

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, October 10, 2024.

Members present:

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

Hon. Tiffany Anderson	Victor H. Laws, III, Esq.
Hon. Vicki Ballou-Watts	Dawne D. Lindsey, Clerk
James M. Brault, Esq.	Stephen S. McCloskey, Esq.
Hon. Catherine Chen	Kathleen Meredith, Esq.
Julia Doyle, Esq.	Judy Rupp, State Court Administrator
Arthur J. Horne, Jr., Esq.	Gregory K. Wells, Esq.
Brian Kane, Esq.	Brian Zavin, Esq.
Hon. Karen R. Ketterman	

In attendance:

Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter
Meredith A. Drummond, Esq., Assistant Reporter
Hon. John Morrissey, Chief Judge, District Court of Maryland
Gillian Tonkin, Esq., Staff Attorney to Chief Judge, District
Court
Sarah Kaplan, Esq., Juvenile & Family Services
Shaoli Katana, Esq., MSBA
Richard Keidel, Esq., Office of Legal Affairs and Fair Practices
Rachel Konieczny, The Daily Record

The Chair convened the meeting. He introduced new Executive Aide Courtney Towles, who started in the position at the end of July, to the Committee. He also informed the

Committee that the Supreme Court held an Open Meeting on the 223rd Report the previous day. The Court spent more than one hour on the category dealing with Rule 1-333 (Court Interpreters). He said that there was an "avalanche" of opposition from the interpreter community, which had not been anticipated. He explained that the opposition was to one proposed amendment, which changed the provision governing how long a proceeding can go on before the court should consider appointing an additional interpreter. The proposal changed the provision in the Rule from three to four hours, but the Chair commented that the interpreters who commented and addressed the Court also objected to the current three-hour provision. He said that the interpreters raised points not considered by the Committee.

Judge Nazarian informed the Committee that the rest of the proposed amendments to Rule 1-333 were adopted by the Court. He pointed out that the Rule was never intended to require interpreters to actively interpret for four hours without a second interpreter available to trade off, but the wording of the proposed amendments "landed on this nerve." He explained that there was a lack of clarity on the difference between an "assignment" where an interpreter is made available and a "proceeding" where an interpreter would be active and need

breaks or a second interpreter to combat fatigue. He added that this was not a problem the Committee was attempting to solve.

The Chair informed the Committee that the Court partially remanded Rule 1-333 because of the issues raised by the interpreters, so it will be back before the Committee at some point in the future. He also informed the Committee that the Court did not finish its consideration of the 223rd Report and will be scheduling an additional Open Meeting.

The Deputy Reporter introduced new members Kathleen Meredith and Judge Karen Ketterman and welcomed them to their first meeting. Assistant Reporter Drummond 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.

Agenda Item 1. Consideration of proposed amendments to Rule 16-911 (Required Denial of Inspection - In General)

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

MARYLAND RULES OF PROCEDURE
TITLE 16 – COURT ADMINISTRATION
CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

AMEND Rule 16-911 by updating the tagline to section (f) and by adding new subsection (f)(3), as follows:

RULE 16-911. REQUIRED DENIAL OF INSPECTION--
IN GENERAL

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

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

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

(2) the Maryland Constitution;

(3) a provision of the PIA that is made applicable to judicial records by the Rules in this Chapter;

(4) a Rule adopted by the Supreme Court; or

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

(A) the judicial record,

(B) the custodian of the judicial record, or

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

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

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

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

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

(d) Judicial or other Professional Work Product

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

(e) Record Subject to Expungement Order

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

(f) Security of Judicial Facilities, Equipment, Operations, Personnel; Protected Individuals and Information

A custodian shall deny inspection of:

(1) a continuity of operations plan; ~~and~~

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

(3) judicial records or parts of judicial records created or maintained by the Office of Information Privacy in relation to Code, Courts Article, Title 3, Subtitles 23 and 24.

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

Committee note: Subsection (a)(5) of this Rule allows a court to seal a record or otherwise preclude its disclosure. So long as a judicial record is under seal or subject to an order precluding or limiting disclosure, it may not be disclosed except in conformance with the court's order. The authority to seal a judicial record must be exercised in

conformance with the general policy of these Rules and with supervening standards enunciated in decisions of the Supreme Court of the United States and the Supreme Court of Maryland. See *Baltimore Sun Co. v. Colbert*, 323 Md. 290 (1991).

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

Rule 16-911 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-911 implement Ch. 415, 2024 Laws of Maryland (SB 575). The Judge Andrew F. Wilkinson Judicial Security Act creates the Office of Information Privacy ("OIP") in the Administrative Office of the Courts. A "protected individual" as defined by the Act may request or ask the OIP to request that certain personal information be removed from websites, social media, and publications.

In carrying out its duties under the Act, the OIP will necessarily be custodian of highly sensitive information (the Act defines "personal information" to include everything from a judge's home address and phone number to banking information and the daycare for a judge's child). The State Court Administrator has requested that Title 16, Chapter 900 ("the Access Rules") expressly prohibit public access to the records of the OIP.

Rule 16-902 (b) defines an administrative record as "a record that (A) pertains to the administration or administrative support of a court, a judicial agency, a special judicial unit, or the judicial system of the State; and (B) is not a case record." Pursuant to Rule 16-913 (d), an administrative record is not public if it is "(1) prepared by or for a judge or other judicial personnel; (2) either (A) purely administrative in nature but not a local rule, policy, or directive that governs the operation of the court or (B) a draft of a document intended for consideration by the author or others and not intended to be final in its existing form;

and (3) not filed with the clerk and not required to be filed with the clerk.”

The records of the OIP are likely covered by the administrative records provision of Rule 16-913 (d). However, to ensure the security of those records, the proposed amendment to Rule 16-911 (f) adds a new subsection to make it clear that records “created or maintained” by the OIP are shielded from public inspection.

The Chair informed the Committee that the proposed amendments to Rule 16-911 were requested by the State Court Administrator to implement the Judge Andrew F. Wilkinson Judicial Security Act (Chapter 415, 2024 Laws of Maryland (SB 575)). He noted that the Rule has not been through a subcommittee and will require a motion to approve.

Ms. Rupp thanked the Rules Committee for its prompt attention to this matter. She explained that the legislation went into effect on October 1 and allows the Office of Information Privacy (“the OIP”) to shield information pertaining to state and federal judges from public inspection. She said that the OIP will be tasked with maintaining records containing sensitive information about judges and their families. She said that she wanted the Rules to be extremely clear that that information is not public.

Judge Nazarian moved to approve Rule 16-911 as presented. Mr. Wells seconded the motion and it passed unanimously.

Agenda Item 2. Consideration of proposed amendments to Rule 16-912 (Access to Notice, Special Judicial Unit, License, and Domestic Partnership Records)

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

MARYLAND RULES OF PROCEDURE
TITLE 16 – COURT ADMINISTRATION
CHAPTER 900 – ACCESS TO JUDICIAL RECORDS
DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-912 by replacing the number “15” with the number “17” in subsection (c)(2)(B) and by conforming the cross reference following subsection (c)(2)(B) to the amended subsection, as follows:

Rule 16-912. ACCESS TO NOTICE, SPECIAL JUDICIAL UNIT, AND LICENSE, AND DOMESTIC PARTNERSHIP RECORDS

(a) Notice Records

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

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

(b) Special Judicial Unit Records

(1) Generally

Subject to unwaived lawful privileges and subsection (b)(2) of this Rule, where a requested record falls within the confidentiality rules applicable to a special judicial unit, access to the record is governed by the confidentiality Rules applicable to that unit.

(2) Exception

Access to administrative records of special judicial units that are not subject to a confidentiality provision in the Rules governing the unit shall be governed by Rule 16-913.

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

(c) License Records

(1) Business License Records

Except as otherwise provided by the Rules in this Chapter, the right to inspect business license records is governed by the applicable provisions of Parts II, III, and IV of the PIA.

(2) Marriage License Records

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

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

(B) until the license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a minor party to be married who is ~~15~~ 17 years old or older.

Cross reference: See Code, Family Law Article, § 2-301, which lists the conditions necessary to permit a 17-year-old minor ~~between 15 and 17 years old~~ to legally marry and Code, Family Law Article, § 2-402 (e), which permits disclosure to a parent or guardian of such a minor prior to the license becoming effective.

(d) Domestic Partnership Records

A custodian shall deny inspection of the portion of a declaration of domestic partnership or declaration of termination that contains the home address of either domestic partner.

Cross reference: See Code, Estates and Trusts Article, § 2-214(d)(3).

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

Rule 16-912 was accompanied by the following Reporter's note:

Conforming amendments are proposed to subsection (c)(2)(B) and the cross reference following subsection (c)(2)(B) to conform this Rule to the revisions to Code, Family Law Article, §2-301 enacted as Chapter 175, 2022 Laws of Maryland (HB 83). The statute was revised to prohibit minors under the age of 17 from legally marrying in the State.

The Chair explained that the proposed amendment to Rule 16-912 conforms the Rule to a 2022 statute that prohibits minors under the age of 17 from marrying.

There being no motion to amend or reject the proposed amendment to Rule 16-912, it was approved as presented.

Agenda Item 3. Consideration of proposed amendments to Rule 16-914 (Case Records - Required Denial of Inspection - Certain Categories)

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

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 900 - ACCESS TO JUDICIAL RECORDS
DIVISION 2 - LIMITATIONS ON ACCESS

AMEND Rule 16-914 by adding new section (s), as follows:

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

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

...

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

...

(q) A petition for authorization for minor to marry action filed pursuant to Rule 15-1501.

[note to Committee: section (r) is pending in the 223rd Report]

(r) In an action under Title 7, Chapter 200 of these Rules, the record of an administrative agency proceeding where the Administrative Agency Restricted Information Statement indicates that the record contains restricted information as defined by Rule 20-101 (s).

Cross reference: See Rules 7-206 and 7-206.1 pertaining to the record of an administrative agency proceeding filed in an action for judicial review of an administrative agency decision. For procedures to request an administrative agency to provide access to public portions of the agency's record of an administrative agency proceeding, see Code, General Provisions Article, Title 4 (Public Information Act).

(s) Case records shielded pursuant to Code, Real Property Article, § 8-503 (failure to pay rent actions).

Source: This Rule is derived in part from former Rule 16-907 (2019), and is in part new.

Rule 16-914 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-914 implement Chapter 347, 2024 Laws of Maryland (SB 19). The bill requires the District Court to automatically shield certain landlord-tenant actions if a failure to pay rent case does not result in a judgment of possession. There is also a provision for shielding these actions by motion under certain circumstances. Proposed new section (s) requires the custodian of these records to deny inspection if they are shielded pursuant to the statute. This language is modeled after a similar provision in section (c).

The Chair informed the Committee that the proposed amendment implements a statute shielding certain landlord-tenant actions. He noted that the Court just yesterday approved new section (r). The proposed amendment adds new section (s).

There being no motion to amend or reject the proposed amendment to Rule 16-914, it was approved as presented.

Agenda Item 4. Consideration of proposed amendments to Rule 4-211 (Filing of Charging Document), Rule 11-410 (Waiver of Jurisdiction), Rule 16-915 (Case Records - Required Denial of Inspection - Specific Information), Rule 16-916 (Case Records - Procedures for Compliance), Rule 10-108 (Orders), and Rule 15-1302 (Petition for Approval)

The Chair presented Rule 4-211, Filing of Charging Document and Rule 11-410, Waiver of Jurisdiction, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 – CRIMINAL CAUSES
CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-211 by adding new section (e) pertaining to the identity of a minor victim and by adding a cross reference following section (e), as follows:

Rule 4-211. FILING OF CHARGING DOCUMENT

(a) Citation

The original of a citation shall be filed in District Court promptly after its issuance and service. Electronic data documenting the citation uploaded to the District Court by or on behalf of the peace officer who issued the citation shall be regarded as an original of the citation.

(b) Statement of Charges

(1) Before Any Arrest

Except as otherwise provided by statute, a judicial officer may file a statement of charges in the District Court against a defendant who has not been arrested for that offense upon written application containing an affidavit showing probable cause that the defendant committed the offense charged. If not executed by a peace officer, the affidavit shall be made and signed before a judicial officer.

(2) After Arrest

When a defendant has been arrested without a warrant, unless an information is filed in the District Court, the officer who has custody of the defendant shall (A) forthwith cause a statement of charges to be filed against the defendant in the District Court and (B) at the same time or as soon thereafter as is practicable file an affidavit containing facts showing probable cause that the defendant committed the offense charged.

Cross reference: See Code, Courts Article, § 2-608 for special requirements concerning an application for a statement of charges against a law enforcement officer, an educator, or a person within the definition of “emergency services personnel” in that section for an offense allegedly committed in the course of executing the person's duties.

(c) Information

A State's Attorney may file an information as permitted by Rule 4-201.

Committee note: Nothing in section (b) of this Rule precludes the filing of an information in the District Court by a State's Attorney at any time, whether in lieu of the filing of a statement of charges or as an additional or superseding charging document after a statement of charges has been filed.

(d) Indictment

The circuit court shall file an indictment returned by a grand jury.

(e) Identity of Minor Victim

If a person responsible for filing a charging document with the court pursuant to this Rule knows that the charging document contains the name of or any other information that could be reasonably expected to identify a minor victim, the person shall notify the clerk of the presence of identifying information in the document and where in the document that information is contained.

Cross reference: See Code, Criminal Procedure Article, § 11-301.

Source: This Rule is derived as follows:

Section (a) is derived from the last clause of M.D.R. 720 i.

Section (b) is derived from M.D.R. 720 a and b.

Section (c) is new.

Section (d) is new.

Section (e) is new.

Rule 4-211 was accompanied by the following Reporter's note:

Proposed amendments to Rule 4-211 implement Chapters 877/878, 2024 Laws of Maryland (SB 111/HB 458). The statute deals with protection from public access of identifying information of a minor victim in a delinquency or criminal action. "Identifying information" includes the name of the minor victim or "information that reasonably could be expected to identify" the minor victim. The court is required to deny inspection of a filing containing this information "on notice that [the filing] includes identifying information of a minor victim." The court is permitted to order disclosure of the information on a finding by clear and convincing evidence that there is good cause to do so.

The Judiciary expressed concerns about the statute as it pertains to existing public filings that may contain this information. The Department of

Legislative Services stated in a revised Fiscal and Policy Note that “because the required redaction of identifying information prior to authorizing specified disclosure/inspection appears to only be triggered after *notice* that filings contain such information, it is assumed that identifying information within *existing* records that are available under current standards does not have to be redacted (which would necessitate significant time and resources) *unless* the Judiciary receives specific supplemental notice regarding the content of a particular document.” (emphasis in original).

Records in criminal proceedings involving minor victims must comply with the statute. The Rules contain procedures for filers to alert the court that filings contain information that is not public:

- Rule 20-101 defines “restricted information” as “information that, by Rule or other law, is not subject to public inspection or is prohibited from being included in a court record absent a court order.”
- Rule 20-201 (h) prohibits a submission by certain filers from containing restricted information.
- Rule 20-201.1 (c) requires (1) the completion of a Notice of Restricted Information form, (2) the redaction of the restricted information, and (3) the filing of the redacted copy for public access and an unredacted copy under seal that is not accessible to members of the general public.

The statute makes the identifying information of a minor victim in a criminal proceeding “restricted information” subject to Rules 20-201 and 20-201.1. Prosecutors and defense attorneys are subject to these Rules, which apply in every jurisdiction now that all counties utilize MDEC. However, because the statute explicitly applies to all types of charging documents, several categories of filers are not governed by the current procedures surrounding restricted information. District Court Commissioners – defined as “judicial personnel” in Rule 20-101 – and judges

and other court personnel are exempted from compliance with Rule 20-201 (h).

Proposed amendments to Rule 4-211 add new section (e), requiring the person who files a charging document with the court to notify the clerk of identifying information required to be redacted by the statute. See the Reporter's notes to Rules 16-915 and 16-916 for information regarding the proposed process for compliance with the statute's requirements.

MARYLAND RULES OF PROCEDURE
TITLE 11 - JUVENILE CAUSES
CHAPTER 400 - DELINQUENCY AND CITATION
PROCEEDINGS

AMEND Rule 11-410 by adding to the tagline of section (f), by adding new subsection (f)(1)(C) pertaining to records containing identifying information of a minor victim, by adding a cross reference following new subsection (f)(1)(C), and by making stylistic changes, as follows:

Rule 11-410. WAIVER OF JURISDICTION

(a) Initiation of Waiver

The court's exclusive original jurisdiction may be waived by the court:

(1) on its own initiative in conformance with subsection (b)(1) of this Rule; or

(2) on motion of the State's Attorney filed in conformance with subsection (b)(2) of this Rule.

