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, November 19, 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
Del. Luke Clippinger
Hon. John P. Davey
Mary Ann Day, Esq.
Alvin I. Frederick, Esq.
Irwin R. Kramer, Esq.
Victor H. Laws, III, Esq.
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

Neil Bloom, Esq.
Lee Blinder, Executive Director & Founder, Trans Maryland
Hon. Sidney Butcher, District Court
Hon. Michael DiPietro, Circuit Court for Baltimore City
Hon. Deborah Eyler, Court of Special Appeals
Brian Field, Esq., MSBA
Aaron Greenfield, Esq.
Melissa M. Higdon, Executive Director, Client Protection Fund of the Bar of Maryland
C.P. Hoffman, Esq., Legal Director, FreeState Justice
Katherine Howard, Maryland Multi Housing Association
Michael Klima, Esq.
Lydia Lawless, Esq., Bar Counsel, Attorney Grievance Commission
Marianne Lee, Executive Counsel & Director, Attorney Grievance

Commission
Will Manahan, Esq., Law Clerk, Circuit Court for Baltimore City
Lisa Mannisi, Esq., Civil and Criminal Case Administrator, Anne Arundel County Circuit Court
Kathy Minus, Esq.
Hon. John Morrissey, Chief Judge, District Court
Sarah Parks, Court Business Services, JIS
Elizabeth Pinolini, Esq.
Phillip Robinson, Esq.
Jane Santoni, Esq.
Carolyn Schneck, Internal Audit Manager, Maryland Judiciary
Suzanne Schneider, Esq., Chief of Staff, Court of Appeals
Hon. Cathy Serrette, Circuit Court for Prince George's Co.
Del. Emily Shetty
Tom Stahl, Esq., MSBA
Nisa Subasinghe, Esq., Policy Law Specialist, Juvenile & Family Services, Maryland Judiciary
Roberta Warnken, Chief Clerk, District Court
Hon. Pamela White, Circuit Court for Baltimore City

The Chair convened the meeting. The Reporter informed the Committee that the Court of Appeals held an open meeting on the 208th Report containing new Rules governing juvenile causes and signed a Rules Order effective January 1, 2022. She also reminded the Committee and guests that the meeting is being recorded for the purposes of assisting with the preparation of minutes and anyone who speaks is consenting to being recorded.

Agenda Item 1. Consideration of proposed Rules changes pertaining to presumed abandoned funds: New Rule 19-414 (Funds Presumed Abandoned) and proposed amendments to Rule 19-301.15 (Safekeeping Property) and Rule 19-604 (Powers and Duties of Trustees; Treasurer)

Judge Wilner presented new Rule 19-414, Funds Presumed Abandoned, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 400 – ATTORNEY TRUST ACCOUNTS

ADD New Rule 19-414, as follows:

RULE 19-414. FUNDS PRESUMED ABANDONED

(a) Definition

In this Rule, "Client Protection Fund" means the Client Protection Fund of the Bar of Maryland.

(b) Generally

(1) Funds deposited in an attorney's trust account pursuant to Rule 19-404 for the benefit of a client or other person are presumed abandoned if, after three years from the date the funds were deposited or were required to be deposited pursuant to that Rule, (A) the attorney is unable to determine the identity or location of the person after having made reasonable efforts to do so, or (B) the person has affirmatively declined to accept the funds, other than because of a dispute as to the amount owed.

Committee note: Code, Commercial Law Article, § 17-306 declares, for purposes of the Maryland Uniform Disposition of Abandoned Property Act, that intangible personal property held in a fiduciary capacity for the benefit of another person is presumed abandoned unless, within three years after it becomes payable or distributable, the owner has increased or decreased the principal, accepted payment of

principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary. That is not a workable definition with respect to attorney trust accounts. Persons who may be entitled to the payment of attorney trust account funds would not be able to increase or decrease the funds, and, if they correspond with the attorney, their identity and likely their location will be revealed. The definition in this Rule is intended to be a reasonable and practicable one that would be acceptable to the Comptroller.

QUERY: Should the attorney have to wait three years if the person affirmatively declines to accept the funds?

(2) Reasonable efforts require that the attorney (A) has complied with the requirements of Rule 19-407, (B) upon first having notice of a problem identifying or locating a person who may be entitled to trust account funds or other property held by the attorney, (i) make a diligent search for any records or information in the attorney's file, any court file to which the attorney has access, and any published directory or available public records that may assist in identifying or locating the person, (ii) seek the assistance of the client [and other attorneys, unrepresented parties, and witnesses in the case] who may have information regarding the name or whereabouts of the person, (iii) attempt to determine whether the person is in Federal custody or the custody of a State or local government in a jurisdiction in which the attorney has reason to believe the person may reside, (iv) using information possessed by the attorney, conduct an internet search for the person, and (v) attempt to contact the person by first class mail, certified mail, and e-mail, and (C) at least 30 days before taking action pursuant to section (c)of this Rule, make a reasonable attempt

to update the information possessed by the attorney.

Cross reference: Rule 19-407 requires attorneys to keep certain records pertaining to the attorney's trust accounts and to maintain those records for at least five years after the date the record was created.

QUERY: Should publication be required for amounts over $ X?

(c) Duty of Attorney Upon Presumed Abandonment

(1) Upon determining that attorney trust funds are presumed abandoned pursuant to section (b) of this Rule, the attorney shall prepare the requisite report and transmit it, together with the funds and any non-IOLTA accrued interest, to the State Comptroller in accordance with Code, Commercial Law Article, §§ 17-310 and 17-312.

(2) The transmission shall be accompanied by a report filed at the times specified and containing the information required by Code, Commercial Law Article, § 17-310.

Cross reference: See Rule 19-301.6 regarding confidential information.

Committee note: Code, Commercial Law Article § 17-310 (d) anticipates an annual report covering the period July 1 through June 30 to be filed no later than October 31.

(3) No such funds or report shall be transmitted to the Client Protection Fund.

Committee note: For several decades, a practice has been in place for attorneys who have been unable to identify or locate persons entitled to trust funds received by the attorney to transfer those funds to the Client Protection Fund. The intent of this Rule is to end that practice. The sole statutory mission of the Client Protection

Fund is to receive, investigate, and pay claims filed by persons injured by the misconduct of attorneys, not deal with abandoned money in attorney trust fund accounts. See Rule 19-602(a)and Maryland State Bar Association Committee on Ethics, Ethics Docket 92-2 (1992): "After the property is presumed abandoned, you, as holder, are required to file a report with the State Comptroller's Office regarding the property."

(d) Transfer of Funds from Client Protection Fund

On or before July 1, 2022, the Client Protection Fund shall (1) prepare the reports required by Code, Commercial Law Article, § 17-310, and (2) transmit them, together with all attorney trust account funds that, on or prior to that date, were received by the Client Protection Fund and all non-IOLTA accrued interest thereon that have not previously been paid by the Client Protection Fund to persons lawfully entitled to those funds, to the State Comptroller, in accordance with Code, Commercial Law Article, §§ 17-310 and 17-312 and applicable regulations adopted by the Comptroller.

(e) The first reports under this Rule shall be filed no later than October 31, 2022 and shall include all attorney trust funds that qualify as abandoned as of June 30, 2022.

Rule 19-414 was accompanied by the following Reporter's note:

Proposed new Rule 19-414 provides a procedure for the transfer of presumed abandoned funds from an attorney's trust account or the Client Protection Fund, as applicable, to the State Comptroller in accordance with Code, Commercial Law Article, §§ 17-310 and 17-312.

The Chair explained that the background for Item 1 is summarized in his memorandum (see Appendix A). He thanked Douglas M. Bregman, Chair of the Trustees of the Client Protection Fund, for his letter to the Committee clarifying certain points. The Chair noted that his memorandum did not intend any criticism of Mr. Bregman, the trustees, or Melissa Higdon, Executive Director of the Client Protection Fund. The Court of Appeals has concluded that the Client Protection Fund ("CPF") should no longer receive or hold attorney trust account funds and asked the Committee to draft Rules to achieve three objectives: first, to halt any further transfers of such funds; second, to give guidance to attorneys dealing with non-distributable trust funds; and third, to require CPF to transfer trust funds currently held to the Comptroller in accordance with Code, Commercial Law Article, §§17-310 and 17-312.

The Chair stated that the Court of Appeals did not ask for opinions on the policy or the objectives. He said that he takes the Court's request as a directive and sees the Committee as responsible for drafting proposed Rules that meet the Court's objectives. He asked that the Committee limit its discussion to whether the Rules approved by a specially-formed subcommittee are adequate and appropriate to meet those objectives. He said that one issue the Court may not have thought about is the

impact of transferring funds held by CPF to the Comptroller on the Maryland Legal Services Corporation ("MLSC"). He explained that Mr. Bregman's letter raised the question because CPF trust accounts are in IOLTA accounts and accrued interest is paid to MLSC. Upon the transfer of those funds to the Comptroller, there will likely be accrued interest which, if severable, the Comptroller's office expressed willingness to transfer. However, once the funds are transferred, they cannot be segregated and no future interest will be given to MLSC. By statute, the Comptroller distributes $8 million each year to MLSC, increased from $2 million in the 2021 legislative session. He noted that the Comptroller does not oppose a further increase by statute in light of this Rule change. The Chair said that he will bring this fact to the Court's attention.

The Chair explained that section (a) defines the Client Protection Fund. Subsection (b)(1) addresses the Court's objective to give guidance to attorneys dealing with trust accounts where there is no recipient for distributions. This can occur when the attorney cannot identify or locate the proper recipient, or the recipient is known but refuses to accept the funds. He drew the Committee's attention to a query following the Committee note after subsection (b)(1) concerning whether an attorney must wait three years before transferring funds if the recipient refuses to accept funds for a reason other than a

dispute over the amount to be paid. Mr. Kramer said that he has a client with this situation, and it would be helpful to be able to act sooner than three years if there is a clear refusal. His client was unable to complete the job and her client refuses to accept the return of the funds. The Chair asked for suggested language for the provision. Mr. Kramer suggested that if there has been a written statement declining to accept funds, the attorney can transfer the funds to the Comptroller. Mr. Kramer moved to adopt this language in subsection (b)(1). Judge Bryant seconded the motion and it was approved by a majority vote.

The Chair said that subsection (b)(2) outlines what constitutes reasonable efforts. The Chair called for comment on subsection (b)(2). Mr. Laws said that the efforts described in the subsection appear broad and potentially burdensome to private practitioners, particularly references to available public directories. The Chair responded that the Court of Appeals requested that the Rule provide guidance on reasonable efforts. He noted that some of the accounts that the CPF is holding are older transfers from the 1990s, which creates a lot of problems in terms of locating the proper recipient. Ms. Higdon explained that the CPF receives funds from attorneys who cannot identify ownership, often due to their own recordkeeping. Sometimes an attorney is deceased and another attorney going

through the records cannot find adequate information about clients.

The Chair asked for suggestions for amendments to subsection (b)(2). Mr. Laws commented that it is a difficult question because if an attorney is deceased, it would fall to a conservator or another attorney appointed to wrap up the affairs to determine who is entitled to funds. He said that subsection (b)(2)(B)(i), requiring a diligent search of any published directory or available public records – presumably nationwide – is perhaps overbroad, but the list is also under-inclusive because it doesn't suggest accessing estate records. The Chair remarked that the funds need to be turned over after three years, at which point an attorney should at least have some idea of the individual or entity entitled to funds. He asked for further discussion from attorneys on the Committee who will need to deal with these issues. Mr. Laws remarked that even the subsection about determining whether the recipient is incarcerated is daunting to him as a civil practitioner.

