SUPREME COURT STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms 236-237 of the Maryland Judicial Center, 187 Harry S. Truman Parkway, Annapolis, Maryland on Thursday, June 20, 2024.

Members present:

Hon. Alan M. Wilner, Chair
Hon. Douglas R.M. Nazarian, Vice Chair

Hon. Tiffany Anderson
Hon. Pamila J. Brown
Hon. Yvette Bryant
Hon. Catherine Chen
Del. Luke Clippinger
Julia Doyle, Esq.
Brian Kane, Esq.
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Stephen S. McCloskey, Esq.
Judy Rupp, State Court Administrator
Scott D. Shellenberger, Esq.
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Brian Zavin, Esq.
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Meredith A. Drummond, Esq., Assistant Reporter
Heather Cobun, Esq., Assistant Reporter

Amy Brennan, Esq., Deputy Chief Attorney, Appellate Division, Office of the Public Defender
Thomas DeGonia, Esq., Bar Counsel
Christine DuFour, Esq.
Hon. Dan Friedman, Appellate Court of Maryland
Michael Hudak, Esq., MSBA
Kelly Hughes Iverson, Esq.
Moonisha Huq
Ronald Jarashow, Esq.
Cynthia Jurrius, Esq., Program Director, Maryland Judiciary Mediation and Conflict Resolution Office
Shaoli Katana, Esq., MSBA

Connie Kratovil-Lavelle, Esq., MSBA
Marianne Lee, Esq., Executive Counsel and Director, Attorney Grievance Commission
Hon. John Morrissey, Chief Judge, District Court
Hon. John Nugent, Circuit Court for Baltimore City
Kelley O'Connor, Assistant State Court Administrator
Pamela Ortiz, Esq., Director, Access to Justice
Suzanne Pelz, Esq., Senior Government Relations & Public Affairs Officer
Gillian Tonkin, Esq., Staff Attorney to Chief Judge, District Court
George Tolley, Esq.
James Tuomey, Esq.

The Chair convened the meeting. He informed the Committee that the Supreme Court recently reappointed Ms. Lindsey, Ms. Doyle, Mr. Marcus, and Mr. McCloskey to new five-year terms. In addition, the Court made a series of new appointments to fill vacancies left by departing members of the Committee: Jamar Brown of Rosenberg Martin Greenberg, LLP; Kathleen Meredith of Iliff, Meredith, Wildberger & Brennan, P.C.; and Judge Karen R. Ketterman of the Talbot County District Court. They are filling the seats vacated by Mr. Zollicoffer, Mr. Kramer, and Judge Brown, respectively. The Chair thanked the outgoing members for their service on the Committee. The new appointments take effect on July 1, 2024.

The Chair informed the Committee that some subcommittee assignments have been altered to accommodate the change in membership. He asked any members who want to ask for a different assignment to contact staff. The Chair said that the

minutes from the May 17, 2024 meeting were circulated for review. He called for any amendments or discussion on the minutes. Hearing none, he called for a motion to approve the minutes. A motion to approve the minutes was made, seconded, and approved by majority vote.

The Reporter advised that the meeting was being recorded for the purpose of assisting with the preparation of meeting minutes and that speaking will be treated as consent to being recorded. The Reporter also informed the Committee that the meeting is the final one for Executive Aide Sarah McAdams, who is departing her position at the end of July. The Committee members expressed their appreciation for Ms. McAdams's service.

Agenda Item 1. Consideration of Rules changes proposed by the Special Subcommittee on *Voir Dire*

The Chair presented handout versions of Rule 2-512, Jury Selection, and Rule 4-312, July Selection, for consideration.

HANDOUT

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-512 by adding a reference to a certain statutory provision and replacing "may" with

"shall" in subsection (a)(2), by replacing "same" qualifications with "required" qualifications in section (b), by deleting certain words from the tagline of section (d), by changing the tagline of subsection (d)(1), by adding language to subsection (d)(1) concerning the purpose of examination and the discretion of the court, by adding a Committee note after subsection (d)(1), by creating new subsection (d)(2) with language from current subsection (d)(1), by adding a Committee note concerning the Model Jury Selection Questions after section (d), by re-lettering current subsection (d)(2) as section (e), and by re-lettering subsequent sections, as follows:

Rule 2-512. JURY SELECTION

(a) Jury Size and Challenge to the Array

(1) Size

Before a trial begins, the judge shall decide (A) the required number of sworn jurors, including any alternates, and (B) the size of the array of qualified jurors needed.

Cross reference: See Code, Courts Article, § 8-421(b).

(2) Insufficient Array

Subject to Code, Courts Article, § 8-421, if ~~**If**~~ the array is insufficient for jury selection, the trial judge ~~**may**~~ **shall** direct that additional qualified jurors be summoned at random from the qualified juror pool as provided by statute.

(3) Challenge to the Array

A party may challenge the array on the ground that its members were not selected or summoned according to law, or on any other ground that would disqualify the array as a whole. A challenge to the array shall be made and determined before any individual member of the array is examined, except that the trial judge for good cause may permit the challenge to be made after the jury is sworn but before any evidence is received.

(b) General Requirements

All individuals to be impanelled on the jury, including any alternates, shall be selected in the same manner, have the ~~**same**~~ **required** qualifications, and be subject to the same examination.

(c) Jury List

(1) Contents

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

(2) Dissemination

(A) Allowed

A party may provide the jury list to any person employed by the party to assist in jury selection. With permission of the trial judge, the list may be disseminated to other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.

(B) Prohibited

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

(3) Not Part of the Case Record; Exception

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

Cross reference: See Rule 16-934 concerning petitions to permit or deny inspection of a case record.

(d) Examination ~~and Challenges for Cause~~

(1) ~~Examination~~ Generally

The trial judge may permit the parties to conduct an examination of qualified jurors or may conduct ~~the~~ an examination after considering questions proposed by the parties. The purpose of an examination is to (A) identify and remove prospective jurors who **are not legally qualified to serve as a juror or** are unable to serve fairly and impartially and (B) allow the parties to obtain information that may provide guidance for the use of peremptory challenges and challenges for cause. Regardless of whether an examination is conducted by a judge or by the parties, the court retains discretion to preclude improper, excessive, or abusive questioning.

Committee note: The ability to use the examination of a prospective juror to obtain information that may provide guidance for the informed exercise of peremptory challenges does not limit or excuse the trial court's obligation to remove a prospective juror for cause who cannot serve fairly and impartially.

(2) Conduct of Examination

If the judge conducts the examination, the judge may permit the parties to supplement the examination by further inquiry or may submit to the jurors additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. On request of any party, the judge shall direct the clerk to call the roll of the array and to request each qualified juror to stand and be identified when called.

Committee note: The Maryland State Bar Association, Inc. has promulgated Model Jury Selection Questions for Maryland Civil Trials, which may provide guidance to the court and parties in the formulation of relevant questions for the examination of jurors.

~~(2)~~(e) Challenge for Cause

A party may challenge an individual qualified juror for cause. A challenge for cause shall be made and determined before the jury is sworn, or thereafter for good cause shown.

~~(e)~~(f) Peremptory Challenges

(1) Designation of Qualified Jurors; Order of Selection

Before the exercise of peremptory challenges, the trial judge shall designate those individuals on the jury list who remain qualified after examination. The number designated shall be sufficient to provide the required number of sworn jurors, including any alternates, after allowing for the exercise of peremptory challenges. The trial judge shall at the same time prescribe the order to be followed in selecting individuals from the list.

(2) Number; Exercise of Peremptory Challenges

Each party is permitted four peremptory challenges plus one peremptory challenge for each group of three or less alternates to be impanelled. For purposes of this section, all plaintiffs shall be considered as a single party and all defendants shall be considered as a single party unless the trial judge determines that adverse or hostile interests between plaintiffs or between defendants justify allowing one or more of them the separate peremptory challenges available to a single party. The parties shall simultaneously exercise their peremptory challenges by striking names from a copy of the jury list.

~~(f)~~(g) Impanelled Jury

(1) Impanelling

The individuals to be impanelled as sworn jurors, including any alternates, shall be called from the qualified jurors remaining on the jury list in the order previously designated by the trial judge and shall be sworn.

(2) Oath; Functions, Powers, Facilities, and Privileges

All sworn jurors, including any alternates, shall take the same oath and, until discharged from jury service, have the same functions, powers, facilities, and privileges.

(3) Discharge of Jury Member

At any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate in the order of selection set under subsection (e)(1). When the jury retires to consider its verdict, the trial judge shall discharge any remaining alternates who did not replace another jury member.

~~(g)~~(h) Foreperson

The trial judge shall designate a sworn juror as foreperson.

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

Rule 2-512 was accompanied by the following Reporter's note:

By letter dated April 11, 2024, the Chief Justice of the Supreme Court requested that the Rules Committee consider whether to recommend changes to the current scope of *voir dire*. Noting that the topic of *voir dire* was raised during the General Assembly's 2024 legislative session as Senate Bill 827 ("SB827"), the Chief Justice asked the Committee to address possible changes to the *voir dire* process at its May meeting.

The Rules Committee most recently considered changes to the *voir dire* process in 2014. In *Pearson v. State*, 437 Md. 350, 357 n.1 (2014), the Court of Appeals, now the Supreme Court, declined to "address

Pearson's contention that Maryland should discontinue limited *voir dire* by allowing *voir dire* to facilitate the intelligent use of peremptory challenges" and asked the Rules Committee "[t]o gather more information on the important issue of whether to maintain limited *voir dire*."

After discussing the topic at the June 19, 2014 Rules Committee meeting, the Committee transmitted its 185th Report with the results of its extensive research. The Report cited numerous resources, including publications from the National Center of State Courts ("NCSC") and standards and principles of the American Bar Association ("ABA").

The 185th Report contained five recommendations. In regard to the scope of *voir dire*, the Report stated, "The Court should join the Federal courts and the great majority of State courts and permit *voir dire* to include relevant inquiries designed to facilitate or guide the intelligent exercise of peremptory challenges, in both civil and criminal cases."

At the Rules Committee meeting on May 17, 2024, the Committee heard comments from several interested parties and discussed how to address the issues raised. After consideration, the topic of *voir dire* expansion was referred to a Special Subcommittee on *voir dire*. The Special Subcommittee recommends expanding the scope of *voir dire* by amending Rules 2-512 and 4-312.

Subsection (a)(2) addresses appropriate action if an array is insufficient for jury selection. Code, Courts Article, § 8-421 (b) provides, "If the parties in a civil case agree, a trial judge may dispense with selecting an array of at least 14 qualified jurors." Section (c) contains a similar provision for criminal cases. Rule 2-512 (a)(2) is updated to reflect that, subject to § 8-421, the trial judge is required to direct that additional qualified jurors be summoned if the array is insufficient for jury selection.

In section (b), the word "same" is replaced with "required" to indicate that all individuals impanelled on the jury must have the certain qualifications that are required by law.

