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, January 10, 2025.

Members present:

Hon. Yvette M. Bryant, Chair
Hon. Douglas R.M. Nazarian, Vice Chair

Hon. Tiffany H. Anderson
James M. Brault, Esq.
Jamar R. Brown, Esq.
Hon. Catherine Chen
Julia Doyle, Esq.
Arthur J. Horne, Jr., Esq.
Brian A. Kane, Esq.
Hon. Karen R. Ketterman
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Stephen S. McCloskey, Esq.
Kathleen H. Meredith, Esq.
Judy Rupp, State Court Administrator
Scott D. Shellenberger, Esq.
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Brian L. Zavin, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Heather Cobun, Esq., Assistant Reporter
Meredith A. Drummond, Esq., Assistant Reporter

Richard Abbott, Program Director, Juvenile & Family Services
Jennifer Caffrey, Esq., Chief Supervising Attorney for Child Support at Maryland Office of the Attorney General
Hon. Kathleen Dumais, Circuit Court for Montgomery County
Thomas Fisher, Esq., Managing Director, Maryland Center for Legal Assistance
Lou Gieszl, Assistant State Court Administrator, Programs
Jarnice Johnson, Executive Director, Child Support Administration
Cynthia Jurrius, Esq., Program Director, Maryland Judiciary Mediation and Conflict Resolution Office

Sarah Kaplan, Esq., Juvenile & Family Services
Connie Kratovil-Lavelle, Esq., MSBA
Hon. John P. Morrissey, Chief Judge, District Court of Maryland
Pamela Ortiz, Esq., Director, Access to Justice
Rachel Konieczny, The Daily Record
Gillian Tonkin, Esq., Staff Attorney to Chief Judge, District Court
Shaoli Sarkar, Esq., MSBA
Hon. Cathy Serrette, Circuit Court for Prince George's County
Hon. Julia Weatherly, Circuit Court for Prince George's County
Monica Villarreal, Program Manager, Maryland Judiciary, Mediation and Conflict Resolution Office
Amee Vora, Esq., Advocacy Director for Family Law, Maryland Legal Aid

The Chair convened the meeting. She welcomed the Committee to her first meeting as Chair. 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 also called for a motion to approve the minutes for the Friday, November 15, 2024 meeting, which were circulated previously for review. A motion to approve the minutes was made, seconded, and approved by consensus.

Agenda Item 1. Consideration of proposed new Rule 9-202.1 (Child Support Modification).

The Chair presented Rule 9-202.1, Child Support Modification, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

ADD new Rule 9-202.1, as follows:

Rule 9-202.1. CHILD SUPPORT MODIFICATION

(a) Applicability

This Rule applies to a motion to modify child support pursuant to Code, Family Law Article, § 12-104 that is filed more than 30 days after entry of an order by a Maryland court establishing or modifying child support. It does not apply to modification of a support order or income withholding order issued in another state or a foreign support order registered in this State.

Cross reference: See Code, Family Law Article, Title 10, Subtitle 3, Part IV.

(b) Form of Motion

The motion shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the clerks' offices.

(c) Issuance of Summons

Pursuant to Rule 1-321 (e), the clerk shall issue a summons to be served with the motion.

(d) Service

(1) On Non-Moving Party

Except as otherwise provided in section (e) of this Rule, the summons and the motion shall be served on the non-moving party in accordance with Rule 2-121 (a).

(2) On Child Support Administration

If the Child Support Administration is charged with collecting child support in the action, in addition to the service required by subsection (d)(1) of this Rule, the moving party shall serve a copy of the summons and the motion on the local office of child support by first-class mail.

(e) Alternative Methods of Service

(1) Request

If (A) the current address of the non-moving party is not known to the moving party, (B) the moving party is unable to serve the non-moving party after having made reasonable good faith efforts to do so, or (C) the moving party alleges facts supporting that personal service on the non-moving party is impracticable, the moving party may file a request to permit an alternate method of service pursuant to Rule 2-121 (b) or (c), as appropriate, together with an affidavit in support of the request. The request and affidavit shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the clerks' offices. If the Child Support Administration is charged with collecting child support in the action, the moving party shall mail a copy of the request and affidavit to the local office of child support by first-class mail.

(2) Determination of Request

The court promptly shall consider a request filed pursuant to section (e) of this Rule and may hold a hearing to determine an appropriate method of service, except that if the Child Support Administration is charged with collecting child support in the action, the court shall hold a hearing if the Child Support Administration requests a hearing within 15 days of being served pursuant to subsection (d)(2) of this Rule. If a hearing is held, the court shall permit participation by means of remote electronic participation pursuant to Rule 21-201. If the court grants the request, it shall enter an order permitting an alternate method of service reasonably calculated to give actual notice of the action to the non-moving party, which may include:

(A) authorizing service pursuant to Rule 2-121 (b);

(B) permitting the moving party to send a copy of the summons and the motion to the non-moving party by electronic means, including email, text message, or social media; or

(C) if the Child Support Administration is charged with collecting child support and has an email address or cell phone number for the non-moving party in its records, ordering the Child Support Administration to make prompt electronic service by email, text message, or both.

(3) Order Permitting Alternative Service

An order permitting an alternative method of service shall:

(A) set forth the authorized method or methods of alternate service;

(B) set forth a method for demonstrating proof of service;

(C) if the Child Support Administration is ordered to serve the non-moving party electronically, instructions for providing the court with the email address or cell phone number used for service confidentially; and

(D) include a directive to the non-moving party to provide to the court, in writing, within the time allowed for filing a response to the motion, an address to which pleadings, papers, and notices are to be sent.

Committee note: The non-moving party may provide any street address or post office box at which the party is willing and able to receive pleadings. Papers, and notices, including any documents that may require prompt action on the part of the non-moving party. The address may be provided as part of a response to the motion.

Cross reference: See Code, State Government Article, §§ 7-301 to 7-313 and Rule 1-205 concerning participation in the Address Confidentiality Program. See Rule 1-311 (a) concerning information to be provided when filing a pleading or paper with the court.

(4) Failure to Provide Address

If a non-moving party who is served pursuant to section (e) of this Rule fails to provide the court with an address as required by subsection (e)(3)(D) of this Rule within the time allowed for responding to the motion, the court shall enter an order stating a method by which pleadings and papers may be served and notices may be sent, which may be the method of alternate service used for service of the initial motion.

(f) Motion to Modify Child Support as Counterclaim

A non-moving party who is served with a summons and motion to modify child support or a petition for contempt in an action involving child support may file a motion to modify child support as a counterclaim and serve it on the moving party in accordance with Rule 1-321 (a). If the Child Support Administration is charged with collecting child support in the action and is not the moving party, the party filing the counterclaim shall serve a copy of it on the local office of child support by first-class mail. If the Child Support Administration is the moving party, the party filing the counterclaim shall serve each other party named in the child support order sought to be modified in accordance with the procedure set forth in subsection (d)(1) of this Rule.

(g) Status Conference

(1) When Held; Method of Participation]

The court shall hold a status conference no later than 15 days after the later of the filing of a response or, if no response is filed, the time for filing a response pursuant to Rule 2-321 has expired. If a counterclaim is filed, the status conference shall not be held until after a response to the counterclaim is filed or, if no response is filed, the time for filing a response to the counterclaim has expired. The status conference may be held by means of remote electronic participation. If the Child Support Administration received notice of the motion, it may appear at the status conference but is not required to attend.

(2) Waiver

By consent, the parties may waive the status conference and request that the matter be set in for a hearing.

Source: This Rule is new.

The Chair informed the Committee that proposed new Rule 9-202.1 establishes a procedure for modifying a child support order. She explained that the Family/Domestic Subcommittee of the Rules Committee was asked to consider the barriers that self-represented litigants face when attempting to modify their support obligation due to a material change in circumstances. This work was prompted in part by the Report and Recommendations of the Equal Justice Committee Rules Review Subcommittee ("EJC Report"). She said that the Domestic Law Committee of the Judicial Council submitted a proposed Rule that recommended that service of a motion to modify child support be permitted by mail if the moving party could verify the address of the non-moving party.

The Chair said that the Family/Domestic Subcommittee considered the proposed Rule and was not comfortable with a perceived lower standard of service and had due process concerns. The Family/Domestic Subcommittee recommended a different version of Rule 9-202.1 that emphasizes alternative methods of service, including electronic service. She said that

the history of the proposed Rule is summarized in the memorandum by Assistant Reporter Cobun (see Appendix 1).

Judge Weatherly, Chair of the Domestic Law Committee Child Support Workgroup, addressed the Committee. She explained that the workgroup was tasked with addressing equity issues facing low-income families with child support obligations. She said that this work was prompted by a 2019 report from the Abell Foundation as well as the EJC Report. The workgroup identified two significant procedural hurdles to modifying a support order: difficulty obtaining service of the initial motion and inability to file a motion to modify as a counterclaim to a contempt action initiated by the Child Support Administration. Judge Weatherly said that, in her experience, an obligor will come before the court on a contempt petition, and she will learn that there are grounds to modify the support order. She said that, in those scenarios, she instructs the individual to file a motion to modify child support. Often, the party struggles to obtain service. This results in the motion being dismissed for lack of service, and the filer must start over. There is also a statutory prohibition against retroactive modification prior to the date the motion is filed (Code, Family Law Article, § 12-104).

Judge Weatherly said that the workgroup's proposed Rule, which is included in the materials attached to the memorandum,

differs from the one recommended by the Family/Domestic Subcommittee. She explained that the most significant difference is that the workgroup proposed allowing the moving party to verify a mailing address for the non-moving party and serve the motion and summons via first-class mail. Judge Weatherly said that California has been doing this for a while, but that the Subcommittee objected to it. She said that the Subcommittee's recommendation would not help low-income individuals.

Judge Weatherly said that, rather than asking the Committee to reconsider the workgroup's proposal, she wanted to focus on two issues for the Committee's consideration. First, she said that section (f) of proposed New Rule 9-202.1 permits a motion to modify child support to be filed as a counterclaim, which the workgroup recommended, but requires personal service on the non-moving party if the counterclaim is in response to contempt proceedings initiated by the Child Support Administration. She informed the Committee that the moving party will struggle with service, which raises the same issues as service of any other initial motion to modify support. She said that in any other case, a responding party may file a counterclaim, serve it by mail, and the court schedules a hearing. She explained that the workgroup proposed allowing mailing the counterclaim to the Child Support Administration and the opposing party. She added

that the Child Support Administration has agreed to accept service this way.

Judge Weatherly said that the second concern is with section (g), which requires a status hearing after service of the motion and expiration of the time for filing a response. She told the Committee that this will trigger a significant number of hearings which will be difficult to set and will delay reaching a hearing on the merits. She said that the data provided by Rules Committee staff identified 4,285 motions for modification filed in 2024. She added that she spoke to the Prince George's County Circuit Court and was informed that there were 505 in that county last year. If a status hearing is required to be set within 15 days, as section (g) proposes, large jurisdictions like Prince George's County will struggle to set them and it will cause unnecessary hearings. She added that the only procedural assistance she can see a self-represented party receiving at such a hearing is with filing a motion for default if the non-moving party failed to respond.

Thomas Fisher, supervising attorney for the Maryland Center for Legal Assistance, often referred to as the "Self Help Center," addressed the Committee. He said that he was broadly in favor of removing procedural hurdles for self-represented litigants and modernizing service options. In particular, he

said that he would recommend that the alternative service form be reviewed and streamlined to make it more *pro se*-friendly.

Jennifer Caffrey, Chief Supervising Attorney for Child Support at the Maryland Office of the Attorney General, and Jarnice Y. Johnson, Executive Director of the Child Support Administration, addressed the Committee. Ms. Caffrey said that she and Ms. Johnson were present for any questions. The Chair asked for the Child Support Administration's position on receiving service. Ms. Caffrey said that the Administration did not oppose the workgroup's proposed Rule, which permitted service on the Administration by mail rather than personal service. However, the Administration is unable to forward filings to the non-moving party due to logistical concerns and costs. To the extent that the Administration is asked to take on a larger role in facilitating service on parties, she said that there are concerns about what would be required of the local offices. She pointed out that the Subcommittee's recommendation would permit the court to order the Administration to serve an initial motion on the non-moving party via email or text message, if the Administration has such contact information. She said that this will require "human capital" to implement. If the Administration does not have email or cell phone information for an individual or receives a "bounce back" when something is sent, that must be communicated

to the court. She added that the Administration needs to be mindful of its resources. Ms. Johnson concurred with Ms. Caffrey's assessment.

Mr. Marcus said that allowing service by mail would streamline things, but the opposing party may later tell the court, "I didn't get it," and trigger finger-pointing over service. Judge Weatherly replied that, in her experience, people do not file answers; the parties come to court and testimony is taken on issues of income, expenses, etc. She clarified that the workgroup's request for amendment to the Subcommittee's recommendation would permit service by mail of a counterclaim only. Judge Ketterman pointed out that the Child Support Administration may not have up-to-date contact information for the custodial parent. She said that, in certain cases, the custodial parent is not working with the Administration at all. Judge Weatherly agreed. She said that when the Administration began using direct deposit rather than mailing checks, there was less incentive for the custodial parent to maintain up-to-date contact information.

