STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Twenty-Third Report to the Supreme Court of Maryland, recommending proposed new Rules 2-510.2, 2-640, 3-510.2, and 3-640, amendments to current Rules 1-101, 1-105, 1-202, 1-301, 1-321, 1-322, 1-324, 1-325, 1-333, 2-221, 2-510, 2-541, 2-516, 2-551, 2-633, 2-641, 2-645, 2-646, 2-647, 3-131, 3-221, 3-510, 3-516, 3-633, 3-641, 3-645, 3-646, 3-647, 4-265, 4-271, 4-322, 4-349, 4-707, 4-709, 5-404, 7-103, 7-109, 7-206, 7-206.1, 8-132, 8-201, 8-413, 8-511, 8-606, 9-202, 9-205, 9-205.3, 9-208, 11-103, 11-107, 13-101, 16-103, 16-208, 16-402, 16-406, 16-502, 16-503, 16-601, 16-701, 16-901, 16-904, 16-905, 16-914, 16-918, 17-102, 17-202, 17-205, 17-207, 17-303, 17-602, 17-603, 17-604, 19-217, 19-218, 19-301.15, 19-301.16, 19-301.2, 19-305.5, 19-504, 19-505, 19-752, 20-101, 20-102, 20-104, 20-106, 20-107, 20-109, 20-201, 20-204, 20-205, 20-301, 20-402, 20-405, 20-501, and 21-301, amendments to current Forms 4-503.2 and 19-A.1, and rescission of current Rule 4-708.

The Committee's Two Hundred and Twenty-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 August 19, 2024 any written comments they may wish to make to rules@mdcourts.gov or:

Sandra F. Haines, Esquire

Reporter, Rules Committee

Judiciary A-POD

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Gregory Hilton
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THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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July 18, 2024

The Honorable Matthew J. Fader,
Chief Justice
The Honorable Shirley M. Watts
The Honorable Brynja M. Booth
The Honorable Jonathan Biran
The Honorable Steven B. Gould
The Honorable Angela M. Eaves,
Justices

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

Your Honors:

The Rules Committee submits this, its Two Hundred and Twenty-Third Report, and recommends that the Court adopt the new Rules and the amendments to existing Rules submitted with this Report. There are thirteen categories of proposed changes, as follows:

CATEGORY ONE deals with Rules pertaining to the Servicemembers Civil Relief Act (New Rules 2-510.2, 2-640, 3-510.2, and 3-640 and amendments to Rules 2-510, 2-633, 2-641, 2-645, 2-646, 2-647, 3-510, 3-633, 3-641, 3-645, 3-646, and 3-647).

The proposals in this Category emanate from a memorandum opinion by the U.S. District Court for the District of Maryland in *Rouse v. Moore* (Civ. No. JKB-22-00129) holding that certain collection activities constitute judgments for purposes of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. § 3910 *et. seq.*) and thus require the plaintiff to submit to the court an affidavit regarding the defendant's military service. The Rules in this category deal with the kinds of enforcement activity that would require a military service affidavit under the SCRA and are amended accordingly. See the Reporter's note to Rule 2-640.

CATEGORY TWO deals with waiver of costs (Rule 1-325). As explained in the Reporter's note, the proposal seeks to eliminate the need for a duplicative request of a waiver of costs by considering a prepayment waiver request as including a request for a final waiver.

CATEGORY THREE deals with court interpreters (Rules 1-333, 16-502, and 16-503). The nature and derivation of the suggested changes are described in the extensive Reporter's note to Rule 1-333.

CATEGORY FOUR deals with criminal proceedings (Rules 4-271, 4-349, 4-707, 4-708, 4-709, and 21-301, and Form 4-503.2). The nature and derivation of the proposed changes are described in the Reporter's notes to those Rules.

CATEGORY FIVE deals with **contents of** the record/digital media (Rules 1-202, 1-322, 2-516, 3-516, 4-322, 20-301, 7-109, 8-413, 20-402, 16-904, 16-905, 16-918, 20-101, and 20-106. In addition, conforming amendments are proposed to Rules 2-131, 2-221, 3-131, 3-221, 9-202, 13-101, 16-103, 16-601, 2-551, and 20-107).

These changes are described in the Reporter's notes. See, in particular, the Reporter's notes to Rules 2-516, 4-322, 7-109, 8-413, and 16-918.

CATEGORY SIX deals with restricted information in administrative agency records (Rules 7-206 and 16-914). Rule 7-206 requires that the agency record be accompanied by a restricted information form indicating whether the record contains any restricted information. If so, the clerk must shield the record. See the Reporter's notes to those Rules.

CATEGORY SEVEN deals with appeals (Rules 8-132 and 8-511). See the Reporter's notes to those Rules.

CATEGORY EIGHT deals with Alternative Dispute Resolution (ADR) and the Judiciary's Mediation and Conflict Resolution Office (MACRO) (Rules 17-102, 17-202, 17-205, 17-207, 17-303, 17-602, 17-603, 17-604, and 9-205). These Rules provide a much greater role for MACRO, which is a unit within the Administrative Office of the Courts, in the provision of ADR services. See the Reporter's note to Rule 17-207.

CATEGORY NINE deals with *pro hac vice* admission of out-of-state attorneys (Rule 19-217 and Form 19-A.1) and special authorization of out-of-state attorneys affiliated with programs providing legal services to low-income individuals (Rule 19-218).

CATEGORY TEN deals with the Maryland Attorneys' Rules of Professional Conduct (Rules 19-301.15 and 19-301.16). The first of them requires an attorney to deposit in a client trust account legal fees and expenses

that have been paid in advance, to be withdrawn only when the fees are earned or the expenses incurred, and eliminates the ability of the client to agree to a different arrangement. Rule 19-301.16 is amended to conform with recent amendments to ABA Model Rule of Professional Conduct 1.16.

CATEGORY ELEVEN deals with the reinstatement of an attorney following a disbarment, suspension, resignation, or inactive status (Rule 19-752).

CATEGORY TWELVE deals with MDEC (Rules 1-101, 1-105, 1-324. 2-541, 4-265, 7-103, 7-206.1, 8-201, 8-606, 9-205.3, 9-208, 11-103, 11-107, 16-402, 16-406, 16-901, 19-301.2, 20-102, 20-104, 20-109, 20-201, 20-204, 20-205, 20-405, and 20-501).

CATEGORY THIRTEEN consists of "housekeeping" and clarifying amendments (Rules 1-301, 5-404, 16-208, 16-701, 19-305.5, 19-504, and 19-505).

