

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Ninety-Third Report to the Court of Appeals, transmitting thereby proposed new Rule 16-901 and proposed amendments to the Rules in Title 16, Chapter 900; Rules 1-202, 1-322.1, 1-324, 2-508, 2-512, 3-508, 4-263, 4-312, 6-125, 6-210, 6-302, 6-317, 7-206.1, 8-102, 8-206, 9-203, 9-205.2, 9-205.3, 15-1101, 16-102, 16-103, 16-110, 16-203, 16-204, 16-505, 16-601, 17-304, 17-403, 17-405, 18-100.2, 18-102.9, 18-102.11, 18-103.8, 18-103.9, 18-103.11, 18-103.12, 18-202.9, 18-302, 18-401, 18-501, 18-603, 19-104, 19-501, 19-711, 19-734, 19-752, 20-101, 20-102, 20-103, 20-104, 20-105, 20-106, 20-107, 20-109, 20-201, 20-203, 20-204, 20-205, 20-301, 20-402, 20-405, 20-501, 20-504; and Forms 9-102.2, 9-102.4, and 9-102.5.

The Committee's One Hundred Ninety-Third Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before May 17, 2017 any written comments they may wish to make to:

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Bessie M. Decker
Clerk
Court of Appeals of Maryland

April 17, 2017

The Honorable Mary Ellen Barbera,
Chief Judge

The Honorable Clayton Greene, Jr.

The Honorable Sally D. Adkins

The Honorable Robert N. McDonald,

The Honorable Shirley M. Watts

The Honorable Michele D. Hotten

The Honorable Joseph M. Getty,
Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Ninety-Third Report, and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The Report comprises ten categories of suggested changes.

Category One consists of amendments to Rules 8-102 and 19-501 requested by the Court.

The amendment to Rule 8-102 changes the commencement of the annual Terms of the Court of Appeals and Court of Special Appeals from the first Monday in September to September 1. Consistent with the language defining the Terms of the Circuit Courts, the amendment defines the Terms as being for accounting and statistical reporting purposes. It makes clear that the expiration of a Term does not affect the jurisdiction or authority of the Court with respect to actions and matters then pending.

Two amendments are proposed to Rule 19-501, which creates the Court's Standing Committee on Pro Bono Legal Service. Subsection (a)(2)(f) is amended to permit the Court to appoint more than one member from the general public. That change was

requested by the Court. We have added as well an amendment to subsection (a)(3) to provide that, at the end of a member's term, the member continues to serve until a successor is appointed. That is taken from Rule 18-302 (c)(3), dealing with the Judicial Ethics Committee, and is presented for the Court's consideration.

Category Two consists of an amendment to Rule 9-205.3, to permit two additional categories of individuals eligible to serve as custody evaluators - a Maryland licensed graduate social worker with at least two years of experience in certain fields, and a licensed clinical professional counselor. That expansion was recommended by Judges Sheila Tillerson-Adams and Cynthia Callahan.

Category Three consists of conforming the Rules that currently mention "retired" and "recalled" judges to the new designation of "senior judges." That is done by defining the term "senior judge" in Rule 1-202 (z) and substituting the new term throughout the other Rules. The Court's attention is called to the exception noted in Rule 1-202 with respect to the term "senior judge" as used in Rules 16-103 and 16-601. In those Rules, the term has a special meaning.

Category Four consists of amendments to several probate Rules dealing with the method of sending notices by registers of wills to interested persons. Those Rules were before the Court recently in Category Nine of the 191st Report. The Committee had recommended that first notices to interested persons be given by both certified mail and regular first-class mail. A group of registers, who had initially proposed that such notices be given by regular first-class mail, proposed to the Court that the notices be given by first-class mail, return service requested. The Court remanded the matter to the Committee to address that proposal. The Committee has done so and agrees with the registers' current position. It recommends that Rules 6-125, 6-210, 6-302 (b), and 6-317 be amended accordingly.

Category Five consists of amendments to the Title 20 Rules (MDEC). When the original MDEC Rules were being developed and drafted, the structure and capacities of MDEC had not fully taken shape, and, in several respects, the expectations of the Administrative Office of the Courts, the Rules Committee, and the Court have not been realized as the system developed further and was put into operation. The fact is that the system in place, and not capable of immediate change, is, in some instances, inconsistent with the text of the current Rules, and

it is the Rules that need to be modified. Most of the proposed changes were recommended by the MDEC Executive Steering Committee chaired by District Court Chief Judge John P. Morrissey and are more ones of style or clarification than substance, but a number of the proposed changes are substantive.

Some of the terminology used in the Rules is proposed for change - "affected" and "applicable," as adjectives, are changed to "MDEC." Those changes appear in several of the Title 20 Rules. A Committee note is added to the definition of "MDEC System" in Rule 20-101 (m) to explain the binary structure of MDEC - the "electronic file and serve" and the "electronic case management" components - and the functions of each.

That has significance in the new definition of "MDEC system outage" in Rule 20-101 (q) and in Rules 20-106 (b) and 20-501, dealing with the consequences of an MDEC system outage. In a "nutshell," an MDEC system outage occurs only when the primary electronic service provider - currently Tyler Technologies - is incapable of receiving or transmitting electronic submissions, not when a secondary electronic service provider is so incapable or when one or more courthouses are experiencing a problem. The Committee was advised that, so long as the primary electronic service provider is capable of receiving and transmitting electronic submissions, those submissions will be in the system, even if they cannot be acted on immediately.

An amendment to Rule 20-103 permits the policies and procedures developed by the State Court Administrator to include, with the approval of the Chief Judge of the Court of Appeals, the approval of pilot projects to test the fiscal and operational efficacy of those projects. One of those possible pilot projects is mentioned in Rule 20-201 (m), but there may be others as well.

Several changes are recommended to Rule 20-104, dealing with user registration. As initially envisioned, an individual could have only one user registration. As part of the registration process, the individual would be assigned by MDEC (1) a unique user identification number that could not be changed, and (2) a username and a password that the registrant could change which, in combination with the user identification number, would enable the registered user to file and access submissions. The unique user identification number for attorneys was to be the attorney's Client Protection Fund number. See current Rule 20-104 (c).

That approach has never been implemented; MDEC does not assign a unique user identification number, or a username, or a password to anyone. Instead, as part of the registration process, attorneys supply to MDEC their Client Protection Fund number, which merely identifies them as attorneys, as well as the username and password they select. The Committee was advised that, since the initial roll-out of MDEC in 2014, only two non-attorneys have sought registration, and, in those two instances, an MDEC official required forms of identification that she believed necessary.

It was anticipated that attorneys who are employed by a government agency, such as a State's Attorney's or County Attorney's Office but are permitted to have a private practice or may act as self-represented litigants in their own personal cases, may need to file submissions in two different capacities and that the capacity in which they file a submission needs to be made clear.

The procedure for dealing with that was left to the policies and procedures developed by the State Court Administrator, which follow the initial premise that an individual may have only one registration. The 2016 Policies and Procedures Manual provides that, if an individual is employed by a government agency or other entity but may be filing submissions privately as well, the individual must supply to the State Court Administrator an individual e-mail address when filing submissions privately. The individual "may have only one user registration and one unique user registration number but will need two e-mail addresses." See *MDEC Policies and Procedures* (MDEC v1.15), page 13.

That, too, the Committee was advised, needs to be changed. MDEC can accommodate and will insist upon separate registrations rather than permitting a registrant to operate under one registration with two or more different e-mail addresses.

In order to conform the Rules with the practice, amendments to Rule 20-104 are proposed that (1) would permit the registered user application form to require information necessary to identify the applicant with particularity, (2) delete references to the unique user identification number, (3) delete the prohibition against multiple registrations, and (4) require an applicant for registration to provide information regarding any existing registration. A proposed Committee note following Rule 20-104 (b) explains the change.

An important change is made in Rule 20-109 (e)(2) dealing with remote access, as explained in the Committee note following that subsection. That change is reflected as well in amendments to Rule 16-902 (k)(2) noted in **Category Six**.

When the Rules Committee first began work on developing the MDEC Rules in 2012, it presented to the Court, for a policy determination, the issue of what level of access the public should have to electronic (MDEC) records. At the time, when all, or at least most, case records were in paper form, anyone who wanted to inspect them necessarily had to travel to the courthouse where they were kept. That would not be the case under MDEC - the records could be made remotely accessible, and the question was whether and to what extent they should be.

The Court was aware that the U.S. District Court in Maryland had in place a system whereby members of the public, through a subscription service (PACER), could remotely access unshielded case records filed in that Court. Concerns were raised, however, about the impact on personal privacy and security if members of the public, for mischievous (or worse) purposes, were able to access case records filed in the State courts from their laptops at home. The argument was advanced that, because of the much greater number and diversity in the kinds of cases filed in State Courts - domestic, foreclosure, personal injury cases - the prospect of harm was greater than what might flow from access to Federal case documents. Requiring people to come to the courthouse provided what commonly was termed a "practical obscurity." People were not likely to make that effort unless they had some special need for the information.

The Court held a public hearing on the remote access issue and decided, at least at the inception of MDEC, to retain that "practical obscurity" by allowing access to the electronic case records only through terminals provided by the Judiciary for that purpose at the courthouse where the case records were filed. During the discussion, members of the Court left open the prospect of reconsidering that decision after MDEC was in place for a while.

MDEC is now operating in 10 counties and, before the end of the year, is expected to migrate to seven more, and four more in 2018. The MDEC Executive Steering Committee has recommended a limited expansion of that provision, to permit electronic access to unshielded information in case records filed in the District Court or any of the Circuit Courts from terminals or kiosks in

any Maryland District Court or Circuit Court courthouse. That is reflected in the amendments to Rule 20-109 (e)(2) and the Committee note following that subsection and in amendments to the definition of "remote access" in Rule 16-902 (k)(2).

Another significant change is the proposed deletion of the requirement of a certificate of redaction of restricted information, which requires amendments to Rules 20-106 (d), 20-201 (f), and 20-203 (c). This has been a recurrent issue, both for paper filings and electronic submissions.

Even before the adoption in 2004 of the "access to court records" Rules, now in Chapter 900 of Title 16, certain kinds of case records and certain information in case records were not accessible to the public. As part of the "access" Rules, the Court adopted what is now Rule 16-911, requiring filers to inform the clerk, in writing, whether the record, any part of the record, or any information in the record was "confidential," so that it could be shielded. That was to avoid the clerk having to read through every filing looking for that kind of information.

By the time the MDEC Rules were being drafted nine years later, concern over public access to confidential information, particularly identifying information, had heightened. The Committee, and ultimately the Court, sought to deal with that problem not just by shielding such information that appeared in case records but also by precluding it from being inserted in those records unless there was some special reason for it to be included and, in that event, requiring the filer to file a redacted version as well. Only the redacted version would be subject to public inspection. See Rule 20-201 (f). A similar, though not identical, provision with respect to certain identifying information was included in a new Rule 1-322.1. To implement those requirements, the filer was required to include with a filing a certificate that there was no such information in the filing or, if there was, that a redacted version was attached. See former Rule 1-322.2 and Rule 20-201 (f)(1)(B).

The certificate of redaction requirement in Rule 1-322.2, which took effect July 1, 2014, lasted only a month. Shortly after its approval by the Court, belated opposition to it surfaced from the Circuit Court clerks, and the Rule was repealed. The duty under Rule 1-322.1 not to include such information in a filing remained, but the requirement of a certificate of compliance disappeared. No objection was raised at that time with respect to Rule 20-201 (f), which remains in

effect for MDEC submissions. Enforcement of that requirement is provided for in Rule 20-203 (c), which requires the clerk to strike a submission, other than by a judge or judicial appointee, if it does not contain the required certificate of redaction. There thus exists a posited anomaly that, at least as to specific identifying information, a certificate of redaction is not required in non-MDEC counties, but is required in MDEC counties.

The Committee was asked by the MDEC Executive Steering Committee to resolve that inconsistency by removing the certificate requirement in Rules 20-201 (f) and 20-203 (c), which the Committee has agreed to recommend, notwithstanding one minor problem. Under the current practice, as illustrated in the MDEC Policies and Procedures Manual (MDEC c1.15, page 50), an MDEC submission will not be electronically transmitted unless the filer checks a box on the computer screen that states "[t]his submission includes a written certificate that the submission does not contain any restricted information, OR, if it does, the certificate states the reason and legal basis for including it and I have attached redacted and unredacted copies marked appropriately." The Committee has been advised that that box can be changed (or recently has been changed) to state "In accordance with Maryland Rules 1-322.1 and 20-201 (f), I hereby certify that this submission does not contain any restricted information, OR, if the submission does contain restricted information, I have marked the document(s) "CONFIDENTIAL" in the previous screen."

The amendments to Rules 20-201 (f) and 20-203 (c) will not resolve the anomaly of requiring a certificate only for filings in MDEC counties. The value of those amendments is that the clerk will not be tasked with looking for a separate certificate in MDEC counties and rejecting the filing if one is not present.¹

One final amendment to Rule 20-201 is worthy of note - the addition of a new section (m), which is in three parts. There is in place a program known as "Commissioner Assistant," which allows District Court commissioners to file directly with the District Court docket entries and data regarding the results of pretrial release proceedings they conduct at times when the

¹There appears to be a dispute among some of the Circuit Court clerks as to whether a separate certificate is, in fact, required in light of the box on the computer screen. One or more clerks have been rejecting filings that were not accompanied by a separate certificate; others have not done so.

District Court is not open - nights, weekends, holidays. The advantage is that there is then no delay in the information, particularly of releases, getting into the MDEC system and being available to the law enforcement community. It also saves the clerks from having to enter the data.

The MDEC Executive Steering Committee is contemplating the expansion of that program to the Circuit Courts - when the commissioners conduct pretrial release proceedings emanating from arrests based on warrants issued by a Circuit Court judge. Because that would involve dealing with the 24 clerks' offices that are not part of the District Court structure, the State Court Administrator wishes to proceed first through a pilot project. Subsection (m)(1) deals with those matters. It makes clear that the clerks, in both the District and Circuit Courts, remain responsible for reviewing the data entered by the commissioners and correcting any clerical errors in the form or language of the docket entries, which mirrors the duty they have under Rule 20-203 (b) with respect to filings by others.

Subsection (m)(2) deals with a different, but similar issue. In many of the Circuit Courts, there are employees (other than judges' secretaries and law clerks) who serve at the pleasure of the court or the administrative judge but who are paid by the county. They are not attached to the clerk's office but may perform tasks that, in other counties, are performed by employees in the clerk's office, and who file information that needs to be docketed. Assignment commissioners and trust clerks are examples. Subsection (m)(2) permits the clerk, with the approval of the administrative judge, to authorize those employees to enter data directly into the MDEC system, subject to review and correction of any clerical errors in the form or language of docket entries by the clerk.

This is not intended as a direct authority for those employees to perform that function but merely allows the clerks to permit them to do so; nor is this intended to include judges' secretaries or law clerks. Judges may permit their secretaries and law clerks to physically transmit filings, as an agent for the judge, but this amendment would not permit them to enter anything on their own behalf.

One change of significance in Rule 20-203, aside from conforming to the change in Rule 20-201 dealing with certificates of redaction, is in section (d). Under the current Rule, when the clerk issues a deficiency notice based on a filing not complying with a Title 20 Rule or a policy or

procedure of the State Court Administrator, no action is taken on the submission until the deficiency is corrected. That "remedy" was added in 2015, but it leaves the submission in limbo.

At the request of the MDEC Executive Steering Committee, the Rules Committee proposes to substitute a provision that, unless the deficiency is corrected or withdrawn within ten days, the submission will be stricken. In particular, upon receipt of the deficiency notice, the filer, if he or she disputes that there is a deficiency, may request the administrative judge or that judge's designee to order the clerk to withdraw the notice. Unless (1) the court issues such an order, or (2) the dispute is otherwise resolved within ten days after the notice was sent, the court shall strike the submission.

A change proposed to Rule 20-402, dealing with the transmittal of records to an appellate court, is largely clarifying and updating but important enough to call to the Court's attention. Maryland was one of the first States to include the appellate courts in an initial roll-out of its electronic filing and case management system. It was initially anticipated that the electronic part of the trial court record would be electronically transmitted to the appellate court. As transmitted in the 176th Report, the Rule simply stated that "the clerk of the trial court shall transmit in an electronic format that portion of the record filed electronically."

Before the Court could act on that, the Committee was advised that MDEC was unable to accommodate an actual electronic transmittal of the record, at least not for the then-foreseeable future. In a Supplement to that Report, the Committee substituted the language that now appears in Rule 20-402, which leaves open the prospect that, at some point, MDEC would be able to implement the initial proposal but, in the meanwhile, provides an alternative approach. Under the current Rule (and practice), the electronic record remains where it is, but the trial court clerk enters a notice on the docket that, as of the time of the notice, the electronic part of the record is within the custody of the appellate court, and the judges, clerks, and other judicial officials of the appellate court have unrestricted remote access to that record. The electronic part of the record is not actually transferred into the appellate court's case management system.

It appears now, four years later, that MDEC is still incapable of actually transmitting the electronic part of the

record, and no change in that incapacity is on the horizon. Some updating and clarification of the Rule has been recommended, however, by the MDEC Executive Steering Committee and the Clerk of the Court of Special Appeals. The Rules Committee proposes eliminating the prospect of any direct transmittal of the electronic portion of the record and clarifying more precisely the functional transmittal process from the trial court to the appellate court and vice versa. At the request of the Office of the Public Defender, Rule 20-402 is amended also to make clear that, when electronic disks or tapes are offered or admitted into evidence but not transcribed, those physical items must be included in the non-electronic part of the record. Apparently, in some instances, that has not happened.

Conforming amendments are proposed to Rules 1-324 and 7-206.1. In the latter Rule, a substantive change also is proposed. At the request of the Workers' Compensation Commission, Rule 7-206.1 was adopted in 2015. Because Commission proceedings are electronically recorded, section (d) was added to require, in judicial review actions where the Commission is required to transmit the record to a Circuit Court in an MDEC county, that the Commission "shall" file the record electronically. The Committee has been advised, however, that there are technical difficulties with directly transmitting the Commission's record electronically into the MDEC system, and that³⁴ because of the size of some of the Commission's records, the electronic filing of those records has proved cumbersome for the Commission. At the request of counsel to the Commission, the Committee recommends that "shall" be changed to "may."

Category Six consists of a general updating of the "access" Rules in Title 16, Chapter 900. As noted, those Rules were adopted in 2004 but have been amended from time to time. Most of the amendments proposed in this Report are stylistic or clarifying in nature, although there are some substantive changes.

CaseSearch. One matter of major importance that was considered by the Rules Committee but was recommitted to the General Court Administration Subcommittee for further study, was a new Rule 16-911, dealing with the CaseSearch program. That program was developed by units within the Administrative Office of the Courts and came into being as an administrative undertaking, without the benefit of any Rule, in 2006. It provides free remote public access to certain information in civil, criminal, and traffic cases -- mostly docket entries,

calendaring events, and peripheral information but not actual case records.

The program has become highly popular with various segments of society, but it also has raised concerns both among judicial officials and some legislators regarding the impact of the easy remote access to that information on the ability of some people who have been caught up in civil, criminal, or traffic litigation to obtain employment, housing, credit, and insurance. The Committee expects that it will have a Rule for the Court to consider in the near future but decided not to delay transmittal of the other access Rules that are in need of updating. The proposal before the Court in this Report shows Rule 16-911 as "Reserved."

Rule 16-901. Proposed Rule 16-901, dealing with the scope of the Chapter 900 Rules, is new. Its function is to point out that these Rules concern access by the **public** and do not constrain access by judicial officials and employees when acting in their official capacity. It also calls attention to some other Rules that bear on public access.

Rule 16-902. Several amendments are proposed to Rule 16-902 (Definitions). The most ubiquitous is substituting "judicial record" for "court record." That is mostly because of the inclusion within the Chapter of administrative records, many of which are generated or collected by units within the Administrative Office of the Courts or other judicial agencies, are not filed in any court, and have little or no direct relevance to any case. They are judicial records because they are in the custody of a judicial agency, but they are not court records.

The definition of "custodian" in new section (e) is rewritten, mostly for clarification. The substantive amendments to section (k), dealing with access to electronic records has been noted already in the discussion to Rule 20-109. The intent of that change is to permit the public to have electronic access to case records through a terminal or kiosk located in any District or Circuit Court courthouse in the State. Currently, such access is available only through a terminal located in the courthouse where the record was filed. See also Rule 16-910 (c). The new definition does this by declaring that access through a terminal or kiosk located in any such courthouse in the State does not constitute remote access.

Section (1) adds a new definition of "special judicial unit," which consists of the State Board of Law Examiners, the Attorney Grievance Commission, the Commission on Judicial Disabilities, and their respective sub-units. The reason for that is that those agencies have their own confidentiality provisions which control the extent of public access to their records and proceedings.

Rule 16-903. The proposed amendments to Rule 16-903 are mostly conforming or clarifying ones. The deletion of subsection (c)(2) reflects the fact that no administrative order has ever been issued and none is currently contemplated. The language in section (f) has been moved to Rule 16-901.

Rules 16-904, 16-905, and 16-906. The proposed amendments to those Rules are principally updating, conforming, and clarifying ones.

Rule 16-907. Two changes of substance are proposed in Rule 16-907. Current section (c) requires the sealing of petitions for protective orders under Code, Family Law Article §4-504 until the earlier of 48 hours after the petition is filed or when the court acts on the petition. It is not uncommon for there to be delays in obtaining service of the petition, and lifting the seal on the petition prior to service can result in harm to the petitioner and evasion of service. The Committee recommends substituting "service or denial of the petition" for the current provision. The Committee also believes that the exclusions in current section (f) for documents filed in guardianship cases are too narrow and that there are other documents filed in such cases that contain sensitive financial information. The language in section (g) is deleted because it is covered by the Rules dealing with the special judicial units.

Rule 16-908. No changes of substance are recommended to Rule 16-908.

Rule 16-909. With one exception, the changes proposed to Rule 16-909 merely reflect the structural changes within the Administrative Office of the Courts. The exception is the deletion of subsection (f)(6). The Committee believes that, with the ability of the requester of electronic access to databases to negotiate during the review process, there is no need for a "second bite at the apple" if, in the end, the request is denied by the Chief Judge of the Court of Appeals.

Current Rules 16-910, 16-911, and 16-912 are renumbered, but no substantive changes to them are proposed. Conforming amendments are proposed to Rules 1.322.1, 2-512, 4-263, 4-312, 9-203, 9-205.2, 15-1103, 16-203, 16-204, 16-505, 19-104, and 20-504.

Category Seven consists of amendments to three attorney discipline Rules recommended by former Bar Counsel.

Rule 19-711. Rule 19-711 (b)(2) permits Bar Counsel to dismiss a complaint that is without merit or fails to allege facts which, if true, would demonstrate professional misconduct or incapacity. Occasionally -- particularly when some alleged misconduct on the part of an attorney is publicized in the news media -- individuals who have no personal knowledge of the underlying facts are prompted to file complaints. Bar Counsel may pursue an investigation on his or her own initiative or based on other information but doesn't wish to "dismiss" the individual duplicative complaints, in part because of an inability due to confidentiality constraints to explain to the various complainants why their facially meritorious complaints are being dismissed. To deal with that, the Committee recommends an amendment to the Rule permitting Bar Counsel to "decline to pursue" those complaints that are duplicative of a complaint that is being pursued.

Rule 19-711 (b)(3) permits Bar Counsel, with the approval of the Attorney Grievance Commission, to defer action on a complaint where the allegations in the complaint are substantially similar to those pending in a court proceeding. At Bar Counsel's request, the Committee recommends giving Bar Counsel the same authority, subject to the same conditions, where the issues in a complaint are under investigation by a law enforcement, regulatory, or other disciplinary agency.

Rule 19-734. Three principal amendments are proposed to Rule 19-734, dealing with conservatorship proceedings. Bar Counsel may file such a proceeding when (1) an attorney dies, is disbarred, suspended, or placed on inactive status, is otherwise incapacitated, or has abandoned his or her practice, (2) there are open client matters, and (3) there appears to be no one willing and capable of conducting the attorney's client affairs. The principal responsibility of the conservator is to take charge of the client files and the attorney's trust account and take appropriate action to protect the clients. An amendment to section (a) recognizes that such a conservatorship may exist along with the administration of the attorney's general estate

by a personal representative if the attorney has died or a guardian in the event the attorney is legally disabled. A Committee note calls attention to the different roles of the conservator and those other fiduciaries.

Amendments to section (b) permit the emergency appointment of a conservator to provide immediate protection of the client files and trust accounts. Normally, although Bar Counsel may file the petition, another attorney will be appointed as the conservator. An addition to section (b) also provides for service of the petition on certain interested parties.

Rule 19-752. A new section (i) is proposed to Rule 19-752 to preclude an individual who has been disbarred or suspended and who has filed a petition for reinstatement that was denied by the Court of Appeals from filing another such petition within a year after the earlier petition was denied, except upon an order of the Court for good cause. The basis for the amendment is that, when a petition for reinstatement is filed, Bar Counsel must make an investigation and determine whether to support, oppose, or take no position on the petition, which often requires considerable time and effort. Former Bar Counsel advised that, when coming upon some circumstance -- possibly the failure of the attorney to comply adequately with some condition -- that may cause Bar Counsel to oppose the petition, there often is discussion with the petitioner regarding the matter in an effort to resolve the problem, but, if the petitioner insists on proceeding and fails to gain reinstatement, there should be a minimum time period before another petition may be filed, absent permission from the Court.

Category Eight consists of an amendment to Rule 18-103.9 that would permit orphans' court judges, other than the Circuit Court judges in Harford and Montgomery Counties who sit as orphans' court judges in those counties, to conduct ADR proceedings under certain conditions and limitations. The amendment was recommended by the Conference of Orphans' Court Judges and is explained in the Reporter's Note to that Rule.

Category Nine consists of amendments to Forms 9-102.2, 9-102.4, and 9-102.5 pertaining to adoptions and guardianships that terminate parental rights that were recommended by the Attorney General's Office.

Finally, **Category 10** consists of amendments to Rules 2-508 and 3-508. Those amendments were included in the 178th Report as conforming amendments to Rule 16-804, dealing with

conflicting assignments undertaken by attorneys. In light of opposition from several attorneys, the Court deferred action on Rules 16-804, 2-508, and 3-508 and remanded them to the Committee for further consideration. The Committee revised Rule 16-804 to resolve concerns that had been expressed by the attorneys and included the revision in the Committee's 191st Report, and the Court adopted the revised Rule. Unfortunately, the Committee omitted to include the conforming amendments to Rules 2-508 and 3-508 in the 191st Report, and they are submitted as part of this Report.

For the further guidance of the Court and the public, following each proposed new Rule and amendment to an existing Rule is a Reporter's note describing in further detail the reasons for the proposals. *We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation.* They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc

cc: Bessie M. Decker, Clerk

Rule 8-102

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-102 by adding language stating that the term of each appellate court is for accounting and statistical reporting purposes; by changing the beginning date of a term to September 1; by providing August 31 as the end date of a term; by adding language providing that the expiration of a term does not affect the jurisdiction or authority of the court with respect to pending actions and matters; and by making stylistic changes, as follows:

Rule 8-102. TERM OF COURT

(a) For accounting and statistical reporting purposes, Each
each appellate court shall have one term annually, beginning on the second Monday in September 1 of each year and continuing until the beginning of the next term following August 31.

(b) The expiration of a term does not affect the
jurisdiction or authority of the court with respect to actions
and matters then pending.

Source: This Rule is derived from former Rules 1003 and 803.

Rule 8-102

REPORTER'S NOTE

In response to a request by the Court of Appeals, Rule 8-102 is proposed to be amended by changing the date of the term of each appellate court from the second Monday in September to September 1 through August 31 of the following year. The Rule clarifies the expiration of a term does not affect the jurisdiction or authority of the court with respect to actions and matters then pending.

Rule 19-501

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 500 - PRO BONO LEGAL SERVICES

AMEND Rule 19-501 by substituting the words "at least one" for the word "a" in subsection (a)(2)(F), by providing that at the end of a member's term the member continues to serve until a successor is appointed, by adding provisions concerning the service of a member appointed after a term has begun, and by making stylistic changes, as follows:

Rule 19-501. STATE PRO BONO COMMITTEE AND PLAN

(a) Standing Committee on Pro Bono Legal Service

(1) Creation

There is a Standing Committee of the Court of Appeals on Pro Bono Legal Service.

(2) Members

The Standing Committee consists of the following members appointed by the Court of Appeals:

(A) eight members of the Maryland Bar, including one from each appellate judicial circuit and one selected from the State at large;

(B) a maximum of three Circuit Court judges selected from nominees submitted by the Conference of Circuit Judges;

Rule 19-501

(C) a maximum of three District Court judges selected from nominees submitted by the Chief Judge of the District Court;

(D) the Public Defender or a designee of the Public Defender;

(E) a representative from the Legal Aid Bureau, Maryland Volunteer Lawyers Service, Pro Bono Resource Center of Maryland, and one other pro bono referral organization; and

(F) a at least one member of the general public.

(3) Terms; ~~Chair~~

The term of each member is three years. A member may be reappointed to serve one or more additional terms. At the end of a term, a member continues to serve until a successor is appointed. Unless reappointed, a member who is appointed after a term has begun serves only for the rest of the term until a successor is appointed.

(4) Chair

The Court of Appeals shall designate one of the members as chair.

~~(4)~~ (5) Consultants

The Standing Committee may designate a reasonable number of consultants from among court personnel or representatives of other organizations or agencies concerned with the provision of legal services to persons of limited means.

. . .

Rule 19-501

REPORTER'S NOTE

Rule 19-501 (a) is proposed to be amended to (1) permit the appointment of more than one member of the general public to the Standing Committee of the Court of Appeals on Pro Bono Legal Service, (2) provide that a member continues to serve at the end of the member's term until a successor is appointed, (3) provide for a term of less than three years if a member is appointed after a term has begun, and (4) make stylistic changes.

Rule 9-205.3

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

AMEND Rule 9-205.3 (d) to add two categories of professionals to the list of individuals who may qualify to serve as a custody evaluator, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

. . .

