SUPREME COURT STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms 132-133 of the Maryland Judicial Center, 187 Harry S. Truman Parkway, Annapolis, Maryland on Friday, November 15, 2024.

Members present:

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

Hon. Tiffany Anderson
James M. Brault, Esq.
Jamar R. Brown, Esq.
Hon. Yvette M. Bryant
Julia Doyle, Esq.
Monica Garcia Harms, Esq.
Arthur J. Horne, Jr., Esq.
Hon. Karen R. Ketterman
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Stephen S. McCloskey, Esq.
Kathleen Meredith, Esq.
Judy Rupp, State Court Administrator
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Brian Zavin, Esq.

In attendance:

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

Hon. Matthew Fader, Chief Justice, Supreme Court of Maryland
Elizabeth Ashford, Esq., Public Justice Center
Derek Bayne, Esq., Commission on Judicial Disabilities
Tanya Bernstein, Esq., Commission on Judicial Disabilities
Katherine Davis, Esq., Director, Maryland Pro Bono Resource Center
Thomas DeGonia, Esq., Bar Counsel
Tamara Dowd, Esq., Commission on Judicial Disabilities
Hon. James Eyler
Kendra Jolivet, Esq., Commission on Judicial Disabilities
Marianne Lee, Esq., Executive Counsel and Director, Attorney Grievance Commission

Lisa Mannisi, Esq., Civil and Criminal Case Administrator, Anne Arundel County Circuit Court
Hon. John P. Morrissey, Chief Judge, District Court of Maryland
Pamela Ortiz, Esq., Director, Access to Justice
Gillian Tonkin, Esq., Staff Attorney to Chief Judge, District Court
Rachel Konieczny, The Daily Record
Zafar Shah, Esq., Assistant Advocacy Director for Tenant Right to Counsel, Maryland Legal Aid

The Chair convened the meeting. He announced that the meeting will be his final one as Chair of the Rules Committee. He said that he informed the Supreme Court last month that he would be resigning from the Rules Committee, the Judicial Council, and the Major Projects Committee.

The Chair said that it has been a pleasure and a privilege to serve on the Committee for at least 28 years. He said that the work is interesting and creative; he expressed his gratitude for the intelligence, dedication, and friendship of the Committee members and staff. He noted that the public may not often be aware of the work of the Committee but called it a special group of people who serve the public well. He informed the Committee that he plans to spend time reading books at two elementary schools in Baltimore County.

The Chair concluded by saying that he has asked Vice Chair Judge Nazarian to preside over the remainder of the meeting. The Committee applauded the Chair and thanked him for his service.

Chief Justice Fader addressed the Chair and the Committee. He said that he wanted to attend on behalf of the Supreme Court and make remarks. He informed the Committee that the Chair has "lived a life of service that very few can match," a large portion of which was spent with the Maryland Judiciary. The Chair served on the Court of Special Appeals – now the Appellate Court – from 1977 to 1996, including six years as Chief Judge of that Court. He was then a judge on the Court of Appeals – now the Supreme Court – from 1996 until 2007. The Chief Justice added that the Chair then engaged in almost an additional full career of service since reaching the mandatory retirement age of 70. Prior to his time on the bench, the Chair was an Assistant Attorney General and then Chief Legislative Officer to Gov. Marvin Mandel. The Chief Justice stated that the Chair served on countless committees and work groups, including the Rules Committee, during his years of service.

The Chief Justice said that the Supreme Court relies heavily on the Committee to vet Rules proposals and sift through public comments. He noted that the Chair is a driving force behind the excellence of the Committee. He acknowledged sadness at the news of the Chair's resignation but added that he cannot take issue with the decision given his lengthy career in public service.

Chief Judge Morrissey remarked that when he became District Court Chief Judge in June 2014, he was entering the role with one month to implement the Appointed Attorneys Program necessitated by *DeWolfe v. Richmond*, 434 Md. 444 (2013). He said that his predecessor, Judge Ben C. Clyburn, informed him that one of his first calls should be to Judge Wilner and the Rules Committee. Judge Morrissey said that the Chair's service on the Major Projects Committee has involved a major time commitment sitting through hours-long meetings and providing insight when the work of that Committee intersects with that of the Rules Committee. Judge Morrissey said that he was presenting the Chair with a District Court challenge coin to thank him for his service. He explained that the Chair must have the coin with him when he sees Judge Morrissey or else he must pay for lunch.

Judge Nazarian remarked that there is nobody who has devoted more of themselves or of their professional life to the work of the Committee. He added that no current member of the Committee has served under any other Chair. He said that "institutional memory" is a term that comes up when someone retires or moves on from a position; however, he said that the term does not adequately capture the way that the Chair has lived the history of the law of the State. He said that the Committee serves a function that relatively few people

understand but everyone in the room knows that the Chair's retirement is well-earned.

The Reporter addressed the Chair and said that, on behalf of the staff, it has been an honor and privilege to work with him. She presented him with a card and small gift from the Committee staff.

Mr. Marcus said that serving on the Rules Committee under the Chair's leadership has been one of the greatest experiences of his career. He informed the Chair that his career has been "iconic" and that he has been a beacon for everyone he has touched. He continued that the Chair modeled collegiality and every virtue a lawyer and citizen of the State could want. Mr. Marcus said that there is a Yiddish term, "menschkeit," which describes a person who is good to the soul. He stated that the term applies to the Chair, who he said cannot appreciate the impact he has had. He concluded by congratulating the Chair on one of the finest careers of anyone in Maryland.

Judge Bryant said that it is a sad day but also a happy day because the Chair has more than earned his retirement from the Committee. She thanked him for everything he has taught her, adding that he is a guide but also steps back and allows the Committee members to learn how to do the work themselves. She noted that this will be key as they move forward in his absence.

The Reporter advised that the meeting was being recorded for the purpose of assisting with the preparation of meeting minutes and that speaking will be treated as consent to being recorded. She informed the Committee that the Rules Orders for the 222nd and 223rd Reports, which were heard across three open meetings, have all been signed and posted. She also called for a motion to approve the minutes for the October 10, 2024 meeting, which were circulated prior to the meeting for review. A motion to approve the minutes was made, seconded, and approved by consensus.

Agenda Item 1. Consideration of new Preamble to the Maryland Rules and proposed amendments to Rule 18-101.2 (Promoting Confidence in the Judiciary [ABA Rule 1.2]) and Rule 18-201.2 (Promoting Confidence in the Judiciary).

Mr. Marcus informed the Committee that Agenda Item 1 addresses an issue that was previously discussed by the Committee; proposals were submitted to the Supreme Court as part of the 221st Report. He said that the focus is on implicit bias, something that most people can describe and would agree can negatively impact the fairness of court proceedings. Mr. Marcus explained that the Supreme Court is grappling with what to do when behavior or speech appears to manifest inappropriate bias

in a judicial proceeding, particularly when it is a bias that is subconscious.

Mr. Marcus said that the American Psychological Association defines "implicit bias" as "a negative attitude of which one is not consciously aware against a specific group." He noted that the concept of the bias being "unconscious" is what makes it particularly difficult to address in a Rule. On remand, the Supreme Court wanted the Committee to consider how to prohibit unconscious behavior, particularly in Title 18 which can lead to sanctions against judges. He said that the Court also expressed interest in making an aspirational statement about keeping all judicial proceedings and interactions with the public fair and free of bias. Mr. Marcus explained that to address this request, staff proposed creating a "Preamble" to the Maryland Rules which would encourage reflection and awareness of bias.

Mr. Marcus presented a new Preamble to the Maryland Rules for consideration.

MARYLAND RULES OF PROCEDURE

PREAMBLE

ADD a Preamble to the Maryland Rules, as follows:

PREAMBLE

> The mission of the Maryland Judiciary is to provide fair, efficient, and effective justice for all persons who come before it. The Judiciary is committed to ensuring the integrity and impartiality of the judicial system and to providing court interactions free of impermissible bias and the appearance of such bias. In all court interactions, each judge, judicial officer, employee, and agent acting on behalf of the Maryland Judiciary should refrain from engaging in conduct that exhibits actual or implicit bias based on race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation – whether directed toward counsel, court staff, witnesses, parties, jurors, or any other individual – and should take action to prevent others from engaging in such conduct.