Mr. Shellenberger commented that it is difficult even as a State's Attorney to locate inmates outside of his own county detention center. There is no standard listing of individuals incarcerated in local facilities, so it is reasonable to limit the search to jurisdictions where the individual is likely to be held. Mr. Kramer remarked that he is concerned about having a

less detailed list of suggestions because then it is up to the attorney to determine what is reasonable. One attorney's determination of what is reasonable may differ from another attorney's determination. He said that the attorney is not appropriating the funds, because they are being sent to the Comptroller and may be claimed in the future; however, he is in favor of clear steps for attorneys to take to comply. The Chair said that the proposed language is a Subcommittee recommendation and called for a motion to amend it. Mr. Shellenberger suggested copying the language from subsection (b)(2)(B)(iii), limiting a search geographically to a jurisdiction where the attorney has reason to believe the person may reside. Ms. Day moved to amend the language in subsection (b)(2)(B)(i) to include the geographic limitation from (b)(2)(B)(iii). The motion was seconded and approved by consensus.

Mr. Laws said that in response to the query after subsection (b)(2), he does not believe that publication is necessary for certain property as it is an increasingly expensive service and it is unclear who would pay for it. The Comptroller publishes a list periodically notifying possible claimants of unclaimed property.

Ms. Lawless said that "reasonable" is defined in the Rules in the context of a reasonably prudent and competent attorney. She explained that usually, attorneys can identify the

individual but cannot locate the individual despite reasonable efforts. She suggested that the Rule state that "reasonable efforts may include" the items in subsection (b)(2), which permits attorneys to tailor efforts to the client and practice type. The Chair suggested putting the information in a Committee note. Judge Price supported Ms. Lawless's proposal and suggested adding estate and obituary records. Mr. Laws and Mr. Kramer agreed. Judge Bryant moved to adopt the amendments suggested by Ms. Lawless, the Chair, and Judge Price to state that "reasonable efforts may include" the items in subsection (b)(2), to move those provisions into a Committee note, and to include estate records. The motion was seconded and approved by consensus.

The Chair said that section (c) governs the attorney's actions once property can be deemed abandoned after reasonable efforts. Mr. Laws said that Code, Commercial Law Article, §17-302 requires an attorney to send the funds to the State with a report, but there is also an intermediate step requiring notice to the apparent owner at the individual's last known address. He suggested adding that preliminary step to the Rule either by copying the language from the statute or referencing the statute's requirements. He moved to create a new subsection (c)(1) requiring compliance with the statute. Judge Price seconded the motion. The amendment was approved by consensus.

The Chair explained that section (d) requires the CPF to transfer funds currently held to the Comptroller. Section (e) is taken from the Code provisions and requires annual reports of attorney trust funds deemed abandoned. Ms. Higdon pointed out that section (e) does not have a caption. The Chair said that one would be added.

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

The Chair presented Rules 19-301.15, Safekeeping Property, and 19-604, Powers and Duties of Trustees; Treasurer, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

CLIENT-ATTORNEY RELATIONSHIP RULES

AMEND Rule 19-301.15 by adding a cross reference after section (e), as follows:

RULE 19-301.15. SAFEKEEPING PROPERTY

(a) An attorney shall hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property. Funds shall be kept in a separate account maintained pursuant to Title 19, Chapter 400 of the Maryland Rules, and records shall be created and maintained

in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the attorney and shall be preserved for a period of at least five years after the date the record was created.

(b) An attorney may deposit the attorney's own funds in a client trust account only as permitted by Rule 19-408 (b).

(c) Unless the client gives informed consent, confirmed in writing, to a different arrangement, an attorney shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the attorney's own benefit only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, an attorney shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, an attorney shall deliver promptly to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render promptly a full accounting regarding such property.

(e) When an attorney in the course of representing a client is in possession of property in which two or more persons (one of whom may be the attorney) claim interests, the property shall be kept separate by the attorney until the dispute is resolved. The attorney shall distribute promptly all portions of the property as to which the interests are not in dispute.

Cross reference: For the duties of an attorney with respect to attorney trust account funds that are presumed abandoned, see Rule 19-414.

. . .

Rule 19-301.15 was accompanied by the following Reporter's note:

A proposed amendment to Rule 19-301.15 adds a cross reference to proposed new Rule 19-414 after section (e), before the Comment and Model Rules Comparison.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

AMEND Rule 19-604 by adding a Committee note following subsection (a)(2) and by making clarifying stylistic changes, as follows:

RULE 19-604. POWERS AND DUTIES OF TRUSTEES; TREASURER

(a) Trustees

The trustees have the following powers and duties:

(1) To elect, from among their membership, a chair, a treasurer, and such other officers as they deem necessary or appropriate.

(2) To receive, hold, manage, and distribute, pursuant to ~~this Rule~~ the Rules in this Chapter, the funds raised hereunder,

and any other monies that may be received by the Fund through voluntary contributions or otherwise.

Committee note: The power of the trustees under subsection (a)(2) of this Rule to receive and distribute funds received through "voluntary contributions or otherwise" does not include receiving or distributing abandoned attorney trust funds, except for the distribution of funds required by Rule 19-414.

(3) To authorize payment of claims in accordance with ~~this Rule~~ the Rules in this Chapter.

(4) To adopt regulations for the administration of the Fund and the procedures for the presentation, consideration, recognition, rejection and payment of claims, and to adopt procedures for conducting business. A copy of the regulations shall be filed with the Clerk of the Court of Appeals, who shall mail a copy of them to the clerk of the circuit court for each county and to all Registers of Wills. The regulations shall be posted on the Judiciary website.

(5) To enforce claims for restitution arising by subrogation, assignment, or otherwise.

(6) To deposit funds in any bank or other savings institution (A) that is chartered and whose financial activities are regulated under federal or Maryland law, and (B) whose deposits are insured by an instrumentality of the federal government.

(7) To invest funds not needed for current use in such investments as they deem appropriate, consistent with an investment policy specified in regulations adopted by the trustees and approved by the Court of Appeals.

(8) To employ and compensate consultants, agents, attorneys, and employees.

(9) To delegate the power to perform routine acts which may be necessary or desirable for the operation of the Fund, including the power to authorize disbursements for routine operating expenses of the Fund, but authorization for payments of claims shall be made only as provided in Rule 19-609.

(10) To sue or be sued in the name of the Fund without joining any or all individual trustees.

(11) To comply with the requirements of Rules 19-704 (e), 19-705 (c), 19-708 (a), and 19-723 and all other applicable laws.

(12) To designate an employee to perform the duties set forth in Rules 19-708 (a) and 19-723 and notify Bar Counsel of that designation.

(13) To file with the Court of Appeals an annual report of the management and operation of the Fund and to arrange for an annual audit of the accounts of the Fund by state or private auditors. The cost of the audit shall be paid by the Fund if no other source of funds is available.

(14) To file additional reports and arrange for additional audits as the Court of Appeals or the Chief Judge of that Court may order.

(15) To perform all other acts authorized by these Rules or necessary or proper for the fulfillment of the purposes of the Fund and its efficient administration.

(b) Treasurer

The treasurer shall:

(1) maintain the Fund in a separate account;

> (2) disburse monies from the Fund only upon the action of the trustees pursuant to these Rules;
>
> (3) file annually with the trustees a bond for the proper execution of the duties of the office of treasurer of the Fund in an amount established by the trustees and with one or more sureties approved by the trustees; and
>
> (4) comply with the requirements of Rule 19-705 (b).
>
> Source: This Rule is derived from former Rule 16-811.4 (2016).

Rule 19-604 was accompanied by the following Reporter's note:

> Proposed amendments to Rule 19-604 make clarifying stylistic changes to the Rule and add a Committee note following subsection (a)(2). Included in the Committee note is a reference to proposed new Rule 19-414, Funds Presumed Abandoned.

The Chair explained that the proposed amendment to Rule 19-301.15 adds a cross reference to new Rule 19-414. Rule 19-604 is amended to update the powers and duties of the trustees to exclude receiving or distributing abandoned attorney trust funds, except as required by Rule 19-414.

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

The Chair called for recommendations regarding getting word out to attorneys about the new Rule. He noted that the

reporting requirement goes into effect next year. Mr. Stahl said that attorneys probably assume abandoned funds are sent to CPF and it will be very important to provide guidance, particularly to attorneys who are retiring or otherwise wrapping up practices. He said that the Maryland State Bar Association has options for contacting attorneys and getting the message out.

The Chair thanked the special Subcommittee, Ms. Higdon and the CPF staff, and everyone who assisted with the proposal.

Agenda Item 2. Consideration of proposed amendments to Rule 20-201.1 (Restricted Information)

The Chair presented Rule 20-201.1, Restricted Information, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

Amend Rule 20-201.1 by requiring the clerk to reject a submission without prejudice when a filer fails to comply with certain requirements pertaining to the filing of redacted and unredacted versions of the submission, as follows:

RULE 20-201.1. RESTRICTED INFORMATION

(a) Statement in Submission; Notice Regarding Restricted Information

(1) Requirement

Each submission filed pursuant to Rule 20-201 that contains restricted information shall state prominently on the first page that it contains restricted information. Except for categories of actions specified in Rule 16-914 (a) or in the Policies and Procedures adopted by the State Court Administrator pursuant to Rule 20-103 (b), if the submission contains restricted information, it shall be accompanied by a completed Notice Regarding Restricted Information on a form approved by the State Court Administrator. The completed Notice shall be subject to public inspection.

(2) Failure to File Notice Regarding Restricted Information

If the filer fails to file a completed Notice of Restricted Information as required, the clerk shall reject the submission without prejudice to refile the submission accompanied by the Notice. The clerk shall enter on the docket that a submission was received but was rejected for non-compliance with Rule 20-201.1 (a).

(b) Submission Not Subject to Public Inspection

If the submission, as a whole, is not subject to public inspection by Rule, other law, or court order, the filer shall cite the grounds for such an assertion in the Notice.

(c) Submission Containing Restricted Information

(1) Requirements

If a filer believes that a submission contains both restricted information that is not subject to public inspection and information that is subject

to public inspection, and that the restricted information is necessary to be included in the submission, the filer shall ~~(1)~~ (A) file both an unredacted version of the submission, noting prominently in the title of the version that the version is "unredacted--to be shielded," and a redacted version of the submission that excludes the restricted information, noting prominently in the title of the version that the version is "redacted," and ~~(2)~~ (B) state in the Notice the grounds for the assertion that some information is restricted information and for including the restricted information in the submission.

(2) Failure to File Required Versions

If the filer fails to file both an unredacted and a redacted version of a submission when required under subsection (c)(1) of this Rule, the clerk shall reject the submission without prejudice to refile the submission with both versions included. The clerk shall enter on the docket that a submission was received but was rejected for non-compliance with Rule 20-201.1 (c).

Cross reference: See Rule 20-203 (e), requiring the unredacted version to be shielded.

. . .

Rule 20-201.1 was accompanied by the following Reporter's note:

The Rules Committee is advised that courts have been receiving some submissions containing restricted information, accompanied by the Notice required by section (a) of Rule 20-201.1, but not containing a redacted version of the submission. Proposed new subsection (c)(2) requires the clerk to reject a submission containing restricted information, without

> prejudice, unless both a redacted and an unredacted version of the submission are included.

The Chair said that Rule 20-201.1 is a recent Rule intended to instruct MDEC filers on the procedure when submissions contain restricted information. The filer must submit a written notice and both an unredacted and redacted version of the filing, but clerks have reported repeated problems with filers including the notice but not the redacted copy. The clerks requested guidance on how to proceed under these circumstances as the Rule does not contain a consequence for not filing a redacted version. The Major Projects Committee suggested filling the "gap" by requiring rejection of the filing, the same consequence that failing to file the notice carries. The Chair explained that the proposed amendments prohibit the clerk from accepting the unredacted version and issuing a deficiency notice because the filing would immediately become subject to public inspection without the redaction.