Cross reference: See Code, Courts Article, § 3-8A-03, concerning the jurisdiction of the court, and § 3-8A-06, concerning the waiver of the court's exclusive jurisdiction.

(b) Timing

(1) Waiver on Court's Own Initiative

The court may waive its jurisdiction on its own initiative at any time after the filing of a delinquency petition but not later than 10 days before commencement of the first scheduled adjudicatory hearing.

(2) Motion by State's Attorney

(A) A motion to waive juvenile court jurisdiction filed by the State's Attorney may be filed with the delinquency petition or not later than five days before commencement of the first scheduled adjudicatory hearing.

(B) The motion to waive juvenile court jurisdiction shall state with particularity the reasons the State's Attorney requests the waiver, taking into account the factors required to be considered by the court under Code, Courts Article, § 3-8A-06(e).

(3) Waiver of Time Requirement

For good cause, the court may waive the time requirement of subsection (b)(2) of this Rule if, before commencement of the first scheduled adjudicatory hearing, the State's Attorney files against the child a subsequent delinquency petition accompanied by a waiver motion or an indictment or criminal information in a criminal case.

(c) Investigation

Upon the filing of a waiver motion, or prior to any waiver of jurisdiction by the court on its own initiative, the court shall order the Department of Juvenile Services to make a waiver investigation and prepare a report that addresses the criteria listed in Code, Courts Article, § 3-8A-06. The report shall include all records that are to be made available to the court at a waiver hearing. The Department shall file the report with the clerk at least five days before the scheduled waiver hearing. At the time of filing, the Department shall provide a copy of the report to the State's Attorney's Office, and the District Office of the Public Defender or private counsel. If the child is

unrepresented, the Department shall provide a copy of the report to the child.

(d) Hearing

(1) Required

The court may not waive its jurisdiction without first conducting a waiver hearing in accordance with this section.

(2) Notice

Reasonable notice of the time and place of the hearing shall be given to all parties pursuant to Rule 11-108 (f).

(3) Time of Hearing

Unless otherwise ordered, a waiver hearing shall be held:

(A) prior to an adjudicatory hearing; and

(B) within 30 days after the date a petition for detention or community detention is granted, or, if the child is not detained or on community detention, within 30 days after service of the waiver petition.

Cross reference: See Rule 11-406 concerning detention and community detention.

(4) Purpose of Hearing

A waiver hearing is for the sole purpose of determining whether the court should waive its jurisdiction.

(5) Admissibility of Report of Waiver Investigation

The report of the waiver investigation is admissible as evidence at the waiver hearing. Each party has the right to present evidence concerning the report.

Cross reference: See Code, Courts Article, § 3-8A-17(c) regarding admissibility of the report of a study as evidence. For admission of evidence, generally, see Rule 11-101 (b).

(6) Jurisdiction Previously Waived

If the court has previously waived its jurisdiction with respect to a delinquency petition filed against a respondent and a delinquency petition based on another alleged delinquent act is subsequently filed against the respondent, the court may waive its jurisdiction with respect to the subsequent petition based on the previous waiver after a limited hearing of which the respondent has been notified and at which the respondent has an opportunity to be heard.

Cross reference: See *In re Michael W.*, 53 Md. App. 271 (1982) regarding compliance with fundamental principles of due process.

(7) Respondent Over 21 Years of Age

If a delinquency petition is filed against a respondent who is over 21 years of age, the court may waive its jurisdiction after a limited hearing of which the respondent has been notified and at which the respondent has an opportunity to be heard.

(e) Required Condition for Waiver; Criteria; Considerations

(1) Required Condition

The court may not waive its jurisdiction unless it determines, by a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures.

(2) Criteria and Considerations

In considering that determination, the court shall assume that the respondent child committed the delinquent act alleged in the delinquency petition and shall consider the criteria set forth in Code, Courts Article, § 3-8A-06(e).

~~Cross Reference~~ reference: See *Davis v. State*, 474 Md. 439 (2021).

(f) Waiver Order

(1) Statement of Grounds; Contents of Order

If the court concludes that its jurisdiction should be waived, it shall prepare and file or dictate into the record a statement of the grounds for its decision and enter an order:

(A) waiving its jurisdiction and ordering the child held for trial under the appropriate criminal procedure; ~~and~~

(B) committing the child to the custody of the sheriff or other appropriate officer in an adult detention facility pending a pretrial release hearing pursuant to Rule 4-222-; and

(C) if identifying information of a minor victim or other restricted information is in the case record, ordering directing the State's Attorney or other filer to comply with the requirements of Rule 20-201.1 prior to the transfer of the case record to the court exercising criminal jurisdiction.

Cross reference: See Code, Courts Article, § 11-301 pertaining to redaction of identifying information of a minor victim.

(2) Effect of Delinquency Petition

The delinquency petition shall be considered a charging document for the purpose of detaining the respondent child pending a pre-trial release hearing.

(3) Copies

Pending a pre-trial release hearing, the clerk promptly shall furnish to the appropriate officer true copies of the delinquency petition and the court's waiver order.

Source: This Rule is derived in part from former Rule 11-113 (2021) and is in part new.

Rule 11-410 was accompanied by the following Reporter's note:

Proposed amendments to Rule 11-410 implement Chapters 887/888, 2024 Laws of Maryland (HB 458/SB 111). The law prohibits the court or a party in a criminal or juvenile delinquency proceeding from disclosing or allowing inspection of a filing that could identify a minor victim involved in the proceeding to a non-party without redaction of that information. The statute provides specifically that

“identifying information” includes the name of the minor victim or “information that reasonably could be expected to identify” the minor victim.

The court record in a delinquency proceeding is confidential by law and not subject to public inspection (Code, Courts Article, § 3-8A-27 (b) and Rule 16-914 (a)(2)). A proposed amendment to Rule 11-420 (f) requires the court to order the parties to comply with Rule 20-201.1 when the juvenile court waives its jurisdiction. A cross reference to the statute is added after the new subsection.

See the Reporter’s notes to Rules 16-915 and 16-915 for additional information regarding compliance with the statute by the court.

The Chair informed the Committee that the proposed amendments to Rules 4-211 and 11-410 implement a statute shielding identifying information regarding a minor victim in a criminal or delinquency action from public inspection. The Chair called for any comment on the proposed amendments.

Ms. Lindsey asked if the notice to the clerk in Rule 4-211 (e) could be in writing. She said that she wants to avoid a situation where someone comes to the clerk’s office in person to claim that protected information is in a court record without putting that notice in writing. Assistant Reporter Cobun noted that requiring the notice to be in writing matches the procedure in Rule 16-915, which is also included in this agenda item, for notifying the clerk of information subject to shielding. Ms. Lindsay moved to add “in writing” to Rule 4-211 (e). The motion was seconded and approved by consensus.

Ms. Cobun also informed the Committee that Judge Bryant, who could not be present, had emailed several comments on this agenda item that she wished to raise. In Rule 4-211, Judge Bryant suggested that the phrase "could be reasonably expected to identify" be changed to "could be reasonably used to identify." Ms. Cobun explained that the phrase is pulled directly from the statute and is also used in Rule 16-915. The Chair called for a motion to make that amendment. Judge Nazarian commented that he would be hesitant to deviate from the statute.

There being no further motion to amend or reject the proposed amendments to Rule 4-211, the Rule was approved as amended.

The Chair called for comments on Rule 11-410. Ms. Cobun said that Judge Bryant had also flagged a mistake in Rule 11-410 (f) (1) (C): the Juvenile Subcommittee was asked to choose between "ordering" and "directing" in that subsection. The Subcommittee chose "ordering," and "directing" should have been deleted. By consensus, the Committee accepted the amendment deleting "directing."

There being no further motion to amend or reject the amendments to Rule 11-410, the Rule was approved as amended.

The Chair presented Rule 16-915, Case Records - Required Denial of Inspection - Specific Information and Rule 16-916, Case Records - Procedures for Compliance, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 900 - ACCESS TO JUDICIAL RECORDS
DIVISION 2 - LIMITATIONS ON ACCESS

AMEND Rule 16-915 by adding new section (d) pertaining to identifying information of a minor victim; by adding a cross reference following new section (d); and by re-lettering sections (d) through (h) as (e) through (i), respectively, as follows:

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

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

- (a) The name, address, telephone number, e-mail address, or place of employment of an individual who reports the abuse of a vulnerable adult pursuant to Code, Family Law Article, § 14-302.
- (b) Except as provided in Code, General Provisions Article, § 4-331, the home address, telephone number, and private e-mail address of an employee of the State or a political subdivision of the State.
- (c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested, or as to whom the State has

requested, that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or petition filed under Rule 16-934.

(d) The name of a minor victim or any other information that could reasonably be expected to identify a minor victim in a criminal action or a juvenile delinquency action where the juvenile court waives jurisdiction.

Cross reference: See Code, Criminal Procedure Article, § 11-301 (b).

~~(d)~~(e) The address, telephone number, and e-mail address of a witness in a criminal or juvenile delinquency action, who has requested, or as to whom the State has requested, that such information be shielded. Such a request may be made at any time, including a request or petition filed under Rule 16-934.

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

~~(f)~~(g) A trade secret, confidential commercial information, confidential financial information, or confidential geological or geophysical information.

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

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

Cross reference: See Rule 16-934 (i) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions. For obligations of a filer of a submission containing restricted information, see Rules 16-916 and 20-201.1.

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

Rule 16-915 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-915 implement Chapters 887/888 (HB 458/SB 111), 2024 Laws of Maryland. The law prohibits the court or a party in a criminal or juvenile delinquency proceeding from disclosing or allowing inspection of a filing that could identify a minor victim involved in the proceeding to a non-party without redaction of that information. The statute provides specifically that "identifying information" includes the name of the minor victim or "information that reasonably could be expected to identify" the minor victim. See the Reporter's note to Rule 4-211.

New section (d) implements the statute's requirements. A cross reference to the new law follows the section. Subsequent sections are re-lettered. See the Reporter's note to Rule 16-916 for additional information regarding compliance with the statute by the court.

MARYLAND RULES OF PROCEDURE
TITLE 16 – COURT ADMINISTRATION
CHAPTER 900 – ACCESS TO JUDICIAL RECORDS
DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-916 by adding to subsection (b)(2) a provision authorizing a person who is the subject of a case record to inform the custodian if a case record contains information not subject to inspection and a provision permitting the custodian to refer to a judge a question as to whether information is subject to public inspection, as follows:

Rule 16-916. CASE RECORDS – PROCEDURES FOR COMPLIANCE

(a) Duty of Person Filing Record

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

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

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

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

(b) Duty of Clerk

(1) The clerk shall make a reasonable effort, promptly upon the filing or creation of a case record, to shield any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian by the person filing or authorizing the filing of the case record.

Cross reference: See Rule 20-203.

(2) ~~Persons~~ A person (A) who filed or authorized the filing of a case record filed prior to July 1, 2016 or (B) who is a subject of a case record or acting on behalf of a subject of a case record filed at any time may advise the custodian in writing whether any part of the case

record is not subject to inspection. The custodian is not bound by that determination and may refer the matter to a judge for consideration. The custodian shall make a reasonable effort, as time and circumstances allow, to shield from those case records any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian. The duty under this subsection is subordinate to all other official duties of the custodian.

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

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

Rule 16-916 was accompanied by the following Reporter’s note:

Proposed amendments to Rule 16-916 implement Chapters 887/888 (HB 458/SB 111, 2024 Laws of Maryland). The law prohibits the court or a party in a criminal or juvenile delinquency proceeding from disclosing or allowing inspection of a filing that could identify a minor victim involved in the proceeding to a non-party without redaction of that information. The statute provides specifically that “identifying information” includes the name of the minor victim or “information that reasonably could be expected to identify” the minor victim. See the Reporter’s note to Rule 4-211.

Proposed amendments to Rule 16-915 state that this information is not subject to public inspection.

For records later discovered to contain information identifying a minor victim, Rule 16-916 (b) is updated and expanded to allow clerks to respond when alerted later to the presence of non-public information. Subsection (b)(2) currently permits a filer to advise the custodian of a case record that was filed prior to July 1, 2016 that part of the record should be

shielded from public access. Proposed amendments would permit the subject of a case record or someone acting on behalf of the subject of a case record to alert the clerk of non-public information contained in the record. This provision applies regardless of when the record was filed. An additional amendment permits the clerk to refer the matter to a judge for determination.

The Chair informed the Committee that the amendments in Rules 16-915 and 16-916 also implement the statute shielding minor victims' identifying information. The Chair called for comments on Rules 16-915 and 16-916. Ms. Cobun said that she had another note from Judge Bryant on Rule 16-916 (b)(2). The current language of the Rule refers to a "determination" by a person – not the clerk – that a case record contains non-public information. Ms. Cobun explained that Judge Bryant suggested that the word be changed to something like "assertion" to make it clear that only the custodian of the record makes a determination under the Rule. By consensus, the Committee agreed to amend the Rule to change "determination" to "assertion."

There being no motion to amend or reject the proposed amendments to Rule 16-915, the Rule was approved as presented. There being no further motion to amend or reject the proposed amendments to Rule 16-916, the Rule was approved as amended.

The Chair presented conforming amendments to Rule 10-108, Orders, and Rule 15-1302, Petition for Approval, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-108 by updating the cross reference following section (a), as follows:

Rule 10-108. ORDERS

(a) Order Appointing Guardian

(1) Generally

An order appointing a guardian shall:

(A) state whether the guardianship is of the property, the person, or both;

(B) state the name, sex, and date of birth of the minor or the disabled person;

(C) state the name, address, telephone number, and e-mail address, if available, of the guardian;

(D) state whether the appointment of a guardian is solely due to a physical disability, and if not, the reason for the guardianship;

(E) state (i) the amount of the guardian's bond or that bond is waived and (ii) the date by which proof of any bond shall be filed with the court;

Cross reference: See Rule 10-702 (a), requiring the bond to be filed before the guardian commences the performance of any fiduciary duties.

(F) state the date by which any annual report of the guardian shall be filed; and

Cross reference: See Rule 10-706 (b).

(G) state the specific powers and duties of the guardian and any limitations on those powers or duties either expressly or by referring to the specific sections or subsections of an applicable statute containing those powers and duties; and

(H) except as to a public guardian, unless the guardian has already satisfied the requirement or the court orders otherwise, direct the guardian to complete an orientation program and training in conformance with the applicable Guidelines for Court-Appointed Guardians attached as an Appendix to the Rules in this Title.

Committee note: An example of an appointment as to which waiver of the orientation and training requirements of subsection (a) (1) (H) may be appropriate is the appointment of a temporary guardian for a limited purpose of specific transaction.

Cross reference: Code, Estates and Trusts Article, §§ 13-201 (b) and (c), 13-213, 13-214, 13-705 (b), 13-708, and 15-102 and Title 15, Subtitle 6 (Maryland Fiduciary Access to Digital Assets Act).

(2) Confidential Information

Information in the order or in papers filed by the guardian that is subject to being shielded pursuant to the Rules in Title 16, Chapter 900 shall remain confidential, but, in its order, the court may permit the guardian to disclose that information when necessary to the administration of the guardianship, subject to a requirement that the information not be further disclosed without the consent of the guardian or the court.

Committee note: Disclosure of identifying information to financial institutions and health care providers, for example, may be necessary to further the purposes of the guardianship.

Cross reference: See Rule 16-914 (e) and (i) and Rule 16-915 ~~(e)~~(f).

...

Rule 10-108 was accompanied by the following Reporter's note:

A conforming amendment to Rule 10-108 is necessitated by the proposed amendments to Rule 16-915. Section (e) of that Rule is now (f). The cross reference after section (a) of Rule 16-915 is updated.

MARYLAND RULES OF PROCEDURE
TITLE 15 – OTHER SPECIAL PROCEEDINGS
CHAPTER 1300 – STRUCTURED SETTLEMENT
TRANSFERS

AMEND Rule 15-1302 by updating the cross reference following subsection (c)(1)(F), as follows:

Rule 15-1302. PETITION FOR APPROVAL

...