Ms. Lindsey commented that it will be difficult for clerks to implement the Subcommittee proposal, which carves out one type of family law case to permit electronic service. She said that child support cases are often intertwined with custody and other issues. Judge Weatherly pointed out that Rule 2-121 and

the alternative service form have always permitted the court to order "any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice." She said that the issue is what is most likely to give actual notice of the motion.

Judge Chen asked how likely the Administration is to have an email address for a parent. Ms. Johnson responded that the agency is more likely to have the custodial parent's email address than the non-custodial parent but did not have an estimate. Ms. Caffrey noted that there are some cases where the custodial parent is receiving temporary cash assistance ("TCA") from the state and the child support payments do not go to the individual but rather are directed to the Department of Human Services. She said that those parents are less incentivized to update their contact information with the Administration because they are not receiving the funds. Ms. Johnson estimated that approximately one-third of the Administration's s involve TCA. Judge Ketterman pointed out that, under the proposed Rule, the Child Support Administration would only be required to conduct electronic service by court order.

The Reporter asked how the court makes child support calculations if the non-moving party does not file an answer to provide financial information. Ms. Lindsey said that, in Allegany County, the court issues subpoenas instructing the

parties to bring documents to the hearing. The subpoenas are served by the Sheriff. Judge Anderson said that the court instructs the parties to bring pay stubs and other documentation to the hearing on the motion, but people frequently fail to do so. If the Child Support Administration is involved, the attorney elicits testimony to establish the needed information. The Chair agreed that parties often show up empty-handed.

The Chair asked Ms. Caffrey and Ms. Johnson whether they have concerns with the Subcommittee's proposal, specifically subsections (e)(2)(C) and (e)(3)(C). Ms. Caffrey said that the issue seems to be how the non-moving party is served. She said that the Administration has no position on whether that service occurs via personal service or mail.

Judge Chen asked if making the status conference in section (g) optional addresses the workgroup's concerns. She suggested changing the "shall" to "may" to permit the court to determine whether the hearing would be helpful. Judge Weatherly responded that it is hard for the assignment office to know when to set matters in for a hearing if the office is waiting for a judge to ask for one. Judge Chen suggested that there could be a change to the notice before the court dismisses the motion for lack of prosecution to encourage individuals to ask for a hearing before the court dismisses the matter. She acknowledged that when someone is overwhelmed by poverty, that individual may

not be interested in responding to "a letter from the government" but if even a portion of the litigants who receive the letter are prompted to ask for a hearing and come to court, it could prevent dismissals. Judge Weatherly said that it works best to get the parties in front of a judge as quickly as possible to get help. Judge Chen said that the judge cannot give legal advice but can encourage the individual to speak with a Self-Help Center attorney. Judge Weatherly said that these hearings would likely be set in before a magistrate who could speak broadly to how to proceed.

Ms. Doyle commented that the status conference in the proposed Rule would occur in every case unless waived. She asked Judge Weatherly if she was saying that this provision is not necessary. Judge Weatherly said that the workgroup had proposed a status hearing before the court dismissed a case for lack of service. She said that she did not think the proposed automatic status conference in every case was necessary.

Ms. Cobun pointed out that the workgroup's proposal mandated a merits hearing once the parties were served and the time for a response had run. Judge Weatherly responded, in her court, this hearing is set automatically after a specified time period. Ms. Cobun asked what time frame would work if the Rule were to require a hearing to be set in at a specified time. Judge Weatherly replied that some counties require a motion for

default if the non-moving party fails to file a response, and that can trip up individuals who do not know to file that request. She added that the parties know that there is a child support obligation between them. Judge Weatherly said another one of the workgroup's proposals was to require a military service affidavit to be filed with the motion to comply with the Servicemembers Civil Relief Act (50 U.S.C. § 3931). This affidavit must be filed before the court may enter an order of default because the court cannot proceed against an absent party who is in the military service without complying with that law.

The Chair called for a motion. Judge Nazarian said that the consensus appears to be to approve the Rule without section (g). He moved to strike the status conference provision and approve the remainder of Rule 9-202.1 as presented. Judge Wilson seconded. The Committee approved the amendment by consensus.

Judge Chen said that it sounded like there was agreement to allow service of the counterclaim by mail in response to a contempt petition. She suggested that the Rule could also require the moving party to send the motion by email, if the email address for the non-moving party is known. She said that it gives the non-moving party notice of what is happening. Ms. Cobun asked if the email would constitute legal service if it is not ordered by the court. Judge Chen replied that it would be

purely in addition to service by mail. Mr. Laws agreed and suggested that section (f) be amended to require service of a counterclaim via first-class mail and email.

Ms. Cobun said that the intent of the proposed Rule is to have the same service requirements for a motion to modify child support when it is an initial motion as there are when it is a counterclaim, including the option of asking for alternative service pursuant to section (e). Ms. Meredith asked if this addresses the Child Support Administration's concerns. Ms. Cobun said that the Administration will be notified if a party is seeking alternative service by the Administration and will have the opportunity to alert the court if such service is not possible. Judge Chen responded that adding the requirement to email the counterclaim to the non-moving party in addition to mailing it increases the likelihood of actual notice. She moved to add that service under section (f) be made by first-class mail and email. Mr. Laws seconded the motion but said that he would also support adding a reference to alternative service pursuant to section (e).

Ms. Doyle said that she is concerned about obtaining jurisdiction over the custodial parent, who is not the moving party, by mail. She said that, if the Child Support Administration initiates the contempt action, the custodial parent is not a party. Judge Ketterman pointed out that the

custodial parent may not be aware that the Administration has initiated contempt proceedings. She asked if simply mailing the counterclaim to modify child support provides sufficient notice to that person.

Judge Chen moved to amend section (f) to require that, when the Child Support Administration initiates contempt proceedings, a counterclaim to modify the support order shall be served on each other person who is party to the support order by first-class mail and email. Mr. Laws seconded the motion, but added that, if due process is a concern, an alternative would be to add a reference to service pursuant to section (e) to make it clear that alternative service is an option for the counterclaim.

Mr. Kane said that, if the Child Support Administration has initiated the contempt proceedings, it may or may not involve the custodial parent. He said that it does seem unfair that the law restricts the court's power to modify the order prior to the date that the motion was filed. He added that the circumstances that would merit a modification can exist for some time before the obligor realizes or is able to file and serve the motion. He acknowledged that this is a statutory issue.

Judge Chen asked for clarification about whether the custodial parent is a party to the contempt action. Ms. Caffrey replied , if the Administration refers a case for contempt, the

custodial parent is not involved. Judge Chen withdrew her motion to amend section (f).

Judge Nazarian said that Mr. Laws's suggestion of adding a reference to section (e) in section (f) is now ripe for discussion. By consensus, the Committee agreed that the last sentence of section (f) should refer to service "in accordance with the procedure set forth in subsection (d)(1) or section (e) of this Rule."

The Chair called for further discussion. Judge Ketterman said that subsection (e)(2) is unclear. Judge Weatherly offered to have the workgroup engage with the Subcommittee to review that section of the Rule. The Chair responded that, if possible, she would like to resolve the issues now rather than delaying further. Ms. Doyle agreed that the section is "clunky" but suggested that it could be fixed by the Style Subcommittee. Ms. Cobun said that the intent of the subsection is to require the court to promptly determine a request for alternative service and to permit a hearing if the court would like one but to mandate a hearing if the Child Support Administration is involved and requests that a hearing be held on alternative service. Judge Ketterman said that she understood and suggested that the Style Subcommittee review the provision for clarity. Judge Chen pointed out that the terms "alternate service" and

"alternative service" are used interchangeably in the Rule and requested that the Style Subcommittee review that terminology.

By consensus, the Committee approved the Rule as amended, with section (g) deleted and subject to stylistic changes made by the Style Subcommittee.

Agenda Item 2. Consideration of proposed amendments to Rule 9-205.3 (Custody and Visitation-Related Assessments).

The Chair presented Rule 9-205.3, Custody and Visitation-Related Assessments, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205.3 by adding clarifying language to subsection (c)(2); by creating new subsection (d)(1)(A) using the language of current subsection (d)(1); by adding new subsection (d)(1)(B) regarding continuing education and licensing requirements; by creating new subsection (d)(2)(A) addressing mandatory training using language from

current subsection (d)(2), with modifications; by creating new subsection (d)(2)(B) concerning required experience using language from current subsection (d)(2), with modifications; by updating the topics of required knowledge and experience in subsection (d)(2)(B); by modifying the court's ability to waive licensing requirements in subsection (d)(3); and by making stylistic changes, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

(a) Applicability

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

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

(b) Definitions

In this Rule, the following definitions apply:

(1) Assessment

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

(2) Assessor

"Assessor" means an individual who ~~performs~~ conducts an assessment.

(3) Custody Evaluation

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

(4) Custody Evaluator

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

(5) Home Study

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

(6) Mental Health Evaluation

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

(7) Specific Issue Evaluation

"Specific issue evaluation" means a focused investigation into a specific issue raised by a party, the child's attorney, or the court affecting the safety, health, or

welfare of the child as may affect the child's best interests.

Committee note: A specific issue evaluation is not a "mini" custody evaluation. A custody evaluation is a comprehensive study of the general functioning of a family and of the parties' parenting capacities. A specific issue evaluation is an inquiry, narrow in scope, into a particular issue or issues that predominate in a case. The issue or issues are defined by questions posed by the court to the assessor in an order. The evaluation primarily is fact-finding, but the court may opt to receive a recommendation. Examples of questions that could be the subject of specific issue evaluations are questions concerning the appropriate school for a child with special needs and how best to arrange physical custody and visitation for a child when one parent is relocating.

(8) State

"State" includes the District of Columbia.

(c) Authority

(1) Generally

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

(2) Appointment or Approval

The court may appoint or approve any person deemed competent by the court to ~~perform~~ conduct a home study. The court may not appoint or approve a person to ~~perform~~ conduct a custody evaluation or specific issue evaluation unless (A) the assessor has the qualifications set forth in subsections

(d)(1) and (d)(2) of this Rule, or (B) the qualifications set forth in subsection (d)(1) of this Rule have been waived for the assessor pursuant to subsection (d)(3) of this Rule.

(3) Cost

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

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

(d) Qualifications of Custody Evaluator

(1) Education and Licensing

(A) Required Education and Licensure

A custody evaluator shall be:

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

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

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

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

~~(E)~~(v) ~~(i)~~(a) a Maryland-licensed graduate or master social worker with at least two years of experience in ~~(a)~~(1) one or more of the areas listed in subsection ~~(d)(2)~~(d)(2)(B) of this Rule, ~~(b) performing~~ (2) conducting custody evaluations, or ~~(c)~~(3) any combination of subsections ~~(a)~~)(d)(1)(A)(v)(a)(1) and ~~(b)~~)(d)(1)(A)(v)(a)(2); or ~~(ii)~~(b) a graduate or master social worker with an equivalent level of licensure and experience in any other state; or

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

(B) Continuing Education and Licensure Requirements

A custody evaluator shall comply with all conditions necessary to maintain professional licensure, including completing all mandatory continuing education requirements.

(2) Training and Experience

(A) Mandatory Training

~~Unless waived by the court, a~~ A custody evaluator shall have completed~~, or commit to completing, the next available~~ a training program that conforms ~~with~~ to guidelines established by the Administrative Office of the Courts. ~~The current guidelines~~ Current training guidelines shall be posted on the Judiciary's website.

(B) Required Experience

~~In addition to complying with the continuing requirements of the custody evaluator's field, a~~ A custody evaluator shall have ~~training or~~ experience in conducting or observing ~~or performing~~ custody evaluations, and shall have ~~current~~

demonstrated knowledge ~~in the following areas~~ of and experience in applying best practices pertinent to the following topics:

~~(A)~~ (i) domestic and family violence;

~~(B)~~ (ii) child neglect and abuse;

(iii) child and adult development;

(iv) trauma and its impact on children and adults;

~~(C)~~ (v) family ~~conflict and~~ dynamics and conflict resolution;

~~(D) child and adult development;~~ and

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

(3) Waiver of Licensing Requirements

If a court employee, or an individual under contract with the court, has ~~been performing~~ regularly conducted custody evaluations ~~on a regular basis as an employee of, or under contract with, the court~~ for at least ~~five~~ fourteen years prior to January 1, ~~2016~~ 2025, the court may waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual ~~participates in~~ completes a training program required by subsection (d)(2)(A) of this Rule and completes at least 20 hours per year of continuing education relevant to ~~the performance of~~ conducting custody evaluations~~, including course work in one or more of the areas listed in subsection (d)(2) of this Rule~~.

(e) Custody Evaluator Lists and Selection

(1) Custody Evaluator Lists

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

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

(2) Selection of Custody Evaluator

(A) By the Parties

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

(B) By the Court

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

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

(3) Selection of Assessor to ~~Perform~~ Conduct Specific Issue Evaluation

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

(f) Description of Custody Evaluation

(1) Mandatory Elements

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

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

(B) an interview of each party and any adult who performs a caretaking role for the child or lives in a household with the child or, if an adult who lives in a household with the child cannot be located despite best efforts by the custody evaluator, documentation or a description of the custody evaluator's efforts to locate the adult and any information gained about the adult;

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

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

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

(F) contact with any high neutrality/low affiliation collateral sources of information, as determined by the assessor;

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

(G) screening for intimate partner violence;

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

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

(2) Optional Elements – Generally

Subject to subsection (f)(4) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

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

(B) a review of additional records;

(C) employment verification;

(D) a mental health evaluation;

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

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

(3) Elements of Specific Issue Evaluation

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

(4) Optional Elements Requiring Court Approval

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

(g) Order of Appointment

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

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

(2) any provisions the court deems necessary to address the safety and

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

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

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

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

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

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

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

(9) any other provisions the court deems necessary.