The Preamble was accompanied by the following Reporter's note:

> Proposed amendments to Rule 18-101.2 address a concern raised by the Committee on Equal Justice Rules Review Subcommittee ("the EJC Report"). The suggestion in the EJC Report was to add Committee notes to the Rules in Title 4 reminding judges "of the risk of implicit bias." The Rules Committee discussed and ultimately recommended a new Title 1 Rule (Rule 1-342) and amendments to two Rules in the Code of Judicial Conduct (Rules 18-102.3 and 18-202.3). Rule 1-342 contained a general reminder to judicial personnel (1) of the need to be aware of how participants in judicial proceedings and members of the public may construe the manner in which judicial statements or decisions are expressed and enforced and (2) to avoid making statements or taking actions that others may feel indicate a bias that is not intended. The two Title 18 Rules were amended to add discussion of implicit bias to the Comments.
>
> The Supreme Court considered the proposals at an open meeting on the 221st Report on March 19,

> 2024. After discussion, the Court remanded the Rules to the Committee for further study. The Court instructed the Committee, on remand, to relocate the substance of Rule 1-342 to Rules 18-101.2 and 18-201.2 – with reconsideration of the language used in light of the Court's discussion – and to consider developing a Title 1 Rule that serves as an aspirational policy statement for the Judiciary.
>
> To address the second part of the Court's directive, the Attorneys & Judges Subcommittee recommends adding a "Preamble" to the Maryland Rules derived from the Judiciary's mission statement and the language previously included in the proposed new Rule 1-342. The Preamble sets forth the aspirational goal of the courts to avoid actual or implicit bias. The attributes that bias may be based on are derived from Rules 18-102.3 and 18-202.3.
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> By not locating the provision in Title 1, the Preamble signals that it is separate from the Maryland Rules, which "'are not guides to the practice of law but precise rubrics "established to promote the orderly and efficient administration of justice and [that they] are to be read and followed."'" e.g., *Isen v. Phoenix Assurance Co.,* 259 Md. 564, 570 (1970) (*Johnson v. State*, 355 Md. 420, 447 (1999)).

Mr. Marcus said that the Preamble is a mission statement and an admonishment to those representing the Maryland Judiciary to be cognizant of how their actions and words are perceived. Judge Nazarian commented that the idea of the Preamble is that it is not a Rule itself, which addresses some of the Court's concerns. By contrast, the two Title 18 Rules, which will be discussed next, are intended to be enforceable provisions of the Code of Judicial Conduct.

Judge Bryant remarked that she does not have an issue with the idea of a Preamble, however she has concerns about the last clause, which reads, "and should take action to prevent others from engaging in such conduct." She explained that the provision encourages peers to regulate one another and, in certain environments, that troubles her. She suggested that "should" be changed to "may." Judge Nazarian said that he appreciates Judge Bryant's comment. He pointed out that the mission set forth in the Preamble may be intended to cause some discomfort. Judge Bryant responded that she is less concerned with discomfort and more concerned with outright conflict in the workplace over coworkers policing each other's words and behaviors. Chief Judge Morrissey pointed out that judges have a general duty to control conduct in their courtrooms. However, he agreed that the provision might be overly broad if it could lead to regulating speech by members of the public.

Mr. Wells said that he agreed with Judge Bryant's concern and suggested the provision be changed to "encourage" taking action to prevent others from manifesting bias. He said that this would be in line with the aspirational nature of the Preamble. Judge Bryant said that she also has concerns about the word "prevent." She asked how someone could take action to prevent another individual from having biased thoughts. She said she would support changing the clause to "are encouraged to

take action to discourage others from engaging in such conduct." Mr. Wells suggested "refrain from" instead of "prevent." Assistant Reporter Cobun asked how the last sentence would read. Judge Bryant said, taking Mr. Well's suggestion, the end of the sentence would state "and are encouraged to take action to discourage/dissuade others from engaging in such conduct." She said that she is open to either "discourage" or "dissuade." Mr. Wells said that he likes "discourage."

Mr. Horne remarked that if the Preamble is intended to be aspirational, that clause can be removed as it is the only portion that compels an affirmative action on the part of the reader. Judge Nazarian responded that the Judiciary may want people to take affirmative action to prevent bias. Mr. Wells added that the Court should want to encourage staff and employees to have conversations about implicit and explicit bias. Ms. Doyle commented that the Code of Judicial Conduct has directives for judges to control conduct before them. She added that the Preamble might not be the appropriate location for the provision.

Mr. Wells told the Committee that when he began practicing, it was not uncommon for him to walk into a courthouse, dressed in a suit, and be asked if he was a defendant looking for his attorney. He said that the last clause in the proposed Preamble might encourage conversations when employees witness

interactions like the one that he described. Judge Bryant reiterated that she was more comfortable with changing the clause to "are encouraged to take action to discourage others from engaging in such conduct."

Judge Anderson asked what "action" the Committee envisions a Judiciary employee taking. She asked if someone should stop a court proceeding, raise the issue with an employee's supervisor, or even protest outside the courthouse? Judge Bryant asked Mr. Marcus if the Subcommittee engaged in that discussion. Mr. Marcus responded that the Subcommittee did not discuss that issue. Ms. Cobun informed the Committee that the language was derived, in part, from the California Rules of Court Standards of Judicial Administration Standard 10.20.

Judge Wilson suggested that the appropriateness of the action will depend on several factors. She noted that, in the Judiciary human resources policies, there are standards of conduct and required training on bias and how to respond. She said that the proposed phrasing gives broad enough discretion to allow an individual to determine an appropriate response when there appears to be an incident of bias. Mr. Wells pointed out that the intention of changing "should" to "are encouraged to" is to remove any obligation to act. He agreed that the circumstances will vary. Mr. Brault pointed out that the clause is vague, particularly regarding who the "others" are. Judge

Nazarian asked whether the reworded clause should be further amended to refer to "appropriate action."

Judge Bryant moved to amend the final clause of the Preamble to read "are encouraged to take action to discourage others from engaging in such conduct." She clarified that her motion does not include "appropriate action." The motion was seconded and approved by consensus.

Mr. Brown questioned why the scope of the Preamble is limited to Judiciary employees and not all individuals. Mr. Marcus responded that there are specific Rules for attorneys and for judges, but this Preamble goes to the broader Judiciary as a mission statement. Mr. Brown also asked why the phrase "impermissible bias" was chosen. Mr. Marcus responded that everyone has biases, which could be as innocuous as preferring the Ravens over the Commanders. He explained that the focus of the Judiciary is on bias that impacts the fairness of court proceedings. Mr. Brown suggested striking the word "impermissible."

Judge Bryant commented that something she teaches to new judges in family law cases is that they must be cognizant of their biases. She said that she tells judges they can feel how they feel, i.e., have opinions about family structure, but must recognize that the knee-jerk feeling is rooted in bias and must be set aside. She said that if she holds a biased thought, that

thought cannot be policed. But as a judge, she cannot bring that opinion into how she treats parties or cases.

Mr. Brown replied that he liked Mr. Marcus's explanation that it is about bias "that interferes with the fair administration of justice." A motion to strike "impermissible bias" and replace it with the phrase "bias that interferes with the fair administration of justice" was made, seconded, and approved by consensus.

Judge Nazarian called for a motion to approve the Preamble, as amended. The motion was made, seconded, and approved by consensus.

