B) Transmittal of Non-Electronic Parts of the Record

The clerk shall (i) transmit to the appellate court as required under the Rules in Title 8 any part of the record that is not in electronic format in the MDEC system, including audio, audio-video, or video recordings offered or used at a hearing or trial that have not been scanned into the MDEC system, and (ii) enter on the docket a notice (a) that the non-electronic part was so transmitted and (b) that, from and after the date of the notice, the entire record so certified is in the custody of the appellate court.

Cross reference: See Rules 8-412 and 8-413.

(b) Custody of Trial Court Submissions

Upon the docketing and transmittal provided for in subsection (a)(2) of this Rule, the record of all submissions filed on or prior to the date of the notice shall be deemed to be in the custody of the appellate court. Except as otherwise ordered by the appellate court, submissions filed in the trial court after the date of the notice shall not be part of the appellate record but shall be within the custody and jurisdiction of the trial court.

Committee note: Under MDEC, the electronic part of the record is not physically transmitted to the appellate court. It remains where it is but, upon entry of the notice referred to in sections (a) and (b), (1) it is regarded as within the custody of the appellate court, and (2) the judges, clerks, and other authorized employees of the appellate court have full remote electronic access to it. See section (d) of this Rule.

(c) Appellate Submissions During Pendency of Appeal

Subject to section (e) of this Rule and unless otherwise ordered by the appellate court, submissions filed with or by the appellate court during the pendency of the appeal after the date of the docketing and transmittal pursuant to subsection (a)(2) of this Rule shall be part of the appellate court record.

(d) Remote Access by Appellate Judges and Personnel

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

(e) Procedure Upon Completion of Appeal

Upon completion of the appeal, the clerk of the appellate court shall add to the record certified by the clerk of the trial court any opinion, order, or mandate of the appellate court disposing of the

appeal and a notice that, subject to the court's mandate and any further order of the appellate court, from and after the date of the notice, the record is returned to the custody of the trial court. For purposes of Rule 8-606 (d), the record is deemed transmitted to the lower court when the appellate court's mandate is transmitted to the lower court through the MDEC system.

Source: This Rule is new.

Rule 20-402 was accompanied by the following Reporter's note:

Proposed amendments to Rule 20-402 alter a reference to the "trial court" in subsection (a)(1) to be "lower court." The Appellate Subcommittee was advised that when the Court of Appeals issues a writ of certiorari, the writ is directed to the court that issued the decision to be reviewed, which is typically the Court of Special Appeals but can be the trial court in certain circumstances.

Regardless of the direction of the writ, the Clerk of the Court of Appeals has advised that her office prefers to have the electronic record of the case certified and transmitted by the trial court, which has the most complete record. In some situations, the local clerks are reluctant to certify and transmit the record where the writ of certiorari is directed to the Court of Special Appeals and not the trial court. The proposed amendment clarifies that the writ of certiorari is directed to "a lower court" and instructs the trial court to comply with Title 8.

Judge Nazarian said that the proposed changes were requested by the Clerk of the Court of Appeals. Rule 8-305 (b) is amended to eliminate the requirement to forward seven copies of the certification order to the Court. Rule 20-102 is amended to clarify that Title 20 applies more generally to other proceedings in the Court of Appeals, including certified questions of law and original actions allowed by law in that Court. Rule 20-402 is amended to address confusion among clerks regarding which court is responsible for certifying and transmitting the record of a case when the Court of Appeals issues a writ of certiorari.

There being no motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 8. Consideration of the proposed deletion of Form 22 from the Appendix of Forms and an amendment to Rule 8-201 (Method of Securing Review – Court of Special Appeals)

Judge Nazarian presented the deletion of Form 22 in the Appendix of Forms and amendments to Rule 8-201, Method of Securing Review – Court of Special Appeals, for consideration.

MARYLAND RULES OF PROCEDURE
APPENDIX: FORMS

DELETE FORM 22, as follows:

~~FORM 22. NOTICE OF APPEAL (Rule 8-201)~~

~~(Caption)~~

~~NOTICE OF APPEAL~~

~~_____ notes an appeal to the Court of Special Appeals in the above-captioned action.~~

~~(Signature and Certificate of Service)~~

Form 22 was accompanied by the following Reporter's note:

Form 22 is proposed to be deleted from the Appendix and the Notice of Appeal language from Form 22 is proposed to be moved to section (a) of Rule 8-201. This deletion is proposed in conjunction with the proposed deletion of the forms pertaining to juvenile causes presently before the Court of Appeals in the 208th Report. This completes the removal of forms from the Appendix of Forms contained in the Rules, with the exception of the Form Interrogatories, which will remain in the Appendix to the Rules.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 – OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-201 by adding the language contained in former Form 22 to section (a) and by adding a cross reference after section (a), as follows:

RULE 8-201. METHOD OF SECURING REVIEW – COURT OF SPECIAL APPEALS

(a) By Notice of Appeal

Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202. The notice shall be filed with the clerk of the lower court or, in an appeal from an order or judgment of an Orphans' Court, with the register of wills. The clerk or register shall enter the notice on the docket. It is sufficient that the notice be substantially in the following form:

(Caption)

NOTICE OF APPEAL

notes an appeal to the Court of Special Appeals in the above-captioned action.

(Signature and Certificate of Service)

Cross reference: See *AB & K Rentals & Sales Co. v. Universal Leaf Tobacco Co.*, 319 Md. 127, 133 (1990) ("Maryland cases usually have construed notices of appeal liberally and have ignored limiting language in notices of appeal, deeming it surplusage.")

. . .

Source: This Rule is derived from former Rule 1011 with the exception of the first sentence of (a) which is derived from former Rule 1010, and former Form 22.

Rule 8-201 was accompanied by the following Reporter's note:

> Form 22 is proposed to be deleted from the Appendix of Forms, and the Notice of Appeal language from Form 22 is proposed to be moved to section (a) of Rule 8-201. This change is suggested to make the form easier for a practitioner to locate in the Rules while preparing an appeal. A cross reference is added after section (a).

Judge Nazarian explained that Form 22 is the only remaining form in the Appendix of Forms after the deletion of obsolete Forms for Juvenile Causes, which was recently proposed to the Court of Appeals. The Appellate Subcommittee recommends the deletion of Form 22 and its relocation to Rule 8-201.

There being no motion to amend or reject the proposed Rules changes, they were approved as presented.

Agenda Item 9. Consideration of proposed amendments to Rules 8-412 (Record – Time for Transmitting) and 8-413 (Record – Contents and Form)

Judge Nazarian presented Rules 8-412, Record – Time for Transmitting, and 8-413, Record – Contents and Form, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-412 by adding new section (e) permitting a party to file a motion seeking an extension of time to file a brief when an incomplete record is transmitted, as follows:

RULE 8-412. RECORD – TIME FOR TRANSMITTING

. . .

(e) When Incomplete Record is Transmitted

When the clerk of the lower court transmits a record that does not contain the items specified in Rule 8-413 (a), on motion of a party, the appellate court may extend the time for a party to file their brief once the record is complete.

Source: This Rule is derived from former Rules 1025 and 825.

Rule 8-412 was accompanied by the following Reporter's note:

The Appellate Subcommittee proposes that Rule 8-412 be amended to add new section (e). This permits a party to request an extension of time to file a brief when an incomplete record is transmitted to an appellate court.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-413 by adding new subsection (a)(4) requiring that exhibits and recordings must be included as contents of the record, and by making stylistic changes to subsection (a)(4) as follows:

RULE 8-413. RECORD – CONTENTS AND FORM

(a) Contents of Record

The record on appeal shall include (1) a certified copy of the docket entries in the lower court, (2) the transcript required by Rule 8-411, (3) all exhibits marked for identification whether or not offered in evidence, and if offered, whether or not admitted, including any audio, audiovisual, and video recordings pursuant to Rules 2-516, 4-322, and 20-402, and ~~(3)~~ (4) all original papers filed in the action in the lower court except a supersedeas bond or alternative security and those other items that the parties stipulate may be omitted. The clerk of the lower court shall append a certificate clearly identifying the papers included in the record. The lower court may order that the original papers in the action be kept in the lower court pending the appeal, in which case the clerk of the lower court shall transmit only a certified copy of the original papers. The lower court, by order, shall resolve any dispute whether the record accurately discloses what occurred in the lower court, and shall cause the record to conform to its decision. The lower court shall also correct or modify the record if directed by an appellate court pursuant to Rule 8-414(b)(2). When the Court of Appeals reviews an action pending in or decided by the Court of Special Appeals, the record shall also include the record of any proceedings in the Court of Special Appeals.

. . .

> Source: This Rule is derived from former Rule 1026 and Rule 826.

Rule 8-413 was accompanied by the following Reporter's note:

> The Appellate Division of the Public Defender's Office has indicated that there are many instances when an incomplete record is transmitted to an appellate court.
>
> As a result, the Appellate Subcommittee proposes amending Rule 8-413 by adding new subsection (a)(4). This provision mirrors the requirement in Rule 4-322, and requires that exhibits and recordings must be included as contents of the record when it is transmitted to an appellate court by a lower court.
>
> Stylistic changes are also proposed to subsection (a)(4).