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

(1) Removal

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

(2) Resignation

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

(i) Report of Assessor

(1) Custody Evaluation Report

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

(A) Oral Report on the Record

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

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

(B) Written Report Prepared by the Custody Evaluator

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

(2) Report of Specific Issue Evaluation

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

documents reviewed in connection with the specific issue evaluation.

(3) Report of Home Study

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

(4) Report of Mental Health Evaluation

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

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

(j) Copying and Dissemination of Report

A party may copy a written report of an assessment or the transcript of an oral report prepared pursuant to subsection (i)(1)(A) of this Rule but, except as permitted by the court, shall not disseminate the report or transcript other

than to individuals intended to be called as experts by the party.

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

(k) Court Access to Written Report

(1) Generally

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

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

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

(3) Access to Report by Settlement Judge or Magistrate

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

(l) Discovery

(1) Generally

Except as provided in this section, an individual who ~~performs~~ conducts an assessment under this Rule is subject to the Maryland Rules applicable to discovery in civil actions.

(2) Deposition of Court-Paid Assessor

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

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

(1) Subpoena for Assessor

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

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

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

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

(n) Fees

(1) Applicability

Section (n) of this Rule does not apply to a circuit court for a county in which all custody evaluations are ~~performed~~

conducted by court employees, free of charge to the litigants.

(2) Fee Schedules

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

(3) Allocation of Fees and Expenses

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

Source: This Rule is new.

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

Rule 9-205.3 sets forth the requirements for and procedures associated with the appointment of a custody evaluator in a family law action. The Rules Committee recently received proposed amendments to Rule 9-205.3 from the Domestic Law Committee.

In the 2024 Regular Session of the Maryland legislature, SB 365/HB 405 were introduced. The bills addressed the required qualifications and training for custody evaluators appointed by a court and discussed requirements for the introduction of expert evidence related to alleged abuse by a parent. The Judiciary opposed the bills. After the bills failed, Delegate Charlotte Crutchfield, Chair of the House Judiciary Committee's Family and Juvenile Law Subcommittee, facilitated discussions with the bill sponsors and the Domestic Law Committee's Custody Evaluator Standards & Training Workgroup.

The key issues identified by the bill sponsors included ensuring that custody evaluators receive appropriate training, including training on intimate partner violence, child abuse, and related issues. As a result of the discussions, Delegate Crutchfield's group agreed on proposed amendments to Rule 9-205.3 which were submitted to the Rules Committee by the Domestic Law Committee for consideration.

The proposed amendments were circulated by email to the Family/Domestic Subcommittee of the Rules Committee. After receiving comments concerned that the proposed language was vague, some changes to the proposal were drafted. Overall, the proposed amendments now before the Rules Committee aim to maintain the substance of the amendments submitted by the Domestic Law Committee, while re-working certain language and organization of the Rule for clarity. After reviewing the Rule in its entirety,

additional stylistic amendments are also proposed.

A proposed amendment to subsection (c)(2) clarifies that a waiver pursuant to subsection (d)(3) relates solely to the qualifications set forth in subsection (d)(1). In other words, a waiver of qualifications does not include a waiver of the training required by subsection (d)(2).

Amendments are proposed to reorganize subsection (d)(1) for clarity. First, new subsection (d)(1)(A) is created with the language of current subsection (d)(1). The new tagline clarifies that the subsection sets forth the required education and licensing requirements of a custody evaluator. Current subsections (d)(1)(A) through (d)(1)(F) are accordingly re-lettered as subsections (d)(1)(A)(i) through (d)(1)(A)(vi).

A proposed new subsection (d)(1)(B) sets forth the requirement that a custody evaluator comply with all conditions necessary to maintain the evaluator's licensure. This requirement is currently contained in subsection (d)(2) of the Rule, which sets forth the training and experience required "in addition to complying with the continuing requirements of the custody evaluator's field." Because this requirement concerns education and licensing, it has been moved to section (d)(1).

Changes regarding the training of custody evaluators are proposed in subsection (d)(2). First, the current language of subsection (d)(2), with some modifications, is divided into two subsections.

New subsection (d)(2)(A) sets forth the mandatory training requirement for all custody evaluators. A proposed deletion to

the current language eliminates the ability of the court to waive the completion of a training program. An additional deletion in the same subsection requires that certain training be completed instead of accepting a commitment to complete the training.

New subsection (d)(2)(B), using modified language from current subsection (d)(2), addresses the experience required to conduct custody evaluations. The current relevant areas of experience are updated with some additions and modifications to language, as well as re-ordering of the topics. For example, "domestic violence" is changed to "domestic and family violence," while "family conflict and dynamics" is changed to "family dynamics and conflict resolution." In addition, new subsection (d)(2)(B)(iv) now requires a custody evaluator to have demonstrated knowledge of trauma and its impact on children and adults. Overall, the listed topics in which an evaluator is required to have knowledge of and experience in applying the best practices are reorganized and the subsections are re-lettered accordingly.

The Domestic Law Committee has advised that meeting the training requirements should not be difficult for those who wish to become qualified to conduct custody evaluations. The Association of Family and Conciliation Courts' program, "Fundamentals of Conducting Parenting Plan Evaluations," conforms with the training guidelines referenced in (d)(2) and is offered online and live for a fee. To help ensure cost is not a barrier, Juvenile & Family Services within the Administrative Office of the Courts will offer free training programs. One program was held in May of 2023, and another will be offered in 2025.

Proposed amendments to subsection (d)(3) modify the ability of a court to waive licensing requirements. The current

waiver remains a possibility for court employees and contractors who have been conducting custody evaluations for at least fourteen years prior to January 1, 2025. This provision protects the jobs of and only applies to two Anne Arundel Circuit Court employees who have been conducting custody evaluations for over twenty years. These employees are not exempt from the training requirements, and both attended the May 2023 program hosted by Juvenile & Family Services.

Several stylistic changes are also made throughout the Rule. In subsection (d)(1)(A), a hyphen is added to the phrase "Maryland-licensed." Internal references are also updated in subsections (b)(6) and (d)(1)(A)(v).

The term "perform" is replaced with "conduct" throughout the Rule. Although both terms have been used in model standards relating to custody evaluations, "conduct" appears more frequently. Therefore, proposed amendments update Rule 9-205.3 to use "conduct" in relation to the completion of an assessment or evaluation.

The Chair informed the Committee that a handout version of subsections (d)(2) and (d)(3) was distributed prior to the meeting.

HANDOUT

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY,

CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-205.3, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

...

(d) Qualifications of Custody Evaluator

...

(2) Training and Experience

(A) Mandatory Training

...

(B) Required Experience

~~In addition to complying with the continuing requirements of the custody evaluator's field, a~~ A custody evaluator shall have ~~training or~~ experience in conducting or observing ~~or performing~~ custody evaluations, and shall have ~~current~~ demonstrated knowledge ~~in the following areas~~ of and experience in ~~applying best practices pertinent to~~ the following topics:

~~(A)~~ (i) domestic and family violence;

~~(B)~~ (ii) child neglect and abuse;

(iii) child and adult development;

(iv) trauma and its impact on children and adults;

~~(C)~~ (v) family ~~conflict and~~ dynamics and conflict resolution;

~~(D) child and adult development;~~ and

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

(3) Waiver of Licensing Requirements

If a court employee, or an individual under contract with the court, has ~~been performing~~ regularly conducted custody evaluations ~~on a regular basis as an employee of, or under contract with, the court~~ for at least ~~five~~ fourteen years prior to January 1, ~~2016~~ 2025, the court may waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual ~~participates in~~ completes a training program required by subsection (d)(2)(A) of this Rule and completes at least 20 hours per year of continuing education relevant to ~~the performance of~~ conducting custody evaluations~~, including course work in one or more of the areas listed in subsection (d)(2) of this Rule~~.

...

The Chair said that Judge Kathleen Dumais was present to provide background on the proposed amendments to Rule 9-205.3. Judge Dumais informed the Committee that legislation has been introduced in recent General Assembly sessions aimed at setting forth training requirements and qualifications for child custody evaluators. She explained that the Judiciary has opposed this legislation in part because Rule 9-205.3 already regulates child custody evaluators and their training. Representatives from the Judiciary have met with the bills' proponents and attempted to "blend" the two groups' positions. She said that the legislators agree that what is before the Committee represents

the substance they want done, although that does not mean that they will not pursue the legislation.

Judge Dumais said that, on the issue of licensure, almost all of the child custody evaluators working in the state have the licensing that the legislation would require, but the Rule contains a provision allowing the court to waive this requirement. This waiver provision is in the Rule to allow two long-tenured evaluators to continue working in Anne Arundel County. These evaluators have more than 20 years of experience and have all of the required training. They only lack the license. Judge Dumais acknowledged that the legislature remains concerned about the waiver provision. She added that, after further discussions with members of the Rules Committee and staff, the Judicial Council's Domestic Law Committee proposed additional amendments to subsection (d)(2)(B), which are reflected in the handout. She repeated her belief that the details of training and qualifications should be handled by Rule.

The Chair called for a motion on the proposed amendments to Rule 9-205.3, including the handout. Judge Nazarian moved to approve Rule 9-205.3 with the handout version of subsection (d)(2)(B). The motion was seconded and approved by consensus.

Agenda Item 3. Consideration of proposed amendments to Rule 17-105 (Mediation Confidentiality).

Mr. Kane presented Rule 17-105, Mediation Confidentiality, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISION

AMEND Rule 17-105 by adding new section (f), as follows:

Rule 17-105. MEDIATION CONFIDENTIALITY

(a) Mediator

Except as provided in sections (c) and (d) of this Rule, a mediator and any person present or otherwise participating in the mediation at the request of the mediator shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(b) Parties

Except as provided in sections (c) and (d) of this Rule:

(1) a party to a mediation and any person present or who otherwise participates in a mediation at the request of a party may not disclose or be compelled to disclose a mediation communication in any judicial, administrative, or other proceeding; and

(2) the parties may enter into a written agreement to maintain the confidentiality of mediation communications and to require all persons who are

present or who otherwise participate in a mediation to join in that agreement.

Cross reference: See Rule 5-408 (a)(3).

(c) Signed Document

A document signed by the parties that records points of agreement expressed and adopted by the parties or that constitutes an agreement reached by the parties as a result of mediation is not confidential, unless the parties agree otherwise in writing.

Cross reference: See Rule 9-205 (h) concerning the submission of a document embodying the points of agreement to the court in a child access case.

(d) Permitted Disclosures

In addition to any disclosures required by law, a mediator, a party, and a person who was present or who otherwise participated in a mediation may disclose or report mediation communications:

(1) to a potential victim or to the appropriate authorities to the extent they reasonably believe necessary to help prevent serious bodily harm or death to the potential victim;

(2) when relevant to the assertion of or defense against allegations of mediator misconduct or negligence; or

(3) when relevant to a claim or defense that an agreement arising out of a mediation should be rescinded because of fraud, duress, or misrepresentation.

Cross reference: For the legal requirement to report suspected acts of child abuse, see Code, Family Law Article, § 5-705.

(e) Discovery; Admissibility of Information

Mediation communications that are confidential under this Rule are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Cross reference: See Rule 5-408 (b). See also Code, Courts Article, Title 3, Subtitle 18, which does not apply to mediations to which the Rules in Title 17 apply.

(f) Screening; Confidentiality

Except as provided in section (d) of this Rule and subject to the provisions of section (b) of this Rule pertaining to parties, all documents, records, and statements containing mediation communication made by, for, or at the request of the court to assist with a determination of whether to order or refer a matter to mediation shall be confidential, and any person privy to the mediation communications shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose the mediation communication in any judicial, administrative, or other proceeding.

Source: This Rule is derived from former Rule 17-109 (2012). Section (f) is new.

Rule 17-105 was accompanied by the following Reporter's note:

Juvenile & Family Services in the Administrative Office of the Courts referred to the Rules Committee recently a request for clarification in the Rules regarding the confidentiality of screening tools and processes used by courts to determine if certain matters should be referred to mediation.

The issue arose in the context of Rule 9-205, which requires the court to "determine whether mediation of the dispute... is appropriate and likely would be beneficial to the parties or the child." Subsection (b)(2) states that a court "may not" order mediation in a child custody and visitation matter "if a party or a child represents to the court in good faith that there is a genuine issue of abuse of the party or child or coercive control of a party and that, as a result, mediation would be inappropriate."

The Alternative Dispute Resolution (ADR) Subcommittee was informed that screening for abuse or coercive control is handled differently in each jurisdiction. Some courts conduct an interview, others do a "paper screening" that looks for past protective orders between the parties. While the screening process is not new, there is a pilot program currently expanding to utilize a standardized screening tool, the Mediator's Assessment of Safety Issues and Concerns-Short ("MASIC-S"). The screener asks a series of questions of the party and inputs the answers into the MASIC-S tool. At the conclusion of the screening, a recommendation form is uploaded into MDEC indicating whether the case is appropriate for mediation, is not appropriate, or may be appropriate.