Proposed amendments to Rule 2-512 update the tagline of section (d) to refer only to examinations of prospective jurors. Language concerning challenges for cause has been moved to a new section.

A new tagline for subsection (d)(1) reflects that the subsection now addresses examinations, generally. Proposed new language defines the scope of *voir dire* examination, primarily using the language of SB827. In addition to including the purposes of examination from the proposed legislation, amendments to subsection (d)(1) indicate that an examination may also aim to identify jurors who are not legally qualified to serve.

A proposed Committee note after subsection (d)(1) notes that the expanded scope of voir dire does not minimize the obligation of the trial court to remove jurors for cause.

New subsection (d)(2) addresses the conduct of the examination using language from current subsection (d)(1).

A proposed Committee note after section (d) highlights the existence of Model Jury Selection Questions promulgated by the MSBA. The Special Subcommittee has been advised that the MSBA is currently reviewing and, if needed, updating the Model Jury Selection Questions for both civil and criminal trials.

Current subsection (d)(2) is re-lettered as new section (e). Subsequent sections (e) through (g) are re-lettered as sections (f) through (h), respectively.

HANDOUT

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-312 by adding a reference to a certain statutory provision and replacing "may" with "shall" in subsection (a)(2), by replacing "same" qualifications with "required" qualifications in subsection (b)(1), by deleting certain words from the tagline of section (e), by changing the tagline of subsection (e)(1), by adding language to subsection (e)(1) concerning the purpose of examination and the discretion of the court, by adding a Committee note and cross reference after subsection (e)(1), by creating new subsection (e)(2) with language from current subsection (e)(1), by adding a Committee note concerning the Model Jury Selection Questions after section (e), by re-lettering current subsection (e)(2) as section (f), and by re-lettering subsequent sections, as follows:

Rule 4-312. JURY SELECTION

(a) Jury Size and Challenge to the Array

(1) Size

Before a trial begins, the trial judge shall decide (A) the required number of sworn jurors, including any alternates and (B) the size of the array of qualified jurors needed.

Cross reference: See Code, Courts Article, § 8-420(b).

(2) Insufficient Array

Subject to Code, Courts Article, § 8-421, if ~~**If**~~ the array is insufficient for jury selection, the trial judge ~~**may**~~ **shall** direct that additional qualified jurors be summoned at random from the qualified juror pool as provided by statute.

(3) Challenge to the Array

A party may challenge the array on the ground that its members were not selected or summoned according to law, or on any other ground that would disqualify the array as a whole. A challenge to the array shall be made and determined before any individual member of the array is examined, except that the trial judge for good cause may permit the challenge to be made after the jury is sworn but before any evidence is received.

(b) General Requirements

(1) Uniform Method of Impaneling

All individuals to be impaneled on the jury, including any alternates, shall be selected in the same manner, have the ~~**same**~~ **required** qualifications, and be subject to the same examination.

(2) Jurors Not to Be Addressed by Name

In any proceeding conducted in the courtroom or in chambers, a juror shall be referred to by juror number and not by name.

Committee note: The judge should advise prospective jurors and remind impaneled jurors that (1) it is standard procedure for jurors to be referred to in open court only by juror number and not by name, and (2) they may disclose their names to each other if they wish and, when not in open court, refer to each other by name, but they may not specifically disclose the names of other jurors to anyone else unless authorized by the judge.

(c) Jury List

(1) Contents

Subject to section (d) of this Rule, before the examination of qualified jurors, each party shall be provided with a list that includes each juror's name, city or town of residence, zip code, age, gender, education, occupation, and spouse's occupation. Unless the trial judge orders otherwise, the juror's street address or box number shall not be provided.

(2) Dissemination

(A) Allowed

A party may provide the jury list to any person employed by the party to assist in jury selection. With permission of the trial judge, the list may be disseminated to other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.

(B) Prohibited

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

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 4-322, a jury list is not part of the case record.

Cross reference: See Rule 16-913 (a) concerning disclosure of juror information by a custodian of court records.

(d) Nondisclosure of Names and City or Town of Residence

(1) Finding by the Court

If the court finds from clear and convincing evidence or information, after affording the parties an opportunity to be heard, that disclosure of the names or the city or town of residence of prospective jurors will create a substantial danger that (i) the safety and security of one or more jurors will likely be imperiled, or (ii) one or more jurors will likely be subjected to coercion, inducement, other improper influence, or undue harassment, the court may enter an order as provided in subsection (d)(2) of this Rule. A finding under this section shall be in writing or on the record and shall state the basis for the finding.

(2) Order

Upon the finding required by subsection (d)(1) of this Rule, the court may order that:

(A) the name and, except for prospective jurors residing in Baltimore City, the city or town of residence of prospective jurors not be disclosed in voir dire; and

(B) the name and, except for jurors residing in Baltimore City, the city or town of residence of impaneled jurors not be disclosed (i) until the jury is discharged following completion of the trial, (ii) for a limited period of time following completion of the trial, or (iii) at any time.

Committee note: Nondisclosure of the city or town in which a juror resides is in recognition of the fact that some counties have incorporated cities or towns, the disclosure of which, when coupled with other information on the jury list, may easily lead to discovery of the juror's actual residence. The exception for Baltimore City is to take account of the fact that Baltimore City is both an incorporated city and the equivalent of a county, and because persons are not eligible to serve as jurors in the Circuit Court for Baltimore City unless they reside in that city, their residence there is necessarily assumed.

Cross reference: See Rule 16-913 (a).

(3) Extent of Nondisclosure

An order entered under this section may direct that the information not be disclosed to (A) anyone other than the judge and counsel; (B) anyone other than the judge, counsel, and the defendant; or (C) anyone other than the judge, counsel, the defendant, and other persons specified in the order. If the court permits disclosure to counsel but not the defendant, the court shall direct counsel not to disclose the information to the defendant, except pursuant to further order of the court.

(4) Modification of Order

The court may modify the order to restrict or allow disclosure of juror information at any time.

Committee note: Restrictions on the disclosure of the names and city or town of residence of jurors should

be reserved for those cases raising special and legitimate concerns of jury safety, tampering, or undue harassment. See *United States v. Deitz*, 577 F.3d 672 (6th Cir. 2009); *United States v. Quinones*, 511 F.3d 289 (2nd Cir. 2007). When dealing with the issues of juror security or tampering, courts have considered a mix of five factors in deciding whether such information may be shielded: (1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment. See *United States v. Ochoa-Vasquez*, 428 F.3d 1015 (11th Cir. 2005); *United States v. Ross*, 33 F.3d 1507 (11th Cir. 1994). Although the possibility of a lengthy incarceration is a factor for the court to consider the court should not shield that information on that basis alone. In particularly high profile cases where strong public opinion about a pending case is evident, the prospect of undue harassment, not necessarily involving juror security or any deliberate attempt at tampering, may also be of concern.

(e) Examination ~~and Challenges for Cause~~

(1) ~~Examination~~ Generally

The trial judge may permit the parties to conduct an examination of qualified jurors or may conduct the examination after considering questions proposed by the parties. The purpose of an examination is to (A) identify and remove prospective jurors who **are not legally qualified to serve as a juror or** are unable to serve fairly and impartially and (B) allow the parties to obtain information that may provide guidance for the use of peremptory challenges and challenges for cause. Regardless of whether an examination is conducted by a judge or by the parties, the court retains discretion to preclude improper, excessive, or abusive questioning.

Committee note: The ability to use the examination of a prospective juror to obtain information that may

provide guidance for the informed exercise of peremptory challenges does not limit or excuse the trial court's obligation to remove a prospective juror for cause who cannot serve fairly and impartially.

(2) Conduct of Examination

If the judge conducts the examination, the judge may permit the parties to supplement the examination by further inquiry or may submit to the jurors additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. On request of any party, the judge shall direct the clerk to call the roll of the array and to request each qualified juror to stand and be identified when called.

Committee note: The Maryland State Bar Association, Inc. has promulgated Model Jury Selection Questions for Maryland Criminal Trials, which may provide guidance to the court and parties in the formulation of relevant questions for the examination of jurors.

~~(2)~~(f) Challenges for Cause

A party may challenge an individual qualified juror for cause. A challenge for cause shall be made and determined before the jury is sworn, or thereafter for good cause shown.

~~(f)~~(g) Peremptory Challenges

Before the exercise of peremptory challenges, the trial judge shall designate those individuals on the jury list who remain qualified after examination. The number designated shall be sufficient to provide the required number of sworn jurors, including any alternates, after allowing for the exercise of peremptory challenges pursuant to Rule 4-313. The judge shall at the same time prescribe the order to be followed in selecting individuals from the list.

~~(g)~~(h) Impaneled Jury

(1) Impaneling

The individuals to be impaneled as sworn jurors, including any alternates, shall be called from the qualified jurors remaining on the jury list in the order

previously designated by the trial judge and shall be sworn.

(2) Oath; Functions, Powers, Facilities, and Privileges

All sworn jurors, including any alternates, shall take the same oath and, until discharged from jury service, have the same functions, powers, facilities, and privileges.

(3) Discharge of Jury Member

At any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate in the order of selection set under section (e). When the jury retires to consider its verdict, the trial judge shall discharge any remaining alternates who did not replace another jury member.

~~(h)~~(i) Foreperson

The trial judge shall designate a sworn juror as foreperson.

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rule 754 a and in part new.
Section (b) is derived from former Rule 751 b.
Section (c) is new.
Section (d) is new.
Section (e) is derived in part from former Rule 752 ~~and 754 b~~ and is in part new.
Section (f) is derived from former Rule 754 b.
Section ~~(f)~~(g) is derived from former Rule 753.
Section ~~(g)~~(h) is new.
Section ~~(h)~~(i) is derived from former Rule 751 d.

Rule 4-312 was accompanied by the following Reporter's note:

The Rules Committee was recently asked to consider the scope of *voir dire* examination. For additional information, see the Reporter's note to Rule 2-512.

Subsection (a)(2) addresses appropriate action if an array is insufficient for jury selection. Code, Courts Article, § 8-421 (b) provides, "If the parties in a civil case agree, a trial judge may dispense with selecting an array of at least 14 qualified jurors." Section (c) contains a similar provision for criminal cases. Rule 4-312 (a)(2) is updated to reflect that, subject to § 8-421, the trial judge is required to direct that additional qualified jurors be summoned if the array is insufficient for jury selection.

In subsection (b)(1), the word "same" is replaced with "required" to indicate that all individuals impanelled on the jury must have the certain qualifications that are required by law.

Proposed amendments to Rule 4-312 update the tagline of section (e) to refer only to examinations of prospective jurors. Language concerning challenges for cause has been moved to a new section.

A new tagline for subsection (e)(1) reflects that the subsection now addresses examinations, generally. Proposed new language defines the scope of *voir dire* examination, primarily using the language of SB827. In addition to including the purposes of examination from the proposed legislation, amendments to subsection (e)(1) indicate that an examination may also aim to identify jurors who are not legally qualified to serve.