(d) Qualifications of Custody Evaluator

(1) Education and Licensing

A custody evaluator shall be:

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

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

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

(D) a Maryland licensed certified social worker-clinical

Rule 9-205.3

or a clinical social worker with an equivalent level of licensure in any other state;

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

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

(2) Training and Experience

In addition to complying with the continuing requirements of his or her field, a custody evaluator shall have training or experience in observing or performing custody evaluations and shall have current knowledge in the following areas:

- (A) domestic violence;
- (B) child neglect and abuse;
- (C) family conflict and dynamics;
- (D) child and adult development; and
- (E) impact of divorce and separation on children and

adults.

(3) Waiver of Requirements

Rule 9-205.3

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

. . .

REPORTER'S NOTE

A circuit court judge requested an amendment to Rule 9-205.3 to include another category of professionals who could qualify to be custody evaluators -- licensed clinical professional counselors (LCPC). The judge noted that LCPCs have the requisite education and training to qualify. When this request was discussed with other judges, one of them pointed out that licensed graduate social workers (LGSW) with two years of experience in family issues also could qualify to be custody evaluators. The Rules Committee recommends the addition of both of these types of professionals to the list of those who may be appointed or approved by the court to serve as a custody evaluator.

Rule 1-202

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 to add a definition of the term "senior judge" and a related cross reference, as follows:

Rule 1-202. DEFINITIONS

In these rules the following definitions apply except as expressly otherwise provided or as necessary implication requires:

. . .

(z) Senior Judge

"Senior judge" means: (1) in Rules 16-103 and 16-601, an incumbent judge with the longest continuous period of incumbency on the court on which the judge serves, and (2) in all other Rules, an individual who (A) once served as a judge on the District Court, a circuit court, or an appellate court of this State, (B) retired from that office voluntarily or by operation of law by reason of age, and (C) has been approved for recall to sit as a judge pursuant to Md. Constitution, Art. IV, §3A and Code, Courts Article, §1-302.

Cross reference: For a use of the term "senior judge" consistent with the definition in Rule 1-202 (z)(1), see Md. Constitution, Art. IV, §18 (b)(5).

Rule 1-202

~~(z)~~ (aa) Sheriff

"Sheriff " means the sheriff or a deputy sheriff of the county in which the proceedings are taken, any elisor appointed to perform the duties of the sheriff, and, with respect to the District Court, any court constable.

~~(aa)~~ (bb) Subpoena

"Subpoena" means a written order or writ directed to a person and requiring attendance at a particular time and place to take the action specified therein.

~~(bb)~~ (cc) Summons

"Summons" means a writ notifying the person named in the summons that (1) an action against that person has been commenced in the court from which the summons is issued and (2) in a civil action, failure to answer the complaint may result in entry of judgment against that person and, in a criminal action, failure to attend may result in issuance of a warrant for that person's arrest.

~~(cc)~~ (dd) Writ

"Writ" means a written order issued by a court and addressed to a sheriff or other person whose action the court desires to command to require performance of a specified act or to give authority to have the act done.

Source: This Rule is derived as follows:

. . .
Section (z) is new.

Rule 1-202

Section ~~(z)~~ (aa) is derived from former Rule 5 cc.
Section ~~(aa)~~ (bb) is derived from former Rule 5 ee.
Section ~~(bb)~~ (cc) is new.
Section ~~(ee)~~ (dd) is derived from former Rule 5 ff.

REPORTER'S NOTE

An Administrative Order by Chief Judge Mary Ellen Barbera dated August 25, 2016 directed that certain retired judges who had been referred to as "recalled judges" would henceforth be referred to as "senior judges."

To conform terminology in the Maryland Rules with the Administrative Order, Rule 1-202 is proposed to be amended by adding a new section defining the term "senior judge." Because the term "senior judge" presently is used in Md. Const. Art. IV, §18 (b)(5) and Rules 16-103 and 16-601, the proposed definition in Rule 1-202 (z) reflects both the existing and the new usages of the term.

Conforming amendments are proposed to Rules 8-206, 16-102, 16-103, 16-110, 16-601, 17-304, 17-403, 18-100.2, 18-102.9, 18-102.11, 18-103.8, 18-103.9, 18-103.11, 18-103.12, 18-202.9, 18-302, 18-401, 18-501, 18-603, and 20-101.

In Rules 18-302, 18-603, and 20-101, judges who are approved for recall are referred to as "former judges." Conforming amendments are proposed to those Rules as well to refer to those judges as senior judges.

Rule 8-206

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

AMEND Rule 8-206 to substitute the word "senior" for the word "retired," as follows:

Rule 8-206. ADR; SCHEDULING CONFERENCE; ORDER TO PROCEED

(a) ADR

Upon the filing of an appellant's information report pursuant to Rule 8-205, the Court of Special Appeals may enter an order referring the parties, their attorneys, or both to a prehearing conference or mediation pursuant to the Rules in Title 17, Chapter 400.

(b) Scheduling Conference

(1) Order to Attend

Upon the filing of any appeal to the Court of Special Appeals, the Chief Judge or a judge designated by the Chief Judge, on motion of a party or on the judge's own initiative, may enter an order directing the parties, their attorneys, or both, to appear before an incumbent or ~~retired~~ senior judge of the Court at a time and place specified in the order or to be determined by the designated judge.

Rule 8-206

(2) Purposes

The primary purposes of a scheduling conference are to identify and attempt to resolve any special procedural issues and to examine ways to expedite the appeal, if practicable. The participants may discuss:

(A) any claim that the appeal is not timely, that there is no final or otherwise appealable judgment, that the appeal is moot, or that an issue sought to be raised in the appeal is not preserved for appellate review and, in the absence of an agreement to dismiss the appeal or limit the issues, whether it is feasible for any such issue to be presented to the Court in an appropriate preliminary motion;

(B) whether there are any problems with or any dispute over the record and how any such problem or dispute may be resolved;

(C) if there will be no substantial disagreement as to the relevant facts, whether it is feasible to proceed on an agreed statement of the case in lieu of a record and record extract, pursuant to Rule 8-413 (b);

(D) if there are multiple parties raising similar issues, whether one or more consolidated briefs may be feasible and whether any adjustments to the timing and length of such briefs may be useful;

Rule 8-206

(E) if the appeal will hinge on one or two issues of Statewide importance, whether a petition to the Court of Appeals for certiorari may be useful;

(F) whether, because of existing or anticipated circumstances, further proceedings in the Court of Special Appeals should be expedited or delayed; and

(G) any other administrative matter or issue that may make the appellate process more efficient or expeditious.

(3) Implementing Order

Within 30 days after conclusion of a scheduling conference, the parties or the judge may present to the Chief Judge a proposed order to implement any agreements or determinations made at the conference. The Chief Judge shall review a proposed order and proceed in the manner set forth in Rule 17-404 (f)(2) and (3).

(4) Sanctions

Upon the failure of a party or attorney to comply with an order entered under subsection (b)(1) of this Rule, the Court, after an opportunity for a hearing, may impose any appropriate sanction, including (A) dismissal of the appeal, (B) assessing against the party or attorney the reasonable expenses caused by the failure, including reasonable attorney's fees, and (C) assessing against the party or attorney all or part of the appellate costs.

Rule 8-206

(c) Order to Proceed

The Court shall enter an order to proceed with the appeal in conformance with the Rules in this Title if (1) the Court does not enter an order under section (a) or (b) of this Rule, or (2) at the conclusion of ADR ordered pursuant to section (a) or a scheduling conference ordered pursuant to section (b), it appears that the appeal will not be dismissed.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 16-102

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-102 to substitute the word "senior" for the word "retired," as follows:

Rule 16-102. CHIEF JUDGE OF THE COURT OF APPEALS

The Chief Judge of the Court of Appeals is the administrative head of the Maryland judicial system and has overall responsibility for the administration of the courts of this State. In the execution of that responsibility, the Chief Judge:

(a) may exercise the authority granted by the Maryland Constitution, the Maryland Code, the Maryland Rules, or other law;

(b) shall appoint a State Court Administrator to serve at the pleasure of the Chief Judge;

(c) may delegate administrative duties to other persons within the judicial system, including ~~retired~~ senior judges recalled pursuant to Code, Courts Article, §1-302; and

(d) may assign judges pursuant to Rule 16-108 (b).

Source: This Rule is derived from former Rule 16-101 a (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 16-103

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-103 to add a cross reference to Rule 1-202

(z)(1), as follows:

Rule 16-103. CHIEF JUDGE OF THE COURT OF SPECIAL APPEALS

Subject to the provisions of this Chapter, other applicable law, and the direction of the Chief Judge of the Court of Appeals, the Chief Judge of the Court of Special Appeals is responsible for the administration of the Court of Special Appeals and, with respect to that court and to the extent applicable, has the authority of a County Administrative Judge. In the absence of the Chief Judge of the Court of Special Appeals, the provisions of this Rule shall be applicable to the senior judge present in the Court of Special Appeals.

Cross reference: For the definition of a "senior judge" as used in this Rule, see Rule 1-202 (z)(1).

Source: This Rule is derived from former Rule 16-101 b (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 16-110

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-110 to substitute the word "senior" for the words "retired and recalled" in the name of a certain Committee and to delete a reference to that Committee from a Committee note, as follows:

Rule 16-110. JUDICIAL COUNCIL

(a) Existence

There is a Judicial Council.

(b) Membership; Chair

The Judicial Council consists of:

(1) the Chief Judge of the Court of Appeals, who is the Chair of the Judicial Council;

(2) the Chief Judge of the Court of Special Appeals;

(3) the Chair and Vice Chair of the Conference of Circuit Judges;

(4) the Chief Judge of the District Court;

(5) the State Court Administrator;

(6) the Chair and Vice Chair of the Conference of Circuit Court Clerks;

Rule 16-110

(7) the Chair and Vice Chair of the Conference of Circuit Court Administrators;

(8) the Chair of the Court of Appeals Standing Committee on Rules of Practice and Procedure;

(9) the Chief Clerk of the District Court; and

(10) the Chair of the ~~Retired and Recalled~~ Senior Judges Committee; and

(11) three circuit court judges, three District Court judges, and two District Administrative Clerks appointed by the Chief Judge of the Court of Appeals.

Committee note: The Conference of Circuit Court Clerks, and the Conference of Circuit Court Administrators, ~~and the Conference of Retired and Recalled Judges Committee~~ are created and exist only by Administrative Order of the Chief Judge of the Court of Appeals. The inclusion of their Chairs or Vice Chairs on the Judicial Council is not intended to affect the authority of the Chief Judge to alter or revoke those Administrative Orders.

(c) Terms of Appointed Members; Vacancies

(1) The term of each member appointed by the Chief Judge of the Court of Appeals is two years, subject to reappointment for one additional term of two years.

(2) If a vacancy occurs because an appointed member dies, resigns, or leaves the judicial office or office as an administrative clerk that the member occupied when appointed to the Judicial Council, the Chief Judge may appoint a successor to serve for the balance of the unexpired term.

(d) Duties; Authority

Rule 16-110

(1) The Judicial Council serves as the principal advisory body to the Chief Judge of the Court of Appeals with respect to the exercise of the Chief Judge's authority as the administrative head of the State judicial system.

Cross reference: See Article IV, §18 of the Maryland Constitution.

(2) The Chief Judge, as Chair of the Judicial Council, may create committees, subcommittees, and work groups:

(A) to consider matters relevant to the functioning and improvement of the Maryland Judiciary and the administration of justice in the State; and

(B) to make appropriate recommendations to the Judicial Council.

(3) The Chair of the Judicial Council shall make an annual report.

(e) Secretary

The Chief Judge of the Court of Appeals shall designate an individual to serve as Secretary to the Judicial Council.

(f) Meetings

(1) The Judicial Council shall meet on the call of the Chief Judge of the Court of Appeals.

(2) Unless impracticable due to exigent circumstances, the Secretary to the Judicial Council shall cause notice of all meetings of the Council to be posted on the Judiciary's website,

Rule 16-110

and, subject to reasonable space limitations, all such meetings shall be open to the public. Minutes shall be kept of all meetings and posted on the Judiciary website.

Source: This Rule is derived from former Rule 16-802 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 16-601

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

AMEND Rule 16-601 to add a cross reference to Rule 1-202

(z)(1), as follows:

Rule 16-601. DEFINITIONS

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

(a) Extended Coverage

"Extended coverage" means the recording or broadcasting of court proceedings by the use of recording, photographic, television, radio, or other broadcasting equipment operated by:

(1) the news media; or

(2) a person engaged in the preparation of an educational film or recording relating to the Maryland legal or judicial system and intended for instructional use in an educational program offered by a public or accredited educational institution.

(b) Local Administrative Judge

"Local Administrative Judge" means the County

Rule 16-601

Administrative Judge of a circuit court and the District
Administrative Judge of the District Court.

(c) Party

"Party" means a named litigant of record who has appeared
in the proceeding.

(d) Proceeding

"Proceeding" means any trial, hearing, oral argument on
appeal, or other matter held in open court which the public is
entitled to attend.

(e) Presiding Judge

(1) "Presiding judge" means a judge designated to preside
over a proceeding which is, or is intended to be, the subject of
extended coverage.

(2) Where action by a presiding judge is required by the
Rules in this Chapter, and no judge has been designated to
preside over the proceeding, "presiding judge" means the Local
Administrative Judge.

(3) In an appellate court, "presiding judge" means the Chief
Judge of that court or the senior judge of a panel of which the
Chief Judge is not a member.

Cross reference: For the definition of a "senior judge" as used
in this Rule, see Rule 1-202 (z)(1).

Source: This Rule is derived from former Rule 16-109 a (2016.)

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 17-304

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 300 - PROCEEDINGS IN THE DISTRICT COURT

AMEND Rule 17-304 to change a certain reference from a retired judge approved for recall to a senior judge, as follows:

Rule 17-304. QUALIFICATIONS AND SELECTION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Qualifications of Court-designated Mediator

To be designated by the court as a mediator, an individual shall:

- (1) unless waived by the parties, be at least 21 years old;
- (2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of (A) Rule 17-104 or (B) for individuals trained prior to January 1, 2013, former Rule 17-106;
- (3) be familiar with the Rules in Title 17 of the Maryland Rules;
- (4) submit a completed application in the form required by the ADR Office;
- (5) attend an orientation session provided by the ADR Office;
- (6) unless waived by the ADR Office, observe, on separate

Rule 17-304

dates, at least two District Court mediation sessions and participate in a debriefing with the mediator after each mediation;

(7) unless waived by the ADR Office, mediate on separate dates, at least two District Court cases while being reviewed by an experienced mediator or other individual designated by the ADR Office and participate in a debriefing with the observer after each mediation;

(8) agree to volunteer at least six days in each calendar year as a court-designated mediator in the District Court day-of-trial mediation program;

(9) abide by any mediation standards adopted by the Court of Appeals;

(10) submit to periodic monitoring by the ADR Office;

(11) in each calendar year complete four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104; and

(12) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(b) Qualifications of Court-designated Settlement Conference Chair

To be designated by the court as a settlement conference chair, an individual shall be:

Rule 17-304

(1) a judge of the District Court;

(2) a ~~retired judge approved for recall for service under Maryland Constitution, Article IV, §3A~~ senior judge; or

(3) an individual who, unless the parties agree otherwise, shall:

(A) abide by any applicable standards adopted by the Court of Appeals;

(B) submit to periodic monitoring of court-ordered ADR by a qualified person designated by the ADR Office;

(C) be a member in good standing of the Maryland Bar and have at least three years experience in the active practice of law;

(D) unless waived by the court, have completed a training program of at least six hours that has been approved by the ADR Office; and

(E) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(c) Procedure for Approval

(1) Filing Application

An individual seeking designation to mediate or conduct settlement conferences in the District Court shall submit to the ADR Office a completed application substantially in the form required by that Office. The application shall be accompanied

Rule 17-304

by documentation demonstrating that the applicant has met the applicable qualifications required by this Rule.

Committee note: Application forms are available from the ADR Office and on the Maryland Judiciary's website, www.mdcourts.gov/district/forms/general/adr001.pdf.

(2) Action on Application

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

(3) Court-approved ADR Practitioner and Organization Lists

The ADR Office shall maintain a list:

(A) of mediators who meet the qualifications of section (a) of this Rule;

(B) of settlement conference chairs who meet the qualifications set forth in subsection (b)(3) of this Rule; and

(C) of ADR organizations approved by the ADR Office.

(4) Public Access to Lists

The ADR Office shall provide to the Administrative Clerk of each District a copy of each list for that District maintained pursuant to subsection (c)(3) of this Rule. The clerk shall make a copy of the list available to the public at each District Court location. A copy of the completed application of an individual on a list shall be made available by the ADR Office upon request.

Rule 17-304

(5) Removal from List

After notice and a reasonable opportunity to respond, the ADR Office may remove a person as a mediator or settlement conference chair for failure to maintain the applicable qualifications of this Rule or for other good cause.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 17-403

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

AMEND Rule 17-403 to substitute the word "senior" for the word "retired," as follows:

Rule 17-403. PREHEARING CONFERENCE

(a) Purpose

The purpose of a prehearing conference is for the parties, their attorneys, or both to meet with an incumbent or ~~retired~~ senior judge of the Court designated by the Chief Judge to discuss:

- (1) settlement of the case, in whole or in part;
- (2) methods of implementing any settlement;
- (3) clarifying or limiting the issues on appeal; and
- (4) if settlement cannot then be agreed upon, whether (A) proceedings should be stayed for a specified period of time to allow further discussions among the parties or attorneys, or (B) it would be useful for the case to be referred to mediation pursuant to Rule 17-404 or for the parties to engage in an ADR process that is not under the auspices of the ADR division.

(b) Order of Chief Judge

An order of the Chief Judge referring the appeal to a

Rule 17-403

prehearing conference shall direct the parties, their attorneys, or both to appear before a designated incumbent or retired judge of the Court at a time and place specified in the order or to be determined by the designated judge.

(c) Scheduling Conference

If the parties are unable to achieve any of the objectives set forth in section (a) of this Rule but agree that a scheduling conference pursuant to Rule 8-206 would be useful, the Chief Judge may authorize the judge who conducted the prehearing conference to conduct a scheduling conference or direct the parties, their attorneys, or both to appear before another judge of the Court designated by the Chief Judge for that purpose.

(d) Order on Completion of Prehearing Conference

(1) In General

Within 30 days after conclusion of a prehearing conference, the parties or the judge may present to the Chief Judge a proposed order to implement any agreements or determinations made at the conference. The Chief Judge shall review the proposed order and proceed in the manner set forth in Rule 17-404 (f)(2) and (3).

(2) Scheduling Conference

Any order implementing actions to be taken pursuant to a scheduling conference conducted pursuant to Rule 8-206 shall be

Rule 17-403

entered in accordance with the procedures set forth in subsection (b)(3) of that Rule.

(3) Copies

The clerk shall send a copy of an order entered under this section to each party.

(e) Sanctions

Upon the failure of a party or attorney to comply with an order entered under section (b) of this Rule, the Court, after an opportunity for a hearing, may impose any appropriate sanction, including (1) dismissal of the appeal, (2) assessing against the party or attorney the reasonable expenses caused by the failure including reasonable attorney's fees, and (3) assessing against the party or attorney all or part of the appellate costs.

(f) Recusal

A judge who conducts a prehearing conference under this Rule may not sit as a member of a panel, including an in banc panel, assigned to hear the appeal if it proceeds, and shall not participate in any court conference regarding a judicial resolution of the appeal or whether an opinion in the appeal should be designated as reported.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 17-405

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

AMEND Rule 17-405 to substitute the word "senior" for the word "retired," as follows:

Rule 17-405. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Initial Approval

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a ~~retired~~ senior judge of the Court of Appeals, the Court of Special Appeals, or a circuit court ~~approved for recall for service under Code, Courts Article, 1-302~~; or (C) a staff attorney from the Court of Special Appeals designated by the Chief Judge;

(2) have (A) completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104, or (B) conducted at least two Maryland appellate mediations prior to January 1, 2014 and completed advanced appellate mediation training approved by the ADR Division;

(3) unless waived by the ADR Division, have observed at least two Court of Special Appeals mediation sessions and have

Rule 17-405

participated in a debriefing with a staff mediator from the ADR Division after the mediations; and

(4) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules;

(b) Continued Approval

To retain approval as a mediator by the Chief Judge, an individual shall:

(1) abide by mediation standards adopted by the Court of Appeals, if any;

(2) comply with mediation procedures and requirements established by the Court of Special Appeals;

(3) submit to periodic monitoring by the ADR Division of mediations conducted by the individual; and

(4) unless waived by the Chief Judge, complete in each calendar year four hours of continuing mediation-related education in one or more topics set forth in Rule 17-104 or any other advanced mediation training approved by the ADR Division.

Source: This Rule is derived from former Rule 17-403 (a) (2015).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-100.2

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 - MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-100.2 to change a certain reference from a retired judge approved for recall to a senior judge, as follows:

Rule 18-100.2. SCOPE

The Rules in this Chapter apply to:

- (a) Incumbent judges of the Court of Appeals, the Court of Special Appeals, the circuit courts, and the District Court;
- (b) Except as otherwise expressly provided in specific Rules, incumbent judges of the Orphans' Courts;
- (c) Except as otherwise expressly provided in specific Rules, ~~retired judges who are approved for recall for temporary service pursuant to Code, Courts Article, §1-302~~ senior judges; and
- (d) Candidates and applicants for judicial office as defined in Rule 18-104.1, to the extent that a Rule expressly applies to such candidates or applicants.

Source: This Rule is derived from paragraph A-109 of former Rule 16-813 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-102.9

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 - MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-102.9 to change a certain reference from a retired judge approved for recall to a senior judge, as follows:

Rule 18-102.9. EX PARTE COMMUNICATIONS (ABA Rule 2.9)

(a) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge out of the presence of the parties or their attorneys, concerning a pending or impending matter, except as follows:

(1) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(2) When circumstances require, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(A) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(B) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(3) A judge may obtain the advice of a disinterested expert

Rule 18-102.9

on the law applicable to a proceeding if the judge (A) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice, and (B) affords the parties a reasonable opportunity to respond.

(4) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge does not decide a case based on adjudicative facts that are not made part of the record, and does not abrogate the responsibility personally to decide the matter.

Cross reference: See Comment [1] to Rule 18-103.9, permitting a judge to engage in prehearing and settlement conferences.

(5) With the consent of the parties, a judge may confer separately with the parties and their attorneys as part of a prehearing or settlement conference conducted pursuant to the Rules in Title 17.

(6) When serving in a problem-solving court program of a circuit court or the District Court pursuant to Rule 16-207, a judge may initiate, permit, and consider ex parte communications in conformance with the established protocols for the operation of the program if the parties have expressly consented to those protocols.

(b) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the

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judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(c) A judge shall not investigate adjudicative facts in a matter independently, and shall consider only the evidence in the record and any facts that may properly be judicially noticed.

(d) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their attorneys shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's attorney, or if the party is self-represented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with attorneys, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may consult with other judges on pending matters, including a ~~retired judge approved for recall~~ senior judge, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[5] The prohibition against a judge investigating adjudicative facts in a matter extends to information available in all mediums, including electronic.

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[6] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of subsection (a)(2) of this Rule.

Committee note: This Rule does not regulate judicial notice of so-called "legislative facts" (facts pertaining to social policy and their ramifications) or of law.

Cross reference: See Rule 5-201.

Source: This Rule is derived from former Rule 2.9 of Rule 16-813 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-102.11

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 - MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-102.11 to substitute the word "senior" for the word "retired," as follows:

Rule 18-102.11. DISQUALIFICATION (ABA Rule 2.11).

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's attorney, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, an individual within the third degree of relationship to either of them, or the spouse or domestic partner of such an individual:

(A) is a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(B) is acting as an attorney in the proceeding;

(C) is an individual who has more than a de minimis interest that could be substantially affected by the proceeding;

or

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(D) is likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or any of the following individuals has a significant financial interest in the subject matter in controversy or in a party to the proceeding:

(A) the judge's spouse or domestic partner;

(B) an individual within the third degree of relationship to the judge; or

(C) any other member of the judge's family residing in the judge's household.

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(A) served as an attorney in the matter in controversy, or was associated with an attorney who participated substantially as an attorney in the matter during such association;

(B) served in governmental employment, and in such capacity participated personally and substantially as an attorney or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

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(C) previously presided as a judge over the matter in another court; or

(D) is a ~~retired~~ senior judge who is subject to disqualification under Rule 18-103.9.

Cross reference: See Code, Courts Article, §1-203 (c) prohibiting a judge from hearing a case in which a partner or employee of the judge's former law firm is an attorney of record during a period in which the judge is receiving a payout of his former interest in the firm.

(b) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(c) A judge subject to disqualification under this Rule, other than for bias or prejudice under subsection (a)(1) of this Rule, may disclose on the record the basis of the judge's disqualification and may ask the parties and their attorneys to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and attorneys agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Rule 18-102.11

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of subsections (a)(1) through (5) apply. In this Rule, "disqualification" has the same meaning as "recusal."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] By decisional law, the rule of necessity may override the rule of recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. When the rule of necessity does override the rule of recusal, the judge must disclose on the record the basis for possible disqualification and, if practicable, use reasonable efforts to transfer the matter to another judge.

[4] A judge should disclose on the record information that the judge believes the parties or their attorneys might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[5] This procedure gives the parties an opportunity to waive the recusal if the judge agrees. The judge may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the judge. A party may act through an attorney if the attorney represents on the record that the party has been consulted and consents. As a practical matter, a judge may request that all parties and their attorneys sign a waiver agreement.

Source: This Rule is derived from former Rule 2.11 of Rule 16-813 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-103.8

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 - MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-103.8 to change a certain reference from retired judges approved for recall to senior judges, as follows:

Rule 18-103.8. APPOINTMENTS TO FIDUCIARY POSITIONS (ABA Rule 3.8)

(a) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for an estate or trust for a member of the judge's family or an individual who is a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(b) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(c) A judge acting in a fiduciary capacity shall be subject

Rule 18-103.8

to the same restrictions on engaging in financial activities that apply to a judge personally.

(d) If an individual who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

(e) Section (a) of this Rule does not apply to ~~retired judges approved for recall under Code, Courts Article, §1-302~~ senior judges.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 18-102.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Source: This Rule is derived from former Rule 3.8 of Rule 16-813 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-103.11

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 - MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-103.11 to change a certain reference from a retired judge approved for recall to a senior judge, as follows:

Rule 18-103.11. FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES
(ABA Rule 3.11)

(a) A judge may hold and manage investments of the judge and members of the judge's family.

(b) Except as permitted by Rule 18-103.7, a judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(c) A judge shall not engage in financial activities permitted under sections (a) or (b) of this Rule if they will:

(1) interfere with the proper performance of judicial duties;

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(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with attorneys or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

(d) This Rule does not apply to ~~retired judges approved for recall under Code, Courts Article, §1-302~~ senior judges.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 18-102.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 18-101.3 and 18-102.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Source: This Rule is derived from former Rule 3.11 of Rule 16-813 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-103.12

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 - MARYLAND CODE OF JUDICIAL CONDUCT

AMEND Rule 18-103.12 to change a certain reference from retired judges approved for recall to senior judges, as follows:

Rule 18-103.12. COMPENSATION FOR EXTRA-JUDICIAL ACTIVITIES (ABA Rule 3.12)

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Cross reference: See Rule 18-103.9 requiring certain disclosures and action by ~~retired judges approved for recall~~ senior judges who provide alternative dispute resolution services.

COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 18-102.1, Code, Family Law Article, §§2-406 and 2-410, and Md. Rules 18-501 through 18-504.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 18-103.15.

Source: This Rule is derived from former Rule 3.12 of Rule 16-813 (2016).

Rule 18-103.12

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-202.9

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 200 - MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

AMEND Rule 18-202.9 to change a certain reference from a retired judge approved for recall to a senior judge, as follows:

Rule 18-202.9. EX PARTE COMMUNICATIONS

(a) A judicial appointee shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judicial appointee out of the presence of the parties or their attorneys, concerning a pending or impending matter, except as follows:

(1) A judicial appointee may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(2) When circumstances require, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(A) the judicial appointee reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(B) the judicial appointee makes provision promptly to

Rule 18-202.9

notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(3) A judicial appointee may obtain the advice of a disinterested expert on the law applicable to a proceeding if the judicial appointee (A) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice, and (B) affords the parties a reasonable opportunity to respond.

(4) A judicial appointee may consult with court staff and court officials whose functions are to aid the judicial appointee in carrying out the judicial appointee's adjudicative responsibilities, or with a judge, provided the judicial appointee does not make a decision based on adjudicative facts that are not made part of the record, and does not abrogate the responsibility personally to decide the matter.

(5) With the consent of the parties, a judicial appointee may confer separately with the parties and their attorneys as part of a settlement conference conducted pursuant to the Rules in Title 17.

(6) When serving in a problem-solving court program of a circuit court or the District Court pursuant to Rule 16-207, a judicial appointee may initiate, permit, and consider ex parte communications in conformance with the established protocols for

Rule 18-202.9

the operation of the program if the parties have expressly consented to those protocols.

Cross reference: See Rule 4-216 (b) limiting ex parte communications with a District Court Commissioner. To the extent of any inconsistency between that Rule and this one, Rule 4-216 (b) prevails.

(b) If a judicial appointee inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judicial appointee shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(c) Unless expressly authorized by law, a judicial appointee shall not investigate adjudicative facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

Cross reference: See Code, Courts Article, §2-607 (c)(2) authorizing District Court Commissioners to conduct investigations and inquiries into the circumstances of matters presented to determine if probable cause exists for the issuance of a charging document, warrant, or criminal summons.

(d) A judicial appointee shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judicial appointee's direction and control.

Rule 18-202.9

COMMENT

[1] To the extent reasonably possible, all parties or their attorneys shall be included in communications with a judicial appointee.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's attorney, or if the party is self-represented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with attorneys, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judicial appointee may consult with judges or other judicial appointees on pending matters, including a ~~retired judge approved for recall~~ senior judge, but must avoid ex parte discussions of a case with judges or judicial appointees who have previously been disqualified from hearing the matter or with a judge whom the judicial appointee knows has been assigned to hear exceptions to the judicial appointee's recommendation in the matter.

[5] The prohibition against a judicial appointee investigating adjudicative facts in a matter extends to information available in all mediums, including electronic.