For the further guidance of the Court and the public, following the proposed new Rules and the proposed amendments to each 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,

/ s /

Alan M. Wilner
Chair

AMW:sdm
cc: Gregory Hilton, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-510 by adding a reference to new Rule 2-510.2 to section (b) and by adding a provision to subsection (b)(3) concerning the use of subpoenas obtained through the AIS portal, as follows:

Rule 2-510. SUBPOENAS – COURT PROCEEDINGS AND DEPOSITIONS

(a) Required, Permissive, and Non-permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or tangible things at a court proceeding, including proceedings before a magistrate, auditor, or examiner; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(2) A subpoena may be used to compel a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(3) Except as otherwise permitted by law, a subpoena may not be used for any other purpose. If the court, on motion of a party or on its own initiative,

after affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

~~A~~ Subject to the requirements of Rule 2-510.2, a subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

(1) On the request of any person entitled to the issuance of a subpoena, the clerk shall (A) issue a completed subpoena, or (B) provide to the person a blank form of subpoena, which the person shall fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed by the clerk, which the attorney shall fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC or through the AIS portal, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person other than the clerk may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena. A violation of this section shall constitute a violation of subsection (a)(3) of this Rule.

Committee note: This Rule does not apply to subpoenas issued under Code, Courts Article, Title 9, Subtitle 4 (Maryland Uniform Interstate Depositions and Discovery Act) requiring attendance at a deposition in this State. For subpoenas issued under that Act in conjunction with a deposition, see Rule 2-510.1. For discovery of documents, electronically stored information, and property from a party to an action pending in this State, other than in conjunction with a deposition, see Rule 2-422. For inspection of property of a nonparty in an action pending in this State and for discovery under the Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(c) Form

Except as otherwise permitted by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or tangible things to be produced and if testing or sampling is to occur, a description of the proposed testing or sampling procedure, (6) when required by Rule 2-412 (d), a notice to designate the person to testify, (7) the date of issuance, and (8) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter. A subpoena may specify the form in which electronically stored information is to be produced.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 60 days after the date of issuance, provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the reissuance of a new subpoena.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, § 6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health--General Article, §§ 4-302 and 4-306(b)(6), 45 C.F.R. 164.512 regarding medical records; Code, Health--General Article, § 4-307 regarding mental health records; and Code, Financial Institutions Article, § 1-304.

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before a magistrate, auditor, or examiner) or a person named or depicted in an item specified in the subpoena filed

promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or cost, including one or more of the following:

(1) that the subpoena be quashed or modified;

(2) that the subpoena be complied with only at some designated time or place other than that stated in the subpoena;

(3) that documents, electronically stored information, or tangible things designated in the subpoena be produced only upon the advancement by the party serving the subpoena of the reasonable costs of producing them; or

(4) that documents, electronically stored information, or tangible things designated in the subpoena be delivered to the court at or before the proceeding or before the time when they are to be offered in evidence, subject to further order of court to permit inspection of them.

A motion filed under this section based on a claim that information is privileged or subject to protection shall be supported by a description of the nature of each item that is sufficient to enable the demanding party to evaluate the claim.

(f) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents, electronically stored information, or tangible things at the deposition, the person served or a person named or depicted in an item

specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

A claim that information is privileged or subject to protection shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim.

(g) Duties Relating to the Production of Documents, Electronically Stored Evidence, and Other Property

(1) Generally

A person responding to a subpoena to produce documents, electronically stored information, or other property at a court proceeding or deposition shall:

(A) produce the documents or information as they are kept in the usual course of business or shall organize and label the documents or information to correspond with the categories in the subpoena; and

(B) produce electronically stored information in the form specified in the subpoena or, if a form is not specified, in the form in which the person ordinarily maintains it or in a form that is reasonably usable.

(2) Electronically Stored Information

A person responding to a subpoena to produce electronically stored information at a court proceeding or deposition need not produce the same electronically stored information in more than one form and may decline to produce the information on the ground that the sources are not reasonably accessible because of undue burden or cost. A person who declines to produce information on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the demanding party to evaluate the burdens and costs of complying with the subpoena and the likelihood of finding responsive information in the identified sources. Any motion relating to electronically stored information withheld on the ground that it is not reasonably accessible shall be decided in the manner set forth in Rule 2-402 (b).

(h) Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena.

Cross reference: For the availability of sanctions for violations of this section, see Rules 1-201 (a) and 1-341.

(i) Records Produced by Custodians

(1) Generally

A custodian of records served with a subpoena to produce records at trial may comply by delivering the records to the clerk of the court that issued the subpoena at or before the time specified for production. The custodian may produce exact copies of the records designated unless the subpoena specifies that the original records be produced. The records shall be delivered in a sealed envelope labeled with the caption of the action, the date specified for production, and the name and address of the person at whose request the subpoena was issued. The records shall be accompanied by a certificate of the custodian that they are the complete records requested for the period designated in the subpoena and that the records are maintained in the regular course of business. The certification shall be prima facie evidence of the authenticity of the records.

Cross reference: Code, Health-General Article, § 4-306(b)(6); Code, Financial Institutions Article, § 1-304.

(2) During Trial

Upon commencement of the trial, the clerk shall release the records only to the courtroom clerk assigned to the trial. The courtroom clerk shall return the records to the clerk promptly upon completion of trial or at an earlier time if there is no longer a need for them. Upon final disposition of the action the clerk shall return the original records to the custodian but need not return copies.

(3) Presence of Custodian

When the actual presence of the custodian of records is required, the subpoena shall state with specificity the reason for the presence of the custodian.

Cross reference: Code, Courts Article, § 10-104 includes an alternative method of authenticating medical records in certain cases transferred from the District Court upon a demand for a jury trial.

(j) Attachment

A witness served with a subpoena under this Rule is liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

(k) Information Produced that is Subject to a Claim of Privilege or Protection

(1) A party who receives a document, electronically stored information, or other property that the party knows or reasonably should know was inadvertently sent shall promptly notify the sender.

(2) Within a reasonable time after information is produced in response to a subpoena that is subject to a claim of privilege or protection, the person who produced the information shall notify each party who received the information of the claim and the basis for it. A party who wishes to determine the validity

of a claim of privilege or protection that is not controlled by a court order or a disclosure agreement entered into pursuant to Rule 2-402 (e)(5), shall promptly file a motion under seal requesting that the court determine the validity of the claim. A party in possession of information that is the subject of the motion shall appropriately preserve the information pending a ruling. A receiving party may not use or disclose the information until the claim is resolved and shall take reasonable steps to retrieve any information the receiving party disclosed before being notified.

Cross reference: See Rule 19-304.4 (b) of the Maryland Attorneys' Rules of Professional Conduct. For issuing and enforcing legislative subpoenas, see Code, State Government Article, §§ 2-1802 and 2-1803.