Mr. Marcus presented Rule 18-101.2, Promoting Confidence in the Judiciary [ABA Rule 1.2], and Rule 18-201.2, Promoting Confidence in the Judiciary, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 – MARYLAND CODE OF JUDICIAL CONDUCT

RULES GOVERNING INTEGRITY AND THE AVOIDANCE OF IMPROPRIETY

AMEND Rule 18-101.2 by adding new section (d) pertaining to avoiding the perception of bias, by adding "or bias" to Comment 1, by adding to Comment 4 encouragement to participate in education and to participate in activities that promote awareness of biases, by adding new Comment 6, and by

renumbering current Comment 6 as Comment 7, as follows:

Rule 18-101.2. PROMOTING CONFIDENCE IN THE JUDICIARY (ABA RULE 1.2)

(a) Promoting Public Confidence

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

(b) Avoiding Perception of Impropriety

A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

(c) Avoiding Perception of Bias

A judge shall avoid conduct that would create in reasonable minds a perception that the judge is acting with bias based on race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety or bias. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other individuals and must accept the restrictions imposed by this Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities, including training and other educational

opportunities, that promote ethical conduct among judges and attorneys, support professionalism within the judiciary and the legal profession, encourage increased awareness of actual and implicit biases, and promote access to justice for all.

[5] Actual improprieties include violations of law, Court Rules, and this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with competence, impartiality, and integrity is impaired.

[6] Members of the public interacting with the judiciary should be treated fairly and impartially both in fact and in appearance. Judges should be mindful that bias may be explicit but also may be implicit, meaning behavior that is largely influenced by subconscious associations and judgments that the conscious brain is not capable of processing. If a judge is alerted that the judge's conduct could cause a reasonable person to question the judge's impartiality or otherwise suggest impermissible bias on the part of the court, the judge should evaluate the conduct and, if necessary, take reasonable and lawful steps to correct the conduct.

~~[6]~~[7] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Source: This Rule is derived from former Rule 1.2 of Rule 16-813 (2016).

Rule 18-101.2 was accompanied by the following Reporter's note:

Proposed amendments to Rule 18-101.2 address a concern raised by the Committee on Equal Justice Rules Review Subcommittee ("the EJC Report"). The suggestion in the EJC Report was to add Committee notes to the Rules in Title 4 reminding judges "of the

risk of implicit bias." The Rules Committee discussed and ultimately recommended a new Title 1 Rule (Rule 1-342) and amendments to two Rules in the Code of Judicial Conduct (Rules 18-102.3 and 18-202.3). Rule 1-342 contained a general reminder to judicial personnel (1) of the need to be aware of how participants in judicial proceedings and members of the public may construe the manner in which judicial statements or decisions are expressed and enforced and (2) to avoid making statements or taking actions that others may feel indicate a bias that is not intended. The two Title 18 Rules were amended to add discussion of implicit bias to the Comments.

The Supreme Court considered the proposals at an open meeting on the 221st Report on March 19, 2024. After discussion, the Court remanded the Rules to the Committee for further study. The Court instructed the Committee, on remand, to relocate the substance of Rule 1-342 to Rules 18-101.2 and 18-201.2 – with reconsideration of the language used in light of the Court's discussion – and to consider developing a Title 1 Rule that serves as an aspirational policy statement for the Judiciary.

The proposed amendment to Rule 18-101.2 is modeled after the existing provisions in the Rule but adds an admonishment that judges must avoid conduct that would create in reasonable minds a perception of bias based on the enumerated traits. A new Comment 6 provides guidance to the judge who is alerted to the potential for an appearance of bias. It is derived in part from Belton v. State, 483 Md. 523 (2023), and in part from the Supreme Court's comments at the open meeting on the 221st Report.

Additional amendments to the Comments add "or bias" to Comment 1 and expand Comment 4 to reference educational opportunities and encourage increased awareness of bias.

CHAPTER 200 – MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

RULES GOVERNING INTEGRITY AND THE AVOIDANCE OF IMPROPRIETY

AMEND Rule 18-201.2 by adding taglines to sections (a) and (b), by adding new section (d) pertaining to avoiding the perception of bias, by adding "or bias" to Comment 1, by adding to Comment 4 encouragement to participate in education and to participate in activities that promote awareness of biases, by adding new Comment 6, by renumbering current Comment 6 as Comment 7, as follows:

Rule 18-201.2. PROMOTING CONFIDENCE IN THE JUDICIARY

(a) Promoting Public Confidence

A judicial appointee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

(b) Avoiding Perception of Impropriety

A judicial appointee shall avoid conduct that would create in reasonable minds a perception of impropriety.

(c) Avoiding Perception of Bias

A judicial appointee shall avoid conduct that would create in reasonable minds a perception that the judge is acting with bias based on race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety or bias. This principle

applies to both the professional and personal conduct of a judicial appointee.

[2] A judicial appointee should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by this Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judicial appointee undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judicial appointees should participate in activities, including training and other educational opportunities, that promote ethical conduct among judicial appointees and attorneys, support professionalism within the judiciary and the legal profession, encourage increased awareness of actual and implicit biases, and promote access to justice for all.

[5] Actual improprieties include violations of law, Court Rules, and this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judicial appointee's ability to carry out the responsibilities of the judicial appointee's position with competence, impartiality, and integrity is impaired.

[6] Members of the public interacting with the judiciary should be treated fairly and impartially both in fact and in appearance. Judicial appointees should be mindful that bias may be explicit but also may be implicit, meaning behavior that is largely influenced by subconscious associations and judgments that the conscious brain is not capable of processing. If a judicial appointee is alerted that the judicial appointee's conduct could cause a reasonable person to question the judicial appointee's impartiality or otherwise suggest impermissible bias on the part of the court, the judicial appointee should evaluate the conduct and, if necessary, take reasonable and lawful steps to correct the conduct.

~~[6]~~[7] A judicial appointee should, where appropriate, initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judicial appointee must act in a manner consistent with this Code.

Source: This Rule is derived from former Rule 1.2 of Rule 16-814 (2016).

Rule 18-201.2 was accompanied by the following Reporter's note:

Proposed amendments to Rule 18-201.2 address a concern raised by the Committee on Equal Justice Rules Review Subcommittee ("the EJC Report"). See the Reporter's note to Rule 18-102.2.

Mr. Marcus informed the Committee that Rules 18-102.2 and 18-201.2 are companion Rules for judges and judicial appointees, respectively. Both Rules are part of the Supreme Court's remand from the 221st Report. He explained that new section (c) in each Rule adds a provision instructing judges and judicial appointees to "avoid conduct that would create in reasonable minds a perception that the judge is acting with bias." Comment 4 is updated to encourage the judge or appointee to participate in educational opportunities, including those that encourage awareness of actual and implicit biases. New Comment 6 provides additional guidance to judges and appointees regarding awareness of their biases and what to do if alerted to a possible bias.

Mr. Marcus noted that the Chair suggested adding "without prompting" to the second sentence of Comment 6. The sentence defines "implicit bias" as "behavior that is largely influenced by subconscious associations and judgments that the conscious brain is not capable of processing." The Chair pointed out that, if prompted, the Rule expects the judge or appointee to consider the possible biases reflected in the judge or appointee's conduct.

Judge Ketterman suggested striking "that the conscious brain is not capable of processing" from Comment 6. She said that the phrase "subconscious associations and judgments" already captures this notion. Judge Bryant asked about the source of the definition. Ms. Cobun responded that the definition was drawn from a footnote in *Belton v. State*, 483 Md. 523 (2023). She explained that the definition was selected because the Supreme Court referenced it in that case to explain implicit bias. The Chair commented that it struck him as internally inconsistent to ask a judge to correct language or behavior that reflects a bias about which the judge is unaware. He added that if the judge is made aware of the possibility of bias, the judge can then process and respond.

Judge Nazarian remarked that striking the phrase "that the conscious brain is not capable of processing" avoids this

discussion. Ms. Meredith moved to delete the phrase. The motion was seconded and approved by consensus.

Judge Bryant asked whether "impermissible" should be stricken from the last sentence of Comment 6 for consistency with the amendment made to the Preamble. The Reporter commented that section (c) of both Rules lists the types of impermissible biases – race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation – and the Comment expands on that. Mr. Brown responded that, in the context of these Rules, he did not have a problem with the phrase "impermissible bias." There was no motion to strike "impermissible."

There being no further motion to amend Rules 18-101.2 and 18-201.2, they were approved as amended.