[6] A judicial appointee may consult ethics advisory committees, outside counsel, or legal experts concerning the judicial appointee's compliance with this Code. Such consultations are not subject to the restrictions of subsection (a)(2) of this Rule.

Committee note: This Rule does not regulate judicial notice of so-called "legislative facts" (facts pertaining to social policy and their ramifications) or of law.

Cross reference: See Rule 5-201.

Source: This Rule is derived from former Rule 2.9 of Rule 16-814 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-302

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 300 - JUDICIAL ETHICS COMMITTEE

AMEND Rule 18-302 to change a certain reference from retired judges approved for recall to senior judges, as follows:

Rule 18-302. EXISTENCE; MEMBERSHIP; TERMS

(a) Creation

There is a Judicial Ethics Committee.

(b) Membership

The Committee consists of 13 members appointed by the Chief Judge of the Court of Appeals. Of the 13 members:

- (1) one shall be a judge of the Court of Special Appeals;
- (2) two shall be circuit court judges;
- (3) two shall be judges of the District Court;
- (4) one shall be a judge of an orphans' court;
- (5) three shall be ~~former~~ senior judges ~~who are approved for recall for temporary service under Code, Courts Article, 1-302;~~
- (6) one shall be a clerk of a circuit court;
- (7) one shall be a judicial appointee as defined in Rule 18-200.3; and
- (8) two shall not be a judge or other official or employee of the Judicial Branch of the State government or an attorney.

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(c) Terms

(1) The term of a member is three years and begins on July 1, except that the former judges appointed pursuant to subsection (b)(5) of this Rule shall not have a term and shall serve at the pleasure of the Chief Judge of the Court of Appeals.

(2) The terms of the members shall be staggered so that the terms of not more than four members expire each year.

(3) At the end of a term, a member continues to serve until a successor is appointed.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.

(5) A member may not serve more than two consecutive three-year terms.

Source: This Rule is derived from sections (b), (c), and (d) of former Rule 16-812.1 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-401

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISCIPLINE

AMEND Rule 18-401 to substitute the word "senior" for the word "retired," as follows:

Rule 18-401. COMMISSION ON JUDICIAL DISABILITIES - DEFINITIONS

The following definitions apply in this Chapter except as otherwise expressly provided or as necessary implication requires:

(a) Address of Record

"Address of record" means a judge's current home address or another address designated in writing by the judge.

Cross reference: See Rule 18-417 (a)(1) concerning confidentiality of a judge's home address.

(b) Board

"Board" means the Judicial Inquiry Board appointed pursuant to Rule 18-403.

(c) Charges

"Charges" means the charges filed with the Commission by Investigative Counsel pursuant to Rule 18-413.

(d) Commission

"Commission" means the Commission on Judicial Disabilities created by Art. IV, §4A of the Maryland

Rule 18-401

Constitution.

(e) Commission Record

"Commission record" means all documents pertaining to the judge who is the subject of charges that are filed with the Commission or made available to any member of the Commission and the record of all proceedings conducted by the Commission with respect to that judge.

Cross reference: See Rule 18-402 (g).

(f) Complainant

"Complainant" means a person who has filed a complaint, and in Rule 18-404 (a), "complainant" also includes a person who has filed a written allegation of misconduct by or disability of a judge that is not under oath or supported by an affidavit.

(g) Complaint

"Complaint" means a written communication under oath or supported by an affidavit alleging that a judge has a disability or has committed sanctionable conduct.

(h) Disability

"Disability" means a mental or physical disability that seriously interferes with the performance of a judge's duties and is, or is likely to become, permanent.

(i) Judge

"Judge" means (1) a judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court,

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or an orphans' court, and (2) a ~~retired~~ senior judge during any period that the ~~retired~~ senior judge has been approved for recall.

Cross reference: See Md. Const., Art. 4, §3A and Code, Courts Article, §1-302.

(j) Sanctionable Conduct

(1) "Sanctionable conduct" means misconduct while in office, the persistent failure by a judge to perform the duties of the judge's office, or conduct prejudicial to the proper administration of justice. A judge's violation of any of the provisions of the Maryland Code of Judicial Conduct promulgated by Title 18, Chapter 100 may constitute sanctionable conduct.

(2) Unless the conduct is occasioned by fraud or corrupt motive or raises a substantial question as to the judge's fitness for office, "sanctionable conduct" does not include:

(A) making an erroneous finding of fact, reaching an incorrect legal conclusion, or misapplying the law; or

(B) failure to decide matters in a timely fashion unless such failure is habitual.

Committee note: Sanctionable conduct does not include a judge's simply making wrong decisions - even very wrong decisions - in particular cases.

Cross reference: Md. Const., Art. IV, §4B (b)(1). For powers of the Commission in regard to any investigation or proceeding under §4B of Article IV of the Constitution, see Code, Courts Article, §§13-401 through 13-403.

Source: This Rule is derived from former Rule 16-803 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-501

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 500 - MARRIAGE CEREMONIES

AMEND Rule 18-501 to change a certain reference from retired judges approved for recall to senior judges, as follows:

Rule 18-501. SCOPE OF CHAPTER

The Rules in this Chapter apply to:

(a) judges of the District Court, a circuit court, the Court of Special Appeals, and the Court of Appeals; and

(b) ~~retired judges approved for recall pursuant to Code, Courts Article, § 1-302~~ senior judges.

Cross reference: See Code, Family Law Article, §2-406, which also contains a list of other officials authorized to perform marriage ceremonies.

Source: This Rule is derived from former Rule 16-821 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

Rule 18-603

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 600 - MISCELLANEOUS PROVISIONS

AMEND Rule 18-603 to delete a definition of the term "former judge," to revise the definition of the term "judge" by changing a reference from a former judge to a senior judge, and to make stylistic changes, as follows:

Rule 18-603. FINANCIAL DISCLOSURE STATEMENT BY JUDGES

(a) Definitions

In this Rule, "judge" means ~~the following definitions~~ apply:

~~(1) Former Judge~~

~~"Former judge" means an individual who previously served as a judge and has been approved for recall for temporary service under Code, Courts Article, § 1-302.~~

~~(2) Judge~~

~~"Judge" means~~ (A) an incumbent judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court and (B) an individual who, in the preceding calendar year, served as an incumbent judge of one of those courts or was a ~~former~~ senior judge.

(b) Requirement

Rule 18-603

Each judge and ~~each former~~ senior judge shall file with the State Court Administrator a financial disclosure statement in the form prescribed by the Court of Appeals. When filed, a financial disclosure statement is a public record.

(c) When Due; Period Covered

(1) Generally

Except as provided in subsection (c)(2) of this Rule, the statement shall be filed on or before April 30 of each year and shall cover the preceding calendar year or that portion of the preceding calendar year during which the individual was a judge or a ~~former~~ senior judge, except that a newly appointed or elected judge or a judge who leaves office shall file a statement within the time set forth in the instructions to the financial disclosure statement form.

(2) Exception

If a judge or other individual who files a certificate of candidacy for nomination for an election to an elected judgeship has filed a statement pursuant to Code, General Provisions Article, §5-610, the individual need not file a financial disclosure statement under this Rule for the same period of time. The State Court Administrator is designated as the individual to receive statements from the State Administrative Board of Election Laws pursuant to Code, General Provisions Article, §5-610.

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(3) Presumption of Filing

A judge's or ~~former~~ senior judge's financial disclosure statement is presumed to have been filed unless the State Court Administrator, no later than five days after the statement was due, notifies the judge or ~~former~~ senior judge that the statement for the preceding calendar year or portion thereof was not received.

(d) Extension of Time for Filing

(1) Application

Except when required to file a statement pursuant to Code, General Provisions Article, §5-610, a judge or ~~former~~ senior judge may apply to the State Court Administrator for an extension of time for filing the statement. The application shall be submitted prior to the deadline for filing the statement and shall set forth in detail the reasons an extension is requested and the date when a completed statement will be filed.

(2) Decision

For good cause, the State Court Administrator may grant a reasonable extension of time for filing the statement. Whether the request is granted or denied, the State Court Administrator shall furnish the judge or ~~former~~ senior judge and the Judicial Ethics Committee with a written statement of the

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reasons for the decision and the facts upon which the decision was based.

(3) Review by Judicial Ethics Committee

A judge or ~~former~~ senior judge may seek review of the State Court Administrator's decision by the Judicial Ethics Committee by filing with the Committee, within ten days after the date of the decision a statement of reasons for the judge's or ~~former~~ senior judge's dissatisfaction with the decision. The Committee may take the action it deems appropriate with or without a hearing or the consideration of additional documents.

(e) Failure to File Statement; Incomplete Statement

(1) Notice; Referral to Judicial Ethics Committee

The State Court Administrator shall (A) give written notice to each judge or ~~former~~ senior judge who fails to file a timely statement or who files an incomplete statement and (B) in the notice, set a reasonable time, not to exceed ten days, for the judge or ~~former~~ senior judge to file or supplement the statement. If the judge or ~~former~~ senior judge fails to correct the deficiency within the time allowed, the State Court Administrator shall report the deficiency to the Judicial Ethics Committee.

(2) Duties of Committee

(A) After an inquiry, the Committee shall determine whether (i) the judge or ~~former~~ senior judge was required to

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file the statement or the omitted information was required to be disclosed, and (ii) if so, whether the failure to file or the omission of the required information was inadvertent or in a good faith belief that the judge or ~~former~~ senior judge was not required to file the statement or to disclose the omitted information.

(B) If the Committee determines that the judge or ~~former~~ senior judge was not required to file the statement or disclose the omitted information, it shall notify the State Court Administrator and the judge or ~~former~~ senior judge and terminate the inquiry.

(C) If the Committee determines that the statement was required to be filed or that the omitted information was required to be disclosed but that the failure to do so was inadvertent or in a good faith belief that the filing or disclosure was not required, the Committee shall send notice of that determination to the State Court Administrator and the judge or ~~former~~ senior judge and, in the notice, set a reasonable time, not to exceed 15 days, within which the judge or ~~former~~ senior judge shall correct the deficiency.

(D) If the Committee (i) finds that the statement was required to be filed or that the omitted information was required to be disclosed and that failure to file or disclose the omitted information was not inadvertent or in a good faith

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belief, or (ii) after notice was given pursuant to subsection (e)(2)(C) of this Rule, the judge or ~~former~~ senior judge failed to correct the deficiency within the time allowed, the Committee shall report the matter to the Commission on Judicial Disabilities and notify the State Court Administrator and the judge or ~~former~~ senior judge that it has done so.

(f) Public Record

When filed, a financial disclosure statement is a public record.

Source: This Rule is derived from former Rule 16-815 (2016).

REPORTER'S NOTE

Rule 18-603 is proposed to be amended by deleting the definition of "former judge" and by substituting the term "senior judge" for the term "former judge" in the definition of "judge" and throughout the Rule. See also the Reporter's note to Rule 1-202.

Rule 6-125

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-125 by replacing "certified mail" with "first-class mail, return service requested" in subsection (a)(1), by adding a new subsection (a)(2) pertaining to service to a forwarding address, by collapsing the forms in subsections (b)(2) and (b)(3) into one form of certificate of service that includes "first-class mail, return service requested," and by revising section (d) to conform with changes to the Rule, as follows:

Rule 6-125. SERVICE

(a) Method of Service — ~~Generally~~

(1) Generally

Except where these rules specifically require that service shall be made by ~~certified mail~~ first-class mail, return service requested, service may be made by (A) personal delivery, ~~or~~ (B) certified mail, ~~by~~ or (C) first-class mail. Service by certified mail is complete upon delivery. Service by first-class mail, including first-class mail, return service requested, is complete upon mailing. If a person is represented by an attorney of record, service shall be made on the attorney

Rule 6-125

pursuant to Rule 1-321. Service need not be made on any person who has filed a waiver of notice pursuant to Rule 6-126.

(2) Service to Forwarding Address

If first-class mail, first-class mail return service requested, or certified mail is returned with a forwarding address, service of the paper shall be made to the forwarding address.

Cross reference: For service on a person under disability, see Code, Estates and Trusts Article, §1-103 (d).

(b) Certificate of Service

(1) When Required

A certificate of service shall be filed for every paper that is required to be served.

~~(2) Service by Certified Mail~~ Form of Certificate of Service

~~If the paper is served by certified mail, the certificate shall be in the following form:~~

~~CERTIFICATE OF SERVICE~~

~~I hereby certify that on this _____ day of _____,~~
~~(month)~~

~~_____ I mailed by certified mail a copy of this paper to the~~
~~(year)~~

~~following persons:~~

~~(name and address)~~

Signature

~~(3) Service by Personal Delivery or First-Class Mail~~

~~If the paper is served by personal delivery or first-class mail, the certificate shall be in the following form:~~

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____,
(month)

_____ I:
(year)

- personally delivered or
- mailed by certified mail, postage prepaid,
- mailed by first-class mail, postage prepaid, or
- mailed by first-class mail, postage prepaid, return service requested,

a copy of this paper to the following persons:

(name and address)

Signature

(c) Affidavit of Attempts to Contact, Locate, and Identify Interested Persons

An affidavit of attempts to contact, locate, and identify interested persons shall be substantially in the following form:

[CAPTION]

AFFIDAVIT OF ATTEMPTS TO CONTACT, LOCATE, AND IDENTIFY INTERESTED PERSONS

I, _____ am: (check one)

[] a party

[] a person interested in the above-captioned matter

[] an attorney.

I have reason to believe that the persons listed below are persons interested in the estate of _____

(Provide any information you have)

Name	Relationship	Addresses
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I have made a good faith effort to contact, locate, or identify the persons listed above by the following means:

I solemnly affirm under the penalties of perjury that the contents of this document are true to be best of my knowledge, information, and belief.

Rule 6-125

Signature

Date

(d) Proof

If there is no proof of actual notice, and (1) first-class mail is returned as undeliverable, with no forwarding address, (2) first-class mail, return service requested, is returned as undeliverable with no forwarding address, or (3) certified mail is sent and no return receipt is received apparently signed by the addressee, ~~and there is no proof of actual notice,~~ no action taken in a proceeding may prejudice the rights of the person entitled to notice unless proof is made by verified writing to the satisfaction of the court or register that reasonable efforts have been made to locate and warn the addressee of the pendency of the proceeding.

Cross reference: Code, Estates and Trusts Article, §1-103 (c).

REPORTER'S NOTE

Rule 6-125 is proposed to be amended to conform to the changes recommended for Rules 6-210, 6-302, and 6-317 regarding how notices in probate proceedings are sent. A new provision is added providing that if first-class mail, "first-class mail, return service requested," or certified mail is returned with a forwarding address, service of the paper shall be made to the forwarding address. Additionally, the two forms of certificates of service in subsections (b)(2) and (b)(3) are collapsed into one certificate applying to any of the four methods of service.

Rule 6-210

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-210 by deleting language referring to a certain obligation of the estate and by replacing service by certified mail with service by "first-class mail, return service requested," as follows:

Rule 6-210. NOTICE TO INTERESTED PERSONS

Promptly after the personal representative files a notice of appointment pursuant to Rule 6-209, ~~at the expense of the estate~~ the register shall send by ~~certified~~ first-class mail, return service requested, to each interested person a copy of that notice and a notice in the following form:

NOTICE TO INTERESTED PERSONS

In accordance with Maryland law, you are hereby given legal notice of the proceedings in a decedent's estate as more fully set forth in the enclosed copy of the newspaper publication or Notice of Appointment.

This notice is sent to all persons who might inherit if there is no will or who are persons designated to inherit under a will.

Rule 6-210

This notice does not necessarily mean that you will inherit under this estate.

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

Any subsequent notices regarding this estate will be sent to you at the address to which this notice was sent. If you wish notice sent to a different address, you must notify me in writing.

Register of Wills

Address

Cross reference: Code, Estates and Trusts Article, §§2-210 and 5-603 (b).

REPORTER'S NOTE

A group of registers of wills had requested that the requirement of sending notices in probate proceedings by certified mail be replaced by sending notices by first-class mail, wherever "certified mail" appears in the Rules in Title 6. The registers said that certified mail is often returned marked "unclaimed," or the return receipt is not returned to them. Some probate practitioners did not agree with this, citing due process concerns. In its One Hundred Ninety-First Report, the Rules Committee recommended that initial notices be sent by both certified and first-class mail, and subsequent notices could be sent by first-class mail.

Rule 6-210

At the hearing on the 191st Report, some registers of wills objected to the proposal that Rules 6-210, 6-302, and 6-317 be amended to require notice by both certified mail and first-class mail. The Court deferred action on those Rules, as well as on Rule 6-125, which had been recommended to be amended to conform to the proposed changes. The Court requested that the four Rules be revised.

With the consent of representatives of the registers of wills, the Rules Committee recommends that in Rules 6-210, 6-302, and 6-317, initial notices in a probate proceeding are to be served by "first-class mail, return service requested," instead of by certified mail. This means that mail that is undeliverable is returned to the sender by the United States Postal Service with either a new address or the reason for nondelivery.

Subsequent notices may be sent by first-class mail.

Rule 6-302

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-302 (b) by deleting a certain time period and adding the word "promptly," by deleting language referring to a certain obligation of the estate, by replacing service by certified mail with service by "first-class mail, return service requested," and by making stylistic changes, as follows:

Rule 6-302. PROCEEDINGS FOR JUDICIAL PROBATE

(a) Service of Petition

A copy of a petition for judicial probate (Rule 6-301 (a)) shall be served by the petitioner on the personal representative, if any.

Cross reference: Code, Estates and Trusts Article, §5-401.

(b) Notice of Judicial Probate

~~Within five days~~ Promptly after receiving the names and addresses of the interested persons, ~~at the expense of the estate the register shall serve on the interested persons send by certified mail~~ first-class mail, return service requested, to each interested person a Notice of Judicial Probate. The register shall publish the notice once a week for two successive weeks in a newspaper of general circulation in the county where

Rule 6-302

judicial probate is requested. The notice shall be in the following form:

[CAPTION]

NOTICE OF JUDICIAL PROBATE

To all Persons Interested in the above estate:

You are hereby notified that a petition has been filed by _____ for judicial probate of the will dated _____ (and codicils, if any, dated _____) and for the appointment of a personal representative. A hearing will be held _____ on _____ (place) _____ at _____ (date) _____ (time).

This hearing may be transferred or postponed to a subsequent time. Further information may be obtained by reviewing the estate file in the office of the Register of Wills.

Register of Wills

Cross reference: Code, Estates and Trusts Article, §§1-103 (a) and 5-403.

(c) Hearing

The court shall hold a hearing on the petition for judicial probate and shall take any appropriate action.

Rule 6-302

Cross reference: Code, Estates and Trusts Article, §5-404.

(d) Notice of Appointment

After a personal representative has been appointed and if no Notice of Appointment has been published, notice shall be in the form as set forth in Rule 6-311 and published as set forth in Rule 6-331 (a).

Cross reference: Code, Estates and Trusts Article, §5-403.

REPORTER'S NOTE

See the Reporter's note to Rule 6-210.

Additionally, the five-day time period in section (b) is proposed to be replaced by the word "promptly."

Rule 6-317

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-317 by deleting language referring to a certain obligation of the estate and replacing service by certified mail with service by "first-class mail, return service requested," as follows:

Rule 6-317. NOTICE TO INTERESTED PERSONS

~~At the expense of the estate, the~~ The register shall send by ~~certified~~ first-class mail, return service requested, to each interested person a copy of the published Notice of Appointment as required by Rule 6-331 (b) and a notice in the following form:

NOTICE TO INTERESTED PERSONS

In accordance with Maryland law, you are hereby given legal notice of the proceedings in a decedent's estate as more fully set forth in the enclosed copy of the newspaper publication or Notice of Appointment.

This notice is sent to all persons who might inherit if there is no will or who are persons designated to inherit under a will.

Rule 6-317

This notice does not necessarily mean that you will inherit under this estate.

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

Any subsequent notices regarding this estate will be sent to you at the address to which this notice was sent. If you wish notice sent to a different address, you must notify me in writing.

Register of Wills

Address

Cross reference: Code, Estates and Trusts Article, §2-210.

REPORTER'S NOTE

See the Reporter's note to Rule 6-210.

Rule 20-101

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-101 by deleting definitions of "Affected Action," "Applicable County," and "Applicable Date"; by adding definitions of "MDEC Action," "MDEC County," "MDEC Start Date," "MDEC System Outage", and "Signature"; in subsection (d)(1), by deleting language pertaining to no pending issues, requests for relief, charges, or outstanding motions and the ending of the court's jurisdiction and by adding the language "final judgment has been entered in the action"; in subsection (d)(2), by deleting language pertaining to no future events scheduled and adding the language "there are no motions, other requests for relief, or charges pending"; by adding the language "together with the signer's typed name" to section (f); in section (j), by deleting the word "former" and substituting the word "senior" and deleting the language "of any of those courts recalled pursuant to Code, Courts Article, §1-302"; by adding explanatory language to the Committee note after section (m); by substituting the words "together with" for the word "above" in section (z); and by making stylistic changes, as follows:

Rule 20-101. DEFINITIONS

Rule 20-101

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

~~(a) Affected Action~~

~~"Affected action" means an action to which this Title is made applicable by Rule 20-102.~~

~~Cross reference: For the definition of an "action" see Rule 1-202.~~

~~(b) (a) Appellate Court~~

~~"Appellate court" means the Court of Appeals or the Court of Special Appeals, whichever the context requires.~~

~~(c) Applicable County~~

~~"Applicable county" means each county in which, pursuant to an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, MDEC has been implemented.~~

~~Committee note: The MDEC Program was implemented in Anne Arundel County on October 14, 2014. It will be installed sequentially in other counties over a period of time by administrative order of the Chief Judge of the Court of Appeals.~~

~~(d) Applicable Date~~

~~"Applicable date" means the date, specified in an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, from and after which a county is an applicable county.~~

~~(e) (b) Business Day~~

Rule 20-101

"Business day" means a day that the clerk's office is open for the transaction of business. For the purpose of the Rules in this Title, a "business day" begins at 12:00.00 a.m. and ends at 11:59.59 p.m.

~~(f)~~ (c) Clerk

"Clerk" means the Clerk of the Court of Appeals, the Court of Special Appeals, or a circuit court, an administrative clerk of the District Court, and authorized assistant clerks in those offices.

~~(g)~~ (d) Concluded

An action is "concluded" when

(1) ~~there are no pending issues, requests for relief, charges, or outstanding motions in the action or the jurisdiction of the court has ended~~ final judgment has been entered in the action;

(2) ~~no future events are scheduled~~ there are no motions, other requests for relief, or charges pending; and

(3) the time for appeal has expired or, if an appeal or an application for leave to appeal was filed, all appellate proceedings have ended.

Committee note: This definition applies only to the Rules in Title 20 and is not to be confused with the term "closed" that is used for other administrative purposes.

~~(h)~~ (e) Digital Signature

"Digital signature" means a secure electronic signature

Rule 20-101

inserted using a process approved by the State Court Administrator that uniquely identifies the signer and ensures authenticity of the signature and that the signed document has not been altered or repudiated.

~~(i)~~ (f) Facsimile Signature

"Facsimile signature" means a scanned image or other visual representation of the signer's handwritten signature, other than a digital signature, together with the signer's typed name.

~~(j)~~ (g) Filer

"Filer" means a person who is accessing the MDEC system for the purpose of filing a submission.

Committee note: The internal processing of documents filed by registered users, on the one hand, and those transmitted by judges, judicial appointees, clerks, and judicial personnel, on the other, is different. The latter are entered directly into the MDEC ~~System~~ electronic case management system, whereas the former are subject to clerk review under Rule 20-203. For purposes of these Rules, however, the term "filer" encompasses both groups.

~~(k)~~ (h) Hand-Signed or Handwritten Signature

"Hand-signed or handwritten signature" means the signer's original genuine signature on a paper document.

~~(l)~~ (i) Hyperlink

"Hyperlink" means an electronic link embedded in an electronic document that enables a reader to view the linked document.

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~~(m)~~ (j) Judge

"Judge" means a judge of the Court of Appeals, Court of Special Appeals, a circuit court, or the District Court of Maryland and includes a ~~former~~ senior judge ~~of any of those courts recalled pursuant to Code, Courts Article, §1-302 and~~ when designated to sit in one of those courts.

~~(n)~~ (k) Judicial Appointee

"Judicial appointee" means a judicial appointee, as defined in Rule 18-200.3.

~~(o)~~ (l) Judicial Personnel

"Judicial personnel" means an employee of the Maryland Judiciary, even if paid by a county, who is employed in a category approved for access to the MDEC system by the State Court Administrator;

~~(p)~~ (m) MDEC or MDEC System

"MDEC" or "MDEC system" means the system of electronic filing and case management established by the ~~Maryland~~ Court of Appeals.

Committee note: "MDEC" is an acronym for Maryland Electronic Courts. The MDEC system has two components. (1) The electronic filing system permits users to file submissions electronically through a primary electronic service provider (PESP) subject to clerk review under Rule 20-203. The PESP transmits registered users' submissions directly into the MDEC electronic filing system and collects, accounts for, and transmits any fees payable for the submission. The PESP also accepts submissions from approved secondary electronic service providers (SESP) that filers may use as an intermediary. (2) The second component - the electronic case management system - accepts submissions

Rule 20-101

filed through the PESP, maintains the official electronic record in an MDEC county, and performs other case management functions.

(n) MDEC Action

"MDEC action" means an action to which this Title is made applicable by Rule 20-202.

(o) MDEC County

"MDEC County" means a county in which, pursuant to an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, MDEC has been implemented.

(p) MDEC Start Date

"MDEC Start Date" means the date specified in an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website from and after which a county first becomes an MDEC County.

(q) MDEC System Outage

(1) For registered users other than judges, judicial appointees, clerks, and judicial personnel, "MDEC system outage" means the inability of the primary electronic service provider (PESP) to receive submissions by means of the MDEC electronic filing system.

(2) For judges, judicial appointees, clerks, and judicial personnel, "MDEC system outage" means the inability of the MDEC electronic filing system or the MDEC electronic case management system to receive electronic submissions.

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~~(q)~~ (r) Redact

"Redact" means to exclude information from a document accessible to the public.

~~(r)~~ (s) Registered User

"Registered user" means an individual authorized to use the MDEC system by the State Court Administrator pursuant to Rule 20-104.

~~(s)~~ (t) Restricted Information

"Restricted information" means information (1) prohibited by Rule or other law from being included in a court record, (2) required by Rule or other law to be redacted from a court record, (3) placed under seal by a court order, or (4) otherwise required to be excluded from the court record by court order.

Cross reference: See Rule 1-322.1 (Exclusion of Personal Identifier Information in Court Filings) and the Rules in Title 16, Chapter 900 (Access to ~~Court~~ Judicial Records).

~~(t)~~ (u) Scan

"Scan" means to convert printed text or images to an electronic format compatible with MDEC.

(v) Signature

Unless otherwise specified, "signature" means any of the following: a digital signature, a facsimile signature, a handwritten signature, or a typographical signature.

~~(u)~~ (w) Submission

"Submission" means a pleading or other document filed in

Rule 20-101

an action. "Submission" does not include an item offered or admitted into evidence in open court.

Cross reference: See Rule 20-402.

~~(v)~~ (x) Tangible Item

"Tangible item" means an item that is not required to be filed electronically. A tangible item by itself is not a submission; it may either accompany a submission or be offered in open court.

Cross reference: See Rule 20-106 (c)(2) for items not required to be filed electronically.

Committee note: Examples of tangible items include an item of physical evidence, an oversize document, and a document that cannot be legibly scanned or would otherwise be incomprehensible if converted to electronic form.

~~(w)~~ (y) Trial Court

"Trial court" means the District Court of Maryland and a circuit court, even when the circuit court is acting in an appellate capacity.

Committee note: "Trial court" does not include an orphans' court, even when, as in Harford and Montgomery Counties, a judge of the circuit court is sitting as a judge of the orphans' court.

~~(x)~~ (z) Typographical Signature

"Typographical signature" means the symbol "/s/" affixed to the signature line of a submission, ~~above~~ together with the typed name, address, e-mail address, and telephone number of the signer.

Rule 20-101

Source: This Rule is new.

REPORTER'S NOTE

Proposed revisions to the Maryland Electronic Courts (MDEC) Rules emanate mostly from proposals by officials of the Administrative Office of the Courts and employees responsible for the MDEC operation. The MDEC system now in place is different in some material respects from what was anticipated when the system was being designed and when the initial MDEC Rules were drafted and adopted. This requires changes to the current Rules.

Most of the changes to Rule 20-101 are stylistic. However, language is added to the definition of "facsimile signature" in section (f) to require the signer's typed name along with the scanned image or other visual representation of the signer's handwritten signature. This is to ensure that the name of the signer can be ascertained. The Committee note after section (m) is expanded to explain the two components of the MDEC system. The system permits users to file submissions electronically through a primary electronic service provider ("PESP"), which also accepts submissions from approved secondary electronic service providers that filers may use as an intermediary. The second component accepts submissions through the PESP, maintains the official electronic record, and performs other case management functions. A definition of "MDEC System Outage" is added in conjunction with the addition of the Committee note. The consequences and benefits afforded under Rule 20-501, MDEC System Outage, only apply if the outage precludes the PESP from receiving or transmitting electronic submissions. They do not apply when the problem is with a secondary electronic service provider or when it is with the court.

A definition of the word "signature" is added as new section (v) of Rule 20-101. This lists the various types of signatures that are defined and used in the Rules in Title 20.

Rule 20-102

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-102 by deleting the word "applicable" from subsections (a)(1) and (a)(2), by adding the acronym "MDEC" before the word "county" and adding the language "MDEC start" before the word "date" in subsections (a)(1) and (a)(2), and by adding the language "by the County Administrative Judge or the Chief Judge of the District Court" after the word "order" in subsection (a)(2), as follows:

Rule 20-102. APPLICATION OF TITLE

(a) Trial Courts

(1) New Actions and Submissions

On and after the ~~applicable~~ MDEC start date, this Title applies to (A) new actions filed in a trial court for an ~~applicable~~ MDEC county, (B) new submissions in actions then pending in that court, (C) new submissions in actions in that court that were concluded as of the ~~applicable~~ MDEC start date but were reopened on or after that date, (D) new submissions in actions remanded to that court by a higher court or the United States District Court, and (E) new submissions in actions transferred or removed to that court.