Source: This Rule is derived as follows:
Section (a) is new but the first and second sentences are derived in part from the 2006 version of Fed. R. Civ. P. 45 (a)(1)(C); the second sentence also is derived in part from former Rule 407 a.
Section (b) is new.
Section (c) is derived from former Rules 114 a and b, 115 a and 405 a 2 (b), and from the 2006 version of Fed. R. Civ. P. 45 (a)(1)(D).
Section (d) is derived from former Rules 104 a and b and 116 b. Section (e) is derived from former Rule 115 b and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).
Section (f) is derived from the 1980 version of Fed. R. Civ. P. 45 (d)(1), and the 2006 version of Fed. R. Civ. P. 45 (d)(2)(A).
Section (g) is new and is derived from the 2006 version of Fed. R. Civ. P. 45 (d)(1).
Section (h) is derived from the 1991 version of Fed. R. Civ. P. 45 (c)(1).
Section (i) is new.
Section (j) is derived from former Rules 114 d and 742 e.
Section (k) is new and is derived in part from the 2006 version of Fed. R. Civ. P. 45 (d)(2)(B).

REPORTER'S NOTE

A proposed amendment to Rule 2-510 adds to section (b) a condition that issuance of a subpoena is subject to proposed new Rule 2-510.2. That proposed new Rule adds additional requirements for a subpoena to a financial institution compelling production of financial information or information derived from financial records pursuant to Code, Financial Institutions Article, § 1-304. See the Reporter's note to Rule 2-510.2.

An additional amendment is proposed to subsection (b)(3) to clarify that an attorney of record may use the subpoena tool contained in the AIS portal in the same manner as a subpoena obtained from a clerk through MDEC without violating the provisions of subsection (b)(4) of this Rule. This revision is intended to conform the Rule to the current practice whereby many attorneys make use of the subpoena tool contained in the AIS portal to obtain blank subpoenas which are then filled out by the attorney and served on the appropriate party as contemplated in the current form of subsection (b)(3) with blank subpoenas obtained from a clerk through MDEC.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

ADD new Rule 2-510.2, as follows:

Rule 2-510.2. SUBPOENAS – FINANCIAL INFORMATION

(a) Applicability

This Rule applies to a subpoena compelling production of financial information or information derived from financial records as authorized by Code, Financial Institutions Article, § 1-304.

Committee note: Code, Financial Institutions Article, § 1-304 permits a financial institution to disclose or produce financial records or information derived from financial records in compliance with a subpoena only if the subpoena contains a certification either that a copy has been served on the person whose records are sought or that service is waived by the court for good cause.

(b) Military Service Affidavit

(1) Requirement

A person seeking issuance of a subpoena shall complete a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* as to the individual whose records or information is sought by the subpoena.

(2) If Individual is Not in Military Service

If the individual whose records or information is sought is not in military service, the person entitled to issuance of a subpoena shall:

(A) file the completed military service affidavit in the action; and

(B) request issuance of the subpoena pursuant to Rule 2-510.

(3) If Individual is or May be in Military Service

(A) Request; Referral to Judge

If the individual whose records or information is sought is in military service or the requester cannot determine whether the defendant is in military service, the person entitled to issuance of a subpoena shall file a request for issuance of a subpoena accompanied by the completed military service affidavit. The request shall be referred to a judge.

(B) Action by Court

If the court determines that the individual whose records or information is sought is in military service, the court shall appoint an attorney for the individual and proceed under the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*. If the court is unable to determine whether the individual is in military service, the court may enter an order pursuant to 50 U.S.C. § 3931 (b)(3).

(C) Issuance of Subpoena

After referral of the request to a judge, the clerk may issue the requested subpoena only upon order of court.

Source: This Rule is new.

REPORTER'S NOTE

In a memorandum opinion issued on March 20, 2024, the U.S. District Court for the District of Maryland ruled in *Rouse v. Moore* (Civ. No. JKB-22-00129) that collection activities, such as a subpoena to a financial institution or a writ of garnishment, constitute "judgments" for the purposes of the Servicemembers Civil Relief Act (50 U.S.C. § 3910 *et. seq.*) ("the SCRA"). Chief Justice Fader requested that the Rules Committee consider and propose changes to the Rules potentially impacted by the decision.

Proposed new Rule 2-510.2 governs subpoenas to financial institutions compelling production of financial information or information derived from financial records pursuant to Code, Financial Institutions Article, § 1-304. The Rule requires a military service affidavit be filed prior to issuance of a subpoena and creates a procedure for review by a judge if the affidavit indicates that the individual whose financial information is being sought is in military service.

Section (a) sets forth the applicability of the proposed Rule. A Committee note states the requirements of the Financial Institutions Article statute.

Section (b) requires a person who requests a subpoena to a financial institution to complete a military service affidavit. If the individual is not in military service, the affidavit must be filed in the relevant action and the subpoena may then issue in accordance with Rule 2-510. If the individual is or may be in military service, the request for a subpoena must be forwarded to a judge for review and compliance with the SCRA. The subpoena may only be issued by court order once referred to a judge.

The same amendments are recommended to comparable provisions in Title 3.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-633 by adding a reference to new Rule 2-640 to subsection (b)(1), by adding to subsection (b)(1) a requirement that a request for examination include or be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 2-633. DISCOVERY IN AID OF ENFORCEMENT

(a) Methods

Except as otherwise provided in Rule 2-634, a judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of depositions, interrogatories, and requests for documents, and (2) by examination before a judge or an examiner as provided in section (b) of this Rule.

Committee note: The discovery permitted by this Rule is in addition to the discovery permitted before the entry of judgment, and the limitations set forth in Rules 2-411 (d) and 2-421 (a) apply separately to each. Thus, a second deposition of an individual previously deposed before the entry of judgment may be taken after the entry of judgment without leave of court. A second post-judgment deposition of that individual, however, would require leave of court. *Melnick v. New Plan Realty*, 89 Md. App. 435 (1991). Furthermore, leave of court is not required under Rule 2-421 to serve interrogatories on a judgment debtor solely because 30 interrogatories were served upon that party before the entry of judgment.

(b) Examination before a ~~judge~~ Judge or an ~~examiner~~ Examiner

(1) Generally

Subject to Rule 2-640 and section (c) of this Rule, on request of a judgment creditor filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or recorded shall issue an order requiring the appearance for examination under oath before a judge or examiner of (A) the judgment debtor, or (B) any other person who may have property of the judgment debtor, be indebted for a sum certain to the judgment debtor, or have knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor. The request shall include or be accompanied by a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*

(2) Order

(A) The order shall specify when, where, and before whom the examination will be held and that failure to appear may result in (i) the issuance of a body attachment directing a law enforcement officer to take the person served into custody and bring that person before the court and (ii) the person served being held in contempt of court.

Cross reference: See Rule 1-361.

(B) The order shall be served upon the judgment debtor or other person in the manner provided by Rule 2-121, but no body attachment shall issue in the event of a non-appearance absent a determination by the court that (i) the person to whom the order was directed was personally served with the order in the manner described in Rule 2-121 (a)(1) or (3), or (ii) that person has been

evading service willfully, as shown by a particularized affidavit based on personal knowledge of a person with firsthand knowledge.