Mr. Wells asked if the corrected filing will relate back to the original filing date. Chief Judge Morrissey said that if a deficient filing is corrected in the time required by Rule, the filing relates back. If the filing is rejected, it is as if it was not filed. He said in general that he prefers a deficiency notice rather than a rejection but explained that because of the

concern that an unredacted document is a public record, it was determined that a rejection was the appropriate outcome. Mr. Wells clarified that a filing that is rejected and not re-filed before the statute of limitations runs will not be timely. The Chair confirmed that a filing will be rejected regardless of the statute of limitations implications.

Judge Ballou-Watts said that she understands the points made but explained that she can envision a situation where an attorney's staff can make an error that causes a submission to be rejected. She expressed a desire to see the Rule change publicized by the bar associations to ensure that attorneys are aware of the ramifications of failing to comply. She pointed out that the client is hurt by a timely filing being rejected. Chief Judge Morrissey commented that there is a system in place to alert MDEC users and bar associations of changes to MDEC procedures and Rules. All registered users receive an email and the change will be highlighted on the MDEC home screen.

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

The Chair presented Rule 1-314, Disclosure Statement, for consideration.

MARYLAND RULES

TITLE 1 – 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 statutory 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.

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.

The Chair explained that the proposed Rule is intended to implement a statute that requires nongovernmental corporate parties to make certain disclosures on first filing or appearance. He said that the statute is unclear about whether other noncorporate business entities, as filers, must disclose the same information. He informed the Committee that the statute appears to have been derived from Federal Rule of Appellate Procedure 26.1, Federal Rule of Civil Procedure 7.1, local Rules of certain U.S. District Courts, and statutes enacted in some other states. The purpose of those Rules is to inform judges and their staff of potential conflicts of interest. The Federal Rules limit their application to nongovernmental corporate parties and require disclosure of parent corporations and publicly held corporations owning 10% or more stock. Some local federal Rules, including Rules of the

U.S. District Court in Maryland, require additional business entities to disclose ownership and financial interests in the litigation. The Chair pointed out that the statute as written appears to require noncorporate entities to disclose affiliations and owners. On the assumption that this expansive reading could be appropriate, proposed Rule 1-314 deals separately with corporate parties and other business entities. A draft form was created for use with this Rule.

The Chair said that several comments were received on the proposed Rule. The Maryland State Bar Association ("MSBA") Business Law Section opposes the draft and makes several suggestions. The Maryland Multi-Housing Association ("MMHA") expressed concerns primarily about the public disclosure of the information on the form. The Chair noted, for the Committee's information and not as a policy statement, that the General Assembly did not amend public records laws to shield these filings and the U.S. District Court appears to take the position that disclosures under the federal Rules are not shielded.

The Chair asked Ms. Lindsey about what clerks have seen since the law went into effect on October 1. She said that no clerks have reported seeing these disclosures filed or even being aware of the new requirement.

Mr. Field said that the Business Law Section of the MSBA met and discussed this statute. The Section makes some specific

suggestions for the Rule. He said that subsection (a)(1)(B) mentions close corporations and limited liability companies, which are not in the statute. He requested that those entities be removed from the Rule or, alternatively, that the Rule be amended to clarify that a close corporation is a statutory close corporation. He also suggested that subsection (a)(1)(C) track the statute more closely and that subsection (a)(1)(D) be deleted.

The Chair called for additional comment. Ms. Santoni commented that she believes that the statute was intended to be read broadly and she supports including all business entities listed. Judge Nazarian said that he agrees with the proposal to add "statutory" before the term "close corporation" and moved to amend the language of subsection (a)(1)(B). The motion was seconded and approved by consensus.

Judge Nazarian noted that federal courts have been requiring corporate interest disclosures for a long time. The requirement has not been onerous on the filer, though he acknowledged that the form could be a burden on the Judiciary to process. The question is how to make it clear what kinds of businesses must comply. Mr. Robinson pointed out that the purpose is not just for judges to be aware of conflicts but for broader transparency for the parties and the public. He explained that the intent is to be broad and cautioned against

amending the statute by Rule. The Chair responded that the statute is not clear about its application and the Subcommittee broke it up by corporate entities and other business entities.

Mr. Laws said that the subsection (a)(2)(D) catchall may be confusing and may be difficult to identify members or owners. He said that he is reluctant to say that no disclosure is required, but explained that it is not practical for some types of businesses to comply. Ms. Santoni responded that part of the problem and the reason for the legislation was to learn about ownership. Ms. Howard said that District Court filers in high-volume areas, such as landlord/tenant or collection proceedings, will be burdened by the requirement. She explained that the proposed Rule adds paper to already busy clerks' offices and reiterated the request from her comment letter that a central filing system be devised for frequent litigants. Ms. Howard also expressed concern about making a public record naming individuals who may be investors with no decision-making authority in the corporation. She noted that there is the possibility for misuse of this information by individuals who do not like the corporation or its members. She pointed out that landlords are often unpopular, and it is concerning that the statute and now the proposed Rule offer no protection for privacy.

Chief Judge Morrissey commented that Ms. Harris had asked at the October meeting to refer the issue of a central repository to the Major Projects Committee ("MPC") for discussion. The MPC determined that the suggestion would be unworkable for judges and voted to reject the suggestion. Chief Judge Morrissey echoed the Chair's remark that the default assumption is that court records are public unless made otherwise by statute. Ms. Lindsey asked what clerks should do if the disclosure is not filed. Chief Judge Morrissey said that the MPC had discussed that question and rejected the concept of making clerks' offices determine if a component of a filing is missing. He said that in adversarial proceedings, it should be the duty of the parties to draw the court's attention to the matter.

Judge Price said that in landlord/tenant and collection work, the same corporations and partnerships appear repeatedly. She suggested that a party could file the disclosure once and refile only if the underlying information changes. Chief Judge Morrissey responded that judges can change from case to case, or hearing to hearing in any one case, and each judge needs to be able to review the disclosure. Judge Price expressed support for the central repository idea where a judge can seek out the information. The Chair called for a motion. Chief Judge Morrissey reminded the Committee that the MPC voted unanimously

against creating a central repository. He explained that requiring a judge to check a new system outside of MDEC, which would have to be created for the entire Judiciary, creates a problem if the judge fails to check in each case.

Ms. Santoni said that the proposed new filing reminds her of the affidavit judgments Rules created a few years ago which added a form that became part of what everyone files in those cases. She said that the concept of corporate disclosure filings is new right now, but it could soon become routine practice. Ms. Bernhardt echoed Ms. Lindsey's question regarding how the clerks should treat a deficient filing. She said that lawyers are not the best individuals to rely on if part of the goal is to have the judge review the disclosure. Ms. Santoni suggested that clerks should mark filings as deficient and require parties to "fix" the error. Chief Judge Morrissey responded that Ms. Santoni's suggestion would create gridlock in the system for months, noting that almost no attorneys are currently complying. The Chair pointed out that the statute and the Rule do not include a consequence for failing to file a disclosure.

Judge Price commented that the statute is unartfully drafted and moved to reject the proposed Rule. The Chair pointed out that without a Rule attempting to clarify the statute, the only thing in place is the unartfully drafted

statute. Judge Price suggested that the legislature should address the concerns with the statute. The motion was seconded and passed by a vote of 12-7.

Agenda Item 4. Consideration of proposed amendments to Rule 9-205.3 (Custody and Visitation-Related Assessments)

Judge Bryant presented Rule 9-205.3, Custody and Visitation-Related Assessments, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205.3 by revising the definition of "specific issue evaluation" in subsection (b)(7); by deleting the current Committee note after subsection (b)(7) and adding a new Committee note describing specific issue evaluations; by deleting and adding certain language to subsection (c)(2) to provide that, unless waived, a specific issue evaluation assessor must have the qualifications of a custody evaluator; by adding a Committee note after section (c) clarifying the court's ability to order preliminary screening or alcohol and substance use testing; by adding to subsection (d)(2) a requirement that a custody evaluator complete or commit to completing a certain training program; by adding new subsection (e)(3) concerning the selection of an assessor to perform a specific issue evaluation; by requiring

custody evaluations to include interviews with certain individuals in subsection (f)(1)(B); by adding new subsection (f)(1)(F) requiring custody evaluations to include contact with high neutrality/low affiliation collateral sources; by adding a Committee note explaining the term "high neutrality/low affiliation" after subsection (f)(1)(F); by adding new subsection (f)(1)(G) requiring custody evaluations to include screening for intimate partner violence; by re-lettering current subsections (f)(1)(F) and (f)(1)(G) as (f)(1)(H) and (f)(1)(I), respectively; by adding language to subsection (f)(2)(A) and deleting subsection (f)(2)(D); by re-lettering current subsections (f)(2)(E) through (f)(2)(G) as subsections (f)(2)(D) through (f)(2)(F); by adding new subsection (f)(3) addressing the elements of a specific issue evaluation; by re-lettering current subsection (f)(3) as subsection (f)(4) and making the subsection applicable to specific issue evaluation assessors; by deleting certain language from subsection (g)(2); by clarifying that subsection (g)(7) applies to custody evaluations and adding references to relevant subsections; by adding new subsection (g)(8) concerning contents of an order of appointment for a specific issue evaluation; by re-numbering current subsection (g)(8) as subsection (g)(9); by adding language to subsection (i)(1)(A) clarifying the presentation and receipt of reports and transcripts by the court; by requiring that written reports for custody evaluations be furnished to the parties and to the court under seal at least 45 days before the hearing date; by adding new subsection (i)(2) addressing the submission of a report of a specific issue evaluation; by re-lettering current subsections (i)(2) and (i)(3) as subsections (i)(3) and (i)(4), respectively; by adding language to subsections (i)(3) and (i)(4) requiring that reports be furnished to the court under seal; by adding a Committee note after

section (i) describing access to written reports; and by making stylistic changes, as follows:

RULE 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

(a) Applicability

This Rule applies to the appointment or approval by a court of a person to perform an assessment in an action under this Chapter in which child custody or visitation is at issue.

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

(b) Definitions

In this Rule, the following definitions apply:

(1) Assessment

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

(2) Assessor

"Assessor" means an individual who performs an assessment.

(3) Custody Evaluation

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

(4) Custody Evaluator

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

(5) Home Study

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

(6) Mental Health Evaluation

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

(7) Specific Issue Evaluation

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

~~Committee note: An example of a specific issue evaluation is an evaluation of a party as to whom the issue of a problem with alcohol consumption has been raised, performed by an individual with expertise in alcoholism.~~

Committee note: A specific issue evaluation is not a "mini" custody evaluation. A custody evaluation is a comprehensive study of the general functioning of a family and of the parties' parenting capacities. A specific issue evaluation is an inquiry, narrow in scope, into a particular issue or issues that predominate in a case. The issue or issues are defined by questions

posed by the court to the assessor in an order. The evaluation primarily is fact-finding, but the court may opt to receive a recommendation. Examples of questions that could be the subject of specific issue evaluations are questions concerning the appropriate school for a child with special needs and how best to arrange physical custody and visitation for a child when one parent is relocating.

(8) State

"State" includes the District of Columbia.