(c) Contents of Petition

In addition to any other necessary averments, the petition shall:

(1) subject to section (d) of this Rule, include as exhibits:

(A) a copy of the structured settlement agreement;

(B) a copy of any order of a court or other governmental authority approving the structured settlement;

(C) a copy of each annuity contract that provides for payments under the structured settlement agreement or, if any such annuity contract is not

available, a copy of a document from the annuity issuer or obligor evidencing the payments payable under the annuity policy;

(D) a copy of the transfer agreement;

(E) a copy of any disclosure statement provided to the payee by the transferee;

(F) a written Consent by the payee substantially in the form specified in Rule 15-1303;

Cross reference: For shielding requirements applicable to identifying information contained in the payee's Consent, see Rule 16-915 ~~(h)~~(i).

(G) an affidavit by the independent professional advisor selected by the payee, in conformance with Rule 15-1304;

(H) a copy of any complaint that was pending when the structured settlement was established; and

(I) proof of the petitioner's current registration with the Office of the Attorney General as a structured settlement transferee or a copy of a pending application for registration as specified in Code, Courts Article, § 5-1107, if the Office of the Attorney General has not acted within the time specified in Code, Courts Article, Title 5, Subtitle 11.

(2) if the petitioner is not an individual, state (i) the legal status of the petitioner, (ii) whether it is registered to do business in Maryland; and (iii) the name, address, e-mail address, and telephone number of any resident agent in Maryland;

(3) state the names and addresses and, if known, the telephone numbers and email addresses of all interested parties, as defined in Code, Courts Article, § 5-1101 (e);

(4) state whether, to the best of the petitioner's knowledge, information, and belief, the structured settlement arose from (A) a claim of lead poisoning, or (B) any other claim in which an allegation was made in a court record of a mental or cognitive impairment on the part of the payee;

(5) identify any allegations or statements in any complaint attached under subsection (c)(1)(H) of this Rule that describe the nature, extent, or consequences of the payee's cognitive injuries or disabling impairment;

Committee note: To comply with subsection (c)(5) of this Rule, the petitioner should refer to places in the complaint containing the allegations or statements, rather than repeating the allegations or statements in the petition.

(6) state whether there have been any prior transfers or proposed transfers of any of the payee's structured settlement payment rights, and for each prior transfer or proposed transfer:

(A) state whether the transferee in each transfer agreement was the petitioner, an affiliate or predecessor of the petitioner, or a person unrelated in any way to the petitioner;

(B) identify the court and the number of the case in which the transfer or proposed transfer was submitted for approval;

(C) state the disposition of the requested approval; and

(D) include as an exhibit a copy of (i) the transfer agreement, (ii) any disclosure statement provided to the payee by the transferee, and (iii) a copy of any court order approving or declining to approve such transfer or otherwise finally disposing of an application for approval of such transfer.

(7) state the amounts and due dates of the structured settlement payments to be transferred and the aggregate amount of these payments;

(8) state (A) the total amount to be paid under the transfer agreement; (B) the net amount to be received by the payee, after deducting all fees, costs, and amounts chargeable to the payee; and (C) the discounted present value of the payments that would be transferred as determined in accordance with Code, Courts Article, § 5-1101 (b); and

(9) contain a calculation and statement in the following form: “Based on the net amount that the payee will receive from the transferee and the amounts and timing of the structured settlement payments that the payee is transferring to the transferee, the payee will be paying an implied, annual interest rate of _____ percent per year on this transaction, if it were a loan transaction”;

(10) state whether, prior to the filing of the petition, there have been any written, oral, or electronic communications between the petitioner and the independent professional advisor selected by the payee with respect to the transfer and, if so, the dates and nature of those communications; and

(11) state whether, to the best of the petitioner's knowledge after making reasonable inquiry, the proposed transfer would not contravene any applicable law, statute, Rule, or the order of any court or other government authority.

...

Rule 15-1302 was accompanied by the following Reporter's note:

A conforming amendment to Rule 15-1302 is necessitated by the proposed amendments to Rule 16-915. Section (h) of that Rule is now (i). The cross reference after subsection (c)(1)(F) of Rule 15-1302 is updated.

The Chair explained that the two conforming amendments to Rules 10-108 and 15-1302 are necessitated by some re-lettering in Rule 16-915. Ms. Meredith commented that there is a typo in the Committee note after subsection (a)(1)(H). The end of the Committee note should read “or specific transaction.” Ms. Cobun

confirmed that this was a typo made by staff and does not necessitate an amendment to correct.

The Chair noted that the conforming amendments require a motion to approve. By consensus, the Committee approved Rules 10-108 and 15-1302, subject to correction of the typo in Rule 10-108.

Agenda Item 5. Consideration of proposed amendments to Rule 16-933 (Declaratory and Injunctive Relief)

The Chair presented Rule 16-933, Declaratory and Injunctive Relief, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 – COURT ADMINISTRATION
CHAPTER 900 – ACCESS TO JUDICIAL RECORDS
DIVISION 4 – RESOLUTION OF DISPUTES

AMEND Rule 16-933 by adding new subsection (a)(2) pertaining to the ability of the State Court Administrator or custodian to seek declaratory and injunctive relief in certain circumstances, by adding “or requestor” to sections (b) and (c) to clarify that these sections cover both requestors and custodians, by adding a reference to subsection (a)(1) in subsections (e)(1) and (g)(1), by adding new subsection (e)(2) pertaining to the burden the custodian or State Court Administrator must meet, by adding new subsection (g)(2) pertaining to the contents of an order entered in response to a request under section (a)(2) of this Rule, and by making stylistic changes, as follows:

Rule 16-933. DECLARATORY AND INJUNCTIVE RELIEF

(a) Generally

(1) Right to File of a Requestor

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

(2) Right to File of a Custodian or SCA

A custodian or SCA may file a complaint for declaratory and injunctive relief pursuant to the Maryland Declaratory Judgment Act alleging that a request for inspection of a judicial record or pattern of requests is frivolous, vexatious, or in bad faith.

~~(2)~~(3) Waiver of Court Costs

Court costs for the action shall be waived.

~~(3)~~(4) Exhaustion of Administrative Remedies Not Required

Failure to seek administrative review under Rule 16-932 shall not be grounds to dismiss the action.

(b) Where Filed; Service

The complaint shall be filed in the circuit court for the county in which the custodian is employed and shall be served on the custodian or requestor in accordance with Rule 2-121.

(c) Response

The custodian or requestor shall file a response within 30 days after service of the complaint and summons.

(d) Expedited Treatment

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

(e) Burden

(1) Complaint Filed by Requestor

For a complaint filed pursuant to subsection (a)(1) of this Rule, The the custodian or SCA shall have the burden of ~~(1)(A)~~ sustaining the decision that the custodian or SCA made to deny inspection or production of the requested information or judicial record, or to delay a decision on the request, and ~~(2)(B)~~ justifying the proposed fee, if that is in dispute.

(2) Complaint Filed by Custodian or SCA

For a complaint filed pursuant to subsection (a)(2) of this Rule, the custodian or SCA shall have the burden of demonstrating that a request or pattern of requests is frivolous, vexatious, or in bad faith.

(f) In Camera Inspection

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

(g) Order

(1) Complaint Filed by Requestor

For a complaint filed pursuant to subsection (a)(1) of this Rule, If if the court finds that the requester has a right to inspect all or any of the record or to have a new judicial record created, it shall enter an order ~~(1)(A)~~ directing the custodian to produce or create the record or the part of the record subject to inspection for inspection by the requester within a specified time, and ~~(2)(B)~~ if in issue, determine the appropriate fee for producing or creating the record. Otherwise, the court shall dismiss the complaint.

(2) Complaint Filed by Custodian or SCA

For a complaint filed pursuant to subsection (a)(2) of this Rule, if the court finds that the custodian

or SCA has met the burden of proof set forth in subsection (e)(2) of this Rule, the court shall enter an order granting appropriate relief. Otherwise, the court shall dismiss the complaint.

(3) Enforcement

Willful disobedience of an order issued under this Rule may be enforced by contempt. No money damages or attorneys' fees may be awarded to any party.

Source: This Rule is in part derived from former Rule 16-914 (2019) and is in part new.

Rule 16-933 was accompanied by the following Reporter's note:

The General Court Administration Subcommittee proposes amendments to Rule 16-933 to add to the Court Access Rules provisions concerning vexatious requests. The State Court Administrator requested these amendments to address increasing instances of frivolous and repetitious requests for judicial records. The proposed revisions are similar to provisions contained in the Public Information Act.

New subsection (a)(2) is proposed to establish that a custodian or the State Court Administrator may seek relief pursuant to the Maryland Declaratory Judgment Act when a request for inspection of a judicial record or pattern of requests is frivolous, vexatious, or in bad faith.

Conforming amendments are proposed to sections (b) and (c) to clarify that these sections apply to both requestors and the custodian.

New subsection (e)(2) indicates that a custodian or the State Court Administrator must show the Court that a request is "frivolous, vexatious, or in bad faith" to meet their burden.

Section (g) is proposed to be amended to provide guidance to a trial Court when entering an order for a

complaint filed by a custodian or the State Court Administrator.

Stylistic changes are also proposed.

The Chair informed the Committee that Rule 16-933 is amended to allow the State Court Administrator to seek declaratory relief in cases where there is a pattern of frivolous, vexatious, or bad faith requests for records. He noted that Rich Keidel, Associate Legal Counsel for the Office of Legal Affairs and Fair Practices, wrote a memorandum, which is included in the materials (see Appendix 1), and was present to answer any questions. Ms. Rupp said that she can also answer questions. She said that the change allows the custodian of a record or her office to seek relief similar to what is available under the Maryland Public Information Act.

There being no motion to amend or reject the proposed amendments to Rule 16-933, the amendments to the Rule were approved as presented.

Agenda Item 6. Consideration of proposed amendments to Rule 16-934 (Case Records - Court Order Denying or Permitting Inspection Not Otherwise Authorized by Rule)

The Chair presented Rule 16-934, Case Records - Court Order Denying or Permitting Inspection Not Otherwise Authorized by Rule, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 – COURT ADMINISTRATION
CHAPTER 900 – ACCESS TO JUDICIAL RECORDS
DIVISION 4 – RESOLUTION OF DISPUTES

AMEND Rule 16-934 by adding new subsection (d)(2) pertaining to ruling on a motion without a hearing; by renumbering current subsections (d)(2) through (d)(5) as (d)(3) through (d)(6), respectively; by clarifying in renumbered subsections (d)(4) and (d)(5) that a hearing is pursuant to section (f) of the Rule; and by updating internal references in renumbered subsection (d)(6); as follows:

Rule 16-934. CASE RECORDS – COURT ORDER
DENYING OR PERMITTING INSPECTION NOT
OTHERWISE AUTHORIZED BY RULE

(a) Purpose; Scope

(1) Generally

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

(2) Exception

This Rule does not apply to, and does not authorize a court to permit inspection of, a case record where inspection would be contrary to the United States or Maryland Constitution, a Federal statute or regulation that has the force of law, a Maryland statute other than the PIA, or to a judicial record that

is not subject to inspection under Rule 16-911 (c), (d), (e), or (f).

(b) Petition

(1) A party to an action in which a case record is filed, and a person who is the subject of or is specifically identified in a case record may file in the action a petition:

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

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

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

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

(B) if the petition is to permit inspection of a case record filed in that action that is not otherwise subject to inspection, each identifiable person who is a subject of the case record.

(3) A petition to shield a judicial record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 shall be filed in the county where the judgment of conviction was entered and shall state that the petition is filed pursuant to this Rule and that it should be shielded. The petition shall be shielded, subject to further order of the court. Service shall be made, and proceedings shall be held as directed in that Subtitle.

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

(c) Shielding of Record Upon Petition

(1) Section (c) of this Rule does not apply to a petition filed pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 or a submission pursuant to Rule 20-201.1 (d).

(2) Upon the filing of a petition to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue. Immediately upon docketing, a petition to seal or otherwise limit inspection of a case record shall be delivered to a judge for consideration.

(d) Temporary Order Precluding or Limiting Inspection

(1) The court shall consider a petition to preclude or limit inspection filed under this Rule on an expedited basis.

(2) If it does not clearly appear from specific facts shown by affidavit or other statement under oath that there is a substantial basis to believe that the case record is properly subject to an order precluding or limiting inspection pursuant to this Rule, the court may, without a hearing, deny the petition. If the court denies the petition pursuant to this subsection, the petitioner may file a motion for reconsideration of the denial. A motion for reconsideration shall be filed no later than 15 days after the date of denial of the petition. The court may reconsider the denial only if the petitioner provides additional facts shown by affidavit or other statement under oath on the issue of whether there is a substantial basis to believe that the case record is properly subject to an order precluding or limiting inspection pursuant to this Rule.

~~(2)~~(3) The court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other statement under oath that (A) there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection pursuant to this Rule, and (B) immediate, substantial, and irreparable harm will result to the

person seeking the relief or on whose behalf the relief is sought if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.

~~(3)~~(4) If a petition to preclude or limit inspection is filed by a plaintiff prior to service of the original pleading, the petition to preclude or limit inspection shall be served on the defendant with the original pleading. The court shall hold a hearing under section (f) of this Rule on the petition to preclude or limit inspection within 15 days after the earlier of (A) filing of proof of service of the original pleading or (B) filing of the first responsive pleading by the defendant.

~~(4)~~(5) If a petition to preclude or limit inspection is filed after all parties have been served in the underlying action, the court shall hold a hearing under section (f) of this Rule on the petition within 15 days after the petition to preclude or limit inspection is filed.

~~(5)~~(6) For good cause shown, a temporary order precluding or limiting inspection may be extended for up to 30 days after service under subsection ~~(d)~~(3)~~(d)~~(4) or filing under subsection ~~(d)~~(4)~~(d)~~(5) of this Rule.

(e) Referral for Evidentiary Hearing

If a petition to preclude or limit inspection is filed in an appellate court and the appellate court determines that an evidentiary hearing is needed pursuant to this Rule, the appellate court may refer the matter to a judge of a circuit court to conduct the evidentiary hearing.

(f) Final Order

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

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

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

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

(C) denying the petition.

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

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

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

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

(A) whether a special and compelling reason exists to preclude, limit, or permit inspection of the particular case record, and, if so, a description of that reason;

(B) whether any substantial harm is likely to come from the order and, if so, the nature of that harm; and

(C) if the petition seeks to permit inspection of a case record that has been previously sealed by court order under subsection (f)(2)(A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections (f)(3), (4), and (6)(A) of this Rule.

(7) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order within 30 days after a hearing was held or waived.

(g) Filing of Order

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

(h) Non-Exclusive Remedy

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

(i) Request to Shield Certain Information

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

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

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

Committee note: If a court or District Court Commissioner grants a request to shield information under section (h) of this Rule, no adversary hearing is held unless a hearing is required by statute or a person seeking inspection of the shielded information files a petition under section (b) of this Rule.

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

Rule 16-934 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-934 were requested by the Chief Judge of the District Court to create a procedure for a judge to rule without a hearing on a motion to preclude or limit inspection of a case record where it appears on the face of the motion that there is no basis to grant it. The General Court Administration Subcommittee was informed that the District Court sees a significant volume of motions to limit inspection of records, but most are not meritorious and can be ruled on without a hearing.

Proposed amendments to section (d) add new subsection (d)(2) to permit the court to find that the specific facts provided do not provide a substantial basis to believe that the record is properly subject to an order precluding or limiting inspection. In such cases, the court may deny the motion in chambers without a hearing; however, the petitioner may file a motion for reconsideration within 15 days after the denial and provide additional facts for the court to consider.

Subsequent subsections are renumbered, and internal references are updated. Additionally, clarifying amendments to renumbered subsections (d)(4) and (d)(5) state that the hearing referenced in those subsections refers to a hearing pursuant to section (f) of the Rule.

The Chair explained that the proposed amendments to Rule 16-934 allow the court to deny a request under the Rule without a hearing if, on its face, there is no basis to grant the request. He informed the Committee that Chief Judge Morrissey

requested the amendment. Chief Judge Morrissey said that there has been an increase in requests seeking to shield information that there is no legal basis to shield, particularly in District Court records.

There being no motion to amend or reject the proposed amendments to Rule 16-934, the Rule was approved as presented.