(3) Sequestration

The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

Cross reference: Code, Courts Article, §§ 6-411 and 9-119.

(c) Subsequent Examinations

After an examination of a person has been held pursuant to section (b) of this Rule, a judgment creditor may obtain additional examinations of the person in accordance with this section. On request of the judgment creditor, if more than one year has elapsed since the most recent examination of the person, the court shall order a subsequent appearance for examination of the person. If less than one year has elapsed since the most recent examination of the person, the court may require a showing of good cause.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 627.
Section (b) is in part new and in part derived from former Rule 628 b.
Section (c) is new.

REPORTER'S NOTE

In a memorandum opinion issued on March 20, 2024, the U.S. District Court for the District of Maryland ruled in *Rouse v. Moore* (Civ. No. JKB-22-00129) that collection activities, such as a subpoena to a financial institution or a writ of garnishment, constitute "judgments" for the purposes of the Servicemembers Civil Relief Act (50 U.S.C. § 3910 *et. seq.*) ("the SCRA"). Chief Justice Fader requested that the Rules Committee consider and propose changes to the Rules potentially impacted by the decision.

Proposed amendments to Rule 2-633 address the decision by requiring a military service affidavit be filed before a court orders post-judgment examination before a judge or examiner. The issuance of the order is subject to new Rule 2-640, which sets forth the procedure when the affidavit indicates that the judgment debtor is or may be in military service. See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

ADD new Rule 2-640, as follows:

Rule 2-640. ENFORCEMENT PROCEDURES –MILITARY SERVICE AFFIDAVIT

(a) Applicability

This Rule applies to a request for issuance of:

(1) a writ of execution pursuant to Rule 2-641;

(2) a writ of garnishment pursuant to Rule 2-645, Rule 2-645.1, or Rule 2-646;

(3) a writ enforcing a judgment awarding possession pursuant to Rule 2-647; and

(4) an order directing a judgment debtor to appear for an examination pursuant to Rule 2-633 (b).

(b) If Judgment Debtor is Not in Military Service

If a military service affidavit required to be submitted with a request described by section (a) of this Rule indicates that the judgment debtor is not in military service, the writ or order shall be issued as of course.

(c) If Judgment Debtor is or May be in Military Service

(1) Referral to Judge

If a military service affidavit required to be submitted with a request described by section (a) of this Rule indicates that the judgment debtor is in

military service or that the judgment creditor is unable to determine whether the debtor is in military service, the clerk shall refer the request to a judge.

(2) Action by Court

If the court determines that the judgment debtor is in military service, the court shall appoint an attorney for the debtor and proceed under the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* If the court is unable to determine whether the judgment debtor is in military service, the court may enter an order pursuant to 50 U.S.C. § 3931 (b)(3).

(3) Issuance of Writ

For a request for issuance of a writ, after referral of the request to a judge, the clerk may issue the requested writ only upon order of court.

Source: This Rule is new.

REPORTER'S NOTE

In a memorandum opinion issued on March 20, 2024, the U.S. District Court for the District of Maryland ruled in *Rouse v. Moore* (Civ. No. JKB-22-00129) that collection activities, such as a subpoena to a financial institution or a writ of garnishment, constitute "judgments" for the purposes of the Servicemembers Civil Relief Act (50 U.S.C. § 3910 *et. seq.*) ("the SCRA"). Chief Justice Fader requested that the Rules Committee consider and propose changes to the Rules potentially impacted by the decision.

The SCRA requires, in part, that a plaintiff seeking entry of a judgment against a defendant submit to the court an affidavit regarding the defendant's military service. In Maryland, many mechanisms to collect on a judgment, such as writs of garnishment and execution, generally issue from the clerk's office without review by a judge. Proposed amendments to Rules 2-633, 2-641, 2-645, 2-646, and 2-647 require a military service affidavit to be filed with a request pursuant to those Rules.

Proposed new Rule 2-640 sets forth a procedure for compliance by the clerk and the court if the creditor indicates that the debtor is or may be in the

military. If the affidavit indicates that the debtor is not in military service, the requested writ or order shall issue as usual. If the affidavit indicates that the debtor is in military service or the creditor cannot determine whether the debtor is in military service, the clerk is instructed to refer the request to a judge for compliance with the SCRA.

The same changes – new Rule 3-640 and amendments to Rules 3-633, 3-641, 3-645, 3-646, and 3-647 – are proposed in Title 3.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-641 by adding by adding a reference to new Rule 2-640 to section (a), by adding to section (a) a requirement that a request for a writ be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 2-641. WRIT OF EXECUTION – ISSUANCE AND CONTENT

(a) Generally

Upon the written request of a judgment creditor and subject to Rule 2-640, the clerk of a court where the judgment was entered or is recorded shall issue a writ of execution directing the sheriff to levy upon property of the judgment debtor to satisfy a money judgment. The writ shall contain a notice advising the debtor that federal and state exemptions may be available and that there is a right to move for release of the property from the levy. The request shall include or be accompanied by (1) a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* and (2) instructions to the sheriff that shall specify ~~(1)~~(A) the judgment debtor's last known address, ~~(2)~~(B) the judgment and the amount owed under the judgment, ~~(3)~~(C) the property to be levied upon and its location, and ~~(4)~~(D) whether the sheriff is to leave the levied property where found, or to exclude others from access to it or use of it, or to remove it from the premises.

The judgment creditor may file additional instructions as necessary and appropriate and deliver a copy to the sheriff. More than one writ may be issued on a judgment, but only one satisfaction of a judgment may be had.

(b) Issuance to Another County

If a judgment creditor requests the clerk of the court where the judgment was entered to issue a writ of execution directed to the sheriff of another county, the clerk shall send to the clerk of the other county the writ, the instructions to the sheriff, and, if not already recorded there, a certified copy of the judgment for recording.

(c) Transmittal to Sheriff; Bond

Upon issuing a writ of execution or receiving one from the clerk of another county, the clerk shall deliver the writ and instructions to the sheriff. The sheriff shall endorse on the writ the exact hour and date of its receipt and shall maintain a record of actions taken pursuant to it. If the instructions direct the sheriff to remove the property from the premises where found or to exclude others from access to or use of the property, the sheriff may require the judgment creditor to file with the sheriff a bond with security approved by the sheriff for the payment of any expenses that may be incurred by the sheriff in complying with the writ.

Cross reference: For execution of a judgment against the property of a corporation, joint stock company, association, limited liability company, limited liability partnership, or limited liability limited partnership for the amount of fines or costs awarded against it in a criminal proceeding, see Code, Criminal Procedure Article, § 4-203.