(c) Authority

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

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

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

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

(d) Qualifications of Custody Evaluator

(1) Education and Licensing

A custody evaluator shall be:

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

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

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

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

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

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

(2) Training and Experience

Unless waived by the court, a custody evaluator shall have completed, or

commit to completing, the next available training program that conforms with guidelines established by the Administrative Office of the Courts. The current guidelines shall be posted on the Judiciary's website. In addition to complying with the continuing requirements of his or her field, a custody evaluator shall have training or experience in observing or performing custody evaluations and shall have current knowledge in the following areas:

(A) domestic violence;

(B) child neglect and abuse;

(C) family conflict and dynamics;

(D) child and adult development; and

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

(3) Waiver of Requirements

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

(e) Custody Evaluator Lists and Selection

(1) Custody Evaluator Lists

If the circuit court for a county appoints custody evaluators who are not court employees, the family support services coordinator for the court shall maintain a

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

(2) Selection of Custody Evaluator

(A) By the Parties

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

(B) By the Court

An appointment of an individual, other than a court employee, as a custody evaluator by the court shall be made from the list maintained by the family support services coordinator. In appointing a custody evaluator from a list, the court is not required to choose at random or in any particular order from among the qualified evaluators on the list. The court should endeavor to use the services of as many qualified individuals as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training,

background, experience, expertise, or temperament of the available prospective appointees. An individual appointed by the court to serve as a custody evaluator shall have the qualifications set forth in section (d) of this Rule.

(3) Selection of Assessor to Perform Specific Issue Evaluation

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

(f) Description of Custody Evaluation

(1) Mandatory Elements

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

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

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

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

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

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

(F) contact with any high neutrality/low affiliation collateral

sources of information, as determined by the assessor;

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

(G) screening for intimate partner violence;

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

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

(2) Optional Elements — Generally

Subject to subsection (f)(3) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

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

(B) a review of additional records;

(C) employment verification;

~~(D) an interview of any other individual residing in the household;~~

~~(E)~~ (D) a mental health evaluation;

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

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

(3) Elements of Specific Issue Evaluation

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

~~(3)~~ (4) Optional Elements Requiring Court Approval

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

(g) Order of Appointment

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

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

(2) ~~if there are allegations of domestic violence committed by or against a party or child,~~ any provisions the court deems necessary to address the safety and

protection of the parties, all children of the parties, any other children residing in the home of a party, and the person being appointed or approved;

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

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

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

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

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

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

~~(8)~~ (9) any other provisions the court deems necessary.

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

(1) Removal

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

(2) Resignation

A person appointed or approved to perform an assessment may resign prior to completing the assessment and preparing a report pursuant to section (i) of this Rule only upon a showing of good cause, notice to the parties, an opportunity to be heard, and approval of the court.

(i) Report of Assessor

(1) Custody Evaluation Report

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

(A) Oral Report on the Record

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

court's file, maintain that copy under seal, or (ii) direct the custody evaluator to prepare a written report and furnish it to the parties and the court in accordance with subsection (i)(1)(B) of this Rule. Absent the consent of the parties, the judge or magistrate who presides over a settlement conference at which an oral report is presented shall not preside over a hearing or trial on the merits of the custody dispute.

(B) Written Report Prepared by the Custody Evaluator

If an oral report is not prepared and presented pursuant to subsection (i)(1)(A) of this Rule, the custody evaluator shall prepare a written report of the custody evaluation and shall include in the report a list containing an adequate description of all documents reviewed in connection with the custody evaluation. The report shall be furnished to the parties and to the court under seal at least ~~30~~ 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered. The court may shorten or extend the time for good cause shown but the report shall be furnished to the parties no later than 15 days before the scheduled trial or hearing.

(2) Report of Specific Issue Evaluation

An assessor who performed a specific issue evaluation shall prepare a written report that addresses each issue identified by the court in its order of appointment or approval and, if requested by the court, make a recommendation. The report shall be furnished to the parties and to the court, under seal, as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date. The report shall include a list containing an adequate description of all documents reviewed in

connection with the specific issue evaluation.

~~(2)~~(3) Report of Home Study ~~or Specific Issue Evaluation~~

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

~~(3)~~(4) Report of Mental Health Evaluation

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

Committee note: An assessor's written report submitted to the court in accordance with section (i) of this Rule shall be kept by the court under seal. The only access to these reports by a judge or magistrate shall be in accordance with subsections (k)(2) and (k)(3) of this Rule. Each circuit court, through MDEC if available or otherwise, shall devise the means for keeping these reports under seal.

(j) Copying and Dissemination of Report

A party may copy a written report of an assessment or the transcript of an oral

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

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

(k) Court Access to Written Report

(1) Generally

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

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

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

(3) Access to Report by Settlement Judge or Magistrate

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

(l) Discovery

(1) Generally

Except as provided in this section, an individual who performs an assessment

under this Rule is subject to the Maryland Rules applicable to discovery in civil actions.

(2) Deposition of Court-Paid Assessor

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

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

(1) Subpoena for Assessor

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

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

The court may admit an assessor's report into evidence without the presence of the assessor, subject to objections based other than on the presence or absence of the assessor. If the assessor is present, a party may call the assessor for cross-examination.

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

(n) Fees

(1) Applicability

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

(2) Fee Schedules

Subject to the approval of the Chief Judge of the Court of Appeals, the county administrative judge of each circuit court shall develop and adopt maximum fee schedules for custody evaluations. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide custody evaluation services and the ability of litigants to pay for those services. A custody evaluator appointed by the court may not charge or accept a fee for custody evaluation services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal of the individual from all lists maintained pursuant to subsection (e)(1) of this Rule.

(3) Allocation of Fees and Expenses

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

Source: This Rule is new.

Rule 9-205.3 was accompanied by the following Reporter's note:

> Amendments to Rule 9-205.3 were proposed by the Custody Evaluator Standards & Training Work Group of the Judicial Council's Domestic Law Committee. The Work Group reviewed Rule 9-205.3 and the best practices for custody evaluations. Changes proposed by the Work Group aim to re-purpose the specific issue evaluation in custody cases, to expand the use of custody evaluations, and to ensure that the courts may rely on accurate assessments in custody matters. The proposed changes to Rule 9-205.3 are a recommendation of the Family/Domestic Subcommittee.
>
> The Work Group noted several concerns about specific issue evaluations, including confusion about the use of such evaluations. Accordingly, amendments to Rule 9-205.3 clarify the definition of "specific issue evaluation." Changes to subsection (b)(7) substitute the word "focused" for "targeted" and note that the investigation concerns issues affecting the safety, health, or welfare of the child as may affect the child's best interests. The current Committee note following the subsection, providing an example of a specific issue evaluation, is deleted and replaced with a Committee note differentiating specific issue evaluations and custody evaluations. The new Committee note provides guidance on the purpose of specific issue evaluations and includes examples of possible questions for fact-finding.
>
> The Work Group also highlighted confusion about who may be qualified to perform a specific issue evaluation and questioned the value of an evaluation prepared by an individual without sufficient qualifications. The addition of certain language to subsection (c)(2) addresses this concern. Proposed amendments provide that,

unless waived by the court, a person appointed to perform a specific issue evaluation must have the same qualifications as a custody evaluator. A Committee note following section (c) clarifies that the court may still order preliminary screening or testing for alcohol and substance use.

Section (d) of the Rule addresses the training and experience required to be appointed or approved as a custody evaluator. Proposed amendments require a custody evaluator to complete a training program, unless waived by the court, that conforms with guidelines established by the Administrative Office of the Courts and posted on the Judiciary's website. Recognizing that the training may be offered at limited times, subsection (d)(2) permits a custody evaluator to commit to completing the next available training program.

New subsection (e)(3) clarifies that selection of an individual to perform a specific issue evaluation uses the same procedure employed to select a custody evaluator.

Subsection (f)(1) lists the mandatory elements of a custody evaluation. To improve the reliability and usefulness of custody evaluations, the Work Group recommended making additional elements of an evaluation mandatory. Amendments to subsection (f)(1)(B) require that custody evaluations include an interview with any adult who performs a caretaking role for or lives in the household with the child. New subsection (f)(1)(F) requires contact with high neutrality/low affiliation collateral sources of information. A Committee note following the subsection explains the term "high neutrality/low affiliation" and provides examples in custody evaluations. New subsection (f)(1)(G) requires screening for intimate partner violence as an element of a custody evaluation. The subsequent subsections are re-lettered accordingly.

Subsection (f)(2) contains the optional elements of a custody evaluation. Amendments to subsection (f)(2)(A) reflect that contact with high neutrality/low affiliation collateral sources is now a mandatory element of an evaluation. Similarly, current subsection (f)(2)(D) is deleted because an interview with any other individual residing in the household is now mandatory in custody evaluations. Subsections (f)(2)(E) through (f)(2)(G) are re-lettered to account for the deletion.

New subsection (f)(3) addresses the elements of a specific issue evaluation. A specific issue evaluation may include any of the elements listed in subsections (f)(1)(A) through (f)(1)(G), as well as any elements listed in subsection (f)(2) of the Rule. Subsection (f)(3) states that the evaluation is to include fact-finding and, if requested by the court, a recommendation. This subsection reflects the more limited nature of a specific issue evaluation, differing from a custody evaluation.

Current subsection (f)(3) is re-numbered as (f)(4). Amendments to the section clarify that the subsection is applicable to both custody evaluators and specific issue evaluation assessors.

Amendments to section (g) modify the information required in an order appointing or approving a person to perform an assessment. Certain language is deleted from subsection (g)(2) to reflect that the court must include any provisions deemed necessary to address safety concerns, regardless of whether allegations of domestic violence are raised. Stylistic changes to subsection (g)(7) note that the subsection applies only to custody evaluations and add references to relevant subsections of the Rule regarding written and oral reports. New subsection (g)(8) provides that an order appointing or approving an assessor for a specific issue

evaluation must include each issue to be evaluated and whether a recommendation is requested as to each. Subsection (g)(8) ensures that the assessor is informed of the parameters of a specific issue evaluation. Current subsection (g)(8) is renumbered as subsection (g)(9) to account for the addition of the new subsection.

The completion and delivery of a custody evaluation report is addressed in subsection (i)(1). Amendments to subsection (i)(1)(A) clarify that an oral report on the record may be presented to the court, as well as the parties. In addition, a transcript of the oral report prepared for the court's file must be maintained under seal. Further amendments provide that, if prepared, a subsequent written report shall also be furnished to the court. Subsection (i)(1)(B) provides that a written report of a custody evaluator shall be furnished to the court under seal. The time period to file the report is modified from at least 30 days before the scheduled trial or hearing to 45 days before the event. The additional 15 days provides more opportunity for the parties to review the report and adequately prepare for the hearing.

New subsection (i)(2) explains the process for a written report for a specific issue evaluation. An assessor is required to prepare a written report and furnish the report to the parties and to the court under seal. Subsection (i)(2) further provides that the report is to be filed as soon as practicable after completion of the evaluation or by any date specified in the order of appointment or approval. The report must include a list of all documents reviewed for the evaluation.

Proposed amendments delete references to specific issue evaluations in subsection (i)(3) because the evaluations are addressed in new subsection (i)(2). Additional amendments to subsections (i)(3) and (i)(4)

clarify that home studies and mental health evaluations shall be furnished to the court under seal. Stylistic changes are also made in subsection (i)(4).

A new Committee note after section (i) reiterates that written reports must be filed under seal. The note further highlights that access to reports is available only in accordance with subsections (k)(2) and (k)(3) of this Rule.

In addition to the proposed changes to Rule 9-205.3, the Work Group drafted form orders for custody and specific issue evaluations, helping to standardize the use of evaluations throughout the state. The Family/Domestic Subcommittee reviewed these forms in relation to Rule 9-205.3 and suggested changes to members of the Work Group. Because the forms are not included in the Rules, they are not before the Committee at this time.

Judge Bryant said that the proposed amendments to Rule 9-205.3 were recommended by the Custody Evaluator Standards & Training Workgroup of the Judicial Council's Domestic Law Committee. The amendments focus on custody evaluations as well as specific issue evaluations, which are usually intended to be fact-finding but may involve recommendations. She explained that the proposal clarifies who may perform a specific issue evaluation and the training required to be an evaluator. In addition to the existing mandatory elements of a custody evaluation, the evaluator must now interview any adult with caretaking duties or who lives in the household with the child.