The ADR Subcommittee was informed that when courts begin using the MASIC-S tool, the screening process looks different from the perspective of parties and their attorneys. As a result, some attorneys have asked questions about confidentiality and the screening process. Juvenile & Family Services, in consultation with the Judicial Council's ADR Committee, proposed clarifying in the Rules that screening communications are confidential.

Rule 17-102 (h) defines "mediation communication" to include "a communication made for the purpose of considering, initiating, continuing, reconvening, or evaluating a mediation or a mediator." The definition was proposed in substantially the form it exists today following a 1999 report by the Maryland Alternative Dispute Resolution Commission. The report recommended the definition in tandem with a proposed confidentiality Rule intended to make all mediation communications confidential, subject to some exceptions. The circumstances of the proposal of the definition and its inclusion of "communication made for the purpose of considering [or] initiating ... a mediation" strongly indicate that mediation screening conversations have always been intended to be subject to the same confidentiality provisions as statements made during the mediation itself.

Rule 17-105, made applicable to custody and visitation mediation by Rule 9-205 (f), generally

> governs mediation confidentiality and imposes broad confidentiality requirements on mediators, individuals present or participating in the mediation at the mediator's request, and the parties. Though Rule 17-105 does not explicitly address confidentiality of mediation screening tools, the inclusion of "communication made for the purpose of considering... a mediation" in the definition of "mediation communication" suggests that these communications should be subject to the same confidentiality policy. Juvenile & Family Services reports that there is confusion in at least one jurisdiction regarding the confidentiality of screening tools and conversations used solely for the purpose of screening cases for mediation.
>
> A proposed amendment to Rule 17-105 adds new section (f), which generally states that documents, records, and statements used to screen cases for mediation that contain mediation communication are confidential and no person can be compelled to disclose the mediation communication. This provision is subject to the provisions of section (b) governing parties, which are slightly less strict because they only restrict parties' ability to disclose details of a mediation in court, not in their personal lives generally.

Mr. Kane informed the Committee that the proposed amendments to Rule 17-105 should not be controversial. He said that the Rules Committee's Alternative Dispute Resolution ("ADR") Subcommittee was asked to clarify the confidentiality of information obtained when a case is screened for referral for mediation. Mr. Kane explained that there are different screening processes in each county to assess whether there are issues of domestic violence or coercive control in a case. Some counties conduct a "paper screening" by reviewing court records

for any protective orders or other findings indicating there may be domestic violence concerns. Other counties use a formal screening tool questionnaire. He said that there was a question about whether the information gleaned from the questionnaire is confidential. The proposed amendments make clear that this information constitutes "mediation communication" as defined in Rule 17-102 and is subject to the confidentiality provisions of Rule 17-105.

Ms. Meredith commented that "mediation communication" is sometimes singular and sometimes plural within the proposed amendments to the Rule. Assistant Reporter Cobun said that "mediation communication" is a defined term in the singular but it appears to be plural throughout Rule 17-105. By consensus, the Committee determined that the term should be pluralized in the new language for consistency with the rest of the Rule.

There being no further motion to amend or reject the proposed amendments to Rule 17-105, the Rule was approved as amended.

Agenda Item 4. Reconsideration of proposed amendments to Rule 1-332 (Reasonable Accommodations for Persons with Disabilities).

Judge Nazarian presented Rule 1-332, Reasonable Accommodations for Persons with Disabilities, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-332 by retitling the Rule "Reasonable Accommodations for Persons with Disabilities"; by re-titling section (a) as "Application" and adding a statement of applicability; by adding new section letter (b) before "Definitions"; by adding new subsection (b)(2) defining "Person with a Disability" with a cross reference; by adding new subsection (b)(3) defining "Reasonable Accommodation"; by re-numbering current subsection (a)(2) as (b)(4); by re-lettering current section (b) as section (c) and by changing the title to "Request for Reasonable Accommodation"; by deleting the title of current subsection (b)(1) and replacing it with "Generally"; by clarifying in re-lettered subsection (c)(1) who may request a reasonable accommodation; by adding a Committee note following re-lettered subsection (c)(1); by adding new subsection (c)(2) containing provisions from current subsection (b)(1), with amendments; by adding a Committee note after new subsection (c)(2); by adding new section (d) governing the procedure when a reasonable accommodation is requested; by adding new subsection (d)(1) and a Committee note pertaining to the authority to make an accommodation determination; by adding new subsection (d)(2) and a Committee note pertaining to the interactive process; by adding new subsection (d)(3) and a Committee note pertaining to the factors for consideration; by re-lettering current subsection (b)(2) as new subsection (d)(4); by modifying the tagline of new subsection (d)(4); by adding a provision to new subsection (d)(4) referring to compliance with Rule 1-333 (d); by deleting current subsection (b)(3); by adding new subsection (d)(5) pertaining to notice of the court's determination; by adding new section (e) requiring publication of data on

accommodation requests; and by making stylistic changes, as follows:

Rule 1-332. ~~ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT~~ REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

(a) Application

This Rule applies to accommodations for persons with disabilities.

(b) Definitions

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

(1) ADA

"ADA" means the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*

(2) Person with a Disability

"Person with a disability" means an individual with a disability who meets the essential eligibility requirements for the receipt of services or the participation in court services, programs, or activities, with or without reasonable modifications to policies, practices, or procedures, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services.

Cross reference: See 42 U.S.C. § 12131.

(3) Reasonable Accommodation

"Reasonable accommodation" means a measure necessary to provide a person with a disability the opportunity to access a court service, program, or activity in a manner consistent with State and federal law. A reasonable accommodation may include:

(A) a reasonable modification in policy, practice, or procedure;

(B) a reasonable modification to a deadline or time limit that Rule 1-204 permits to be modified but that does not alter a statutory deadline or a statute of limitations;

(C) remote participation by a party or witness in accordance with Title 21 of these Rules;

(D) an auxiliary aid or service other than personal device, including equipment, that is made available without charge; and

Committee note: An auxiliary aid or service may include a qualified interpreter or other effective method of making aurally delivered materials available to an individual who is deaf or hard of hearing; a qualified reader, taped text, or another effective method of making visually delivered materials available to an individual who is blind or has low vision; acquisition or modification of equipment or devices; and other similar services and actions. See 42 U.S.C. § 12103, 28 C.F.R. § 35.104, and 28 C.F.R. § 35.160.

(E) recognizing a supported decision-making arrangement entered pursuant to Code, Estates and Trusts Article, Title 18.

~~(2)~~(4) Victim

"Victim" includes a victim's representative as defined in Code, Criminal Procedure Article, § 11-104.

~~(b)~~(c) ~~Accommodation Under the ADA~~ Request for Reasonable Accommodation

(1) ~~Notification of Need for Accommodation~~ Generally

~~A person~~ An attorney, party, witness, victim, juror, prospective juror, or member of the public requesting ~~an~~ a reasonable accommodation under the ADA or other applicable Maryland or federal law ~~for an attorney, a party, a witness, a victim, a juror, or a prospective juror~~ promptly shall notify the court of the request.

Committee note: An individual authorized to act on behalf of the person with a disability or with the

permission of the person with a disability may request an accommodation.

(2) Submission

To the extent practicable, a request for ~~an~~ a reasonable accommodation shall be ~~(1)~~(A) presented on a form approved by ~~administrative order of the Supreme Court~~ the State Court Administrator, posted on the Judiciary website, and available from the clerk of the court ~~and on the Judiciary website~~ and ~~(2)~~(B) submitted to the court not less than 30 days before the proceeding for which the accommodation is requested. The request should include a case number, if applicable, but need not be filed in a particular action or served on any other party.

Committee note: The Rule does not impose a strict 30-day filing deadline and recognizes that advance notice is not always practicable for all requests for accommodation. Reasonable advance notice is required to the extent feasible so that a court or staff can implement reasonable accommodations. Insufficient advance notice may prevent the provision of a reasonable accommodation.

(d) Determination of Request

(1) Authority to Determine

The court shall consider a reasonable accommodation request that pertains to a motion before the court, the rescheduling of a case, or any other matter that involves the administration of court proceedings or the substantive rights of litigants. The court may approve the requested accommodation, deny the requested accommodation, or offer an alternative accommodation. The court may designate the ADA coordinator to consider and determine other requests.

Committee note: Accommodation requests that may be considered and determined administratively include requests that involve facilities, furniture, and other accommodations that can be provided that do not involve substantive issues or affect court procedure.

(2) Interactive Process

The court or designated ADA coordinator shall review the request and, if appropriate, engage the requestor in an interactive process to determine a reasonable accommodation.

Cross reference: See *In the Matter of Chavis*, 486 Md. 247 (2023), pertaining to procedures and standards for evaluating a request for reasonable accommodations under the ADA.

(3) Factors – Generally

In determining what, if any, accommodation to grant, the court or the ADR coordinator shall:

(A) consider (i) the provisions of the ADA and applicable Federal regulations adopted under the ADA; (ii) Code, State Government Article, §§ 20-304 and 20-901; (iii) Code, Courts Article, § 9-114; (iv) Code, Criminal Procedure Article, §§ 1-202 and 3-103; and (v) other applicable Maryland and federal law;

(B) give primary consideration to the accommodation requested;

(C) consider whether an accommodation would result in (i) a fundamental alteration of the nature of a court service, program, or activity or (ii) an undue financial and administrative burden; and

(D) make the determination on an individual and case-specific basis, with due regard to the nature of the disability and the feasibility of the requested accommodation.

Committee note: In considering reasonable accommodations for a person with a disability, the primary focus is on providing accommodations that enable the individual to participate in or qualify for a program, service, or activity. The focus must not be on the extent of the individual's impairment.

~~(2)~~(4) Request for Sign Language Interpreter

~~The~~ If the accommodation requested is the provision of a sign language interpreter, the court shall

determine whether a sign language interpreter is needed in accordance with the requirements of the ADA; Code, Courts Article, § 9-114; and Code, Criminal Procedure Article, §§ 1-202 and 3-103. If the request is granted, the court shall appoint a sign language interpreter in accordance with Rule 1-333 (c).

~~(3) Provision of Accommodation~~

~~The court shall provide an accommodation if one is required under the ADA. If the accommodation is the provision of a sign language interpreter, the court shall appoint one in accordance with Rule 1-333 (c).~~

(5) Notification of Determination

The court or ADA coordinator promptly shall notify the requestor of its accommodation determination. If a requested accommodation is denied, the court or ADR coordinator shall specify the reason for the denial.

(e) Publication of Data on Accommodation Requests

Each court shall submit an annual report to the State Court Administrator, without identifying information and in a manner that protects the identities of those requesting accommodations, containing (1) data on the number and types of reasonable accommodation requests submitted, (2) the types of accommodations granted, and (3) the number of reasonable accommodation requests denied. The State Court Administrator shall publish a compilation of the data on the Judiciary website.

Source: This Rule is new.

Rule 1-332 was accompanied by the following Reporter's note:

Proposed amendments to Rule 1-332 update and clarify the procedures for requesting, considering, and providing reasonable accommodations to individuals with disabilities seeking to access

Maryland courts. The Supreme Court considered proposed amendments to Rule 1-332 at an open meeting on the 221st Report on March 19, 2024. After discussion, the Court remanded the Rule to the Committee for further study. The Court instructed the Committee to ensure that the language in the proposed Rule is consistent with the Americans with Disabilities Act ("the ADA") and provides at least the same minimum protections.

The General Court Administration Subcommittee discussed a proposed draft in response to the remand at its June 14, 2024 meeting. After considering the comments made by consultants, the Subcommittee referred the Rule to an informal drafting group consisting of local and national ADA experts and representatives from the Maryland Judicial Council Court Access Committee. Committee staff worked with subject matter experts over the summer and the resulting draft generally reflects the consensus among these experts as well as internal stakeholders. The General Court Administration Subcommittee met again on December 18, 2024 and considered proposed amendments recommended by the drafting group.

The Rule is proposed to be renamed to address accommodations more broadly for persons with disabilities instead of only accommodations under the ADA. New section (a) addresses the broader application.

Several definitions are added to new section (b). "Person with a disability" is defined in new subsection (b)(2). The reworked definition is derived from the ADA (42 U.S.C. § 12131). The ADA uses the term "qualified person with a disability," but the drafting group suggested avoiding using the term "qualified" as it may lead to confusion. The Subcommittee discussed the necessity and clarity of the definition, concluding that it is helpful to set forth to whom the Rule applies. The Subcommittee was informed that an individual may have a disability but not require any accommodation to access the courts. Conversely, there may be individuals who cannot be accommodated due to the various provisions of the ADA that rule out accommodations that would impose a substantial burden on the court. The definition narrows the

applicability of the Rule to individuals who require accommodations and who can be accommodated.

The proposed definition for "reasonable accommodation" in new subsection (b)(3) is similar to the definition of "accommodation" proposed in the 221st Report, with some changes. "Reasonable accommodation" is a term used throughout the ADA and more accurately reflects the Act's requirements as an entity is only required to make accommodations that are reasonable, meaning consistent with State and federal law. The drafting group suggested the expansion of the Committee note following the subsection on auxiliary aids and services to provide guidance on types of auxiliary aids and services, derived in part from 42 U.S.C. § 12103. Statutory references are included in the Committee note. A new subsection (b)(3)(E) pertaining to supported decision-making arrangements was also suggested by the drafting group.