Source: This Rule is derived as follows:

Section (a) is in part new and in part derived from former Rules G40 b 4, the last sentence of G49 a, and 622 e.
Section (b) is in part new and in part derived from former Rule 622 h 1 and 3.
Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-645 by adding to section (b) a requirement that a request for a writ include or be accompanied by a military service affidavit and by adding by adding a reference to new Rule 2-640 to section (b), as follows:

Rule 2-645. GARNISHMENT OF PROPERTY – GENERALLY

(a) Availability

Subject to the provisions of Rule 2-645.1, this Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 2-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property includes any debt owed to the judgment debtor, whether immediately payable or unmatured.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was entered a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of each judgment debtor with respect to whom a writ is requested, and (4) the name and address of the garnishee. <u>The request shall include or be accompanied by a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§</u>

3901 *et seq.* Upon the filing of the request and subject to Rule 2-640, the clerk shall issue a writ of garnishment directed to the garnishee.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,

(2) direct the garnishee to hold, subject to further proceedings or to termination of the writ, the property of each judgment debtor in the possession of the garnishee at the time of service of the writ and all property of each debtor that may come into the garnishee's possession after service of the writ,

(3) notify the garnishee of the time within which the answer must be filed and that the failure to do so may result in judgment by default against the garnishee,

(4) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(5) notify the judgment debtor of the right to contest the garnishment by filing a motion asserting a defense or objection, and

(6) notify the judgment debtor that, if the garnishee files an answer pursuant to section (e) of this Rule and no further filings concerning the writ of garnishment are made with the court within 120 days following the filing of the answer, the garnishee may file a notice of intent to terminate the writ of garnishment pursuant to subsection (k)(2) of this Rule.

Committee note: A writ of garnishment may direct a garnishee to hold the property of more than one judgment debtor if the name and address of each judgment debtor whose property is sought to be attached is stated in the writ.

(d) Service

The writ shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Promptly after service upon the garnishee, the person making service shall mail a copy of the writ to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 2-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Answer of Garnishee

The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall admit or deny that the garnishee is indebted to the judgment debtor or has possession of property of the judgment debtor and shall specify the amount and nature of any debt and describe any property. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the judgment debtor could assert. After answering, the garnishee may pay any garnished indebtedness into court and may deliver to the sheriff any garnished property, which shall then be treated as if levied upon by the sheriff. A garnishee who has filed an answer admitting indebtedness to the judgment debtor or possession of property of the judgment debtor is not required to file an amended answer solely because of an

increase in the garnishee's indebtedness to the judgment debtor or the garnishee's receipt of additional property of the debtor.

(f) When No Answer Filed

If the garnishee fails to file a timely answer, the judgment creditor may proceed pursuant to Rule 2-613 for a judgment by default against the garnishee.

(g) When Answer Filed

If the garnishee files a timely answer, the matters set forth in the answer shall be treated as established for the purpose of the garnishment proceeding unless the judgment creditor files a reply contesting the answer within 30 days after its service. If a timely reply is not filed, the court may enter judgment upon request of the judgment creditor, the judgment debtor, or the garnishee. If a timely reply is filed to the answer of the garnishee, the matter shall proceed as if it were an original action between the judgment creditor as plaintiff and the garnishee as defendant and shall be governed by the rules applicable to civil actions.

(h) Interrogatories to Garnishee

The judgment creditor may serve interrogatories directed to the garnishee pursuant to Rule 2-421. The interrogatories shall contain a notice to the garnishee that, unless answers are served within 30 days after service of the interrogatories or within the time for filing an answer to the writ, whichever is later, the garnishee may be held in contempt of court. The interrogatories shall also inform the garnishee that the garnishee must file a notice with the court

pursuant to Rule 2-401 (d) at the time the answers are served. If the garnishee fails to serve timely answers to interrogatories, the court, upon petition of the judgment creditor and proof of service of the interrogatories, may enter an order in compliance with Rule 15-206 treating the failure to answer as a contempt and may require the garnishee to pay reasonable attorney's fees and costs.

(i) Release of Property; Claim by Third Person

Before entry of judgment, the judgment debtor may seek release of the garnished property in accordance with Rule 2-643, except that a motion under Rule 2-643 (d) shall be filed within 30 days after service of the writ of garnishment on the garnishee. Before entry of judgment, a third person claimant of the garnished property may proceed in accordance with Rule 2-643 (e).

(j) Judgment

The judgment against the garnishee shall be for the amount admitted plus any amount that has come into the hands of the garnishee after service of the writ and before the judgment is entered, but not to exceed the amount owed under the creditor's judgment against the debtor and enforcement costs.

(k) Termination of Writ

(1) Upon Entry of Judgment

Upon entry of a judgment against the garnishee pursuant to section (j) of this Rule, the writ of garnishment and the lien created by the writ shall terminate and the garnishee shall be under no obligation to hold any additional

property of the debtor that may come into its possession after the judgment was entered.

(2) By the Garnishee

If the garnishee has filed an answer and no further filing concerning the writ of garnishment is made within 120 days after the filing of the answer, the garnishee may file, at any time more than 120 days after the filing of the answer, a notice of intent to terminate the writ of garnishment. The notice shall (A) contain a statement that a party may object to termination of the writ by filing a response within 30 days after service of the notice and (B) be served on the judgment debtor and the judgment creditor. If no response is filed within 30 days after service of the notice, the garnishee may file a termination of the garnishment, which shall release the garnishee from any further obligation to hold any property of the debtor.

Committee note: The methods of termination of a writ of garnishment provided in section (k) of this Rule are not exclusive. Section (k) does not preclude a garnishee or other party from filing a motion for a court order terminating a writ of garnishment on any other appropriate basis.

(l) Statement of Satisfaction

Upon satisfaction by the garnishee of a judgment entered against it pursuant to section (j) of this Rule, the judgment creditor shall file a statement of satisfaction setting forth the amount paid. If the judgment creditor fails to file the statement of satisfaction, the garnishee may proceed under Rule 2-626.

Source: This Rule is derived as follows:
Section (a) is new but is consistent with former Rules G47 a and G50 a.
Section (b) is new.
Section (c) is new.

Section (d) is in part derived from former Rules F6 c and 104 a (4) and is in part new.
Section (e) is in part new and in part derived from former Rule G52 a and b.
Section (f) is new.
Section (g) is new.
Section (h) is derived from former Rule G56.
Section (i) is new.
Section (j) is new.
Section (k) is new.
Section (l) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-646 by adding to section (b) a requirement that a request for a writ include or be accompanied by a military service affidavit, by adding a reference to new Rule 2-640 to section (b), and by making stylistic changes, as follows:

Rule 2-646. GARNISHMENT OF WAGES

(a) Applicability

This Rule governs garnishment of wages under Code, Commercial Law Article, §§ 15-601 through 15-606.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was obtained a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of the judgment debtor, and (4) the name and address of the garnishee. The request shall include or be accompanied by a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* Upon filing of the request and subject to Rule 2-640, the clerk shall issue a writ of garnishment directed to the garnishee together with a blank answer form provided by the clerk.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue~~,~~;

(2) notify the garnishee of the time within which the answer must be filed and that failure to do so may result in the garnishee being held in contempt~~,~~;

(3) notify the judgment debtor and garnishee that federal and state exemptions may be available~~,~~; and

(4) notify the judgment debtor of the right to contest the garnishment of wages by filing a motion asserting a defense or objection.