Collateral sources of information must be "high neutrality/low affiliation," which is defined in a Committee note. The time period for filing the report is modified and details were added pertaining to the written report.

Judge Bryant said that Judge Eyler, the chair of the workgroup, is present and can answer any questions. Judge Eyler said that Judge Bryant touched on the highlights. The Chair asked if specific issue evaluations could eliminate portions of general custody evaluations. Judge Eyler responded that in cases where one or two issues are driving the proceedings, instead of a general evaluation, the court can have a more targeted investigation done to provide the necessary information.

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

Agenda Item 5. Consideration of proposed amendments to Rule 15-901 (Name Change) and Rule 9-105 (Show Cause Order; Disability of a Party; Other Notice)

Judge Bryant presented Rules 15-901, Name Change, and 9-105, Show Cause Order; Disability of a Party; Other Notice, for consideration.

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 900 – NAME - CHANGE OF

AMEND Rule 15-901 by deleting language pertaining to venue from section (b); by adding new subsections (b)(1) and (b)(2) pertaining to venue for petitions by an adult and on behalf of a minor, respectively; by altering subsection (c)(1)(D) to require a petition for name change of a minor to contain a statement about the best interest of the minor; by altering subsection (c)(1)(E) pertaining to consent to the name change of a minor; by altering a cross reference following subsection (c)(1); by adding new subsection (c)(2)(B) pertaining to written consents to the name change of a minor; by moving current section (e) to new section (d); by re-captioning section (d) to pertain to notice to parents, guardians, and custodians who do not consent to a petition on behalf of a minor; by deleting current subsection (e)(2) pertaining to publication; by deleting certain provisions in current section (d) so that service must comply with Rule 2-121; by re-captioning current section (f) as section (e) pertaining to an objection to a petition; by adding a Committee note following new section (e) regarding the right to object to a petition by an adult; by re-captioning current section (g) as section (f) pertaining to action by the court and hearings; by adding new subsection (f)(1) pertaining to court action on a petition by an adult; by adding a Committee note following new subsection (f)(1) regarding the 30-day delay before the court may enter an order on a petition for a name change for an adult; by adding new subsection (f)(2) pertaining to court action and hearing requirements for a petition on behalf of a minor; and by making stylistic changes, as follows:

Rule 15-901. ACTION FOR CHANGE OF NAME

(a) Applicability

This Rule applies to actions for change of name other than in connection with an adoption or divorce.

(b) Venue

~~An action for change of name shall be brought in the county where the person whose name is sought to be changed resides.~~

(1) Change of Name of an Adult

An action for change of name of an adult shall be brought in the county where the adult resides, carries on a regular business, is employed, or habitually engages in a vocation.

(2) Petition on Behalf of Minor

An action for change of name of a minor shall be brought by an adult petitioner on behalf of the minor in the county where the minor resides or where a parent, guardian, or custodian of the minor resides.

(c) Petition

(1) Contents

The action for change of name shall be commenced by filing a petition captioned "In the Matter of ..." [stating the name of ~~the person~~ individual whose name is sought to be changed] "for change of name to ..." [stating the change of name desired]. The petition shall be under oath and shall contain at least the following information:

(A) the name, address, and date and place of birth of ~~the person~~ individual whose name is sought to be changed;

(B) whether ~~the person~~ individual whose name is sought to be changed has ever been known by any other name and, if so, the name or names and the circumstances under which they were used;

(C) the change of name desired;

(D) all reasons for the requested change, including, if the petition is for the change of name of a minor, a statement explaining why the petitioner believes that the name change is in the best interest of the minor;

(E) a certification that the petitioner is not requesting the name change for any illegal or fraudulent purpose;

(F) if ~~the person~~ individual whose name is sought to be changed is a minor, (i) the names and addresses of that ~~person's~~ individual's parents and any guardian or custodian, (ii) whether each of those individuals consents to the name change; (iii) **whether the petitioner has reason to believe that any parent, guardian, or custodian is unfamiliar with the English language and what language the petitioner reasonably believes the individual can understand,** (iv) if the minor is at least 10 years old, whether the minor consents to the name change; and (v) if the minor is younger than 10 years old, a statement that the minor does not object to the name change; and

(G) whether the ~~person~~ individual whose name is sought to be changed has ever registered as a sexual offender and, if so, ~~the~~ each full name~~(s)~~ (including suffixes) under which the ~~person~~ individual was registered.

Cross reference: See Code, Criminal Procedure Article, §11-705, which requires a registered sexual offender whose name has been changed by order of court to send written notice of the change to ~~the Department of Public Safety and Correctional Services~~ each law enforcement unit where the registrant resides or habitually lives within ~~seven~~ three days after the order is entered.

(2) Documents to Be Attached to Petition

The petitioner shall attach to the petition:

(A) a copy of a birth certificate or other documentary evidence from which the court can find that the current name of the person whose name is sought to be changed is as alleged; and.

(B) if the individual whose name is sought to be changed is a minor, (i) the written consent of each parent, guardian, and custodian of the minor or an explanation why the consent is not attached, and (ii) the written consent of the minor, if the minor is at least 10 years old.

~~(c) Notice~~(d) Minors – Notice to Nonconsenting Parent, Guardian, or Custodian

~~(1) Issued by Clerk~~

Upon the filing of the a petition for change of name of a minor, if the written consent of each parent, guardian, and custodian of the minor was not filed pursuant to subsection (c)(2)(B) of this Rule, the clerk shall sign and issue a ~~notice~~ Notice that ~~(A)~~ (1) includes the caption of the action, ~~(B)~~ (2) describes the substance of the petition and the relief sought, and ~~(C)~~ (3) states that any objection to the name change shall be filed no later than 30 days after service of the petition. **If the petition states that a nonconsenting parent, guardian, or custodian may be unfamiliar with the English language, the clerk shall issue two versions of the Notice, one in English and one in the other language indicated in the petition.** ~~the latest date by which an objection to the petition may be filed.~~

~~(2) Publication~~

~~Unless the court on motion of the petitioner orders otherwise, the notice shall be published one time in a newspaper of general circulation in the county in which the action was pending at least~~

~~fifteen days before the date specified in the notice for filing an objection to the petition. The petitioner shall thereafter file a certificate of publication.~~

(d) Service of Petition – When Required

~~If the person whose name is sought to be changed is a minor, a~~ **The Notice, in English and, if applicable, in the additional language indicated in the petition, a** copy of the petition, **and** any attachments~~, and the notice issued pursuant to section (e) of this Rule~~ shall be served ~~upon that person's parents and any guardian or custodian~~ in the manner provided by Rule 2-121 upon each nonconsenting parent, guardian, or custodian of the minor. ~~When proof is made by affidavit that good faith efforts to serve a parent, guardian, or custodian pursuant to Rule 2-121 (a) have not succeeded and that Rule 2-121 (b) is inapplicable or that service pursuant to that Rule is impracticable, the court may order that service may be made by (1) the publication required by subsection (e)(2) of this Rule and (2) or mailing a copy of the petition, any attachments, and notice by first class mail to the last known address of the parent, guardian, or custodian to be served.~~

~~(f)~~(e) Objection to Petition

Any person may file an objection to the petition. The objection ~~shall be filed within the time specified in the notice and~~ shall be supported by an affidavit ~~which~~ that sets forth the reasons for the objection. The affidavit shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The objection and affidavit shall be served upon the petitioner in accordance with Rule 1-321. The petitioner may file a response within 15 days after being served with the objection

and affidavit. A parent, guardian, or custodian of a minor who does not file an objection within 30 days after being served in accordance with section (d) of this Rule shall be deemed to have consented to the name change of the minor. ~~A person desiring a hearing shall so request in the objection or response under the heading "Request for Hearing."~~

Committee note: Nothing in this Rule is intended to abrogate the right of a person who learns of a requested name change to object to the name change where there is personal knowledge of an illegal or fraudulent purpose or harm to the rights of others.

~~(g)~~(f) Action by Court; Hearing

(1) Name Change of Adult

~~After the time for filing objections and responses has expired, the~~ The court may hold a hearing or may rule on ~~the~~ a petition to change the name of an adult without a hearing and shall enter an appropriate order, except that the court shall not deny the petition without a hearing ~~if one was requested by the petitioner.~~ The court may not enter an order earlier than 30 days after the petition was filed.

Committee note: Although there is no publication or other required notice of a requested name change of an adult, if a person learns of a requested name change, the 30-day delay in the entry of an order after the petition is filed affords a period of time within which an objection could be filed.

(2) Name Change of Minor

The court may hold a hearing or may rule on a petition to change the name of a minor without a hearing and enter an appropriate order if all the consents required by subsection (c)(2)(B) have been filed. In all other cases in which a name

change of a minor is requested, the court shall hold a hearing and enter an appropriate order no earlier than 30 days after all nonconsenting parents, guardians, or custodians have been served in accordance with section (d) of this Rule.

Source: This Rule is derived in part from former Rules BH70 through BH75 and is in part new.

Rule 15-901 was accompanied by the following Reporter's note:

Proposed amendments to Rule 15-901 conform the Rule to a recent statutory change and address recommendations by the Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Work Group. The Rules Committee previously approved the inclusion of a Committee note following current section (e)(2), which read: "The requirement of Code, Courts Article, §3-2201 that the court grant a motion to waive publication under this Rule does not preclude the court from taking other appropriate measures to ensure the integrity of the proceeding, protect the best interests of a minor child for whom a name change is ought, or prevent fraud."

During the discussion at the September 9, 2021 meeting, the Committee was informed that the Work Group planned to propose a complete revision of Rule 15-901. That proposal was submitted to the Rules Committee in late September and referred to the Family/Domestic Subcommittee, which recommends the following amendments:

Section (b) is amended to strike the current language related to venue and add new subsections (b)(1) and (b)(2). Subsection (b)(1) governs venue for a petition by an adult. It is derived from Code, Courts Article, §6-201. Subsection

(b)(2) governs venue for a petition on behalf of a minor. It is derived from Code, Courts Article, §6-202 (5), which applies to certain family law actions related to a child. The Work Group proposal included a provision for the petition to be filed in the county where the individual seeking the name change was born, providing an out-of-state resident who was born in Maryland access the name change process this way. The Subcommittee removed this from the Rule out of concern over jurisdiction, but notes the issue for the Rules Committee.

Section (c) is amended to add additional required information in a petition filed on behalf of a minor. Subsection (c)(1)(D) requires a statement explaining the petitioner's belief that the name change is in the child's best interest. Subsection (c)(1)(F) requires the petition to indicate whether parents, guardians, and custodians of the minor consent to the name change. If the minor is at least 10, the consent of the minor is also required. If the minor is younger, the requirement is that the minor does not object to the name change. This language is derived from the adoption statutes, including Code, Family Law Article, §§5-338, 5-3A-35, and 5-3B-35. The cross reference following subsection (c)(1) is amended to conform with current law. Subsection (c)(2) is amended to add subsection (c)(2)(B), which requires the consents mentioned in subsection (c)(1)(F) to be attached to the petition.

The bolded language in subsection (c)(1)(F) addresses a concern raised by the Chair regarding proper notice to a parent, guardian, or custodian who may lack proficiency in English. The petitioner must note this fact, if known, in the petition and state the language there is reason to believe the parent, guardian, or custodian will understand.

Sections (d) and (e) are reversed. New section (d) applies only to notice to nonconsenting parents, guardians, and custodians of a minor. The clerk must issue a notice to inform the parent, guardian, or custodian of the action and the right to object. Service of the notice is in the manner provided by Rule 2-121.