Agenda Item 7. Consideration of proposed amendments to Rule 11-405 (Taking Child into Custody), Rule 11-406 (Detention; Community Detention; Shelter Care), and Rule 11-420.2 (Safe Harbor - Victims of Child Sex Trafficking and Human Trafficking)

Judge Anderson presented Rule 11-405, Taking Child into Custody; Rule 11-406, Detention; Community Detention; Shelter Care; and Rule 11-420.2, Safe Harbor - Victims of Child Sex Trafficking and Human Trafficking, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 11 – JUVENILE CAUSES
CHAPTER 400 – DELINQUENCY AND CITATION
PROCEEDINGS

AMEND Rule 11-405 by adding a statutory
reference to section (b), as follows:

Rule 11-405. TAKING CHILD INTO CUSTODY

...

(b) Notice; Release; Detention

A law enforcement officer who takes a child into custody shall comply with the requirements of Code, Courts Article, §§ 3-8A-14(b) and (d) and 3-8A-14.2.

...

Rule 11-405 was accompanied by the following Reporter's note:

Amendments to Rule 11-405 are proposed in light of Chapter 735, 2024 Laws of Maryland (HB 814). The bill added new section (d) to Code, Courts Article, § 3-8A-14 to include additional requirements for a law enforcement officer taking a child into custody. A reference to section (d) is added to Rule 11-405 (b).

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 400 – DELINQUENCY AND CITATION
PROCEEDINGS

AMEND Rule 11-406 by adding a provision pertaining to waiver of the required review hearing to subsection (f)(2), as follows:

Rule 11-406. DETENTION; COMMUNITY DETENTION;
SHELTER CARE

...

(f) Child in Detention--Required Actions

(1) Plan for Release

Within 10 days after a court orders detention of a child, the Department of Juvenile Services shall submit a plan to the court for releasing the child into the community.

Cross reference: See Code, Courts Article, § 3-8A-15(l).

(2) Review Hearing

Within 14 days after the court orders detention of a child, and every 14 days thereafter, the Department of Juvenile Services shall appear at a review hearing before the court with the child to explain the reasons for continued detention. With the consent of the State's Attorney and the child's attorney, the court may waive the hearing, provided that no prior waiver of a review hearing under this subsection had been granted.

Cross reference: See Code, Courts Article, § 3-8A-15(k).

...

Rule 11-406 was accompanied by the following Reporter's note:

Proposed amendments to Rule 11-406 implement Chapter 735, 2024 Laws of Maryland (HB 814). The bill added a provision to Code, Courts Article, § 3-8A-15 (k) governing waiver of the required review hearing. Rule 11-406 (f)(2) is updated to include this provision.

MARYLAND RULES OF PROCEDURE
TITLE 11 - JUVENILE CAUSES
CHAPTER 400 – DELINQUENCY AND CITATION
PROCEEDINGS

AMEND Rule 11-420.2 by updating a statutory reference in the cross reference following section (e), as follows:

Rule 11-420.2. SAFE HARBOR – VICTIMS OF CHILD SEX TRAFFICKING AND HUMAN TRAFFICKING

...

(e) Use of Certain Evidence in Other Proceedings

Any statement made by the child or information elicited from the child (1) in connection with services provided pursuant to a referral under Code, Courts Article, § 3-8A-17.13(b)(1)(iii) or (2) at a hearing pursuant to section (c) of this Rule is inadmissible against the child in any proceeding except a hearing held pursuant to subsection (c)(1) of this Rule.

Cross reference: See Code, Family Law Article, § 5-704.4 pertaining to the Safe Harbor Regional Navigator Grant Program. See Code, Courts Article, § 3-8A-14 ~~(d)~~(e) pertaining to duties of a law enforcement officer if there is reason to believe that a child who has been detained is a victim of sex trafficking or human trafficking. See Code, Courts Article, § 3-8A-14.2 pertaining to custodial interrogation of children.

Source: This Rule is new.

Rule 11-420.2 was accompanied by the following Reporter's note:

Proposed amendments to Rule 11-420.2 conform a cross reference to Chapter 735, 2024 Laws of Maryland (HB 814). The bill added a new section to Code, Courts Article, § 3-8A-14, which changed the reference used in the cross reference following section (e).

Judge Anderson explained that the proposed amendments in Agenda Item 7 implement various provisions in recent juvenile law legislation (Chapter 735, 2024 Laws of Maryland (HB 814)).

Judge Anderson said that the amendment to Rule 11-405 (b) adds a reference to an additional provision that applies when a child is taken into custody. Rule 11-406 is amended to state that, with the consent of the State and the child's attorney, the court may waive one review hearing required under the Code. A statutory reference in the cross reference following Rule 11-420.2 (e) is also updated. She said that all of the changes are Subcommittee-approved.

There being no motion to amend or reject the proposed amendments to Rules 11-405, 11-406, and 11-420.2, they were approved as presented.

Agenda Item 8. Consideration of proposed amendments to Rule 11-102 (Definitions), Rule 11-302 (Definitions), Rule 11-422 (Disposition Hearing and Order), Rule 11-423 (Revisory Power; Post-Disposition Hearings), and Rule 4-314 (Defense of Not Criminally Responsible)

Judge Anderson presented Rule 11-102, Definitions; Rule 11-302, Definitions; Rule 11-422, Disposition Hearing and Order; Rule 11-423, Revisory Power; Post-Disposition Hearings; and Rule 4-314, Defense of Not Criminally Responsible, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 11 - JUVENILE CAUSES
CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 11-102 by updating the terms in the cross reference following section (a), as follows:

Rule 11-102. DEFINITIONS

The following definitions apply in this Title:

(a) Statutory Definitions

The definitions in Code, Courts Article, §§ 3-801 and 3-8A-01 are applicable to this Title. If a definition in Code, Courts Article, Title 3, Subtitle 8 differs from the definition of the term in Code, Courts Article, Title 3, Subtitle 8A, the definition in the Subtitle under which the particular action or proceeding was filed applies.

Cross reference: See Code, Courts Article, § 3-801 for definitions of “abuse,” “adjudicatory hearing,” “adult,” “child,” “child in need of assistance,” “CINA,” “commit,” “custodian,” “custody,” “developmental disability,” “disposition hearing,” “guardian,” “guardianship,” labor trafficking,” “local department,” “mental disorder,” “mental injury,” “neglect,” “parent,” “party,” “qualified residential treatment program,” “reasonable efforts,” “relative,” “sex trafficking,” “sexual abuse,” “sexual molestation or exploitation,” “shelter care,” “shelter care hearing,” “TPR proceeding,” “voluntary placement,” and “voluntary placement hearing.”

See Code, Courts Article, § 3-8A-01 for definitions of “adjudicatory hearing,” “adult,” “child,” “child in need of supervision,” “citation,” “commit,” “community detention,” “competency hearing,” “custodian,” “delinquent act,” “delinquent child,” “detention,” “developmental disability,” “disposition hearing,” “incompetent to proceed,” “intake officer,” intellectual disability,” “mental disorder,” ~~“mental retardation,”~~ “mentally handicapped child,” “party,”

“peace order proceeding,” “peace order request,”
“petition,” “qualified expert,” “respondent,” “shelter
care,” “victim,” “violation,” and “witness.”

...

Rule 11-102 was accompanied by the following Reporter’s
note:

Proposed amendments to Rule 11-102
implement Chapters 348/349, 2024 Laws of Maryland
(SB 550/HB 508) and Chapter 444, 2024 Laws of
Maryland (HB 432).

Ch. 348/349 added a definition of “labor
trafficking” to Code, Courts Article, § 3-801. The first
paragraph of the cross reference following section (a) is
updated to reflect this addition.

Ch. 444 made technical amendments to a series
of statutes by replacing the term “mental retardation”
with “intellectual disability.” The second paragraph of
the cross reference following section (a) is updated.

MARYLAND RULES OF PROCEDURE
TITLE 11 - JUVENILE CAUSES
CHAPTER 300 – DEFINITIONS

AMEND Rule 11-302 by updating the terms in
the cross reference following section (b), as follows:

Rule 11-302. DEFINITIONS

The following definitions apply in this Chapter:

...

(b) Additional Definitions

(1) CINA

“CINA” means a child in need of assistance under Chapter 200 of these Rules.

(2) Local Department

“Local department” means the local department of social services for the county in which the court is located. In Montgomery County, “local department” means the Department of Health and Human Services.

Cross reference: See Code, Courts Article, §§ 3-801 ~~(p)~~(q) and 5-301.

Source: This Rule is new.

Rule 11-302 was accompanied by the following Reporter’s
note:

Proposed amendments to Rule 11-102 implement Chapters 348/349, 2024 Laws of Maryland (SB 550/HB 508).

Ch. 348/349 shifted the location of the definition of “local department” in Code, Courts Article, § 3-801. The cross reference following section (b) is updated to reflect this change.

MARYLAND RULES OF PROCEDURE
TITLE 11 - JUVENILE CAUSES
CHAPTER 400 – DELINQUENCY AND CITATION
PROCEEDINGS

AMEND Rule 11-422 by updating the terminology in the cross reference following subsection (d)(1), as follows:

Rule 11-422. DISPOSITION HEARING AND ORDER

...

(d) Permitted Dispositions – Delinquency Petition

(1) Generally

In a proceeding based on a delinquency petition, the court may enter a disposition authorized by Code, Courts Article, § 3-8A-19(d), (f), (g), (h), (i), or (j), subject to the conditions and limitations set forth in those sections and in Code, Courts Article, §§ 3-8A-19.6, 3-8A-22, 3-8A-24, and 3-8A-35.

Cross reference: Code, Courts Article, § 3-8A-19(d) addresses the court's disposition generally. Subsection (f) of that section addresses the guardian appointed under the section. Subsection (g) of that section addresses placement of a child in an emergency facility on an emergency basis under Code, Health-General Article, Title 10, Subtitle 6, Part IV. Subsections (h) and (i) of that section address commitment of a child to the custody of the State Department of Health for inpatient care and treatment in a State mental hospital or State ~~mental retardation facility~~ facility for individuals with an intellectual disability, respectively. Subsection (j) of that section addresses the requirement that a commitment order issued under either subsection (h) or (i) must require the State Department of Health to file certain progress reports.

...

Rule 11-422 was accompanied by the following Reporter's note:

Proposed amendments to Rule 11-422 implement Chapter 444, 2024 Laws of Maryland (HB 432). The bill made technical amendments to a series of statutes by replacing the term “mental retardation” with “intellectual disability.”

MARYLAND RULES OF PROCEDURE
TITLE 11 - JUVENILE CAUSES
CHAPTER 400 – DELINQUENCY AND CITATION
PROCEEDINGS

AMEND Rule 11-423 by updating the terminology in the cross reference following section (c), as follows:

Rule 11-423. REVISORY POWER; POST-DISPOSITION HEARINGS

...

(c) Commitment to Maryland Department of Health

If the order sought to be modified or vacated committed the respondent to the Department of Health pursuant to Code, Courts Article, § 3-8A-19(h), (i), or (j), the court shall proceed in accordance with those sections.

Cross reference: Code, Courts Article, § 3-8A-19(h) addresses the commitment of a child to the custody of the Department of Health for inpatient care and treatment in a State mental hospital. Subsection (i) of that statute addresses commitment of a child to the custody of the Department of Health for inpatient care and treatment in a State ~~mental retardation facility~~ facility for individuals with an intellectual disability. Subsection (j) of that statute addresses the requirement that a commitment order issued under either subsection (i) or (j) must require the Department of Health to file certain progress reports.

...

Rule 11-423 was accompanied by the following Reporter's note:

Proposed amendments to Rule 11-423 implement Chapter 444, 2024 Laws of Maryland (HB 432). The bill made technical amendments to a series of statutes by replacing the term “mental retardation” with “intellectual disability.”

MARYLAND RULES OF PROCEDURE
TITLE 4 – CRIMINAL CAUSES
CHAPTER 200 – TRIAL AND SENTENCING

AMEND Rule 4-314 by updating terminology in subsection (b)(6), as follows:

Rule 4-314. DEFENSE OF NOT CRIMINALLY RESPONSIBLE

...

(b) Procedure for Bifurcated Trial

...

(6) Order of Proof

(A) Evidence of mental disorder or ~~mental retardation~~ intellectual disability as defined in Code, Criminal Procedure Article, § 3-109 shall not be admissible in the guilt stage of the trial for the purpose of establishing the defense of lack of criminal responsibility. This evidence shall be admissible for that purpose only in the second stage following a verdict of guilty.

...

Rule 4-314 was accompanied by the following Reporter's

note:

Proposed amendments to Rule 4-314 implement Chapter 444, 2024 Laws of Maryland (HB 432). The bill made technical amendments to a series of statutes by replacing the term “mental retardation” with “intellectual disability.”

Judge Anderson informed the Committee that the proposed amendments in Agenda Item 8 updated definitions that were changed or added by statute. She said that Chapters 348/349, 2024 Laws of Maryland (SB 550/HB 508) add a definition of “labor trafficking,” which is added to the cross reference in Rule 11-102 and necessitates an updated cross reference in Rule 11-302.

Judge Anderson said that Chapter 444, 2024 Laws of Maryland (HB 432) made a series of technical amendments to replace the term “mental retardation” with “intellectual disability.” The term is updated in the cross reference of Rule 11-102 and in Rules 11-422, 11-423 and 4-314.

There being no motion to amend or reject the proposed amendments to Rules 11-102, 11-302, 11-422, 11-423, and 4-314, the Rules were approved as presented.

Agenda Item 9. Consideration of proposed amendments to Rule 6-209 (Notice of Appointment) and Rule 6-311 (Notice of Appointment)

Mr. Laws presented Rule 6-209, Notice of Appointment, and Rule 6-311, Notice of Appointment, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 6 – SETTLEMENT OF DECEDENTS’ ESTATES
CHAPTER 200 – SMALL ESTATE

AMEND Rule 6-209 by updating the language in the form notice in section (a) pertaining to objection to the appointment, as follows:

Rule 6-209. NOTICE OF APPOINTMENT

(a) Notice

When notice of appointment is required to be published by the order of the register, the personal representative shall file the notice in duplicate in the following form:

(FILE IN DUPLICATE)

(name and address of attorney)

SMALL ESTATE
NOTICE OF APPOINTMENT

Estate No. _____

NOTICE TO CREDITORS
NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____.

Notice is given that _____ (name & address) was on _____ (date) appointed personal representative of the small estate of _____ who died on _____ (date) (with) (without) a will.

Further information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the personal representative or the attorney.

All interested persons or unpaid claimants having any objection to the appointment shall file their objections with the Register of Wills within 30 days after the date of publication of this notice. All persons having an objection to the probate of the will shall file their objections with the Register of Wills within six months after the date of publication of this Notice.

All persons having claims against the decedent must serve their claims on the undersigned personal representative or file them with the Register of Wills with a copy to the undersigned on or before the earlier of the following dates:

- (1) Six months from the date of the decedent's death, or
- (2) Thirty days after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that the claims will be barred unless the creditor presents the claim within thirty days from the mailing or other delivery of the notice. Any claim not served or filed within that time, or any extension provided by law, is unenforceable thereafter.

Personal Representative(s)

True Test Copy

Name and Address of Register of Wills for

Name of newspaper designated by personal representative

(b) Modification of Form

If the initial appointment is made under judicial probate, this form may be modified to delete reference to the notice of the right to object to the appointment of the personal representative or to the probate of the decedent's will, as applicable.

(c) Publication

The register shall cause the notice to be published once in a newspaper of general circulation in the county of appointment.

(d) Certificate of Publication

Within 60 days after publication, the personal representative shall cause to be filed with the register a certification that the required newspaper notice has been published.

Cross reference: Code, Estates and Trusts Article, §§ 7-103 and 5-604 (b); Rule 6-401.

Rule 6-209 was accompanied by the following Reporter's note:

The proposed amendment to Rule 6-209 implements Chapter 318/319, 2024 Laws of Maryland (SB 80/HB326). The bill alters a provision in the notice of appointment of the personal representative. It limits who the notice states can object to the appointment to "all interested persons and unpaid claimants." The form in the amended statute (Code, Estates and Trusts Article, § 7-103) is referenced in the small estate title (Code, Estates and Trusts Article, § 5-603 (b)), and a version of it is included in Rule 6-209. The proposed amendment to the form in section (a) updates the provision relating to objections to conform it to the comparable provision in the notice of appointment in a regular estate.

MARYLAND RULES OF PROCEDURE
TITLE 6 – SETTLEMENT OF DECEDENTS’ ESTATES
CHAPTER 300 – OPENING ESTATES

AMEND Rule 6-311 by replacing certain language in the form notice in section (a) pertaining to objection to the appointment, as follows:

Rule 6-311. NOTICE OF APPOINTMENT

(a) Notice

The petitioner shall file with the register, in duplicate, a notice of appointment in the following form:

(FILE IN DUPLICATE)

(name and address of attorney)

NOTICE OF APPOINTMENT
NOTICE TO CREDITORS
NOTICE TO UNKNOWN HEIRS

Estate No.