Agenda Item 2. Consideration of proposed amendments to Rule 19-737 (Reciprocal Discipline or Inactive Status) and Rule 19-738 (Discipline on Conviction of Crime).

Mr. Marcus presented Rule 19-737, Reciprocal Discipline or Inactive Status, and Rule 19-738, Discipline on Conviction of Crime, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

SPECIAL PROCEEDINGS

AMEND Rule 19-737 by adding "service of" to subsection (d)(1), as follows:

Rule 19-737. RECIPROCAL DISCIPLINE OR INACTIVE STATUS

(a) Duty of Attorney

An attorney who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, (3) is transferred to disability inactive status or an equivalent status in that jurisdiction, or (4) is subject to a remedial order entered in that jurisdiction shall inform Bar Counsel promptly of the discipline, resignation, inactive status, or remedial order.

(b) Petition in Supreme Court

Upon receiving and verifying information from any source that in another jurisdiction an attorney has been disciplined or transferred to disability inactive status, or an equivalent status, or is subject to a remedial order entered in that jurisdiction, Bar Counsel may file a Petition for Disciplinary or Remedial Action in the Supreme Court pursuant to Rule 19-721 (a)(2). A certified copy of the disciplinary or remedial order shall be attached to the Petition.

(c) Show Cause Order

When a petition and certified copy of a disciplinary or remedial order have been filed, the Supreme Court shall order that Bar Counsel and the attorney, within the time specified in the order, show cause in writing based upon any of the grounds set

forth in section (e) of this Rule why corresponding discipline or inactive status, or a corresponding remedial order, should or should not be imposed or entered. A copy of the petition, attachment, and show cause order shall be served in accordance with Rule 19-723.

(d) Temporary Suspension of Attorney

(1) Show Cause Order

When the petition and disciplinary or remedial order demonstrate that an attorney has been disbarred or suspended, is currently suspended from practice pending a final order of a court in another jurisdiction, or has been transferred to disability inactive status based on incapacity in another jurisdiction, the Supreme Court shall order that the attorney, within 15 days from the date of service of the order, show cause in writing why the attorney should not be suspended from the practice of law or transferred to disability inactive status immediately until the further order of the Supreme Court. The show cause order shall be served in accordance with Rule 19-723.

(2) Temporary Suspension or Disability Inactive Status

Upon consideration of the petition and any answer to the order to show cause, the Supreme Court may enter an order: (A) immediately suspending the attorney from the practice of law, pending further order of the Court, (B) immediately transferring the attorney to disability inactive status, pending further order of the Court, or (C) containing any other appropriate provisions. The provisions of Rules 19-741 or 19-743, as applicable, apply to an order under this section.

(3) Termination of Temporary Suspension or Disability Inactive Status

On notification by Bar Counsel that the disciplinary or remedial order has been reversed or vacated in the other jurisdiction, the Supreme Court shall vacate the order of temporary suspension or disability inactive status, unless other grounds exist for the suspension to remain in effect.

(e) Exceptional Circumstances

Reciprocal discipline shall not be ordered if Bar Counsel or the attorney demonstrates by clear and convincing evidence that:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Court, consistent with its duty, cannot accept as final the determination of misconduct;

(3) the imposition of corresponding discipline would result in grave injustice;

(4) the conduct established does not constitute misconduct in this State or it warrants substantially different discipline in this State; or

(5) the reason for inactive status no longer exists.

(f) Action by Supreme Court

Upon consideration of the petition and any answer to the order to show cause, the Supreme Court may: (1) immediately impose corresponding discipline or inactive status, or enter a corresponding remedial order; (2) enter an order designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727; or (3) enter any other appropriate order. The provisions of Rules 19-741 or 19-743, as applicable, apply to an order under this section that disbars or suspends an attorney or that transfers the attorney to disability inactive status.

(g) Conclusive Effect of Adjudication

Except as provided in subsections (e)(1) and (e)(2) of this Rule, a final adjudication in a disciplinary or remedial proceeding by another court, agency, or tribunal that an attorney has been guilty of professional misconduct or is incapacitated is conclusive evidence of that misconduct or incapacity in any proceeding under this Chapter. The introduction of such evidence does not preclude the Commission or Bar Counsel from introducing additional evidence or preclude the attorney from

introducing evidence or otherwise showing cause why no discipline or lesser discipline should be imposed.

(h) Effect of Stay in Other Jurisdiction

If the other jurisdiction has stayed the discipline, inactive status, or remedial order, any proceedings under this Rule shall be deferred until the stay is no longer operative and the discipline, inactive status, or remedial order becomes effective.

(i) Duties of Clerk of Supreme Court

The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived in part from former Rule 16-773 (2016) and is in part new.

Rule 19-737 was accompanied by the following Reporter's note:

The Attorneys and Judges subcommittee proposes that subsection (d)(1) of this Rule be amended to clarify that the time in which the attorney's response to a show cause order under this subsection is due begins to run from the time of service of the show cause order and not the date of issuance of the order. It is anticipated that this will result in less show cause orders being re-issued due to lack of timely service and will allow the attorney more time to respond to the show cause order than sometimes happens under the current version of this Rule.

AMEND Rule 19-738 by adding "service of" to section (d), as follows:

Rule 19-738. DISCIPLINE ON CONVICTION OF CRIME

(a) Definition

In this Rule, "conviction" includes (1) a judgment entered upon acceptance by the court of a plea of guilty, conditional plea of guilty, or nolo contendere and (2) a criminal matter in which a probation before judgment is entered by the trial court, regardless of whether the probation before judgment is predicated upon a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere or upon a finding of guilt by a trier of fact after a trial on the merits.

(b) Duty of Attorney

An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of (1) the filing of the charge, (2) any finding or verdict of guilty on such charge, (3) the entry of a judgment of conviction or a probation before judgment on such charge, and (4) the final disposition of the charge in each court that exercised jurisdiction over the charge.

Cross reference: Rule 19-701 (t).

(c) Petition for Disciplinary or Remedial Action.

(1) Petition Upon Conviction

(A) Upon receiving and verifying information from any source that an attorney has been convicted of a serious crime, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 (a)(2). The petition may be filed whether an appeal or any other post-conviction proceeding is pending.

(B) Contents

The petition shall allege the fact of the conviction and include a request that the attorney be

suspended immediately from the practice of law. A certified copy of the judgment of conviction or a certified copy of the transcript reflecting the conviction shall be attached to the petition and shall be prima facie evidence of the fact that the attorney was convicted of the crime charged.

(2) Petition When Imposition of Sentence is Delayed

(A) Generally

Upon receiving and verifying information from any source that an attorney has been found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, Bar Counsel may file a Petition for Disciplinary or Remedial Action pursuant to Rule 19-721 (a)(2). The petition may be filed whether or not a motion for new trial or other relief is pending.

(B) Contents

The petition shall allege the finding of guilt and the delay in sentencing and request that the attorney be suspended immediately from the practice of law pending the imposition of sentence and entry of a judgment of conviction. Bar Counsel shall attach to the petition a certified copy of the docket reflecting the finding of guilt or a certified copy of the transcript reflecting the finding of guilt, which shall be prima facie evidence that the attorney was found guilty of the crime charged.

(C) Notification to the Supreme Court

Upon the imposition of sentence and entry of a judgment of conviction, Bar Counsel shall inform the Supreme Court and attach a certified copy of the judgment of conviction or a certified copy of the transcript reflecting the conviction.

(d) Show Cause Order

When the petition demonstrates that an attorney has been found guilty or convicted of a serious crime, the Supreme Court shall order that the attorney, within 15 days from the date of service of the order, show cause in writing why the attorney should not be suspended immediately from the practice of law until the further order of the Supreme Court.

(e) Temporary Suspension of Attorney

Upon consideration of the petition and the answer to the order to show cause, the Supreme Court may enter an order immediately suspending the attorney from the practice of law, pending further order of the Court, or enter an order containing any other appropriate provisions. The provisions of Rules 19-741 and 19-743, as applicable, apply to an order suspending an attorney under this section.