A proposed Committee note after subsection (e)(1) notes that the expanded scope of voir dire does not minimize the obligation of the trial court to remove jurors for cause.

New subsection (e)(2) addresses the conduct of the examination using language from current subsection (e)(1).

A proposed Committee note after section (e) highlights the existence of Model Jury Selection Questions promulgated by the MSBA. The Special Subcommittee has been advised that the MSBA is currently reviewing and, if needed, updating the Model

Jury Selection Questions for both civil and criminal trials.

Current subsection (e)(2) is re-lettered as new section (f). Subsequent sections (f) through (h) are re-lettered as sections (g) through (i), respectively.

The Chair informed the Committee that the Reporter's notes to the Rules explain much of the background on the proposed amendments. He explained that in April, Chief Justice Fader requested that the Committee consider whether to recommend Rules changes to expand the scope of *voir dire* to allow questions to jurors to assist attorneys in the use of their peremptory strikes in addition to for-cause strikes. If the Committee chooses to make such a recommendation, the Chair said that the next question would be how to implement the change.

The Chair reminded the Committee that the request from the Chief Justice was prompted by a letter from Delegate Luke Clippinger and Senator William C. Smith Jr., chairs of the House Judiciary and Senate Judicial Proceedings Committees, respectively. The legislators requested that the Committee take up the issue after the Maryland General Assembly considered legislation in the 2024 session that would have expanded the scope of *voir dire*. The Committee has been encouraged to make its recommendation to the Supreme Court soon so that the Court

can act on any recommendation before the next legislative session.

The Chair explained that, ten years ago, the Supreme Court in *Pearson v. State*, 437 Md. 350 (2014) referred to the Committee the question of whether to expand the scope of *voir dire*. In response to the referral, the Committee conducted a study and reported its findings in the 185th Report to the Court in 2014. The Committee concluded that most federal courts and all but three states permitted expanded *voir dire*. The Committee made several recommendations, including that: 1) the Court expand the scope of *voir dire* to permit questions designed to assist attorneys in the intelligent use of their peremptory challenges, 2) the conduct of *voir dire* should remain subject to the supervision and control of the trial judge, and 3) such expansion should wait for the development of form questions by the Maryland State Bar Association ("the MSBA"). The MSBA began its work and in 2018 approved an extensive set of *voir dire* questions for both civil and criminal cases.

The Chair said that the two policy issues for the Committee to decide are whether to recommend overturning *Pearson* by Rule and expanding the scope of *voir dire* and, if so, the extent to which *voir dire* should be controlled by the trial court. He informed the Committee that staff drafted proposed amendments to Rules 2-512 and 4-312 to effectuate the recommendations of the

Special Subcommittee on *Voir Dire*. There are handout versions of each of those Rules for discussion. He explained that the bolded text represents additional amendments circulated to the Subcommittee after its meeting.

The Chair noted that the Committee received several written comments on the proposed amendments contained in the materials. He asked the Committee for any preliminary discussion before hearing from others in attendance. There being no discussion from the Committee, the Chair invited any individuals in attendance who wished to comment on the proposed amendments to speak.

Ronald H. Jarashow addressed the Committee. He said that he is a former circuit court judge and is speaking as a member of the Maryland Association for Justice ("MAJ"), which supported the bills in the General Assembly this year. He indicated that he and MAJ submitted a supportive comment letter (see Appendix 1). He informed the Committee that he wished to comment specifically on the proposal to take the summer to discuss implementation of expanded *voir dire*. He noted that the materials discuss Rules from other states and the option of *voir dire* conducted by attorneys rather than by the judge.

Mr. Jarashow said that the major argument in opposition of attorney-led *voir dire* is that it increases the time it takes to select a jury; however, he pointed out that a study mentioned in

Assistant Reporter Drummond's memorandum found that attorney-led *voir dire* added an average of one hour to the jury selection process, compared to judge-led *voir dire*. He remarked that this impact is minimal if the result is more fair juries. He added that other studies show that jurors are more forthcoming when answering questions posed by attorneys instead of judges, who can be intimidating. He said that if a prospective juror answers a question in a way that may indicate a potential bias, the judge asks whether the individual can still be fair and impartial, to which the individual may feel compelled to say, "yes." Mr. Jarashow pointed out that judges will always maintain ultimate control over *voir dire*. He said that MAJ wishes to participate in the discussions planned for the summer.

Judge Nazarian said that he received communications from some circuit court judges asking that the proposed amendments be tabled for more time to study them. He noted that there have been two public Rules Committee meetings and a meeting of the Special Subcommittee; there have been circuit court judges present at each meeting, and the Maryland Circuit Judges Association has made its concerns known. He said that he respects the judges who want further study, but he believes that the Committee should move forward. Judge Wilner remarked that it is his understanding that the Committee must move forward

with a recommendation because the Chief Justice wants the matter handled expeditiously.

Judge Chen commented that she has received comments from her colleagues in Baltimore City who wished to know more information about other states that have moved from limited to expanded *voir dire*. She noted that due to the number of peremptory challenges authorized by various statutes in Maryland, the judges were interested in how the change may have been implemented elsewhere.

Judge Nazarian responded that the concern, as he understands it, is that Maryland has a relatively large number of peremptory challenges compared to other states, and judges are not sure how expanding the scope of *voir dire* will impact the use of those challenges. He acknowledged that if the Court expands the permitted scope of *voir dire*, it will expand the universe of questions that attorneys wish to ask. He added that he does not think that the concerns raised are misplaced, but he suggested that any Rule change creates the potential for uncertainty in practice.

The Chair called for a motion on Rule 2-512. Judge Nazarian moved to approve the handout version of Rule 2-512. The motion was seconded and approved by majority vote with one abstention.

The Chair explained that the proposed amendments to Rule 4-312, also circulated as a handout, are parallel to the proposals in Rule 2-512. The Chair called for a motion on Rule 4-312. Judge Nazarian moved to approve the handout version of Rule 4-312. The motion was seconded and approved by majority vote with one abstention.

The Chair said that the second part of Agenda Item 1 is discussion of what, if any, additional Rules changes may be desirable to ensure that peremptory challenges are used in a constitutional manner. He said that the memorandum from Assistant Reporter Drummond summarizes the issue (see Appendix 2). Mr. Laws commented that this question will require heavy lifting by the Subcommittee and by staff. He said that adding additional procedures to police the use of peremptory challenges as the Washington state and California rules have done will add more than the one hour of time to pick a jury mentioned by Mr. Jarashow. He suggested that the Subcommittee should tread carefully.

Judge Bryant commented that she presided over jury selection for an attempted murder case the week prior, and it took an entire day. By the end of the day, only 14 prospective jurors had not responded to any of the *voir dire* questions. She said that individuals provide a significant amount of personal information – often in a seeming attempt to be excused from jury

duty – and she wanted the Committee to keep this in mind. She added that attorneys are welcome to ask the judge to call those individuals to the bench to talk with them. She clarified that judges do not ask if individuals can be fair and impartial; they ask if individuals can listen to the evidence and decide based only on the evidence and the law. She said that it will take some time to consider the issues surrounding peremptory challenges. Judge Bryant noted that drafts of amendments addressing peremptory challenges were considered by the Subcommittee, but the consensus was that the drafts required more research, more input from stakeholders, and careful consideration before making a recommendation to the Committee.

Judge Nazarian agreed and said that this is why the Subcommittee decided to bifurcate the issues. He explained that the Subcommittee believed that Rules 2-512 and 4-312 could be recommended to the Court now while additional discussions about peremptory challenges occur.

Mr. Zavin remarked that it would be helpful to hear from practitioners and judges in Washington state and California where the courts have a robust process for *Batson* challenges to peremptory strikes. Mr. Zollicoffer commented that he picked a jury in California for a complex case and it took weeks, not days.

Judge Brown said that the Subcommittee has been formed and has the ability to consult with outside groups. She suggested that moving forward with recommending the amendments to Rules 2-512 and 4-312 shows the General Assembly that the Supreme Court is taking steps in response to the letter from Delegate Clippinger and Senator Smith. She said that all the necessary work may not be completed by the pre-filing deadline for 2025 legislation, but progress can be made.

Judge Bryant said that the Committee would like to take its time and determine how to implement a change before the General Assembly instructs the Judiciary to do so. She asked Delegate Clippinger if he feels that the Committee is moving forward based on the discussions and actions at the meeting. Delegate Clippinger responded that there was a lot of interest in both his and Senator Smith's committees, but they ultimately decided that it would be more appropriate to refer the matter to the Rules Committee first. He said that the legislature recognized that it would be difficult to conduct the same kind of work that the Rules Committee would do within the 90-day legislative session and that the Committee has the expertise to study *voir dire*. He said that he would like to see final action on the issue before the start of the next General Assembly session.

Ms. Doyle remarked that the amendments to Rules 2-512 and 4-312 appear to accomplish what the Chief Justice asked of the

Committee. The approved amendments satisfy the Court's request and address what was covered by the proposed legislation. Whether the procedure around the use of peremptory challenges also should change is an additional issue that arose. Judge Nazarian confirmed that this was the case. He said that the scope of *voir dire* and any reform around peremptory challenges could be considered together, as they are related, but the Subcommittee recommended that the issues be separated so that the scope of *voir dire* can be considered by the Court expeditiously.

The Reporter pointed out that the amendments add a Committee note that refers to the MSBA Model *Voir Dire* Questions, which are an additional component of *voir dire* reform. The Chair explained that he had asked the MSBA to consider whether the extensive model questions need to be updated due to the passage of time, changes in case law, etc. The Reporter replied that the answer was that the questions for use in criminal jury selection did not require updates and the MSBA is unsure about civil jury selection questions.

Judge Nazarian said that the Committee appears to have reached a recommendation to submit to the Court along with a report as to the ongoing work. Mr. Marcus added that another consideration for the Subcommittee is guidance on the use of technology to identify juror traits that attorneys deem

desirable or undesirable. He noted that judges have different stances on how to restrict and safeguard the jury list.

Michael Hudak, co-Chair of the MSBA Rules of Practice Committee, addressed the Committee. He said that, from a practitioner's standpoint, if the scope of *voir dire* is expanded, attorneys will want to ask more questions. He asked whether the recommended amendments, if they become effective with no guidance, will lead to an explosion of the number of proposed *voir dire* questions. He asked if guidance would be in place prior to the change going into effect. Judge Nazarian responded that, if the proposed amendments are approved and enacted, there will not be a rigid list of questions required to be asked of every jury pool in place. He said that if the Court approves the amendments, the appropriate safeguards and limits will be determined by the judges. He noted that judges retain control over the questions that are asked.

Mr. Hudak asked whether the Committee has considered recommending a limit on the number of *voir dire* questions asked. Judge Nazarian said that there has not been discussion of that issue. He noted that the uncertainty of how the increase in the scope of *voir dire* will impact the jury selection process will fall on circuit court judges navigating the change.