Rule 20-102

(2) Existing Documents; Pending and Reopened Cases

With the approval of the State Court Administrator, (A) the County Administrative Judge of the circuit court for an ~~applicable~~ MDEC county, by order, may direct that all or some of the documents that were filed prior to the ~~applicable~~ MDEC start date in a pending or reopened action in that court be converted to electronic form by the clerk, and (B) the Chief Judge of the District Court, by order, may direct that all or some of the documents that were filed prior to the ~~applicable~~ MDEC start date in a pending or reopened action in the District Court be converted to electronic form by the clerk. Any such order by the County Administrative Judge or the Chief Judge of the District Court shall include provisions to ensure that converted documents comply with the redaction provisions applicable to new submissions.

(b) Appellate Courts

This Title applies to appeals and other proceedings in the Court of Special Appeals or Court of Appeals seeking the review of a judgment or order entered in any action to which section (a) of this Rule applies. If so ordered by the Court of Appeals in a particular matter or action, the Title also applies to (1) a question certified to the Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act,

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Code, Courts Article, §§12-601 - 12-613; and (2) an original action in the Court of Appeals allowed by law.

(c) Applicability of Other Rules

Except to the extent of any inconsistency with the Rules in this Title, all of the other applicable Maryland Rules continue to apply. To the extent there is any inconsistency, the Rules in this Title prevail.

Source: This Rule is new.

REPORTER'S NOTE

The proposed changes to Rule 20-102 are clarifying and stylistic, substituting terms that are newly defined in amendments to Rule 20-101 for the previous terminology.

Rule 20-103

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-103 by adding language to subsection (b)(1) providing that with the approval of the Chief Judge of the Court of Appeals, policies and procedures may include the approval of pilot projects and programs in one or more courts to test the fiscal and operational efficacy of those projects or programs, and by making stylistic changes, as follows:

Rule 20-103. ADMINISTRATION OF MDEC

(a) General Authority of State Court Administrator

Subject to supervision by the Chief Judge of the Court of Appeals, the State Court Administrator shall be responsible for the administration of the MDEC system and shall implement the procedures established by the Rules in this Title.

(b) Policies and Procedures

(1) Authority to Adopt

The State Court Administrator shall adopt policies and procedures that are (A) necessary or useful for the proper and efficient implementation of the MDEC System and (B) consistent with (i) the Rules in this Title, (ii) other provisions in the Maryland Rules that are not superseded by the Rules in this

Rule 20-103

Title, and (iii) other applicable law. With the approval of the Chief Judge of the Court of Appeals, the policies and procedures may include the approval of pilot projects and programs in one or more courts to test the fiscal and operational efficacy of those projects or programs.

(2) Publication of Policies and Procedures

Policies and procedures adopted by the State Court Administrator that affect the use of the MDEC system by ~~court~~ judicial personnel, attorneys, or members of the public shall be posted on the Judiciary website and, upon written request, shall be made available in ~~printed~~ paper form by the State Court Administrator.

Source: This Rule is new.

REPORTER'S NOTE

Language is proposed to be added to Rule 20-103 (b)(1) to allow for pilot projects and programs in one or more courts to test the fiscal and operational efficacy of those projects or programs. This is conditioned on the approval of the Chief Judge of the Court of Appeals. This will provide some flexibility to try other kinds of projects and programs without the necessity of changing the MDEC Rules each time one is instituted. One of the possible pilot projects is referred to in Rule 20-201 (m). The other changes to Rule 20-103 are stylistic.

Rule 20-104

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-104 by adding the words "and Necessity" to the tagline of section (a); by adding a new subsection (a)(2), which provides that only a registered user may file submissions electronically in an MDEC action; by adding language to subsection (b), which provides that the on-line application form may require information that the State Court Administrator finds necessary to identify the applicant and may require certain information about an applicant's previous registration; by adding a Committee note after subsection (b)(2); by deleting provisions pertaining to unique identification numbers; by deleting language in section (e) pertaining to cancellation of user registration and reapplication for user registration; by authorizing the registration of an individual in multiple capacities under certain circumstances; by adding a Committee note after section (e); and by making stylistic changes, as follows:

Rule 20-104. USER REGISTRATION

(a) Eligibility and Necessity

(1) Any individual may apply to become a registered user in accordance with this Rule.

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(2) Only a registered user may file submissions electronically in an MDEC action.

(b) On-line Application

(1) An individual seeking to become a registered user shall complete an on-line application in the form prescribed by the State Court Administrator.

(2) The form may require information the State Court Administrator finds necessary to identify the applicant with particularity and shall include (A) an agreement by the applicant to comply with MDEC policies and procedures and the Rules in this Title, and (B) a statement as to whether the applicant is an attorney and, if so, is a member of the Maryland Bar in good standing, and (C) whether the applicant has ever previously registered and, if so, information regarding that registration, including whether it remains in effect and why the applicant is seeking another registration.

Committee note: One of the purposes of registration is to help ensure that electronic submissions are not filed in MDEC actions by persons who are not authorized to file them. See Rule 20-201 (b). It is important for the MDEC system to know, to the extent possible, whether a person seeking to file a submission or to access, through MDEC, documents in an MDEC action, is who he or she purports to be.

This is particularly important with respect to attorneys, who have greater ability to file submissions and access case records than other members of the public. As part of the registration process, attorney-applicants are required to supply a unique attorney number so that MDEC will know they are attorneys. Other kinds of information may be necessary to

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identify non-attorneys. See section (e) of this Rule with respect to multiple registrations.

(c) ~~Identification Number~~, Username, and Password

Upon successful completion of the registration process in accordance with section (b) of this Rule and any verification that the State Court Administrator may require, the individual becomes a registered user. The State Court Administrator shall issue to the registered user ~~a unique user identification number~~, a username, and a password, which together shall ~~entitle~~ enable the registered user to file submissions electronically in an ~~affected~~ MDEC action to which the registered user is a party or is otherwise entitled to file the submission and have the access provided by Rule 20-109. The registered user ~~may not change the unique identification number issued by the State Court Administrator but~~ may change the assigned username and password in conformance with the policies and procedures published by the State Court Administrator.

(d) Effect of Registration

By registering with the State Court Administrator as a registered user, an individual agrees to comply with the Rules in this Title and the MDEC policies and procedures established and published by the State Court Administrator.

(e) ~~Multiple User Identification Numbers Prohibited~~

Registrations

Rule 20-104

~~(1) Cancellation of User Registration~~

~~A registered user may not have more than one user identification number at a time. If the State Court Administrator believes that an individual has more than one user identification number, the State Court Administrator shall notify the individual, at the individual's most recent e-mail address provided to the State Court Administrator, that all of the individual's identification numbers will be cancelled unless the individual shows good cause to the contrary within 30 days after the date of the notice. If the individual fails to make that showing, the State Court Administrator shall cancel all of the individual's identification numbers and revoke the user's registration. The individual may seek review of the State Court Administrator's action pursuant to the Rules in Title 7, Chapter 200 of the Maryland Rules.~~

~~(2) Re application for User Registration~~

~~An individual whose user registration has been cancelled may reapply for user registration, but the State Court Administrator may reject the application unless reasonably satisfied that the individual will comply with the Rules in this Title and with all policies and procedures adopted by the State Court Administrator. An individual who may lawfully intend or be required to file submissions in different capacities may become a registered user in each of those capacities.~~

Rule 20-104

Committee note: Some attorneys or other registered users may be part-time employees of a public agency and be registered through that agency to file submissions on behalf of the agency but also may wish to file submissions on behalf of private clients or on behalf of themselves as parties to their own litigation. In those situations, the individual will need to have more than one registration - one when acting for the public agency and one when acting in a private capacity. There may be individuals other than attorneys who may need to have more than one registration.

(f) Revocation, Suspension, Reinstatement of Attorney User Registration

(1) Duty of Clerk of Court of Appeals

The Clerk of the Court of Appeals shall promptly notify the State Court Administrator of each attorney (A) who, by order of the Court, becomes disbarred, suspended, placed on inactive status, or decertified or who has resigned from the Maryland Bar or (B) who, following a disbarment, suspension, placement on inactive status, decertification, or resignation, has been reinstated to the practice of law in Maryland.

(2) Duty of State Court Administrator

Promptly upon receipt of such notice, the State Court Administrator shall (A) revoke the user registration of each attorney who has been disbarred or placed in inactive status or who has resigned, (B) suspend the user registration of each attorney who has been suspended or decertified, (C) reinstate the user registration of an attorney who has been reinstated, and (D) take any necessary steps to be reasonably satisfied that

Rule 20-104

the MDEC system does not accept any electronic filings from an attorney whose user registration has been revoked or suspended and not reinstated.

(3) Further Submissions

An attorney whose registration has been suspended or revoked under this section shall file any submissions required by the Rules of Professional Conduct in paper form.

(4) Application for User Registration as a Non-attorney

An attorney whose user registration has been suspended or revoked under this section may apply for user registration as a non-attorney. The State Court Administrator may reject the application unless reasonably satisfied that the individual will comply with the Rules in this Title and with all policies and procedures adopted by the State Court Administrator.

Source: This Rule is new.

REPORTER'S NOTE

Several major, interrelated changes are proposed for Rule 20-104. In the original design for MDEC, a person could only register once, and a unique identifying number would be assigned by MDEC. That number could not be changed. Attorneys would use their Client Protection Fund ("CPF") number and others would be assigned a number created for them, which together with a username and a password, also assigned by MDEC (but able to be changed) would enable a registered user to file electronically. The current Rule anticipated that a registered user might need to file submissions in different capacities - as an attorney with a public agency filing on behalf of that agency and as a private attorney or as a self-represented litigant, but that would be permitted by the registered user having two separate names.

Rule 20-104

As implemented, however, MDEC does not assign unique numbers to anyone. An attorney who applies to use MDEC supplies his or her CPF number, and that number will be used to identify the registered user as an attorney. For a non-attorney who applies for registration, MDEC will administratively develop a method of requiring identification as part of the registration process. For attorneys or others who may need to file submissions in different capacities, separate registrations, not just different user names, will be required. Therefore, the prohibition against multiple registrations is proposed to be repealed. The additions to section (b) of Rule 20-104 and the accompanying Committee note address this, as does the deletion of the language in section (e) and the addition of the Committee note following that section. A proposed change to section (c) deletes references to the unique user identification number.

Rule 20-105

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-105 in section (a), by deleting the language "the judge, judicial appointee, clerk, or judicial personnel" and adding the language "that individual"; by adding a sentence pertaining to senior judges to the Committee note after section (a); by adding to section (b) the language "Subject to section (a) of this Rule," the term "senior judge," the language "has a need," and the language "to perform official duties"; and by deleting the words "is" and "entitled" from section (b), as follows:

Rule 20-105. JUDGES; JUDICIAL APPOINTEES; CLERKS; JUDICIAL PERSONNEL

(a) Assignment of Username and Password

The State Court Administrator shall assign to each judge, judicial appointee, clerk, and judicial personnel a username and password that will allow ~~the judge, judicial appointee, clerk, or judicial personnel~~ that individual to access the MDEC System to the extent necessary to the performance of his or her official duties.

Committee note: The access permitted under section (a) of this Rule is limited to that necessary to the performance of official

Rule 20-105

duties. A judicial official or employee who desires access for personal reasons, such as to file submissions as a self-represented litigant, must become a registered user and proceed as such. The State Court Administrator may permit a senior judge to continue to use the username and password the senior judge used while an incumbent judge so long as he or she remains a senior judge.

(b) Revocation

~~Upon~~ Subject to section (a) of this Rule, upon notice that a judge, senior judge, judicial appointee, clerk, or judicial personnel has retired, resigned, or otherwise left office and, as a result, ~~is no longer entitled~~ has a need to access the MDEC System to perform official duties under this Rule, the State Court Administrator shall revoke the individual's username and password, terminate the right of access allowed thereby, and inform the judge, senior judge, judicial appointee, clerk or judicial personnel of the right to apply for user registration under Rule 20-104.

Source: This Rule is new.

REPORTER'S NOTE

The proposed changes to Rule 20-105 are primarily stylistic and include clarifying provisions pertaining to access to the MDEC system by senior judges.

Rule 20-106

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-106 by deleting the word "affected" and replacing it with the acronym "MDEC" throughout the Rule; by deleting from the Committee note after subsection (d)(2)(A) the language "and a certificate as to the absence or redaction of restricted information (Rule 20-201 (f)(1)(B))"; by adding the language "if possible, or otherwise by first-class mail" to subsection (d)(2)(B); 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 ~~affected~~ MDEC action shall file electronically the attorney's entry of appearance and all subsequent submissions in the ~~affected~~ action.

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

Except as otherwise provided in section (b) of this

Rule 20-106

Rule, judges, judicial appointees, clerks, and judicial personnel, shall file electronically all submissions in an ~~affected~~ MDEC action.

(3) Self-represented Litigants

(A) Except as otherwise provided in section (b) of this Rule, a self-represented litigant in an ~~affected~~ MDEC action who is a registered user shall file electronically all submissions in the ~~affected~~ MDEC action.

(B) A self-represented litigant in an ~~affected~~ MDEC 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 ~~affected~~ MDEC 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 ~~affected~~ MDEC 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 ~~affected~~ MDEC action.

(b) Exceptions

(1) MDEC System Outage

Registered users, judges, judicial appointees, clerks,

Rule 20-106

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 ~~affected~~ MDEC 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

Rule 20-106

registered user's control, the registered user is temporarily unable to file submissions electronically shall constitute good cause.

(c) Submissions

(1) Generally

Except as otherwise provided in subsection (c)(2) of this Rule, the requirement of electronic filing in section (a) applies to all submissions that are capable of being converted into electronic format and that, in electronic form, may be converted into a legible paper document.

(2) Exceptions

Except with court approval, the following submissions shall not be filed electronically:

(A) A single document comprising more than 300 pages;

Committee note: A single document comprising more than 300 pages may be submitted electronically by dividing the document into shorter segments.

(B) Oversized documents, such as blueprints, maps, and plats;

(C) Documents offered as evidence in open court at a trial or other judicial proceeding pursuant to section (e) of this Rule;

(D) An item that is impracticable to be filed electronically because of the item's physical characteristics; and

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(E) Any other category of submissions that the State Court Administrator exempts from the requirement of electronic filing.

(3) Required Retention of Certain Original Documents

Original wills and codicils, property instruments that have been or are subject to being recorded, and original public records, such as birth certificates, that contain an official seal may be scanned and filed electronically so long as the original document is maintained by the filer pursuant to Rule 20-302.

Cross reference: See Rule 20-204, which requires a registered user to file a "Notice of Filing Tangible Item" under certain circumstances.

(d) Paper Submissions

(1) Compliance with MDEC Rules

A paper submission shall comply with Rule 20-201 ~~(f)~~ (h) and ~~(i)~~ (1). If applicable, a paper submission also shall comply with Rule 20-201 ~~(g)~~ (j).

(2) Review by Clerk; Scanning

(A) Except as provided in subsection (d)(2)(B) of this Rule, upon receipt of a submission in paper form, the clerk shall review the submission for the presence of a signature and for compliance with Rule 20-107 (a)(1) and Rule 20-201 ~~(e)~~ (g), ~~(f)(1)(B)~~, and ~~(i)~~ (1). If the submission is in compliance, the clerk shall scan it into the MDEC system, verify that the electronic version of the submission is legible, and docket the

Rule 20-106

submission. If the submission is not in compliance, the clerk shall decline to scan it and promptly notify the filer in person or by first-class mail that the submission was rejected and the reason for the rejection.

Committee note: The clerk's pre-scanning review is a ministerial function, limited to ascertaining whether any required fee has been paid (Rule 20-201 ~~(i)~~ (l)) and the presence of the filer's signature; a certificate of service if one is required (Rule 20-201 ~~(e)~~ (g)); ~~and a certificate as to the absence or redaction of restricted information (Rule 20-201 ~~(f)(1)(B)~~).~~

(B) Upon receipt of a submission in paper form that is required by the Rules in this Title to be filed electronically, the clerk shall (i) decline to scan the submission, (ii) notify the filer electronically, if possible, or otherwise by first-class mail, that the submission was rejected because it was required to be filed electronically, and (iii) enter on the docket that the submission was received and that it was not entered into the MDEC system because of non-compliance with Rule 20-106. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

Committee note: Subsection (d)(2)(B) of this Rule is necessary to enforce the electronic filing requirement of Rule 20-106. It is intended to be used only when it is clear that the filer is a registered user who is required to file submissions electronically and that none of the exceptions in sections (b) or (c) of this Rule appear to be applicable.

(3) Destruction of Paper Submission

Rule 20-106

Subject to subsections (d)(4) and (e)(2) of this Rule, the clerk may destroy a paper submission after scanning it and verifying the legibility of the electronic version of it.

(4) Optional Return of Paper Document

The State Court Administrator may approve procedures for identifying and, where feasible, returning paper documents that must be preserved in their original form.

(5) Public Notice

The State Court Administrator shall provide public notice alerting the public to the procedure set forth in subsections (d)(2), (3), and (4) of this Rule.

Committee note: If submissions properly filed in paper form are to be destroyed by the clerk following their being scanned into MDEC, the public must be given reasonable notice of that policy. Notice may be given in a variety of ways, including on the Judiciary website, on on-line and pre-printed forms prepared by the Judiciary, on summonses or other notices issued by the clerks, and by postings in the clerks' offices.

(e) Exhibits and Other Documents Offered in Open Court

(1) Generally

Unless otherwise approved by the court, a document offered into evidence or otherwise for inclusion in the record in open court shall be offered in paper form. If the document is offered as an exhibit, it shall be appropriately marked.

Committee note: Examples of documents other than exhibits offered for inclusion in the record are written motions made in open court, proposed voir dire questions, proposed jury instructions, communications from a jury, and special verdict sheets.

Rule 20-106

(2) Scanning and Return of Document

As soon as practicable, the clerk shall scan the document into the MDEC system and return the document to the party who offered it at the conclusion of the proceeding, unless the court orders otherwise. If immediate scanning is not feasible, the clerk shall scan the document as soon as practicable and notify the person who offered it when and where the document may be retrieved.

Source: This Rule is new.

REPORTER'S NOTE

An amendment to section (d) of Rule 20-106, which is the deletion of the reference to the "certificate as to the absence or redaction of restricted information" from the Committee note after subsection (d)(2)(A) is proposed because of a proposed change to Rule 20-201, removing the requirement that an MDEC filer must file a certificate that the submission contains no restricted information or, if it does, it is accompanied by a redacted version. The language that was added to subsection (d)(2)(B) of Rule 20-106 providing for electronic notification of the rejection of a submission "if possible, or otherwise by first-class mail" was requested by the MDEC Executive Steering Committee, to ensure that notice is received.

Rule 20-107

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-107 by adding the word "typographical" to section (d), as follows:

Rule 20-107. ELECTRONIC SIGNATURES

(a) Signature by Filer; Generally

(1) Subject to sections (b), (c), (d), and (e) of this Rule, when a filer is required to sign a submission, the filer shall electronically sign the submission by inserting a (A) facsimile signature or (B) typographical signature.

(2) The filer shall insert the electronic signature above the filer's typed name, address, e-mail address, and telephone number and, if the filer is an attorney, the attorney's Client Protection Fund ID number. An electronic signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

(b) Signature by Judge or Judicial Appointee

A judge or judicial appointee shall sign a submission electronically by (1) personally affixing the judge's or judicial appointee's digital signature or (2) hand-signing a paper version of the submission and scanning or directing an

Rule 20-107

assistant to scan the hand-signed submission to convert the handwritten signature to a facsimile signature in preparation for electronic filing.

Cross reference: For delegation by an attorney, judge, or judicial appointee to file a signed submission, see Rule 20-108.

(c) Signature by Clerk

When a clerk is required to sign a submission electronically, the clerk's signature shall be a digital signature or a facsimile signature.

(d) Multiple Signatures on a Single Document

When the signature of more than one person is required on a document, the filer shall (1) confirm that the content of the document is acceptable to all signers; (2) obtain the handwritten, facsimile, typographical, or digital signatures of all signers; and (3) file the document electronically, indicating the signers in the same manner as the filer's signature. Filers other than judges, judicial appointees, clerks, and judicial personnel shall retain the signed document until the action is concluded.

(e) Signature Under Oath, Affirmation, or With Verification

When a person is required to sign a document under oath, affirmation, or with verification, the signer shall hand-sign the document. The filer shall scan the hand-signed document, converting the signer's handwritten signature to a facsimile

Rule 20-107

signature, and file the scanned document electronically. The filer shall retain the original hand-signed document until the action is concluded or for such longer period ordered by the court. At any time prior to the conclusion of the action, the court may order the filer to produce the original hand-signed document.

(f) Verified Submissions

When a submission is verified or attaches a document under oath, the electronic signature of the filer constitutes a certification by the filer that (1) the filer has read the entire document; (2) the filer has not altered, or authorized the alteration of, the text of the verified material; and (3) the filer has either personally filed the submission or has authorized a designated assistant to file the submission on the filer's behalf pursuant to Rule 20-108.

Cross reference: For the definition of "hand-signed," see Rule 20-101.

Source: This Rule is new.

REPORTER'S NOTE

The MDEC Executive Steering Committee requested that Rule 20-107 (d) be amended by the addition of typographical signatures to the list of types of signatures permitted on documents that require the signature of more than one person. This conforms to the signature requirement in section (a) applicable to the filer of a submission. Although typographical signatures may be inappropriate for some documents, such as contracts, that require multiple signatures, the proposed amendment recognizes that typographical signatures could be

Rule 20-107

appropriate on other documents, such as a pleadings signed by several attorneys.

Rule 20-109

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-109 by changing the title of the Rule; by changing the term "court records" to the term "judicial records" throughout the Rule; by changing the word "affected" to the acronym "MDEC" throughout the Rule, except at the end of section (b); by adding the words "or other law" to section (b); by deleting language from subsection (e)(1) and adding a reference to CaseSearch; by adding references to kiosks; by adding a Committee note after subsection (e)(2); by adding a new section (g), pertaining to remote access by government officials and agencies; and by making stylistic changes, as follows:

Rule 20-109. ACCESS TO ELECTRONIC ~~COURT~~ RECORDS IN MDEC ACTIONS

(a) Generally

Except as otherwise provided in this Rule, access to ~~court~~ judicial records in an ~~affected~~ MDEC action is governed by the Rules in Title 16, Chapter 900.

(b) Parties and Attorneys of Record

Subject to any protective order issued by the court or other law, parties to and attorneys of record in an ~~affected~~

Rule 20-109

MDEC action shall have full access, including remote access, to all case records in that ~~affected~~ action.

(c) Judges and Judicial Appointees

Judges and judicial appointees shall have full access, including remote access, to ~~all-court~~ judicial records to the extent that such access is necessary to the performance of their official duties. The Chief Judge of the Court of Appeals, by Administrative Order, may further define the scope of remote access by judges and judicial appointees.

(d) Clerks and Judicial Personnel

Clerks and judicial personnel shall have full access from their respective work stations to ~~all-court~~ judicial records to the extent such access is necessary to the performance of their official duties. The State Court Administrator, by written directive, may further define the scope of such access by clerks and judicial personnel.

(e) Public Access

(1) ~~Names of Litigants and Docket Entries~~ Access through CaseSearch

Members of the public shall have free access, ~~including remote access, to unshielded docket information made available pursuant to Rule 16-909 (e)~~ to information posted on CaseSearch.

(2) Unshielded Documents

Rule 20-109

Subject to any protective order issued by the court, members of the public shall have free access to unshielded case records and unshielded parts of case records from computer terminals or kiosks that the ~~court makes~~ courts make available for that purpose. Each ~~clerk's office~~ court shall provide a reasonable number of terminals or kiosks for use by the public. The terminals or kiosks shall not permit the user to download, alter, or forward the information, but the user is entitled to a copy of or printout of a case record in accordance with ~~Rules 16-902 (d)(4) and 16-903~~ Rule 16-903 (d).

Committee note: The intent of subsection (e)(2) of this Rule is that members of the public be able to access unshielded electronic case records in any MDEC action from a computer terminal or kiosk in any courthouse of the State, regardless of where the action was filed or is pending.

(f) Department of Juvenile Services

Subject to any protective order issued by the court, a registered user authorized by the Department of Juvenile Services to act on its behalf shall have full access, including remote access, to all case records in an ~~affected~~ MDEC action to the extent the access is (1) authorized by Code, Courts Article, §3-8A-27 and (2) necessary to the performance of the individual's official duties on behalf of the Department.

(g) Government Agencies and Officials

Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional

Rule 20-109

information contained in case records to government agencies and officials (1) who are approved for such access by the Chief Judge of the Court of Appeals, upon a recommendation by the State Court Administrator, and (2) when those agencies or officials seek such access solely in their official capacity, subject to such conditions regarding the dissemination of such information imposed by the Chief Judge.

Source: This Rule is new.

REPORTER'S NOTE

The MDEC Executive Steering Committee has recommended a limited expansion of remote access to case records to permit electronic access to unshielded information in case records through terminals or kiosks in any Maryland District Court or circuit court courthouse. This is reflected in proposed amendments to Rule 20-109 (e)(2), the Committee note following that subsection, and amendments to the definition of "remote access" in Rule 16-902 (k)(2).

Section (g) is new. It permits the Chief Judge of the Court of Appeals to authorize government agencies and officials to have remote access to information in their official capacities, subject to conditions imposed by the Chief Judge regarding the dissemination of that information.

Stylistic changes also are proposed.

Rule 20-201

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

AMEND Rule 20-201 in section (a) by adding the language "Subject to section (m) of this Rule, sections" and the letters "(k), (l) and (m)"; in section (b), by deleting the word "affected" and adding the acronym "MDEC"; by adding a new section (e), pertaining to multiple submissions filed together; by adding a Committee note after section (e); by adding a new section (f), pertaining to service contact information; by deleting language from subsection (h)(1) that refers to a certificate of redaction by a filer; by adding a new section (i), pertaining to electronic file names; by adding to section (j) language that refers to a file name that has the word "sealed" and language that refers to the clerk temporarily sealing the submission pending the court's action on the motion; by adding to section (k) language that refers to the file name of the proposed order; by adding a new section (m), pertaining to filings by certain judicial officers and employees and to certain pilot programs; and by making stylistic changes, as follows:

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

Rule 20-201

(a) Scope

~~Sections~~ Subject to section (m) of this Rule, sections (b), ~~and~~ (c), and (e) of this Rule apply to all filers. Sections (d), ~~(e)~~, (f), (g), (h), ~~and~~ (i), (k), (l), and (m) of this Rule do not apply to judges, judicial appointees, clerks, and judicial personnel.

(b) Authorization to File

A person may not file a submission in an ~~affected~~ MDEC action unless authorized by law to do so.

(c) Policies of State Court Administrator

A filer shall comply with all published policies and procedures adopted by the State Court Administrator pursuant to Rule 20-103.

(d) Signature

If, under Rule 1-311, the signature of the filer is required, the submission shall be signed in accordance with Rule 20-107.

(e) Multiple Submissions Filed Together

All submissions related to a particular MDEC action that are filed together at one time shall be included in a single electronic folder, sometimes referred to as an envelope.

Committee note: As an example, an answer to a complaint, a counter-claim, a cross-claim, and a motion for summary judgment, all filed at the same time in the same action, must be filed as separate pleadings or papers but in a single electronic folder.

Rule 20-201

(f) Service Contact Information

Unless previously provided, a registered user who files a submission and who will be entitled to electronic service of subsequent submissions in the action shall include in the submission accurate information as to the e-mail address where such electronic service may be made upon the registered user.

~~(e)~~ (g) Certificate of Service

(1) Generally

Other than an original pleading that is served by original process, each submission that is required to be served pursuant to Rule 20-205 (d) shall contain a certificate of service signed by the filer.

(2) Non-electronic Service

If service is not to be made electronically on one or more persons entitled to service, service on such persons shall be made in accordance with the applicable procedures established by other Titles of the Maryland Rules, and the submission shall include a certificate of service that complies with Rule 1-323 as to those persons and states that all other persons, if any, entitled to service were served by the MDEC system.

(3) Electronic Service

If service is made electronically by the MDEC system on all persons entitled to service, the certificate shall so state.

~~(f)~~ (h) Restricted Information

Rule 20-201

(1) Generally

Except as provided in subsection ~~(f)(2)~~ (h)(2) of this Rule, a submission filed by a filer ~~(A)~~ shall not contain any restricted information, ~~and (B) shall contain a certificate by the filer that the submission does not contain any restricted information or, if it does contain restricted information, a redacted submission has been filed contemporaneously pursuant to subsection (f)(2) of this Rule.~~

(2) Where Restricted Information is Necessary

If the filer believes that restricted information is necessary to be included, the filer shall (A) state the reason and a legal basis for including the restricted information, and (B) file both an unredacted version of the document, noting prominently in the caption that the document is unredacted, and a redacted version of the document that excludes the restricted information, noting prominently in the caption that the document is redacted.

(i) Electronic File Names

The electronic file name for each submission shall relate to the title of the submission. If a submission relates to another submission, the file name and the title of the submission shall make reference to the submission to which it relates.

Rule 20-201

~~(g)~~ (j) Sealed Submissions

If the filer desires the submission to be under court seal, the submission shall (1) state prominently in the caption that the document is to be under seal, ~~and~~ (2) have a file name that includes the word "sealed," and (3) state whether there is already in effect a court order to seal the document and, if so, identify that order. If there is no such order, the submission shall include a motion and proposed order to seal the document, and the clerk temporarily shall seal the submission pending the court's action on the motion.

~~(h)~~ (k) Proposed Orders

A proposed order to be signed by a judge or judicial appointee shall be (1) in an electronic text format specified by the State Court Administrator and (2) filed as a separate document identified as relating to the motion or other request for court action to which the order pertains. The file name of the proposed order shall indicate that it is a proposed order.

Committee note: As originally adopted, section ~~(h)~~ (k) of this Rule required that a proposed order be submitted in "an editable text form." Because at the time of initial implementation, the MDEC system could only accept pdf documents, amendments to section ~~(h)~~ (k) were made in 2015 to give the State Court Administrator the flexibility to specify the electronic format of the proposed order. The filer should consult the MDEC policies and procedures posted on the Judiciary website for any changes to the required format.

~~(i)~~ (l) Fee

(1) Generally

Rule 20-201

A submission shall be accompanied, in a manner allowed by the published policies and procedures adopted by the State Court Administrator, by any fee required to be paid in connection with the filing.