TO ALL PERSONS INTERESTED IN THE ESTATE OF
_____.

Notice is given that _____ (name & address) was on _____ (date) appointed personal representative of the estate of _____ who died on _____ (date) (with) (without) a will.

Further information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the personal representative or the attorney.

~~All persons having any objection to the appointment (or to the probate of the decedent's will) shall file their objections with the Register of Wills on or before the ___ day of _____ (6 months from date of appointment), _____ (year).~~

All interested persons or unpaid claimants having any objection to the appointment of the personal representative shall file their objection with the Register of Wills on or before the ___ day of _____ (6 months from date of appointment), _____ (year).

All persons having any objection to the probate of the will of the decedent shall file their objections with the Register of Wills on or before the ___ day of _____ (6 months from date of appointment), _____ (year).

Any person having a claim against the decedent must present the claim to the undersigned personal representative or file it with the Register of Wills with a copy to the undersigned on or before the earlier of the following dates:

- (1) Six months from the date of the decedent's death, or
- (2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that the claim will be barred unless the creditor presents the claims within two months from the mailing or other delivery of the notice. A claim not presented or filed on or before that date, or any extension provided by law, is unenforceable thereafter. Claim forms may be obtained from the Register of Wills.

Personal Representative(s)

True Test Copy

Name and Address of Register of Wills for

Name of newspaper designated by personal representative

(b) Modification of Form

If the initial appointment is made under judicial probate, this form may be modified to delete reference to the notice of the right to object to the appointment of the personal representative or to the probate of the decedent's will, as applicable. If there was a prior small estate proceeding, the form shall be modified to state that fact. If the initial appointment was made more than six months after the decedent's death, the form may be modified to eliminate the reference to persons having a claim against the estate.

Cross reference: Code, Estates and Trusts Article, §§ 7-103 and 8-104; Rule 6-401.

Rule 6-311 was accompanied by the following Reporter's note:

The proposed amendment to Rule 6-311 implements Chapter 318/319, 2024 Laws of Maryland (SB 80/HB326). The bill alters a provision in the notice of appointment of the personal representative. It limits who the notice states can object to the appointment to "all interested persons and unpaid claimants." The form in section (a) of the Rule is updated to conform to the language in the statute.

Mr. Laws said that Chapters 318/319, 2024 Laws of Maryland (SB 80/HB 326), alter a provision in the notice of appointment of a personal representative. The change limits the class of people that the notice states can object to the appointment. Rule 6-209 updates the form notice used in a small estate to effectuate this change. Rule 6-311 conforms the notice for a regular estate to the statute.

Chief Judge Morrissey commented that there has been a movement to remove forms from the Rules and allow the State Court Administrator to promulgate and amend forms through an administrative process. He said that the Judicial Council's Forms Subcommittee tracks legislation and other factors that necessitate changes to court forms and moves more quickly than the Rules process. The Deputy Reporter commented that the forms in Title 6 are used by the various Register of Wills offices and have largely remained in the Rules because the Registers are not under the auspices of the Administrative Office of the Courts. Chief Judge Morrissey replied that since that is the case, he does not have an issue with retaining the current procedure for Title 6 forms.

There being no motion to amend or reject the proposed amendments to Rules 6-209 and 6-311, they were approved as presented.

Agenda Item 10. Consideration of proposed amendments to Rule 10-103 (Definitions) and Rule 10-111 (Petition for Guardianship of Minor)

Mr. Laws presented Rule 10-103, Definitions, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-103 by replacing “Department of Veterans Affairs” with “Department of Veterans and Military Families” in subsection (f)(1), as follows:

Rule 10-103. DEFINITIONS

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

...

(f) Interested Person

(1) In connection with a guardianship of the person or the authorization of emergency protective services, “interested person” means the minor or the disabled person; the guardian and heirs of that person; a governmental agency paying benefits to that person or a person or agency eligible to serve as guardian of the person under Code, Estates and Trusts Article, § 13-707; the ~~Department of Veterans Affairs~~ Department of Veterans and Military Families as directed by Code, Estates and Trusts Article, § 13-801; a supporter named in a supported decision-making agreement under Code, Estates and Trusts Article, Title 18; a

person holding a power of attorney of the minor or disabled person; and any other person designated by the court.

(2) In connection with a guardianship of the property or other fiduciary proceedings, “interested person” means a person who would be an interested person under subsection (f)(1) of this Rule and a current income beneficiary of the fiduciary estate; a fiduciary and co-fiduciary of the fiduciary estate; and the creator of the fiduciary estate.

(3) If an interested person is a minor or disabled person, “interested person” includes a fiduciary appointed for that person, or, if none, the parent or other person who has assumed responsibility for the interested person.

Cross reference: Code, Estates and Trusts Article, §§ 13-101(j) and 13-801.

...

Rule 10-103 was accompanied by the following Reporter’s

note:

The proposed amendment to Rule 10-103 implements Chapters 11/12, 2024 Laws of Maryland (SB 411/HB 432). The bill renamed the Maryland Department of Veterans Affairs to be the Department of Veterans and Military Families, among other terminology adjustments. Because the federal counterpart of this agency is also named the Department of Veterans Affairs, a contextual review was undertaken of each reference to a Department of Veterans Affairs” in the Rules to ascertain whether any are intended to refer to the State agency. Staff also consulted with the Assistant Attorney General for the Department.

Rule 10-103 (f) cites to Code, Estates and Trusts Article, § 13-801, which makes the Secretary of the renamed Maryland Department of Veterans and Military Families an interested person in a guardianship proceeding involving an individual

receiving money from the federal department.
Subsection (f)(1) is amended to change the name of the
Maryland department.

Mr. Laws informed the Committee that, after discussions with staff, the Probate/Fiduciary Subcommittee withdraws the recommendation to amend Rule 10-103 (Definitions). He explained that the Subcommittee has now been informed that Chapters 11/12, 2024 Laws of Maryland (SB 411/HB 432), which changed the name of Maryland's Department of Veterans Affairs to the Department of Veterans and Military Families, do not necessitate an amendment to Rule 10-103. He said that the Rule should continue to refer to the Department of Veterans Affairs, which is the federal agency. A motion to accept the Subcommittee's subsequent recommendation of no amendment to Rule 10-103 was made, seconded, and approved by consensus.

Mr. Laws presented Rule 10-111, Petition for Guardianship of Minor, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-111 by altering a reference to
the head of the Department of Veterans Affairs in the
instructions, as follows:

Rule 10-111. PETITION FOR GUARDIANSHIP OF
MINOR

...

ADDITIONAL INSTRUCTIONS

1. The required exhibits are as follows:

(a) A copy of any instrument nominating a guardian [Code, Estates and Trusts Article, § 13-701 and Maryland Rule 10-301 (d)];

(b) If the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the ~~Administrator or the Administrator's authorized representative~~ Secretary of that Department or any authorized representative of the Secretary, setting forth the age of the minor as shown by the records of the Department of Veterans Affairs, and the fact that appointment of a guardian is a condition precedent to the payment of any moneys due the minor from the Department of Veterans Affairs shall be prima facie evidence of the necessity for the appointment [Code, Estates and Trusts Article, § 13-802 and Maryland Rule 10-301 (d)].

2. Attached additional sheets to answer all the information requested in this petition, if necessary.

Source: This Rule is new.

Rule 10-111 was accompanied by the following Reporter's

note:

The proposed amendment to Rule 10-111 was prompted by Chapters 11/12, 2024 Laws of Maryland (SB 411/HB 432). The bill renamed the Maryland Department of Veterans Affairs to be the Department of Veterans and Military Families, among other terminology adjustments. Because the federal counterpart of this agency is also named the Department of Veterans Affairs, a contextual review was undertaken of each reference to a Department of

Veterans Affairs” in the Rules to ascertain whether any are intended to refer to the State agency. Staff also consulted with the Assistant Attorney General for the Department.

It was determined that Rule 10-111 contains an incorrect reference to an “Administrator” of the Department. The referenced statute and Rule 10-301 refer to the U.S. Department and “a certificate of the Secretary of that Department or any authorized representative of the Secretary.” A housekeeping amendment is proposed to Rule 10-111.

Mr. Laws informed the Committee that the amendment to Rule 10-111 is necessary to update terminology when referring to the federal Department of Veterans Affairs. The head of the Department is the “Secretary.”

There being no motion to amend or reject the proposed amendment to Rule 10-111, it was approved as presented.

Agenda Item 11. Consideration of proposed amendments to Rule 10-201 (Petition for Appointment of a Guardian of the Person), Rule 10-202 (Certificates and Consents), Rule 10-402 (Petition by Parent), and Rule 10-403 (Petition by Standby Guardian)

Mr. Laws presented Rule 10-201, Petition for Appointment of a Guardian of the Person, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-201 by stating that a request pursuant to section (f) may be filed any time after the filing of a petition, as follows:

Rule 10-201. PETITION FOR APPOINTMENT OF A
GUARDIAN OF THE PERSON

...

(f) Request for Expedited Hearing in Connection with
Medical Treatment

(1) Contents

A request for an expedited hearing in connection with medical treatment pursuant to Code, Estates and Trust Article, § 13-705 (f) shall be verified and filed with the petition for guardianship of the person of an alleged disabled person or at any time after the filing of the petition. The request shall contain the following information:

(A) the reason for seeking an expedited hearing;

(B) a description of the proposed change in the alleged disabled person's medical treatment;

(C) a statement of how the alleged disabled person's medical circumstances will be harmed if the proceeding is not expedited;

(D) a description of all efforts made to notify interested persons and any person nominated as guardian of person about the request for an expedited hearing; and

(E) whether the alleged disabled person lacks sufficient understanding or capacity to make or communicate a responsible decision to consent or to refuse consent, the basis for that belief, and an explanation of steps taken to obtain consent to the proposed medical treatment through other means.

Committee note: Examples of consent “through other means” include consent obtained or ascertained though a valid advance directive, consent by an

individual pursuant to an applicable Power of Attorney that specifically authorizes health care decision-making, and consent by a surrogate authorized under Code, Health General Article, Title 5, Subtitle 6, Part I (Health Care Decisions Act).

(2) Factors for Court to Consider

In determining whether to expedite the hearing in connection with medical treatment, the court shall consider:

(A) the degree to which the alleged disabled person's current circumstances are not meeting his or her medical needs in the most appropriate manner;

(B) the degree to which alternative arrangements are or can be made available;

(C) the urgency, necessity, and gravity of the proposed medical treatment and any medical risks to the alleged disabled person if the proceedings are not expedited;

(D) the ability of the alleged disabled person or other legally authorized individual to provide necessary consents for services; and

(E) any other factor that the court considers relevant.

(3) Scheduling of an Expedited Hearing

If the court makes a determination to expedite a hearing because of the need for medical treatment, the hearing shall be scheduled as soon as practicable, taking into account:

(A) the ability of the petitioner to properly serve or notify interested persons on an expedited basis;

(B) the ability of the attorney for the alleged disabled person, government agencies, and court-appointed investigators to perform necessary investigations on an expedited basis; and

(C) any other circumstances that the court considers relevant.

Committee note: The procedure set forth in section (f) of this Rule is not a substitute for a petition for

emergency services under Rule 10-210, nor is it intended to affect the court's discretion to schedule expedited hearings, generally. If the petition is also for the appointment of a guardian of the property, the court may hear and rule on that part of the petition on an expedited basis as well.

Cross reference: See Code, Estates and Trusts Article, §§ 13-702 and 13-705 (f), Rule 10-205 (b), and In re: Sonny E. Lee, 132 Md. App. 696 (2000).

Source: This Rule is derived as follows:

Section (a) is derived from former Rule R71 a.

Section (b) is new.

Section (c) is derived from former Rule R72 a and b.

Section (d) is new.

Section (e) is new.

Section (f) is new.

Rule 10-201 was accompanied by the following Reporter's note:

The proposed amendment to Rule 10-201 was recommended by Juvenile & Family Services in the Administrative Office of the Courts to clarify that a petition for an expedited hearing in connection with medical treatment – authorized by section (f) of the Rule – may be filed at the same time as or any time after the filing of a petition for guardianship under Chapter 200. The current wording of the Rule suggests that the petition for an expedited hearing may only be filed at the same time as the petition for guardianship. However, this may become necessary after the guardianship petition has been filed.

Mr. Laws explained that Juvenile & Family Services in the Administrative Office of the Courts requested the amendment to

Rule 10-201 to clarify that a motion for expedited hearing in connection with medical treatment may be filed contemporaneously with a petition for guardianship of the person or at any time after the petition is filed. He said that the update is intended to permit flexibility in the guardianship process if the need for expedited consideration arises after the initial filing.

There being no motion to amend or reject the proposed amendment to Rule 10-201, it was approved as presented.

Mr. Laws presented Rule 10-202, Certificates and Consents, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES
CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-202 by changing references to a “disabled person” in section (a) to an “alleged disabled person,” as follows:

Rule 10-202. CERTIFICATES AND CONSENTS

(a) Certificates

(1) Generally Required

If guardianship of the person of a an alleged disabled person is sought, the petitioner shall file with the petition signed and verified certificates of the following persons who have examined or evaluated the alleged disabled person: (A) two physicians licensed to

practice medicine in the United States, or (B) one such licensed physician and one licensed psychologist, licensed certified social worker-clinical, or nurse practitioner. An examination or evaluation by at least one of the health care professionals shall have been within 21 days before the filing of the petition.

(2) Form

Each certificate required by subsection (a)(1) of this Rule shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

(3) Absence of Certificates

(A) Refusal to Permit Examination

If the petition is not accompanied by the required certificate and the petition alleges that the alleged disabled person is residing with or under the control of a person who has refused to permit examination or evaluation by a physician, psychologist, licensed certified social worker-clinical, or nurse practitioner, and that the alleged disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the alleged disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the alleged disabled person should not be examined or evaluated. The order shall be personally served on that person and on the alleged disabled person.

(B) Appointment of Health Care Professionals by Court

If the court finds after a hearing that examinations are necessary, it shall appoint (i) two physicians or (ii) one physician and one psychologist, licensed certified social worker-clinical, or nurse practitioner to conduct the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to

answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

Cross reference: See Code, Estates and Trusts Article, § 13-705.

...

Rule 10-202 was accompanied by the following Reporter's note:

Proposed amendments to Rule 10-202 are recommended by Juvenile & Family Services in the Administrative Office of the Courts. Section (a) of the Rule uses the term "disabled person" to refer to an individual who has not yet been adjudged to be disabled by a court. The term is amended to be "alleged disabled person" throughout the Rule.

Mr. Laws informed the Committee that the amendments to Rule 10-202 add "alleged" before "disabled person" when referring to an individual who has not yet been adjudicated to be disabled. He noted that these amendments also were recommended by Juvenile & Family Services.

There being no motion to amend or reject the proposed amendments to Rule 10-202, the Rule was approved as presented.

Mr. Laws presented Rule 10-402, Petition by Parent, and Rule 10-403, Petition by Standby Guardian, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 400 – STANDBY GUARDIAN

AMEND Rule 10-402 by deleting “or any such charge is currently pending against the standby guardian” from subsection (c)(12) and by altering a provision in the Notice issued pursuant to section (e), as follows:

Rule 10-402. PETITION BY PARENT

...

(c) Contents

The petition shall be captioned “In the Matter of ...” [stating the name of the minor]. It shall be signed and verified by the petitioner and shall include the following information:

- (1) The petitioner's name, address, age, and telephone number;
- (2) The petitioner's familial relationship to the minor;
- (3) The name, address, and date of birth of the minor;
- (4) If the minor is at least 14 years of age, the wishes of the minor, if known;
- (5) Whether the minor has any siblings and, if so, their names and ages and whether a standby guardianship is sought for them;
- (6) The proposed standby guardian's name, address, age, and telephone number;
- (7) The proposed standby guardian's relationship to the minor;
- (8) A statement explaining why the appointment of the proposed standby guardian is in the best interests of the minor;

(9) Whether and under what circumstances the standby guardianship is to be of the minor's person, property, or both;

(10) If the standby guardian is to be a guardian of the property of the minor, the nature, value, and location of the property;

(11) A description of the duties and powers of the standby guardian, including whether the standby guardian is to have the authority to apply for, receive, and use public benefits and child support payable on behalf of the minor;

Cross reference: For the powers of a guardian of the person of a minor, see Code, Estates and Trusts Article, § 13-702. For the powers of a guardian of the property, see Code, Estates and Trusts Article, § 15-102.