Section (c) governs the request for a reasonable accommodation. The drafting group discussed how to permit a third party to make a request on behalf of a person with a disability without encouraging unwanted intervention, which undercuts the autonomy of the person with the disability. The group ultimately recommended the addition of a provision that notice may come from another individual authorized to act on that individual's behalf. This is reflected in the Committee note. The drafting group also suggested clarifying that the request does not have to be filed in an action or served on any party. The Committee note following subsection (c)(2) is rephrased from the way it was presented in the 221st Report to clarify that an accommodation request is allowed to be made less than 30 days before the proceeding but cautions that insufficient notice may prevent the accommodation being provided.

Section (d) is significantly restructured from its 221st Report version. Subsection (d)(1) sets forth the accommodation requests that must be considered by a judge in contrast to accommodations that may be determined by the designated ADA coordinator. Subsection (d)(2) adds the concept of an interactive process. The drafting group advised that the prior

proposed language implied that the person with a disability made an accommodation request and the court or ADA coordinator granted or denied that request. In practice, if the request for accommodation cannot be granted, the court should engage in a dialogue with the requester to consider alternatives. A cross reference to a recent case on the procedures and standards for evaluating a request for reasonable accommodations provides additional guidance. The factors in subsection (d)(3) are modified from the 221st version to correct citations and make stylistic changes. They are derived from State and federal laws and regulations.

New section (e) establishes certain reporting requirements regarding requests for reasonable accommodations and the accommodations granted and denied.

Judge Nazarian informed the Committee that Rule 1-332 was remanded by the Supreme Court due to concern over whether the proposed amendments were in sync with the Americans with Disabilities Act ("ADA"). Additional drafting to the Rule was reconsidered by the General Court Administration Subcommittee in consultation with ADA experts. The Chair commented that the Style Subcommittee may want to review the punctuation in the Committee note following subsection (b)(3)(D). The Committee agreed to refer the matter to Style.

There being no further motion to amend or reject the proposed changes to Rule 1-332, the Rule was approved as amended.

Judge Nazarian said that the definition of "reasonable accommodation" in subsection (b)(3)(B) includes "a reasonable modification to a deadline or time limit that Rule 1-204 permits to be modified but that does not alter a statutory deadline or a statute of limitations." He said that a question was raised regarding whether the term "statute of limitations" would include a "statute of repose." He informed the Committee that a handout with an amendment to Rule 1-201 was prepared to address this question.

Judge Nazarian presented a handout with an amendment to Rule 1-201, Rules of Construction, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 200 – CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-201 by adding new section (f), as follows:

Rule 1-201. RULES OF CONSTRUCTION

(a) General

These rules shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay. When a rule, by the word "shall" or otherwise, mandates or prohibits conduct, the consequences of noncompliance are those prescribed by these rules or by statute. If no consequences are prescribed, the court may compel compliance with the rule or may

determine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule.

(b) Jurisdiction and Venue Unaffected

These rules shall not be construed to extend or limit the jurisdiction of any court or, except as expressly provided, the venue of actions.

(c) Effect on Common Law and Statutory Provisions

Neither these rules nor omissions from these rules supersede common law or statute unless inconsistent with these rules.

(d) Singular and Plural – Gender

Words in the singular include the plural and words in any gender include all genders except as necessary implication requires.

(e) Headings, References, and Notes Not Rules

Headings, subheadings, cross references, committee notes, source references, and annotations are not part of these rules.

(f) Statute of Limitations

The term "statute of limitations" includes a statute of repose, except as necessary implication requires.

Source: This Rule is derived as follows:

Section (a) is in part consistent with the 1966 version of Fed. R. Civ. P. 1 and is derived from former Rule 701. The last two sentences are new.

Section (b) is derived from former Rule 1 h and i.

Section (c) is derived from former Rules 1 g and 701.

Section (d) is derived from former Rule 2 c.

Section (e) is derived from former Rule 2 b.

Section (f) is new.

Judge Nazarian explained that the proposed amendment to the "Rules of Construction" explicitly states that "statute of limitations" includes a statute of repose "except as necessary implication requires." Ms. Doyle asked where else the term appears in the Rules. Ms. Cobun replied that the term "statute of limitations" appears in several places in Title 2 and in additional contexts in Titles 15 and 19. She explained that "except as necessary implication requires" covers the situations where "statute of limitations" is used and would not include a statute of repose.

A motion to approve the amendment to Rule 1-201 was made, seconded, and approved by consensus.

Agenda Item 5. Consideration of proposed amendments to Rule 1-325 (Waiver of Costs Due to Indigence – Generally).

Judge Nazarian presented Rule 1-325, Waiver of Costs Due to Indigence – Generally, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-325 by adding "Request for Court Waiver of Open Costs" to the tagline of section (d); by adding new subsection (d)(1) containing the

existing provisions of section (d); by re-lettering current subsections (d)(1) and (d)(2) as (d)(1)(A) and (d)(2)(B), respectively; by re-lettering current subsections (d)(1)(A) and (d)(1)(B) as (d)(1)(A)(i) and (d)(1)(A)(ii), respectively; by re-lettering current subsections (d)(1)(A)(i) through (d)(1)(A)(iii) as (d)(1)(A)(i)(a) through (d)(1)(A)(i)(c), respectively; by adding new subsection (d)(2) governing a request for waiver of open costs; by adding a reference to new subsection (d)(2) to subsections (f)(2)(A) and (f)(2)(B); by updating the affidavit requirement in subsection (f)(2)(B); and by making stylistic changes, as follows:

Rule 1-325. WAIVER OF COSTS DUE TO INDIGENCE – GENERALLY

(a) Scope

This Rule applies only to (1) original civil actions in a circuit court or the District Court and (2) requests for relief that are civil in nature filed in a criminal action.

Committee note: Original civil actions in a circuit court include actions governed by the Rules in Title 7, Chapter 200, 300, and 400. Requests for relief that are civil in nature filed in a criminal action include petitions for expungement and requests to shield all or part of a record.

(b) Definition

In this Rule, “prepaid costs” means costs that, unless prepayment is waived pursuant to this Rule, must be paid prior to the clerk's docketing or accepting for docketing a pleading or paper or taking other requested action.

Committee note: “Prepaid costs” may include a fee to file an initial complaint or a motion to reopen a case, a fee for entry of the appearance of an attorney, and any prepaid compensation, fee, or expense of a magistrate or examiner. See Rules 1-501, 2-541, 2-542, 2-603, and 9-208.

(c) No Fee for Filing Request

No filing fee shall be charged for the filing of the request for waiver of prepaid costs pursuant to section (d) or (e) of this Rule.

(d) Waiver of Prepaid Costs by Clerk; Request for Court Waiver of Open Costs

(1) Prepaid Costs

On written request, the clerk shall waive the prepayment of prepaid costs, without the need for a court order, if:

~~(1)~~(A) the party is an individual who is represented ~~(A)~~(i) by an attorney retained through a pro bono or legal services program on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided that an authorized agent of the program provides the clerk with a statement that ~~(i)~~(a) names the program, attorney, and party; ~~(ii)~~(b) states that the attorney is associated with the program and the party meets the financial eligibility criteria of the Corporation; and ~~(iii)~~(c) attests that the payment of filing fees is not subject to Code, Courts Article, § 5-1002 (the Prisoner Litigation Act), or ~~(B)~~(ii) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

~~(2)~~(B) except for an attorney employed or appointed by the Office of the Public Defender in a civil action in which that Office is required by statute to represent the party, the attorney certifies that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Committee note: The Public Defender represents indigent individuals in a number of civil actions. See Code, Criminal Procedure Article, § 16-204 (b).

Cross reference: See Rule 1-311 (b) and Rule 19-303.1 (3.1) of the Maryland Attorneys' Rules of Professional Conduct.

(2) Request for Waiver of Open Costs at Conclusion of Action

A request under subsection (d)(1) of this Rule may include a request for final waiver of open costs by the court at the conclusion of the action. The request for final waiver of open costs shall include the attorney's certification that the attorney's client signed an affidavit stating that the client does not anticipate a material change in the financial information contained in the client's application for representation. The court shall consider the request at the conclusion of the action in accordance with section (f) of this Rule.

(e) Waiver of Costs by Court

(1) Prepaid Costs

(A) Request for Waiver

An individual unable by reason of poverty to pay a prepaid cost and not subject to a waiver under section (d) of this Rule may file a request for an order waiving the prepayment of the prepaid cost. The request shall be accompanied by (i) the pleading or paper sought to be filed; (ii) an affidavit substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices; and (iii) if the individual is represented by an attorney, the attorney's certification that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Cross reference: See Rule 1-311 (b) and Rule 19-303.1 (3.1) of the Maryland Attorneys' Rules of Professional Conduct.

(B) Review by Court; Factors to be Considered

The court shall review the papers presented and may require the individual to supplement or explain any of the matters set forth in the papers. In determining whether to grant a prepayment waiver, the court shall consider:

(i) whether the individual has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year, which shall be posted on the Judiciary website; and

(ii) any other factor that may be relevant to the individual's ability to pay the prepaid cost.

(C) Order; Payment of Unwaived Prepaid Costs

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the pleading or paper sought to be filed does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. In its order, the court shall state the basis for granting or denying the request for waiver. If the court denies, in whole or in part, a request for the waiver of its prepaid costs, it shall permit the party, within 10 days, to pay the unwaived prepaid cost. If, within that time, the party pays the full amount of the unwaived prepaid costs, the pleading or paper shall be deemed to have been filed on the date the request for waiver was filed. If the unwaived prepaid costs are not paid in full within the time allowed, the pleading or paper shall be deemed to have been withdrawn.

(2) Request for Waiver of Open Costs at Conclusion of Action

A request under subsection (e)(1) of this Rule may include a request for final waiver of open costs at the conclusion of the action. The request shall indicate in the affidavit required by subsection (e)(1) of this Rule that the individual does not anticipate a material change in the information provided in the affidavit. The court shall consider the request at the conclusion of the action in accordance with section (f) of this Rule.

(f) Award of Costs at Conclusion of Action

(1) Generally

At the conclusion of an action, the court and the clerk shall allocate and award costs as required or permitted by law.

Cross reference: See Rules 2-603, 3-603, 7-116, and *Mattison v. Gelber*, 202 Md. App. 44 (2011).

(2) Waiver

(A) Request

At the conclusion of an action, a party who otherwise did not request a final waiver of open costs pursuant to subsection (d)(2) or (e)(2) of this Rule may seek a final waiver of open costs, including any unpaid appearance fee, by filing a request for the waiver, together with (i) an affidavit substantially in the form prescribed by subsection (e)(1)(B) of this Rule, or (ii) if the party was granted a waiver of prepayment of prepaid costs by court order pursuant to section (e) of this Rule and remains unable to pay the costs, an affidavit that recites the existence of the prior waiver and the party's continued inability to pay by reason of poverty.

(B) Determination by Court

In an action under Title 9, Chapter 200 of these Rules or Title 10 of these Rules, the court shall grant a final waiver of open costs if the requirements of Rules 2-603 (e) or 10-107 (b), as applicable, are met. In all other civil matters, the court may grant a final waiver of open costs if the party against whom the costs are assessed is unable to pay them by reason of poverty. The court may require a party who requested a final waiver of open costs pursuant to subsection (d)(2) or (e)(2) of this Rule to file ~~the supplemental affidavit required by subsection (f)(2)(A)(ii) of this Rule~~ an affidavit stating that the party (i) was granted a prior waiver of prepaid costs in the action pursuant to this Rule and (ii) remains unable to pay the costs by reason of poverty.

Source: This Rule is new.

Rule 1-325 was accompanied by the following Reporter's note:

The Supreme Court considered proposed amendments to Rule 1-325 at an open meeting on the 223rd Report on October 9, 2024. After discussion, the Court adopted the proposed amendments, which generally allow for a self-represented litigant to file one request for both a waiver of prepaid costs and final waiver of open costs.

The Court received a supportive comment on the amendments from Maryland Legal Aid (see attached) but the comment also requested that the proposed change be expanded to apply to waiver requests from parties represented by qualified legal services organizations, such as Legal Aid. The Court chose to enact the proposed amendments to Rule 1-325 as presented and referred to the Committee the matter of expanding the applicability of the new provisions.

Proposed amendments to Rule 1-325 extend the "one waiver request" process to parties who are represented by qualified attorneys or legal service organizations.

New subsection (d)(1) contains the current provisions of section (d) governing waiver of prepaid costs. Subsections within new subsection (d)(1) are adjusted.

New subsection (d)(2) permits a request for a waiver of prepaid costs to include a request for final waiver of open costs. The request must include a certification by the attorney that the client has averred that the client does not anticipate a material change in the financial information provided to qualify for representation by a Maryland Legal Services Corporation program. Subsection (d)(2) instructs the court to consider the request for final waiver of open costs at the conclusion of the action in accordance with section (f).

Subsection (f)(2) is amended to add references to a waiver requested pursuant to subsection (d)(2). Subsection (f)(2)(B) is amended to delete reference to the supplemental affidavit required by subsection (f)(2)(A)(ii) and instead restates the required substance of the affidavit ("that the party (i) was granted a prior waiver of prepaid costs in the action pursuant to this Rule and (ii) remains unable to pay the costs by reason of poverty"). The Subcommittee was informed that service providers like Legal Aid conduct a detailed review of the income and assets of potential clients to determine their eligibility. These reviews are done periodically during representation to ensure that clients maintain their eligibility. Legal Aid requested that the supplemental affidavit provision in subsection

(f)(2) be stricken in light of the review process. The Subcommittee acknowledged that judges are likely going to defer to the legal service provider's presence in the case as affirmation of indigency but determined that judges should retain discretion.