(2) Waiver - Civil Action

(A) A filer in a civil action who (i) desires to file electronically a submission that requires a prepaid fee, (ii) has not previously obtained and had docketed a waiver of prepayment of the fee, and (iii) seeks a waiver of such prepayment, shall file a request for a waiver pursuant to Rule 1-325 or Rule 1-325.1, as applicable.

(B) The request shall be accompanied by (i) the documents required by Rule 1-325 or Rule 1-325.1, as applicable, (ii) the submission for which a waiver of the prepaid fee is requested, and (iii) if applicable, a proposed order granting the request.

(C) No fee shall be charged for the filing of the waiver request.

(D) The clerk shall docket the request for waiver. If the clerk waives prepayment of the prepaid fee pursuant to Rule 1-325 (d) or the applicable provision of Rule 1-325.1, the clerk also shall docket the attached submission. If prepayment is not waived by the clerk, the clerk and the court shall proceed in accordance with Rule 1-325 (e) or Rule 1-325.1 (c), as applicable.

Rule 20-201

(3) Waiver - Criminal Action

A fee waiver in a criminal action is governed by Rule 7-103 (c)(2), 8-201 (b)(2), or 8-303 (a)(2), as applicable.

(m) Filings by Certain Judicial Officers and Employees

(1) District Court Commissioners

(A) Filings in District Court

In accordance with policies and procedures approved by the Chief Judge of the District Court and the State Court Administrator, District Court commissioners shall file electronically with the District Court reports of pretrial release proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-216, 4-216.1, 4-217, 4-267, or 4-347. Those filings shall be entered directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a District Court clerk.

Committee note: The intent of the last sentence of subsection (m)(1)(A), as well as subsections (m)(1)(B) and (m)(2), is to provide the same obligation to review and correct post-filing docket entries that the clerk has with respect to filings under Rule 20-203 (b)(1).

(B) Filings in Circuit Court

Subject to approval by the Chief Judge of the Court of Appeals, the State Court Administrator may adopt policies and procedures for one or more pilot programs permitting District Court Commissioners to file electronically with a circuit court

Rule 20-201

reports of pretrial release proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-216, 4-216.1, 4-217, 4-267, or 4-347. A pilot program shall permit District Court Commissioners to enter those filings directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a circuit court clerk.

(2) Circuit Court Employees

In addition to authorized employees of the clerk's office and with the approval of the county administrative judge, the clerk of a circuit court may authorize other employees of the circuit court to enter filings directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a circuit court clerk.

Committee note: In some counties, there are circuit court employees who are not employees in the clerk's office but who perform duties that, in other counties, are performed by employees in the clerk's office. Those employees are at-will employees who serve at the pleasure of the court or the county administrative judge. The intent of subsection (m)(2) is to permit the clerk, with the approval of the county administrative judge, to authorize those employees to enter filings directly into the MDEC system as part of the performance of their official duties, subject to post-filing review by the clerk. It is not the intent that this authority apply to judges' secretaries, law clerks, or administrative assistants. Rule 20-108 (b) authorizes judges and judicial appointees in MDEC counties to delegate to law clerks, secretaries, and administrative assistants authority to file submissions on behalf of the judge or judicial appointee. That delegated authority is a ministerial one, to act on behalf of and for the

Rule 20-201

convenience of the judge or judicial appointee and not an authority covered by subsection (m)(2).

Source: This Rule is new.

REPORTER'S NOTE

In Rule 20-201, proposed new section (e) requires that all submissions pertaining to a particular MDEC action that are filed at the same time be included in one "envelope," which is a single electronic folder. This is because the State pays the primary electronic service provider a fee for each filing, and if the submissions are included in one electronic folder, only one fee is payable regardless of the number of submissions included in that envelope.

Proposed new section (f) requires registered users who file submissions to include in the submission accurate information as to their address so that service of subsequent submissions can be made on the user. This was requested by the MDEC Executive Steering Committee.

The deletion of language in subsection (h)(1) conforms to the deletion of the requirement in Rules 20-106 (d)(1) and 20-203 (a) and (c) that a submission has to contain a certificate that the submission contains no restricted information, or if it does, it is accompanied by a redacted version. The requirement that restricted information be omitted from any submission that is not sealed remains in the Rule; only the requirement of a certificate on the submission is deleted. Under the AOC policies and procedures, a submission cannot be electronically transmitted unless the filer checks a box on the MDEC computer screen in which the filer certifies that there is no restricted information in the submission, or if there is, a redacted version is simultaneously transmitted. Some clerks have taken the position that checking the box suffices as the certificate of redaction and that a separate certificate is not required to be attached to the submission. Other clerks have taken the opposite position -- that a separate certificate must be attached, and they will reject any submission that does not have this. Deleting the requirement for a redaction certificate in an MDEC county, even though registered users will still need to check the box on the computer screen, resolves the issue of whether a clerk should be rejecting filings that do not contain a certificate, since no certificate will be required.

Rule 20-201

Section (i) is added to state what an electronic file name is and to provide that if one submission refers to another submission, a reference to the related submission is required.

Proposed new section (m) explains the procedures for filing by certain judicial officers and employees. District Court commissioners process arrested defendants even when the courts are not open. They electronically transmit into the case management system reports of their proceedings. Subsection (m)(1)(A) puts this ongoing practice into the MDEC Rules. Subsection (m)(1)(B) authorizes pilot programs that would permit that same procedure for the circuit courts.

The proposed addition of subsection (m)(2) is explained in the new Committee note added after it. The intent of subsection (m)(2) is to permit the clerk to authorize certain circuit court employees who are not employees in the clerk's office to enter filings directly into the MDEC system, subject to approval by the county administrative judge and post-filing review by the clerk.

Rule 20-203

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

AMEND Rule 20-203 by adding a new subsection (a)(1) pertaining to the applicability of section (a); by revising references pertaining to the clerk's review of a submission; by adding language to subsection (b)(1) that refers to a procedure for the clerk to notify a filer when a corrected docket entry requires a different fee than the fee required for the original docket entry, and permitting the filer to file a motion seeking review of the clerk's fee determination; in subsection (b)(3), by adding the language "on the docket" and by deleting language that refers to "docketing in the manner required by Rule 16-404"; in section (c), by adding the language "subject to Rule 20-201 (m)," by updating a certain internal reference, and by deleting a reference to "Rule 20-201 (f)(1)(B)"; in section (d), by deleting current subsection (d)(2) and by adding language to provide that unless (1) an order is entered directing the clerk to withdraw the deficiency notice, or (2) the deficiency is otherwise resolved within 10 days after the notice was sent, the court shall strike the submission; by adding a new subsection (e)(3), pertaining to shielding on motion of a party; and by making stylistic changes, as follows:

Rule 20-203

Rule 20-203. REVIEW BY CLERK; STRIKING OF SUBMISSION;
DEFICIENCY NOTICE; CORRECTION; ENFORCEMENT

(a) Time and Scope of Review

(1) Inapplicability of Section

This section does not apply to a submission filed by a judge, or, subject to Rule 20-201 (m), a judicial appointee.

(2) Review by Clerk

As soon as practicable, the clerk shall review a submission, ~~other than a submission filed by a judge or judicial appointee,~~ for compliance with Rule 20-106, 20-107 (a)(1), 20-201 (d), (e) (g), (f)(1)(B), and (i) (1) and the published policies and procedures for acceptance established by the State Court Administrator. Until the submission is accepted by the clerk, it remains in the clerk's queue and shall not be docketed.

(b) Docketing

(1) Generally

The clerk shall promptly correct errors of non-compliance that apply to the form and language of the proposed docket entry for the submission. The docket entry as described by the filer and corrected by the clerk shall become the official docket entry for the submission. If a corrected docket entry requires a different fee than the fee required for the

Rule 20-203

original docket entry, the clerk shall advise the filer, electronically, if possible, or otherwise by first-class mail of the new fee and the reasons for the change. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

(2) Submission Signed by Judge or Judicial Appointee

The clerk shall enter on the docket each judgment, order, or other submission signed by a judge or judicial appointee.

(3) Submission Generated by Clerk

The clerk shall enter on the docket each writ, notice, or other submission generated by the clerk ~~into the MDEC system for docketing in the manner required by Rule 16-404.~~

(c) Striking of Certain Non-Compliant Submissions

If, upon review pursuant to section (a) of this Rule, the clerk determines that a submission, other than a submission filed by a judge or, subject to Rule 20-201 (m), by a judicial appointee, fails to comply with the requirements of Rule 20-107 (a)(1) or Rule 20-201 ~~(e) (g) or (f)(1)(B)~~, the clerk shall (1) strike the submission, (2) notify the filer and all other parties of the striking and the reason for it, and (3) enter on the docket that the submission was received, that it was stricken for non-compliance with the applicable section of Rule

Rule 20-203

20-107 (a)(1) or Rule 20-201 ~~(e)~~ (g) ~~or (f)(1)(B)~~, and that notice pursuant to this section was sent. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

(d) Deficiency Notice

(1) Issuance of Notice

If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20 or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer with a copy to the other parties a deficiency notice describing the nature of the violation.

~~(2) Correction; Enforcement~~

~~Unless the court orders otherwise, the court will take no further action on the submission until the deficiency is corrected or withdrawn.~~

~~(3) (2) Judicial Review; Striking of Submission~~

The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice. Unless (A) the judge issues such an order, or (B) the deficiency is otherwise

Rule 20-203

resolved within 10 days after the notice was sent, the court shall strike the submission.

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

If, after filing, a submission is found to contain restricted information, the clerk shall issue a deficiency notice pursuant to section (d) of this Rule and shall shield the submission from public access until the deficiency is corrected.

(2) Shielding of Unredacted Version of Submission

If, pursuant to Rule 20-201 ~~(f)(2)~~ (h)(2), a filer has filed electronically a redacted and an unredacted submission, the clerk shall docket both submissions and shield the unredacted submission from public access. Any party and any person who is the subject of the restricted information contained in the unredacted submission may file a motion to strike the unredacted submission. Upon the filing of a motion and any timely answer, the court shall enter an appropriate order.

(3) Shielding on Motion of Party

A party aggrieved by the refusal of the clerk to shield a filing or part of a filing that contains restricted information may file a motion pursuant to Rule 16-912.

Source: This Rule is new.

Rule 20-203

REPORTER'S NOTE

In Rule 20-203, proposed amendments to sections (a) and (c) delete provisions pertaining to rejection of a submission for failure to include a certificate of redaction. The reason for this is explained in the Reporter's note to Rule 20-201.

Provisions pertaining to the assessment of a revised fee pertaining to a corrected docket entry are added to subsection (b)(1).

Section (d) currently provides that if a submission is not subject to striking pursuant to section (c) of the Rule but is otherwise deficient, the clerk sends a deficiency notice and, generally, no further action on the submission is taken until the deficiency is corrected or withdrawn. The Committee is advised that, in many instances, deficiencies are not being resolved promptly, and the matter remains "in limbo." The Committee recommends that section (d) be amended to provide that, unless the court issues an order directing the clerk to withdraw the deficiency notice, if a deficiency is not resolved within 10 days after the deficiency notice is sent, the court will strike the submission.

In section (e), a new subsection (e)(3) permits the filing of a motion by a party aggrieved by the refusal of the clerk to shield restricted information.

Stylistic and conforming amendments to the Rule also are proposed.

Rule 20-204

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

AMEND Rule 20-204 to change the term "affected action" to "MDEC action," as follows:

Rule 20-204. NOTICE OF FILING TANGIBLE ITEM

No later than the next business day after a registered user files a tangible item in an ~~affected~~ MDEC action, the registered user shall file a "Notice of Filing Tangible Item" that describes the tangible item, identifies the electronically filed submission to which the tangible item is attached, and states why the tangible item could not have been filed electronically.

Cross reference: See Rule 20-106 (c)(2) for documents that shall not be filed electronically.

Source: This Rule is new.

REPORTER'S NOTE

In Rule 20-204, the term "affected action" is changed to "MDEC action" to reflect a terminology change in proposed amendments to Rule 20-101.

Rule 20-205

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

AMEND Rule 20-205 to change the term "affected action" to "MDEC action," as follows:

Rule 20-205. SERVICE

. . .

(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 entitled to receive service of the submission who (A) are not registered users, (B) are registered users but have not entered an appearance in the ~~affected~~ MDEC action, and (C) are persons entitled to receive service of copies of tangible items that are in paper form.

. . .

REPORTER'S NOTE

In Rule 20-205, the term "affected action" is changed to "MDEC action" to reflect a terminology change in proposed amendments to Rule 20-101.

Rule 20-301

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 300 - OFFICIAL RECORD

AMEND Rule 20-301 to change the term "affected action" to "MDEC action," as follows:

Rule 20-301. CONTENT OF OFFICIAL RECORD

(a) Generally

The official record of an ~~affected~~ MDEC action consists of:

(1) the electronic version of all submissions filed electronically or filed in paper form and scanned into the MDEC system;

(2) all other submissions and tangible items filed in the action that exist only in non-electronic form;

(3) the electronic version of all documents offered or admitted into evidence or for inclusion in the record at any judicial proceeding, pursuant to Rule 20-106 (e);

(4) all tangible items offered or admitted into evidence that could not be filed electronically or scanned into the MDEC system;

(5) a transcript of all court recordings of proceedings in the ~~affected~~ MDEC action; and

Rule 20-301

(6) all other documents or items that, for good cause, the court orders be part of the record.

. . .

REPORTER'S NOTE

In Rule 20-301, the term "affected action" is changed to "MDEC action" to reflect a terminology change in proposed amendments to Rule 20-101.

Rule 20-402

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 - APPELLATE REVIEW

AMEND Rule 20-402 by deleting current section (a) and subsection (b)(1); by deleting language from new subsection (a)(1), pertaining to the grant of an application for leave to appeal and the assembly and indexing of the record; by adding a new subsection (a)(2)(A), pertaining to transmittal through MDEC; by adding a new subsection (a)(2)(B), pertaining to transmittal of non-electronic parts of the record; by adding a cross reference after subsection (a)(2)(B); in new section (b), by deleting the language, "of the notice," "and jurisdiction," and "subject to order of" and by adding the language, "and transmittal," "or on," and "Except as otherwise ordered by"; by adding a Committee note after section (b); by revising section (c), pertaining to appellate submissions during the pendency of the appeal; in section (e), by deleting the words "and jurisdiction" and by adding the language "the court's mandate and" and a sentence pertaining to when the record is deemed transmitted to the lower court; and by making stylistic changes, as follows:

Rule 20-402. TRANSMITTAL OF RECORD

Rule 20-402

(a) Preference Certification and Transmittal

~~If possible under MDEC, the clerk of the trial court shall transmit in an electronic format that portion of the record that is in electronic format.~~

~~(b) Alternative~~

~~(1) This section applies only if it is not possible under MDEC for the clerk of the trial court to transmit the electronic part of the record to the clerk of the appellate court in an electronic format.~~

~~(2) (1) Certification~~

~~Upon the filing of a notice of appeal, notice that the Court of Special Appeals has granted an application for leave to appeal, or notice that the Court of Appeals has issued a writ of certiorari directed to the trial court, the clerk of the trial court shall comply with the requirements of Title 8 of the Maryland Rules and assemble, index, and prepare a certification of the record.~~

~~(2) Transmittal of the Record to the Appellate Court~~

~~The clerk shall transmit that part of the record not in electronic format to the clerk of the appellate court as required under Title 8 and shall enter on the docket a notice that (A) the non-electronic part of the record was so transmitted, and (B) from and after the date of the notice, the~~

Rule 20-402

~~entire record so certified is in the custody and jurisdiction of the appellate court.~~

(A) Transmittal through MDEC

For purposes of Rule 8-412, the record is deemed transmitted to the appellate court when the lower court docket and transmits to the appellate court through the MDEC system a certified copy of the docket entries ("Case Summary"), together with a statement of the cost of preparing and certifying the record, the costs assessed against each party prior to the transmission of the record, and the cost of all transcripts and of copies, if any, of the transcripts for each of the parties.

(B) Transmittal of Non-Electronic Parts of the Record

The clerk shall (i) transmit to the appellate court as required under the Rules in Title 8 any part of the record that is not in electronic format in the MDEC system, including audio, audio-video, or video recordings offered or used at a hearing or trial that have not been scanned into the MDEC system, and (ii) enter on the docket a notice (a) that the non-electronic part was so transmitted and (b) that, from and after the date of the notice, the entire record so certified is in the custody of the appellate court.

Cross reference: See Rules 8-412 and 8-413.

~~(3)~~ (b) Custody of Trial Court Submissions

Rule 20-402

Upon the docketing ~~of the notice~~ and transmittal provided for in subsection ~~(b)(2)~~ (a)(2) of this Rule, the record of all submissions filed on or prior to the date of the notice shall be deemed to be in the custody ~~and jurisdiction~~ of the appellate court. ~~Subject to order of~~ Except as otherwise ordered by the appellate court, ~~any~~ submissions filed in the trial court after the date of the notice shall not be part of the appellate record but shall be within the custody and jurisdiction of the trial court.

Committee note: Under MDEC, the electronic part of the record is not physically transmitted to the appellate court. It remains where it is but, upon entry of the notice referred to in sections (a) and (b), (1) it is regarded as within the custody of the appellate court, and (2) the judges, clerks, and other authorized employees of the appellate court have full remote electronic access to it. See section (d) of this Rule.

~~(4)~~ (c) Appellate Submissions During Pendency of Appeal

Subject to ~~subsection (b)(6)~~ section (e) of this Rule and unless otherwise ordered by the appellate court, submissions filed with or by the appellate court ~~shall~~ during the pendency of the appeal ~~not be made part of the record certified by the clerk of the trial court but~~ after the date of the docketing and transmittal pursuant to subsection (a)(2) of this Rule shall be part of the appellate court record.

~~(5)~~ (d) Remote Access by Appellate Judges and Personnel

Rule 20-402

During the pendency of the appeal, the judges, law clerks, clerks, and staff attorneys of the appellate court shall have free remote access to the certified record.

~~(6)~~ (e) Procedure Upon Completion of Appeal

Upon completion of the appeal, the clerk of the appellate court shall add to the record certified by the clerk of the trial court any opinion, order, or mandate of the appellate court disposing of the appeal, and a notice that, subject to the court's mandate and any further order of the appellate court, from and after the date of the notice, the record is returned to the custody ~~and jurisdiction~~ of the trial court. For purposes of Rule 8-606 (d), the record is deemed transmitted to the lower court when the appellate court's mandate is transmitted to the lower court through the MDEC system.

Source: This Rule is new.

REPORTER'S NOTE

Based upon recommendations by the MDEC Executive Steering Committee and the Clerk of the Court of Special Appeals, amendments to Rule 20-402 are proposed to clarify and update the Rule.

Current section (a) and subsection (b)(1) are proposed to be deleted. In their place is new language that reflects updated procedures. Subsection (a)(2)(A) provides that the record will be deemed transmitted to the appellate court when the lower court docket and transmits to the appellate court through MDEC a certified copy of the docket entries, together with a statement of the cost of preparing and certifying the record, the costs assessed against each party prior to the transmission of the record, and the cost of all transcripts and

Rule 20-402

copies of the transcript. New subsection (a)(2)(B) sets out requirements pertaining to transmittal to the appellate court of parts of the record that are not in electronic format in the MDEC system. At the request of the Office of the Public Defender, language in new subsection (a)(2)(B) makes clear that any audio, audio-video, and video recordings offered or used at a hearing or trial, but not scanned into the MDEC system, must be included as part of the record.

At the request of the Clerk of the Court of Special Appeals, the word "jurisdiction" has been deleted from section (b), and the Rule refers only to the transfer of custody of the record.

Section (e) provides that the record is deemed transmitted to the lower court when the appellate court's mandate is transmitted to the lower court through the MDEC system.

Stylistic changes are made throughout the Rule.

Rule 20-405

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 - APPELLATE REVIEW

AMEND Rule 20-405 to change the term "affected action" to "MDEC action," as follows:

Rule 20-405. OTHER SUBMISSIONS

. . .

(b) Electronic Filing

Unless otherwise ordered by the Court, a submission by an attorney, a self-represented litigant who is a registered user, the Court, a judge of the Court, or a Clerk in an ~~affected~~ MDEC action shall be filed electronically.

. . .

REPORTER'S NOTE

In Rule 20-405, the term "affected action" is changed to "MDEC action" to reflect a terminology change in proposed amendments to Rule 20-101.

Rule 20-501

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 500 - MISCELLANEOUS RULES

AMEND Rule 20-501 by adding the language "Outage Onset" to the tagline of subsection (a)(1); in subsection (a)(1), by deleting language pertaining to the court being unable to accept electronic filings because of a system failure and adding language providing that in the event of an MDEC System outage, the State Court Administrator, as expeditiously as possible, shall notify registered users of the date and time of the onset of an outage; by changing the tagline of subsection (a)(2); in subsection (a)(2), by deleting language pertaining to a system resumption and adding language providing that upon the termination of the MDEC system outage, the State Court Administrator, as expeditiously as possible, shall notify each registered user by posting an MDEC outage termination notice that states the date and time of the termination of the outage on the Judiciary website or by other means; in subsection (b)(1), by deleting language pertaining to a court in a system failure being unable to accept electronic filings and adding the language "If an MDEC system outage is posted" and the language "an outage termination is posted"; in subsection (b)(2), by deleting language pertaining to a court listed as unable to

Rule 20-501

accept electronic filings in a system failure notice and adding the language "during an MDEC system outage"; and by adding a Committee note after subsection (b)(2) pertaining to what happens when a courthouse is closed or unable to accept electronic submissions, as follows:

Rule 20-501. MDEC SYSTEM OUTAGE

(a) Posting of Notices

(1) ~~System Failure~~ Outage Onset Notice

~~If a court in an applicable county is unable to accept electronic filings because of an MDEC system failure~~ In the event of an MDEC system outage, the State Court Administrator, as expeditiously as possible, shall ~~immediately~~ notify each registered user by posting ~~a system failure~~ an MDEC outage notice on the Judiciary website or by other electronic means. The ~~system failure~~ notice shall state the date and time of the ~~system failure~~ and ~~list the courts affected by the system failure~~ onset of the outage.

(2) ~~System Resumption~~ Outage Termination Notice

~~When a court's capability of accepting electronically filed submissions resumes~~, Upon the termination of the MDEC system outage, the State Court Administrator, as expeditiously as possible, shall ~~immediately~~ notify each registered user by posting ~~a system resumption~~ an MDEC outage termination notice on

Rule 20-501

the Judiciary website or by other electronic means. The ~~system resumption~~ outage termination notice shall state the date and time ~~that the capability of accepting electronically filed submissions resumed in each court~~ of the termination of the outage.

(b) Effect of Notice

(1) Electronic Submissions - Expiring Time Extended

~~While a court is listed in a system failure notice as unable to accept electronic filings, the affected court is deemed inaccessible to electronic filers. If a court is inaccessible under this Rule~~ If an MDEC system outage is posted for any portion of the same day that the time for filing a submission expires, the time to file the submission electronically is automatically extended until the first full day, other than a Saturday, Sunday, or legal holiday, that ~~the system is able to accept electronic filings~~ an outage termination notice is posted.

(2) Paper Submissions - Accepted

~~If, a court is listed as unable to accept electronic filings in a system failure notice but~~ during an MDEC system outage, the courthouse is otherwise open for business, a registered user may elect to timely file the submission in paper form.

Rule 20-501

Committee note: There may be circumstances in which the courthouse where an MDEC action is pending is closed or otherwise unable to accept electronic submissions. In that situation, a filer is still able to transmit a submission through the primary electronic service provider in the normal way, even though the court may be temporarily unable to act on it.

Cross reference: See Rule 20-106 (b) for exceptions to required electronic filing.

Source: This Rule is new.

REPORTER'S NOTE

Amendments to Rule 20-501 are proposed in conjunction with a new definition of "MDEC system outage" that is proposed to be added to Rule 20-101. The MDEC Executive Steering Committee, requested that in subsections (a)(1) and (2), the word "immediately" be replaced by the language "as expeditiously as possible," since in an outage situation, it may take some time for the State Court Administrator to become aware of the outage and take the required action.

Rule 1-324

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-324 to revise an internal reference, as follows:

Rule 1-324. NOTIFICATION OF ORDERS, RULINGS, AND COURT PROCEEDINGS

. . .

(b) Notification When Attorney Has Entered Limited Appearance

If, in an action that is not an ~~affected~~ MDEC action as defined in Rule 20-101 ~~(a)~~ (n), an attorney has entered a limited appearance for a party pursuant to Rule 2-131 or Rule 3-131 and the automated operating system of the clerk's office does not permit the sending of notifications to both the party and the attorney, the clerk shall send all notifications required by section (a) of this Rule to the attorney as if the attorney had entered a general appearance. The clerk shall inform the attorney that, until the limited appearance is terminated, all notifications in the action will be sent to the attorney and that it is the attorney's responsibility to forward to the client notifications pertaining to matters not within the scope of the limited appearance. The attorney promptly shall

Rule 1-324

forward to the client all such notifications, including any received after termination of the limited appearance.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 1-324 conforms the Rule to reflect a terminology changes in proposed amendments to Rule 20-101.

Rule 7-206.1

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-206.1 to revise an internal reference and to change the word "shall" to "may" in section (d), as follows:

Rule 7-206.1. RECORD - JUDICIAL REVIEW OF DECISION OF THE WORKERS' COMPENSATION COMMISSION

. . .

(d) Electronic Transmission

If the Commission is required by section (b) of this Rule or by order of court to transmit all or part of the record to the court, the Commission ~~shall~~ may file electronically if the court to which the record is transmitted is the circuit court for an "~~applicable~~ MDEC county" as defined in Rule 20-101 ~~(e)~~ (o).

. . .

REPORTER'S NOTE

Proposed amendments to Rule 7-206.1 conform the Rule to reflect a terminology change in proposed amendments to Rule 20-101 and, at the request of the Workers' Compensation Commission, change the word "shall" to "may" in section (d).

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MARYLAND RULES OF PROCEDURE

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- ~~(e)~~ (f) Certain Administrative Records

Rule ~~16-905~~ 16-906. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - IN GENERAL

- (a) When Inspection Would be Contrary to Federal Law, Certain Maryland Law, or Court Order
- (b) When Inspection Would be Contrary to Other Maryland Statutes

Rule ~~16-906~~ 16-907. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES OF CASE RECORDS

Rule ~~16-907~~ 16-908. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - SPECIFIC INFORMATION IN CASE RECORDS

Rule ~~16-908~~ 16-909. CONVERSION OF PAPER RECORDS

- (a) Construction of Rule
- (b) In General
- (c) Limiting Access to ~~Court~~ Judicial Records
- (d) Facilitating Access to ~~Court~~ Judicial Records
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- (b) Denial of Access
 - (1) Restricted Information
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 - (A) In General
 - ~~(B) Exception~~
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- (c) Availability of Computer Terminals

Rule 16-911. [RESERVED]

~~Rule 16-910~~ 16-912. CASE RECORDS - COURT ORDER DENYING OR PERMITTING INSPECTION OF CASE RECORD

- (a) Motion
- (b) Shielding Upon Motion
- (c) Temporary Order Precluding or Limiting Inspection
- (d) Final Order
- (e) Filing of Order
- (f) Non-exclusive Remedy
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~~Rule 16-911~~ 16-913. CASE RECORDS - PROCEDURES FOR COMPLIANCE

- (a) Duty of Person Filing Record
- (b) Duty of Clerk

~~Rule 16-912~~ 16-914. RESOLUTION OF DISPUTES BY ADMINISTRATIVE OR CHIEF JUDGE

- (a) Application by Custodian
- (b) Preliminary Determination
- (c) Order; Stay; ~~Action to Enjoin Inspection~~
- (d) Action to Enjoin Inspection
- ~~(d)~~ (e) Order; Action to Compel Inspection
- ~~(e)~~ (f) When Order Becomes Final and Conclusive

Rule 16-901

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

ADD new Rule 16-901, as follows:

Rule 16-901. SCOPE OF CHAPTER

(a) Generally

Except as expressly provided or limited by other Rules, the Rules in this Chapter govern public access to judicial records, whether in paper or electronic form.

Cross reference: (1) See Rule 16-504 governing access to electronic recordings of court proceedings and Rule 20-109 governing access to electronic records under the system of electronic filing and case management established by the Court of Appeals (MDEC). (2) See Rule 16-902 (h) defining "judicial record." (3) The Public Information Act (Code, General Provisions Article, §§4-101 through 4-601) deals generally with public access to public records, as defined in §4-101 (h). See Code, General Provisions Article, §4-301 (2)(iii), requiring a custodian of a public record to deny inspection if the inspection would be contrary to the rules adopted by the Court of Appeals.

(b) Access by Judicial Employees, Parties, Attorneys of Record, and Certain Government Agencies

The Rules in this Chapter do not limit access to judicial records by judicial officials or employees in the performance of their official duties, to a case record by a party or attorney of record in the action, or to government agencies or officials to whom access is permitted by law.

Rule 16-901

Source: This Rule is new.

REPORTER'S NOTE

The Access to Court Records Rules went into effect in 2004. Proposed revisions to the Rules include access to electronic records. The term "court records" is changed to "judicial records" throughout because records maintained by the Administrative Office of the Courts and all of its units; by the Judicial Council and its committees, subcommittees, and work groups; and by the Rules Committee, the Professionalism Center, etc. are subject to the Access Rules but would not be considered "court records." The term "judicial record" is more inclusive and descriptive.

As part of the revisions, a new Rule 16-901, Scope of Chapter, is proposed.

Rule 16-902

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-901 by renumbering it Rule 16-902; by changing the term "court record" to "judicial record" throughout the Rule; by adding the word "otherwise," deleting an internal reference, and changing the word "another" to the word "a" in subsection (a)(1); by deleting language in subsection (a)(2) and replacing it with the language "or judicial agency;" by adding the language "magistrates or other judicial personnel" to subsection (a)(2)(D); by adding a new subsection (a)(2)(J) pertaining to policies, procedures, and plans; by adding a new subsection (a)(2)(K) pertaining to judicial work product; by deleting current section (c); by adding language to section (e); by adding a new section (l) a definition of "Special Judicial Unit"; by adding a new definition of "Judicial Record" to section (h); by adding the language "clerk of" to section (i); by adding a subsection (1) to section (k) with language added to and deleted from the definition of "remote access"; by adding a new subsection (2) to section (k) pertaining to a definition of the term "case records"; and by adding clarifying language and making stylistic changes to the Committee note after subsection (k)(2), as follows:

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Rule ~~16-901~~ 16-902. DEFINITIONS

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

(a) Administrative Record

(1) Except as otherwise provided in ~~subsection (a)(3) of~~ this Rule, "administrative record" means a record that:

(A) pertains to the administration of a court, ~~another~~ a judicial agency, or the judicial system of the State; and

(B) is not a case record.