The Chair said that the proposed amendments to Rules 2-512 and 4-312 will be transmitted to the Supreme Court expeditiously

and the Subcommittee will continue its work on other aspects of this issue over the summer.

Agenda Item 2. Consideration of proposed amendments to Rule 19-711 (Complaint; Investigation by Bar Counsel)

Mr. Marcus presented Rule 19-711, Complaint; Investigation by Bar Counsel, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

AMEND Rule 19-711 by adding new subsection (b)(3) pertaining to allegations of misconduct by an attorney who is a candidate for public office and by making stylistic changes, as follows:

Rule 19-711. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Who May Initiate

Bar Counsel may file a complaint on Bar Counsel's own initiative, based on information from any source. Any other person also may file a complaint with Bar Counsel. Any communication to Bar Counsel that (1) is in writing, (2) alleges that an attorney has engaged in professional misconduct or has an incapacity, (3) includes the name and contact information of the person making the communication, and (4) states facts which, if true, would constitute

professional misconduct by or demonstrate an incapacity of an attorney constitutes a complaint.

(b) Review of Complaint

(1) Generally

Bar Counsel shall make an inquiry concerning every complaint that is not facially frivolous, unfounded, or duplicative.

(2) Declining Complaint

If Bar Counsel concludes that a complaint is without merit, does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, or is duplicative, Bar Counsel shall decline the complaint and notify the complainant. Bar Counsel also may decline a complaint submitted by an person who provides information about an attorney derived from published news reports or third party sources where the complainant appears to have no personal knowledge of the information being submitted.

(3) When Attorney is a Candidate for Election

(A) Definitions

For purposes of this Rule, (i) "election" [means][includes] a general election, primary election, or special election [in Maryland], whether arising under the Code, Election Article, a city ordinance, or an equivalent source, and (ii) "candidate" means an individual who files a certificate of candidacy for a public office.

(B) Generally

If a complaint is received or initiated by Bar Counsel less than 90 days before an election in which the attorney is a candidate, all action in the matter shall be stayed until after the election unless:

(i) the complaint is declined pursuant to subsection (b)(2) of this Rule;

(ii) Bar Counsel is proceeding in accordance with Rule 19-732;

(iii) the attorney submits a written waiver of the stay to Bar Counsel; or

(iv) seven Commission members present or participating by remote electronic means determine that the stay should be lifted because: (a) deferring action could put an individual or the public at risk from the attorney's past or potential future misconduct that is within the purview of the Commission and the risk could be avoided or mitigated by prompt investigation or (b) prompt investigation is necessary to preserve evidence. Upon a determination by the Commission to lift the stay in whole or in part, Bar Counsel shall proceed as directed by the Commission.

Cross reference: *See Attorney Grievance Commission v. Pierre*, 485 Md. 56 (2023).

Committee note: When subsection (b)(3) of this Rule applies, all action on a complaint is stayed prior to any notification by Bar Counsel to the attorney. The Committee recognizes that the complainant or other individual may make the existence of the complaint public despite the stay. Subsection (b)(3)(B)(iii) addresses the circumstance in which the attorney has been made aware of the existence of a complaint and wishes to decline the stay.

~~(3)~~(4) After Attorney Response

Unless a complaint is declined for one of the reasons set forth in subsection (b)(2) of this Rule or action is stayed pursuant to subsection (b)(3) of this Rule, Bar Counsel ordinarily shall obtain a written response from the attorney who is the subject of a complaint and consider other appropriate information to assist in evaluating the merits of the complaint. If Bar Counsel determines based upon such evaluation that an insufficient basis exists to demonstrate misconduct or incapacity or that the overall circumstances do not warrant investigation, Bar Counsel may close the file without approval of the Commission. Otherwise, subject to subsection ~~(b)(5)~~(b)(6) of this Rule, Bar Counsel shall (A) docket the complaint, (B) notify the complainant and explain in writing the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct

an investigation to determine whether there exists a substantial basis to conclude the attorney committed professional misconduct or is incapacitated.

~~(4)~~(5) If Complaint Declined or Closed

If a complaint is declined or closed by Bar Counsel, allegations made in the complaint may not be used in any disciplinary proceeding against the attorney. If additional information becomes known to Bar Counsel regarding a complaint that was declined or closed before docketing, the earlier allegations may be reopened.

Committee note: In this Rule, "docket" refers to the process of listing a complaint on the docket of active investigations maintained by Bar Counsel, rather than on a docket maintained by the clerk of a court. Before determining whether a complaint is frivolous or unfounded, Bar Counsel may contact the attorney and obtain an informal response to the allegations.

~~(5)~~(6) Pending Civil or Criminal Action

If Bar Counsel concludes that a civil or criminal action involving material allegations against the attorney substantially similar or related to those alleged in the complaint is pending in any court of record in the United States, or that substantially similar or related allegations presently are under investigation by a law enforcement, regulatory, or disciplinary agency, Bar Counsel, with the approval of the Commission, may defer action on the complaint pending a determination of those allegations in the pending action or investigation. Bar Counsel shall notify the complainant of that decision and, during the period of the deferral, shall report to the Commission, at least every 90 days, the status of the other action or investigation. The Commission, at any time, may direct Bar Counsel to proceed in accordance with subsection (b)(1) or ~~(3)~~(4) of this Rule.

(c) Notice to Attorney

(1) Generally

Except as otherwise provided in this section, Bar Counsel shall notify the attorney who is the subject of the complaint that Bar Counsel is undertaking an

investigation to determine whether the attorney has engaged in professional misconduct or is incapacitated. The notice shall be given before the conclusion of the investigation and shall include the name and contact information of the complainant and the general nature of the professional misconduct or incapacity under investigation. As part of the notice, Bar Counsel may demand that the attorney provide information and records that Bar Counsel deems appropriate and relevant to the investigation. The notice shall state the time within which the attorney shall provide the information and any other information that the attorney may wish to present. The notice shall be served on the attorney in accordance with Rule 19-708.

(2) Exceptions

Bar Counsel need not give notice of investigation to an attorney if, with the approval of the Commission, Bar Counsel proceeds under Rule 19-737, 19-738, or 19-739.

(d) Time for Completing Investigation

(1) Generally

Subject to ~~subsection (b)(5)~~ subsections (b)(3) and (b(6) of this Rule or unless the time is extended pursuant to subsection (d)(2) of this Rule, Bar Counsel shall complete an investigation within 120 days after docketing the complaint.

(2) Extension

(A) Upon written request by Bar Counsel and a finding of good cause by the Commission, the Commission may grant an extension for a specified period. Upon a separate request by Bar Counsel and a finding of good cause, the Commission may renew an extension for a specified period.

(B) The Commission may not grant or renew an extension, at any one time, of more than 60 days unless it finds specific good cause for a longer extension.

(C) If an extension exceeding 60 days is granted, Bar Counsel shall provide the Commission with a status report at least every 60 days.

(3) Sanction

For failure to comply with the time requirements of section (d) of this Rule, the Commission may take any action appropriate under the circumstances, including dismissal of the complaint and termination of the investigation.

Source: This Rule is derived in part from former Rule 16-731 (2016) and is in part new.

Rule 19-711 was accompanied by the following Reporter's note:

The Supreme Court of Maryland in *Attorney Grievance Commission v. Pierre*, 485 Md. 56 (2023) and in a letter to the Chair of the Rules Committee dated September 21, 2023 requested that the Rules Committee consider proposing a Rule addressing how and when attorney misconduct investigations and proceedings should be handled during an election campaign in which the respondent attorney is a candidate." September 21, 2023 letter, paragraph 2.

The Attorneys and Judges Subcommittee, in conjunction with the then-recently appointed Bar Counsel, considered the Court's request at its January 9, 2024 meeting. Following that meeting, additional research was conducted to identify approaches taken in other jurisdictions and by organizations interested in attorney disciplinary matters, and a special drafting group was convened to prepare amendments to Rule 19-711.

Rule 19-711 is proposed to be amended to add new subsection (b)(3), which governs how complaints against an attorney who is a candidate for public office will proceed.

> The revisions provide that action on any complaint against an attorney who is a candidate for public office that is received or initiated less than 90 days before the election is stayed until after the election unless (1) the complaint is declined by Bar Counsel pursuant to subsection (b)(2) of the Rule; (2) Bar Counsel proceeds in accordance with Rule 19-732; (3) the attorney waives the stay in writing; or (4) the stay is lifted by a vote of at least seven members of the Attorney Grievance Commission.
>
> Stylistic changes are also proposed to this Rule.

Mr. Marcus informed the Committee that Agenda Item 2 also is a Supreme Court referral. He explained that in *Attorney Grievance Commission v. Pierre*, 485 Md. 56 (2023), the Court referred to the Committee the question of whether to adopt a Rule "establishing procedures for addressing alleged misconduct violations that arise during the pendency of election campaigns generally and campaigns for judicial offices specifically." *Id.* at 74 n.5. He said that the case raised concerns about investigations conducted by Bar Counsel involving attorneys who, at the time of the investigation, are candidates for elected office.

Mr. Marcus invited Bar Counsel Thomas M. DeGonia to address the Committee. Mr. DeGonia explained that if a complaint is filed, his office begins an inquiry. At the conclusion of the inquiry phase, Bar Counsel can dismiss the complaint if it is without merit or conduct a full investigation. He said that, of

the complaints that are not dismissed, a large percentage are resolved before becoming public, usually through peer review. He informed the Committee that under the proposed amendments to Rule 19-711, if the respondent is a candidate in an upcoming election, his office would not launch an inquiry or investigation but instead would stay all action unless the Attorney Grievance Commission authorizes Bar Counsel to proceed.

Mr. Marcus said that the Rule, as amended, applies to all candidates for any office, not just attorneys campaigning to be judges as was the case in *Pierre.* He explained that if a lawyer is a candidate for office, someone who wanted to malign the candidate and try to undermine the campaign could file an ethics complaint and leak to the media the fact that a complaint is pending. He said that a goal of the proposal is to discourage someone from abusing the ethics process for political gain. He noted that political speech and the election process are vitally important and must be balanced with the disciplinary process by which the Court protects the public. He informed the Committee that Rules in other jurisdictions were reviewed as well as federal guidance.

Mr. Marcus said that the proposed amendments to Rule 19-711 were completed by a small drafting group in consultation with Mr. DeGonia. He noted that Bar Counsel may still dismiss a complaint that, on its face, is without merit. For complaints

that cannot be dismissed without inquiry, the amendments establish a point in time close to an election after which Bar Counsel ordinarily must stay all action if the attorney is a candidate. However, the amendments also provide a mechanism for serious misconduct to be pursued. Mr. Marcus explained that there is no magic number for how close the election should be before the stay should kick in, but the drafting group decided that 90 days would be appropriate, recognizing that it is more difficult for a candidate to respond to an ethics complaint the closer the election is. Mr. Marcus also pointed out that the Rule contains a provision that allows the Attorney Grievance Commission to lift the stay to protect the public or preserve evidence. He said that the Supreme Court expressed concerns about the grievance process having any perceived impact on the election and that a goal of the amendments is to avoid any perception of Bar Counsel having an influence in an election. He drew the Committee's attention to the definitions of "candidate" and "election" in the Rule.