Judge Nazarian explained that the proposed amendments to Rule 1-325 were referred to the Committee by the Supreme Court at the open meeting on the 223rd Report. The Court received a comment letter from Maryland Legal Aid requesting that the "one waiver request" policy recommended for self-represented parties in that Report be extended to parties represented by Maryland Legal Services Corporation ("MLSC") attorneys.

Amee Vora, from Maryland Legal Aid, said that Legal Aid and a coalition of civil legal aid providers supported the change proposed for self-represented individuals requesting a waiver of final costs and is asking the Committee and the Court to "finish the process" by extending it to MLSC providers. She said that the process of requiring a second waiver request at the conclusion of a proceeding is cumbersome and requires time from attorneys to diligently pursue the final waiver. She explained that every MLSC-funded organization must adhere to strict eligibility requirements as far as who the organizations represent. If an MLSC attorney is involved in the case from beginning to end, it means that the person has qualified for the representation throughout the case by reason of indigence.

There being no motion to amend or reject the proposed amendments to Rule 1-325, the Rule was approved as presented.

Agenda Item 6. Consideration of proposed Rules changes pertaining to MDEC – amendments to Rule 20-106 (When Electronic Filing Required; Exceptions) and Rule 20-205 (Service).

Judge Nazarian presented Rule 20-106, When Electronic Filing Required; Exceptions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106 by deleting a portion of current subsection (a)(3)(A) and replacing it with a statement pertaining to filing by a self-represented litigant; by creating new subsection (a)(3)(B) containing a portion of current subsection (a)(3)(A), with amendments; by adding new subsection (a)(3)(C) pertaining to the administrative judge's authority to permit a self-represented litigant to change how the litigant files; by re-lettering current subsection (a)(3)(B) as (a)(3)(D); and by making stylistic changes, as follows:

RULE 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

(a) Filers – Generally

(1) Attorneys

Except as otherwise provided in section (b) of this Rule, an attorney who enters an appearance in an

action shall file electronically the attorney's entry of appearance and all subsequent submissions in the action.

(2) Judges, Judicial Appointees, Clerks, and Judicial Personnel

Except as otherwise provided in section (b) of this Rule, judges, judicial appointees, clerks, and judicial personnel, shall file electronically all submissions in an action.

(3) Self-represented Litigants

(A) ~~Except as otherwise provided in section (b) of this Rule,~~ A self-represented litigant who is a registered user may elect to file electronically or in paper form.

(B) Subject to section (b) of this Rule, a self-represented litigant in an action who is a registered user and who files an initial pleading or paper electronically shall file electronically all subsequent submissions in the action. A self-represented litigant who files an initial pleading or paper in paper form shall file in paper form all subsequent submissions in the action.

(C) For good cause shown, the administrative judge having direct administrative supervision over the court in which an action is pending may permit a self-represented litigant to change how the litigant files in the action.

~~(B)~~ (D) A self-represented litigant in an action who is not a registered user may not file submissions electronically.

(4) Other Persons

Except as otherwise provided in the Rules in this Title, a registered user who is required or permitted to file a submission in an action shall file the submission electronically. A person who is not a registered user shall file a submission in paper form.

Committee note: Examples of persons included under subsection (a)(4) of this Rule are government agencies or other persons who are not parties to the action but are required or permitted by law or court order to file a

record, report, or other submission with the court in the action and a person filing a motion to intervene in an action.

(b) Exceptions

(1) MDEC System Outage

Registered users, judges, judicial appointees, clerks, and judicial personnel are excused from the requirement of filing submissions electronically during an MDEC system outage in accordance with Rule 20-501.

(2) Other Unexpected Event

If an unexpected event other than an MDEC system outage prevents a registered user, judge, judicial appointee, clerk, or judicial personnel from filing submissions electronically, the registered user, judge, judicial appointee, clerk, or judicial personnel may file submissions in paper form until the ability to file electronically is restored. With each submission filed in paper form, a registered user shall submit to the clerk an affidavit describing the event that prevents the registered user from filing the submission electronically and when, to the registered user's best knowledge, information, and belief, the ability to file electronically will be restored.

Committee note: This subsection is intended to apply to events such as an unexpected loss of power, a computer failure, or other unexpected event that prevents the filer from using the equipment necessary to effect an electronic filing.

(3) Other Good Cause

For other good cause shown, the administrative judge having direct administrative supervision over the court in which an action is pending may permit a registered user, on a temporary basis, to file submissions in paper form. Satisfactory proof that, due to circumstances beyond the registered user's control, the registered user is temporarily unable to file submissions electronically shall constitute good cause.

. . .

Rule 20-106 was accompanied by the following Reporter's note:

> Proposed amendments to Rule 20-106 were recommended by the Major Projects Committee (MPC) to clarify requirements for self-represented litigants (SRLs) who register to use MDEC. Rule 20-106 requires attorneys as well as judges, judicial appointees, and judicial personnel to file electronically, with limited exceptions for an MDEC outage or another unexpected event. SRLs are the only filers still permitted to file in paper form, but they may also register for MDEC and file electronically.
>
> Rule 20-106 currently provides that an SRL who is a registered MDEC user must file all submissions in an action electronically. The MPC was alerted to a situation where an SRL who is a registered user wished to file a case in paper form. The Rule does not include a provision for a registered user to "unregister" or opt out of being a registered user. The MPC recommended to the General Court Administration Subcommittee permitting an SRL to file either electronically or in paper form in each action, but requiring the SRL to continue to use the same filing method in each action.
>
> Proposed amendments to Rule 20-106 (a)(3) implement the MPC recommendation. Subsection (a)(3)(A) is amended to state that an SRL who is a registered user may file either electronically or in paper. New subsection (a)(3)(B) modifies the current provisions of the Rule to require the SRL to continue filing in the chosen format for all subsequent submissions. New subsection (a)(3)(C) permits the administrative judge, for good cause shown, to allow the SRL to change how the SRL files in an action.

Judge Nazarian explained that the proposed amendments to Rule 20-106 apply to self-represented individuals who register to use the MDEC system. The Major Projects Committee recommends

a policy that permits such filers to use either MDEC or paper filing, but requires them to use the same filing method for the duration of a given action. The proposed amendments set forth this policy.

There being no motion to amend or reject the proposed amendments to Rule 20-106, the Rule was approved as presented.

Judge Nazarian presented Rule 20-205, Service, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-205 by adding to subsection (d)(1) a requirement that the filer cause MDEC to electronically serve submissions not served by the clerk, by adding a cross reference to Rules pertaining to service requirements in the event of an MDEC system outage, and by making stylistic changes, as follows:

Rule 20-205. SERVICE

(a) Original Process

Service of original process shall be made in accordance with the applicable procedures established by the other Titles of the Maryland Rules.

(b) Subpoenas

Service of a subpoena shall be made in accordance with the applicable procedures established by the other Titles of the Maryland Rules.

(c) Court Orders and Communications

The clerk is responsible for serving writs, notices, official communications, court orders, and other dispositions, in the manner set forth in Rule 1-321, on ~~persons~~ each person entitled to receive service of the submission who (A) ~~are~~ is a registered ~~users~~ user, (B) ~~are~~ is a registered ~~users~~ user but ~~have~~ has not entered an appearance in the MDEC action, and (C) ~~are persons~~ is a person otherwise entitled to receive service of copies of tangible items that are in paper form.

(d) Other Electronically Filed Submissions

(1) Except as provided by subsection (d)(2) of this Rule, (A) the filer is responsible for causing the MDEC system to electronically serve all other submissions, and (B) ~~On~~ on the effective date of filing, the MDEC system shall electronically serve ~~on~~ each registered ~~users~~ user entitled to service ~~all other submissions filed electronically~~.

Cross reference: For the effective date of filing, see Rule 20-202.

(2) The filer is responsible for serving, in the manner set forth in Rule 1-321, ~~persons~~ each person entitled to receive service of the submission who (A) ~~are~~ is a registered ~~users~~ user, (B) ~~are~~ is a registered ~~users~~ user but ~~have~~ has not entered an appearance in the MDEC action, and (C) ~~are persons~~ is a person otherwise entitled to receive service of copies of tangible items that are in paper form.

Committee note: Rule 1-203 (c), which adds three days to certain prescribed periods after service by mail, does not apply when service is made by the MDEC system.

Cross reference: See Rule 20-106 (b)(1) and Rule 20-501 concerning service requirements in the event of an MDEC system outage.

Source: This Rule is new.

Rule 20-205 was accompanied by the following Reporter's note:

> Proposed amendments to Rule 20-205 clarify electronic service requirements in MDEC. The General Court Administration Subcommittee discussed an apparent gap in the MDEC Rules regarding service of electronic submissions.
>
> Rule 20-205 (d) sets forth that "the MDEC system shall electronically serve" registered users entitled to service with all electronically filed submissions that are not court orders and communications served by the clerk pursuant to section (c). The Subcommittee was informed that some users neglect to properly electronically serve submissions and the Rules do not expressly require the filer to instruct MDEC to conduct electronic service. This has the possibility to be a point of confusion, particularly with self-represented litigants using MDEC. The Subcommittee recommends a clarifying amendment to subsection (d)(1) stating that the filer is responsible for causing MDEC to electronically serve submissions.
>
> Stylistic amendments to sections (c) and (d) change "persons" and "users" to the singular "person" and "user."

Judge Nazarian explained that the General Court Administration Subcommittee was informed that there are situations where MDEC users, particularly self-represented users, electronically file a submission but fail to take the necessary steps to have MDEC serve the submission, if service is required. The proposed amendments to Rule 20-205 require that the filer cause the MDEC system to serve the filing.

There being no motion to amend or reject the proposed amendments to Rule 20-205, the Rule was approved as presented.

Agenda Item 7. Consideration of proposed amendments to Rule 5-606 (Competency of Juror as Witness).

Mr. Marcus presented Rule 5-606, Competency of Juror as Witness, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 600 – WITNESSES

AMEND Rule 5-606 by adding new subsection (b)(2) concerning a *Peña-Rodriguez* exception, by adding a cross reference after new subsection (b)(2), and by renumbering subsequent subsections, as follows:

Rule 5-606. COMPETENCY OF JUROR AS WITNESS

(a) At the Trial

A member of a jury may not testify as a witness before that jury in the trial of the case in which the sworn juror is sitting. If the sworn juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry Into Validity of Verdict

(1) In any inquiry into the validity of a verdict, a sworn juror may not testify as to (A) any matter or statement occurring during the course of the jury's deliberations, (B) the effect of anything upon that or any other sworn juror's mind or emotions as

influencing the sworn juror to assent or dissent from the verdict, or (C) the sworn juror's mental processes in connection with the verdict.

(2) In any inquiry into the validity of a verdict, a sworn juror may testify as to a clear statement made by a juror indicating that the juror relied on a stereotype or animus based on race**[**, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation**]** to convict a criminal defendant.

Cross reference: See *Peña–Rodriguez v. Colorado,* 580 U.S. 206 (2017).

~~(2)~~(3) A sworn juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying may not be received for these purposes.

~~(3)~~(4) Notes made under Rule 2-521 (a) or Rule 4-326 (a) may not be used to impeach a verdict.

(c) "Verdict" Defined

For purposes of this Rule, "verdict" means a verdict returned by a trial jury.

Committee note: This Rule does not address or affect the secrecy of grand jury proceedings.

Source: This Rule is derived in part from F.R.Ev. 606.

Rule 5-606 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 Criminal Rules Subcommittee recently reviewed a recommendation from the EJC Report concerning *Peña–Rodriguez v. Colorado*, 580 U.S. 206, 225 (2017) and the impact of racial biases on verdicts.

Current Rule 5-606 addresses the competency of a juror as a witness. Subsection (b)(1) states, "In any inquiry into the validity of a verdict, a sworn juror may not testify as to (A) any matter or statement occurring during the course of the jury's deliberations, (B) the effect of anything upon that or any other sworn juror's mind or emotions as influencing the sworn juror to assent or dissent from the verdict, or (C) the sworn juror's mental processes in connection with the verdict." Rule 5-606 (b)(3) further provides that "[n]otes made under Rule 2-521 (a) or Rule 4-326 (a) may not be used to impeach a verdict." Rule 2-521 (a) requires the prompt destruction of a juror's notes after a civil trial.

Despite the prohibition against revealing certain aspects of a jury's deliberation, the Supreme Court of the United States has held that this prohibition may yield to the Sixth Amendment right of a defendant to a fair trial. In *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017), the defendant was convicted by a jury of unlawful sexual contact and harassment. After the trial, two jurors spoke with defendant's counsel and indicated that "another juror had expressed anti-Hispanic bias toward [the defendant] and [the defendant's alibi witness]" by making a number of biased statements in the presence of other jurors. *Id.* at 212. After the Colorado Supreme Court affirmed the defendant's conviction, finding no basis to permit impeachment of the verdicts, the United States Supreme Court reversed and remanded, holding:

> [W]here a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee. *Id.* at 225.