Judge Nazarian said that the proposed amendments to Rule 8-412 add a new section permitting the court to extend time to file a brief when an incomplete record is filed. Rule 8-413 is amended to require exhibits marked for identification to be included in the record. Mr. Zavin commented that his office proposed that Rule 8-412 allow for reissuance of the briefing order when an incomplete record is transmitted, which would reset the clock for all filings rather than permitting an extension on request. He explained that the burden is on the appellant to review the record that is transmitted and identify

if it is incomplete. Mr. Hilton responded that he doesn't see a difference between reissuing the briefing notice or extending the time to file.

There being no motion to amend or reject the proposed Rules changes, they were approved as presented.

Agenda Item 10. Consideration of proposed Rules changes in response to requests of the appellate courts

Judge Nazarian presented new Rule 8-125, Appeals from Courts Exercising Criminal Jurisdiction – Confidentiality, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 8-125, as follows:

Rule 8-125. APPEALS FROM COURTS EXERCISING CRIMINAL JURISDICTION – CONFIDENTIALITY

(a) Scope

This Rule applies to an appeal from a criminal prosecution or conviction in which the victim of the alleged crime:

(1) is or was a minor child at the time of the crime; or

(2) is the victim of a crime which would require the defendant, if convicted, to register as a sex offender.

Cross reference: see Code, Criminal Procedure Article, §§ 11-701 – 11-704.2.

(b) Confidentiality

(1) Name of victim

The name of an individual covered by section (a) of this Rule, other than the individual's initials, shall not be used in any opinion, oral argument, brief, record extract, petition, appendix, or other document pertaining to the appeal that is generally available to the public.

(2) Other Identifying Information

Other information from which an individual covered by subsection (a) of this Rule might readily be identified, including the individual's street address, phone number, email address, or the names (other than initials) of related individuals other than a defendant in the criminal prosecution, shall not be used in any opinion, oral argument, brief, record extract, petition, appendix, or other document pertaining to the appeal that is generally available to the public.

(3) Information Filed Under Seal

Information that is required to be kept confidential by this Rule may be included in a document that is filed under seal, provided that a redacted copy of the document omitting the confidential information is filed at the same time.

Source: This Rule is new.

Rule 8-125 was accompanied by the following Reporter's note:

> The Court of Special Appeals ("COSA") and the Criminal Appeals Division of the Office of the Attorney General ("Criminal Appeals Division") have indicated that the advent of electronic filing in Maryland has greatly increased the public's ability to access appellate records. One side effect of this increased access is that the details of crimes against children and sexual assault victims are easily searchable by the public.
>
> As a result of this, the COSA and the Criminal Appeals Division have proposed that new Rule 8-125 be considered by the Rules Committee. Rule 8-125, which is based structurally on existing Rules 8-121, 8-122, 8-123, and 8-124, ensures that any personally identifying information pertaining to children victims of crime or victims of sexual assault is kept confidential during an appeal.

Judge Nazarian said that the proposed Rule applies to confidentiality in criminal appeals involving minor children and certain crime victims. The Rule requires such individuals to be identified in appellate opinions by initials only and other identifying information cannot be used.

There being no motion to amend or reject the proposed new Rule, it was approved as presented.

Judge Nazarian presented Rule 8-504, Contents of Brief, for consideration.

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-504 by re-lettering subsection (a)(9) as subsection (a)(10), by re-lettering subsection (a)(10) as subsection (a)(9), by deleting the requirement in proposed new subsection (a)(9) to list the font type and size, by adding a provision to proposed new subsection (a)(9) pertaining to the certification of word count and compliance with Rule 8-112, by adding new subsection (a)(9)(A) establishing the content of the form of the certification of word count and compliance with Rule 8-112, by adding new subsection (a)(11) concerning a certificate of service, by deleting the reference to "termination of parental rights" from the tagline and body of subsection (b)(2), by adding a reference to an appendix filed under seal pursuant to Rule 8-125 to subsection (b)(2), and by adding a cross reference to Rules 8-121, 8-122, 8-123, 8-124, and 8-125 following subsection (b)(2), as follows:

RULE 8-504. CONTENTS OF BRIEF

(a) Contents.

A brief shall comply with the requirements of Rule 8-112 and include the following items in the order listed:

(1) A table of contents and a table of citations of cases, constitutional provisions, statutes, ordinances, rules, and regulations, with cases alphabetically arranged. When a reported Maryland case is cited, the citation shall include a reference to the official Report.

Cross reference: Citation of unreported opinions is governed by Rule 1-104.

(2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court, except that the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief.

(3) A statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

(4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract supporting the assertions. If pursuant to these rules or by leave of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record.

Cross reference: Rule 8-111 (b).

(5) A concise statement of the applicable standard of review for each issue, which may appear in the discussion of the issue or under a separate heading placed before the argument.

(6) Argument in support of the party's position on each issue.

(7) A short conclusion stating the precise relief sought.

(8) In the Court of Special Appeals, a statement as to whether the party filing the brief requests oral argument.

~~(9) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.~~

~~(10)~~(9) If the brief is prepared with proportionally spaced type, ~~the font used and the type size in points shall be stated on the last page~~ a Certification of Word Count and Compliance with Rule 8-112 substantially in the form set forth in subsection (a)(9)(A) of this Rule. The party or amicus curiae providing the certification may rely on the word count of the word-processing system used to prepare the brief.

(A) Form

A Certification of Word Count and Compliance with Rule 8-112 shall be substantially in the following form:

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the requirements stated in Rule 8-112.

(10) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.

(11) Unless filed as a separate document, a certificate of service in compliance with Rule 1-323.

Cross reference: For requirements concerning the form of a brief, see Rule 8-112.

(b) Appendix.

(1) Generally

Unless the material is included in the record extract pursuant to Rule 8-501, the appellant shall reproduce, as an appendix to the brief, the pertinent part of every ruling, opinion, or jury instruction of each lower court that deals with points raised by the appellant on appeal. If the appellee believes that the part reproduced by the appellant is inadequate, the appellee shall reproduce, as an appendix to the appellee's brief, any additional part of the instructions or opinion believed necessary by the appellee.

(2) Appeals in Juvenile ~~and Termination of Parental Rights~~ and Criminal Prosecution or Conviction Cases.

In an appeal from an order relating to a child entered by a court exercising juvenile jurisdiction ~~or from an order in a proceeding involving termination of parental rights~~ or an appendix required to be filed under seal as defined in Rule 8-125 (b)(2), each appendix shall be filed as a separate volume and, unless otherwise ordered by the court, shall be filed under seal.

Cross reference: see Rules 8-121, 8-122, 8-123, and 8-124.

Committee note: Rule 8-501 (j) allows a party to include in an appendix to a brief any material that inadvertently was omitted from the record extract.

. . .

Source: This Rule is derived as follows: Section (a) is derived from former Rules 831 c and d and 1031 c 1 through 5 and d 1 through 5, with the exception of subsection (a)(6) which is derived from FRAP 28 (a)(5). Section (b) is derived in part from Fed. R. App. P. 32 and former Rule 1031 c 6 and d 6,

and is in part new. Section (c) is derived from former Rules 831 g and 1031 f.

Rule 8-504 was accompanied by the following Reporter's note:

> The Appellate Subcommittee proposes amendments to Rule 8-504 to resolve some issues with repetition and potentially confusing requirements in Rules 8-503 and 8-504. Rule 8-503 (g) requires a certification of word count and statement about font, spacing, and type. This statement must be signed. Rule 8-504 (a)(9) requires a statement on the final page of a brief concerning font type and size and whether proportionally spaced type was used. Rule 8-503 (c) states that the attorney's name typed on the cover of the brief constitutes a signature.
>
> To resolve these issues, the Subcommittee proposes to move section (g) of Rule 8-503 to new subsection (a)(9)(A) of Rule 8-504.
>
> Subsection (a)(9) is proposed to be renumbered as subsection (a)(10). Subsection (a)(10) is proposed to be re-lettered as subsection (a)(9).
>
> Proposed new subsection (a)(9) is amended to list the font type and size and to add new subsection (a)(9)(A) establishing the content of the form of the certification of word count and compliance with Rule 8-112.
>
> Proposed new subsection (a)(11) is added concerning a certificate of service.
>
> The reference to "termination of parental rights" is proposed to be deleted from the tagline and body of subsection (b)(2).

A reference to an appendix filed under seal pursuant to Rule 8-125 is proposed to be added to subsection (b)(2). A cross reference to Rules 8-121, 8-122, 8-123, 8-124, and 8-125 is proposed following subsection (b)(2).

Judge Nazarian explained that the proposed amendments consolidate word count and font requirements into one Rule. The Chair suggested adding "or Appendix" following "Reference shall be made to the pages of the record extract" in subsection (a)(4). Judge Nazarian concurred and also identified a style issue in the caption of subsection (b)(2).

By consensus, the Committee approved the Rule as amended.