Cross reference: Rule 19-741.

(f) Termination of Temporary Suspension

On notification by Bar Counsel or the attorney that the conviction was reversed, the Supreme Court shall vacate the order of temporary suspension, unless other grounds exist for the suspension to remain in effect.

(g) Action by the Supreme Court

When a petition filed pursuant to section (c) of this Rule alleges the conviction of a serious crime and the attorney denies the conviction or intends to present evidence in support of a disposition other than disbarment, the Supreme Court may (1) immediately suspend the attorney, (2) enter an order designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727, or (3) enter any other appropriate order. The provisions of Rules 19-741 and 19-743 apply to an order under this section that disbars or suspends an attorney or that places the attorney on inactive status.

(h) Time for Holding a Hearing

If, pursuant to section (g) of this Rule, the Court designates a judge to hold a hearing, the hearing shall be scheduled as follows:

(1) No Appeal of Conviction

If the attorney does not appeal the conviction, the hearing shall be held within a reasonable time after the time for appeal has expired.

(2) Appeal of Conviction

If the attorney appeals the conviction, the hearing shall be delayed, except as provided in section (h)(4) of this Rule, until the completion of appellate review.

(A) If, after completion of appellate review, the conviction is reversed or vacated, the judge to whom the action is assigned shall either dismiss the petition or hear the action on the basis of evidence other than the conviction.

(B) If, after the completion of appellate review, the conviction is not reversed or vacated, the hearing shall be held within a reasonable time after the mandate is issued.

(3) Effect of Incarceration

If the attorney is incarcerated as a result of the conviction, the hearing shall be delayed until the termination of incarceration unless the attorney requests an earlier hearing and makes all arrangements (including financial arrangements) to attend the hearing or waives the right to attend.

(4) Right to Earlier Hearing

If the hearing on the petition has been delayed under subsection (h)(2) of this Rule and the attorney has been suspended from the practice of law under section (e) of this Rule, the attorney may request that the judge to whom the action is assigned hold an earlier hearing, at which the conviction shall be considered a final judgment.

(i) Conclusive Effect of Final Conviction

In any proceeding under this Chapter, a final judgment of any court of record convicting an attorney of a crime, whether the conviction resulted from acceptance by the court of a plea of guilty or nolo contendere, or a verdict after trial, is conclusive evidence of the attorney's guilt of that crime. As used in this Rule, “final judgment” means a judgment as to which all rights to direct appellate review have been exhausted. The introduction of the judgment does not preclude the Commission or Bar Counsel from introducing additional evidence or the attorney from introducing evidence or otherwise showing cause why

a disposition other than disbarment should be entered.

(j) Statement of Charges

If the Supreme Court denies or dismisses a petition filed under section (c) of this Rule, Bar Counsel may file a Statement of Charges under Rule 19-718.

(k) Duties of Clerk of Supreme Court. The applicable provisions of Rule 19-761 apply when an order is entered under this Rule.

Source: This Rule is derived in part from former Rule 16-771 (2016) and is in part new.

Rule 19-738 was accompanied by the following Reporter's note:

The Attorneys and Judges subcommittee proposes that section (d) of this Rule be amended to clarify that the time in which the attorney's response to a show cause order under this subsection is due begins to run from the time of service of the show cause order and not the date of issuance of the order. It is anticipated that this will result in less show cause orders being re-issued due to lack of timely service and will allow the attorney more time to respond to the show cause order than sometimes happens under the current version of this Rule.

Mr. Marcus informed the Committee that the proposed amendments to Rules 19-737 and 19-738 were requested by Greg Hilton, Clerk of the Supreme Court. The amendments clarify the time for an attorney to respond to a show cause order issued by the Supreme Court pertaining to reciprocal discipline or discipline on conviction of a crime. He said that the Rules

permit the attorney 15 days to respond to a show cause order issued by the Court. It was explained to the Attorneys & Judges Subcommittee that the Rules do not specify whether the 15 days to respond runs from the issuance of the order or service of the order, which causes confusion. The Subcommittee recommends, at Mr. Hilton's request, that the 15 days run from the date of service of the show cause order. Mr. Marcus said that this amendment relieves the Court of the burden of reissuing show cause orders and gives the attorney and the Court clear guidance regarding the time for a response.

There being no motion to amend or reject the proposed amendments to Rules 19-737 and 19-738, they were approved as presented.

Agenda Item 3. Consideration of proposed amendments to Rule 19-752 (Reinstatement – Other Suspension; Disbarment; Disability Inactive Status; Resignation)

Mr. Marcus presented Rule 19-752, Reinstatement – Other Suspension; Disbarment; Disability Inactive Status; Resignation, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

AMEND Rule 19-752 by changing "may" to "shall" in subsection (e)(1) and by adding new subsection (e)(3), as follows:

Rule 19-752. REINSTATEMENT – OTHER SUSPENSION; DISBARMENT; DISABILITY INACTIVE STATUS; RESIGNATION

...

(e) Response to Petition

(1) Generally

Within 30 days after service of the petition, Bar Counsel shall file and serve on the attorney a response. Except as provided in subsection (d)(2) of this Rule, the response shall admit or deny the averments in the petition in accordance with Rule 2-323 (c). The response ~~may~~ shall include Bar Counsel's recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement.

(2) Consent

If Bar Counsel is satisfied that the attorney has complied fully with the provisions of Rule 19-741 and any requirements or conditions in the order of suspension or disbarment, and there are no known complaints or disciplinary proceedings pending against the attorney, the response may be in the form of a consent to the reinstatement.

(3) Extension

Upon written request by Bar Counsel filed within the time for filing a response, the Court may grant an extension for a specified period.

...

Rule 19-752 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 EJC Report contains several recommendations for consideration by the Rules Committee.
>
> During a listening session for the EJC Report, an attorney raised concerns about certain aspects of Rule 19-752 concerning the process for reinstatement. Although it appears that the suggestions regarding Rule 19-752 were outside the scope of the EJC Report and were therefore not addressed in the body of the Report, a memorandum on the topic was prepared and included in the Appendices of the EJC Report. Accordingly, the suggestions concerning Rule 19-752 were forwarded to the Attorneys and Judges Subcommittee for consideration.
>
> Rule 19-752 (e) sets forth requirements for Bar Counsel's response to a petition for reinstatement. Section (e) provides that the response "may include Bar Counsel's recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement."
>
> The listening sessions conducted for the EJC Report suggested that there were at least some instances where petitioners were unable to discern from Bar Counsel's response the reasoning for Bar Counsel's support of or opposition to reinstatement. To address this concern, the proposed amendment to section (e) changes "may" to "shall," making it clear that Bar Counsel is required to provide the reasoning behind their support or opposition.
>
> Rule 19-752 contains no provisions concerning a request by Bar Counsel for an extension of time to respond. The memorandum from the EJC Report suggested that the Rule be amended to clarify that good cause must be shown in a request for an extension.

> In light of the concerns raised, proposed new subsection (e)(3) addresses Bar Counsel's requests for an extension. The new language clarifies that Bar Counsel may request an extension by written request filed within the time for filing a response. The Court may grant an extension for a specified period.

Mr. Marcus informed the Committee that the proposed amendments to Rule 19-752 adjust the procedure for applying for reinstatement after a disbarment, disability, etc. The Rule includes a detailed list of items that must be included with a petition for reinstatement. The Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("the EJC Report") suggested that the process may in certain ways perpetuate bias.

Mr. Marcus explained that subsection (e)(1) of the Rule requires Bar Counsel to file a response to the petition so that the Court knows Bar Counsel's position. Subsection (e)(1) also provides that Bar Counsel's response "may include recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement." The Rule also requires Bar Counsel to admit or deny all of the averments in the petition – which can involve a significant volume of information that must be verified – within 30 days of the filing of the petition.

Mr. Marcus informed the Committee that the EJC Report raised the issue of whether Bar Counsel should be required to state the reasons for a recommendation for or against reinstatement. The concern, raised at a listening session, was that some petitioners found it difficult to discern why Bar Counsel made a recommendation. There was also discussion at the listening session about the timeliness of Bar Counsel's response.