Section (e), applicable to the name change of an adult or a minor, states that any person may file an objection to the petition. The bolded language requires the clerk to issue the notice in English and in a second language where the petition indicated that a parent, guardian, or custodian entitled to notice may lack familiarity with the English language. The Access to Justice Department of the Administrative Office of the Courts has advised that generic court forms and notices are translated but case-specific orders and documents are not. If the notice under section (d) is standardized, it can be translated into five priority languages and additional languages as needed. A Committee note following the section states that a person with knowledge of any fraud, illegal purpose, or harm to the rights of others may object. A parent, guardian, or custodian of a minor who fails to file an objection within 30 days of service is deemed to have consented to the name change of the minor.

Former subsection (e)(2), publication, is deleted. Code, Courts Article, §3-2201 requires the court to waive the publication requirement on motion by the petitioner. The Work Group informed the Subcommittee that after consultation with the Maryland State Police and a representative for various credit reporting agencies, it was determined that publication is an antiquated method of providing notice and is not used by those entities to track name changes. An increasing number of states have eliminated the publication requirement without any substitute notice method, including New York

(by statute) and New Jersey (by court rule) in 2020. Other states that do not require publication sometimes require specific notice to interested persons, such as creditors and law enforcement, require additional documentation, such as a background check. The Subcommittee discussed the necessity of public notice for an adult name change and what, if any, standing another individual may have to object. Currently, there will be a public record of the name change through court records, although no notice will occur if the petitioner requests publication waiver, as is now permitted by law. Unless the file is shielded or sealed due to safety concerns or other good cause, the name change action can be located in court records, including Maryland Judiciary Case Search.

Section (f) governs action by the court on a petition. New subsection (f)(1) pertains to the name change of an adult. It permits the court to hold a hearing or rule without a hearing and enter an appropriate order. The court may not deny a petition without a hearing and may not enter an order earlier than 30 days after the petition is filed. A Committee note explains that the 30-day waiting period is to permit a person who learns of the name change to object, if there is cause.

New subsection (f)(2) applies to petitions on behalf of a minor. The court may hold a hearing or rule without a hearing and enter an appropriate order if the required consents have been filed. Where a parent, guardian, or custodian does not consent or objects, the court must hold a hearing. The hearing cannot be held earlier than 30 days after all nonconsenting parents, guardians, and custodians have been served.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-105 by deleting section (d) and by reletting sections (f) through (g), as follows:

RULE 9-105. SHOW CAUSE ORDER; DISABILITY OF A PARTY; OTHER NOTICE

. . .

~~(d) Notice of Name Change~~

~~If the person to be adopted is an adult and the petitioner desires to change the name of the person to be adopted to a surname other than that of the petitioner, notice of a proposed change of name shall also be given in the manner provided in Rule 15-901.~~

. . .

~~(e)~~ (d) Form of Show Cause Order

. . .

~~(f)~~ (e) Form of Notice of Objection

. . .

~~(g)~~ (f) Form of Notice for Service by Publication and Posting

. . .

Source: This Rule is in part derived from former Rule D74 and is in part new.

Rule 9-105 was accompanied by the following Reporter's note:

> The proposed deletion of section (d) in Rule 9-105 is a conforming amendment necessitated by the proposed amendments to Rule 15-901. Section (d) required a petitioner adopting an adult who seeks a name change other than to the surname of the petitioner to comply with the notice requirements of Rule 15-901. The proposed amendments to Rule 15-901 delete the notice and publication requirement for adult name change petitions.

Judge Bryant explained that the Committee approved amendments to Rule 15-901 at the September meeting in response to legislation that requires a judge to waive publication under the current Rule on request by the petitioner. At that meeting, the Committee was informed that the LGBTQ+ Family Law Work Group of the Maryland Judicial Council Domestic Law Committee was in the process of recommending a more significant overhaul of the Rule. The work group provided a proposal to the Family/Domestic Subcommittee for consideration and the Subcommittee approved the amendments now before the Committee.

Judge Bryant explained that there was discussion about the appropriate venue for a name change and the Subcommittee recommended tracking venue statutes, striking the work group's recommendation that venue is appropriate where the petitioner was born. She also noted that with respect to minors, there are provisions for the consent of parents, guardians, and custodians as well as the minor whose name is being changed, if the child

is at least ten years old. The proposal also streamlines the process where all adults who must consent agree to the name change of a minor.

The Chair pointed out the bolded language in subsection (c)(1)(F) regarding a parent, guardian, or custodian who is unfamiliar with English. The Reporter explained that the bolded language was added after the Subcommittee approved the Rule, so it will require a motion to approve the additional language. She noted that the Administrative Office of the Courts can translate the form notice to alert the parent, guardian, or custodian about the proceeding. The petition itself cannot be translated as a case-specific document, but the notice can advise the recipient to seek additional translation services.

Del. Emily K. Shetty, sponsor of the House of Delegates bill that requires judges to waive the publication requirement, thanked the Committee for its work on the Rule. She said that on behalf of herself and Senate sponsor Sen. Shelly L. Hettleman, she wanted to clarify that the purpose of the legislation was to address privacy and safety concerns of members of the transgender community as well as victims of domestic violence.

Judge DiPietro, chair of the work group, thanked the members of the Family/Domestic Subcommittee for their work on the proposal. He explained that the work group requests that

the venue provision be amended to include place of birth, explaining that it will assist individuals who have Maryland birth certificates but do not live in Maryland. He said that Maryland has an interest in accurate records, and statutes provide for the ability of an out-of-state resident to alter a Maryland birth certificate. He also requested that the petition include a statement explaining why venue is appropriate.

Mx. Hoffman, Legal Director of FreeState Justice, informed the Committee that there are situations where an individual born in Maryland but residing out of state could need to access the name change process. Some countries do not have a way to obtain a court order changing someone's name, which prevents individuals living outside of the United States from changing a Maryland birth certificate. In one instance, FreeState Justice advised a petitioner to bring a cause of action under the court's general equitable jurisdiction, which was ultimately successful. Mx. Hoffman also noted that situations exist where states have different requirements to update a name or gender marker and individuals who are not current Maryland residents could need to file here. The Chair asked about the status of a Rule to create a process for judicial declaration of gender identity. The Reporter explained that the work group is drafting a proposal now to permit a declaration of gender

identity and optional name change in one filing. Rule 15-901 is ready to be considered now.

Judge DiPietro said that the venue suggestion is for extenuating circumstances where an individual was born in Maryland but cannot access the name change process where that individual now resides. If place of birth is added back to the venue provision, he also said that subsection (c)(1) should be updated to include a statement as to why venue is appropriate. Judge Nazarian moved to amend subsection (b)(1) to include place of birth as a proper venue for an adult petition. Assistant Reporter Cobun asked if the Committee would also include place of birth in subsection (b)(2) pertaining to minors. Judge Bryant responded that the Subcommittee considered petitions on behalf of minors to be different and opposed expanding venue for those petitions. There was no motion to amend subsection (b)(2).

The Chair pointed out that venue is usually done by statute and asked if there was a problem with the Committee determining venue by Rule. Judge DiPietro responded that venue in guardianships is done by Rule. Judge Nazarian's motion to amend subsection (b)(1) and to add a statement as to venue in subsection (c)(1) was seconded and approved by consensus.

Judge DiPietro also pointed out that subsection (f)(2) is unclear about whether the court can rule on a petition on behalf

of a minor without a hearing if a parent, guardian, or custodian has not responded to the notice. The proposed Rule deems lack of response a consent. Judge Nazarian moved to amend subsection (f)(2) to permit the court to grant a petition for a minor where all consents have been filed "or no timely objections have been filed." Judge Bryant seconded the amendment and it was approved by majority vote.

The Reporter asked for a motion to approve the bolded language related to non-English speaking parents, guardians, and custodians. Judge Bryant moved to adopt the language. The motion was seconded and approved by consensus.

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

Judge Bryant said that the proposed conforming amendment to Rule 9-105 deletes a reference to the publication process, which is removed from Rule 15-901. 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 9-103 (Petition)

Judge Bryant presented Rule 9-103, Petition, for consideration.

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-103 by adding an exception to subsection (b)(2)(A), by adding new subsection (b)(2)(B) governing certain petitions filed pursuant to a statute, and by re-lettering current subsection (b)(2)(B) as subsection (b)(2)(C), as follows:

RULE 9-103. PETITION

(a) Titling of Case

A proceeding shall be titled "In re Adoption/Guardianship of _____ (first name and first initial of last name of prospective adoptee or ward)."

(b) Petition for Adoption

(1) Contents

A petition for adoption shall be signed and verified by each petitioner and shall contain the following information:

(A) The name, address, age, business or employment, and employer of each petitioner;

(B) The name, sex, and date and place of birth of the person to be adopted;

(C) The name, address, and age of each parent of the person to be adopted;

(D) Any relationship of the person to be adopted to each petitioner;

(E) The name, address, and age of each child of each petitioner;

(F) A statement of how the person to be adopted was located (including names and addresses of all intermediaries or surrogates), attaching a copy of all

advertisements used to locate the person, and a copy of any surrogacy contract;

Committee note: If the text of an advertisement was used verbatim more than once, the requirement that a copy of all advertisements be attached to the petition may be satisfied by attaching a single copy of the advertisement, together with a list of the publications in which the advertisement appeared and the dates on which it appeared.

(G) If the person to be adopted is a minor, the names and addresses of all persons who have had legal or physical care, custody, or control of the minor since the minor's birth and the period of time during which each of those persons has had care, custody, or control, but it is not necessary to identify the names and addresses of foster parents, other than a petitioner, who have taken care of the minor only while the minor has been committed to the custody of a child placement agency;

(H) If the person to be adopted is a minor who has been transported from another state to this State for purposes of placement for adoption, a statement of whether there has been compliance with the Interstate Compact on the Placement of Children (ICPC);

(I) If applicable, the reason why the spouse of the petitioner is not joining in the petition;

(J) If there is a guardian with the right to consent to adoption for the person to be adopted, the name and address of the guardian and a reference to the proceeding in which the guardian was appointed;

(K) Facts known to each petitioner that may indicate that a party has a disability that makes the party incapable of consenting or participating effectively in the proceedings, or, if no such facts are

known to the petitioner, a statement to that effect;

(L) Facts known to each petitioner that may entitle the person to be adopted or a parent of that person to the appointment of an attorney by the court;

(M) If a petitioner desires to change the name of the person to be adopted, the name that is desired;

(N) As to each petitioner, a statement whether the petitioner has ever been convicted of a crime other than a minor traffic violation and, if so, the offense and the date and place of the conviction;

(O) That the petitioner is not aware that any required consent has been revoked; and

(P) If placement pending final action on the petition is sought in accordance with Code, Family Law Article, § 5-3B-12, a request that the court approve the proposed placement.

(2) Exhibits

(A) Except for an adoption pursuant to Code, Family Law Article, §5-3B-27, ~~The~~ the following documents shall accompany the petition as exhibits:

(i) A certified copy of the birth certificate or "proof of live birth" of the person to be adopted;

(ii) A certified copy of the marriage certificate of each married petitioner;

(iii) A certified copy of all judgments of divorce of each petitioner;

(iv) A certified copy of any death certificate of a person whose consent would be required if that person were living;

(v) A certified copy of all orders concerning temporary custody or guardianship of the person to be adopted;

(vi) A copy of any existing adoption home study by a licensed child placement agency concerning a petitioner, criminal background reports, or child abuse clearances;

(vii) A document evidencing the annual income of each petitioner;

(viii) The original of all consents to the adoption, any required affidavits of translators or attorneys, and, if available, a copy of any written statement by the consenting person indicating a desire to revoke the consent, whether or not that statement constitutes a valid revocation;

Cross reference: See Code, Family Law Article, §§5-331, 5-338, and 5-339 as to a Public Agency Adoption without Prior TPR; 5-345, 5-350, and 5-351 as to a Public Agency Adoption after TPR; 5-3A-13, 5-3A-18, and 5-3A-19 as to a Private Agency Guardianship; 5-3A-35 as to a Private Agency Adoption; and 5-3B-20 and 5-3B-21 as to an Independent Adoption.