Judge Nazarian 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 16-918 by adding new subsection (b)(2)(B)(ii) excepting papers filed in an appellate court from the requirements of this Rule, by making the tagline of subsection (b)(2)(B) plural, and by making stylistic changes to subsection (b)(2)(B), as follows:

RULE 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 (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~~ Exceptions

(i) 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.

(ii) Section (b) of this Rule does not apply to briefs, appendices, petitions for writ of certiorari, motions, and oppositions filed in the Court of Special Appeals or Court of Appeals.

(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 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 16-905.

> Source: This Rule is derived from former Rule 16-910 (2019).

Rule 16-918 was accompanied by the following Reporter's note:

> The Court of Special Appeals has identified an issue with Rule 16-918. Section (a) of this Rule generally provides that judicial records kept in electronic form are open to inspection to the same extent that the record would be open to inspection in paper form. Section (b) of this Rule lists exceptions to this general provision. Subsection (b)(2)(A), which requires a custodian to "prevent remote access to the name, address, telephone number, date of birth, e-mail address, and place of employment of a victim or non-party witness" creates a problem for the appellate courts in their role of custodian of briefs and appendices in criminal cases.
>
> To address this concern, the Appellate Subcommittee proposes amending Rule 16-918 to place the existing exceptions located in subsection (b)(2)(B) in new subsection (b)(2)(B)(i). In addition, new subsection (b)(2)(B)(ii) is proposed to except papers filed in appellate courts from the provisions of Rule 16-918.
>
> Stylistic changes are also proposed to subsection (b)(2)(B).

Judge Nazarian said that the proposed amendments address required denial of inspection of certain information in electronic records. New subsection (b)(2)(B)(ii) excludes from this provision briefs, appendices, petitions for writ of certiorari, motions, and oppositions filed in the appellate

courts. The Chair noted that subsection (b)(1) states that a custodian shall take steps to prevent access to restricted information once on notice that the information is in the record. Ms. Bernhardt said that briefs may inadvertently include restricted information and the clerk should be allowed to shield that information until the filing party can correct it. Judge Nazarian moved to amend subsection (b)(2)(B)(ii) to state that "Subsection (b)(2) of this Rule" does not apply to appellate court filings. The motion was seconded and approved by majority vote.

By consensus, the Committee approved the Rule as amended.

Judge Nazarian presented Rule 8-411, Transcript, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-411 by adding a provision to subsection (a)(2) only requiring transcripts to be made of the portions of recorded testimony that are relevant to an appeal, by making stylistic changes to subsection (a)(2), and by adding a cross reference following subsection (a)(3) as follows:

RULE 8-411. TRANSCRIPT

(a) Ordering of Transcript

Unless a copy of the transcript is already on file, the appellant shall order in writing from the court reporter a transcript containing:

(1) a transcription of (A) all the testimony or (B) that part of the testimony that the parties agree, by written stipulation filed with the clerk of the lower court, is necessary for the appeal or (C) that part of the testimony ordered by the Court pursuant to Rule 8-206 (c) or directed by the lower court in an order;

(2) a transcription of any portion of any proceeding relevant to the appeal that was recorded pursuant to Rule 16-503 (b) and that: (A) contains the ruling or reasoning of the court or tribunal; or (B) is otherwise reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal; and

(3) if relevant to the appeal and in the absence of a written stipulation by all parties to the contents of the recording, a transcription of any audio or audiovisual recording or portion thereof offered or used at a hearing or trial.

Cross reference: See Rule 8-501 (c).

. . .

Source: This Rule is derived in part from former Rule 1026 a 2 and Rule 826 a 2(b), and is in part new.

Rule 8-411 was accompanied by the following Reporter's note:

> The Court of Special Appeals ("COSA") has identified an area of concern with Rule 8-411. The current Rule, in subsection (a)(2), requires that any proceeding relevant to the appeal must be transcribed. The effect of this provision is that the whole proceeding must be transcribed, even the portions of the proceeding that are not relevant for the appeal. This makes the process of obtaining the transcript necessary for the appeal to proceed much more costly than it needs to be, which has a disproportionate impact on self-represented and lower income parties to an appeal.
>
> To remedy this situation the COSA has proposed that subsection (a)(2) of Rule 8-411 be revised so that only the portions of recorded testimony relevant to an appeal must be transcribed.
>
> Stylistic changes are proposed to subsection (a)(3).
>
> A cross reference is also added following subsection (a)(3).

Judge Nazarian explained that the proposed amendments to Rule 8-411 allow for the transcription of only the portion of a non-evidentiary proceeding that is relevant to the appeal. The amendments allow the parties to transmit relevant portions of the transcript to the court and reduce costs.

There being no motion to amend or reject the proposed amendments to Rule 8-411, they were approved as presented.

Judge Nazarian presented Rule 8-207, Expedited Appeal, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 – OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-207 by revising subsection (a)(3) to clarify that the five day requirement to order a transcript applies to juvenile and TPR cases, by revising subsection (a)(4) to expand the 30 day deadline to transmit the record in juvenile and TPR matters, and by making stylistic changes, as follows:

RULE 8-207. EXPEDITED APPEAL

(a) Adoption, Guardianship, Child Access, Child in Need of Assistance, Special Immigrant Juvenile Status Cases

(1) This section applies to every appeal to the Court of Special Appeals (A) from a judgment granting or denying a petition (i) for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, or (ii) to declare that a child is a child in need of assistance, (B) from a judgment granting, denying, or establishing custody of or visitation with a minor child or from an interlocutory order taken pursuant to Code, Courts Article, § 12-303(3)(x), and (C) from a judgment or other appealable order granting or denying a petition or motion for an order containing findings or determinations of fact necessary to a grant of Special Immigrant Juvenile Status by the Secretary of Homeland Security or other authorized federal agency or official. Unless otherwise provided for good cause by order of the Court of Special Appeals or by order of the Court of Appeals if that Court

has assumed jurisdiction over the appeal, the provisions of this section shall prevail over any other rule to the extent of any inconsistency.

(2) In the information report filed pursuant to Rule 8-205, the appellant shall state whether the appeal is subject to this section.

(3) Within five days after (A) entry of an order pursuant to Rule 8-206 (c) directing preparation of the record, (B) the filing of a notice of appeal in a juvenile cause subject to this Rule, or (C) a notice of appeal from a guardianship terminating parental rights subject to this Rule, the appellant shall order the transcript and make an agreement for payment to assure its preparation. The court reporter or other person responsible for preparation of the transcript shall give priority to transcripts required for appeals subject to this section and shall complete and file the transcripts with the clerk of the lower court within 20 days after receipt of an order of the party directing their preparation and an agreement for payment of the cost. An extension of time may be granted only for good cause.

(4) The clerk of the lower court shall transmit the record to the Court of Special Appeals within thirty days after (A) the date of the order entered pursuant to Rule 8-206(c), (B) the filing of a notice of appeal in a juvenile cause subject to this Rule, or (C) a notice of appeal from a guardianship terminating parental rights subject to this Rule.

(5) The briefing schedule set forth in Rule 8-502 shall apply, except that (A) an appellant's reply brief shall be filed within 15 days after the filing of the appellee's brief, (B) a cross-appellee's brief shall be filed within 20 days after the filing of a cross-appellant's brief, and (C) a cross-appellant's reply brief shall be

filed within 15 days after the filing of a cross-appellee's brief. Unless directed otherwise by the Court, any oral argument shall be held within 120 days after transmission of the record. The decision shall be rendered within 60 days after oral argument or submission of the appeal on the briefs filed.

(6) Any motion for reconsideration pursuant to Rule 8-605 shall be filed within 15 days after the filing of the opinion of the Court or other order disposing of the appeal. Unless the mandate is delayed pursuant to Rule 8-605(d) or unless otherwise directed by the Court, the Clerk of the Court of Special Appeals shall issue the mandate upon the expiration of 15 days after the filing of the court's opinion or order.

. . .

Source: This Rule is derived in part from former Rule 1029 and is in part new.

Rule 8-207 was accompanied by the following Reporter's note:

The Court of Special Appeals (the "COSA") has proposed that Rule 8-207 be amended to resolve differing opinions between certain parties in CINA/TPR cases as to when the transcript should be ordered and when the record must be transmitted.

To resolve the issue with transcripts, the COSA proposes that subsection (a)(3) be amended to add the filing of a notice of appeal in a juvenile matter as an event that triggers the five day requirement to order the transcript.

To resolve the issue of when the record must be transmitted, the COSA also proposes

that subsection (a)(4) be amended so that the record must be transmitted within 30 days of the filing of a notice of appeal in a juvenile or TPR matter.

Stylistic changes to subsections (a)(3) and (a)(4) are also proposed.

Judge Nazarian explained that the amendments to subsections (a)(3) and (a)(4) alter when the transcript must be ordered and when the circuit court record must be transmitted in an expedited appeal. He said that there has been some confusion about the appropriate timing.

There being no motion to amend or reject the proposed amendments to Rule 8-207, they were approved as presented.