Maryland has acknowledged the *Peña-Rodriguez* holding in subsequent opinions. In *Williams v. State*, 478 Md. 99 (2022), the defendant argued that the trial

court permitted legally inconsistent verdicts. *Id.* at 114. Upon a juror's request, Defendant's counsel met with the juror after trial and submitted an affidavit to the court indicating that the jury instructions were misinterpreted by the jury. *Id.* On appeal, the Supreme Court of Maryland held:

> [W]e conclude that the circuit court correctly granted the motion to strike statements by jurors referenced in the motion for a new trial and that the circuit court did not abuse its discretion in denying the motion for a new trial. The information obtained from jurors after the verdict that Williams's counsel proffered on the last day of the trial and the averments in the affidavit accompanying the motion for a new trial purported to be statements by jurors about discussions that occurred during the jury's deliberations and the jurors' thought processes during deliberations. None of the information attributed to the jurors involved allegations of racial bias or discrimination or the existence of external influences on the jury. *Id.* at 137.

The Court further explained, "To date, Maryland appellate courts have not deviated from the no-impeachment rule — *i.e.*, neither this Court nor the [former] Court of Special Appeals has recognized an exception to the no impeachment rule under Maryland law." *Id.* at 138. In this manner, the Supreme Court of Maryland recently declined to extend the *Peña-Rodriguez* exception.

Although the *Peña-Rodriguez* exception has been recognized by the U.S. Supreme Court as an appropriate reason to invade the province of the jury, locating clear evidence of the racial animus of a juror may prove challenging. The EJC Report highlights a proposal to retain jurors' notes to assist defendants in determining whether racial bias impacted the verdict in their trial. The EJC Report discusses this proposal, but refrains from recommending or declining the proposed change. The EJC Report acknowledges that "[t]he rare, but not non-existent, chance of finding a

'clear statement' of racial animus in a juror's notebook should be weighed against the chilling effects of making such notes a public record."

In summary, the EJC Report included the following recommendation for the Committee: "The Rules Committee may wish to examine the benefits and drawbacks of adding a *Peña-Rodriguez* exception to Rules 4-326 and 5-606." To address this recommendation of the EJC Report, the Criminal Rules Subcommittee considered two possible changes: (1) permitting inspection of jurors' notes in certain circumstances and (2) adding a *Peña–Rodriguez* exception to the Rules.

In regard to permitting inspection of jurors' notes, the petitioners in *Peña-Rodriguez* and *Williams* sought to introduce statements of jurors through testimony or affidavits. The cited cases did not concern requests to view a juror's notes or allegations that a juror's notes would reveal bias.

The American Bar Association has published Principles for Juries and Jury Trials, revised in 2016. In regard to notetaking, Principle 13 states that jurors should be permitted to take notes and provides: "Jurors should be instructed at the beginning of the trial that they are permitted, but not required, to take notes… Jurors should also be instructed that after they have reached their verdict, all juror notes will be collected and destroyed." Current Maryland Rules also provide for the destruction of a juror's notes, consistent with the ABA Principles.

Overall, the Criminal Rules Subcommittee declined to recommend amending the Rules concerning the destruction of a juror's notes. However, the Subcommittee recommended adding an exception to Rule 5-606 permitting inquiry into the validity of a verdict as set forth in *Peña–Rodriguez*.

Accordingly, a proposed amendment to Rule 5-606 adds new subsection (b)(2). The language is derived from the holding in *Peña–Rodriguez* permitting a sworn juror to testify as to a clear statement made

by a juror indicating that the juror relied on a stereotype or animus based on race to convict a defendant.

The Criminal Rules Subcommittee discussed whether the amendment to Rule 5-606 should go beyond the limited holding in *Peña–Rodriguez* to permit inquiry after clear statements that a juror relied on other stereotypes or animus in reaching a conviction. In proposed new subsection (b)(2), bracketed language expands the exception to include additional biases not addressed in *Peña–Rodriguez*. The bracketed language is derived from drafts of new *voir dire* Rules that address impermissible biases in the context of peremptory strikes. The Subcommittee has referred this bracketed language to the Rules Committee for consideration.

Mr. Marcus informed the Committee that the proposed amendments to Rule 5-606 deal with the U.S. Supreme Court decision *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017). Generally, a juror cannot testify to impeach the verdict after it is rendered and the jury is discharged. The Court held in *Peña-Rodriguez* that a jury verdict may be impeached if it is shown that a juror made a clear statement that the juror relied on racial stereotypes or animus as a basis for the verdict. In that case, two jurors informed the defendant's counsel after the verdict that one of the jurors expressed racial bias toward the defendant and the defendant's alibi witness. The Supreme Court determined that such statements could indicate a violation of the defendant's Sixth Amendment right to a fair and impartial

jury and the court may undertake an investigation for more information.

Mr. Marcus informed the Committee that the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("EJC Report") suggested that the holding in *Peña-Rodriguez* should be recognized in the Rules. In light of *Peña-Rodriguez*, the question is when is a juror competent to testify about statements made during deliberations. Normally, the answer is "never." Rule 5-606 addresses the competency of a juror as a witness.

Mr. Marcus said that the Maryland Supreme Court discussed *Peña-Rodriguez* in *Williams v. State*, 478 Md. 99 (2022). In that case, defense counsel met with a juror after the verdict and learned that the jury appeared to have misunderstood the instructions. The Maryland Supreme Court held that none of the information provided by the juror suggested that any jurors allowed racial bias to influence their verdict, which *Peña-Rodriguez* had determined was a violation of the Sixth Amendment.

Mr. Marcus noted that Maryland gives jurors notepads, and there are rules for the use of notes and destruction of the notepads after the case concludes. The Criminal Rules Subcommittee rejected the notion of reviewing jurors' notes to impeach their verdict. He said that, in a recent case, a judge tried to dismiss an empaneled juror based on that juror's notes.

Under the Rules, those notes are personal to the juror and should not be invaded by the court.

Mr. Marcus said that the proposed amendments to Rule 5-606 add new subsection (b)(2), permitting a juror to testify to certain statements as part of an inquiry into the validity of the verdict. A cross reference to *Peña-Rodriguez* follows the new subsection. Mr. Marcus explained that the draft contains bracketed language which goes beyond statements of racial bias and includes other impermissible biases.

Mr. Laws commented that subsection (b)(2) is explicitly made applicable only in criminal cases. He acknowledged that this comports with the holding in *Peña-Rodriguez* but pointed out that jurors also act on inappropriate biases in civil cases. Mr. Marcus replied that Mr. Laws's point is well-taken and agreed that the same issue can arise in civil matters. He said that the Committee can consider striking the clause limiting the amendment to criminal actions. He pointed out that there is a risk that the amendment could trigger a proliferation of litigation trying to impeach jury verdicts, but that the stakes are higher in a criminal action, which could make the risk worthwhile. Mr. Wells said that he shares Mr. Laws's concerns regarding civil cases. He added that he was involved in a personal injury case where a juror refused to engage in deliberations and would not find in favor of the plaintiff

because she was a young, black, single mother. He said that other jurors contacted the plaintiff's attorney after the fact.

Mr. Marcus said that the bracketed language is based on *Peña-Rodriguez*, which involved a Mexican defendant. He said that, arguably, that could be bias based on race, ethnicity, or national origin. Mr. Shellenberger pointed out that "age" is included in the bracketed language, which concerned him if a remark about the defendant's age could trigger inquiry into the jury verdict. Mr. Marcus said that it would have to be a clear statement of animus based on the characteristic, not just a comment.

Judge Chen remarked that Fed.R.Evid. 606 broadly refers to "extraneous prejudicial information [that is] improperly brought to the jury's attention" and does not distinguish between civil and criminal matters. Judge Nazarian pointed out that *Peña-Rodriguez* is explicitly grounded in the Sixth Amendment, which is limited to criminal matters. He said that he would be in favor of applying the policy to both civil and criminal cases, but he is unsure whether the Maryland Supreme Court would agree. Mr. Brown said that the same qualifications exist for jurors whether sitting on a civil or criminal jury. Both kinds of juries must be fair and impartial and free of impermissible bias. Mr. Brown moved to delete "to convict a criminal

defendant" from the end of subsection (b)(2). The motion was seconded and approved by consensus.

Judge Chen suggested that the Rule could refer to a "constitutionally impermissible stereotype." Mr. Wells commented that limiting the amendment to the Rule to adding race in accordance with *Peña-Rodriguez* does not fully address the equal justice concerns that are being discussed. He suggested sending the Rule to the Court with the bracketed language so that the Court can have a discussion. Mr. Shellenberger suggested that making the provision broad may lead to less debate because there is less discussion of what is "missing." Ms. Doyle said that, if the Rule is modeled after the federal Rule, it does not have to attempt to list the categories. Mr. Marcus replied that the Subcommittee also discussed only adding a cross reference to the *Peña-Rodriguez* exception.

Ms. Meredith asked Judge Chen to repeat her suggestion. Judge Chen replied that instead of including "based on race" and the bracketed language, the Rule could permit testimony about a "clear statement made by a juror indicating that the juror relied on a constitutionally impermissible stereotype." Mr. Marcus said that he is concerned with introducing the idea of constitutionality without being more specific. Mr. Laws moved to amend subsection (b)(2) to refer to "racial classification or other unconstitutional stereotype or animus." Mr. Zavin asked

whether that language refers to the Federal or State Constitution. Judge Nazarian replied that it would refer to both.

Ms. Meredith said that she is both concerned about undermining juror discussions and that the Supreme Court will disfavor the bracketed language. Mr. Marcus agreed that erosion of the general principle that jurors cannot impeach a verdict is dangerous. He added that the question for the Committee is what reason, if any, justifies an exception. He pointed out that the trial judge will be the backstop determining what is appropriate. Judge Anderson said that the Federal Rule is vague so that it can be applied case-by-case where there are clear statements of any kind which unduly influence a jury.

Mr. Laws restated his motion for Rule 5-609 (b)(2) to state, "relied on a racial classification or other unconstitutional stereotype or animus." The Reporter commented that "classification" may be misleading as individuals could be properly "classified" in a case, such as a class action alleging disparate treatment based on race. Mr. Laws agreed to remove the word "classification." Mr. Brown commented that the language does not get at the "undue influence" portion of the Federal Rule. Mr. Marcus replied that he likes being close to the holding in *Peña-Rodriguez*. Ms. Meredith seconded Mr. Laws's motion. Mr. Brown reiterated that he liked the wording of the

Federal Rule, which addresses both improper bias as well as other outside influences on jurors. The Chair remarked that it is troubling to encourage opening up a jury's verdict to scrutiny after it is issued, and counsel has had the opportunity to poll each juror to ask them to individually verify that juror's vote.

The Chair called for a vote on the motion. Mr. Shellenberger said that he is opposed to the amendment and would like to see the scope of the Rule limited to the exception in *Peña-Rodriguez*. Mr. Laws's motion passed by a majority vote with four voting against.

There being no further motion to amend or reject the proposed amendments to Rule 5-606, the Rule was approved as amended.

Agenda Item 8. Consideration of a policy question regarding the burden of proof for a violation of probation in criminal actions.

Mr. Marcus presented Rule 4-347, Proceedings for Revocation of Probation, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-347 by specifying a burden of proof of "beyond a reasonable doubt" in subsection (e)(2) for an alleged failure to obey all laws, as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

(a) How Initiated

Proceedings for revocation of probation shall be initiated by an order directing the issuance of a summons or warrant. The order may be issued by the court on its own initiative or on a verified petition of the State's Attorney or the Division of Parole and Probation. The petition, or order if issued on the court's initiative, shall state each condition of probation that the defendant is charged with having violated and the nature of the violation.

Cross reference: See Code, Criminal Procedure Article, § 6-223.

(b) Notice

A copy of the petition, if any, and the order shall be served on the defendant with the summons or warrant.

Cross reference: For victim notification procedures, see Code, Criminal Procedure Article, §§ 11-104, 11-503, and 11-507.

(c) Release Pending Revocation Hearing

Unless the judge who issues the warrant sets conditions of release or expressly denies bail, a defendant arrested upon a warrant shall be taken before a judicial officer of the District Court or before a judge of the circuit court without unnecessary delay or, if the warrant so specifies, before a judge of the District Court or circuit court for the purpose of

determining the defendant's eligibility for release.

(d) Waiver of Counsel

The provisions of Rule 4-215 apply to proceedings for revocation of probation.

(e) Hearing

(1) Generally

The court shall hold a hearing to determine whether a violation has occurred and, if so, whether the probation should be revoked. The hearing shall be scheduled so as to afford the defendant a reasonable opportunity to prepare a defense to the charges. Whenever practicable, the hearing shall be held before the sentencing judge or, if the sentence was imposed by a Review Panel pursuant to Rule 4-344, before one of the judges who was on the panel. With the consent of the parties and the sentencing judge, the hearing may be held before any other judge. The provisions of Rule 4-242 do not apply to an admission of violation of conditions of probation.

Cross reference: See *State v. Peterson*, 315 Md. 73 (1989), construing the third sentence of this subsection. For procedures to be followed by the court when a defendant may be incompetent to stand trial in a violation of probation proceeding, see Code, Criminal Procedure Article, § 3-104.

(2) Conduct of Hearing

The court may conduct the revocation hearing in an informal manner and, in the interest of justice, may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses. A violation of probation based solely on an alleged failure to obey all laws must be proven beyond a reasonable doubt. The defendant shall be given the opportunity to admit or deny the alleged violations, to testify, to present

witnesses, and to cross-examine the witnesses testifying against the defendant. If the defendant is found to be in violation of any condition of probation, the court shall (A) specify the condition violated and (B) afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

Cross reference: See *Hersch and Cleary v. State*, 317 Md. 200 (1989), setting forth certain requirements with respect to admissions of probation violations, and *State v. Fuller*, 308 Md. 547 (1987), regarding the application of the right to confrontation in probation revocation proceedings. For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, § 6-231.