(2) "Administrative record" includes:

(A) a rule adopted by a court pursuant to Rule 1-102;

(B) an administrative order, policy, or directive that governs the operation of a court ~~including an order, policy, or directive that determines the assignment of one or more judges to particular divisions of the court, or particular kinds of cases~~ or judicial agency;

(C) an analysis or report, even if derived from ~~court~~ judicial records, that is:

(i) prepared by or for a court or ~~other~~ judicial agency;

(ii) used by the court or ~~other~~ judicial agency

for purposes of judicial administration; and

(iii) not filed, and not required to be filed, with the

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clerk of a court.

(D) judicial education materials prepared by, for, or on behalf of a unit of the Maryland Judiciary for use by Maryland judges, magistrates, or other judicial personnel;

(E) a jury plan adopted by a court;

(F) a case management plan adopted by a court;

(G) a continuity of operations plan;

(H) an electronic filing plan adopted by a court; ~~and~~

(I) an administrative order issued by the Chief Judge of the Court of Appeals pursuant to Rule ~~16-902~~ 16-903;

(J) policies, procedures, and plans adopted or approved by the State Court Administrator, the Court of Appeals, or the Chief Judge of that Court pursuant to a Maryland Rule or a statute; and

(K) judicial or other professional work product, including drafts of documents, notes, and memoranda prepared by a judge or other Judicial Branch personnel at the direction of a judge or other judicial official and intended for use in the preparation of a decision, order, recommendation, or opinion.

(3) "Administrative record" does not include a document or information gathered, maintained, or stored by a person or entity other than a court or ~~other~~ judicial agency, to which a court or ~~other~~ judicial agency has access but which is not a case record.

Rule 16-902

(b) Business License Record

(1) "Business license record" means a ~~court~~ judicial record pertaining to an application for a business license issued by the clerk of a court, and includes the application for the license and a copy of the license.

(2) "Business license record" does not include a ~~court~~ judicial record pertaining to a marriage license.

Committee note: A marriage license record is included as a case record under subsection (c)(1)(B) of this Rule. It does not fit neatly within the scope of either a business license record or a case record, but, with respect to issues of public access, it is better treated in the manner of case records. See Rule 16-907 (b).

(c) Case Record

(1) Except as otherwise provided in this Rule, "case record" means:

(A) ~~a document, information, or other thing that is collected, received, or maintained by a court in connection with one or more specific actions or proceedings~~ all or any portion of a court paper, document, exhibit, order, notice, docket entry, or other record, whether in paper, electronic, or other form, that is made, entered, filed, or maintained by the clerk of a court in connection with an action or proceeding;

(B) a ~~copy of~~ record pertaining to a marriage license issued and maintained by the court, including, after the license is issued, the application for the license;

(C) a miscellaneous record filed with the clerk of the court pursuant to law that is not a notice record.

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(2) "Case record" does not include a document or information described in subsection (a)(3) of this Rule.

(d) Court

"Court" means the Court of Appeals of Maryland, the Court of Special Appeals, a circuit court, the District Court of Maryland, and an orphans' court of Maryland.

Custodian

~~(e) Court Record~~

~~"Court record" means a record that is:~~

- ~~(1) an administrative record;~~
- ~~(2) a business license record;~~
- ~~(3) a case record; or~~
- ~~(4) a notice record.~~

~~(f) (e) Custodian~~

"Custodian," with respect to a judicial record, means:

(1) the clerk of a court for a case record, notice record, or business license record, the clerk of the court in which the record was filed or the license was issued or, in the absence of the clerk, an employee of the clerk's office authorized to act for the clerk in determining administratively whether inspection of the record or any part of the record may be denied; and

(2) any other authorized individual who has physical custody and control of a court record for an administrative record or special judicial unit record, the individual or individuals with legal control over the record and authority to

Rule 16-902

determine administratively whether inspection of the record or any part of the record may be denied.

Committee note: This definition of "custodian" focuses on who has authority to make the administrative decision whether, for purposes of the Rules in this Chapter, inspection of a particular judicial record may be denied. It is not intended to foreclose the application of a different definition that may be relevant for other purposes.

~~(g)~~ (f) Individual

"Individual" means a human being.

~~(h)~~ (g) Judicial Agency

"Judicial agency" means a unit within the Judicial Branch of the Maryland Government other than a special judicial unit.

(h) Judicial Record

"Judicial record" means a record that is:

(1) an administrative record;

(2) a business license record;

(3) a case record;

(4) a notice record; or

(5) a special judicial unit record.

(i) Notice Record

"Notice record" means a record that is filed with the clerk of a court pursuant to statute for the principal purpose of giving public notice of the record. It includes deeds, mortgages, and other documents filed among the land records; financing statements filed pursuant to Code, Commercial Law

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Article, Title 9; and tax and other liens filed pursuant to statute.

(j) Person

"Person" means an individual, sole proprietorship, partnership, firm, association, corporation, or other entity.

(k) Remote Access

(1) Generally

"Remote access" means the ability to inspect, search, or copy a ~~court~~ judicial record, as defined in section (h) of this Rule, by electronic means from a location other than the location where the record is stored device not under the control of the Maryland Judiciary. ~~For purposes of this definition, a case record in electronic form is deemed to be stored in the office of the clerk of the court in which the case record was filed.~~

(2) Case Records

Remote access to case records means access through the CaseSearch program operated by the Administrative Office of the Courts. Access to electronic case records through a terminal or kiosk located in a courthouse of the District Court or a circuit court and made available by the court for public access does not constitute remote access.

(1) Special Judicial Unit

"Special Judicial Unit" means (1) the State Board of Law

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Examiners, the Accommodations Review Committee, and the Character Committees; (2) the Attorney Grievance Commission and Bar Counsel; and (3) the Commission on Judicial Disabilities, the Judicial Inquiry Board, and Investigative Counsel.

Cross reference: See Rule 20-109 (c).

Committee note: The Rules in this Chapter recognize that ~~court~~ judicial records can be of ~~four~~ five types: (1) those, like land records, that are filed with the court, not necessarily in connection with any litigation, but for the ~~sole~~ principal purpose of providing public notice of them; (2) those that are essentially administrative in nature - that are created or maintained by the court or judicial agency itself and relate to the ~~internal administration or operation of a~~ the court or ~~other judicial agency as an agency of Government;~~ (3) those that are filed or created in connection with business licenses (excluding marriage licenses) issued by the clerk; ~~and~~ (4) those that are filed with the court in connection with a judicial action or the issuance of a marriage license; and (5) records of three special judicial units that are subject to special rules of confidentiality. The premise of the Rules in this Chapter is that, although the presumption of openness applies to all four kinds of records, they need to be treated differently in some respects.

Land records and other similar kinds of records that are filed with the clerk for the principal purpose of giving public notice of them are ~~court~~ judicial records, but, because the court's only function with respect to those records is to preserve them and make ~~and keep~~ them available for public inspection, there is no justification for shielding them, ~~or any part of them,~~ from public inspection. Those kinds of records are defined as "notice records," and it is the intent of the Rules in this Chapter that, except as otherwise required by statute, there be no substantive (content) restrictions on public access to them. One such statute is Code, Real Property Article, §3-111, prohibiting the disclosure of certain identifying information in recordable instruments.

The Rules in this Chapter assume that the kinds of internal administrative records maintained by a court or other ~~Judicial Branch~~ judicial agency, mostly involving personnel, budgetary, and operational management, are similar in nature and purpose to those kinds of administrative records maintained by Executive Branch agencies and that records pertaining to business licenses issued by a court clerk are similar in nature to records kept by

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Executive Branch agencies that issue licenses of one kind or another. The Rules in this Chapter thus treat those kinds of records more or less the same as comparable Executive Branch records. The Public Information Act ("PIA") provides the most relevant statement of public policy regarding those kinds of records, and, as a general matter, the Rules in this Chapter apply the PIA to those kinds of records, at least with respect to the substantive issue of access. Rule ~~16-911~~ 16-912 provides the procedure to be used to resolve disputes over access to all ~~court~~ judicial records, including administrative records.

A different approach is taken with respect to access to case records - most of which ~~those that~~ come into the court's possession as the result of their having been filed by or with respect to litigants in judicial actions. As to them, the Rules in this Chapter carve out only those exceptions to public access that are felt particularly applicable. The exceptions, for the most part, are ~~narrower~~ more particular than those provided by the PIA. Categorical exceptions are limited to those that (1) have an existing basis, either by statute other than the PIA, or by specific Rule, or (2) present some compelling need for non-access. In an attempt to remove discretion from clerical personnel to deny public access and require that any dispute over closure be examined by a judge on a case-by-case basis, the Rules in this Chapter require that all other exclusions be by court order.

To achieve the differentiation between these various kinds of court records, ~~four~~ five categories are specifically defined in this Rule - "administrative records," "business license records," "case records," ~~and~~ "notice records," and "records of special judicial units". Some principles enunciated in the Rules in this Chapter apply to all ~~four~~ five categories, and, for that purpose, the term "~~court~~ judicial records," which includes all ~~four~~ five categories, is used.

Source: This Rule is derived from former Rule 16-1001 (2016).

REPORTER'S NOTE

In renumbered Rule 16-902, the definition of "administrative record" is proposed to be expanded to include (1) policies, procedures, and plans adopted by the State Court Administrator, the Court of Appeals, or the Chief Judge of the Court of Appeals and (2) judicial or other professional work product. The definition of the term "case record" is expanded to include court papers, documents, exhibits, orders, notices, and docket entries made in both paper and electronic form.

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The definition of the term "custodian" now encompasses custodians of case, notice, or business license records. It is broadened to include custodians of administrative or special judicial unit records. A Committee note is added to clarify that for purposes of the Access Rules, the definition of "custodian" focuses on who has authority to make the administrative decision as to whether inspection of a particular judicial record may be denied.

The term "special judicial unit" is added, because the current Access Rules do not clearly cover these units. Their records would constitute administrative records, but the Rules governing these units have their own confidentiality provisions, which should control the extent of public access. Because no special Rule governs the confidentiality of records of the Client Protection Fund of the Bar of Maryland, that body is not treated as a special judicial unit. Its records should be regarded as administrative records, access to which is governed by Rule 16-905 (c) and the Public Information Act, Code, General Provisions Article, Title 4.

A definition of "judicial record" is added, since that term does not appear in the current Access Rules. The definition of "remote access" is expanded to include a definition of remote access to case records. A Committee note is added to explain the various types of judicial records.

Rule 16-903

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-902 by renumbering it Rule 16-903, by changing the term "court record" to "judicial record" throughout the Rule, by adding a new section (a) pertaining to the purpose of the Rules in Chapter 900, by adding the language "or by other applicable law" and making stylistic changes to section (b), by adding a reference to Rule 16-910 in the Committee note after section (b), by deleting subsection (2) of section (c) and making stylistic changes to section (c), by changing certain terminology in and by adding an exception to section (d), by adding a Committee note after section (d), by adding language to subsection (e)(6)(A) referring to two Maryland counties, by deleting language from subsection (e)(6)(D), by changing an internal reference and deleting a word from subsections (f)(1) and (2), and by deleting current section (f), as follows:

Rule ~~16-902~~ 16-903. GENERAL POLICY

(a) Purpose of Rules

The Rules in this Chapter are intended to provide public access to judicial records while protecting the legitimate security and privacy rights of litigants and others who are the

Rule 16-903

subject of those records.

~~(a)~~ (b) Presumption of Openness

~~Court~~ Judicial records ~~maintained by a court or other judicial agency~~ are presumed to be open to the public for inspection. Except as otherwise provided by the Rules in this Chapter or by other applicable law, the custodian of a ~~court~~ judicial record shall permit an individual appearing in person in the office of the custodian during normal business hours to inspect the record.

Committee note: (1) For normal business hours, see Rule 16-403. (2) The definition of "business day" in Rule 20-101 ~~(e)~~ (b) has no application to this Rule. (3) Remote access to case records is provided for, in part, by Rule 16-910.

~~(b)~~ (c) Protection of Records

To protect ~~court~~ judicial records and prevent unnecessary interference with the official business and duties of the custodian and other ~~court~~ judicial personnel,

~~(1)~~ a clerk is not required to permit in-person inspection of a case record filed with the clerk for docketing in a judicial action or a notice record filed for recording and indexing until the document has been docketed or recorded and indexed; ~~and~~

~~(2) the Chief Judge of the Court of Appeals, by administrative order, a copy of which shall be posted on the Judiciary's website and filed with and maintained by the clerk of each court, may adopt procedures and conditions, not~~

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~~inconsistent with the Rules in this Chapter, governing the timely production, inspection, and copying of court records.~~

~~(e)~~ (d) Exhibit Pertaining to Motion or Marked for Identification

Unless a judicial ~~action~~ proceeding is not open to the public or the court expressly orders otherwise, and except for identifying information shielded pursuant to law, a court case record that consists of an exhibit (1) submitted in support of or in opposition to a motion that has been ruled upon by the court or (2) marked for identification at trial, ~~whether or not~~ offered in evidence, whether or not admitted, is subject to inspection, notwithstanding that the record otherwise would not have been subject to inspection under the Rules in this Chapter.

Cross reference: See Rule 2-516.

Committee note: Section (d) is based on the general principle that the public has a right to know the evidence upon which a court acts in making decisions, except to the extent that a superior privacy interest recognized by law permits particular evidence, or the evidence in particular cases, to be shielded.

~~(d)~~ (e) Fees

(1) In this Rule, "reasonable fee" means a fee that bears a reasonable relationship to the actual or estimated costs incurred or likely to be incurred in providing the requested access.

(2) Unless otherwise expressly permitted by the Rules in this Chapter, a custodian may not charge a fee for providing

Rule 16-903

access to a ~~court~~ judicial record that can be made available for inspection, in paper form or by electronic access, with less than two hours of effort by the custodian or other judicial employee.

(3) A custodian may charge a reasonable fee if two hours or more of effort are required to provide the requested access.

(4) The custodian may charge a reasonable fee for making or supervising the making of a copy or printout of a ~~court~~ judicial record.

(5) The custodian may waive a fee if, after consideration of the ability of the person requesting access to pay the fee and other relevant factors, the custodian determines that the waiver is in the public interest.

(6) A dispute concerning the assessment of a reasonable fee shall be determined:

(A) if the record is in an appellate court or an orphans' court other than in Harford or Montgomery County, by the chief judge of the court, and in the orphans' court in Harford or Montgomery County, by the County Administrative Judge of the circuit court for that county;

(B) if the record is in a circuit court, by the county administrative judge;

(C) if the record is in the District Court, by the District administrative judge; or

Rule 16-903

(D) if the record is in a judicial agency other than a court, by the State Court Administrator.

~~(e)~~ (f) ~~New Court~~ Judicial Records

(1) Except as expressly required by other law and subject to Rule ~~16-908~~ 16-909, a custodian, a court, or another judicial agency is not required by the Rules in this Chapter to index, compile, re-format, program, or reorganize existing ~~court~~ judicial records or other documents or information to create a new ~~court~~ judicial record not necessary to be maintained in the ordinary course of business. The removal, deletion, or redaction from a ~~court~~ judicial record of information not subject to inspection under the Rules in this Chapter in order to make the ~~court~~ judicial record subject to inspection does not create a new record within the meaning of this Rule.

(2) If a custodian, court, or ~~other~~ judicial agency (A) indexes, compiles, re-formats, programs, or reorganizes existing ~~Court~~ judicial records or other documents or information to create a new ~~court~~ judicial record, or (B) comes into possession of a new ~~court~~ judicial record created by another from the indexing, compilation, re-formatting, programming, or reorganization of other ~~court~~ judicial records, documents, or information, and there is no basis under the Rules in this Chapter to deny inspection of that new ~~court~~

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judicial record or some part of that ~~court~~ judicial record, the new ~~court~~ judicial record or a part for which there is no basis to deny inspection shall be subject to inspection.

~~(f) Access by Judicial Employees, Parties, and Attorneys~~

~~The Rules in this Chapter address access to court records by the public at large. The Rules do not limit access to court records by judicial officials or employees in the performance of their official duties, or to a case record by a party or attorney of record in the action.~~

Source: This Rule is derived from former Rule 16-1002 (2016).

REPORTER'S NOTE

In renumbered Rule 16-903, a new section (a) is proposed to clarify the purpose of the Access Rules.

Subsection (c)(2) is deleted, because no administrative order governing the production, inspection, and copying of court records exists nor is one planned.

A Committee note is added after section (d) explaining the meaning of that section.

Language is added to subsection (e)(6)(A) to account for the fact that in Harford and Montgomery Counties, Orphans' Court cases are heard in the circuit court.

Provisions contained in section (f) of the current Rule are transferred to Rule 16-901.

Rule 16-904

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-903 by renumbering it Rule 16-904, by changing the term "court record" to "judicial record" throughout the Rule; by changing an internal reference in section (a), by adding language pertaining to a certified copy to and deleting language from section (b), and by adding a new section (c) pertaining to an uncertified copy, as follows:

Rule ~~16-903~~ 16-904. COPIES

(a) Entitlement

Except as otherwise expressly provided by law, a person entitled to inspect a ~~court~~ judicial record is entitled to have a copy or printout of the ~~court~~ record. The copy or printout may be in paper form or, subject to Rule ~~16-908 (e)~~ 16-909 (c) and the Rules in Title 20, in electronic form.

(b) ~~Where Made~~ Certified Copy

To the extent practicable, a certified copy ~~or printout in paper form~~ of the case record shall be made ~~where the court record is kept and while the court record is in the custody of the custodian~~ by any authorized clerk of the court in which the case was filed or to which it was transferred.

(c) Uncertified Copy

Rule 16-904

Copies or printouts in paper form that are obtained from a terminal or kiosk located in a courthouse are uncertified.

Source: This Rule is derived from former Rule 16-1003 (2016).

REPORTER'S NOTE

Renumbered Rule 16-904 is proposed to be amended to address access to certified and uncertified copies of judicial records.

Rule 16-905

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-904 by renumbering it Rule 16-905, by adding the language "Special Judicial Unit" to the title, by adding the language "except as otherwise provided by statute" to section (a), by adding a cross reference to a certain statute after section (a), by adding a new section (b) pertaining to special judicial unit records, by adding cross references to certain other Rules after section (b), by making a stylistic change and by changing the word "and" to the word "or" in subsection (c)(1)(A), by adding the language "unless otherwise directed in a" before the words "court order" in subsection (c)(2), by replacing the reference to the "Maryland Public Information Act" with its specific Code citation in sections (d) and (e), by deleting a word in section (d), by changing the term "court record" to "judicial record" in the Committee note after subsection (d)(9), by changing the term "Board of Directors of the Judicial Institute" to "State Court Administrator" and by adding the language "in the education and training of" before the words "Maryland judges" in subsection (f)(2), and by adding a new subsection (f)(4) pertaining to certain recordings and documents, as follows:

Rule 16-905

Rule ~~16-904~~ 16-905. ACCESS TO NOTICE, SPECIAL JUDICIAL UNIT, ADMINISTRATIVE, AND BUSINESS LICENSE RECORDS

(a) Notice Records

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

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

(b) Special Judicial Unit Records

Access to judicial records of special judicial units is governed by the confidentiality Rules applicable to those particular units.

Cross reference: See Rule 18-409, applicable to records and proceedings of the Judicial Disabilities Commission, the Judicial Inquiry Board, and Investigative Counsel; Rule 19-105, applicable to the Board of Law Examiners, the Accommodation Review Committee, and the Character Committees; and Rule 19-707, applicable to records and proceedings of the Attorney Grievance Commission and Bar Counsel.

~~(b)~~ (c) Administrative and Business License Records

(1) Except as otherwise provided by the Rules in this Chapter, the right to inspect administrative and business license records is governed by the applicable provisions of Code, General Provisions Article, Title 4.

(A) A custodian shall deny inspection of an administrative record used by the jury commissioner in the jury selection

Rule 16-905

process, except (i) as otherwise ordered by a trial judge ~~orders~~ in connection with a challenge under Code, Courts Article, §§8-408 and 8-409; ~~and~~ or (ii) as provided in subsections ~~(b)(2)(B)~~ and ~~(b)(2)(C)~~ (c)(1)(B) and (c)(1)(C) of this Rule.

(B) Upon request, the trial judge may authorize a custodian ~~shall~~ to disclose the names and zip codes of the sworn jurors contained on a jury list after the jury has been impaneled and sworn, unless otherwise ordered by the trial judge.

Cross reference: See Rule 4-312 (d).

(C) After a source pool of qualified jurors has been emptied and re-created in accordance with Code, Courts Article, §8-207, and after every individual selected to serve as a juror from that pool has completed the individual's service, a trial judge ~~shall~~, upon request, shall disclose the name, zip code, age, sex, education, occupation, marital status, and spouse's occupation of each person whose name was selected from that pool and placed on a jury list, unless, in the interest of justice, the trial judge determines that this information remain confidential in whole or in part.

(D) A jury commissioner may provide jury lists to the Health Care Alternative Dispute Resolution Office as required by that Office in carrying out its duties, subject to any regulations of that office to ensure against improper dissemination of juror data.

Rule 16-905

Cross reference: See Rule 4-312 (d).

(E) At intervals acceptable to the jury commissioner, a jury commissioner shall provide to the State Board of Elections and State Motor Vehicle Administration data about prospective, qualified, or sworn jurors needed to correct erroneous or obsolete information, such as that related to a death or change of address, subject to the Board's and Administration's adoption of regulations to ensure against improper dissemination of juror data.

~~(3)~~ (2) ~~Except by~~ Unless otherwise directed in a court order, a custodian shall deny inspection of an administrative record that constitutes all or part of a continuity of operations plan drafted or adopted pursuant to Rule 16-803.

~~(e)~~ (d) Personnel Records - Generally

Except as otherwise permitted by ~~the Maryland Public Information Act~~ Code, General Provisions Article, Title 4 (PIA) or by this Rule, a custodian shall deny to a person, other than the person who is the subject of the record, inspection of the personnel records of an employee of the court or ~~other~~ judicial agency or of an individual who has applied for employment with the court or other judicial agency. The following records or information are not subject to this exclusion and, unless sealed or otherwise shielded pursuant to the Maryland Rules or other law, shall be open to inspection:

Rule 16-905

- (1) the full name of the individual;
- (2) the date of the application for employment and the position for which application was made;
- (3) the date employment commenced;
- (4) the name, location, and telephone number of the court or judicial agency to which the individual has been assigned;
- (5) the current and previous job titles and salaries of the individual during employment by the court or judicial agency;
- (6) the name of the individual's current supervisor;
- (7) the amount of monetary compensation paid to the individual by the court or judicial agency and a description of any health, insurance, or other fringe benefit that the individual is entitled to receive from the court or judicial agency;
- (8) unless disclosure is prohibited by law, other information authorized by the individual to be released; and
- (9) a record that has become a case record.

Committee note: Although a ~~court~~ judicial record that has become a case record is not subject to the exclusion under section ~~(e)~~ (d) of this Rule, it may be subject to sealing or shielding under other Maryland Rules or law.

~~(d)~~ (e) Personnel Records - Retirement

Unless inspection is permitted under ~~the Maryland Public Information Act~~ Code, General Provisions Article, Title 4 (PIA) or the record has become a case record, a custodian shall deny

Rule 16-905

inspection of a retirement record of an employee of the court or other judicial agency.

~~(e)~~ (f) Certain Administrative Records

A custodian shall deny inspection of the following administrative records:

(1) judicial work product, including drafts of documents, notes, and memoranda prepared by a judge or other court personnel at the direction of a judge and intended for use in the preparation of a decision, order, or opinion;

(2) unless otherwise determined by the ~~Board of Directors of the Judicial Institute~~ State Court Administrator, judicial education materials prepared by, for, or on behalf of a unit of the Maryland Judiciary for use ~~by~~ in the education and training of Maryland judges, magistrates, and other judicial personnel;

(3) an administrative record that is:

(A) prepared by or for a judge or other judicial personnel;

(B) either (i) purely administrative in nature but not a local rule, policy, or directive that governs the operation of the court or (ii) a draft of a document intended for consideration by the author or others and not intended to be final in its existing form; and

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

Source: This Rule is derived from former Rule 16-1004 (2016).

Rule 16-905

REPORTER'S NOTE

In renumbered Rule 16-905, a proposed amendment to section (a) contains an exception for statutes that may not conform to the provisions of section (a).

Section (b) is new. It addresses access to the records of special judicial units. A cross reference to the Rules applying to these units is added.

Rule 16-906

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-905 by renumbering it Rule 16-906, by changing the term "court record" to the term "judicial record" throughout the Rule, and by replacing the reference to the "Maryland Public Information Act" with the Code citation in subsection (a)(3) and section (b), as follows:

Rule ~~16-905~~ 16-906. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - IN GENERAL

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

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

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

(2) The Maryland Constitution;

(3) A provision of ~~the Maryland Public Information Act~~ Code, General Provisions Article, Title 4 (PIA) that is expressly adopted in the Rules in this Chapter;

(4) A rule adopted by the Court of Appeals; or

(5) An order entered by the court having custody of the case

Rule 16-906

record or by any higher court having jurisdiction over

(A) the case record, or

(B) the person seeking inspection of the case record.

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

Unless inspection is otherwise permitted by the Rules in this Chapter, a custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than ~~the Maryland Public Information Act~~ (Code, General Provisions Article, Title 4) (PIA), that expressly or by necessary implication applies to a ~~court~~ judicial record.

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

Committee note: Subsection (a)(5) of this Rule allows a court to seal a record or otherwise preclude its disclosure. So long as a ~~court~~ judicial record is under seal or subject to an order precluding or limiting disclosure, it may not be disclosed except in conformance with the order. The authority to seal a ~~court~~ judicial record must be exercised in conformance with the general policy of these Rules and with supervening standards enunciated in decisions of the United States Supreme Court and the Maryland Court of Appeals.

Source: This Rule is derived from former Rule 16-1005 (2016).

REPORTER'S NOTE

Proposed amendments to renumbered Rule 16-906 contain only stylistic changes.

Rule 16-907

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-906 by renumbering it Rule 16-907, by deleting language from the title, by adding the words "and truancy" before the word "actions" in subsection (a)(2), by deleting the reference to a certain period of time after the petition is filed and replacing it with the time period "until the petition is served" in section (c), by adding the language "peace orders" and "domestic violence protection orders" to section (d), by adding the language "fiduciary or a" before the word "guardian," by adding the words "minor or" before the word "disabled person," by adding a reference to certain chapters of Title 10, by deleting subsections (f)(1) and (f)(2), by deleting current section (g), by adding the language "except as authorized by a judge under that Rule" to subsection (g)(1)(B), by changing the term "court records" to "judicial records" in the Committee note after subsection (g)(6), by adding the language "Incompetency and Criminal Responsibility" to subsection (g)(7), by adding the language "or other law" to and deleting language from section (h), by adding the language "subject to the Rules in Title 16, Chapter 500" to and deleting language from section (i), by changing an internal Rule

Rule 16-907

reference in subsection (1)(2), and by making stylistic changes, as follows:

Rule ~~16-906~~ 16-907. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES OF CASE RECORDS

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

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) adoption;

(B) guardianship; or

(C) to revoke a consent to adoption or guardianship for which there is no pending adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, ~~and~~ child in need of supervision, and truancy actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection unless the record was ordered expunged.

Committee note: In most instances, the "children" referred to in this section will be minors, but, as Juvenile Court jurisdiction extends until a child is 21, in some cases, the children legally may be adults.

(b) The following case records pertaining to a marriage

Rule 16-907

license:

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

(2) Until a license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.

Cross reference: See Code, Family Law Article, §2-402 (f).

(c) Case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, §4-504, which shall be sealed until the earlier of ~~48 hours after the petition is filed or the court acts on~~ service or denial of the petition.

(d) Case records required to be shielded pursuant to Code, Courts Article, §3-1510 (peace orders) or Code, Family Law Article, §4-512 (domestic violence protective orders).

(e) In any action or proceeding, a record created or maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

(f) ~~The following papers~~ Papers filed by a fiduciary or a guardian of the property of a minor or disabled adult person pursuant to Title 10, Chapter 200, 400, or 700 of the Maryland Rules that include financial information regarding the minor or disabled person.

~~(1) the annual fiduciary account filed pursuant to Rule 10-~~

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~~706, and~~

~~(2) the inventory and information report filed pursuant to Rule 10-707.~~

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, Human Services Article, §§1-202 and 1-203 and Code, Family Law Article, §5-707.

~~(g) The following case records in actions or proceedings involving attorneys or judges:~~

~~(1) Records and proceedings in attorney grievance matters declared confidential by Rule 19-707 (b).~~

~~(2) Case records with respect to an investigative subpoena issued by Bar Counsel pursuant to Rule 19-712.~~

~~(3) Subject to the provisions of Rule 19-105 (b), (c), and (d) of the Rules Governing Admission to the Bar, case records relating to bar admission proceedings before the Accommodations Review Committee and its panels, a Character Committee, the State Board of Law Examiners, and the Court of Appeals.~~

~~(4) Case records consisting of IOLTA Compliance Reports filed by an attorney pursuant to Rule 19-409 and Pro Bono Legal Service Reports filed by an attorney pursuant to Rule 19-503.~~

~~(5) Case records relating to a motion filed with respect to a subpoena issued by Investigative Counsel for the Commission on Judicial Disabilities pursuant to Rule 18-405.~~

~~(h) (g) The following case records in criminal actions or proceedings:~~

~~(1) A case record that has been ordered expunged pursuant to~~

Rule 16-907

Rule 4-508.

(2) The following case records pertaining to search warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601, except as authorized by a judge under that Rule.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d)(3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, §4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) A case record maintained under Code, Courts Article, §9-106, of the refusal of an individual to testify in a criminal action against the individual's spouse.