Judge Nazarian presented Rule 8-502, Filing of Briefs, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-502 by revising subsection (b)(2)(A) to link the automatic 30 day extension by stipulation to the original due date of the principal brief, by making stylistic changes to subsection (b)(2)(B), by changing the number of copies required in section (c) from 20 to eight, and by adding new section (e) establishing procedures for

the **citation of supplemental authority and supplemental memoranda, briefs, and oral argument**, as follows:

RULE 8-502. FILING OF BRIEFS

. . .

(b) Extension of Time

(1) In the Court of Appeals

In the Court of Appeals, the time for filing a brief may be extended by (A) joint stipulation of the parties filed with the clerk so long as the appellant's brief and the appellee's brief are filed at least 30 days, and any reply brief is filed at least ten days, before the scheduled argument, or (B) order of the Court entered on its own initiative or on motion filed pursuant to Rule 1-204.

(2) In the Court of Special Appeals

Subsection (b)(2) of this Rule governs extensions of time for filing briefs in the Court of Special Appeals.

(A) By Joint Stipulation

By joint stipulation filed with the clerk, the parties may extend the time for filing (i) a principal brief by no more than 30 days <u>from the original due date of the brief</u>, or (ii) a reply brief, provided that the reply brief will be filed at least ten days before argument or the date of submission on the brief.

(B) By Order of the Court

The court, on its own initiative or on motion filed pursuant to Rule 1-204, may extend the time for filing a brief. Absent urgent and previously unforeseeable circumstances, a motion shall be filed at

least five days before the applicable due date. The motion shall: ~~(1)~~(i) state that the moving party has sought the consent of the other parties and whether each party consents to the extension, and ~~(2)~~(ii) if the requested due date is more than 30 days after the original due date, identify good cause for the extension request.

(c) Filing and Service

In an appeal to the Court of Special Appeals, ~~15~~ eight copies of each brief and ~~10~~ eight copies of each record extract shall be filed, unless otherwise ordered by the court. Unless filing an informal brief pursuant to subsection (a)(9) of this Rule, ~~Incarcerated~~ incarcerated or institutionalized parties who are self-represented shall file ~~nine~~ eight copies of each brief and ~~nine~~ eight copies of each record extract. In the Court of Appeals, ~~20~~ eight copies of each brief and record extract shall be filed, unless otherwise ordered by the court. Two copies of each brief and record extract shall be served on each party pursuant to Rule 1-321.

. . .

(e) **Citation of Supplemental Authority; Supplemental Memoranda, Briefs, and Oral Argument**

(1) Citation of Supplemental Authority

If a pertinent and significant authority comes to a party's attention after the party's brief has been filed, including after oral argument but before the mandate issues, the party promptly **[shall][may]** file a Notice of Supplemental Citation. The Notice shall set forth the citation, state the reason for the supplemental citation, and refer either to a page of a brief or to a point argued orally. The body of the

Notice may not exceed 350 words. Any response shall be filed promptly and limited to 350 words.

(2) Supplemental Memoranda, Briefs, and Oral Argument

Upon receipt of a Notice of Supplemental Citation pursuant to subsection (e)(1) of this Rule, or on its own initiative, the Court may grant leave for, or direct the filing of, additional memoranda or supplemental briefs, and may require additional argument before, during, or after oral argument.

Source note: This Rule is derived from former Rules 1030 and 830 with the exception of subsection (a)(8) which is derived from the last sentence of former Rule Z56, ~~and of~~ subsection (b)(2) which is in part derived from Rule 833 and in part new, and section (e) which is derived from Fed. R. App. P. 28 (j) and the Fourth Circuit's Rule 28.

Rule 8-502 was accompanied by the following Reporter's note:

The Court of Special Appeals ("COSA") requested an amendment to Rule 8-502 last year which permits the parties to stipulate to extend the time for filing a principal brief by 30 days and a reply brief by 10 days. Some practitioners, since these changes have gone into effect, have taken the position that the current version of Rule 8-502 permits multiple such extensions, as each stipulation resets the clock. This interpretation was not the intent of the COSA when the Rule was changed last year.

The COSA proposes amending section (b) of Rule 8-502 to link the 30 day extension

to the original due date of the principal brief.

Stylistic changes to subsection (b)(2)(B) are also proposed.

The clerk of the COSA has requested section (c) be amended to change the number of copies required from 20 to eight.

The Court of Appeals has requested that Rules Committee draft for its consideration an amendment to the Maryland Rules comparable to Federal Rules regarding citation of supplemental authority after a party's brief has been filed. The Appellate Subcommittee proposes in response to amend Rule 8-502 by adding new section (e), based on Fed. R. App. P. 28 (j) and the Fourth Circuit's Rule 28.

Judge Nazarian said that the proposed amendments clarify the time to file briefs when there is a joint stipulation to extend time and reduce to eight the number of required copies of the brief and record extract unless proceeding under the informal briefing process. New section (e) applies to the citation of supplemental authority and briefing on supplemental authority after a brief has been filed. He explained that the Court of Appeals asked the Committee to consider a Rule that tracks Fed. R. App. P. 28 (j). Section (e) creates a procedure for parties to raise "pertinent and significant authority" that may come to their attention after briefing or oral argument. The court may permit additional memoranda, supplemental briefs,

or additional argument. The Committee is asked to determine whether subsection (e)(1) should say "shall" or "may."

The Chair pointed out that the duty of candor already exists. He said that if pertinent and significant authority contrary to the party's position comes to the party's attention, it should not be discretionary to disclose it to the court. Judge Nazarian responded that making section (e) mandatory could lead to disputes between the parties over what is pertinent and significant. Ms. Bernhardt commented that out-of-state authority could be very pertinent and significant but not controlling in Maryland. She suggested making subsection (e)(1) permissive and cross referencing the Maryland Attorneys' Rules of Professional Conduct. Mr. Jawor, of the Maryland Office of the Attorney General, said that the goal of the Rule is to provide guidance for parties about how to file this kind of supplement. Mr. Welter, also from the Office of the Attorney General, asked if the Rule should include the post-certiorari petition stage. Ms. Johnson responded that a supplemental authority notice is not necessary at that stage because supplements already are accepted freely during that time. Judge Nazarian moved to have the Rule read "may" and include a cross reference to the relevant attorney ethics Rule. The motion was seconded and approved by majority vote.

There being no motion to further amend or reject the proposed Rule, it was approved as amended.

Judge Nazarian presented Rule 17-405, Qualifications of Court-Designated Mediators, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 – PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

AMEND Rule 17-405 by adding senior District Court judges and retired circuit court magistrates to the list of individuals who may be approved to serve as court-designated mediators, as follows:

RULE 17-405. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Initial Approval

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a senior judge of the Court of Appeals, the Court of Special Appeals, ~~or~~ a circuit court, or the District Court; ~~or~~ (C) a staff attorney from the Court of Special Appeals designated by the Chief Judge; or (D) a retired circuit court magistrate;

(2) have (A) completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104, or (B) conducted at least two Maryland appellate mediations prior to January 1, 2014 and completed advanced mediation training approved by the ADR Division;

(3) unless waived by the ADR Division, have observed at least two Court of Special Appeals mediation sessions and have participated in a debriefing with a staff mediator from the ADR Division after the mediations; and

(4) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules.

(b) Continued Approval

To retain approval as a mediator by the Chief Judge, an individual shall:

(1) abide by mediation standards adopted by Administrative Order of the Court of Appeals and posted on the Judiciary website;

(2) comply with mediation procedures and requirements established by the Court of Special Appeals;

(3) submit to periodic monitoring by the ADR Division of mediations conducted by the individual; and

(4) unless waived by the Chief Judge, complete in each calendar year four hours of continuing mediation-related education in one or more topics set forth in Rule 17-104 or any other advanced mediation training approved by the ADR Division.

Source: This Rule is derived from former Rule 17-403 (a) (2015).

Rule 17-405 was accompanied by the following Reporter's note:

The Court of Special Appeals (the "COSA") has indicated that a question has arisen as to whether senior District Court judges and retired circuit court magistrates should be eligible to serve as court-

designated mediators in the COSA's Alternative Dispute Resolution program. The COSA has requested that this question be posed to the Appellate Subcommittee, as the COSA does not have a formal position on this question.

Subsection (a)(1) of Rule 17-405 is proposed to be amended by adding senior District Court judges and retired circuit court magistrates to the categories of individuals who may be approved to serve as a court-designated mediator in the COSA Alternative Dispute Resolution program.

Judge Nazarian said that the proposed amendments add senior District Court judges and retired circuit court magistrates to the list of individuals who may serve as court-designated mediators.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Judge Nazarian presented Rule 8-501, Record Extract, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 by changing the requirement in subsection (l)(2) so that attorneys and registered users of MDEC are

no longer required to file paper copies and must now file only one electronic copy of the deferred record extract with the court and serve one copy on each party in an appeal, by adding a Committee note following subsection (l)(2) indicating that attorneys and registered users are required to file briefs and papers with the court electronically, by adding a reference to Rule 20-404 (b) in subsection (l)(6), by adding new subsection (l)(7)(B) establishing procedures that permit a joint stipulation to extend the time to file a page-proof or final brief in the Court of Special Appeals, and by making stylistic changes, as follows:

RULE 8-501. RECORD EXTRACT

. . .