Mr. Laws said that there may be a gap in the Rule. He said that new subsection (b)(4) would delay seeking a written response from the respondent attorney if the action is stayed pursuant to new subsection (b)(2). He pointed out that the Rule does not provide for Bar Counsel to seek a response after the stay expires or is lifted. He suggested that the additional

language in subsection (b)(4) should read "or, if the action is stayed pursuant to subsection (b)(3) of this Rule, upon the expiration or lifting of the stay." By consensus, the Committee approved the amendment.

Mr. Laws also asked how the 90-day stay would work when a complaint is filed before the primary election, all action is stayed, and then the candidate wins the primary and is going to be on the ballot in November. He commented that with Maryland's typical May primary, this would create a situation where the stay would lift after the primary but be reimposed in August, 90 days before the general election. Mr. DeGonia responded that he has considered whether a complaint can or should be taken up during that brief window. The Reporter remarked that if Maryland ever moved its primary earlier, a stay that would remain in place for the duration of the candidacy could become very long. Mr. Marcus commented that states have moved their primaries earlier to try to be more relevant on the national political stage. Judge Bryant said that a provision could be added to lift the stay if the candidate loses.

Mr. Laws clarified that his concern was if Bar Counsel could stay, resume, then stay all action during election season. Mr. Wells responded that one of the Court's concerns was the integrity of the process and that the scenario set forth by Mr. Laws could be a problem. Mr. DeGonia answered that he would

consider the stay to remain in place between the primary and general elections rather than trying to "game" the system and start an inquiry in between. Mr. Marcus moved to amend new subsection (b)(3) to state that, unless the Attorney Grievance Commission votes to lift the stay, the stay remains in place for a candidate who is successful in a primary or special election that is to be followed by a general election. The motion was seconded and approved by consensus.

Judge Bryant said that the definition of "election" in new subsection (b)(3)(A) has the option of specifying "in Maryland." She suggested that the Rule should not be restricted in this manner because a Maryland attorney could be a candidate in a non-Maryland election. The Chair asked why this would be a concern. Assistant Reporter Cobun responded that the same logic from the *Pierre* opinion would apply: it is a distraction to the candidate to respond to an ethics investigation in the middle of a campaign and it can be seen as interfering in the election. Ms. Doyle added that the Court should not want its disciplinary process used to influence any elections in any jurisdiction. Ms. Cobun asked Mr. DeGonia if he would be aware of an out-of-state candidacy when a complaint is filed. He responded that his office is discussing amending the complaint form to ask the filer to indicate whether the respondent is a candidate. He added that if the complainant does not provide this information

and the candidate is alerted to the complaint, the candidate can inform Bar Counsel of the need to impose the stay. The Reporter remarked that she would want to avoid imposing an unreasonable knowledge requirement on Bar Counsel; is the office obligated to conduct an inquiry into state and local elections elsewhere?

Mr. Laws moved to keep "in Maryland" and add "or elsewhere" to the definition of "election" in subsection (b)(3)(A). The motion was seconded and approved by consensus.

Judge Nazarian moved to approve Rule 19-711 as amended. The motion was seconded and approved by consensus.

Agenda Item 3. Consideration of proposed amendments recommended by the ADR Subcommittee

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Mr. Zollicoffer presented Rule 17-102, Definitions; Rule 17-202, General Procedure; Rule 17-205, Qualifications of Court-Designated Mediators; Rule 17-207, Procedure for Approval; Rule 17-303, Designation of Mediators and Settlement Conference Chairs; Rule 17-602, Authority to Order ADR; Rule 17-603, Qualifications of Court-Designated ADR Practitioners; Rule 17-604, Procedure for Approval; and Rule 9-205, Mediation of Child Custody Disputes, for consideration.

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISION

AMEND Rule 17-102 by adding new section (g) defining "MACRO"; by re-lettering current sections (g) through (l) as (h) through (m), respectively; and by making stylistic changes, as follows:

Rule 17-102. DEFINITIONS

. . .

(g) MACRO

"MACRO" means the Mediation and Conflict Resolution Office, a unit within the Administrative Office of the Courts.

~~(g)~~(h) Mediation

"Mediation" means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of all or part of a dispute.

Cross reference: For the role of the mediator, see Rule 17-103.

~~(h)~~(i) Mediation Communication

"Mediation communication" means a communication, whether spoken, written, or nonverbal, made as part of a mediation, including a communication made for the purpose of considering, initiating, continuing, reconvening, or evaluating a mediation or a mediator.

~~(i)~~(j) Neutral Case Evaluation

"Neutral case evaluation" means a process in which (1) the parties, their attorneys, or both appear before an impartial evaluator and present in summary fashion the evidence and arguments to support their respective positions, and (2) the evaluator renders an

evaluation of their positions and an opinion as to the likely outcome of the litigation.

~~(j)~~(k) Neutral Expert

"Neutral expert" means an individual with special expertise to provide impartial technical background information, an impartial opinion, or both in a specific area.

~~(k)~~(l) Neutral Fact-Finding

"Neutral fact-finding" means a process in which (1) the parties, their attorneys, or both appear before an impartial individual and present the evidence and arguments to support their respective positions as to disputed factual issues, and (2) the individual makes findings of fact as to those issues that are not binding unless the parties agree otherwise in writing.

~~(l)~~(m) Settlement Conference

"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial individual to discuss the issues and positions of the parties in an attempt to agree on a resolution of all or part of the dispute by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial individual may recommend the terms of an agreement.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is new.
Section (c) is new.
Section (d) is derived from former Rule 17-102 (a) (2012).
Section (e) is derived from former Rule 17-102 (b) (2012).
Section (f) is derived from former Rule 17-102 (c) (2012).
Section (g) is new.
Section ~~(g)~~(h) is derived from former Rule 17-102 (d) (2012).
Section ~~(h)~~(i) is derived from former Rule 17-102 (e) (2012).
Section ~~(i)~~(j) is derived from former Rule 17-102 (f) (2012).

Section ~~(j)~~(k) is new.
Section ~~(k)~~(l) is derived from former Rule 17-102 (g) (2012).
Section ~~(l)~~(m) is derived from former Rule 17-102 (h) (2012).

Rule 17-102 was accompanied by the following Reporter's note:

Proposed amendments to Rule 17-102 implement changes requested by the Judicial Council's Alternative Dispute Resolution Committee and the Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts. The proposal provides for a centralized, statewide hub for ADR practitioners to apply and maintain credentials.

Rule 17-102 is amended to add new section (g) to define "MACRO," the acronym for the office in the Administrative Office of the Courts that will implement and maintain the statewide program. "MACRO" is used throughout Title 17 to refer to the office.

Current sections (g) through (l) are re-lettered as (h) through (m), respectively.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-202 by deleting references to the court's list of approved ADR practitioners and organizations and replacing them with references to the list maintained by MACRO in subsections (c)(1) and (f)(5), by adding a requirement that a practitioner must either have applied to provide services in that court or consented to a designation in that court, by replacing "the court" with "MACRO" in subsection (c)(2), by adding to section (d) a requirement that the

court attempt to use a diverse range of qualified individuals, and by adding a Committee note after section (d), as follows:

Rule 17-202. GENERAL PROCEDURE

. . .

(c) Designation of ADR Practitioner

(1) Direct Designation

In an order referring all or part of an action to ADR, the court may designate~~, from a list of approved ADR practitioners maintained by the court pursuant to Rule 17-207, an ADR practitioner to conduct the ADR~~ an ADR practitioner approved and on the list maintained by MACRO pursuant to Rule 17-207 who has either (A) applied to provide services in the court making the designation or (B) consented to the designation in that court.

Committee note: The court may determine that it is appropriate to designate an ADR practitioner who has not applied to provide services in that court but who is on the list to provide services in another court. Before a court designates an ADR practitioner who has not applied to offer services in that court, the court should obtain the consent of the practitioner to serve in that court.

(2) Indirect Designation if ADR is Non-fee-for-service

If the ADR is non-fee-for-service, the court may delegate authority to an ADR organization selected from a list maintained by ~~the court~~ MACRO pursuant to Rule 17-207 or to an ADR unit of the court to designate an ADR practitioner qualified under Rules 17-205 or 17-206, as applicable, to conduct the ADR. An individual designated by the ADR organization pursuant to the court order has the status of a court-designated ADR practitioner.

Committee note: Examples of the use of indirect designation are referrals of indigent litigants to publicly funded community mediation centers and

referrals of one or more types of cases to a mediation unit of the court.

(d) Discretion in Designation

In designating an ADR practitioner, the court is not required to choose at random or in any particular order from among the qualified ADR practitioners or organizations on its lists. The court should endeavor to use the services of a diverse range of as many qualified persons 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 designees.

Committee note: Courts are encouraged to use a broad range of practitioners that reflect the diversity of the parties who appear before the courts.

. . .

(f) Objection; Alternatives

. . .

(5) Ruling

If a party timely objects to a referral, the court shall revoke its order. If the parties offer an alternative proposal or agree on a different ADR practitioner, whether or not the ADR practitioner's name is on the ~~court's~~ list of approved ADR practitioners and organizations maintained by MACRO pursuant to Rule 17-207, the court shall revoke or modify its order, as appropriate.

. . .

Rule 17-202 was accompanied by the following Reporter's note:

Proposed amendments to Rule 17-202 implement a request by the Judicial Council's Alternative Dispute Resolution Committee and the Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts. Currently,

individual courts approve and maintain lists of ADR practitioners available to provide services in those courts. MACRO intends to centralize this process by requiring practitioners to apply directly to MACRO. MACRO will review the applications for compliance with the requirements of this Title and will maintain the lists of practitioners approved to work in each court as well as the ADR organizations approved by each court to provide services.

Proposed amendments to subsection (c)(1) provide for designation of a practitioner from the list maintained by MACRO. The practitioner must either be on the list approved for designation in that court or have consented to designation in that court. The intent of the provision is to provide flexibility to courts, especially those with smaller rosters of approved practitioners, to select a practitioner with the requisite expertise and availability. A Committee note after subsection (c)(1) clarifies that a court may wish to designate a practitioner who is not on that court's list but who is otherwise approved by MACRO and on the list for another court. The court must obtain that practitioner's consent before making the designation. Subsection (c)(2) updates a reference to the court's list to MACRO's list.

Section (d) adds the requirement that the court should attempt to use a diverse range of qualified practitioners. A Committee note following section (d) explains the intent of the added language.