(5) A presentence investigation report prepared pursuant to Code, Correctional Services Article, §6-112.

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(6) A case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, §15-108, (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, §14-110, or (D) the Attorney General when acting pursuant to Article V, §3 of the Maryland Constitution or other law.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of ~~court~~ judicial records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(7) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3 (Incompetency and Criminal Responsibility).

Cross reference: See Code, Criminal Law Article, §5-601.1 governing confidentiality of ~~court~~ judicial records pertaining to a citation issued for a violation of Code, Criminal Law Article, §5-601 involving the use or possession of less than 10 grams of marijuana.

~~(i)~~ (h) A transcript, ~~tape recording,~~ or an audio, video, or digital recording of any court proceeding that was closed to the public pursuant to Rule, ~~or~~ order of court, or other law.

~~(j)~~ (i) Subject to the Rules in Title 16, Chapter 500, ~~Backup~~ backup audio recordings ~~made by any means,~~ computer disks, and notes of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

~~(k)~~ (j) The following case records containing medical information:

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(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health-General Article, §18-338.1 or §18-338.2.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health-General Article, §5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, §18-201 or §18-202.

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled individual, declared confidential by Code, Health-General Article, §7-1003.

(6) A case record relating to a petition for an emergency evaluation made under Code, Health-General Article, §10-622 and declared confidential under ~~Code, Health-General Article, §10-630~~ of that Article.

~~(l)~~ (k) A case record that consists of the federal or Maryland

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income tax return of an individual.

~~(m)~~ (l) A case record that:

(1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or

(2) in accordance with Rule ~~16-910~~ ~~(b)~~ 16-912 (b) is the subject of a motion to preclude or limit inspection.

~~(n)~~ (m) As provided in Rule 9-203 (d), a case record that consists of a financial statement filed pursuant to Rule 9-202.

~~(o)~~ (n) A document required to be shielded under Rule 20-203 (e)(1).

~~(p)~~ (o) An unredacted document filed pursuant to Rule 1-322.1 or Rule 20-203 (e)(2).

Source: This Rule is derived from former Rule 16-1006 (2016).

REPORTER'S NOTE

In renumbered Rule 16-907, subsection (a)(2) contains a proposed addition providing for an exclusion of access to case records in truancy actions. A Committee note is added clarifying the meaning of the term "children" referred to in subsection (a)(2). Section (c) has been changed to ensure that the record is sealed for a sufficient period of time to protect the petitioner. Language is added to section (f), clarifying and expanding the scope of the financial information to which the section applies. Current section (g) is deleted because of the addition of section (b) of Rule 16-905. Section (i) has a new reference to the Title 16, Chapter 500 Rules, which pertain to the recording of proceedings.

Rule 16-908

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-907 by renumbering it Rule 16-908, by making a stylistic change to the title, by changing an internal Rule reference in section (c), and by changing an internal Rule reference in the cross reference after section (f), as follows:

Rule ~~16-907~~ 16-908. CASE RECORDS - REQUIRED DENIAL
OF INSPECTION - SPECIFIC INFORMATION ~~IN CASE RECORDS~~

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

(a) The name, address, telephone number, e-mail address, or place of employment of an individual who reports the abuse of a vulnerable adult pursuant to Code, Family Law Article, §14-302.

(b) Except as provided in Code, General Provisions Article, §4-331, the home address, telephone number, and private e-mail address of an employee of the State or a political subdivision of the State.

(c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested that such information be

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shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or motion filed under Rule ~~16-910~~ 16-912.

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

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

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

Cross reference: See Rule ~~16-910~~ ~~(g)~~ 16-912 (g) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions.

Source: This Rule is derived from former Rule 16-1007 (2016).

REPORTER'S NOTE

Proposed amendments to renumbered Rule 16-908 contain only stylistic changes.

Rule 16-909

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-908 by renumbering it Rule 16-909, by changing the term "court record" to the term "judicial record" throughout the Rule, by adding a cross reference after section (a), by changing the approval process for changes to electronic access to databases, by deleting references to the Office of Communications and Public Affairs, by designating the State Court Administrator as the recipient of requests for electronic access to or information from databases, by changing the procedure for review of a request for access that was denied, and by deleting subsection (f)(6), as follows:

Rule ~~16-908~~ 16-909. CONVERSION OF PAPER RECORDS

(a) Construction of Rule

This Rule is subject to and shall be construed harmoniously with the other Rules in this Chapter, the Rules in Title 20, other applicable law, and administrative orders of the Chief Judge of the Court of Appeals.

Cross reference: Remote access to case records by the general public is governed predominantly by the CaseSearch program. See Rules 20-102 (a)(2) and 20-106 regarding the conversion of paper records under MDEC.

(b) In General

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Subject to the Rules in this Title and Title 20, to other applicable law, and to administrative orders of the Chief Judge of the Court of Appeals, a custodian, court, or other judicial agency, for the purpose of providing public access to ~~court~~ judicial records in electronic form, is authorized but not required:

(1) to convert paper ~~court~~ judicial records into electronic ~~court~~ judicial records;

(2) to create new electronic records, databases, programs, or computer systems;

(3) to create the ability to inspect or copy ~~court~~ judicial records through remote access; or

(4) to convert, supplement, modify, or replace an existing electronic storage or retrieval system.

(c) Limiting Access to ~~Court~~ Judicial Records

A custodian may limit access to ~~court~~ judicial records in electronic form to the manner, form, and program that the electronic system used by the custodian, without modification, is capable of providing.

(d) Facilitating Access to ~~Court~~ Judicial Records

If a custodian, court, or other judicial agency converts paper ~~court~~ judicial records into electronic ~~court~~ judicial records or otherwise creates new electronic records, databases, or computer systems, it shall, to the extent practicable, design

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those records, databases, or systems to facilitate access to ~~court~~ judicial records that are open to inspection under the Rules in this Chapter.

(e) Current Programs Providing Electronic Access to Databases

Any electronic access to a database of ~~court~~ judicial records that is provided by a court or other judicial agency and is in effect on July 1, 2016 may continue in effect, subject to review by the Judicial Council for consistency with the Rules in this Chapter. After review, the Council may ~~make~~ or direct recommend to the Chief Judge of the Court of Appeals any changes that it concludes are necessary to make the electronic access consistent with the Rules in this Chapter.

(f) New Requests for Electronic Access to or Information from Databases

(1) A person who desires to obtain electronic access to or information from a database of ~~court~~ judicial records to which electronic access is not then immediately and automatically available shall submit to the ~~Office of Communications and Public Affairs~~ State Court Administrator a written request that describes the ~~court~~ judicial records to which access is desired and the proposed method of achieving that access.

(2) The ~~Office of Communications and Public Affairs~~ State Court Administrator shall review the request and ~~may consult~~ the Judicial Information Systems. ~~Without~~ without undue delay

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~~and, unless impracticable, within 30 days after receipt of the request, the Office of Communications and Public Affairs shall take one of the following actions:~~

(A) ~~It shall approve~~ Approve a request that seeks access to ~~court~~ judicial records subject to inspection under the Rules in this Chapter or Title 20 ~~and~~ that will not directly or indirectly impose significant fiscal or operational burdens on any court or judicial agency.

(B) ~~It shall conditionally~~ Conditionally approve a request that seeks access to ~~court~~ judicial records subject to inspection under the Rules in this Chapter or Title 20 but will directly or indirectly impose significant and reasonably calculable fiscal or operational burdens on a court or judicial agency on condition of the requestor's prepayment in full of all additional expenses reasonably incurred as a result of the approval.

(C) ~~It shall deny~~ Deny the request and state the reason for the denial if:

(i) the request would impose significant and reasonably calculable operational burdens on a court or judicial agency that cannot be overcome merely by prepayment of additional expenses under subsection (f)(2)(B) of this Rule or any other practicable condition;

(ii) the requester fails or refuses to satisfy a condition imposed under subsection (f)(2)(B) of this Rule;

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(iii) the request seeks access to ~~court~~ judicial records not subject to inspection under the Rules in this Chapter or Title 20; or

(iv) the request directly or indirectly imposes a significant but not reasonably calculable fiscal or operational burden on any court or judicial agency.

(3) Upon receipt of a denial, the requester may ~~request a conference with the Office of Communications and Public Affairs to address any basis for denial. If, after a conference the matter is not resolved, the requester may~~ ask for referral of the request or any proposed but rejected amendment to the request to the Judicial Council for its review and recommendation to the Chief Judge of the Court of Appeals.

(4) Upon referral to the Judicial Council, the Council, in accordance with its internal procedures or as otherwise directed by the Chief Judge of the Court of Appeals, shall consider each of the stated grounds for denial of the request by the ~~Office of Communications and Public Affairs~~ State Court Administrator and any previously proposed but rejected amendment thereof, and also consider, to the extent relevant thereto:

(A) whether the data processing system, operational system, electronic filing system, or manual or electronic storage and retrieval system used by or planned for the court or judicial agency that maintains the records can currently provide the access requested in the manner requested and in conformance

Rule 16-909

with Rules 16-901 through ~~16-907~~ 16-908, and, if not, any changes or effort required to enable those systems to provide that access;

(B) whether any changes to the data processing, operational electronic filing, or storage or retrieval systems used by or planned for other courts or judicial agencies in the State would be required in order to avoid undue disparity in the ability of those courts or agencies to provide equivalent access to ~~court~~ judicial records maintained by them;

(C) any other fiscal, personnel, or operational impact of the proposed program on the court or judicial agency or on the State judicial system as a whole;

(D) whether there is a substantial possibility that information retrieved through the program may be used for any fraudulent or other unlawful purpose or may result in the dissemination of inaccurate or misleading information concerning ~~court~~ judicial records or individuals who are the subject of ~~court~~ judicial records and, if so, whether there are any safeguards to prevent misuse of disseminated information and the dissemination of inaccurate or misleading information; and

(E) any other consideration that the Judicial Council finds relevant.

(5) Upon consideration of the factors set forth in subsection (f)(4) of this Rule and without undue delay, the Judicial Council shall inform the Chief Judge of the Court of

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Appeals of its recommendations. The Chief Judge shall determine and inform the ~~Office of Communications and Public Affairs~~ State Court Administrator and the requester whether the request is:

(A) approved, because it complies with the requirements of subsection (f)(2)(A) of this Rule;

(B) conditionally approved, because it complies with the requirements of subsection (f)(2)(B) of this Rule and the requester has agreed to comply with the conditions established by the Chief Judge; or

(C) denied under subsection (f)(2)(C) of this Rule.

~~(6) Upon receiving a denial by the Chief Judge, the requester is not barred from resubmitting to the Office of Communications and Public Affairs an amended request that addresses the Chief Judge's stated grounds for denial.~~

Source: This Rule is derived from former Rule 16-1008 (2016).

REPORTER'S NOTE

In renumbered Rule 16-909, a cross reference is proposed to be added after section (a) referring to the CaseSearch program and to the MDEC Rules pertaining to the conversion of paper records to electronic records. Section (e) is amended to provide that the Judicial Council recommends to the Chief Judge of the Court of Appeals any changes the Council concludes are necessary to make electronic access to records consistent with the Access Rules. Under the current Rule, the Council is charged with the responsibility of making or directing the changes.

In section (f), the role of the Office of Communications and Public Access in responding to requests for electronic access to, or information from, a database of judicial records is transferred to the State Court Administrator. Subsection (f)(6) is deleted as unnecessary.

Rule 16-910

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-909 by renumbering it Rule 16-910, by changing the term "court record" to "judicial record" throughout the Rule, by deleting current subsection (b)(2)(B), by adding the words "or kiosks" to section (c), and by adding a cross reference at the end of the Rule, as follows:

Rule ~~16-909~~ 16-910. ACCESS TO ELECTRONIC RECORDS

(a) In General

Subject to the other Rules in this Title and in Title 20 and other applicable law, a ~~court~~ judicial record that is kept in electronic form is open to inspection to the same extent that the record would be open to inspection in paper form.

(b) Denial of Access

(1) Restricted Information

A custodian shall take reasonable steps to prevent access to restricted information, as defined in Rule 20-101 ~~(s)~~ (t), that the custodian is on notice is included in an electronic ~~court~~ judicial record.

(2) Certain Identifying Information

(A) In General

Except as provided in subsection (b)(2)(B) of this

Rule 16-910

Rule, a custodian shall prevent remote access to the name, address, telephone number, date of birth, e-mail address, and place of employment of a victim or nonparty witness in:

- (i) a criminal action,
- (ii) a juvenile delinquency action under Code, Courts Article, Title 3, Subtitle 8A,
- (iii) an action under Code, Family Law Article, Title 4, Subtitle 5 (domestic violence), or
- (iv) an action under Code, Courts Article, Title 3, Subtitle 15 (peace order).

~~(B) Exception~~

~~Unless shielded by a protective order, the name, office address, office telephone number and office e-mail address, if any, relating to law enforcement officers, other public officials or employees acting in their official capacity, and expert witnesses, may be remotely accessible.~~

~~(C) (B) Notice to Custodian~~

A person who places in a ~~court~~ judicial record identifying information relating to a witness shall give the custodian written or electronic notice that such information is included in the record, where in the record that information is contained, and whether that information is not subject to remote access under this Rule, Rule 1-322.1, Rule 20-201, or other applicable law. Except as federal law may otherwise provide, in the absence of such notice a custodian is not liable for allowing

Rule 16-910

remote access to the information.

(c) Availability of Computer Terminals

Clerks shall make available at convenient places in the courthouses computer terminals or kiosks that the public may use free of charge in order to access ~~court~~ judicial records and parts of ~~court~~ judicial records that are open to inspection, including ~~court~~ judicial records as to which remote access is otherwise prohibited. To the extent authorized by administrative order of the Chief Judge of the Court of Appeals, computer terminals or kiosks may be made available at other facilities for that purpose.

Cross reference: Rule 20-109.

Source: This Rule is derived from former Rule 16-1008.1 (2016).

REPORTER'S NOTE

In renumbered Rule 16-910, subsection (b)(2)(B) is proposed to be deleted, references to "kiosks" are added to section (c), and a cross reference to Rule 20-109 is added at the end of the Rule.

Rule 16-912

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-910 by renumbering it Rule 16-912, by making a stylistic change to the title, by adding the language "or other applicable law" to subsections (a)(1)(A) and (B), by changing the term "court record" to the term "judicial record" in subsection (a)(3), by adding the language "or on whose behalf the relief is sought" to subsection (c)(2), and by making a stylistic change to subsection (d)(5), as follows:

Rule ~~16-910~~ 16-912. CASE RECORDS - COURT ORDER DENYING OR PERMITTING INSPECTION OF CASE RECORD

(a) Motion

(1) A party to an action in which a case record is filed, including a person who has been permitted to intervene as a party, and a person who is the subject of or is specifically identified in a case record may file a motion:

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

(B) to permit inspection of a case record filed in that action that is not otherwise subject to inspection

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under the Rules in this Chapter or Title 20 or other applicable law.

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

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

(B) each identifiable person who is the subject of the case record.

(3) A petition to shield a ~~court~~ judicial record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 shall be filed in the county where the judgment of conviction was entered. Service shall be provided and proceedings shall be held as directed in that Subtitle.

(b) Shielding Upon Motion

This section does not apply to a petition filed pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3. Upon the filing of a motion to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue.

(c) Temporary Order Precluding or Limiting Inspection

(1) The court shall consider a motion filed under this Rule

Rule 16-912

on an expedited basis.

(2) In conformance with the provisions of Rule 15-504 (Temporary Restraining Order), the court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other statement under oath that (A) there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection, and (B) immediate, substantial, and irreparable harm will result to the person seeking the relief or on whose behalf the relief is sought if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.

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

(d) Final Order

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

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

(B) permitting inspection, under such conditions and

Rule 16-912

limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under the Rules in this Chapter; or

(C) denying the motion.

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

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

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

(5) In determining whether to permit or deny inspection, the court shall consider:

(A) if the motion seeks to preclude or limit inspection of a case record that is otherwise subject to inspection under the Rules in this Chapter, whether a special and compelling reason exists to preclude or limit inspection of the particular case record; ~~and~~

Rule 16-912

(B) if the motion seeks to permit inspection of a case record that is otherwise not subject to inspection under the Rules in this Chapter, whether a special and compelling reason exists to permit inspection; and

(C) if the motion seeks to permit inspection of a case record that has been previously sealed by court order under subsection (d)(1)(A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections (d)(2), (3), and (5)(A) of this Rule.

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

(e) Filing of Order

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

(f) Non-exclusive Remedy

This Rule does not preclude a court from exercising its authority at any time to enter an appropriate order that seals or limits inspection of a case record or that makes a case record subject to inspection.

(g) Request to Shield Certain Information

(1) This subsection applies to a request, filed by an

Rule 16-912

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

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

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

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

Source: This Rule is derived from former Rule 16-1009 (2016).

REPORTER'S NOTE

In renumbered Rule 16-912, the phrase "or other applicable law" is proposed to be added to subsections (a)(1)(A) and (B). In subsection (c)(2), language is added to account for the situation in which a petition is filed not by the person seeking relief, but by someone else on behalf of the person for whom relief is sought.

Rule 16-913

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-911 by renumbering it Rule 16-913 and by making stylistic changes, as follows:

Rule ~~16-911~~ 16-913. CASE RECORDS - PROCEDURES FOR COMPLIANCE

(a) Duty of Person Filing Record

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

(2) The custodian is not bound by the person's determination that a case record, any part of a case record, or information contained in a case record is not subject to inspection and shall permit inspection of a case record unless, in the custodian's independent judgment, subject to review as provided in Rule ~~16-912~~ 16-914, the case record is not subject to inspection.

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

Rule 16-913

the case record, part of the case record, or information, even if the case record, part of the case record, or information in the case record is not subject to inspection under the Rules in this Chapter.

(b) Duty of Clerk

(1) In conformance with procedures established by administrative order of the Chief Judge of the Court of Appeals, the clerk shall make a reasonable effort, promptly upon the filing or creation of a case record, to shield any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian by the person filing or authorizing the filing of the case record.

(2) Persons who filed or authorized the filing of a case record filed prior to July 1, 2016 may advise the custodian in writing whether any part of the case record is not subject to inspection. The custodian is not bound by that determination. The custodian shall make a reasonable effort, as time and circumstances allow, to shield from those case records any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian. The duty under this subsection is subordinate to all other official duties of the custodian.

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

Rule 16-913

Source: This Rule is derived from former Rule 16-1010 (2016).

REPORTER'S NOTE

Proposed amendments to renumbered Rule 16-913 contain only stylistic changes.

Rule 16-914

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-912 by renumbering it 16-914; by changing the term "court record" to "judicial record" throughout the Rule; by adding the language "or other applicable law" and the word "identifiable" to section (a); by adding the language "who is the subject of or is specifically identified in the record" to and by deleting language from sections (a), (b), and (c); by deleting language from the tagline of section (c); and by adding a tagline to section (d), as follows:

Rule ~~16-912~~ 16-914. RESOLUTION OF DISPUTES BY ADMINISTRATIVE OR CHIEF JUDGE

(a) Application by Custodian

If, upon a request for inspection of a ~~court~~ judicial record, a custodian is in doubt whether the record is subject to inspection under the Rules in this Chapter or other applicable law, the custodian, after making a reasonable effort to notify the person seeking inspection and each identifiable person ~~to whom the court record pertains~~ who is the subject of or is specifically identified in the record shall apply in writing for a preliminary judicial determination whether the ~~court~~ judicial record is subject to inspection.

Rule 16-914

(1) If the record is in an appellate court or an orphans' court other than in Harford or Montgomery County, the application shall be to the chief judge of the court.

(2) If the record is in a circuit court or in the orphans' court for Harford or Montgomery County, the application shall be to the county administrative judge.

(3) If the record is in the District Court, the application shall be to the district administrative judge.

(4) If the record is in a judicial agency other than a court, the application shall be to the Chief Judge of the Court of Appeals, who may refer it to the county administrative judge of a circuit court.

(b) Preliminary Determination

After hearing from or making a reasonable effort to communicate with the person seeking inspection and each person ~~to whom the court record pertains~~ who is the subject of or is specifically identified in the record, the court shall make a preliminary determination of whether the record is subject to inspection. Unless the court extends the time for good cause, the preliminary determination shall be made within 10 days after the court receives the written request.

(c) ~~Order; Stay; Action to Enjoin Inspection~~

If the court determines that the record is subject to inspection, the court shall file an order to that effect. If a person ~~to whom the court record pertains~~ who is the subject of

Rule 16-914

or is specifically identified in the record objects, the judge may stay the order for not more than five business days in order to allow the person an opportunity to file an appropriate action to enjoin the inspection.

(d) Action to Enjoin Inspection

An action under section (c) of this Rule shall be filed within 30 days after the order is filed, and the person who requested inspection of the record shall be made a party. If such an action is timely filed, it shall proceed in accordance with Rules 15-501 through 15-505.

~~(d)~~ (e) Order; Action to Compel Inspection

If the court determines that the ~~court~~ judicial record is not subject to inspection, the court shall file an order to that effect, and the person seeking inspection may file an action under ~~the Public Information Act~~ Code, General Provisions Article, Title 4 (PIA) or on the basis of the Rules in this Chapter to compel the inspection. An action under this section ~~(d) of this Rule~~ shall be filed within thirty days after the order is filed.

~~(e)~~ (f) When Order Becomes Final and Conclusive

If a timely action is filed under section ~~(e) or (d)~~ or (e) of this Rule, the preliminary determination by the court shall not have a preclusive effect under any theory of direct or collateral estoppel or law of the case. If a timely action is

Rule 16-914

not filed, the order shall be final and conclusive.

Source: This Rule is derived from former Rule 16-1011 (2016).

REPORTER'S NOTE

In renumbered Rule 16-914, the phrase "or other applicable law" is added to section (a). Throughout the Rule, stylistic and clarifying changes are made.

Rule 1-322.1

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-322.1 to revise an internal reference, as follows:

Rule 1-322.1. EXCLUSION OF PERSONAL IDENTIFIER INFORMATION IN COURT FILINGS

(a) Applicability

This Rule applies only to pleadings and other papers filed in an action on or after July 9, 2013 by a person other than a judge or judicial appointee. The Rule does not apply to administrative records, business license records, or notice records, as those terms are defined in Rule ~~16-901~~(a) 16-902 (a).

. . .

REPORTER'S NOTE

Proposed amendments to the Rules in Title 16, Chapter 900 (Access to Judicial Records) require revision of references to those Rules in other Rules.

Rule 2-512

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-512 to revise an internal reference, as follows:

Rule 2-512. JURY SELECTION

. . .

(c) Jury List

. . .

(3) Not Part of the Case Record; Exception

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

Cross reference: See Rule ~~16-909~~ 16-910 concerning motions to seal or limit inspection of a case record.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 4-263

MARYLAND RULES OF PROCEDURE

TITLE 4- CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 to revise an internal reference, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(d) Disclosure by the State's Attorney

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

. . .

(3) State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, §11-205 or Rule ~~16-910~~ ~~(b)~~ 16-912 (b), the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged;

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 4-312

MARYLAND RULE OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-312 to revise internal references, as follows:

Rule 4-312. JURY SELECTION

. . .

(c) Jury List

. . .

(3) Not Part of the Case Record; Exception

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

Cross reference: See Rule ~~16-904 (b)(2)(B)~~ 16-905 (c) concerning disclosure of juror information by a custodian of court records.

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

(1) Finding by the Court

If the court finds from clear and convincing evidence or information, after affording the parties an opportunity to be heard, that disclosure of the names or the city or town of residence of prospective jurors will create a substantial danger

Rule 4-312

that (i) the safety and security of one or more jurors will likely be imperiled, or (ii) one or more jurors will likely be subjected to coercion, inducement, other improper influence, or undue harassment, the court may enter an order as provided in subsection (d)(2) of this Rule. A finding under this section shall be in writing or on the record and shall state the basis for the finding.

(2) Order

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

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

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

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

Rule 4-312

Cross reference: See Rule ~~16-904 (b)(2)(B)~~ 16-905 (c).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 9-203

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

AMEND Rule 9-203 to revise internal references, as
follows:

Rule 9-203. FINANCIAL STATEMENTS

. . .

Cross reference: See Rule ~~16-902 (e)~~ 16-903 (d) and Rule ~~16-909~~
16-910.

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 9-205.2

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

AMEND Rule 9-205.2 to revise an internal reference, as follows:

Rule 9-205.2. PARENTING COORDINATION

. . .

(i) Confidential Information

(1) Access to Case Records

Except as otherwise provided in this subsection, the parenting coordinator shall have access to all case records in the action. If a document or any information contained in a case record is not open to public inspection under the Rules in Title 16, Chapter 900, the court shall determine whether the parenting coordinator may have access to it and shall specify any conditions to that access.

Cross reference: See Rule ~~16-901~~ 16-902 for the definition of "case record."

(2) Other Confidential Information

(A) A parenting coordinator may not require or coerce the parties or an attorney for the child to release any confidential information that is not included in the case record

Rule 9-205.2

(B) Confidential or privileged information received by the parenting coordinator from a party or from a third person with the consent of a party may be disclosed by the parenting coordinator to the other party, to an attorney for the child, and in court pursuant to subsections (g)(7) and (8) of this Rule. Unless otherwise required by law, the parenting coordinator may not disclose the information to anyone else without the consent of the party who provided the information or consented to a third person providing it.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 15-1103

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

AMEND Rule 15-1103 to revise an internal reference, as follows:

Rule 15-1103. INITIATION OF PROCEEDING TO CONTEST ISOLATION OR QUARANTINE

(a) Petition for Relief

An individual or group of individuals required to go to or remain in a place of isolation or quarantine by a directive of the Secretary issued pursuant to Code, Health - General Article, §18-906 or Code, Public Safety Article, §14-3A-05, may contest the isolation or quarantine by filing a petition for relief in the circuit court for the county in which the isolation or quarantine is occurring or, if that court is not available, in any other circuit court.

Committee note: Motions to seal or limit inspection of a case record are governed by Rule ~~16-909~~ 16-910. The right of a party to proceed anonymously is discussed in *Doe v. Shady Grove Hosp.*, 89 Md. App. 351, 360-66 (1991).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 16-203

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS - CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-203 to revise an internal reference, as follows:

Rule 16-203. ELECTRONIC FILING OF PLEADINGS, PAPERS, AND REAL PROPERTY INSTRUMENTS

. . .

(c) Criteria for Adoption of Plan

In developing a plan for the electronic filing of pleadings, the County Administrative Judge or the Chief Judge of the District Court, as applicable, shall be satisfied that the following criteria are met:

(1) the proposed electronic filing system is compatible with the data processing systems, operational systems, and electronic filing systems used or expected to be used by the judiciary;

(2) the installation and use of the proposed system does not create an undue financial or operational burden on the court;

(3) the proposed system is reasonably available for use at a reasonable cost, or an efficient and compatible system of manual filing will be maintained;

Rule 16-203

(4) the proposed system is effective, secure, and not likely to break down;

(5) the proposed system makes appropriate provision for the protection of privacy and for public access to public records in accordance with the Rules in Chapter 900 of this Title; and

(6) the court can discard or replace the system during or at the conclusion of a trial period without undue financial or operational burden.

The State Court Administrator shall review the plan and make a recommendation to the Chief Judge of the Court of Appeals with respect to it.

Cross reference: For the definition of "public record," see Code, General Provisions Article, §4-101 (h). See also Rules 16-901 - ~~16-912~~ 16-914 (Access to ~~Court~~ Judicial Records).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 16-204

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS - CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-204 to revise internal references, as follows:

Rule 16-204. REPORTING OF CRIMINAL AND MOTOR VEHICLE INFORMATION

. . .

(b) Inspection of Criminal History Record Information
Contained in Court Records of Public Judicial Proceedings

Criminal history record information contained in court records of public judicial proceedings is subject to inspection in accordance with Rules 16-901 through ~~16-912~~ 16-914.

Cross reference: See Code, Courts Article, §§2-203 and 13-101 (d) and (f), Criminal Procedure Article, §§10-201, 10-214, 10-217, and General Provisions Article, Title 4. For the definition of "court records" for expungement purposes, see Rule 4-502 (d). For provisions governing access to ~~court~~ judicial records generally, see Title 16, Chapter 900.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 16-505

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-505 for revise an internal reference, as follows:

Rule 16-505. ADMINISTRATION OF CIRCUIT COURT RECORDING PROCESS

. . .

(c) Supervision of Court Reporters

Subject to the general supervision of the Chief Judge of the Court of Appeals, the County Administrative Judge shall have the supervisory responsibility for the court reporters and persons responsible for recording court proceedings in that county. The County Administrative Judge may delegate supervisory responsibility to the supervisory court reporter or a person responsible for recording court proceedings, including the assignment of court reporters or other persons responsible for recording court proceedings.

Cross reference: Rule ~~16-906 (j)~~ 16-907 (i) provides that backup audio recordings made by any means, computer disks, and notes of a court reporter that have not been filed with the clerk or are not part of the official court record are not ordinarily subject to public inspection.

Source: This Rule is derived from former Rule 16-404 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 19-104

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 100 - STATE BOARD OF LAW EXAMINERS

AND CHARACTER COMMITTEES

AMEND Rule 19-104 to delete a cross reference, as follows:

Rule 19-104. SUBPOENA POWER

(a) Subpoena

(1) Issuance

In any proceeding before the Board or a Character Committee pursuant to Rule 19-203 or Rule 19-213, the Board or Committee, on its own initiative or the motion of an applicant, may cause a subpoena to be issued by a clerk pursuant to Rule 2-510. The subpoena shall issue from the Circuit Court for Anne Arundel County if incident to Board proceedings or from the circuit court in the county in which the Character Committee proceeding is pending. The proceedings shall be docketed in the issuing court and shall be sealed and shielded from public inspection.

(2) Name of Applicant

The subpoena shall not divulge the name of the applicant, except to the extent this requirement is impracticable.

Rule 19-104

(3) Return

The sheriff's return shall be made as directed in the subpoena.

(4) Dockets and Files

The Character Committee or the Board, as applicable, shall maintain dockets and files of all papers filed in the proceedings.

(5) Action to Quash or Enforce

Any action to quash or enforce a subpoena shall be filed under seal and docketed as a miscellaneous action in the court that issued the subpoena.