(l) Deferred Record Extract; Special Provisions Regarding Filing of Briefs

(1) If the parties so agree in a written stipulation filed with the Clerk or if the appellate court so orders on motion or on its own initiative, the preparation and filing of the record extract may be deferred in accordance with this section. The provisions of section (d) of this Rule apply to a deferred record extract, except that the designations referred to therein shall be made by each party at the time that party serves the page-proof copies of its brief.

(2) If a deferred record extract authorized by this section is employed, the appellant, within 30 days after the filing of the notice required by Rule 8-412 (a) ~~record~~, shall file ~~four~~ one page-proof ~~copies~~ copy of the brief ~~if the case is in the Court of Special Appeals, or one copy if the case is in the Court of Appeals~~, and shall serve ~~two copies~~ one copy on ~~the~~

~~appellee~~ each party. Within 30 days after the filing of the page-proof copies of the appellant's brief, the appellee shall file one page-proof copy of the brief and shall serve ~~two copies~~ one copy on the appellant. The page-proof copies shall contain appropriate references to the pages of the parts of the record involved. The parties are not required to file paper copies of page-proof briefs if they are represented by counsel or are registered users of MDEC.

Committee note: Attorneys and registered users are required to file briefs and other papers with the court electronically.

(3) Within 25 days after the filing of the page-proof copy of the appellee's brief, the appellant shall file the deferred record extract, and the appellant's final briefs. Within five days after the filing of the deferred record extract, the appellee shall file its final briefs.

(4) The appellant may file a reply brief in final form within 20 days after the filing of the appellee's final brief, but not later than ten days before the date of scheduled argument.

(5) In a cross-appeal:

(A) within 30 days after the filing of the page-proof copies of the appellee/cross-appellant's brief, the appellant/cross-appellee shall file one page-proof copy of a brief in response to the issues and argument raised on the cross-appeal and shall include any reply to the appellee's response that the appellant wishes to file;

(B) within 25 days after the filing of the cross-appellee/appellant's reply brief, the appellant shall file the deferred record extract, the appellant's final briefs, and the final cross-appellee's/appellant's reply briefs;

(C) within five days after the filing of the deferred record extract, the appellee

shall file its final appellee/cross-appellant's briefs; and

(D) the appellee/cross-appellant may file in final form a reply to the cross-appellee's response within 20 days after the filing of the cross-appellee's final brief, but not later than ten days before the date of scheduled argument.

(6) The deferred record extract and final briefs shall be filed in the number of copies required by Rules 8-502(c), ~~and~~ 8-501(a), and 20-404 (b). The briefs shall contain appropriate references to the pages of the record extract. The deferred record extract shall contain only the items required by Rule 8-501(c), those parts of the record actually referred to in the briefs, and any material needed to put those references in context. No changes may be made in the briefs as initially served and filed except (A) to insert the references to the pages of the record extract, (B) to correct typographical errors, and (C) to take account of a change in the law occurring since the filing of the page-proof briefs.

(7) Extensions of Time

(A) In the Court of Appeals

In the Court of Appeals, ~~The~~ the time for filing page-proof copies of a brief or final briefs may be extended by stipulation of counsel filed with the clerk so long as the final briefs set out in subsections (3) and (5) of this section are filed at least 30 days, and any reply brief set out in subsections (4) and (5) of this section is filed at least ten days, before the scheduled argument.

(B) In the Court of Special Appeals

(i) By Joint Stipulation

By joint stipulation filed with the Clerk, the parties may extend the time

for filing a page-proof brief or final brief by no more than 30 days from the original due date of the page-proof brief or final brief. Stipulations to extend the time to file a reply brief may be extended by stipulation so long as the reply brief will be filed at least ten days before argument or the date of submission of the case on the briefs.

(ii) By Order of the Court

The court, on its own initiative or on motion filed pursuant to Rule 1-204, may extend the time for filing a brief. Absent urgent and previously unforeseeable circumstances, a motion shall be filed at least five days before the applicable due date. The motion shall: (1) state that the moving party has sought consent of the other parties and whether each party consents to the extension or not; and (2) if the requested due date is more than 30 days after the original due date, identify good cause for the extension requires.

. . .

Source note: This Rule is derived from former Rules 1028 and 828 with the exception of section (l) which is derived from former Rule 833.

Rule 8-501 was accompanied by the following Reporter's note:

The Court of Special Appeals (the "COSA") has requested that the Rules Committee consider proposed amendments to section (l) of Rule 8-501 so that parties using a deferred record extract will follow

> the same procedures adopted recently which modified the time extension limits for briefs in the COSA.
>
> Subsection (l)(2) is proposed to be amended so that attorneys and registered users of MDEC are now required to file one electronic copy with the court and serve one copy electronically on the other parties instead of filing four paper copies and serving two copies of the deferred record extract. A Committee note is proposed following subsection (l)(2) indicating that attorneys and registered users are required to file briefs and papers with the court electronically.
>
> Subsection (l)(6) is proposed to be amended by adding a reference to Rule 20-404 (b).
>
> Subsection (l)(6) is proposed to be amdended by adding new subsection (l)(7)(B)(i) establishing procedures that permit a joint stipulation to extend time to file a page-proof brief or final brief in the Court of Special Appeals in appeals in which a deferred record extract is employed. New subsection (l)(7)(B)(ii) addresses extensions of time by order of court.
>
> Stylistic changes are also employed.

Judge Nazarian explained that the proposed amendments deal with deferred record extract situations and conform them to the scheduling and time extension changes put into place last year. Subsection (l)(2) is amended to reduce the number of copies required and clarifies the requirement if the parties are represented by counsel or registered MDEC users. New subsection (l)(7)(B) establishes procedures for extensions of time in the

Court of Special Appeals by joint stipulation or by order of the court. The Chair suggested deleting "or not" from the language in subsection (l)(7)(B)(ii).

By consensus, the Committee approved the Chair's suggested change and the Rule as amended.

Judge Nazarian presented Rule 8-602, Dismissal by Court, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 600 – DISPOSITION

AMEND Rule 8-602 by changing the deadline in section (e) for a motion for reconsideration from 10 days to 20 days, as follows:

RULE 8-602. DISMISSAL BY COURT

. . .

(e) Reconsideration of Dismissal

(1) Motion for Reconsideration. No later than ~~10~~ 20 days after the entry of an order dismissing an appeal, a party may file a motion for reconsideration of the dismissal.

. . .

> Source note: This Rule is in part derived from former Rules 1035 and 835 and in part new.

Rule 8-602 was accompanied by the following Reporter's note:

> The Court of Special Appeals (the "COSA") has requested that section (e) of this Rule be amended to change the deadline to file a motion for reconsideration from 10 days to 20 days. The COSA feels that 10 days is too short of a time to file this motion, especially for incarcerated and other self-represented parties.

Judge Nazarian said that Rule 8-602 deals with dismissals of pending appeals by the court. The proposed amendment to section (e) extends from ten to 20 the number of days to move for reconsideration.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 11. Consideration of proposed amendments to: Rule 2-551 (In Banc Review), Rule 8-503 (Style and Form of Briefs), and Rule 8-112 (Form of Court Papers)

Judge Nazarian presented Rule 2-551, In Banc Review, for consideration.

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-551 by deleting certain language from section (c), by adding language to section (c) pertaining to the number of copies required to be filed in an MDEC county and a non-MDEC county, and by adding a cross reference following section (c), as follows:

RULE 2-551. IN BANC REVIEW

. . .

(c) Memoranda.

Within 30 days after the filing of the notice for in banc review the party seeking review shall file ~~four copies of~~ a memorandum stating concisely the questions presented, any facts necessary to decide them, and supporting argument. Within 15 days thereafter, an opposing party who wishes to dispute the ~~statement of~~ questions, ~~or~~ facts, or arguments presented shall file ~~four copies of~~ a memorandum stating the alternative questions presented, any additional or different facts, and supporting argument. ~~In the absence of such dispute, an opposing party may file a memorandum of argument.~~ Any person filing a memorandum under this section who is not required to file electronically under MDEC shall file four copies of the memorandum in paper form.

Cross reference: See Rule 20-101 (k) for the definition of MDEC.

. . .

> Source: This Rule is new, is consistent with Md. Const., Art. IV, § 22, and replaces former Rule 510.

Rule 2-551 was accompanied by the following Reporter's note:

> A practitioner previously brought an issue with Rule 2-551 to the attention of the Subcommittee. Current Rule 2-551 requires that "four copies" of the memorandum be filed. Now that most of the counties in Maryland are MDEC counties and paper copies are no longer filed, this existing language can be confusing, and the current practice in MDEC counties is to electronically file one copy in MDEC.
>
> This proposed change to section (c) of Rule 2-551 brings the practice in MDEC counties into conformance with the current practice, requiring only one copy of the memorandum to be filed. The requirement to file four copies of the memorandum is maintained in non-MDEC counties. A cross reference to the definition of "MDEC county" contained in Rule 20-101 is also proposed to be added following section (c).