Bar Counsel Thomas DeGonia informed the Committee that reinstatement proceedings are often years in the making and involve significant requests for information from the petitioner. He said that petitioning for reinstatement can be tantamount to a reapplication in terms of the level of documentation required. He noted that usually the process involves working with the petitioner and the petitioner's attorney and asking follow-up questions for more information.

Mr. DeGonia said that, in his experience, his office doesn't "hide the ball" with the reasons for a recommendation. He said that when his office files an objection, the reasons are provided. Regarding timeliness of responses, he explained that when it appears that his office will require more than 30 days to respond, he usually works with the petitioner's counsel to file a joint consent to extend the time or, if needed, he files a motion.

Mr. Marcus explained that the proposed amendments to the Rule change the "may" to a "shall" in section (e), requiring Bar Counsel to provide the recommendations behind support or opposition to reinstatement. Additionally, new subsection (e)(3) permits Bar Counsel to request an extension.

Ms. Meredith commented that the adjustment of "may" to "shall" does not fully address the concerns in the EJC Report. She pointed out that the Rule now reads, "The response shall include Bar Counsel's recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement." She said that requiring the "recommendations" does not necessarily require the "reasoning" behind the recommendations. Mr. DeGonia said that he would not oppose adding "and reasoning" to address that concern. Ms. Meredith moved to add "and reasoning" to subsection (e)(1). The motion was seconded and approved by consensus.

There being no further motion to amend or reject the proposed amendments to Rule 19-752, they were approved as amended.

Agenda Item 4. Consideration of proposed amendments to Rule 19-504 (Pro Bono Attorney) and Rule 19-607 (Dishonored Checks).

Mr. Marcus presented Rule 19-504, Pro Bono Attorney, and Rule 19-607, Dishonored Checks, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

AMEND Rule 19-504 by updating a reference in sections (a) and (b), as follows:

Rule 19-504. PRO BONO ATTORNEY

(a) Definition

As used in this Rule, "pro bono attorney" means an attorney who is authorized by Rule ~~*19-215*~~ *19-218* or Rule 19-605 ~~(a)(2)~~ (b)(2) to represent clients, without compensation other than reimbursement of reasonable and necessary expenses, and whose practice is limited to providing such representation. "Pro bono attorney" does not include (1) an active member of the Maryland Bar in good standing or (2) an attorney whose certificate of authorization to practice under Rule ~~*19-215*~~ *19-218* permits the attorney to receive compensation for the practice of law under that Rule.

Cross reference: For the professional responsibility of an active member of the Maryland Bar to render pro bono publico legal service, see Rule 19-306.1 (6.1) (Pro Bono Publico Service) of the Maryland Attorneys' Rules of Professional Conduct.

(b) Authorization to Practice as a Pro Bono Attorney

To practice as a pro bono attorney, an out-of-state attorney shall comply with Rule ~~*19-215*~~ *19-218* and a retired/inactive member of the Maryland Bar shall comply with Rule 19-605 ~~(a)(2)~~ (b)(2).

...

Rule 19-504 was accompanied by the following Reporter's note:

Proposed changes to Rule 19-504 are housekeeping amendments. The references to Rule 19-605 (a)(2) in Rule 19-504 were not updated after Rule 19-605 was restructured in 2018. Accordingly, amendments are proposed to update the references to Rule 19-605 in Rule 19-504 (a) and (b).

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

AMEND Rule 19-607 by updating a reference in subsection (d)(1), as follows:

Rule 19-607. DISHONORED CHECKS

...

(c) Temporary Suspension Order

(1) Notice by Treasurer

The treasurer of the Fund promptly, but not more often than once each calendar quarter, shall submit to the Supreme Court a proposed interim Temporary Suspension Order stating the name and account number of each attorney who remains in default of payment for a dishonored check and related charges.

(2) Entry and Service of Order

The Supreme Court shall enter an Interim Temporary Suspension Order prohibiting the practice of law in the State by each attorney as to whom the Court is satisfied that the treasurer has made reasonable efforts to give notice concerning the dishonored check. The treasurer shall mail by first class mail a copy of the interim Temporary Suspension Order to each attorney named in the order at the attorney's last address as it appears on the records of the trustees. The mailing by the treasurer of the copy constitutes service of the order on the attorney.

(d) Payment; Termination or Replacement of Interim Order

(1) Procedure Upon Payment

Upon payment of the full amount due by the attorney, the trustees and the Court shall follow the procedure set forth in Rule ~~19-605 (a)(4)~~ 19-606 (c).

(2) If No Payment

If the full amount due is not paid by the time the Court enters its next Temporary Suspension Order under Rule 19-606 and, as a result, the attorney is included in that order, the interim order shall terminate and be replaced by the Temporary Suspension Order.

Source: This Rule is derived from former Rule 16-811.7 (2016).

Rule 19-607 was accompanied by the following Reporter's note:

A housekeeping amendment is proposed to Rule 19-607. Rule 19-607 addresses the procedure when a check to the Client Protection Fund is dishonored. If payment is not timely made after notice to the attorney, an Interim Temporary Suspension Order shall be entered by the Supreme Court of Maryland. Rule 19-607 (d)(1) addresses the procedure when an attorney then makes the required payment to the Client Protection Fund.

When Rule 19-607 was adopted in 2016, subsection (d)(1) contained the same language as the current version of the Rule, including a reference to Rule 19-605. However, it appears that this initial reference to Rule 19-605 (a)(4) was a typographical error. In 2016, Rule 19-605 (a)(4) addressed methods of payment, not a process for the trustees and Court to follow.

Earlier versions of Rule 19-607, formerly Rule 16-811.7, referenced the procedure set forth in former Rule 19-811.6 (e). The text of former Rule 19-811.6 (e), setting forth the procedure for terminating a Temporary Suspension Order, now appears in Rule 19-606 (c).

Accordingly, the reference in Rule 19-607 (d)(1) has been updated to refer to Rule 19-606 (c), describing the procedure by which the Court or trustees terminate a Temporary Suspension Order.

Mr. Marcus explained that the proposed amendments to Rules 19-504 and 19-607 are housekeeping amendments to correct internal references. There being no motion to amend or reject the proposed amendments, they were approved as presented.

Agenda Item 5. Consideration of proposed amendments to Rule 4-262 (Discovery in District Court) and Rule 4-263 (Discovery in Circuit Court).

Mr. Marcus presented Rule 4-262, Discovery in District Court, and Rule 4-263, Discovery in Circuit Court, for consideration.

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-262 by ... **adding new subsection (d)(5)(C) pertaining to facial recognition technology** ... as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

. . .

(d) Disclosure by the State's Attorney

~~*(1) Without Request*~~

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

(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 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; **and**

(C) the use of facial recognition technology, in accordance with Code, Criminal Procedure Article, § 2-504;

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.

. . .

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

The Rules Committee at its October 10, 2024 meeting approved certain amendments to Rule 4-262, including making mandatory certain disclosures previously available only on request. The Committee also discussed the addition of a reference to Code, Criminal Procedure Article, § 2-504 to the subsection governing pretrial identification. The issue was

referred to the Criminal Rules Subcommittee for consideration. The Subcommittee determined that the reference was appropriate and that there are no other similar statutes that should be incorporated.

Proposed amendments to Rule 4-262 implement 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, § 2-504 requires that the State disclose in discovery certain information if facial recognition technology was used in an investigation. New subsection (d)(5)(C) explicitly incorporates this mandatory disclosure.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-263 by ... **adding new subsection (d)(7)(C) pertaining to facial recognition technology** ... as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(d) Disclosure by the State's Attorney

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

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information,

including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

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

(3) State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-912 (b), 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; **and**

(C) the use of facial recognition technology, in accordance with Code, Criminal Procedure Article, § 2-504;

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.

. . .