Subsection (f)(5) is also amended to change a reference to the court's list of approved practitioners to the list maintained by MACRO.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-205 by requiring a mediator designated by the court to provide documentation of continuing education to MACRO in subsection (a)(5), by permitting the county administrative judge to designate an individual to receive reports in subsection (a)(7), by adding new subsection (a)(9) requiring a mediator to notify the court and MACRO if changes to certain information, and by making stylistic changes, as follows:

Rule 17-205. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Basic Qualifications

A mediator designated by the court shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or, for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the rules, statutes, and practices governing mediation in the circuit courts;

(4) have mediated or co-mediated at least two civil cases;

(5) complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104 and provide documentation of continuing education in the manner required by MACRO and approved by the State Court Administrator;

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

(7) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge or the judge's designee; ~~and~~

(8) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-302 (b) relating to diligence, quality assurance, and a willingness to accept, upon request by the court, a reasonable number of referrals at a reduced-fee or pro bono~~.~~; and

(9) provide notification to MACRO of any changes to (A) the mediator's name, business address, telephone number, or e-mail address and (B) any other information required to be updated by the application approved pursuant to Rule 17-207. MACRO shall update the practitioner list and notify each court where the practitioner has requested to offer services.

. . .

Rule 17-205 was accompanied by the following Reporter's note:

Proposed amendments to Rule 17-205 implement a request by the Judicial Council's Alternative Dispute Resolution Committee and the Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts. The proposal provides for a centralized, statewide hub for ADR practitioners to apply and maintain credentials. MACRO is in the process of developing a web-based platform – through the Judiciary website – for this process.

Proposed amendments to section (a) are intended to permit MACRO to oversee practitioner compliance with continuing education requirements.

Subsection (a)(5) requires that documentation of continuing education be submitted to MACRO in a manner approved by the State Court Administrator. The centralized process is not dependent on completion of the web-based platform and can be conducted by other means until the platform is completed, according to MACRO representatives. The State Court Administrator may determine the best

method of transmitting information to and from MACRO in the interim.

Subsection (a)(7) adds the potential for an administrative judge's designee to assign a monitor.

New subsection (a)(9) provides for notification by the practitioner of any changes to contact information or other relevant information.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-207 by changing in subsections (a)(2) and (b)(2) the manner of application for an individual seeking to conduct ADR, by specifying in subsections (a)(3)(C) and (b)(3)(C) that the State Court Administrator may require applications be made through an online platform, by deleting the language in subsection (a)(4) and replacing it with a new procedure for action by MACRO on an application; by changing in subsections (a)(5) and (b)(5) the responsibility for maintenance of lists of approved practitioners, by deleting the contents of subsection (a)(6) and replacing it with a provision for public access to lists by MACRO, by adding new subsections (a)(7) and (b)(7) creating a process for designating a practitioner as inactive, by re-lettering subsection (a)(7) as (a)(8); by adding to subsection (a)(8) a provision for a circuit court to notify MACRO that a practitioner should be removed from a list; by changing in subsection (b)(4) the committees and organizations responsible for reviewing and acting on applications, by specifying in subsection (b)(6) that MACRO is responsible for providing access to lists of practitioners to the public and to circuit court clerks, by re-lettering subsection (b)(7) as (b)(8); by changing in new subsection (b)(8) the body responsible for determining that an individual should be removed

from the court-approved practitioner lists, and by making stylistic changes, as follows:

Rule 17-207. PROCEDURE FOR APPROVAL

(a) Generally

(1) Scope

This section applies to individuals who seek eligibility for designation by a court to conduct ADR pursuant to Rule 9-205, Rule 14-212, or Rule 17-201 other than in actions assigned to the Business and Technology Case Management Program or the Health Care Malpractice Claims ADR Program.

(2) Application

An individual seeking designation to conduct ADR shall file an application with ~~the clerk of the circuit court from which the individual is willing to accept referrals~~ MACRO. The application shall be substantially in the form approved by the State Court Administrator and ~~shall be available from the clerk of each circuit court~~ posted to the Judiciary website. ~~The clerk shall transmit each completed application, together with all accompanying documentation, to the county administrative judge or the judge's designee.~~

(3) Documentation

(A) An application for designation as a mediator shall be accompanied by documentation demonstrating that the applicant meets the requirements of Rule 17-205 (a) and, if applicable, Rule 9-205 (c)(2) and Rule 17-205 (c) and (e).

(B) An application for designation to conduct ADR other than mediation shall be accompanied by documentation demonstrating that the applicant is qualified as required by Rule 17-206 (a).

(C) The State Court Administrator may require the application and documentation to be provided ~~in a word processing file~~ through an online platform or other electronic format.

(4) Action on Application

(A) Determination

~~After such investigation as the county administrative judge deems appropriate, the county administrative judge or designee shall notify the applicant of the approval or disapproval of the application and the reasons for the disapproval.~~ MACRO shall review the application to determine (i) whether an applicant seeking designation as a mediator meets the requirements of Rule 17-205 (a) and, if applicable, Rule 9-205 (c)(2) and Rule 17-205 (c) and (e), and (ii) whether an applicant for designation to conduct other ADR meets the requirements of Rule 17-206 (a).

(B) Notice to Applicant

After such investigation as MACRO deems appropriate, MACRO shall notify the applicant of the approval or disapproval of the application and the reasons for a disapproval.

(C) Notice to Court

If MACRO approves the application, MACRO shall transmit or make available through electronic means the completed application and all accompanying documentation to the county administrative judge or the judge's designee for each court for which the applicant is seeking designation to conduct ADR.

(5) Court-Approved ADR Practitioner and Organization Lists

~~The county administrative judge or designee of each circuit court~~ MACRO shall maintain ~~a list:~~ lists of ADR practitioners approved in accordance with this Rule and ADR organizations approved in each court. The lists shall be made available to all circuit courts and identify the ADR practitioners and ADR organizations that have requested to serve in each court. The lists shall also identify:

(A) ~~of~~ mediators who meet the qualifications set forth in Rule 17-205 (a), (c), and (e);

(B) ~~of~~ mediators who meet the qualifications of Rule 9-205 (c);

(C) ~~of~~ other ADR practitioners who meet the applicable qualifications set forth in Rule 17-206 (a); and

(D) ~~of~~ ADR organizations approved by the county administrative judge.

(6) Public Access to Lists

~~The county administrative judge or designee shall provide to the clerk of the court a copy of each list, together with a copy of the application filed by each individual on the lists. The clerk shall make these items available to the public.~~ MACRO shall provide public access to the lists set forth in subsection (a)(5) of this Rule.

(7) Designation as Inactive

After notice and reasonable opportunity to respond, MACRO may designate a practitioner on a court-approved list as "inactive" for failure to maintain the continuing education requirements set forth in Rule 17-205 (a)(5). MACRO shall notify the applicable court when a practitioner has been designated as "inactive." If the practitioner subsequently comes into compliance with the continuing education requirements, MACRO shall notify the applicable court that the practitioner is no longer designated as "inactive."

~~(7)~~(8) Removal From List

After notice and a reasonable opportunity to respond, the county administrative judge or another judge of the court designated by the administrative judge may ~~remove a person~~ determine that an ADR practitioner should be removed from a court-approved list for failure to maintain the qualifications required by Rule 17-205, Rule 9-205 (c), or Rule 17-206 (a) or for other good cause. The county administrative judge or the judge's designee shall notify MACRO of the determination, the reasons for the determination, and whether the reasons for the determination are relevant to the practitioner's eligibility to serve in other courts. Upon receipt of such notification from the court,

MACRO shall remove the practitioner from the court's list. If the reason for removal is relevant to the practitioner's eligibility to serve in other courts, MACRO shall notify the other courts of the practitioner's removal.

(b) Business and Technology and Health Care Malpractice Programs

(1) Scope

This section applies to individuals who seek eligibility for designation by a court to conduct ADR pursuant to Rule 17-201 in an action assigned to the Business and Technology Case Management Program or pursuant to Rule 17-203 in an action assigned to the Health Care Malpractice Claims ADR Program.

(2) Application

An individual seeking designation to conduct ADR shall file an application with ~~the Administrative Office of the Courts, which shall transmit the application to the committee of program judges appointed pursuant to Rule 16-702~~ MACRO. The application shall be substantially in the form approved by the State Court Administrator and ~~shall be available from the clerk of each circuit court~~ posted to the Judiciary website.

(3) Documentation

(A) An application for designation as a mediator, shall be accompanied by documentation demonstrating that the applicant meets the applicable requirements of Rule 17-205.

(B) An application for designation to conduct ADR other than mediation shall be accompanied by documentation demonstrating that the applicant is qualified as required by Rule 17-206 (a).

(C) The State Court Administrator may require the application and documentation to be provided ~~in a word processing file~~ through an online platform or other electronic format.

(4) Action on Application

After such investigation as ~~the Committee of Program Judges~~ MACRO deems appropriate, ~~the Committee shall notify the Administrative Office of the Courts that the application has been approved or disapproved and the reasons for a disapproval. The Administrative Office of the Courts~~ MACRO shall approve or disapprove the application. MACRO shall notify the applicant of the action ~~of the Committee~~ and the reasons for a disapproval.

(5) Court-Approved ADR Practitioner Lists

~~The Administrative Office of the Courts~~ MACRO shall maintain a list:

(A) of mediators who meet the qualifications of Rule 17-205 (b);

(B) of mediators who meet the qualifications of Rule 17-205 (d); and

(C) of other ADR practitioners who meet the qualifications of Rule 17-206 (a).

(6) Public Access to Lists

~~The Administrative Office of the Courts~~ MACRO shall attach to the lists such additional information as the State Court Administrator specifies, keep the lists current, and ~~transmit a copy of each current list and attachments to the clerk of each circuit court, who shall~~ make these items available to the clerk of each circuit court and to the public.

Committee note: Examples of information that the State Court Administrator may specify as attachments to the lists include information about the individual's qualifications, experience, and background and any other information that would be helpful to litigants selecting an individual best qualified to conduct ADR in a specific case.

(7) Designation as Inactive

After notice and reasonable opportunity to respond, MACRO may designate a practitioner on a court-approved list as "inactive" for failure to maintain the continuing education requirements set forth in Rule 17-205 (a)(5). MACRO will notify the applicable court(s) when a practitioner has been designated as

"inactive." If the practitioner subsequently comes into compliance with the continuing education requirements, MACRO shall notify the applicable court(s) that the practitioner is no longer designated as "inactive."

~~(7)~~(8) Removal From List

After notice and a reasonable opportunity to respond, the ~~Committee of Program Judges~~ MACRO may remove an individual from a court-approved practitioner list for failure to maintain the qualifications required by Rule 17-205 or Rule 17-206 (a) or for other good cause.

Source: This Rule is derived in part from former Rule 17-107 (2012) and is in part new.

Rule 17-207 was accompanied by the following Reporter's note:

Proposed amendments to Rule 17-207 implement a request by the Judicial Council's Alternative Dispute Resolution Committee and the Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts.

Subsection (a)(2) is amended to provide that ADR practitioners apply to MACRO rather than the circuit court, using a form approved by the State Court Administrator posted to the Judiciary website.