Judge Nazarian said that the proposed changes make Rule 2-551 more streamlined and clear.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Judge Nazarian presented a "handout" of Rule 8-503, Style and Form of Briefs, for consideration.

"HANDOUT"

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 by adding subsection (b)(5) addressing references to an appendix to a cross-appellant's reply brief, by adding new subsections (c)(1)(E) and (c)(2)(E) requiring a certain color for the back and cover of a cross-appellant's reply brief, by revising subsection (d)(1) concerning the application of the word count limitation, by deleting the words "filed by the appellant" from subsection (d)(3), by deleting references in section (e) to the color of the back and cover of a cross-appellant's brief, by adding to section (e) a word count limitation applicable to a reply brief filed by a cross-appellant, by deleting current section (g), by re-lettering current section (h) as section (g), and by making stylistic changes, as follows:

RULE 8-503. STYLE AND FORM OF BRIEFS

(a) Numbering of Pages; Binding

The pages of a brief shall be consecutively numbered. The brief shall be securely bound along the left margin.

(b) References

References (1) to the record extract, regardless of whether the record extract is included as an attachment to the appellant's brief or filed as a separate volume, shall

be indicated as (E .....), (2) to any appendix to appellant's brief shall be indicated as (App .....), (3) to an appendix to appellee's brief shall be indicated as (Apx .....), ~~and~~ (4) to an appendix to a reply brief shall be indicated as (Rep. App .....), and (5) to an appendix to a cross-appellant's reply brief shall be indicated as (Cr. Apx). If the case falls within an exception listed in Rule 8-501(b), references to the transcript of testimony contained in the record shall be indicated as (T .....) and other references to the record shall be indicated as (R .....).

(c) Covers

A brief shall have a back and cover of the following color:

(1) In the Court of Special Appeals:

(A) appellant's brief--yellow;

(B) appellee's brief--green;

(C) reply brief--light red;

(D) amicus curiae brief--gray;

(E) cross-appellant's reply brief--violet;

~~(E)~~(F) briefs of incarcerated or institutionalized parties who are self-represented--white.

(2) In the Court of Appeals:

(A) appellant's brief--white;

(B) appellee's brief--blue;

(C) reply brief--tan;

(D) amicus curiae brief--gray;

(E) cross-appellant's reply brief--orange.

The cover page shall contain the name of the appellate court, the caption of the case on appeal, and the case number on appeal, as

well as the name, address, telephone number, and e-mail address, if available, of at least one attorney for a party represented by an attorney or of the party if not represented by an attorney. If the appeal is from a decision of a trial court, the cover page shall also name the trial court and each judge of that court whose ruling is at issue in the appeal. The name typed or printed on the cover constitutes a signature for purposes of Rule 1-311.

(d) Length

(1) Principal Briefs of Parties

Except as otherwise provided in section (e) of this Rule or with permission of the Court, the principal brief of an appellant or appellee shall not exceed 9,100 words in the Court of Special Appeals or 13,000 words in the Court of Appeals. This limitation does not apply to ~~(A) the table of contents and citations required by Rule 8-504(a)(1); (B) the citation and text~~ (A) the information required by Rule 8-504(a)~~(8)~~(10)~~; (C) a motion to dismiss and argument supporting or opposing the motion;~~ or ~~(D)~~(B) a Certification of Word Count and Compliance with Rule 8-112 required by Rule 8-504 (a)(9) ~~under section (g) of this Rule~~.

(2) Motion to Dismiss

Except with permission of the Court, any portion of a party's brief pertaining to a motion to dismiss shall not exceed an additional 2,600 words in the Court of Special Appeals or 6,500 words in the Court of Appeals.

(3) Reply Brief

Any reply brief ~~filed by the appellant~~ shall not exceed 3,900 words in the Court of Special Appeals or 6,500 words in the Court of Appeals.

(4) Amicus Curiae Brief

Except with the permission of the Court, an amicus curiae brief:

(A) if filed in the Court of Special Appeals, shall not exceed 3,900 words; and

(B) if filed in the Court of Appeals, shall not exceed 6,500 words, except that an amicus curiae brief supporting or opposing a petition for certiorari or other extraordinary writ shall not exceed 3,900 words.

(e) Briefs of Cross-Appellant and Cross-Appellee

In cases involving cross-appeals, the principal brief filed by the appellee/cross-appellant ~~shall have a back and cover the color of an appellee's brief and~~ shall not exceed 13,000 words. The ~~responsive~~ reply brief filed by the appellant/cross-appellee ~~shall have a back and cover the color of a reply brief and~~ shall not exceed (1) 13,000 words in the Court of Appeals or (2) in the Court of Special Appeals (A) 9,100 words if no reply to the appellee's answer is included or (B) 13,000 words if a reply is included. The reply brief filed by the cross-appellant shall not exceed 3,900 words in the Court of Special Appeals or 6,500 words in the Court of Appeals.

(f) Incorporation by Reference

In a case involving more than one appellant or appellee, any appellant or appellee may adopt by reference any part of the brief of another.

~~(g) Certification of Word Count and Compliance With Rule 8-112~~

~~(1) Requirement~~

~~Except as otherwise provided by Rule 8-112(b)(3), a brief shall include a Certification of Word Count and Compliance with Rule 8-112 substantially in the form set forth in subsection (g)(2) of this Rule. The party or amicus curiae providing the~~

~~certification may rely on the word count of the word-processing system used to prepare the brief.~~

~~(2) Form~~

~~A Certification of Word Count and Compliance with Rule 8-112 shall be signed by the individual making the certification and shall be substantially in the following form:~~

~~CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112~~

~~1. This brief contains _____ words, excluding the parts of the brief exempted from the word count by Rule 8-503.~~

~~2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.~~

_____
_____
_____

~~Signature~~

~~(h)~~(g) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 831 a and 1031 a.

Section (b) is derived from former Rules 831 a and 1031 a.

Section (c) is derived from former Rules 831 a and 1031 a.

Section (d) is in part derived from Rule 831 b and 1031 b and in part new.

Section (e) is new.

Section (f) is derived from Fed. R. App. P. 28(i).

~~Section (g) is new and is derived in part from Fed. R. App. P.32.~~

Section ~~(h)~~(g) is derived from former Rules 831 g and 1031 f.

Rule 8-503 was accompanied by the following Reporter's note:

Proposed amendments to Rule 8-503 streamline and clarify certain requirements for cases on appeal.

New subsection (b)(5) explains how to reference an appendix to a cross-appellant's reply brief.

New subsections (c)(1)(E) and (c)(2)(E) state the color for the back and cover of a cross-appellant's reply brief in the Court of Special Appeals and the Court of Appeals, respectively. The color used in the Court of Special Appeals is violet, while orange is used in the Court of Appeals. Current subsection (c)(1)(E) is re-lettered as (c)(1)(F) to account for the new subsection.

Proposed amendments to subsection (d)(1) clarify the application of the word limit to an appellant or appellee's principal brief. References to Rule 8-504 account for amendments to Rule 8-504 that are proposed contemporaneously with these changes. The limitation does not apply to the information required by Rule 8-504 (a)(10) and the Certification of Word Count and Compliance with Rule 8-112 required by Rule 8-504 (a)(9). Rule 8-504 (a)(10) requires the citation and verbatim text of all pertinent law. Rule 8-504 (a)(9) requires a Certification of Word Count and

Compliance with Rule 8-112 that formerly was required by Rule 8-503 (g).

Section (e) is updated to reflect that the back and cover color of the principal brief and any reply brief filed by the appellee/cross-appellant is stated in Rule 8-503 (c).

Rule 8-503 (g) formerly addressed the requirement and form of a Certification of Word Count and Compliance with Rule 8-112. Proposed amendments to Rule 8-504 move this requirement to Rule 8-504 (a)(9). Accordingly, section (g) is deleted from Rule 8-503 to avoid repetition. Section (h) is subsequently re-lettered as section (g).

Judge Nazarian said that a "handout" version of Rule 8-503 was distributed to the Committee and that is the version to be considered. The proposed amendments make a series of changes to fix style and form issues in briefing, including the recognition of reply briefs in cross-appeals with new colors in each court. He said that other changes conform the Rule to the changes made to Rule 8-504. Ms. Bernhardt asked for clarification on the stricken language in subsection (d)(1) removing the provisions excluding the table of contents, table of authorities, and citation text from the word count. Judge Nazarian moved to reinsert stricken subsections (d)(1)(A) and (B). The motion was seconded and approved by majority vote.

Judge Nazarian moved to adopt the "handout" version of Rule 8-503 with the amendments. The motion was seconded and approved by majority vote.

Judge Nazarian presented Rule 8-112, Form of Court Papers, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 8-112 by replacing the reference to section (g) of Rule 8-503 in subsection (b)(3)(C) with a reference to subsection 8-504 (a)(9), as follows:

Rule 8-112. FORM OF COURT PAPERS

. . .