(d) Service

The writ and answer form shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Upon issuance of the writ, a copy of the writ shall be mailed to the debtor's last known address. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Response of Garnishee and Debtor

The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall state whether the debtor is an employee of the garnishee and, if so, the rate of pay and the existence of prior liens. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the debtor could assert. The debtor may file a motion at any time asserting a defense or objection.

(f) When No Answer Filed

If the garnishee fails to file a timely answer, the court on motion of the creditor may order the garnishee to show cause why the garnishee should not be held in contempt and required to pay reasonable attorney's fees and costs.

(g) When Answer Filed

If the answer denies employment, the clerk shall dismiss the proceeding against the garnishee unless the creditor files a request for hearing within 15 days after service of the answer. If the answer asserts any other defense or if the debtor files a motion asserting a defense or objection, a hearing on the matter shall be scheduled promptly.

(h) Interrogatories to Garnishee

Interrogatories may be served on the garnishee by the creditor in accordance with Rule 2-645 (h).

(i) Withholding and Remitting of Wages

While the garnishment is in effect, the garnishee shall withhold all garnishable wages payable to the debtor. If the garnishee has asserted a defense or is notified that the debtor has done so, the garnishee shall remit the withheld wages to the court. Otherwise, the garnishee shall remit them to the creditor or the creditor's attorney within 15 days after the close of the debtor's last pay period in each month. The garnishee shall notify the debtor of the amount withheld each pay period and the method used to determine the amount. If the garnishee is served with more than one writ for the same debtor, the writs shall be satisfied in the order in which served.

(j) Duties of the Creditor

(1) Payments received by the creditor shall be credited first against accrued interest on the unpaid balance of the judgment, then against the principal amount of the judgment, and finally against attorney's fees and costs assessed against the debtor.

(2) Within 15 days after the end of each month in which one or more payments are received from any source by the creditor for the account of the debtor, the creditor shall mail to the garnishee and to the debtor a statement disclosing the payments and the manner in which they were credited. The statement shall not be filed in court, but creditor shall retain a copy of each statement until 90 days after the termination of the garnishment proceeding and make it available for inspection upon request by any party or by the court.

(3) If the creditor fails to comply with the provisions of this section, the court upon motion may dismiss the garnishment proceeding and order the creditor to pay reasonable attorney's fees and costs to the party filing the motion.

(k) Termination of Garnishment

A garnishment of wages terminates 90 days after cessation of employment unless the debtor is reemployed by the garnishee during that period.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule F6 a.
Section (b) is new.
Section (c) is in part derived from former Rule F6 b and in part new.
Section (d) is in part derived from former Rule F6 c and in part new.
Section (e) is derived from former Rule F6 d and k.
Section (f) is derived from former Rule F6 f.
Section (g) is in part derived from former Rule F6 e and in part new.
Section (h) is derived from former Rule F6 g.
Section (i) is in part derived from former Rule F6 h and in part new.

Section (j) is derived from former Rule F6 j.
Section (k) is derived from former Rule F6 i.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-647 by adding a reference to new Rule 2-640, by adding a requirement that a request for a writ include or be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 2-647. ENFORCEMENT OF JUDGMENT AWARDING POSSESSION

Upon the written request of the holder of a judgment awarding possession of property and subject to Rule 2-640, the clerk shall issue a writ directing the sheriff to place that party in possession of the property. The request shall include or be accompanied by (a) a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* and (b) instructions to the sheriff specifying ~~(a)~~(1) the judgment, ~~(b)~~(2) the property and its location, and ~~(c)~~(3) the party to whom the judgment awards possession. The clerk shall transmit the writ and the instructions to the sheriff. When a judgment awards possession of property or the payment of its value, in the alternative, the instructions shall also specify the value of the property, and the writ shall direct the sheriff to levy upon real or personal property of the judgment debtor to satisfy the judgment if the specified property cannot be found. When the judgment awards possession of real property located partly in the county where the judgment is entered and partly in an adjoining county, the sheriff may execute the writ as to all of the property.

Cross reference: See Code, Real Property Article, § 7-113(c)(1) for an alternate method to take possession of residential real property when the person claiming a right to possession of the property by the terms of a foreclosure sale or court order does not have a court-ordered writ of possession executed by a sheriff or constable. For authority of a sheriff's department to set conditions for removal of personalty or eviction in inclement weather, see *Thornton Mellon, LLC v. Frederick County Sheriff*, 479 Md. 474 (2022).

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-510 by adding a reference to new Rule 3-510.2 to section (b) and by adding a provision to subsection (b)(3) concerning the use of subpoenas obtained through the AIS portal, as follows:

Rule 3-510. SUBPOENAS

(a) Required, Permissive, and Non Permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents or other tangible things at a court proceeding, including proceedings before an examiner; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection and copying of designated documents or other tangible things at a deposition taken pursuant to Rule 3-401 or 3-431.

(2) A subpoena may be used to compel a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection and copying of designated documents or other tangible things at a deposition taken pursuant to Rule 3-401 or 3-431.

(3) A subpoena may not be used for any other purpose. If the court, on motion of a party or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a person has used or attempted to use a

subpoena or a copy or reproduction of a subpoena form for a purpose other than one allowed under this Rule, the court may impose an appropriate sanction, including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

~~A~~ Subject to the requirements of Rule 3-510.2, a subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

(1) On the request of any person entitled to the issuance of a subpoena, the clerk shall (A) issue a completed subpoena, or (B) provide to the person a blank form of subpoena, which the person shall fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed by the clerk, which the attorney shall fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC or through the AIS portal, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person other than the clerk may not copy and fill in any blank form of subpoena for

the purpose of serving the subpoena. A violation of this section shall constitute a violation of subsection (a)(3) of this Rule.

(c) Form

Except as otherwise permitted by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents or other tangible things to be produced, (6) the date of issuance, and (7) a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 60 days after the date of issuance provided that the subpoena is served within the 60-day period. The failure to serve a subpoena within the 60-day period does not preclude the reissuance of a new subpoena.

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 3-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or

hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, § 6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health--General Article, §§ 4-302 and 4-306 (b)(6), 45 C.F.R. 164.512 regarding medical records; Code, Health--General Article, § 4-307 regarding mental health records; and Code, Financial Institutions Article, § 1-304.