(12) A statement (A) whether the standby guardian has been convicted of a crime listed in Code, Estates and Trusts Article, § 11-114 ~~or any such charge is currently pending against the standby guardian~~, and (B) if the standby guardian has been convicted of such a crime, the charge for which the standby guardian was convicted, the year of the conviction, the court in which the conviction occurred, and any good cause for the appointment, if applicable under § 11-114 (b);

(13) Whether the authority of the standby guardian is to become effective on the petitioner's incapacity, death, or the first of those circumstances to occur;

Cross reference: Code, Estates and Trust Article, § 13-906.

(14) A statement that there is a significant risk that the petitioner will become incapacitated or die within two years of the filing of the petition and the basis for the statement;

Cross reference: Code, Estates and Trusts Article, § 13-903 (a).

(15) If the petitioner is unable to appear in court for a hearing pursuant to Rule 10-404, a statement explaining why;

(16) If a person having parental rights does not join in the petition, a statement to that effect and the following information, to the extent known: (A) the identity of the person, (B) if the identity of the person is not known, what efforts were made to identify and locate the person, and (C) if the identity of the person is known, the reasons the person did not join the petition, if known, and a description of the efforts made to inform the person about the petition; and

(17) If the petitioner believes that notice to the minor would be unnecessary or would not be in the best interests of the minor, a statement explaining why.

...

(e) Notice to Interested Persons

The Notice to Interested Persons shall be in the following form:

In the Matter of	In the Circuit Court for
_____	_____
(Name of minor)	(County)

	(docket reference)

NOTICE TO INTERESTED PERSONS

A petition has been filed seeking the appointment of a standby guardian of the [person] [property] [person and property] of _____, a minor.

You are receiving this because you are related to or otherwise concerned with the welfare of the minor.

Please examine the attached papers carefully.

If you object to the appointment of a standby guardian, please file a response with the court at (address of courthouse) no later than 30 days after the date of issue of this Notice. (Be sure to include the

case number.) If a response is not received by the court, the court may rule on the petition without a ~~hearing your input~~. If you wish to participate in this proceeding in any way, notify the court and be prepared to attend any hearing.

CERTIFICATE OF SERVICE

I certify that a copy of the petition and the "Notice to Interested Persons" was mailed, by ordinary mail, postage prepaid, and by certified mail, postage prepaid and return receipt requested, this ____ day of _____, to _____ at _____.

Petitioner

Name (printed)

Address

Telephone Number

...

Rule 10-402 was accompanied by the following Reporter's note:

Proposed amendments to Rule 10-202 are recommended by Juvenile & Family Services in the Administrative Office of the Courts. The amendment to subsection (c)(12) removes the requirement that a

pending charge against a candidate for standby guardian be disclosed in the petition. The Probate/Fiduciary Subcommittee was informed that this language was added to the Rule, but is not required by the governing statute (Code, Estates and Trusts Article, § 11-114). The statute provides that a court may not appoint a person convicted of certain offenses as a standby guardian without good cause shown, but including a pending charge in the analysis raises the standard proposed by the statute. No other type of guardianship petition requires disclosure of a pending charge.

According to Juvenile & Family Services, due to disproportionate rates of arrest for marginalized individuals, this requirement unnecessarily burdens prospective standby guardians from communities of color, particularly immigrant communities.

An additional amendment is proposed in section (e). The Notice in section (e) states that the court may Rule on the petition without a hearing. However, Rule 10-404 requires a hearing on any petition filed pursuant to Rule 10-402. It is recommended that the reference to ruling without a hearing be deleted from the Notice in section (e).

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 400 – STANDBY GUARDIAN

AMEND Rule 10-403 by deleting “or any such charge is currently pending against the standby guardian” from subsection (c)(10), as follows:

Rule 10-403. PETITION BY STANDBY GUARDIAN

...

(c) Contents

The petition shall be captioned "In the Matter of ..." [stating the name of the minor]. It shall be signed and verified by the petitioner and shall contain the following information:

(1) The petitioner's name, address, age, telephone number, and relationship to the minor and the minor's parents;

(2) The name, address, and date of birth of the minor;

(3) If the minor is at least 14 years of age, the wishes of the minor, if known;

(4) Whether the minor has any siblings and, if so, their names and ages and whether a guardianship is sought for them;

(5) The names and addresses of the witnesses to the written designation of the petitioner as standby guardian of the minor and any relationship of the petitioner to those witnesses;

(6) A statement explaining why the appointment of the proposed standby guardian is in the best interests of the minor;

(7) Whether and under what circumstances the standby guardianship is to be of the minor's person, property, or of both;

(8) If the standby guardian is to be a guardian of the property of the minor, the nature, value, and location of the property;

(9) A description of the duties and powers of the standby guardian, including whether the standby guardian is to have the authority to apply for, receive, and use public benefits and child support payable on behalf of the minor;

(10) A statement (A) whether the standby guardian has been convicted of a crime listed in Code, Estates and Trusts Article, § 11-114 ~~or any such charge is currently pending against the standby guardian~~, and (B) if the standby guardian has been convicted of such a crime, the charge for which the standby guardian

was convicted, the year of the conviction, the court in which the conviction occurred, and any good cause for the appointment, if applicable under § 11-114 (b);

(11) If the petition is filed by a person designated by a parent as alternate standby guardian pursuant to Code, Estates and Trusts Article, § 13-904 (b)(2), a statement that the person designated as standby guardian is unwilling or unable to act as standby guardian and the basis for the statement; and

(12) A list of interested persons.

...

Rule 10-403 was accompanied by the following Reporter's note:

The proposed amendment to Rule 10-202 are recommended by Juvenile & Family Services in the Administrative Office of the Courts. The amendment to subsection (c)(12) removes the requirement that a pending charge against a candidate for standby guardian be disclosed in the petition. See the Reporter's note to Rule 10-402.

Mr. Laws informed the Committee that the amendments to Rules 10-402 and 10-403 apply to standby guardianships, which are temporary guardianships for minors put in place when a parent or guardian anticipates some kind of incapacity due to medical treatment, death, or adverse immigration action. The standby guardianship is limited in duration. He said that the amendments delete the requirement that the petition disclose any pending charges for a disqualifying offense. He explained that this requirement in the Rules goes further than the requirement

of the statute, which only requires disclosure of a conviction for certain offenses.

The Chair commented that standby guardians are typically designated by the parent to act in the parent's place for a temporary period while the parent is incapacitated. He called for any comment on the proposed amendments. Ms. Meredith asked why a pending charge for a disqualifying offense should not be disclosed. Mr. Laws said that the Subcommittee discussed the issue, and one concern is that it makes it harder to find individuals willing to step up to be standby guardians. Ms. Cobun added that there also is a potential disparate impact on immigrant communities in which there may be a disproportionate number of arrests that do not lead to convictions. Judge Chen commented that the Reporter's note indicates that the amendments conform the Rule to the requirements of the statute.

Mr. Laws pointed out that an additional amendment to Rule 10-402 makes a change to the Notice to Interested Persons form. He explained that the current form states that if the interested person does not respond, the court may rule without a hearing; however, Rule 10-404 requires that there be a hearing on the petition. The form is updated to state that the court may rule "without your input" if the interested person does not respond.

There being no motion to amend or reject the proposed amendments to Rules 10-402 and 10-403, they were approved as presented.

Agenda Item 12. Consideration of proposed amendments to Rule 4-252 (Motions in Circuit Court) and Rule 11-419 (Motions)

Assistant Reporter Cobun presented Rule 4-252, Motions in Circuit Court, and Rule 11-419, Motions, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 – CRIMINAL CAUSES
CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-252 by adding a cross reference following subsection (a)(3), as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

(a) Mandatory Motions

In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:

- (1) A defect in the institution of the prosecution;
- (2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;
- (3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;

Cross reference: See Code, Criminal Procedure Article, Title 2, Subtitle 5 regarding admissibility of results generated by facial recognition technology.

(4) An unlawfully obtained admission, statement, or confession; and

Cross reference: See Code, Courts Article, § 3-8A-14.2 regarding admissibility of a statement made by a child, including a child charged as an adult, during a custodial interrogation.

(5) A request for joint or separate trial of defendants or offenses.

(b) Time for Filing Mandatory Motions

A motion under section (a) of this Rule shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c), except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

(c) Motion to Transfer to Juvenile Court

A request to transfer an action to juvenile court pursuant to Code, Criminal Procedure Article, § 4-202 shall be made by separate motion entitled “Motion to Transfer to Juvenile Court.” The motion shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c) and, if not so made, is waived unless the court, for good cause shown, orders otherwise.

Cross reference: For notification of victims of their right to file a victim impact statement in transfers of actions to juvenile court, see Code, Criminal Procedure Article, § 11-402(c).

(d) Other Motions

(1) Defect in Charging Document

A motion asserting failure of the charging document to show jurisdiction in the court or to charge an offense may be raised and determined at any time.

(2) Child Victim of Trafficking--Court Determination

A motion seeking relief under Code, Criminal Law Article, § 1-402 may be raised at any time prior to entry of judgment. The court shall follow the procedure set forth in Rule 11-420.2. "Petition" as used in Rule 11-420.2 shall be construed to refer to a "charging document." "Disposition" as used in Rule 11-420.2 shall be construed to refer to a "judgment."

Cross reference: See Code, Courts Article, § 3-8A-17.13.

(3) Any Other Motion

Any other defense, objection, or request capable of determination before trial without trial of the general issue, shall be raised by motion filed at any time before trial.

(e) Content

A motion filed pursuant to this Rule shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual averments. Every motion shall contain or be accompanied by a statement of points and citation of authorities.

(f) Response

A response, if made, shall be filed within 15 days after service of the motion and contain or be accompanied by a statement of points and citation of authorities.

(g) Determination

(1) Generally

Motions filed pursuant to this Rule shall be determined before trial and, to the extent practicable, before the day of trial, except that the court may defer until after trial its determination of a motion to dismiss for failure to obtain a speedy trial. If factual issues are involved in determining the motion, the court shall state its findings on the record.

(2) Motions Concerning Transfer of Jurisdiction to the Juvenile Court

A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court. See also *Davis v. State*, 474 Md. 439 (2021) for discussion of the statutory factors in Code, Criminal Procedure Article, § 4-202(d) governing transfer of jurisdiction to the juvenile court.

(h) Effect of Determination of Certain Motions

(1) Defect in Prosecution or Charging Document. If the court grants a motion based on a defect in the institution of the prosecution or in the charging document, it shall order the defendant released on personal recognizance unless the crime charged is a crime of violence as defined in Code, Criminal Law Article, § 14-101, in which case the court may release the defendant on any terms and conditions that the court considers appropriate or may order that the defendant be remanded to custody for a specific time period not to exceed ten days pending the filing of a new charging document.

(2) Suppression of Evidence

(A) If the court grants a motion to suppress evidence, the evidence shall not be offered by the State at trial, except that suppressed evidence may be used in accordance with law for impeachment purposes. The court may not reconsider its grant of a motion to suppress evidence unless before trial the State files a motion for reconsideration based on (i) newly discovered evidence that could not have been discovered by due diligence in time to present it to the court before the court's ruling on the motion to suppress evidence, (ii) an error of law made by the court in granting the motion to suppress evidence, or (iii) a change in law. The court may hold a hearing on the motion to reconsider. Hearings held before trial shall, whenever practicable, be held before the judge who granted the motion to suppress. If the court

reverses or modifies its grant of a motion to suppress, the judge shall prepare and file or dictate into the record a statement of the reasons for the action taken.

(B) If the State appeals a decision of the trial court granting a motion to suppress evidence in a case in which the defendant is charged with a crime of violence as defined in Code, Criminal Law Article, § 14-101, the court may release the defendant on any terms and conditions that the court considers appropriate or may order the defendant remanded to custody pending the outcome of the appeal.

(C) If the court denies a motion to suppress evidence, the ruling is binding at the trial unless the court, on the motion of a defendant and in the exercise of its discretion, grants a supplemental hearing or a hearing de novo and rules otherwise. A pretrial ruling denying the motion to suppress is reviewable on a motion for a new trial or on appeal of a conviction.

(3) Transfer of Jurisdiction to Juvenile Court

If the court grants a motion to transfer jurisdiction of an action to the juvenile court, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code, Courts Article, § 3-8A-15. Until a juvenile petition is filed, the charging document shall have the effect of a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of the defendant in detention or shelter care.

Cross reference: Code, Criminal Procedure Article, § 4-202.

Committee note: Subsections (a)(1) and (2) include, but are not limited to allegations of improper selection and organization of the grand jury, disqualification of an individual grand juror, unauthorized presence of persons in the grand jury room, and other

irregularities in the grand jury proceedings. Section (a) does not include such matters as former jeopardy, former conviction, acquittal, statute of limitations, immunity, and the failure of the charging document to state an offense.

Source: This Rule is derived from former Rule 736.

Rule 4-252 was accompanied by the following Reporter's note:

Chapters 808/809, 2024 Laws of Maryland (SB 182/HB338), add a new subtitle to the Criminal Procedure Article governing the use of facial recognition technology. Code, Criminal Procedure Article, § 2-502 prohibits use of facial recognition technology as evidence in criminal and delinquency proceedings, with certain exceptions.

In Rule 4-252, a cross reference to the new statute is proposed to be added following subsection (a)(3), which requires “an unlawful... pretrial identification” to be raised by motion filed within the time state in section (b) of the Rule. The new cross reference is modeled after a similar provision recently added following subsection (a)(4) pertaining to a law governing admissibility of statements by a juvenile in a custodial interrogation. A parallel reference is proposed in Rule 11-419 governing motions in delinquency proceedings.

MARYLAND RULES OF PROCEDURE
TITLE 11 – JUVENILE CAUSES
CHAPTER 400 – DELINQUENCY AND CITATION
PROCEEDINGS

AMEND Rule 11-419 by adding a cross reference following subsection (b)(3), as follows:

Rule 11-419. MOTIONS

(a) Generally

(1) Content

A motion filed pursuant to this Rule shall (A) be in writing, unless the court otherwise directs, (B) state the grounds upon which it is made, and (C) set forth the relief sought. A motion requesting suppression of evidence or a motion alleging an illegal source of information as the basis for probable cause shall be supported by precise and specific factual averments. Every motion shall contain or be accompanied by a statement of points and citation of authorities.

(2) Response

A response, if made, shall be filed within 10 days after service of the motion and contain or be accompanied by a statement of points and citation of authorities.

(3) Determination

Motions filed pursuant to this Rule shall be determined on the day of trial but prior to trial, except that the court may defer until after trial its determination of a motion to dismiss for failure to obtain a speedy trial. If factual issues are involved in determining the motion, the court shall state its findings on the record.

(b) Mandatory Motions—Generally

In a delinquency proceeding, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:

(1) A defect in the institution of the prosecution;

(2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;

(3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;

Cross reference: See Code, Criminal Procedure Article, Title 2, Subtitle 5 regarding admissibility of results generated by facial recognition technology.

(4) An unlawfully obtained admission, statement, or confession; and

Cross reference: See Code, Courts Article, § 3-8A-14.2 regarding admissibility of a statement made by a child during a custodial interrogation.

(5) A request for a joint trial or separate trials of respondents or offenses.

(c) Time for Filing

(1) Mandatory Motions

A motion under section (b) of this Rule shall be filed no later than five business days before the first scheduled adjudicatory hearing, unless the court, for good cause shown, orders otherwise.

(2) Other Motions

A motion asserting failure of the charging document to show jurisdiction in the court or to charge an offense may be raised and determined at any time. Any other defense, objection, or request capable of determination before trial without trial of the general issue shall be raised by motion filed at any time before trial.

Source: This Rule is new.

Rule 11-419 was accompanied by the following Reporter's note:

Chapters 808/809, 2024 Laws of Maryland (SB 182/HB338), add a new subtitle to the Criminal Procedure Article governing the use of facial recognition technology. Code, Criminal Procedure Article, § 2-502 prohibits use of facial recognition technology as evidence in criminal and delinquency proceedings, with certain exceptions.

In Rule 11-419, a cross reference to the new statute is proposed following subsection (b)(3), which requires “an unlawful... pretrial identification” to be raised by motion filed in conformity with the Rule. The new cross reference is modeled after a similar provision recently added following subsection (b)(4) pertaining to a law governing admissibility of statements by a juvenile in a custodial interrogation. A parallel reference is proposed in Rule 4-252 governing motions in criminal proceedings.