(b) Typewritten Papers--Uniformly Spaced Type

(1) Type Size

Uniformly spaced type (such as produced by typewriters) in the text and footnotes shall not be smaller than 11 point and shall not exceed 10 characters per inch.

(2) Spacing

Papers prepared with uniformly spaced type shall be double-spaced, except that headings, indented quotations, and footnotes may be single-spaced.

(3) Documents Subject to Word Count Maximums

(A) Applicability

This subsection applies to a typewritten document as to which a word count maximum is specified by the Rules in this Title. It does not apply to a document that is commercially printed or generated by a computer printer.

(B) Page Limits

Word count maximums are replaced by page limits, as follows:

(i) if the word count maximum is 13,000, the typewritten document shall not exceed 50 pages in length;

(ii) if the word count maximum is 9,100, the typewritten document shall not exceed 35 pages in length;

(iii) if the word count maximum is 6,500, the typewritten document shall not exceed 25 pages in length;

(iv) if the word count maximum is 3,900, the typewritten document shall not exceed 15 pages in length; and

(v) if the word count maximum is 2,600, the typewritten document shall not exceed 10 pages.

(C) No Certification Required

The certification requirement of Rule ~~8-503 (g)~~ 8-504 (a)(9) does not apply.

. . .

Source: This Rule is new but is derived in part from former Rules 831 a and 1031 a.

Rule 8-112 was accompanied by the following Reporter's note:

> Subsection (b)(3)(C) of Rule 8-112 is proposed to be amended to conform to the proposed amendments of Rule 8-503 and 8-504. In the proposed amendment to Rule 8-503, section (g) of that Rule is deleted and moved to subsection (a)(9) of Rule 8-504. As a result, the reference in subsection (b)(3)(C) of Rule 8-112 to Rule 8-503 (g) is replaced with a reference to Rule 8-504 (a)(9).

Judge Nazarian said that the proposed amendments are conforming ones triggered by the amendments to Rules 8-503 and 8-504.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 12. Consideration of proposed amendments to Rule 8-511 (Amicus Curiae) and Rule 8-303 (Petition for Writ of Certiorari – Procedure)

Judge Nazarian presented a "handout" version of Rule 8-511, Amicus Curiae, for consideration.

"HANDOUT"

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-511 by adding new subsection (a)(4) referring to the proposed new procedures in section (e) pertaining to amicus curiae briefs filed in cases involving discretionary review, by deleting subsection (b)(1)(F) to remove the requirement to seek leave of the court to file an amicus curiae brief in cases involving discretionary review, by amending section (c) so that the time for filing an amicus curiae brief is tied to the time that the appellee's principal brief is due, by changing the citation to subsection (c)(2) of this Rule in section (c) with a citation to subsection (e)(3) of this Rule, by revising section (d) so that an amicus brief filed pursuant to proposed new section (e) need not comply with the provisions of Rules 8-503 and 8-504, by adding new section (e) establishing the procedures to be followed for amicus briefs supporting or opposing discretionary review, and by making stylistic changes, as follows:

RULE 8-511. AMICUS CURIAE

(a) Authorization to File Amicus Curiae Brief.

An amicus curiae brief may be filed only:

(1) upon written consent of all parties to the appeal;

(2) by the Attorney General in any appeal in which the State of Maryland may have an interest;

(3) upon request by the Court; ~~or~~

(4) as provided in subsection (e)(1) of this Rule; or

~~(4)~~(5) upon the Court's grant of a motion filed under section (b) of this Rule.

(b) Motion and Brief.

(1) Content of Motion.

A motion requesting permission to file an amicus curiae brief shall:

(A) identify the interest of the movant;

(B) state the reasons why the amicus curiae brief is desirable;

(C) state whether the movant requested of the parties their consent to the filing of the amicus curiae brief and, if not, why not;

(D) state the issues that the movant intends to raise; and

(E) identify every person, other than the movant, its members, or its attorneys, who made a monetary or other contribution to the preparation or submission of the brief, and identify the nature of the contribution. ~~; and~~

~~(F) if filed in the Court of Appeals to seek leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ, state whether, if the writ is issued, the movant intends to seek consent of the parties or move for permission to file an amicus curiae brief on the issues before the Court.~~

(2) Attachment of Brief.

Copies of the proposed amicus curiae brief shall be attached to two of the copies of the motion filed with the Court.

Cross reference: See Rule 8-431(e) for the total number of copies of a motion required when the motion is filed in an appellate court.

(3) Service.

The movant shall serve a copy of the motion and proposed brief on each party.

(4) If Motion Granted.

If the motion is granted, the brief shall be regarded as having been filed when the motion was filed. Within ten days after the order granting the motion is filed, the amicus curiae shall file the additional number of briefs required by Rule 8-502(c).

(c) Time for Filing.

~~(1) Generally.~~ Except as required by subsection ~~(c)(2)~~ (e)(3) of this Rule and unless the Court orders otherwise, an amicus curiae brief shall be filed at or before the time specified for the filing of the principal brief of the appellee.

~~(2) Time for Filing in Court of Appeals.~~

~~(A) An amicus curiae brief may be filed pursuant to section (a) of this Rule in the Court of Appeals on the question of whether the Court should issue a writ of certiorari or other extraordinary writ to hear the appeal as well as, if such a writ is issued, on the issues before the Court.~~

~~(B) An amicus curiae brief or a motion for leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ shall be filed at or before the time any answer to the petition is due.~~

~~(C) Unless the Court orders otherwise, an amicus curiae brief on the issues before the Court if the writ is granted shall be filed at the applicable time specified in subsection (c)(1) of this Rule.~~

(d) Compliance With Rules 8-503 and 8-504.

(1) An amicus curiae brief shall comply with the applicable provisions of Rules 8-503 and 8-504, except as provided in subsection (d)(2) of this Rule.

(2) An amicus curiae brief filed pursuant to subsections (e)(1) or (f)(3) of this Rule shall comply with the applicable provisions of Rule 8-112. It may, but need

not, comply with the applicable provisions of Rules 8-503 and 8-504.

(e) Brief Supporting or Opposing Discretionary Review.

(1) Motion Not Required.

An amicus curiae brief may be filed in the Court of Appeals on the question of whether the Court should issue a writ of certiorari or other extraordinary writ to hear the appeal, or in the Court of Special Appeals on the question of whether the Court should grant an application for leave to appeal. A motion requesting permission to file such an amicus brief is not required, provided that the amicus curiae brief is signed by an attorney pursuant to Rule 1-311.

(2) Required Contents.

A brief filed pursuant to subsection (e)(1) of this Rule shall state whether, if the writ is issued or application is granted, the amicus curiae intends to seek consent of the parties or move for permission to file an amicus curiae brief on the issues before the Court.

(3) Time for Filing.

(A) Unless the Court orders otherwise, an amicus curiae brief on the question of whether the Court of Appeals should issue a writ of certiorari or other extraordinary writ to hear the appeal shall be filed within seven days after the petition is filed.

(B) Unless the Court orders otherwise, an amicus curiae brief on the question of whether the Court of Special Appeals should grant an application for leave to appeal shall be filed within 15 days after the record is transmitted pursuant to Rule 8-204 (c)(1).

Subsection (e)(4) - Option A

(4) Length.

A brief filed pursuant to subsection (e)(1) of this Rule shall not exceed **1,900** words.

Subsection (e)(4) - Option B

(4) Length.

A brief filed pursuant to subsection (e)(1) of this Rule shall not exceed **3,900** words.

(e) Reply Brief; Oral Argument; Brief Supporting or Opposing Motion for Reconsideration.

Without permission of the Court, an amicus curiae may not (1) file a reply brief, (2) participate in oral argument, or (3) file a brief in support of, or in opposition to, a motion for reconsideration. Permission may be granted only for extraordinary reasons.

(f) Appellee's Reply Brief.

Within ten days after the later of (1) the filing of an amicus curiae brief that is not substantially in support of the position of the appellee or (2) the entry of an order granting a motion under section (b) that permits the filing of a brief not substantially in support of the position of the appellee, the appellee may file a reply brief limited to the issues in the amicus curiae brief that are not substantially in support of the appellee's position and are not fairly covered in the appellant's principal brief. Any such reply brief shall not exceed 3,900 words.

Source: This Rule is derived in part from Fed.R.App.P. 29 and Sup.Ct.R. 37 and is in part new.

Rule 8-511 was accompanied by the following Reporter's note:

> The Appellate Subcommittee proposes amendments to Rule 8-511 to eliminate the requirement of an individual wishing to file an amicus curiae brief supporting or opposing discretionary review to seek leave of the court by motion prior to doing so. Procedures governing this proposition are established in proposed new section (e).
>
> Section (c) has been amended to conform to these changes by removing subsection (c)(2) and linking the time to file a brief to subsection (e)(3) or at or before the time specified for the filing of the appellee's principal brief.