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before an examiner) or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the subpoena be quashed or modified;

(2) that the subpoena be complied with only at some designated time or place other than that stated in the subpoena;

(3) that documents or other tangible things designated in the subpoena be produced only upon the advancement by the party serving the subpoena of the reasonable costs of producing them; or

(4) that documents or other tangible things designated in the subpoena be delivered to the court at or before the proceeding or before the time when they are to be offered in evidence, subject to further order of court to permit inspection of them.

(f) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents or other tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

(g) Protection of Persons Subject to Subpoenas

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.

Cross reference: For the availability of sanctions for violations of this section, see Rules 1-201 (a) and 1-341.

(h) Records Produced by Custodians

(1) Generally

A custodian of records served with a subpoena to produce records at trial may comply by delivering the records to the clerk of the court that issued the subpoena at or before the time specified for production. The custodian may produce exact copies of the records designated unless the subpoena specifies that the original records be produced. The records shall be delivered in a sealed envelope labeled with the caption of the action, the date specified for production, and the name and address of the person at whose request the subpoena was issued. The records shall be accompanied by a certificate of the custodian that they are the complete records requested for the period designated in the subpoena and that the records are maintained in the regular course of business. The certification shall be prima facie evidence of the authenticity of the records.

Cross reference: Code, Health--General Article, § 4-306(b)(6); Code, Financial Institutions Article, § 1-304.

(2) During Trial

Unless the court has ordered that the records may be inspected and copied prior to trial, upon commencement of the trial, the clerk shall release the records only to the courtroom clerk assigned to the trial. The courtroom clerk shall return the records to the clerk promptly upon completion of trial or at an earlier time if there is no longer a need for them. Upon final disposition

of the action, the clerk shall return the original records to the custodian but need not return copies.

(3) Presence of Custodian

When the actual presence of the custodian of records is required, the subpoena shall state with specificity the reason for the presence of the custodian.

Cross reference: Code, Courts Article, § 10-104 includes an alternative method of authenticating medical records in certain cases.

(i) Attachment

A witness served with a subpoena under this Rule is liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

Source: This Rule is derived as follows:
Section (a) is new but the second sentence is derived in part from former Rule 407 a.
Section (b) is new.
Section (c) is derived from former M.D.R. 114 a and b and 115 a.
Section (d) is derived from former M.D.R. 104 a and b and 116 b.
Section (e) is derived from former M.D.R. 115 b.
Section (f) is derived from the 1980 version of Fed. R. Civ. P. 45(d)(1).
Section (g) is derived from the 1991 version of Fed. R. Civ. P. 45(c)(1).
Section (h) is new.
Section (i) is derived from former M.D.R. 114 d and 742 e.

REPORTER'S NOTE

A proposed amendment to Rule 3-510 adds to section (b) a condition that issuance of a subpoena is subject to proposed new Rule 3-510.2. That proposed new Rule adds additional requirements for a subpoena to a financial institution compelling production of financial information or information derived from financial records pursuant to Code, Financial Institutions Article, § 1-304. See the Reporter's note to Rule 3-510.2.

An additional amendment is proposed to subsection (b)(3) to clarify that an attorney of record may use the subpoena tool contained in the AIS portal in the same manner as a subpoena obtained from a clerk through MDEC without violating the provisions of subsection (b)(4) of this Rule. This revision is intended to conform the Rule to the current practice whereby many attorneys make use of the subpoena tool contained in the AIS portal to obtain blank subpoenas which are then filled out by the attorney and served on the appropriate party as contemplated in the current form of subsection (b)(3) with blank subpoenas obtained from a clerk through MDEC.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

ADD new Rule 3-510.2, as follows:

Rule 3-510.2. SUBPOENAS – FINANCIAL INFORMATION

(a) Applicability

This Rule applies to a subpoena compelling production of financial information or information derived from financial records as authorized by Code, Financial Institutions Article, § 1-304.

Committee note: Code, Financial Institutions Article, § 1-304 permits a financial institution to disclose or produce financial records or information derived from financial records in compliance with a subpoena only if the subpoena contains a certification either that a copy has been served on the person whose records are sought or that service is waived by the court for good cause.

(b) Military Service Affidavit

(1) Requirement

A person seeking issuance of a subpoena shall complete a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* as to the individual whose records or information is sought by the subpoena.

(2) If Individual is Not in Military Service

If the individual whose records or information is sought is not in military service, the person entitled to issuance of a subpoena shall:

(A) file the completed military service affidavit in the action; and

(B) request issuance of the subpoena pursuant to Rule 3-510.

(3) If Individual is or May be in Military Service

(A) Request; Referral to Judge

If the individual whose records or information is sought is in military service or the requester cannot determine whether the defendant is in military service, the person entitled to issuance of a subpoena shall file a request for issuance of a subpoena accompanied by the completed military service affidavit. The request shall be referred to a judge.

(B) Action by Court

If the court determines that the individual whose records or information is sought is in military service, the court shall appoint an attorney for the individual and proceed under the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*. If the court is unable to determine whether the individual is in military service, the court may enter an order pursuant to 50 U.S.C. § 3931 (b)(3).

(C) Issuance of Subpoena

After referral of the request to a judge, the clerk may issue the requested subpoena only upon order of court.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 3-510.2 governs subpoenas to financial institutions, which are authorized by Code, Financial Institutions Article, § 1-304. See the Reporter's note to Rule 2-510.2.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-633 by adding a reference to new Rule 3-640 to subsection (b)(1), by adding to subsection (b)(1) a requirement that a request for examination include or be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 3-633. DISCOVERY IN AID OF ENFORCEMENT

(a) Methods

Unless a money judgment arises out of a small claim action against an individual and except as otherwise provided in Rule 3-634, a judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of interrogatories pursuant to Rule 3-421, and (2) by examination before a judge or an examiner as provided in section (b) of this Rule.

Committee note: The discovery permitted by this Rule is in addition to the discovery permitted before the entry of judgment, and the limitations set forth in Rule 3-421 (b) apply separately to each. Thus, leave of court is not required under Rule 3-421 to serve one set of not more than 15 interrogatories on a judgment debtor solely because interrogatories were served upon that party before the entry of judgment.

Cross reference: See Code, Courts Article, § 11-704, prohibiting the District Court from ordering an individual to (1) appear for examination or (2) answer interrogatories in aid of execution of a money judgment arising out of a small claim action.

(b) Examination before a ~~judge~~ Judge or an ~~examiner~~ Examiner

(1) Generally

Subject to Rule 2-640 and section (c) of this Rule, on request of a judgment creditor filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or recorded shall issue an order requiring the appearance for examination under oath before a judge or person authorized by the Chief Judge of the Court to serve as an examiner of (A) the judgment debtor, or (B) any other person who may have property of the judgment debtor, be indebted for a sum certain to the judgment debtor, or have knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor. The request shall include or be accompanied by a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*

(2) Order

(A) The order shall specify when, where, and before whom the examination will be held and that failure to appear may result in (i) the issuance of a body attachment directing a law enforcement officer to take the person served into custody and bring that person before the court and (ii) the person served being held in contempt of court.