Source: This Rule is new.

Mr. Marcus said that Agenda Item 8 does not come to the Committee as a Subcommittee recommendation. The Criminal Rules Subcommittee discussed whether to alter the burden of proof for finding a violation of probation if the underlying conduct is criminal. This change was proposed in the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("EJC Report"). Mr. Marcus explained that the current burden of proof for an alleged violation of probation is preponderance of the evidence. A standard term of probation is to "obey all laws," and the EJC Report pointed out that, for a conviction, a violation of the law must be proven beyond a

reasonable doubt. The Report contends that it is unfair to subject the same alleged conduct to a lower burden of proof to find a violation of probation, which can have significant consequences for the defendant.

Mr. Marcus reiterated that the Subcommittee could not reach a consensus and wished to refer the matter to the Committee for discussion. He said that there was a lot of skepticism about the proposed change, and some argued that it would "cripple" the violation of probation system to require a burden of proof equivalent to a full-blown criminal trial. He pointed out that a probation agreement is a contract between the defendant and the court, and an alleged violation of probation is a breach of that contract. Mr. Marcus noted that the purpose of the EJC Rules Review Subcommittee was to look at the Rules and identify issues for consideration and discussion. The Criminal Rules Subcommittee was reluctant to recommend the proposed change but wanted to elevate the issue to the full Committee for discussion.

Ms. Doyle asked if there was any data indicating a disparate impact on marginalized individuals under the current system. Mr. Marcus replied that proceedings for violation of probation are initiated by a probation officer and no data has been presented indicating that violations are being initiated based on bias. He pointed out that prosecutors usually wait to

pursue a violation of probation until the trial on the underlying criminal conduct has concluded and the defendant has been found guilty beyond a reasonable doubt. The conviction is then more than sufficient to meet the preponderance of the evidence standard to show a violation of probation. He asked Mr. Shellenberger how many times in his career he has pursued a violation of probation without a conviction for the underlying conduct. Mr. Shellenberger responded that he has done so three times in 20 years, based on the specific circumstances of those cases.

The Chair commented that there may be a situation where an individual on probation is arrested with a massive quantity of drugs. If there is some sort of defect in the prosecution resulting in an inability to pursue the criminal case, she said that the prosecutor may still wish to go forward with the violation of probation. She cautioned that changing this system could make judges reluctant to place individuals on probation in the first place if it will be more difficult to prove a violation. Judge Nazarian pointed out that, in the Chair's example, the defendant probably violated additional terms of the probation besides the admonishment to "obey all laws." He suggested that prohibiting specific conduct can permit the court to find by a preponderance of the evidence that the defendant

violated probation without getting into whether the defendant committed a crime while on probation.

Judge Nazarian informed the Committee that the points in the judicial process where there is discretion are the points where bias can become a problem. He said that, despite a violation of probation being a civil matter, the result can still be incarceration for the defendant. He added that the idea behind the proposed change is to resolve the disconnect but said that he took Mr. Shellenberger's point that it is rare for a prosecutor to pursue a violation without first obtaining a conviction.

Mr. Shellenberger reminded the Committee that the Subcommittee did not recommend the change, just requested that it be discussed by the full Committee. He pointed out that most states use the preponderance standard for alleged criminal conduct as a violation of probation. Mr. Zavin agreed that it is rare to see a prosecutor pursue a violation of probation after an acquittal, but when it does happen it can be serious. He said that he has only encountered that scenario once in his career.

The Chair called for a motion to amend Rule 4-347. No motion was made.

Agenda Item 9. Consideration of proposed amendments to Rule 4-213.1 (Appointment, Appearance, or Waiver of Attorney at Initial Appearance) and Rule 4-271 (Trial Date).

Mr. Marcus presented Rule 4-213.1, Appointment, Appearance, or Waiver of Attorney at Initial Appearance, and Rule 4-271, Trial Date, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-213.1 by correcting a typographical error in subsection (g)(1) and by adding clarifying language to subsections (g)(1) and (g)(2), as follows:

Rule 4-213.1. APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT INITIAL APPEARANCE

...

(g) Provisional and Limited Appearance

(1) Provisional Representation by Public Defender

Unless a District Court commissioner has made a final determination of indigence and the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance shall be provisional**, shall terminate automatically upon the conclusion of that stage of the criminal action, and does not commence the time for setting a trial date pursuant to Rule 4-271**. For purposes of this section, eligibility for provisional representation shall be

determined by a District Court ~~**commission**~~ **commissioner** prior to or at the time of the proceeding.

(2) Limited Appearance

Unless a general appearance has been entered pursuant to Rule 4-214, an appearance by a court-appointed or privately retained attorney shall be limited to the initial appearance before the judicial officer, ~~and~~ shall terminate automatically upon the conclusion of that stage of the criminal action, and does not commence the time for setting a trial date pursuant to Rule 4-271.

(3) Inconsistency with Rule 4-214

Section (g) of this Rule prevails over any inconsistent provision in Rule 4-214.

Committee note: The entry of a provisional or limited appearance in accordance with this Rule does not constitute the entry of an appearance for the purpose of bringing, prosecuting, or defending an action and does not require the payment of a fee under Code, Courts Article, § 7-204.

Source: This Rule is new but is derived, in part, from amendments proposed to Rule 4-216 in the 181st Report of the Standing Committee on Rules of Practice and Procedure.

Rule 4-213.1 was accompanied by the following Reporter's note:

Proposed amendments to Rules 4-213.1 and 4-271 clarify the impact of limited appearances in criminal cases on the "*Hicks* Rule." A trial court judge brought the question to the Rules Committee of whether an attorney entering a limited appearance in a criminal action pursuant to Rule 4-213.1 starts the *Hicks* timeline.

Code, Criminal Procedure Article, § 6-103 and Rule 4-271 both provide that a trial date must be set within 30 days after the earlier of the appearance of

counsel or the first appearance of the defendant before the circuit court. However, neither the Rule, the Code, nor case law directly address whether the "appearance of counsel" includes the entry of a limited appearance as permitted by Rule 4-213.1 for an initial appearance.

A limited appearance pursuant to Rule 4-213.1 terminates automatically upon conclusion of the relevant stage of the criminal action. The Committee note following section (g) explains, at least for purposes of collecting fees, "The entry of a provisional or limited appearance in accordance with this Rule does not constitute the entry of an appearance for the purpose of bringing, prosecuting, or defending an action…" Accordingly, the limited appearance contemplated by Rule 4-213 is distinguished from an "appearance of counsel" otherwise referenced in other Rules.

Considering that a limited appearance pursuant to Rule 4-213.1 is only for the purposes of a proceeding and not for the action, amendments to subsections (g)(1) and (g)(2) are proposed to clarify that the entry of a limited appearance pursuant to the Rules does not commence the time for setting a trial date.

An additional amendment is proposed in subsection (g)(1) to clarify that provisional representation by the Office of the Public Defender automatically terminates, parallel to the automatic termination contemplated in subsection (g)(2). A review of the Rules history suggests that a provision about automatic termination was inadvertently removed from an earlier version of subsection (g)(1).

The provisions in current Rule 4-213.1 (g) were initially proposed as new subsection (e)(2) of Rule 4-216 in the 181st Report to implement the holding of *DeWolfe v. Richmond*. The language proposed in the 181st Report and adopted by Rules Order provided: "Provisional representation by the Public Defender or representation by a court-appointed attorney shall be limited to the initial appearance before the judicial officer and *shall terminate automatically* upon the conclusion of that stage of the criminal action, unless

representation by the Public Defender is extended or renewed pursuant to Rule 4-216.1." (emphasis added).

In the 183rd Report, the provisions in Rule 4-216 (e)(2) were moved to new Rule 4-213.1 (g), where they are still found. The 183rd Report explained that there was no intent to change the content of this section when moving it to the new Rule: "Sections (e), (f), and (g), dealing, respectively, with waiver of the right to an attorney, participation of attorneys by electronic means or telecommunication, and provisional or limited appearances, were included in the 181st Report and were approved in that context by the Court." Similarly, the Reporter's note for Rule 4-213.1 in the 183rd Report confirms that no major changes were intended, stating: "Section (g), pertaining to provisional and limited appearances, carries forward the provisions of Rule 4-216 (e)(2)." Despite noting that no major changes were intended, the language providing that a provisional or limited appearance would automatically terminate appeared only in the subsection concerning court-appointed or privately retained attorneys.

Code provisions suggest that the language regarding automatic termination is applicable to provisional representation by the Office of the Public Defender. Code, Criminal Procedure Article, § 16-210 (d)(3) states:

> (i) For the purpose of an initial appearance proceeding or bail review, a District Court commissioner shall make a preliminary determination as to whether an individual qualifies as indigent.
> …
> (iii) Representation at the initial appearance shall terminate at the conclusion of the proceeding, unless the commissioner has made a final determination that the individual qualifies as indigent and the Office has entered a general appearance.

In light of the Rules history and § 16-210, it appears that the language regarding automatic termination was inadvertently removed from

subsection (g)(1) when the provisions were moved to new Rule 4-213.1 in the 183rd Report. Accordingly, proposed amendments to Rule 4-213.1 (g)(1) add language clarifying that provisional representation by the Office of the Public Defender terminates unless a final determination is made by the District Court commissioner or a general appearance is entered pursuant to Rule 4-214.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-271 by adding clarifying language to section (a), as follows:

Rule 4-271. TRIAL DATE

(a) Trial Date in Circuit Court

(1) The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel pursuant to Rule 4-214 or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events. When a case has been transferred from the District Court because of a demand for jury trial, and an appearance of counsel entered in the District Court was automatically entered in the circuit court pursuant to Rule 4-214 (a), the date of the appearance of counsel for purposes of this Rule is the date the case was docketed in the circuit court. On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date. If a circuit court trial date is changed, any subsequent changes of the trial date may be made only by the county administrative judge or that judge's designee for good cause shown.

Cross reference: See Code, Criminal Procedure Article, § 6-103; see also *Jackson v. State*, 485 Md. 1 (2023).

(2) Upon a finding by the Chief Justice of the Supreme Court that the number of demands for jury trial filed in the District Court for a county is having a critical impact on the efficient operation of the circuit court for that county, the Chief Justice, by Administrative Order, may exempt from this section cases transferred to that circuit court from the District Court because of a demand for jury trial.

(b) Change of Trial Date in District Court

The date for trial in the District Court may be changed on motion of a party, or on the court's initiative, and for good cause shown.

Committee note: Subsection (a)(1) of this Rule is intended to incorporate and continue the provisions of Rule 746 from which it is derived. Stylistic changes have been made.

Source: This Rule is derived as follows:

Section (a) is in part derived from former Rule 746 a and b, and is in part new.

Section (b) is derived from former M.D.R. 746.

Rule 4-271 was accompanied by the following Reporter's note:

Proposed amendments to Rules 4-213.1 and 4-271 clarify the impact of limited appearances in criminal cases on the "Hicks Rule." For further discussion, see the Reporter's note to Rule 4-213.1.

Rule 4-271 (a) provides that a trial date must be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213. A proposed amendment to Rule 4-271 (a)(1) notes that the subsection refers to an appearance of counsel entered pursuant to Rule 4-214, addressing the entry of appearance of defense counsel. The added language makes clear that the beginning of the 30-day period is

not triggered by a provisional or limited appearance entered pursuant to Rule 4-213.1.

Mr. Marcus informed the Committee that the proposed amendments to Rules 4-213.1 and 4-271 clarify certain portions of the Rules governing initial appearances and the "*Hicks* Rule" for setting a trial date. He said that Rule 4-213.1, when drafted to implement *DeWolfe v. Richmond*, 434 Md. 444 (2013), provided for an attorney's appearance for the limited purpose of representation at an initial appearance proceeding. The Committee was asked to clarify whether the appearance of an attorney at the initial appearance commenced the time for setting a trial date pursuant to Rule 4-271.

Mr. Marcus said that the proposed amendments to Rule 4-213.1 (g)(1) and (g)(2) clarify that a provisional or limited appearance does not trigger *Hicks*. Ms. Doyle commented that Rule 4-271 explicitly states that *Hicks* is triggered by the first appearance in circuit court. She questioned whether the clarification is necessary. The Chair asked whether this came to the Committee as a question from a judge. Mr. Marcus confirmed that it did. The Chair told the Committee that it appears that the proposed amendments do not break new ground but merely clarify existing law in response to a question. Mr. Marcus noted that the bolded language was added to Rule 4-213.1

after the Subcommittee meeting to provide additional clarification.

A motion to approve the proposed amendments to Rule 4-213.1 was made, seconded, and approved by consensus. Mr. Marcus said that the proposed amendment to Rule 4-271 is similarly clarifying in nature. A motion to approve the proposed amendment to Rule 4-271 was made, seconded, and approved by consensus. The bolded language was added after the Subcommittee meeting.

The Reporter informed the Committee that there were two information items: an update on *Rouse v. Moore, et al.*, 724 F.Supp.3d 410 (D.Md. 2024), *appeal filed* (4th Cir. Dec. 24, 2024), and a summary of post-conviction laws and Rules compiled by the Committee staff which will be shared with the Judiciary and made publicly available.

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