(ix) If applicable, proof of guardianship or relinquishment of parental rights granted by an administrative, executive, or judicial body of a state or other jurisdiction; a certification that the guardianship or relinquishment was granted in compliance with the jurisdiction's laws; and any appropriate translation of documents required to allow the child to enter the United States;

Cross reference: See Code, Family Law Article, §§5-305, 5-331, and 5-338 as to a Public Agency Adoption without Prior TPR; 5-305 and 5-345 as to a Public Agency Adoption after TPR; 5-3A-05, 5-3A-13, and 5-3A-18 as to a Private Agency Guardianship; 5-3A-05 as to a Private Agency Adoption; and 5-3B-04 and 5-3B-20 as to an Independent Adoption.

(x) If a parent of the person to be adopted cannot be identified or located, an affidavit of each petitioner and the other parent describing the attempts to identify and locate the unknown or missing parent;

Cross reference: See Code, Family Law Article, §§ 5-331 and 5-334 as to a Public Agency Adoption without Prior TPR and 5-3B-15 as to an Independent Adoption.

(xi) A copy of any agreement between a parent of the person to be adopted and a petitioner relating to the proposed adoption with any required redaction;

Cross reference: See Code, Family Law Article, §§ 5-308 and 5-331 as to a Public Agency Adoption without Prior TPR; 5-308 and 5-345 as to a Public Agency Adoption after TPR; 5-3A-08 as to a Private Agency Adoption; and 5-3B-07 as to an Independent Adoption.

(xii) If the adoption is subject to the Interstate Compact on the Placement of Children, the appropriate ICPC approval forms;

Cross reference: Code, Family Law Article, § 5-601.

(xiii) A brief statement of the health of each petitioner signed by a physician or other health care provider if applicable; and

(xiv) If required, a notice of filing as prescribed by Code, Family Law Article:

(1) § 5-331 in a Public Agency Adoption without Prior TPR; or

(2) § 5-345 in a Public Agency Adoption after TPR.

(B) If the petition is filed pursuant to Code, Family Law Article, §5-3B-27 by the spouse of the prospective adoptee's mother or an individual who consented to the

prospective adoptee's conception by means of assisted reproduction, the following documents shall accompany the petition as exhibits:

(i) A certified copy of the petitioner's and prospective adoptee's mother's marriage certificate or evidence of the parties' shared express intent to become parents of the child by means of assisted reproduction, including a copy of any written agreement consenting to the conception of the prospective adoptee by means of assisted reproduction;

(ii) A certified copy of the prospective adoptee's birth certificate;

(iii) A statement explaining the circumstances of the prospective adoptee's conception in detail sufficient to identify any individual who may be entitled to notice or whose consent may be required under this subtitle;

(iv) The original of all consents to the adoption, any required affidavits of translators or attorneys, and, if available, a copy of any written statement by the consenting person indicating a desire to revoke the consent, whether or not that statement constitutes a valid revocation; and

(v) An affidavit of counsel for a child, if the child is represented.

Cross reference: Code, Family Law Article, §5-3B-27.

~~(B)~~ (C) The following documents shall be filed before a judgment of adoption is entered:

(i) Any post-placement report relating to the adoption, if applicable;

Cross reference: See Code, Family Law Article, §§ 5-337 as to a Public Agency Adoption without Prior TPR; 5-349 as to a Public Agency Adoption after TPR; 5-3A-31

and 5-3A-34 as to a Private Agency Adoption; and 5-3B-16 as to an Independent Adoption.

(ii) A brief statement of the health of the child by a physician or other health care provider;

(iii) If required by law, an accounting of all payments and disbursements of any money or item of value made by or on behalf of each petitioner in connection with the adoption;

Cross reference: Code, Family Law Article, § 5-3B-24 as to an Independent Adoption.

(iv) An affidavit of counsel for a parent, if required by Code, Family Law Article:

(1) §§ 5-307 and 5-339 in a Public Agency Adoption without Prior TPR;

(2) §§ 5-3A-07 and 5-3A-19 in a Private Agency Guardianship; or

(3) §§ 5-3B-06 and 5-3B-21 in an Independent Adoption.

(v) An affidavit of counsel for a child, if the child is represented;

Cross reference: See Code, Family Law Article, §§ 5-307 and 5-338 as to a Public Agency Adoption without Prior TPR; 5-307 and 5-350 as to a Public Agency Adoption after TPR; 5-3A-07 and 5-3A-35 as to a Private Agency Adoption; and 5-3B-06 and 5-3B-20 as to an Independent Adoption.

(vi) If the adoption is subject to the Interstate Compact on the Placement of Children, the required post-placement form;

(vii) A proposed judgment of adoption; and

(viii) A Maryland Department of Health Certificate of Adoption Form.

Cross reference: Code, Health-General Article, § 4-211 (f).

(c) Petition for Guardianship

A petition for guardianship shall state all facts required by subsection (b)(1) of this Rule, to the extent that the requirements are applicable and known to the petitioner. It shall be accompanied by all documents required to be filed as exhibits by subsection (b)(2) of this Rule, to the extent the documents are applicable. The petition shall also state the license number of the child placement agency.

Cross reference: See Code, Family Law Article, §5-3A-13 as to a Private Agency Guardianship.

(d) If Facts Unknown or Documents Unavailable

If a fact required by subsection (b)(1) or section (c) of this Rule is unknown to a petitioner or if a document required by subsection (b)(2) or section (c) is unavailable, the petitioner shall so state and give the reason in the petition or in a subsequent affidavit. If a document required to be submitted with the petition becomes available after the petition is filed, the petitioner shall file it as soon as it becomes available.

(e) Disclosure of Facts Known to Child Placement Agency

If any fact required by subsection (b)(1) of this Rule to be stated is known to a child placement agency and the agency declines to disclose it to a petitioner, the agency shall disclose the fact to the court in writing at the time the petition is filed.

Source: This Rule is derived in part from former Rule D72, in part from former Rule D80, and is in part new.

Rule 9-103 was accompanied by the following Reporter's note:

> Proposed amendments to Rule 9-103 conform the Rule to the provisions in Code, Family Law Article, §5-3B-27. The statute was added in 2019 to streamline adoptions by individuals using assisted reproduction. The statute contains a list of documents to file along with an adoption petition pursuant to that Code section. The Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Work Group informed the Family and Domestic Subcommittee that since the passage of the statute, there has been confusion about whether the requiring filings listed in the statute replace the required attachments in Rule 9-103 or are supplemental. Certain attachments in Rule 9-103 (b)(2)(A) are either duplicative of the statute or irrelevant to the type of adoption governed by the statute.
>
> Subsection (b)(2)(A) is amended to exclude adoptions pursuant to Code, Family Law Article, §5-3B-27. New subsection (b)(2)(B) lists the required attachments to a petition for adoption pursuant to that statute. Current subsection (b)(2)(B) is re-lettered as (b)(2)(C).

Judge Bryant said that the proposed amendments streamline the Rule as it pertains to adoptions under Code, Family Law Article, §5-3B-07. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 7. Consideration of proposed amendments to Rule 2-506 (Voluntary Dismissal) and Rule 3-506 (Voluntary Dismissal)

Judge Price presented Rules 2-506, Voluntary Dismissal, and 3-506, Voluntary Dismissal, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-506 by creating new subsection (b)(1) using language from current section (b) and adding language concerning the contents of a notice of dismissal upon stipulated terms; by creating new subsection (b)(2) using the remaining language from current section (b), with stylistic changes, and adding language addressing the filing and service requirements of a motion to enforce the stipulated terms; and by adding a Committee note after section (b) concerning the filing of the written settlement agreement or disclosure of its terms and the signing of an affidavit of non-compliance, as follows:

RULE 2-506. VOLUNTARY DISMISSAL

...

(b) Dismissal Upon Stipulated Terms

(1) Notice of Dismissal

If an action is settled upon written stipulated terms and dismissed, the plaintiff shall file a Notice of Dismissal that: (A) states that the parties have entered into a written settlement agreement; (B) if the agreement specifies a date by which all terms of the agreement are to be satisfied, states that date; and (C) states that the agreement includes a provision obligating the parties to keep the court and other parties to the agreement informed in

writing of their current addresses until satisfaction of the agreement.

(2) Enforcement of Stipulated Terms

The action may be reopened ~~at any time~~ upon ~~request of any~~ motion of a party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief. A copy of the settlement agreement and an affidavit of non-compliance stating the balance due or stipulated term to be enforced shall accompany the motion. Service of the motion and accompanying documents shall be made in accordance with Rule 1-321 (a).

Committee note: Except in conjunction with a motion to enforce the stipulated terms, the parties are not required to file a copy of the written settlement agreement or disclose its terms. An affidavit of non-compliance filed pursuant to subsection (b)(2) of this Rule may be signed by a party, an attorney for the party, or other person with knowledge of the non-compliance.

...

Rule 2-506 was accompanied by the following Reporter's note:

Attorneys have recently raised concerns or questions about dismissals upon stipulated terms in the District court and in the circuit courts. First, when a party fails to comply with the stipulated terms of an agreement, the opposing party can file a motion and request entry of a judgment. While some courts have entered judgment based on the motion, other courts have required that a summons be reissued and served before the entry of a judgment. The Committee has been asked to clarify the form of service required when a party moves to

reopen a case based on another party's failure to comply with stipulated terms.

Second, a concern has been raised about the confidentiality of the stipulated terms. Attorneys often file form Stipulations of Dismissal that indicate the action was settled upon written stipulated terms between the parties. The details of the settlement are not provided in the dismissal. In some jurisdictions, judges have refused to permit dismissal unless the terms of the settlement are provided. The Committee has been asked to clarify whether parties have a right to maintain confidentiality regarding the terms of a settlement.

Dismissals upon stipulated terms are addressed in the circuit court and in the District Court by Rules 2-506 and 3-506, respectively. Proposed amendments to Rules 2-506 and 3-506 separate section (b) into two subsections. New subsection (b)(1) addresses the requirements of the Notice of Dismissal. The Notice shall state that the parties have entered into a written settlement agreement, provide the date, if specified in the agreement, by which all terms of the agreement are to be satisfied, and state that the agreement obligates the parties to keep the court and other parties to the agreement informed in writing of their current addresses until satisfaction of the agreement.

New subsection (b)(2) concerns the enforcement of stipulated terms. Amendments clarify the process by which a case may be reopened for enforcement of an agreement. The action may be reopened upon motion of a party to the settlement. The motion shall be accompanied by a copy of the agreement and an affidavit of non-compliance. Service of the motion is to be completed in accordance with Rule 1-321. Personal service pursuant to Rule 2-121 or Rule 3-121 is not required because, pursuant to

subsection (b)(1), the parties' agreement requires that they maintain current addresses with the court and other parties until the agreement is satisfied.

A Committee note after the subsection highlights that parties are not required to file a copy of a written settlement agreement or disclose its terms unless moving to enforce the stipulated terms. The Committee note further explains that an affidavit of non-compliance as required by subsection (b)(2) may be signed by a party, an attorney for the party, or a person with knowledge of the non-compliance.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-506 by creating new subsection (b)(1) using language from current section (b) and adding language concerning the contents of a notice of dismissal upon stipulated terms; by creating new subsection (b)(2) using the remaining language from current section (b), with stylistic changes, and adding language addressing the filing and service requirements of a motion to enforce the stipulated terms; and by adding a Committee note after section (b) concerning the filing of the written settlement agreement or disclosure of its terms and the signing of an affidavit of non-compliance, as follows:

RULE 2-506. VOLUNTARY DISMISSAL

...