Rule 4-263 was accompanied by the following Reporter's note:

The Rules Committee at its October 10, 2024 meeting approved certain amendments to Rule 4-263, including adding a new provision governing use of in-custody witness testimony. The Committee also discussed the addition of a reference to Code, Criminal Procedure Article, § 2-504 to the subsection governing pretrial identification. The issue was referred to the Criminal Rules Subcommittee for consideration. The Subcommittee determined that the reference was appropriate and that there are no other similar statutes that should be incorporated.

Proposed amendments to Rule 4-263 implement 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, § 2-504 requires that the State disclose in discovery certain information if facial recognition technology was used in an investigation. New subsection (d)(7)(C) explicitly incorporates this mandatory disclosure.

Mr. Marcus informed the Committee that the proposed amendments implement a new section of the Maryland Code pertaining to use of facial recognition technology. He reminded the Committee that this possible change was briefly discussed with other amendments to Rules 4-262 and 4-263 that were considered at the October 10, 2024 meeting. This specific issue was referred to staff for further research and then sent to the Criminal Rules Subcommittee.

Code, Criminal Procedure Article, § 2-504 requires certain discovery disclosures if facial recognition technology is used in a criminal investigation. The proposed amendments add the mandatory disclosures to the District Court and circuit court discovery Rules. Mr. Brown asked whether the phrase "in accordance with" in new subsection (d)(5)(C) is the correct one. The Committee agreed to refer the word choice to the Style Subcommittee.

There being no motion to amend or reject the proposed amendments to Rules 4-262 and 4-263, they were approved as

presented, subject to any changes recommended by the Style Subcommittee.

Agenda Item 6. Consideration of proposed new Rule 15-1601 (Derivative Actions)

Ms. Doyle presented Rule 15-1601, Derivative Actions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1600 – DERIVATIVE ACTIONS

ADD new Rule 15-1601, as follows:

Rule 15-1601. DERIVATIVE ACTIONS

(a) Applicability

This Rule applies to a derivative action against a business entity to enforce a right that may be properly asserted by that entity.

Cross reference: See *Werbowsky v. Collomb*, 362 Md. 581 (2001) pertaining to corporations; *Plank v. Cherneski*, 469 Md. 548 (2020) and Code, Corporations and Associations Article, Title 4A, Subtitle 8 pertaining to limited liability companies; and Code, Corporations and Associations Article, Title 10, Subtitle 10, pertaining to limited partnerships.

(b) Complaint

Notwithstanding the provisions of Rule 2-304, the complaint shall state:

(1) facts supporting that the plaintiff is entitled to bring each derivative cause of action on behalf of the business entity nominal defendant;

(2) that the plaintiff was so entitled at the time of the transaction or conduct complained of and at the time the derivative action is brought, or that the plaintiff's entitlement devolved on the plaintiff by operation of law; and

(3) with particularity, (A) the attempts, if any, of the plaintiff to obtain the desired action from the business entity, and, if known the reasons the desired action was not obtained, or (B) the reasons for not making an attempt to obtain the desired action.

Committee note: A court may consider the use of Rule 2-502 when appropriate. See *Bender v. Schwartz*, 172 Md. App. 648 (2007).

(c) Plaintiff as Representative

The derivative action may be maintained only if it appears that, under applicable law, the plaintiff fairly and adequately represents the interests of the business entity in pursuing the derivative action.

(d) Settlement, Dismissal, and Compromise

Unless all equity holders consent to a proposed settlement, voluntary dismissal, or compromise of the derivative action, a derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval, after notice of the proposed settlement, voluntary dismissal, or compromise has been given to all equity holders in the manner ordered by the court and an opportunity for a hearing has been provided. Unless specified by the court, the consent may be either in writing or on the record in open court.

(e) Fees and Costs

A court may award reasonable attorneys' fees and costs.

Cross reference: For the ability of the court to award attorneys' fees and costs, see *Boland v. Boland*, 423 Md. 296, 317 (2011) pertaining to corporations; Code, Corporations and Associations Article, § 4A-804

pertaining to limited liability companies; and Code, Corporations and Associations Article § 10-1004, pertaining to limited partnerships.

Source: This Rule is new. It is derived in part from Fed. R. Civ. P. 23.1.

Rule 15-1601 was accompanied by the following Reporter's note:

Proposed new Rule 15-1601 establishes a procedure for filing, maintaining, and resolving derivative actions. A derivative action generally is a lawsuit brought by one or more shareholders of a corporation or equity holders of another form of business entity on behalf of a business entity against the entity or its directors alleging a breach of duty and seeking to protect the interests of the business entity. Maryland does not have a statute or Rule setting forth a procedure for this form of litigation, which has unique features and requirements that litigants and the court may overlook. A retired appellate judge suggested that the Committee consider the creation of a derivative actions Rule to provide guidance.

Section (a) sets forth the applicability of the Rule. A cross reference identifies cases and statutes pertaining to derivative actions against various business entitles.

Section (b) states the pleading requirements to establish standing and a cause of action. It is derived from Fed. R. Civ. P. 23.1. A Committee note suggests that the court may make use of Rule 2-502 (Separation of Questions for Decision by Court) and cites to an Appellate Court case on that issue.

Section (c) requires the plaintiff to fairly and adequately represent the interests of the business entity to maintain the action.

Section (d) sets forth the circumstances and notice requirements to settle, dismiss, or compromise a derivative action. It is derived from Fed. R. Civ. P. 23.1.

> Section (e) permits the court to award reasonable attorneys' fees and costs. A cross reference following section (e) sets forth the case law and statutory law on attorneys' fees and costs in derivative actions.

Ms. Doyle informed the Committee that the proposed new Rule on derivative actions was suggested by senior Appellate Court Judge James Eyler. She asked Judge Eyler to address the Committee to explain the proposal and answer questions.

Judge Eyler said that, when he was on the bench, he saw derivative action cases and authored several opinions for the Appellate Court on that area of law. As a retired judge, he said that he mediates disputes between business entities that involve derivative action issues. He explained that the proliferation of limited liability companies has increased the potential for derivative actions, and he believes that there is a lack of understanding among the bar about how to pursue one. He said that there is a Federal Rule on derivative actions and many states, including Delaware, have their own. Judge Eyler said that he and Judge Ronald Rubin worked with Rules Committee staff and the Maryland State Bar Association Business Law Section to draft the proposed Rule.

Judge Eyler informed the Committee that the three main attributes of a derivative action plaintiff are: (1) the plaintiff's standing and representative capacity, (2) proof that

a demand for the desired action was made and refused or that a demand would have been futile, and (3) that the plaintiff is the appropriate representative. He commented that a corporate attorney had suggested that section (e) clarify that attorney's fees and costs may be awarded only as permitted by law. He acknowledged that this was the intent of the Rule. It is not meant to create any new substantive rights.

Mr. Marcus asked how the proposed amendment to section (e) should read. The Reporter suggested adding the phrase "as permitted by law." Ms. Doyle pointed out that the cross reference following the section provides the relevant statutes and case law. By consensus, the Committee approved the amendment.

Judge Eyler also noted that many states distinguish small businesses from other types in their derivative action Rules. He explained that the proposed Maryland Rule instead chose to address the different needs of a small ownership group compared to numerous shareholders by imposing certain requirements unless all stakeholders consent. In a small business case, consent is more achievable, and the court can dispense with some of the procedures for resolving a derivative action.

Judge Bryant pointed out that Fed. R. Civ. P. 23.1 contains a provision pertaining to collusion to confer jurisdiction on a court that otherwise would lack it. She asked why the proposed

Maryland Rule does not contain such a provision. Judge Eyler responded that this has not been an issue in Maryland and he did not want to bog down the Rule. He said that the proposed Rule combines features of the Federal Rule and Delaware statutes and Rules. He added that the intent was to make practitioners and courts more sensitive to the fact that there are differences between direct actions and derivative actions. The Reporter asked if these cases usually end up in the Business and Technology program for the circuit court where they are filed. Judge Eyler responded in the affirmative.