Subsection (a)(3)(C) is amended to permit the State Court Administrator to require use of an online platform to transmit the application and other documentation.

The procedure in current subsection (a)(4) is proposed to be deleted and replaced. New subsection (a)(4)(A) sets forth the determination to be made by MACRO on receipt of an application. New subsection (a)(4)(B) requires MACRO to notify the applicant of the decision to either approve or disapprove the

application and the reasons for a disapproval. New subsection (a)(4)(C) provides that MACRO shall share the application and materials with the administrative judge or the judge's designee in each jurisdiction where the applicant will seek designation.

The Rules Committee's ADR Subcommittee was informed that administrative judges are in favor of this proposed process to streamline applications and approvals. Judges in each court will maintain their discretion regarding the designation of practitioners for cases, but MACRO will oversee the initial screening for baseline qualifications and monitor continuing education compliance.

Subsection (a)(5) is amended to require MACRO to maintain lists of ADR practitioners approved by any circuit court and make those lists available to all circuit courts.

Subsection (a)(6) deletes the current language pertaining to public access to lists and requires MACRO to provide public access. The publicly available information will include the practitioner's name, areas of expertise, and other basic information, according to the MACRO representatives. Additional profile details, including contact information, can be made public at the practitioner's discretion.

New subsection (a)(7) creates a new procedure for designating a practitioner as inactive for failure to document completion of continuing education, which is now reported to MACRO under proposed amendments to Rule 17-205. MACRO will notify the applicable court when a practitioner is designated as inactive and reinstate a practitioner after requirements are met.

Current subsection (a)(7) is re-lettered as subsection (a)(8). It alters the process for removing a practitioner from an approved list when the practitioner fails to maintain required qualifications.

The county administrative judge or his or her designee will now notify MACRO of the determination and MACRO will remove the practitioner from lists. MACRO will then determine if the reason for the removal is one which should be shared with other courts where the practitioner works.

Proposed amendments in section (b) make similar changes to the provisions governing ADR practitioners in business and technology and health care malpractice programs, with some exceptions. Proposed new subsection (b)(7) contains the same procedure for designation as inactive as proposed new subsection (a)(7).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 300 – PROCEEDINGS IN DISTRICT COURT

AMEND Rule 17-303 by clarifying in subsection (b)(3) that the court or ADR Office should attempt to use a diverse range of qualified individuals and by adding a Committee note following subsection (b)(3), as follows:

Rule 17-303. DESIGNATION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Limited to Qualified Individuals

(1) Court-Designated Mediator

A mediator designated by the court or pursuant to court order shall possess the qualifications prescribed in Rule 17-304 (a).

(2) Court-Designated Settlement Conference Chair

A settlement conference chair designated by the court or pursuant to court order shall possess the qualifications prescribed in Rule 17-304 (b).

(b) Designation Procedure

(1) Court Order

The court by order may designate an individual to conduct the ADR or may direct the ADR Office, on behalf of the court, to select a qualified individual for that purpose.

(2) Duty of ADR Office

If the court directs the ADR Office to select the individual, the ADR Office may select the individual or may arrange for an ADR organization to do so. An individual selected by the ADR Office or by the ADR organization has the status of a court-designated mediator or settlement conference chair.

(3) Discretion in Designation or Selection

Neither the court nor the ADR Office is required to choose at random or in any particular order from among the qualified individuals. They should endeavor to use the services of <u>a diverse range of</u> as many qualified individuals as practicable, but the court or ADR Office 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 designees.

<u>Committee note: Courts are encouraged to use a broad range of practitioners that reflect the diversity of the parties who appear before the courts.</u>

(4) ADR Practitioner Selected by Agreement of Parties

If the parties agree on the record to participate in ADR but inform the court of their desire to select an individual of their own choosing to conduct the ADR, the court may (A) grant the request and postpone further proceedings for a reasonable time, or (B) deny any request for postponement and proceed with a scheduled trial.

Source: This Rule is new.

Rule 17-303 was accompanied by the following Reporter's note:

The proposed amendment to Rule 17-303 implements a request by the Judicial Council's Alternative Dispute Resolution Committee and the Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts.

Subsection (b)(3) is amended to require that the court should attempt to use a diverse range of qualified practitioners. A Committee note following subsection (b)(3) explains the intent of the "diverse range" addition.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

AMEND Rule 17-602 by updating an internal reference in subsection (f)(1), by clarifying in subsection (f)(2) that the courts should attempt to use a diverse range of qualified individuals, and by adding to the Committee note following subsection (f)(2), as follows:

Rule 17-602. AUTHORITY TO ORDER ADR

. . .

(f) Designation of ADR Practitioner

(1) Generally

The order shall designate an individual to conduct the mediation or settlement conference (A) agreed to by the parties, or (B) in the absence of such an agreement, from a list of qualified individuals maintained by the court pursuant to Rule ~~17-603~~ 17-604.

(2) Discretion in Designation

In designating an individual under subsection (e)(1)(B) of this Rule, the court is not required to choose at random or in any particular order from among the qualified individuals on its lists. The court should endeavor to use the services of a diverse range 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 designees.

Committee note: Courts are encouraged to use a broad range of practitioners that reflect the diversity of the parties who appear before the courts.

Nothing in these Rules is intended to preclude the parties from participating in a collaborative law process as long as all parties agree to it.

Source: This Rule is new.

Rule 17-602 was accompanied by the following Reporter's note:

Proposed amendments to Rule 17-602 implement a request by the Judicial Council's Alternative Dispute Resolution Committee and the Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts.

An internal reference is updated in subsection (f)(1). Subsection (f)(2) is amended to add the requirement that the court should attempt to use a diverse range of qualified practitioners. The

Committee note following subsection (f)(2) is updated to explain the intent of the "diverse range" addition.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

AMEND Rule 17-603 by updating an internal reference in section (a) and by requiring in subsection (a)(4) that documentation of continuing education be submitted to MACRO, as follows:

Rule 17-603. QUALIFICATIONS OF COURT-DESIGNATED ADR PRACTITIONERS

(a) Court-Designated Mediators

A mediator designated by the court pursuant to Rule 17-602 ~~(e)(1)(B)~~ (f)(1)(B) shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or, for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the rules, statutes, and procedures governing wills, the administration of estates, the authority of orphans' courts and registers of wills, and the mediation program operated by the orphans' court;

(4) complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104 and provide documentation of continuing education to MACRO in a manner approved by the State Court Administrator;

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

(6) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the Chief Judge.

. . .

Rule 17-603 was accompanied by the following Reporter's note:

Proposed amendments to Rule 17-603 implement a request by the Judicial Council's Alternative Dispute Resolution Committee and the Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts.

A technical amendment in section (a) reflects the correct location of the provision governing appointment of an ADR practitioner from court-approved lists.

Subsection (a)(4) is amended to incorporate the new proposed method for practitioners to report continuing education to MACRO.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

AMEND Rule 17-604 by requiring in subsection (a)(1) that an individual file an application with MACRO and use a form approved by the State Court Administrator, by deleting the Committee note following subsection (a)(1); by deleting the language in section (b) and replacing it with a new procedure for action by MACRO on an application; by providing in

subsection (c)(1) that MACRO shall maintain lists of approved individuals; by adding new subsection (c)(2) creating a process for designating a practitioner as inactive; by re-lettering current subsection (c)(2) as (c)(3); by adding to new subsection (c)(3) a provision for the Chief Judge of the orphans' court to notify MACRO that a practitioner should be removed from a list; and by making stylistic changes, as follows:

Rule 17-604. PROCEDURE FOR APPROVAL

(a) Application

(1) Generally

An individual seeking designation to conduct mediation or settlement conference proceedings shall file an application with ~~the Chief Judge of the orphans' court from which~~ MACRO indicating the county or counties from which the individual is willing to accept referrals. The application shall be substantially in the form approved by the ~~Chief Judge~~ State Court Administrator and posted to the Judiciary website. An individual may apply for designation to conduct both mediations and settlement conferences ~~but shall file a separate application for each. The Chief Judge may select a designee to accept and maintain the applications~~.

~~Committee note: The Committee recommends that the Chief Judges of the orphans' courts attempt to develop a uniform application form that can be used throughout the State.~~

(2) Documentation

The application shall be accompanied by documentation that the applicant meets the requirements of Rule 17-603 (a) or (b), as relevant, and may include documentation of the applicant's approval to conduct mediations or settlement conferences in other orphans' courts of the State.

(b) Action on Application

(1) Determination

~~After such investigation as the Chief Judge finds appropriate, the Chief Judge shall notify the applicant of the approval or disapproval of the application and the reasons for any disapproval.~~ MACRO shall review the application to determine whether an applicant seeking designation as a mediator meets the requirements of Rule 17-603 (a) or (b), as relevant.

(2) Notice to Applicant

After such investigation as MACRO deems appropriate, MACRO shall notify the applicant of the approval or disapproval and the reasons for any disapproval.

(3) Notice to Court

If MACRO approves the application, MACRO shall transmit or make available through electronic means the completed application and all accompanying documentation to the Chief Judge or the judge's designee for each court for which the applicant is seeking designation to conduct ADR.

(c) Lists

(1) Generally

~~The Chief Judge~~ MACRO shall maintain lists of individuals who have been approved for designation to conduct mediations or settlement conferences, which shall be available to the public and to the other orphans' courts of the State.

(2) Designation as Inactive

After notice and reasonable opportunity to respond, MACRO may designate a practitioner on a court-approved list as "inactive" for failure to maintain the continuing education requirements set forth in Rule 17-603. MACRO will notify the applicable court when a practitioner has been designated as "inactive." If the practitioner subsequently comes into compliance with the continuing education requirements, MACRO shall notify the applicable court that the practitioner is no longer designated as "inactive."

~~(2)~~(3) Removal from List

After notice and a reasonable opportunity to respond, the Chief Judge or another judge of the court designated by the Chief Judge may remove an individual from a list for failure to maintain the required qualifications or for other good cause. The Chief Judge or the judge's designee shall notify MACRO of the determination. Upon receipt of such notification from the court, MACRO shall remove the practitioner from the orphans' court's list. If the reason for removal is relevant to the practitioner's eligibility to serve in other courts, MACRO shall notify the other courts of the practitioner's removal.

Source: This Rule is new.

Rule 17-604 was accompanied by the following Reporter's note:

Proposed amendments to Rule 17-604 implement a request by the Judicial Council's Alternative Dispute Resolution Committee and the Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts.

Subsection (a)(1) is amended so that ADR practitioners apply to MACRO rather than the Chief Judge of the orphans' court, using a form approved by the State Court Administrator posted to the Judiciary website. A Committee note referencing forms devised by the Chief Judge of the orphans' court is deleted.

The procedure in current section (b) is proposed to be deleted and replaced. New subsection (b)(1) sets forth the determination to be made by MACRO on receipt of an application. New subsection (b)(2) requires MACRO to notify the applicant of the decision to either approve or disapprove the application and the reasons for a disapproval. New subsection (b)(3) provides that MACRO shall share the application and materials with the administrative judge or the judge's designee in each court where the applicant will seek designation.