Judge Nazarian said that the "handout" version of Rule 8-511 is before the Committee for consideration. He explained that the proposed amendments add new subsection (a)(4), strike subsection (b)(1)(F), and strike subsection (c)(2). Section (d) is amended to require amicus curiae briefs to comply with Rule 8-112. The Chair asked if "applicable" should be stricken from subsection (d)(2) because if provisions are applicable, they must be followed. By consensus, the Committee approved the amendment. Judge Nazarian said that new section (e) contains the bulk of the substantive changes to the Rule. Subsection (e)(1) eliminates the requirement for a motion to file an amicus brief under certain circumstances. Subsection (e)(2) outlines

the required contents of a brief and subsection (e)(3) governs the time for filing. There are two options for subsection (e)(4) governing the length of a brief: either 1,900 words or 3,900 words. Mr. Nivens advocated for the longer limit to allow groups to fully explain who they are and provide an overview of their clientele in addition to their argument for why a certiorari petition should be granted. The Chair questioned whether 3,900 words is necessary to express why it is in the public interest for the court to take up a case. The brief should not get into the merits of the case.

Judge Nazarian moved to adopt the "handout" version of Rule 8-511 with the amendment striking "applicable" from subsection (d)(2) and the adoption of option A for subsection (e)(4), applying a 1,900 word limit. The Reporter pointed out that the reference to (f)(3) in subsection (d)(2) should be to (e)(3). Judge Nazarian agreed and incorporated that amendment into his motion. The motion was seconded and approved by a majority vote.

By consensus, the Committee approved Rule 8-511 as amended.

Judge Nazarian presented Rule 8-303, Petition for Writ of Certiorari – Procedure, for consideration.

AMEND Rule 8-303 by revising section (a) so that seven copies are no longer required to be filed with a petition; by adding a reference to "cross petition" in sections (a), (b), (c), (d), (f), and (g); by revising subsection (b)(1) to establish a limit of 1,500 words for a cross petition; by deleting the requirement in subsection (d)(1) requiring seven copies to be filed with a petition or cross petition; by revising subsection (d)(1) so the time to file a response if an amicus curiae brief is filed is extended by 15 days; by adding new subsection (d)(2) pertaining to word limits; and by making stylistic changes, as follows:

RULE 8-303. PETITION FOR WRIT OF CERTIORARI — PROCEDURE

(a) Filing

A petition for a writ of certiorari~~, together with seven legible copies,~~ shall be filed with the Clerk of the Court of Appeals. The petition or cross petition shall be accompanied by the filing fee prescribed pursuant to Code, Courts Article, § 7-102 unless:

(1) if the petition or cross petition is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1; or

(2) if the petition or cross petition is in a criminal action, the fee has been waived by an order of court or the petitioner is represented by the Public Defender's Office.

Cross reference: Rule 1-325.

Subsection (b)(1) – OPTION A

(b) Petition; Cross Petition

(1) Contents

The petition or cross petition shall present accurately, briefly, and clearly whatever is essential to a ready and adequate understanding of the points requiring consideration. Except with the permission of the Court of Appeals, a petition shall not exceed 3,900 words ***and a cross petition shall not exceed 1,500 words****.* ~~*It*~~ *A petition and cross petition shall contain the following information:*

Subsection (b)(1) – OPTION B

(1) Contents

The petition or cross petition shall present accurately, briefly, and clearly whatever is essential to a ready and adequate understanding of the points requiring consideration. Except with the permission of the Court of Appeals, ***a petition and cross petition shall not exceed 3,900 words.*** ~~*It*~~ *A petition and cross petition shall contain the following information:*

(A) A reference to the action in the lower court by name and docket number;

(B) A statement whether the case has been decided by the Court of Special Appeals;

(C) If the case is then pending in the Court of Special Appeals, a statement whether briefs have been filed in that Court or the date briefs are due, if known;

(D) A statement whether the judgment of the circuit court has adjudicated all claims in the action in their entirety, and the rights and liabilities of all parties to the action;

(E) The date of the judgment sought to be reviewed and the date of any mandate of the Court of Special Appeals;

(F) The questions presented for review;

(G) A particularized statement of why review of those issues by the Court of Appeals is desirable and in the public interest.

(H) A reference to pertinent constitutional provisions, statutes, ordinances, or regulations;

(I) A concise statement of the facts material to the consideration of the questions presented; and

(J) A concise argument in support of the petition or cross petition.

(2) Documents

A copy of each of the following documents shall be submitted with the petition or cross petition at the time it is filed:

(A) The docket entry evidencing the judgment of the circuit court;

(B) Any opinion of the circuit court;

(C) Any written order issued under Rule 2-602(b);

(D) If the case has not been decided by the Court of Special Appeals, all briefs that have been filed in the Court of Special Appeals; and

(E) Any opinion of the Court of Special Appeals.

(3) Where Documents Unavailable

If a document required by subsection (b)(2) of this Rule is unavailable, the petitioner shall state the reason for the unavailability. If a document required to be submitted with the petition or cross petition becomes available after the petition or cross petition is filed but before it has been acted upon, the petitioner shall file it as a supplement to

the petition or cross petition as soon as it becomes available.

(4) Previously Served Documents

Copies of any brief or opinion previously served upon or furnished to another party need not be served upon that party.

(c) Sanction

Failure to comply with section (b) of this Rule is a sufficient reason for denying the petition or cross petition.

(d) Answer

(1) Time to file

Within 15 days after service of the petition or cross petition, any other party may file an original ~~and seven copies of an~~ answer to the petition or cross petition stating why the writ should be denied. If an amicus curiae brief is filed in support of the petition or cross petition pursuant to Rule 8-511 (e), the deadline to answer is automatically extended to 15 days after service of the amicus curiae brief.

(2) Word limits

(A) Answer to Petition

Except with the permission of the Court of Appeals, an answer to a petition shall not exceed 3,900 words.

(B) Reply to Cross Petition

Except with the permission of the Court of Appeals, a reply to a cross petition shall not exceed 1,500 words.

(e) Stay of Judgment of Court of Special Appeals or of a Circuit Court

Upon the filing of a petition for a writ of certiorari, or upon issuing a writ on its own motion, the Court of Appeals may stay the issuance, enforcement, or execution of a mandate of the Court of Special Appeals

or the enforcement or execution of a judgment of a circuit court.

(f) Disposition

On review of the petition or cross petition and any answer, the Court, unless otherwise ordered, shall grant or deny the petition or cross petition without the submission of briefs or the hearing of argument. If the petition or cross petition is granted, the Court shall:

(1) direct further proceedings in the Court of Appeals;

(2) dismiss the appeal pursuant to Rule 8-602;

(3) affirm the judgment of the lower court;

(4) vacate or reverse the judgment of the lower court;

(5) modify the judgment of the lower court;

(6) remand the action to the lower court for further proceedings pursuant to Rule 8-604(d); or

(7) an appropriate combination of the above.

(g) Duty of Clerk

The Clerk of the Court of Appeals shall send a copy of the order disposing of the petition or cross petition to the clerk of the lower court. If the order directs issuance of a writ of certiorari, the Clerk shall issue the writ to the lower court.

Source: This Rule is derived from former Rule 811.

Rule 8-303 was accompanied by the following Reporter's note:

> The Clerk of the Court of Appeals has requested that Rule 8-303 be amended to remove the requirement for multiple copies of a petition, cross petition, and answers to the same to be filed from sections (a) and (d). The Clerk no longer requires multiple copies of these papers.
>
> In addition, a practitioner has expressed concerns with current Rule 8-303 and the practice involving petitions for certiorari in the Court of Appeals. In the current version of this Rule, there is a limit of 3,900 words for a petition. There is no word limit for answers, and the Rule is silent concerning cross petitions. This results in some confusion among practitioners, and in many cases, answers to petitions under this Rule far exceed the word limit imposed by this Rule on the petitions.
>
> To address these concerns, Rule 8-303 is proposed to be amended throughout to add cross petitions as papers that are covered by the Rule, and subsection (b)(1) OPTION A is proposed for the consideration of the Rules Committee to provide a limit of 1,500 words for a cross petition. Subsection (b)(1) OPTION B is also proposed should the Rules Committee prefer that the word limit for a cross petition be 3,900, or the same as a petition.
>
> Section (d) is proposed to be restructured with subsection (d)(1) added so that a party will have 15 days to answer after service of a petition, cross petition, or amicus curiae brief. New subsection (d)(2) establishes word limits for an answer to a petition (3,900 words) and a reply to a cross petition (1,500 words).

Judge Nazarian explained that the amendments eliminate the requirement of seven copies of the petition in section (a) and add "or cross-petition" to each subsection. Proposed options for subsection (b)(1) address word count for a cross-petition. Option A restricts a cross-petition to 1,500 words and option B is 3,900 words. The remaining changes add "or cross petition" where there is a reference to a petition. Section (d) is amended to allow for the filing of an amicus brief in support of a petition or cross-petition and applies word limits. Ms. Bernhardt questioned what should occur when an answer and cross-petition are one document. She noted that a cross-petition is the same as an original petition, and it should not be limited to fewer words. Judge Nazarian moved to adopt option B with the longer word limit. The motion was seconded and approved by majority vote.

By consensus, the Committee approved Rule 8-303 as amended.

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