Ms. Cobun explained that the proposed amendments to Rules 4-252 and 11-419 add a cross reference to alert the parties to the requirements of a new subtitle of the Criminal Procedure Article governing use of facial recognition technology. Because failure to comply with the provisions of the Code would render unlawful a pretrial identification involving facial recognition technology, the Criminal Rules and Juvenile Subcommittees recommend adding a cross reference after Rule 4-252 (a) (4) and Rule 11-419 (b) (3). She noted that the cross reference is modeled after a similar provision added last year following “an unlawfully obtained admission, statement, or confession” which refers to the statute on statements made by minors in a custodial interrogation.

There being no motion to amend or reject the proposed amendments to Rules 4-252 and 11-419, they were approved as presented.

Ms. Cobun informed the Committee that Judge Chen had raised a question via email prior to the meeting regarding whether the discovery Rules should also be amended in light of the facial recognition technology law. Code, Criminal Procedure Article, § 2-504 mandates disclosure of certain information in discovery if the technology is used. Ms. Cobun said that the provisions of the statute could be added to Rule 4-263 (d) (7), which addresses discovery of material and information regarding pretrial identification. That subsection already specifically references statutes governing eyewitness testimony. Ms. Cobun added that staff has not had a chance to conduct a search to see if any other statutes contain such mandatory disclosures. She told the Committee that the Criminal Rules Subcommittee is meeting next week if the Committee would like give staff and the Subcommittee a chance to investigate further and make a recommendation for the November Rules Committee meeting.

Judge Chen said that, in her opinion, being explicit about the State's mandatory discovery obligations is in everyone's best interest. She moved to add the reference to Code, Criminal Procedure Article, § 2-504 to Rules 4-262 and 4-263. The motion was seconded. The Chair called for discussion. Mr. Wells commented that he has no issue with the merits of the proposed change but would like to see the Criminal Rules Subcommittee review the proposal. The Chair called for a vote on Judge

Chen's motion. The motion failed. Ms. Drummond said that handout versions of Rules 4-262 and 4-263 will be prepared and sent to the Criminal Rules Subcommittee for review at its upcoming meeting.

Agenda Item 13. Consideration of Rules changes proposed by the Criminal Rules Subcommittee

Assistant Reporter Drummond presented Rule 4-262, Discovery in District Court; Rule 4-263, Discovery in Circuit Court [Option A]; new Rule 4-268, Pre-Trial Hearing Prior to Admission of In-Custody Witness Testimony [Option A]; and Rule 4-263, Discovery in Circuit Court [Option B], for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-262 by adding a Committee note after subsection (c)(2); by deleting the current tagline of subsection (d)(1); by creating new subsections (d)(1) and (d)(2) with the language of current subsection (d)(1); by deleting the tagline and stem language of current subsection (d)(2) requiring a defendant to submit a written request to obtain certain disclosures; by renumbering subsections (d)(2)(A) through (d)(2)(F) as subsections (d)(3) through (d)(8), respectively; by adding clarifying language and deleting language referring to discovery requests in section (i); by adding new language to section (n) concerning sanctions; and by making stylistic changes, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

(a) Applicability

This Rule governs discovery and inspection in the District Court. Discovery is available in the District Court in actions that are punishable by imprisonment.

Committee note: This Rule also governs discovery in actions transferred from District Court to circuit court upon a jury trial demand made in accordance with Rule 4-301 (b)(1)(B). See Rule 4-301 (c).

(b) Definitions

In this Rule, the terms “defense,” “defense witness,” “oral statement,” “provide,” “State's witness,” and “written statement” have the meanings stated in Rule 4-263 (b).

Cross reference: For the definition of “State's Attorney,” see Rule 4-102 (l).

(c) Obligations of the Parties

(1) Due Diligence

The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Committee note: In many jurisdictions, the State complies with discovery requirements imposed under Rules 4-262 and 4-263 through “open file” discovery. While, in appropriate cases, “open file” discovery may satisfy the State’s discovery obligation, the full scope of discovery may require provision of additional discovery

materials beyond that contained in the “open file,” as expressly outlined in Rules 4-262 and 4-263.

Cross reference: For the obligations of the State's Attorney, see State v. Williams, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

~~(1) Without Request~~

Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) Exculpatory Information

~~all~~ All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(2) Impeachment Information

~~and all~~ All material or information in any form, whether or not admissible, that tends to impeach a State's witness;

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

~~(2) On Request~~

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

~~(A)~~(3) Statements of Defendant and Co-defendant

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

~~(B)~~(4) Written Statements, Identity, and Telephone Numbers of State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: ~~(i)~~(A) the name of the witness;

~~(ii)~~(B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-934, the address and, if known to the State's Attorney, the telephone number of the witness, and ~~(iii)~~(C) the statements of the witness relating to the offense charged that are in a writing signed or adopted by the witness or are in a police or investigative report;

~~(C)~~(5) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

~~(i)~~(A) specific searches and seizures, eavesdropping, or electronic surveillance including wiretaps; and

~~(ii)~~(B) pretrial identification of the defendant by a State's witness;

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant by a State's witness also may be required. See *Green v. State*, 456 Md. 97 (2017).

~~(D)~~(6) Reports or Statements of Experts

As to each State's witness the State's Attorney intends to call to testify as an expert witness other than at a preliminary hearing:

~~(i)~~(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

~~(ii)~~(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

~~(iii)~~(C) the substance of any oral report and conclusion by the expert;

~~(E)~~(7) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings,

photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

~~(F)~~(8) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

(e) Disclosure by Defense

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

(1) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert; and

(2) Defense of Duress

Notice of an intention to rely on a defense of duress pursuant to Code, Criminal Law Article, § 11-306(c).

(3) Documents, Computer-Generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

(f) Person of the Defendant

(1) On Request

On written request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By Any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the

other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(i) Procedure

To the extent practicable, the discovery and inspection required or permitted by this Rule shall be completed before the hearing or trial date, except that asserting a defense pursuant to subsection (e)(2) of this Rule shall be made at least 10 days before the trial. ~~If a request was made before the date of the hearing or trial and the request was refused or denied, or pretrial compliance was impracticable~~ If compliance was refused, denied, or impracticable, the court may grant a delay or continuance in the hearing or trial to permit the inspection or discovery.

(j) Requests, Motions, and Responses to be filed with the Court

Requests for discovery, motions for discovery, and any responses to the requests or motions shall be filed with the court.

(k) Discovery Material not to be Filed with the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

(l) Retention; Inspection of Original

The party generating discovery material shall retain the original until the expiration of any sentence imposed on the defendant and, on request, shall make the original available for inspection and copying by the other party.

(m) Protective Orders

On motion of a party, a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

(n) Failure to Comply With Discovery Obligation

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Source: This Rule is new.

Rule 4-262 was accompanied by the following Reporter's note:

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). The Subcommittee was tasked with identifying instances in the Rules which "reflect, perpetuate, or fail to correct systemic biases."

The Criminal Rules Subcommittee has held numerous meetings to address the suggestions concerning criminal law in the EJC Report. Recent topics included suggestions to improve the process of criminal discovery, impacting Rules 4-262 and 4-263.

Rule 4-262 concerns discovery for criminal cases in the District Court. The EJC Report discussed a proposed amendment that would institute a fixed deadline for providing discovery before trial in the District Court and would compel sanctions if the deadline was not met. The EJC Report acknowledged that the turnaround time from forensic laboratories must be considered when modifying discovery timeframes. In addition, sanctions are not intended as

punishment, but primarily aim to ensure a fair trial. Although the imposition of sanctions is within the discretion of the court, there are well-established principles that a court should apply before determining what, if any, sanction to impose.

The concept of a discovery deadline in the District Court has been discussed several times by the Rules Committee in the last two decades. For example, in its 163rd Report, the Rules Committee proposed amendments to section (i) of Rule 4-262 governing discovery procedure in the District Court. The proposed amendment added the phrase “to the extent practicable” before language requiring discovery and inspection to be completed before the hearing or trial. Similar new language in that section permitted a delay or continuance if “pretrial compliance was impracticable.” The Reporter’s note to Rule 4-262 explained, “The Rules Committee believes that specific deadlines for requesting and providing discovery would not be compatible with District Court practice, and therefore declines to recommend the addition of discovery deadlines to Rule 4-262.” The proposed amendments to section (i) were adopted by Rules Order filed on March 9, 2010.

The Criminal Rules Subcommittee has determined that a discovery deadline is not practicable at this time and declined the EJC Report’s suggestion to add a deadline to Rule 4-262. However, several other amendments are proposed to Rule 4-262, primarily addressing additional concerns raised by the EJC Report.

A new Committee note after subsection (c)(2) acknowledges that some prosecutors comply with their discovery obligations by using “open file” discovery. The Committee note highlights that additional materials may still be required as outlined in the Rule. A parallel Committee note is proposed in Rule 4-263.

Rule 4-262 sets forth mandatory disclosures to the defendant in the District Court. Certain additional materials must be provided if a written request is made by the defendant. The EJC Report noted that requiring a written request may present an obstacle for unrepresented defendants and recommended that the

Committee consider expanding the list of mandatory disclosures provided without request.

In current Rule 4-262, subsection (d)(1) addresses discovery materials that must be provided without request and subsection (d)(2) lists materials that must be provided after a written request. Proposed amendments to section (d) in effect combine the two sections, making all of the discovery materials listed in section (d) required without the necessity of a request. Stylistic changes are made as needed to conform the subsections to the structural change.

Clarifying language is added to section (i), noting that discovery and inspection shall be completed before the hearing or trial date. The second sentence of the section is amended to reflect that discovery pursuant to section (d) no longer requires a request.

Section (n) concerns sanctions if a party fails to comply with discovery obligations. Despite comments received from some justice partners, the EJC Report discouraged the use of mandatory sanctions for discovery violations in the circuit court, but recommended that the Rules Committee consider whether a postponement should be the presumptive remedy for a failure to timely meet discovery obligations in the District Court.

In regard to sanctions, the Criminal Rules Subcommittee determined that the current Rule gives allowance for the court to fashion an appropriate response to a discovery violation. The Subcommittee declined to limit the court's discretion by creating presumptive remedies for discovery violations.

A proposed amendment to section (n) instead adds the same language that appears in the parallel section of Rule 4-263, enumerating some possible sanctions.

[OPTION A]

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES
CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-263 by adding a Committee note after subsection (c)(2), by deleting the cross reference after subsection (d)(6), by adding subsection (d)(11) addressing disclosures concerning in-custody witness testimony, by adding a cross reference after new subsection (d)(11), by deleting a Committee note at the end of section (n), and by making stylistic changes, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

...

(c) Obligations of the Parties

(1) Due Diligence

The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Committee note: In many jurisdictions, the State complies with discovery requirements imposed under Rules 4-262 and 4-263 through “open file” discovery. While, in appropriate cases, “open file” discovery may satisfy the State’s discovery obligation, the full scope of discovery may require provision of additional discovery materials beyond that contained in the “open file,” as expressly outlined in Rules 4-262 and 4-263.

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-912 (b), the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged;

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

~~Cross reference: For the requirement to disclose a "benefit" to an "in custody witness," see Code, Courts Article, § 10-924.~~

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

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

(7) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's witness including, if the pretrial identification involved participation by personnel from a law enforcement agency, (i) a copy of or an electronic link to the written policies relating to eyewitness identification required by Code, Public Safety Article, §§ 3-506 and 3-506.1, and (ii) documents or other evidence indicating compliance or non-compliance with the requirements of Code, Public Safety Article, §§ 3-506 and 3-506.1;

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant by a State's witness also may be required. See *Green v. State*, 456 Md. 97 (2017).

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings,

photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; ~~and~~

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial; and

(11) In-custody Witness Testimony

If the State's Attorney intends to introduce testimony of an in-custody witness:

(A) any benefits an in-custody witness has received, or expects to receive, in exchange for providing testimony;

(B) the substance, time, and place of any statement (i) allegedly made by a suspect or defendant to the in-custody witness or (ii) made by an in-custody witness to law enforcement implicating the suspect or defendant; and

(C) other cases in which the in-custody witness testified, provided that the testimony can be ascertained through reasonable inquiry, and whether the in-custody witness received a benefit in exchange for providing testimony in those other cases.

Cross reference: See Rule 4-268 concerning pre-trial hearings prior to the admission of in-custody witness testimony.

(e) Disclosure by Defense

Without the necessity of a request, the defense shall provide to the State's Attorney:

(1) Defense Witness

The name and, except when the witness declines permission, the address of each defense witness other than the defendant, together with all written statements of each such witness that relate to the subject matter of the testimony of that witness. Disclosure of the identity and statements of a person who will be called for the sole purpose of impeaching a State's witness is not required until after the State's witness has testified at trial.

(2) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(3) Character Witnesses

As to each defense witness the defense intends to call to testify as to the defendant's veracity or other relevant character trait, the name and, except when the witness declines permission, the address of that witness;

(4) Alibi Witnesses

If the State's Attorney has designated the time, place, and date of the alleged offense, the name and, except when the witness declines permission, the address of each person other than the defendant whom the defense intends to call as a witness to show that the defendant was not present at the time, place, or date designated by the State's Attorney;

(5) Insanity Defense

Notice of any intention to rely on a defense of not criminally responsible by reason of insanity, and the name and, except when the witness declines permission, the address of each defense witness other than the defendant in support of that defense; and

Committee note: The address of an expert witness must be provided. See subsection (e)(2)(A) of this Rule.

(6) Defense of Duress

Notice of an intention to rely on a defense of duress pursuant to Code, Criminal Law Article, § 11-306(c).

(7) Documents, Computer-Generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

(f) Person of the Defendant

(1) On Request

On request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By Any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally

required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c), and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date, except that asserting a defense pursuant to subsection (e)(6) of this Rule shall be made at least 10 days before the first scheduled trial date.

(i) Motion to Compel Discovery

(1) Time

A motion to compel discovery based on the failure to provide discovery within the time required by section (h) of this Rule shall be filed within ten days after the date the discovery was due. A motion to compel based on inadequate discovery shall be filed within ten days after the date the discovery was received.

(2) Content

A motion shall specifically describe the information or material that has not been provided.

(3) Response

A response may be filed within five days after service of the motion.

(4) Certificate

The court need not consider any motion to compel discovery unless the moving party has filed a certificate describing good faith attempts to discuss with the opposing party the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

(j) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(k) Manner of Providing Discovery

(1) By Agreement

Discovery may be accomplished in any manner mutually agreeable to the parties. The parties shall file with the court a statement of their agreement.

(2) If No Agreement

In the absence of an agreement, the party generating the discovery material shall (A) serve on the other party copies of all written discovery material, together with a list of discovery materials in other forms and a statement of the time and place when these materials may be inspected, copied, and photographed, and (B) promptly file with the court a notice that (i) reasonably identifies the information provided and (ii) states the date and manner of service. On request, the party generating the discovery material shall make the original available for inspection and copying by the other party.

(3) Requests, Motions, and Responses to Be Filed With the Court

Requests for discovery, motions for discovery, motions to compel discovery, and any responses to the requests or motions shall be filed with the court.

(4) Discovery Material Not to Be Filed With the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

(l) Retention

The party generating discovery material shall retain the original until the earlier of the expiration of (i) any sentence imposed on the defendant or (ii) the retention period that the material would have been retained under the applicable records retention and disposal schedule had the material been filed with the court.

(m) Protective Orders

(1) Generally

On motion of a party, a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

(2) In Camera Proceedings

On request of party, or a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court may permit any showing of cause for denial or restriction of disclosures to be made in camera. A record shall be made of both in court and in camera proceedings. Upon the entry of an order granting relief in an in camera proceeding, all confidential portions of the in camera portion of the proceeding shall be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

(n) Sanctions

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony

to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

~~Committee note: When testimony of an in-custody witness is offered, the Court, at the request of a defendant, shall conduct a hearing to ensure that the State's Attorney has disclosed all material and information related to the in-custody witness as required by law. See Code, Courts Article, § 10-924.~~

Source: This Rule is new and is derived in part from former Rule 741 and the 1998 version of former Rule 4-263.

Rule 4-263 [Option A] was accompanied by the following

Reporter's note:

In Rule 4-263, a proposed Committee note after subsection (c)(2) acknowledges that some prosecutors comply with their discovery obligations by using "open file" discovery. The Committee note highlights that additional materials may still be required as outlined in the Rule. A parallel Committee note is proposed in Rule 4-262.