~~Cross reference: See Rule 16-906 (g)(3).~~

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 20-504

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 500 - MISCELLANEOUS RULES

AMEND Rule 20-504 to revise an internal reference, as follows:

Rule 20-504. AGREEMENTS WITH VENDORS

(a) Definition

In this Rule, "vendor" means a person who provides or offers to provide to registered users or others services that include the filing or service of submissions pursuant to the Rules in this Title or remote access to electronic case records maintained by Maryland courts.

(b) Agreement with Administrative Office of the Courts

As a condition of having the access to MDEC necessary for a person to become a vendor, the person must enter into a written agreement with the Administrative Office of the Courts that, in addition to any other provisions, (1) requires the vendor to abide by all Maryland Rules and other applicable law that limit or preclude access to information contained in case records, whether or not that information is also stored in the vendor's database, (2) permits the vendor to share information contained in a case record only with a party or attorney of

Rule 20-504

record in that case who is a customer of the vendor, (3) provides that any material violation of that agreement may result in the immediate cessation of remote electronic access to case records by the vendor, and (4) requires the vendor to include notice of the agreement with the Administrative Office of the Courts in all agreements between the vendor and its customers.

Cross reference: See Maryland Rules 20-109 and 16-901 through ~~16-912~~ 16-914.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.

Rule 19-711

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

ADMINISTRATIVE PROCEDURES

AMEND Rule 19-711 to permit Bar Counsel to decline to pursue a complaint that is duplicative, to permit Bar Counsel with the approval of the Attorney Grievance Commission to defer action on a complaint when an investigation of substantially similar or related facts by certain authorities is occurring or when there are related allegations in a pending civil or criminal action, and to make stylistic changes, as follows:

Rule 19-711. COMPLAINT; INVESTIGATION BY BAR COUNSEL

(a) Who May Initiate

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

Rule 19-711

demonstrate an incapacity of an attorney constitutes a complaint.

(b) Review of Complaint

(1) Bar Counsel shall make an appropriate investigation of every complaint that is not facially frivolous, ~~or~~ unfounded, or duplicative.

(2) If Bar Counsel concludes that the complaint is ~~either~~ without merit, ~~or~~ does not allege facts which, if true, would demonstrate either professional misconduct or incapacity, or is duplicative, Bar Counsel shall dismiss or decline to pursue the complaint and shall notify the complainant ~~of the dismissal.~~ Otherwise, subject to subsection (b)(3) of this Rule, Bar Counsel shall (A) open a file on the complaint, (B) acknowledge receipt of the complaint and explain in writing to the complainant the procedures for investigating and processing the complaint, (C) comply with the notice requirement of section (c) of this Rule, and (D) conduct an investigation to determine whether reasonable grounds exist to believe the allegations of the complaint.

Committee note: Before determining whether a complaint is frivolous or unfounded, Bar Counsel may contact the attorney and obtain an informal response to the allegations.

(3) If Bar Counsel concludes that a civil or criminal action involving material allegations against the attorney substantially similar or related to those alleged in the

Rule 19-711

complaint is pending in any court of record in the United States, or that substantially similar or related allegations presently are under investigation by a law enforcement, regulatory, or disciplinary agency, Bar Counsel, with the approval of the Commission, may defer action on the complaint pending a determination of those allegations in ~~that~~ the pending action or investigation. Bar Counsel shall notify the complainant of that decision and, during the period of the deferral, shall report to the Commission, at least every six months, the status of the other action or investigation. The Commission, at any time, may direct Bar Counsel to proceed in accordance with subsection (b)(2) of this Rule.

(c) Notice to Attorney

(1) Except as otherwise provided in this section, Bar Counsel shall notify the attorney who is the subject of the complaint that Bar Counsel is undertaking an investigation to determine whether the attorney has engaged in professional misconduct or is incapacitated. The notice shall be given before the conclusion of the investigation and shall include the name and address of the complainant and the general nature of the professional misconduct or incapacity under investigation. As part of the notice, Bar Counsel may demand that the attorney provide information and records that Bar Counsel deems appropriate and relevant to the investigation. The notice shall

Rule 19-711

state the time within which the attorney shall provide the information and any other information that the attorney may wish to present. The notice shall be served on the attorney in accordance with Rule 19-708 (b).

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

(d) Time for Completing Investigation

(1) Generally

Subject to subsection (b)(3) of this Rule or unless the time is extended pursuant to subsection (d)(2) of this Rule, Bar Counsel shall complete an investigation within 90 days after opening the file on the complaint.

(2) Extension

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

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

(C) If an extension exceeding 60 days is granted, Bar

Rule 19-711

Counsel shall provide the Commission with a status report at least every 60 days.

(3) Sanction

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

Source: This Rule is derived from former Rule 16-731 (2016).

REPORTER'S NOTE

At the request of Bar Counsel, several amendments to Rule 19-711 are proposed.

An amendment to subsection (b)(2) permits Bar Counsel to decline to pursue a complaint that is duplicative of another complaint against the same attorney, alleging the same misconduct. The phrase "decline to pursue" is used to prevent the inference that a duplicative complaint lacks merit.

Current subsection (b)(3) gives Bar Counsel, with the approval of the Commission, the authority to defer action on a complaint when there is a civil or criminal action pending in a court of record involving material allegations against the attorney that are substantially similar to those alleged in the complaint. Proposed amendments to subsection (b)(3) expand the authority to defer to include the situations where the allegations in the complaint (1) are "related" to the allegations in the pending civil or criminal action or (2) are substantially similar or related to allegations under investigation by a law enforcement, regulatory, or disciplinary agency.

Rule 19-734

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

SPECIAL PROCEEDINGS

AMEND Rule 19-734 to delete provisions pertaining to service from section (a), to add language pertaining to conservatorships and administration of an attorney's estate to section (a), to add a Committee note following section (a), to add service provisions to section (b), to add provisions pertaining to emergency relief to section (b), and to make stylistic changes, as follows:

Rule 19-734. CONSERVATOR OF CLIENT MATTERS

(a) Appointment; When Authorized; ~~Service~~

If (1) an attorney dies, disappears, has been disbarred, suspended, or placed on inactive status, or is incapacitated or has abandoned the practice of law, (2) there are open client matters, and (3) and there is not known to exist any personal representative, partner, or other individual who is willing to conduct and capable of conducting the attorney's client affairs, Bar Counsel may file a petition requesting the appointment of a conservator to inventory the attorney's files and to take other appropriate action to protect the attorney's clients. ~~The~~

Rule 19-734

~~petition shall be served in accordance with Rule 2-121. A~~
conservatorship may coexist with the administration of the
attorney's general estate by a personal representative or
guardian.

Committee note: The conservator will be responsible for dealing
with the attorney's trust accounts and client matters over which
a guardian or personal representative, even if one exists,
ordinarily should have no authority. A guardian or personal
representative who has been appointed should be served with the
petition and order, however, to avoid the prospect of conflicts.

(b) Petition; and Service; Order

(1) Filing

The petition to appoint a conservator may be filed in
the circuit court ~~in~~ for any county in which the attorney
maintained an office for the practice of law, and may include a
request for emergency relief in accordance with subsection
(b)(3) of this Rule. ~~Upon such proof of the facts as the court~~
~~may require, the court may enter an order appointing an attorney~~
~~approved by Bar Counsel to serve as conservator subject to~~
~~further order of the court.~~

(2) Service

The petition shall be served on the attorney, the
guardian of the attorney, or the personal representative of the
attorney, as appropriate, and on any other person the court may
require to be served. Service shall be made in the manner
described in Rule 2-121.

Rule 19-734

(3) Emergency Appointment

Upon sufficient allegations in the petition and a showing by affidavit or other evidence that immediate, substantial, and irreparable harm may result from the attorney's disappearance or inability or unwillingness to deal properly with the attorney's trust accounts or client matters, the court may enter an order (A) appointing an attorney approved by Bar Counsel to serve as a temporary emergency conservator with authority to take control of the trust accounts and client files and (B) enjoining the financial institutions holding the trust accounts from transferring any funds except upon the order of the temporary conservator, all pending further order of the court.

(4) Order Appointing Conservator

Upon such proof of the facts as the court may require, the court may enter an order appointing an attorney approved by Bar Counsel to serve as conservator subject to further order of the court.

(c) Inventory

Promptly upon accepting the appointment, the conservator shall take possession and prepare an inventory of the attorney's files, take control of the attorney's trust and business accounts, review the files and accounts, identify open matters, and note the matters requiring action.

Rule 19-734

(d) Disposition of Files

With the consent of the client or the approval of the court, the conservator may assist the client in finding a new ~~counsel~~ attorney, assume responsibility for specific matters, or refer the client's open matters to attorneys willing to handle them.

(e) Sale of Law Practice

With the approval of the court, the conservator may sell the attorney's law practice in accordance with Rule 19-301.17 (1.17) of the Maryland Attorneys' Rules of Professional Conduct.

(f) Compensation

(1) Entitlement

The conservator is entitled to periodic payment from the attorney's assets or estate for reasonable hourly attorney's fees and reimbursement for expenditures reasonably incurred in carrying out the order of appointment.

(2) Motion for Judgment

Upon verified motion served on the attorney at the attorney's last known address or, if the attorney is deceased, on the personal representative of the attorney, the court may order payment to the conservator and enter judgment against the attorney or personal representative for the reasonable fees and expenses of the conservator.

(3) Payment from Disciplinary Fund

Rule 19-734

If the conservator is unable to obtain full payment within one year after entry of judgment, the Commission may authorize payment from the Disciplinary Fund in an amount not exceeding the amount of the judgment that remains unsatisfied. If payment is made from the Disciplinary Fund, the conservator shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

(g) Confidentiality

A conservator shall not disclose any information contained in a client's file without the consent of the client, except as necessary to carry out the order of appointment.

Source: This Rule is derived from former Rule 16-777 (2016).

REPORTER'S NOTE

Rule 19-734, which is derived from former Rule 16-777, was adopted, effective July 1, 2016. As part of the revision of the Rule, a provision was added to section (a), requiring service pursuant to Rule 2-121. Bar Counsel pointed out that sometimes the choice of who must be served is not obvious, such as when an attorney disappears, is incapacitated, or has abandoned the practice of law. If no personal representative has been appointed when an attorney has died, or if the personal representative is not a member of the bar, it is not clear who is to be served.

The Rules Committee recommends amendments to the Rule to take into account the fact that a conservatorship may coexist with the appointment of a personal representative or guardian. A Committee note is added to explain the conservator's authority, as opposed to the authority of the guardian or personal representative.

Provisions pertaining to service are moved from section (a) to section (b), and are amended to provide for service on the

Rule 19-734

attorney, the attorney's guardian, the attorney's personal representative, as appropriate, and on any other person the court may require. Service is to be made pursuant to Rule 2-121, which includes provisions for alternative methods of service when the preferred method of service set forth in section (a) of that Rule is not feasible.

To protect the client's interests and funds, a provision is added to permit the emergency appointment of a temporary conservator if immediate, substantial, and irreparable harm may result from the attorney's disappearance or unwillingness to deal with trust accounts and client files.

Rule 19-752

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 700 - DISCIPLINE, INACTIVE STATUS, RESIGNATION

REINSTATEMENT

AMEND Rule 19-752 to place a certain time limit on an attorney's ability under the Rule to file a petition for reinstatement after a denial by the Court of Appeals of a prior petition for reinstatement, as follows:

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

. . .

(i) Subsequent Petitions

Except upon order of the Court of Appeals for good cause shown, an attorney may not file a petition for reinstatement sooner than one year after the Court denied a prior petition for reinstatement.

~~(i)~~ (j) Conditions to Reinstatement

An order that reinstates an attorney may include, as a condition precedent to reinstatement or as a condition of probation after reinstatement that the attorney:

(1) take the oath of attorneys required by Code, Business Occupations and Professions Article, §10-212;

Rule 19-752

(2) pass either the comprehensive Maryland Bar examination or an attorney examination administered by the Board of Law Examiners;

(3) attend a bar review course approved by Bar Counsel and submit to Bar Counsel satisfactory evidence of attendance;

(4) submit to Bar Counsel evidence of successful completion of a professional ethics course at an accredited law school;

(5) submit to Bar Counsel evidence of attendance at the professionalism course required for newly-admitted attorneys;

(6) engage an attorney satisfactory to Bar Counsel to monitor the attorney's legal practice for a period stated in the order of reinstatement;

(7) limit the nature or extent of the attorney's future practice of law in the manner set forth in the order of reinstatement;

(8) participate in a program tailored to individual circumstances that provides the attorney with law office management assistance, attorney assistance or counseling, treatment for substance or gambling abuse, or psychological counseling;

(9) demonstrate, by a report of a health care professional or other evidence, that the attorney is mentally and physically competent to resume the practice of law;

(10) issue an apology to one or more persons; or

Rule 19-752

(11) take any other corrective action that the Court deems appropriate.

~~(j)~~ (k) Effective Date of Reinstatement Order

An order that reinstates the petitioner may provide that it shall become effective immediately or on a date stated in the order.

~~(k)~~ (l) Duties of Clerk

(1) Attorney Admitted to Practice

Promptly after the effective date of an order that reinstates a petitioner, the Clerk of the Court of Appeals shall comply with Rule 19-761.

(2) Attorney Not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Court of Appeals to practice law, the Clerk of the Court of Appeals shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

~~(l)~~ (m) Motion to Vacate Reinstatement

Bar Counsel may file a motion to vacate an order that reinstates the petitioner if (1) the petitioner has failed to

Rule 19-752

demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 19-752 (h) or section (j) of this Rule or (2) the petition filed under section (a) of this Rule contains a false statement or omits a material fact, the petitioner knew the statement was false or the fact was omitted, and the true facts were not disclosed to Bar Counsel prior to entry of the order. The petitioner may file a verified response within 15 days after service of the motion, unless a different time is ordered. If there is a factual dispute to be resolved, the court may enter an order designating a judge in accordance with Rule 19-722 to hold a hearing. The judge shall allow reasonable time for the parties to prepare for the hearing and may authorize discovery pursuant to Rule 19-726. The applicable provisions of Rule 19-727 shall govern the hearing. The applicable provisions of Rules 19-728 and 19-741, except section (c) of Rule 19-741, shall govern any subsequent proceedings in the Court of Appeals. The Court may reimpose the discipline that was in effect when the order was entered or may impose additional or different discipline.

Source: This Rule is derived from former Rule 16-781 (2016).

REPORTER'S NOTE

The Rules Committee is advised that Bar Counsel expends a substantial amount of time and effort in reviewing a petition for reinstatement and performing an investigation in order to respond to the petition. Rule 19-752 currently places no

Rule 19-752

temporal or numeric limitation on the ability of an attorney to petition for reinstatement after a denial of a prior petition for reinstatement by the Court of Appeals. The Committee recommends a new section (i) be added to Rule 19-752 to prohibit an attorney from filing a petition for reinstatement sooner than one year after the Court of Appeals denied a prior petition, unless the Court, for good cause shown, enters an order permitting an earlier filing.

Rule 18-103.9

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 - MARYLAND CODE OF JUDICIAL CONDUCT

RULES GOVERNING EXTRAJUDICIAL ACTIVITY

AMEND Rule 18-103.9 to change certain references from a retired judge approved for recall to a senior judge in section (b) and the Committee note and to add a new section (c) to permit certain judges of the Orphans' Court to conduct alternative dispute resolution proceedings under certain circumstances, as follows:

Rule 18-103.9. SERVICE AS ARBITRATOR OR MEDIATOR (ABA RULE 3.9)

(a) Unless expressly authorized by law, a judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties.

(b) ~~A retired judge who is approved for recall for temporary service under Code, Courts Article, §1-302~~ senior judge may conduct alternative dispute resolution (ADR) proceedings in a private capacity only if the judge:

(1) conducts no ADR proceedings in a private capacity relating to a case in which the judge currently is sitting;

(2) is not affiliated with a law firm, regardless of whether the law firm also offers ADR services;

Rule 18-103.9

(3) discloses to the parties in each judicial proceeding in which the judge sits:

(A) the judge's professional association with any entity that is engaged in offering ADR services;

(B) whether the judge is conducting, or has conducted within the previous 12 months, an ADR proceeding involving any party, attorney, or law firm involved in the judicial proceeding pending before the judge; and

(C) any negotiations or agreements for future ADR services involving the judge and any of the parties or attorneys to the case; and

(4) except when there is no disqualification by agreement as permitted by Rule 18-102.11 (c), does not sit in a judicial proceeding in which the judge's impartiality might reasonably be questioned because of ADR services engaged in or offered by the judge.

(c) An Orphans' Court judge, other than a judge sitting as an Orphans' Court judge in Montgomery County or Harford County, may conduct alternative dispute resolution (ADR) proceedings only if the Orphans' Court judge:

(1) does not conduct ADR proceedings in matters within the jurisdiction of an Orphans' Court or that are related to the administration of an estate or guardianship;

Rule 18-103.9

(2) does not use the judge's judicial office to further the judge's success in the practice of ADR; and

(3) discloses to the parties in each ADR proceeding over which the judge presides, whether a party, attorney, or law firm involved in the ADR proceeding is or has been involved in an Orphans' Court proceeding before the judge within the past 12 months.

Committee note: A ~~retired judge approved for recall~~ senior judge may affiliate with an entity that is engaged exclusively in offering ADR services but may not affiliate with any entity that also is engaged in the practice of law.

COMMENT

[1] Except as provided in section (b), this Rule does not prohibit a judge from participating in arbitration, mediation, or prehearing or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

Source: This Rule is derived from former Rule 3.9 of Rule 16-813 (2016).

REPORTER'S NOTE

Proposed amendments to Rule 18-103.9 replace references to a retired judge approved for recall with references to the new term, "senior judge."

Additionally, at the request of the Conference of Orphans' Court Judges, a new section (c), permitting Orphans' Court judges to conduct alternative dispute resolution ("ADR") proceedings under certain circumstances, is proposed to be added to the Rule.

Subsection (c)(1) is based on Code, Estates and Trusts Article, §2-109 (b)(4), which permits the outside practice of law by Orphans' Court judges in Prince George's, Baltimore, Calvert, and Howard Counties, in connection with a case that is

Rule 18-103.9

"(i) [o]utside the jurisdiction of orphans' court; and (ii) [u]nrelated to the administration of an estate or guardianship."

Subsection (c)(2) is derived from Rule 18-103.10 (b)(2)(A), which permits a part-time judge of the Orphans' Court who is an attorney to practice law, other than in the court where the judge sits, provided that "the judge shall not use the judge's judicial office to further the judge's success in the practice of law."

Subsection (c)(3), which requires an Orphans' Court judge who is presiding in an ADR proceeding to make certain disclosures to the participants, is derived from subsection (b)(3) of Rule 18-103.9, which requires senior judges who conduct ADR proceedings to make certain disclosures to parties in a judicial proceeding in which the judge sits.

Form 9-102.2

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

FORMS FOR GUARDIANSHIPS THAT TERMINATE PARENTAL RIGHTS

AND ADOPTIONS

AMEND section (H) of Form 9-102.2 to include certain expenses that may be paid to a parent who is placing a child for adoption, as follows:

Form 9-102.2. CONSENT OF PARENT TO A PRIVATE AGENCY
GUARDIANSHIP

CONSENT OF PARENT TO GUARDIANSHIP WITH THE RIGHT TO
CONSENT TO ADOPTION OF _____ TO
_____, A LICENSED PRIVATE ADOPTION AGENCY

INSTRUCTIONS

These instructions and attached consent form may be used only in cases where the child is being placed for adoption with the assistance of a licensed private adoption agency. Code, Family Law Article, Title 5, Subtitle 3A.

The attached consent form is an important legal document. You must read all of these instructions BEFORE you sign the consent form. If you do not understand the instructions or the consent form, you should not sign it. If you are under 18 years old or if you have a disability that makes it difficult for you

Form 9-102.2

to understand, do not sign the consent form unless you have a lawyer.

A. Right to Have This Information in a Language You Understand

You have the right to have these instructions and the consent form translated into a language that you understand. If you cannot read or understand English, you should not sign the consent form. You should have this form translated for you into a language you do understand. The translated consent form is the one you should read and decide whether or not to sign. Any translation must have an affidavit attached in which the translator states that it is a true and accurate translation of this document.

. . .

H. Compensation

Under Maryland law, you are not allowed to charge or receive money or compensation of any kind for the placement for adoption of your child or for your agreement to the adoptive parent having custody of your child, except ~~that~~ for (1) reasonable and customary charges or fees for adoption counseling, hospital, legal, or medical services may be paid, (2) reasonable expenses for transportation for medical care associated with the pregnancy or birth of the child, (3) reasonable expenses for food, clothing, and shelter for a birth mother if, on written advice of a physician, the birth mother is

Form 9-102.2

unable to work or otherwise support herself because of medical reasons associated with the pregnancy or birth of the child, and (4) reasonable expenses associated with any required court appearance relating to the adoption, including transportation, food, and lodging expenses.

. . .

REPORTER'S NOTE

An Assistant Attorney General pointed out that some expenses that are allowed to be paid to a parent who is placing a child for a private agency or independent adoption have been omitted from the consent forms in Forms 9-102.2, 9-102.4, and 9-102.5. These expenses are provided for in Code, Family Law Article, §§5-3A-45 and 5-3B-32. The Rules Committee recommends that references to these expenses be added to Forms 9-102.2, 9-102.4, and 9-102.5.

Form 9-102.4

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

FORMS FOR GUARDIANSHIPS THAT TERMINATE PARENTAL RIGHTS

AND ADOPTIONS

AMEND section (H) of Form 9-102.4 to include certain expenses that may be paid to a parent who is placing a child for adoption, as follows:

Form 9-102.4. CONSENT OF PARENT TO AN INDEPENDENT ADOPTION WITH TERMINATION OF PARENTAL RIGHTS

CONSENT OF PARENT TO ADOPTION OF _____

Independent Adoption with Termination of Parental Rights

INSTRUCTIONS

These instructions and attached consent form may be used only in independent adoptions, not those that are arranged by an adoption agency. This form should only be used for a parent whose parental rights are being terminated. It should not be used for a parent who is retaining parental rights, for example, a custodial parent in a step-parent adoption. Code, Family Law Article, Title 5, Subtitle 3B.

The attached consent form is an important legal document. You must read all of these instructions BEFORE you sign the

Form 9-102.4

consent form. If you do not understand the instructions or the consent form, you should not sign it. If you are under 18 years old or if you have a disability that makes it difficult for you to understand, do not sign the consent form unless you have a lawyer.

A. Right to Have This Information in a Language You Understand

You have the right to have these instructions and the consent form translated into a language that you understand. If you cannot read or understand English, you should not sign the consent form. You should have this form translated for you into a language you do understand. The translated consent form is the one you should read and decide whether or not to sign. Any translation must have an affidavit attached in which the translator states that it is a true and accurate translation of this document.

. . .

H. Compensation

Under Maryland law, you are not allowed to charge or receive money or compensation of any kind for the placement for adoption of your child or for your agreement to the adoptive parent having custody of your child, except ~~that~~ for (1) reasonable and customary charges or fees for adoption counseling, hospital, legal, or medical services may be paid, (2) reasonable expenses

Form 9-102.4

for transportation for medical care associated with the pregnancy or birth of the child, (3) reasonable expenses for food, clothing, and shelter for a birth mother if, on written advice of a physician, the birth mother is unable to work or otherwise support herself because of medical reasons associated with the pregnancy or birth of the child, and (4) reasonable expenses associated with any required court appearance relating to the adoption, including transportation, food, and lodging expenses.

. . .

REPORTER'S NOTE

See the Reporter's note to Form 9-102.2.

Form 9-102.5

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

FORMS FOR GUARDIANSHIPS THAT TERMINATE PARENTAL RIGHTS

AND ADOPTIONS

AMEND section (H) of Form 9-102.5 to include certain expenses that may be paid to a parent who is placing a child for adoption, as follows:

Form 9-102.5. CONSENT OF PARENT TO AN INDEPENDENT ADOPTION WITHOUT TERMINATION OF PARENTAL RIGHTS

CONSENT OF PARENT TO ADOPTION OF _____

Independent Adoption without Termination of Parental Rights

INSTRUCTIONS

These instructions and attached consent form may be used only in independent adoptions, not those that are arranged by an adoption agency. This form should only be used for a parent whose parental rights are not being terminated. It should be used for a parent who is retaining parental rights, for example, a custodial parent in a step-parent adoption. Code, Family Law Article, Title 5, Subtitle 3B.

The attached consent form is an important legal document. You must read all of these instructions BEFORE you sign the

Form 9-102.5

consent form. If you do not understand the instructions or the consent form, you should not sign it. If you are under 18 years old or if you have a disability that makes it difficult for you to understand, do not sign the consent form unless you have a lawyer.

A. Right to Have This Information in a Language You Understand

You have the right to have these instructions and the consent form translated into a language that you understand. If you cannot read or understand English, you should not sign the consent form. You should have this form translated for you into a language you do understand. The translated consent form is the one you should read and decide whether or not to sign. Any translation must have an affidavit attached in which the translator states that it is a true and accurate translation of this document.

. . .

H. Compensation

Under Maryland law, you are not allowed to charge or receive money or compensation of any kind for the placement for adoption of your child or for your agreement to the adoptive parent having custody of your child, except ~~that~~ for (1) reasonable and customary charges or fees for adoption counseling, hospital, legal, or medical services may be paid, (2) reasonable expenses for transportation for medical care associated with the

Form 9-102.5

pregnancy or birth of the child, (3) reasonable expenses for food, clothing, and shelter for a birth mother if, on written advice of a physician, the birth mother is unable to work or otherwise support herself because of medical reasons associated with the pregnancy or birth of the child, and (4) reasonable expenses associated with any required court appearance relating to the adoption, including transportation, food, and lodging expenses.

. . .

REPORTER'S NOTE

See the Reporter's note to Form 9-102.2.

Rule 2-508

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-508 to delete section (d), delete the cross reference, add a new cross reference to Rule 16-804, and make stylistic changes, as follows:

Rule 2-508. CONTINUANCE OR POSTPONEMENT

(a) Generally

On motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require.

(b) Discovery not Completed

When an action has been assigned a trial date, the trial shall not be continued or postponed on the ground that discovery has not yet been completed, except for good cause shown.

(c) Absent Witness

A motion for a continuance or postponement on the ground that a necessary witness is absent shall be supported by an affidavit. The affidavit shall state: (1) the intention of the affiant to call the witness at the proceeding, (2) the specific facts to which the witness is expected to testify, (3) the reasons why the matter cannot be determined with justice to the

Rule 2-508

party without the evidence, (4) the facts that show that reasonable diligence has been employed to obtain the attendance of the witness, and (5) the facts that lead the affiant to conclude that the attendance or testimony of the witness can be obtained within a reasonable time. The court may examine the affiant under oath as to any of the matters stated in the affidavit and as to the information or knowledge relied upon by the affiant in determining those facts to which the witness is expected to testify. If satisfied that a sufficient showing has been made, the court shall continue or postpone the proceeding unless the opposing party elects to stipulate that the absent witness would, if present, testify to the facts stated in the affidavit, in which event the court may deny the motion.

~~(d) Legislative Privilege~~

~~Upon request of an attorney of record who is a member or desk officer of the General Assembly, a proceeding that is scheduled during the period of time commencing five days before the legislative session convenes and ending ten days after its adjournment shall be continued. Upon request of an attorney of record who is a member of the Legislative Policy Committee or one of its committees or subcommittees or a member of a committee or subcommittee of the State legislature functioning during the legislative interim, a proceeding that is scheduled on the day of a meeting of the Committee or subcommittee shall~~

Rule 2-508

~~be continued. When a brief or memorandum of law is required to be filed in a proceeding to be continued under the provisions of this section, the proceeding shall be continued for a time sufficient to allow it to be prepared and filed.~~

~~(e)~~ (d) Costs

When granting a continuance or postponement for a reason other than one stated in section (d), the court may assess costs and expenses occasioned by the continuance or postponement.

Cross reference: ~~For the Revised Administrative Order for Continuances for Conflicting Case Assignments or Legislative Duties, see the Maryland Judiciary Website, www.mdcourts.gov. See Rule 16-804 for postponements or continuances for conflicting case assignments or legislative duties.~~

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 527 a 1.

Section (b) is derived from former Rule 526.

Section (c) is derived from former Rule 527 c 1, 2, 3, and 4.

~~Section (d) is derived from former Rule 527 b.~~

Section ~~(e)~~ (d) is derived from former Rule 527 e.

REPORTER'S NOTE

Conforming amendments to Rule 2-508 are proposed to avoid duplication with new Rule 16-804 and add a cross reference to that Rule.

Rule 3-508

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 500 - TRIAL

AMEND Rule 3-508 to delete section (c), add a cross reference to Rule 16-804, and make stylistic changes, as follows:

Rule 3-508. CONTINUANCE OR POSTPONEMENT

(a) Generally

On motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require.

(b) Discovery not Completed

When an action has been assigned a trial date, the trial shall not be continued or postponed on the ground that discovery has not yet been completed, except for good cause shown.

~~(c) Legislative Privilege~~

~~Upon request of an attorney of record who is a member or desk officer of the General Assembly, a proceeding that is scheduled during the period of time commencing five days before the legislative session convenes and ending ten days after its adjournment shall be continued. Upon request of an attorney of record who is a member of the Legislative Policy Committee or~~

Rule 3-508

~~one of its committees or subcommittees or a member of a committee or subcommittee of the State legislature functioning during the legislative interim, a proceeding that is scheduled on the day of a meeting of the Committee or subcommittee shall be continued. When a brief or memorandum of law is required to be filed in a proceeding to be continued under the provisions of this section, the proceeding shall be continued for a time sufficient to allow it to be prepared and filed.~~

~~(d)~~ (c) Costs

When granting a continuance or postponement for a reason other than one stated in section (c), the court may assess costs and expenses occasioned by the continuance or postponement.

Cross reference: See Rule 16-804 for continuances or postponements for conflicting case assignments or legislative duties.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 527.

Section (b) is derived from former M.D.R. 526.

~~Section (c) is derived from former Rule 527 b.~~

Section ~~(d)~~ (c) is derived from former Rule 527 e.

REPORTER'S NOTE

Conforming amendments to Rule 3-508 are proposed to avoid duplication with new Rule 16-804 and add a cross reference to that Rule.