Subsection (c)(1) is amended to require MACRO to maintain lists of ADR practitioners approved by an orphans' court to conduct ADR.

New subsection (c)(2) creates a new procedure for designating a practitioner as inactive for failure to document completion of continuing education.

Current subsection (c)(2) is re-lettered as subsection (c)(3). New subsection (c)(3) is amended to add "from List" to the caption. A provision is added to require the Chief Judge of the orphans' court or a designee to notify MACRO of a determination that an individual should be removed from a list. The Chief Judge is also authorized to designate another judge of the court to make the determination.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205 by adding new subsection (a)(2)(C) defining "MACRO"; by deleting references to individuals approved by the court and replacing them with individuals on the list approved by MACRO in subsections (c)(3), (d)(1)(A), and (d)(5); by adding a requirement that the court endeavor to use a diverse range of qualified mediators to subsection (d)(4) and an explanatory Committee note following subsection (d)(4); and by updating a cross reference following section (f) as follows:

Rule 9-205. MEDIATION OF CHILD CUSTODY AND VISTATION DISPUTES

(a) Applicability; Definitions

. . .

(2) In this Rule, the following definitions apply:

(A) "Abuse" has the meaning stated in Code, Family Law Article, § 4-501.

(B) "Coercive control" means a pattern of emotional or psychological manipulation, maltreatment, threat of force, or intimidation used to compel an individual to act, or refrain from acting, against the individual's will.

(C) "MACRO" means the Mediation and Conflict Resolution Office, and unit within the Administrative Office of the Courts.

. . .

(c) Qualifications of Court-Designated Mediator

To be eligible for designation as a mediator by the court, an individual shall:

(1) have the basic qualifications set forth in Rule 17-205 (a);

(2) have completed at least 20 hours of training in a family mediation training program that includes:

(A) Maryland law relating to separation, divorce, annulment, child custody and visitation, and child and spousal support;

(B) the emotional aspects of separation and divorce on adults and children;

(C) an introduction to family systems and child development theory;

(D) the interrelationship of custody, visitation, and child support; and

(E) if the training program is given after January 1, 2013, strategies to (i) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and (ii) safely terminate a mediation when termination is warranted; and

(3) have co-mediated at least eight hours of child access mediation sessions with an individual ~~approved~~

~~by the county administrative judge~~ on the list maintained by MACRO pursuant to Rule 17-207 (a)(5)(B)**,** or, in addition to any observations during the training program, have observed at least eight hours of such mediation sessions.

(d) Court Designation of Mediator

(1) In an order referring a matter to mediation, the court shall:

(A) designate a mediator from a list of qualified mediators approved by ~~the court~~ MACRO;

(B) if the court has a unit of court mediators that provides child access mediation services, direct that unit to select a qualified mediator; or

(C) direct an ADR organization, as defined in Rule 17-102, to select a qualified mediator.

(2) If the referral is to a fee-for-service mediation, the order shall specify the hourly rate that the mediator may charge for mediation in the action, which may not exceed the maximum stated in the applicable fee schedule.

(3) A mediator selected pursuant to subsection (d)(1)(B) or (d)(1)(C) of this Rule has the status of a court-designated mediator.

(4) In designating a mediator, the court is not required to choose at random or in any particular order. The court should endeavor to use the services of a diverse range of as many qualified mediators 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 designees.

Committee note: Courts are encouraged to use a broad range of practitioners that reflect the diversity of the parties who appear before the courts.

(5) The parties may request to substitute for the court-designated mediator another mediator who has the qualifications set forth in Rule 17-205 (a)(1), (2), (3), and (6) and subsection (c)(2) of this Rule, whether or not the mediator's name is on the ~~court's~~ MACRO's

list, by filing with the court no later than 15 days after service of the order of referral to mediation a Request to Substitute Mediator.

. . .

(f) Confidentiality

Confidentiality of mediation communications under this Rule is governed by Rule 17-105.

Cross reference: For the definition of "mediation communication," see Rule 17-102 ~~(h)~~(i).

Committee note: By the incorporation of Rule 17-105 by reference in this Rule, the intent is that the provisions of the Maryland Mediation Confidentiality Act are inapplicable to mediations under Rule 9-205. See Code, Courts Article, § 3-1802(b)(1).

. . .

Rule 9-205 was accompanied by the following Reporter's note:

Proposed amendments to Rule 9-205 implement a request by the Judicial Council's Alternative Dispute Resolution Committee and the Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts.

New subsection (a)(2)(C) defines "MACRO" as it is used in the Rule. The definition is the same as the new definition proposed to be added to Rule 17-102.

Subsection (c)(3) is amended to delete the reference to an individual approved by the county administrative judge. Instead, co-mediation must have been conducted with an individual on the list approved by MACRO pursuant to Rule 17-207 (a)(5)(B).

Subsections (d)(a)(A) and (d)(5) are amended to refer to a list of qualified mediators approved by MACRO.

Subsection (d)(4) is amended to require that the court should attempt to use a diverse range of qualified practitioners. A Committee note following subsection (d)(4) explains the intent of the "diverse range" addition.

The cross reference following section (f) is updated.

Mr. Zollicoffer informed the Committee that the Rules in Agenda Item 3 make certain changes to the Alternative Dispute Resolution ("ADR") Rules, largely in Title 17. He explained that the proposed amendments were before the ADR Subcommittee last year and then were referred back to the Judicial Council's Alternative Dispute Resolution Committee to address questions. He said that the requested clarifications were provided, and the Rules Committee's ADR Subcommittee approved the amendments earlier this year.

Mr. Zollicoffer said that the proposed amendments aim to bring uniformity to the ADR process by moving many of the duties currently held by individual circuit courts to the centralized Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts. The Rules are amended to encourage courts to appoint "a diverse range of" qualified individuals. He said that additional changes permit the court to appoint from a broader pool of practitioners if a smaller

jurisdiction would like to ask a practitioner from another county's approved list to provide services. The process of approval of an application, removing a practitioner from a court's list, or placing a practitioner on inactive status are consistent and centralized.

Mr. Zollicoffer said that Cynthia Jurrius, program director for MACRO, and Judge John Nugent were available to answer any questions. Judge Anderson raised two stylistic changes. She said that in Rule 17-207 (b)(8), the word "the" needs to be deleted before the stricken language "Committee of Program Judges," and in Rule 9-205 (d)(5), the word "the" before "court's" also needs to be deleted. The Chair said that those edits will be made by the Style Subcommittee.

There being no further motion to amend or reject the proposed amendments, the Rules were approved, subject to the stylistic edits suggested by Judge Anderson.

Agenda Item 4. Consideration of proposed amendments to Rule 1-333 (Court Interpreters)

The Chair presented Rule 1-333, Court Interpreters, for consideration.

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-333 by adding a Committee note following subsection (b)(2) pertaining to notice by a third party that an individual needs an interpreter, as follows:

Rule 1-333. COURT INTERPRETERS

. . .

(b) Spoken Language Interpreters

(1) Applicability

This section applies to spoken language interpreters. It does not apply to sign language interpreters.

Cross reference: For the procedure to request a sign language interpreter, see Rule 1-332.

(2) Application for the Appointment of an Interpreter

An individual who needs an interpreter shall file an application for the appointment of an interpreter. To the extent practicable, the application shall be filed not later than 30 days before the proceeding for which the interpreter is requested on a form approved by the State Court Administrator and available from the clerk of the court and on the Judiciary website. If a timely and complete application is filed, the court shall appoint an interpreter free of charge in court proceedings in accordance with section (c) of this Rule.

Committee note: Nothing in this Rule precludes the parties to an action, judges, court personnel, or other individuals who become aware of the existence or potential existence of an individual who needs an interpreter from providing prompt notice to the court of that fact. The court may construe the notice as a request pursuant to section (b) of this Rule.

(3) When Additional Application Not Required

(A) Party

If a party who is an individual who needs an interpreter includes on the application a request for an interpreter for all proceedings in the action, the court shall provide an interpreter for each proceeding without requiring a separate application prior to each proceeding.

Committee note: A nonparty who may qualify as an individual who needs an interpreter must timely file an application for each proceeding for which an interpreter is requested.

(B) Continued or Postponed Proceedings

Subject to subsection (b)(5) of this Rule, if an individual who needs an interpreter filed a timely application and the proceeding for which the interpreter was requested is continued or postponed, the court shall provide an interpreter for the continued or postponed proceeding without requiring the individual to file an additional application.

(4) Where Timely Application Not Filed

If an application is filed, but not timely filed pursuant to subsection (b)(2) of this Rule, or an individual who may qualify as an individual who needs an interpreter appears at a proceeding without having filed an application, the court shall make a diligent effort to secure the appointment of an interpreter and may either appoint an interpreter pursuant to section (c) of this Rule or determine the need for an interpreter as follows:

(A) Examination on the Record

To determine whether an interpreter is needed, the court, on request or on its own initiative, shall examine a party, attorney, witness, or victim on the record. The court shall appoint an interpreter if the court determines that:

(i) the party does not understand English well enough to participate fully in the proceedings and to assist the party's attorney, or

(ii) the party, attorney, witness, or victim does not speak English well enough to readily understand or communicate the spoken English language.

(B) Scope of Examination

The court's examination of the party, witness, or victim should include questions relating to:

(i) identification;

(ii) active vocabulary in vernacular English; and

(iii) the court proceedings.

Committee note: Examples of matters relating to identification are: name, address, birth date, age, and place of birth. Examples of questions that elicit active vocabulary in vernacular English are: How did you come to court today? What kind of work do you do? Where did you go to school? What was the highest grade you completed? What do you see in the courtroom? Examples of questions relating to the proceedings are: What do you understand this case to be about? What is the purpose of what we are doing here in court? What can you tell me about the rights of the parties to a court case? What are the responsibilities of a court witness? Questions should be phrased to avoid “yes or no” replies.

(5) Notice When Interpreter Is Not Needed

If an individual who needs an interpreter will not be present at a proceeding for which an interpreter had been requested, including a proceeding that had been continued or postponed, the individual, the individual's attorney, or the party or attorney who subpoenaed or otherwise requested the appearance of the individual shall notify the court as far in advance as practicable that an interpreter is not needed for that proceeding.

. . .

Rule 1-333 was accompanied by the following Reporter’s note:

Proposed amendments to Rule 1-333 add a Committee note following subsection (b)(2) to clarify that other individuals involved in the proceeding, court personnel, or anyone else who has knowledge that an individual needs an interpreter may alert the court to that fact. This provision was requested by the Court Access Committee as part of the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee.

The Chair explained that the proposed amendment to Rule 1-333 (b) was requested by the Court Access Committee as part of the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee. There being no motion to amend or reject the proposed amendment to Rule 1-333, it was approved as presented.

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