Additional amendments to the Rule are proposed based on the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). In March 2023, the Judicial Council approved the EJC Report for dissemination. For additional information, see the Reporter's note to Rule 4-262.

The EJC Report discussed a proposal to add a new subsection to Rule 4-263 about in-custody witness testimony. The proposal would amend Rule 4-263 to incorporate the requirements of Code, Courts Article, § 10-924 and add a new Rule addressing a

preliminary hearing. Overall, the EJC Report recommended that Rule 4-263 be amended to incorporate the statutory requirements of Code, Courts Article, § 10-924, that the Committee consider adding a section regulating hearings under the Code section, and that the Committee consider whether pretrial sworn testimony from an in-custody witness may be demanded by a defendant.

Accordingly, the Criminal Rules Subcommittee has prepared two options for amendments to Rule 4-263. Option A deletes the current cross reference to Code, Courts Article, § 10-924 and related Committee note. The proposed amendments instead add a new subsection concerning § 10-924, as suggested by the EJC Report. Option A also includes new Rule 4-268 regarding related hearings. See Rule 4-263 [Option B] for a description of different possible amendments.

In Option A, the cross reference to § 10-924 is proposed to be deleted after subsection (d)(6)(B). New subsection (d)(11) sets forth the required discovery material if the State's Attorney intends to introduce the testimony of an in-custody witness. The language of the section is taken from the statutory provisions. A cross reference after the new subsection points to new Rule 4-268.

A Committee note after section (n) is proposed to be deleted. Based on the addition of new subsection (d)(11), the Committee note is unnecessary.

Stylistic changes are made to account for the addition of a new subsection.

[OPTION A]

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

ADD new Rule 4-268, as follows:

Rule 4-268. PRE-TRIAL HEARING PRIOR TO
ADMISSION OF IN-CUSTODY WITNESS TESTIMONY

At the request of the defendant, the court shall conduct a hearing prior to admitting the testimony of an in-custody witness to determine whether the State's Attorney has disclosed all material and information related to the in-custody witness as required by law.

Cross reference: See Rule 4-263 and Code, Courts Article, § 10-924.

Source: This Rule is new.

Rule 4-268 was accompanied by the following Reporter's
note:

The Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report") discussed a proposal to add a new subsection to Rule 4-263 about in-custody witness testimony and add a new Rule addressing a preliminary hearing. For additional information, see the Reporter's note to Rule 4-263.

Proposed new Rule 4-268 addresses hearings related to § 10-924 and is prepared in tandem with the Option A amendments to Rule 4-263. Section (e) of § 10-924 states, "Prior to admitting testimony of an in-custody witness, the court shall conduct a hearing, at the request of the defendant, to ensure that the State's Attorney has disclosed all material and information related to the in-custody witness as required under subsection (d) of this section and Maryland Rule 4-263."

[OPTION B]

MARYLAND RULES OF PROCEDURE
TITLE 4 – CRIMINAL CAUSES
CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-263 by adding a Committee note after section (c), as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

...

(c) Obligations of the Parties

(1) Due Diligence

The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Committee note: In many jurisdictions, the State complies with discovery requirements imposed under Rules 4-262 and 4-263 through “open file” discovery. While, in appropriate cases, “open file” discovery may satisfy the State’s discovery obligation, the full scope of discovery may require provision of additional discovery materials beyond that contained in the “open file,” as expressly outlined in Rules 4-262 and 4-263.

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-912 (b), the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged;

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances

of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

Cross reference: For the requirement to disclose a “benefit” to an “in-custody witness,” see Code, Courts Article, § 10-924.

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

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

(7) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's witness including, if the pretrial identification involved participation by personnel from a law enforcement agency, (i) a copy of or an electronic link to the written policies relating to eyewitness identification required by Code, Public Safety Article, §§ 3-506 and 3-506.1, and (ii) documents or other evidence indicating compliance or non-compliance with the requirements of Code, Public Safety Article, §§ 3-506 and 3-506.1;

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant by a State's witness also may be required. See *Green v. State*, 456 Md. 97 (2017).

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

(e) Disclosure by Defense

Without the necessity of a request, the defense shall provide to the State's Attorney:

(1) Defense Witness

The name and, except when the witness declines permission, the address of each defense witness other than the defendant, together with all written statements of each such witness that relate to the subject matter of the testimony of that witness. Disclosure of the identity and statements of a person who will be called for the sole purpose of impeaching a State's witness is not required until after the State's witness has testified at trial.

(2) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(3) Character Witnesses

As to each defense witness the defense intends to call to testify as to the defendant's veracity or other relevant character trait, the name and, except when the witness declines permission, the address of that witness;

(4) Alibi Witnesses

If the State's Attorney has designated the time, place, and date of the alleged offense, the name and, except when the witness declines permission, the address of each person other than the defendant

whom the defense intends to call as a witness to show that the defendant was not present at the time, place, or date designated by the State's Attorney;

(5) Insanity Defense

Notice of any intention to rely on a defense of not criminally responsible by reason of insanity, and the name and, except when the witness declines permission, the address of each defense witness other than the defendant in support of that defense; and

Committee note: The address of an expert witness must be provided. See subsection (e)(2)(A) of this Rule.

(6) Defense of Duress

Notice of an intention to rely on a defense of duress pursuant to Code, Criminal Law Article, § 11-306(c).

(7) Documents, Computer-Generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

(f) Person of the Defendant

(1) On Request

On request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of

other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By Any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c), and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date, except that asserting a defense pursuant to subsection (e)(6) of this Rule shall be made at least 10 days before the first scheduled trial date.

(i) Motion to Compel Discovery

(1) Time

A motion to compel discovery based on the failure to provide discovery within the time required by section (h) of this Rule shall be filed within ten days

after the date the discovery was due. A motion to compel based on inadequate discovery shall be filed within ten days after the date the discovery was received.

(2) Content

A motion shall specifically describe the information or material that has not been provided.

(3) Response

A response may be filed within five days after service of the motion.

(4) Certificate

The court need not consider any motion to compel discovery unless the moving party has filed a certificate describing good faith attempts to discuss with the opposing party the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

(j) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(k) Manner of Providing Discovery

(1) By Agreement

Discovery may be accomplished in any manner mutually agreeable to the parties. The parties shall file with the court a statement of their agreement.

(2) If No Agreement

In the absence of an agreement, the party generating the discovery material shall (A) serve on the other party copies of all written discovery material, together with a list of discovery materials in other forms and a statement of the time and place when these materials may be inspected, copied, and photographed, and (B) promptly file with the court a

notice that (i) reasonably identifies the information provided and (ii) states the date and manner of service. On request, the party generating the discovery material shall make the original available for inspection and copying by the other party.

(3) Requests, Motions, and Responses to Be Filed With the Court

Requests for discovery, motions for discovery, motions to compel discovery, and any responses to the requests or motions shall be filed with the court.

(4) Discovery Material Not to Be Filed With the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

(l) Retention

The party generating discovery material shall retain the original until the earlier of the expiration of (i) any sentence imposed on the defendant or (ii) the retention period that the material would have been retained under the applicable records retention and disposal schedule had the material been filed with the court.

(m) Protective Orders

(1) Generally

On motion of a party, a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

(2) In Camera Proceedings

On request of party, or a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court may permit any showing of cause for denial or restriction of disclosures to be made in camera. A record shall be

made of both in court and in camera proceedings. Upon the entry of an order granting relief in an in camera proceeding, all confidential portions of the in camera portion of the proceeding shall be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

(n) Sanctions

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Committee note: When testimony of an in-custody witness is offered, the Court, at the request of a defendant, shall conduct a hearing to ensure that the State's Attorney has disclosed all material and information related to the in-custody witness as required by law. See Code, Courts Article, § 10-924.

Source: This Rule is new and is derived in part from former Rule 741 and the 1998 version of former Rule 4-263.

Rule 4-263 [Option B] was accompanied by the following

Reporter's note:

Proposed amendments to Rule 4-263 add a Committee note after subsection (c)(2) acknowledging that some prosecutors comply with their discovery obligations by using "open file" discovery. The Committee note highlights that additional materials

may still be required as outlined in the Rule. A parallel Committee note is proposed in Rule 4-262.

The Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter “the EJC Report”) discussed a proposal to add a new subsection to Rule 4-263 about in-custody witness testimony. For additional information, see the Reporter’s note to Rule 4-263 [Option A].

Upon review of the history of Rule 4-263, it appears that the Rules Committee previously approved amendments after consideration of Code, Courts Article, § 10-924, including a cross reference to the statute after subsection (d)(6) and an explanatory Committee note at the end of the Rule. The amendments were discussed at the June 18, 2020 Rules Committee meeting, transmitted to the Supreme Court in the 206th Report, and adopted by Rules Order entered March 30, 2021. Due to the timing of the EJC Report, it is unclear if these amendments to Rule 4-263 were considered in the recommendation of the EJC Report.

Accordingly, the Criminal Rules Subcommittee has prepared two options for amendments to Code, Courts Article, § 10-924. In Option B, the current cross reference and Committee note remain and no additional new language is added. See Rule 4-263 [Option A] for a description of other possible amendments.

Ms. Drummond explained that Agenda Item 13 reflects the work of the Criminal Rules Subcommittee to address recommendations made by the Equal Justice Committee Rules Review Subcommittee (“the EJC Report”). She explained that the proposed amendments address discovery in the District Court and circuit courts.

Ms. Drummond said that proposed amendments to Rule 4-262 add a Committee note regarding "open file" discovery and a series of amendments make disclosures previously only required upon request mandatory without request. She said that the EJC Report noted that unrepresented individuals are less likely to know to request this discovery and therefore do not receive it. The proposed amendments to Rule 4-262 do away with the distinction of disclosures required with or without request and make all items under section (d) mandatory disclosures.

Ms. Drummond also informed the Committee that the EJC Report suggested a presumptive remedy of postponement for a discovery violation. She said that the Criminal Rules Subcommittee declined to limit the court's discretion when there is a lack of compliance, and opted to add new language to section (n) consistent with the sanction provisions set forth in Rule 4-263 for the circuit courts.

There being no motion to amend or reject the proposed amendments to Rule 4-262, the Rule was approved as presented.

Ms. Drummond said that the second part of Agenda Item 13 pertains to criminal discovery in circuit court and includes two options considered by the Subcommittee. She said that the EJC Report made certain recommendations about disclosures pertaining to testimony of in-custody witnesses. The Rule currently includes a cross reference after subsection (d) (6) (B), which was

added when Code, Courts Article, § 10-924 was added to the Code. Ms. Drummond noted that the Rules Committee took up this matter at the same time as the Rules Review Subcommittee. The EJC Report ultimately recommended changes that differ from the Rules Committee's recommendation, which was adopted by the Supreme Court.

Ms. Drummond said that Rule 4-263 [Option A] adds new subsection (d)(11) governing testimony by an in-custody witness and creates new Rule 4-268 which provides for the pretrial hearing pursuant to the statute. Rule 4-263 [Option B] would add the Committee note pertaining to "open file" discovery that is added to Rule 4-262 but would not make any additional amendments to implement the in-custody witness statute.

The Chair called for a motion to approve Option A or B. Judge Nazarian moved to approve Rule 4-263 [Option A] and new Rule 4-268. The motion was seconded and approved by consensus.

Agenda Item 14. Consideration of proposed housekeeping amendment to Rule 19-409 (Interest on Funds)

Ms. Cobun presented Rule 19-409, Interest on Funds, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS
CHAPTER 400 – ATTORNEY TRUST ACCOUNTS

AMEND Rule 19-409 by updating an internal reference in subsection (c)(5)(I), as follows:

RULE 19-409. INTEREST ON FUNDS

...

(c) Duty to Report IOLTA Participation

(1) As a condition precedent to the practice of law, each attorney admitted to practice in Maryland shall report annually in accordance with this Rule information concerning all IOLTA accounts.

(2) On or before July 10 of each year, AOC shall send electronically to each attorney on active status a notice requiring the attorney to complete an IOLTA Compliance Report on or before September 10 of that year. The Report shall require disclosure of the name, address, location, and account number of each IOLTA account maintained by the attorney as of July 10 of each year.

(3) If all IOLTA eligible trust funds of all attorneys in a law firm are deposited in shared law firm IOLTA accounts, the firm shall designate an attorney to be its “IOLTA Reporting Attorney.” The Reporting Attorney shall report on all law firm IOLTA accounts by submitting one report listing the specific account information for the firm with the Reporting Attorney’s signature. Each attorney at the law firm other than the firm’s IOLTA Reporting Attorney shall submit a report that includes the attorney’s name, law firm address and phone number, and the name of the IOLTA Reporting Attorney. The report need not include account information.

(4) On or before September 10 of each year, the attorney, through AIS. Shall file electronically a completed IOLTA Compliance Report with AOC.

(5) Enforcement

(A) Notice of Default

As soon as practicable after February 10 of each year, AOC shall electronically notify each defaulting attorney of the attorney's failure to file the required Report. The notice shall (i) state that the attorney has not filed the required IOLTA Compliance Report and (ii) state that continued failure to file the Report may result in an order by the Supreme Court prohibiting the attorney from practicing law in Maryland.

(B) Additional Discretionary Notice of Default

In addition to the electronic notice, AOC may give additional notice in other ways to defaulting attorneys. This discretion shall be liberally construed with respect to notices given in 2019.

(C) List of Defaulting Attorneys

As soon as practicable after February 10 of each year but no later than March 10, AOC shall:

(i) prepare, certify, and, transmit to the Supreme Court a list that includes the name and, unless the attorney has elected to keep the address confidential, the address of each attorney engaged in the practice of law who has failed to file the IOLTA Compliance Report for the preceding reporting period;

(ii) include with the list a proposed Decertification Order stating the name and, unless the attorney has elected to keep the address confidential, the address of each attorney who has failed to file the IOLTA Compliance Report; and

(iii) at the request of the Court, furnish additional information from its records or give further notice to the defaulting attorneys.

(D) Decertification Order

If satisfied that AOC has given the required notice to the attorneys named in the proposed decertification order, the Supreme Court shall enter a decertification order prohibiting each of them from practicing law in Maryland until such time as a Recertification Order applicable to a listed attorney is entered pursuant to subsection (c)(4)(F) of this Rule. If the Court concludes

that an attorney was not given the required notice, it shall delete that attorney's name from the proposed Order.

(E) Transmittal of Decertification Order

AOC shall transmit a copy of the decertification order to each attorney named in the Order.

(F) Recertification; Reinstatement

If a decertified attorney thereafter files the outstanding IOLTA Compliance Report, AOC shall inform the Supreme Court and request the Court to enter an order that recertifies the attorney and terminates the decertification. Upon the entry of that order, AOC promptly shall transmit confirmation to the attorney. After an attorney is recertified, the fact that the attorney had been decertified need not be disclosed by the attorney in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(G) Duty of Clerk of Supreme Court

Upon entry of each Decertification Order and each Recertification Order entered pursuant to this Rule, the Clerk of the Supreme Court shall comply with Rule 19-761.

(H) Certain Information Furnished to the Maryland Legal Services Corporation

AOC promptly shall submit to the Maryland Legal Services Corporation the data from the IOLTA Compliance Reports.

(I) Confidentiality

Except as provided in subsections ~~(e)(4)(H)~~ and ~~(e)(4)(I)~~ (c)(5)(H) of this Rule, IOLTA Compliance Reports are confidential and are not subject to inspection or disclosure under Code, General Provisions Article, § 4-301. Neither AIS nor AOC shall release those Reports to any person, except as provided in this Rule or upon order of the Supreme Court. Non-identifying information and data contained in an attorney's IOLTA Compliance Report are not confidential.

Source: This Rule is derived from former Rule 16-608(2016).

Rule 19-409 was accompanied by the following Reporter's note:

A proposed housekeeping amendment to Rule 19-409 corrects an internal reference in subsection (c)(5)(I). The reference should be to (c)(5)(H).

Ms. Cobun explained that the proposed housekeeping amendment corrects an internal reference in Rule 19-409. A motion to approve the housekeeping amendment was made, seconded, and approved by consensus. Ms. Meredith pointed out two typos in the Rule: subsection (c)(2) has "complete" misspelled as "compete" and subsection (c)(5)(A) has "state" misspelled as "stat." Ms. Cobun thanked Ms. Meredith and said that those would be corrected.

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