Mr. Brault asked about the requirement in subsection (b)(2) that the plaintiff be a shareholder, member, or partner at the time of the complained conduct and when the derivative action is brought; the Federal Rule only requires the former. He said that, in a small business, someone with standing could have left or retired before the action is filed. The Reporter responded that the second clause, "or that the plaintiff's entitlement devolved on the plaintiff by operation of law," may clarify this point.

Mr. Brault also pointed out that the wording of section (c), which requires that the plaintiff "fairly and adequately represents the interests of the business entity in pursuing the derivative action" slightly differs from the Federal Rule, which requires the plaintiff to "fairly and adequately represent the

interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association." He said that he had a case with Judge Rubin where a derivative action was dismissed because it was determined that the plaintiff was self-interested. Assistant Reporter Cobun responded that the phrasing was derived from Delaware Rule of Chancery Court 23.1.

Ms. Doyle remarked that, prior to the meeting, Judge Eyler had raised with her the notion of relocating the proposed new Rule. Judge Eyler explained that most state Rules and the Federal Rules have a derivative action Rule immediately following their Rule on class actions. No motion to relocate the Rule was made.

Mr. Brown pointed out that in subsection (b)(3), there should be a comma after "if known." A motion to make that amendment was made, seconded, and approved by consensus.

There being no further motion to amend or reject proposed new Rule 15-1601, it was approved as amended.

Agenda Item 7. Consideration of proposed amendments to Rule 3-711 (Landlord-Tenant Grantee Actions)

Judge Wilson presented Rule 3-711, Landlord-Tenant Grantee Actions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 700 – SPECIAL PROCEEDINGS

AMEND Rule 3-711 by creating section (a) consisting of the current language of the Rule and by adding new section (b) pertaining to the required notice of intent in an action for summary ejectment, as follows:

Rule 3-711. LANDLORD-TENANT AND GRANTEE ACTIONS

(a) Generally

Landlord-tenant and grantee actions shall be governed by (1) the procedural provisions of all applicable general statutes, public local laws, and municipal and county ordinances, and (2) unless inconsistent with the applicable laws, the rules of this Title, except that no pretrial discovery under Chapter 400 of this Title shall be permitted in a grantee action, or an action for summary ejectment, wrongful detainer, or distress for rent, or an action involving tenants holding over.

(b) Summary Ejectment – Required Notice of Intent

In an action for summary ejectment pursuant to Code, Real Property Article, § 8-401, before filing a complaint for summary ejectment, the landlord shall provide to the tenant a written notice of the landlord's intent to file the complaint in accordance with Code, Real Property Article, § 8-401 (c). The notice shall be substantially in the form approved by the State Court Administrator, as posted on the Judiciary website and available in the offices of the clerks of the District Court, including the portion of the form that provides information pertaining to resources available to tenants and landlords.

Source: This Rule is derived from former M.D.R. 1 b and 401 a. Section (b) is new.

Rule 3-711 was accompanied by the following Reporter's note:

The proposed amendment to Rule 3-711 addresses a concern raised by the Access to Counsel in Evictions Task Force (established by Chapter 746, 2021 Laws of Maryland (HB 18)). The law provides that tenants are required to be notified of the ability to speak with an attorney provided by a legal services organization when facing an eviction proceeding. The law requires a landlord contemplating filing a complaint for summary ejectment pursuant to Code, Real Property, § 8-401 to notify the tenant of the intent to file 10 days in advance using a form developed by the Judiciary.

The form notice was developed, but the Task Force has observed that there are ongoing concerns from service providers that landlords are not using the court's form. The Court Access Committee in the Administrative Office of the Courts considered this concern and recommended that Rule 3-711 be amended to require the landlord to include a copy of the notice provided to the tenant with the complaint for summary ejectment. A similar provision was proposed to be added to the statute, but it was removed prior to the passage of Chapter 124, 2024 Laws of Maryland (HB 693).

The District Court Subcommittee discussed the recommendation of the Task Force and the Court Access Committee, but ultimately decided not to recommend an additional requirement that the legislature opted not to include in the governing statute. The Subcommittee was informed that landlord filers sometimes use their own version of the form; however, a concern in those cases is that the customized form may have omitted the information contained on the Judiciary form that refers both landlords and tenants to resources for mediation and to the Maryland Court Help Center.

The Subcommittee recommends adding new section (b) to Rule 3-711 requiring the use of a notice "substantially in the form approved by the State Court Administrator" as contemplated by the statute and requiring that the notice include the information on resources.

Judge Wilson said that the proposed amendment adds new section (b) addressing a statutory requirement in eviction cases. She said that Code, Real Property Article, § 8-401 requires the notice to be "in a form created by the Maryland Judiciary," but the Access to Counsel in Evictions ("ACE") Task Force informed the District Court Subcommittee that landlords sometimes use their own versions of the form. These forms do not include all the same information and resources, including information about the ACE program.

Judge Wilson said that the Task Force requested that the Rule be amended to require use of the Judiciary-made form and require that the landlord attach a copy of the completed form to the complaint for summary ejectment. She informed the Committee that the Subcommittee considered both requests and ultimately decided against recommending requiring the landlord to attach a copy of the notice to the complaint. She explained that the legislature considered adding a requirement to attach the notice to the complaint in 2024 legislation (Chapter 124, 2024 Laws of Maryland (HB 693)), but ultimately removed it from the final

bill. Considering this, the Subcommittee chose not to recommend adding the requirement by Rule.

Regarding requiring the use of the Judiciary's form, Judge Wilson said that the Subcommittee was informed by Chief Judge Morrissey and by an attorney representing the Maryland Multi-Housing Association that it is common for firms to take District Court-generated forms and make their own formatted versions. The Rules frequently use the phrase "substantially in the form" to allow for this practice. Judge Wilson said that the District Court Subcommittee ultimately chose to recommend requiring the use of a notice form "substantially in the form approved by the State Court Administrator." The new provision also requires that the form include the resources for landlords and tenants.

Ms. Meredith asked Judge Wilson for her response to the comment letter submitted by the Public Justice Center (see Appendix). Judge Wilson said that the letter opposed allowing use of a form "substantially similar to" the one developed by the Judiciary. She said that allowing substantial compliance by the use of a form that may not look exactly identical to the Judiciary's version is in line with what the Committee usually requires.

Chief Judge Morrissey informed the Committee that the District Court is a forms-driven court and confirmed that many law firms take the District Court forms, digitize them, and use

them in their own case management systems in a slightly reformatted style. He said that he receives complaints when the District Court changes the forms because it requires the firms to re-code their versions to comply. He emphasized that the District Court has always accepted substantial compliance in forms. He added that there is a group currently reviewing the landlord notice form for clarity and word choice in collaboration with advocates from the Public Justice Center and other groups. Judge Nazarian asked whether any other statutes require using a form developed by the Judiciary. Assistant Reporter Cobun responded that in a quick search, she was unable to find another statute using the same language.

Zafar Shah, of Maryland Legal Aid, addressed the Committee. He said that the ACE attorneys see clients who received forms that do not contain all the information required by the Judiciary's form. He argued that the statute requires strict compliance. He said that landlords are using forms that do not contain all of the information that the legislature wants to be included. He added that advocates do not want to have to debate substantial compliance in court.

Katherine Davis, of the Maryland Pro Bono Resource Center, addressed the Committee. She said that she agrees with Mr. Shah and added that allowing "substantial compliance" leads to confusion. She said that the program attorneys keep a laminated

copy of the official form to show to clients. This can help attorneys quickly determine if the landlord complied with the notice requirement. She said that attorneys do not want to litigate whether a landlord's version of the form is "substantially" close enough to the Judiciary version.

Elizabeth Ashford, of the Public Justice Center, addressed the Committee. She said that she echoed the concerns previously raised and informed the Committee that she sees clients who received notices that are missing significant details.

Judge Nazarian said that he could not see how to get around the wording of the statute, which seems to require strict compliance with the Judiciary's form. Mr. Brown said that he agreed. A motion to strike "substantially" from Rule 3-711 (b) was made, seconded, and approved by consensus.

There being no further motion to amend or reject the proposed amendments to Rule 3-711, the Rule was approved as amended.

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