(b) Dismissal Upon Stipulated Terms

(1) Notice of Dismissal

If an action is settled upon written stipulated terms and dismissed, the plaintiff shall file a Notice of Dismissal that: (A) states that the parties have entered into a written settlement agreement; (B) if the agreement specifies a date by which all terms of the agreement are to be satisfied, states that date; and (C) states that the agreement includes a provision obligating the parties to keep the court and other parties to the agreement informed in writing of their current addresses until satisfaction of the agreement.

(2) Enforcement of Stipulated Terms

The action may be reopened ~~at any time~~ upon ~~request of any~~ motion of a party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief. A copy of the settlement agreement and an affidavit of non-compliance stating the balance due or stipulated term to be enforced shall accompany the motion. Service of the motion and accompanying documents shall be made in accordance with Rule 1-321 (a).

Committee note: Except in conjunction with a motion to enforce the stipulated terms, the parties are not required to file a copy of the written settlement agreement or disclose its terms. An affidavit of non-compliance filed pursuant to subsection (b)(2) of this Rule may be signed by a party, an attorney for the party, or other person with knowledge of the non-compliance.

...

Rule 3-506 was accompanied by the following Reporter's note:

> Attorneys have recently raised concerns or questions about dismissals upon stipulated terms pursuant to Maryland Rules 2-506 and 3-506. For discussion of the proposed amendments, see the Reporter's Note for Rule 2-506.

Judge Price explained that the proposed amendments to Rules 2-506 and 3-506 came about through letters to the Committee from practitioners. Ernest I. Cornbrooks, III wrote to express concern about certain judges requiring that confidential settlement documents be filed with the court with a stipulated dismissal (see Appendix B). Peter Ramsey Helt wrote separately to ask for guidance when a party seeks to reopen a case after a stipulated dismissal, including what kind of service is required on the opposing party (see Appendix C).

Judge Price said that the proposed revisions to the Rules seek to clarify what must be filed with a stipulated dismissal and the procedure to reopen a case. The parties must state the date when the agreement ends, if known, and agree to keep each other informed of current addresses for the duration of the agreement so that post-settlement filings can be served by first class mail. When seeking to reopen a case for noncompliance, the settlement agreement must be attached.

Chief Judge Morrissey said that District Court Alternative Dispute Resolution mediators asked if the written agreements that they draft after a mediation, which purport to dismiss the

case but are not formal notices of dismissal, would comply with the amended Rule. Judge Price suggested removing the capitalization of "Notice of Dismissal" so that it is less rigid. Chief Judge Morrissey agreed. By consensus, the Committee approved the Rule as amended.

Agenda Item 8. Consideration of proposed amendments to Rule 2-535 (Revisory Power) and Rule 3-535 (Revisory Power)

Judge Price presented Rules 2-535, Revisory Power, and 3-535, Revisory Power, for consideration.

MARYLAND RULES

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-535 by adding a Committee note following section (a), as follows:

Rule 2-535. REVISORY POWER

(a) Generally

On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated

as filed on the same day as, but after, the entry on the docket.

Committee note: Where a motion to vacate a judgment entered based on a party's failure to appear at a proceeding, the court may consider relevant emergency circumstances that contributed to the failure to appear, if presented with information by the moving party.

In the event of a public health emergency, factors to consider include lack of access to a platform to participate in a remote proceeding, stay-at-home or quarantine orders issued by a local government or health authority, and the immunocompromised status of the party or a member of the party's household.

(b) Fraud, Mistake, Irregularity

On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Committee note: This section is intended to be as comprehensive as Code, Courts Article, § 6-408.

(c) Newly-Discovered Evidence

On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.

(d) Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court,

and thereafter with leave of the appellate court.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 625 a.
Section (b) is derived from former Rule 625 a.
Section (c) is derived from former Rule 625 b.
Section (d) is derived from the 1948 version of Fed. R. Civ. P. 60 (a) and former Rule 681.

Rule 2-535 was accompanied by the following Reporter's note:

Proposed amendments to Rule 2-535 are recommended by the Maryland Judicial Council Court Access and Community Relations Committee and the Maryland Attorney General's COVID-19 Access to Justice Task Force. The Judgments Subcommittee was informed about concerns that the ongoing pandemic and the related move toward remote proceedings, where possible, may disproportionately impact low-income and self-represented litigants who fail to appear due to technology or health problems.

The proposed Committee note following section (a) informs judges and litigants that emergency circumstances which contribute to a party's failure to appear may be considered in determining whether it is appropriate to vacate a judgment which was entered against the non-appearing party. The second paragraph specifically identifies factors to consider where a party claims that their absence was due to a public health emergency.

MARYLAND RULES

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-535 by adding a Committee note following section (a), as follows:

Rule 3-535. REVISORY POWER

(a) Generally

On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and may take any action that it could have taken under Rule 3-534.

Committee note: Where a motion to vacate a judgment entered based on a party's failure to appear at a proceeding, the court may consider relevant emergency circumstances that contributed to the failure to appear, if presented with information by the moving party.

In the event of a public health emergency, factors to consider include lack of access to a platform to participate in a remote proceeding, stay-at-home or quarantine orders issued by a local government or health authority, and the immunocompromised status of the party or a member of the party's household.

Cross reference: For default judgments relating to citations issued for certain record-keeping violations, see Code, Transportation Article, §15-115.

(b) Fraud, Mistake, Irregularity

On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Committee note: This section is intended to be as comprehensive as Code, Courts Article, § 6-408.

(c) Newly-Discovered Evidence

On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 3-533.

(d) Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 625 a.
Section (b) is derived from former M.D.R. 625 a.
Section (c) is derived from former M.D.R. 625 b.
Section (d) is derived from the 1948 version of Fed. R. Civ. P. 60 (a) and former Rule 681.

Rule 3-535 was accompanied by the following Reporter's note:

Proposed amendments to Rule 3-535 are recommended by the Maryland Judicial Council Court Access and Community Relations Committee and the Maryland Attorney General's COVID-19 Access to Justice Task

Force. See the Reporter's note to Rule 2-535 for more information.

Judge Price said that the proposed amendments to Rules 2-535 and 3-535 were suggested by the Maryland Judicial Council Court Access and Community Relations Committee, on recommendation of the Maryland Attorney General's COVID-19 Access to Justice Task Force. Those groups expressed concern about default judgments where a failure to appear in a civil case was the result of lack of remote access or the ability to travel to court due to an emergency such as the COVID-19 pandemic. Judge Price explained that the District Court Subcommittee first looked at Rule 2-613 (Default Judgments) but determined that the concept should be added to a Committee note in the Rules governing the court's revisory power. The note in each Rule informs the court that emergency circumstances may be considered in determining whether to exercise revisory power over a judgment. She suggested that the language of the Committee note be amended to begin "When reviewing a motion" rather than "Where a motion." By consensus, the Committee approved the amendment.

The Chair commented that the reference to public health emergencies may be too limiting, because other emergencies such as natural disasters could contribute to a party's failure to appear. He asked if the Subcommittee discussed referring to

other emergencies. Judge Price responded that the focus of the discussion was around public health emergencies like the pandemic but agreed that the reference to emergencies could be expanded. Judge White, chair of the Court Access Committee, suggested that the second paragraph of the Committee note be amended to read, "In the event of a public health or other emergency." She pointed out that the recommendation came from a COVID-19 task force in the Attorney General's Office, but the actual recommendation is not limited to a public health emergency. The task force report references "another state of emergency." Judge Bryant suggested the note read "or other declared emergency" to clarify that some governmental entity must make the determination. Judge Price asked if the Committee note should reference other types of emergency situations since the examples listed focus on public health emergencies. The Chair suggested deleting "health" from the phrase "local government or health authority." Judge Price suggested referring to lack of access to reliable transportation. Chief Judge Morrissey commented that he is uncertain how to consider "immunocompromised status" of a party. Judge Bryant suggested specifying that the immunocompromised status must be "medically verifiable." She moved to include the language and the amendment was approved by consensus. There being no motion to

further amend or reject the proposed Rules, they were approved as amended.

Agenda Item 9. Consideration of proposed amendments to Rule 2-649 (Charging Order) and 3-649 (Charging Order)

Judge Price presented Rules 2-649 (Charging Order) and 3-649 (Charging Order) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-649 by adding language related to a judgment debtor's economic interest in a limited liability company, as follows:

RULE 2-649. CHARGING ORDER

(a) Issuance of Order

Upon the written request of a judgment creditor of a partner or member holding an economic interest in a limited liability company, the court where the judgment was entered or recorded may issue an order charging the partnership interest or limited liability company interest of the judgment debtor with payment of all amounts due on the judgment. The court may order such other relief as it deems necessary and appropriate, including the appointment of a receiver for the judgment debtor's share of the partnership or limited liability company profits and any other money that is or becomes due to the judgment debtor by reason

of the partnership or limited liability company interest.

(b) Service

The order shall be served on the partnership or limited liability company in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction. The order may be served in or outside the county. Promptly after service of the order upon the partnership or limited liability company, the person making service shall mail a copy of the request and order to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 2-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and partnership or limited liability company in the manner provided by Rule 1-321.

Committee note: If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is new.

Rule 2-649 was accompanied by the following Reporter's note:

Proposed amendments to Rules 2-649 and 3-649 extend the provisions of those Rules to a judgment debtor's membership interest in a limited liability company in addition to a partnership. The Rules permit the court, on written request by a creditor, to issue an order charging the partnership interest of a judgment debtor. Section (b) provides that service shall be on the partnership pursuant to Title 2, Chapter

100. After service on the partnership, a copy of the request and order is mailed to the judgment debtor. The service mechanism allows the creditor to serve the partnership first and prevent dissipation of assets.

The Judgments Subcommittee was informed that the statutory provisions for charging orders against partnership interest and LLC membership interest are nearly identical (Code, Corporations and Associations Article, §9A-504 and §4A-607) but attorneys are only sometimes successful in obtaining a charging order and serving it against an LLC without first notifying the judgment debtor. The proposed amendments add economic interest in an LLC to the charging order Rules.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-649 by adding language related to a judgment debtor's economic interest in a limited liability company, as follows:

RULE 3-649. CHARGING ORDER

(a) Issuance of Order

Upon the written request of a judgment creditor of a partner <u>or member holding an economic interest in a limited liability company</u>, the court where the judgment was entered or recorded may issue an order charging the partnership interest <u>or limited liability company interest</u> of the judgment debtor with payment of all amounts due on the judgment. The court may order such

other relief as it deems necessary and appropriate, including the appointment of a receiver for the judgment debtor's share of the partnership or limited liability company profits and any other money that is or becomes due to the judgment debtor by reason of the partnership or limited liability company interest.

(b) Service

The order shall be served on the partnership or limited liability company in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction. The order may be served in or outside the county. Promptly after service of the order upon the partnership or limited liability company, the person making service shall mail a copy of the request and order to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 3-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and partnership or limited liability company in the manner provided by Rule 1-321.

Committee note: If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is new.

Rule 3-649 was accompanied by the following Reporter's note:

Proposed amendments to Rules 2-649 and 3-649 extend the provisions of those Rules to a judgment debtor's membership interest in a limited liability company in addition

to a partnership. See the Committee note to Rule 2-649 for more information.

Judge Price said that the proposed amendments to Rules 2-649 and 3-649 include limited liability company interests in the charging order Rules. The statutes governing charging the partnership interest of a debtor and the limited liability company interest of a debtor are parallel, but the concept of limited liability company interests was never incorporated into these Rules. There being no motion to amend or reject the proposed Rules, they were approved as presented.

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