Cross reference: See Rule 1-361.

(B) The order shall be served upon the judgment debtor or other person in the manner provided by Rule 3-121, but no body attachment shall issue in the event of a non-appearance absent a determination by the court that (i) the person to whom the order was directed was personally served with the order in the manner described in Rule 3-121 (a)(1) or (3), or (ii) that person has been

evading service willfully, as shown by a particularized affidavit based on personal knowledge of a person with firsthand knowledge.

(3) Sequestration

The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

Cross reference: Code, Courts Article, §§ 6-411 and 9-119.

(c) Subsequent Examinations

After an examination of a person has been held pursuant to section (b) of this Rule, a judgment creditor may obtain additional examinations of the person in accordance with this section. On request of the judgment creditor, if more than one year has elapsed since the most recent examination of the person, the court shall order a subsequent appearance for examination of the person. If less than one year has elapsed since the most recent examination of the person, the court may require a showing of good cause.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 627.
Section (b) is in part new and in part derived from former M.D.R. 628 b.
Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-633.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

ADD new Rule 3-640, as follows:

Rule 3-640. ENFORCEMENT PROCEDURES – MILITARY SERVICE AFFIDAVIT

(a) Applicability

This Rule applies to a request for issuance of:

(1) a writ of execution pursuant to Rule 3-641;

(2) a writ of garnishment pursuant to Rule 3-645, Rule 3-645.1, or Rule 3-646;

(3) a writ enforcing a judgment awarding possession pursuant to Rule 3-647; and,

(4) an order directing a judgment debtor to appear for an examination pursuant to Rule 3-633 (b).

(b) If Judgment Debtor is Not in Military Service

If a military service affidavit required to be submitted with a request described by section (a) of this Rule indicates that the judgment debtor is not in military service, the writ or order shall be issued as of course.

(c) If Judgment Debtor is or May be in Military Service

(1) Referral to Judge

If a military service affidavit required to be submitted with a request described by section (a) of this Rule indicates that the judgment debtor is in military service or that the judgment creditor is unable to determine whether the debtor is in military service, the clerk shall refer the request to a judge.

(2) Action by Court

If the court determines that the judgment debtor is in military service, the court shall appoint an attorney for the debtor and proceed under the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*. If the court is unable to determine whether the judgment debtor is in military service, the court may enter an order pursuant to 50 U.S.C. § 3931 (b)(3).

(3) Issuance of Writ

For a request for issuance of a writ, after referral of the request to a judge, the clerk may issue the requested writ only upon order of court.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-641 by adding a reference to new Rule 3-640 to section (a), by adding to section (a) a requirement that a request for a writ include or be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 3-641. WRIT OF EXECUTION – ISSUANCE AND CONTENT

(a) Generally

A writ of execution directing the sheriff to levy upon property of the judgment debtor to satisfy a money judgment may be issued by the clerk of a court where the judgment was entered or is recorded and, subject to Rule 3-640, shall be issued only upon written request of the judgment creditor. If the levy is to be made upon real property located in a county other than Baltimore City, the clerk shall not issue the writ of execution unless it shall appear from that clerk's records or from a certification filed by the judgment creditor that a Notice of Lien has been recorded pursuant to Rule 3-621 in the circuit court for the county where the levy is to be made. The writ shall contain a notice advising the debtor that federal and state exemptions may be available and that there is a right to move for release of the property from the levy. The request shall include or be accompanied by (1) a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§

3901 *et seq.* and (2) instructions to the sheriff that shall specify ~~(1)~~(A) the judgment debtor's last known address, ~~(2)~~(B) the judgment and the amount owed under the judgment, ~~(3)~~(C) the property to be levied upon and its location, and ~~(4)~~(D) whether the sheriff is to leave the levied property where found, or to exclude others from access to it or use of it, or to remove it from the premises. The judgment creditor may file additional instructions as necessary and appropriate and deliver a copy to the sheriff. More than one writ may be issued on a judgment, but only one satisfaction of a judgment may be had.

(b) Issuance to Another County

If a judgment creditor requests the clerk of the court where the judgment was entered to issue a writ of execution directed to the sheriff of another county, the clerk shall send to the clerk of the other county the writ, the instructions to the sheriff, and, if not already recorded there, a certified copy of the judgment for recording.

(c) Transmittal to Sheriff; Bond

Upon issuing a writ of execution or receiving one from the clerk of another county, the clerk shall deliver the writ and instructions to the sheriff. The sheriff shall endorse on the writ the exact hour and date of its receipt and shall maintain a record of actions taken pursuant to it. If the instructions direct the sheriff to remove the property from the premises where found or to exclude others from access to or use of the property, the sheriff may require the judgment creditor to file with the sheriff a bond with security approved by the

sheriff for the payment of any expenses that may be incurred by the sheriff in complying with the writ.

Cross reference: For execution of a judgment against the property of a corporation, joint stock company, association, limited liability company, limited liability partnership, or limited liability limited partnership for the amount of fines or costs awarded against it in a criminal proceeding, see Code, Criminal Procedure Article, § 4-203.

Source: This Rule is derived as follows:
Section (a) is in part new and in part derived from former M.D.R. G40 b 4, the last sentence of G49 a, and 622 e and i.
Section (b) is in part new and in part derived from former M.D.R. 622 h 1 and 3.
Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-641.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-645 by adding to section (b) a requirement that a request for a writ include or be accompanied by a military service affidavit and by adding by adding a reference to new Rule 3-640 to section (b), as follows:

Rule 3-645. GARNISHMENT OF PROPERTY – GENERALLY

(a) Availability

Subject to the provisions of Rule 3-645.1, this Rule governs garnishment of any property of the judgment debtor, other than wages subject to Rule 3-646 and a partnership interest subject to a charging order, in the hands of a third person for the purpose of satisfying a money judgment. Property includes any debt owed to the judgment debtor, whether immediately payable or unmatured.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was entered a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of each judgment debtor with respect to whom a writ is requested, and (4) the name and address of the garnishee. <u>The request shall include or be accompanied by a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§</u>

3901 *et seq.* Upon the filing of the request and subject to Rule 3-640, the clerk shall issue a writ of garnishment directed to the garnishee.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,

(2) direct the garnishee to hold, subject to further proceedings or to termination of the writ, the property of each judgment debtor in the possession of the garnishee at the time of service of the writ and all property of each debtor that may come into the garnishee's possession after service of the writ,

(3) notify the garnishee of the time within which the answer must be filed and that failure to do so may result in judgment by default against the garnishee,

(4) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(5) notify the judgment debtor of the right to contest the garnishment by filing a motion asserting a defense or objection, and

(6) notify the judgment debtor that, if the garnishee files an answer pursuant to section (e) of this Rule and no further filings concerning the writ of garnishment are made with the court within 120 days following the filing of the answer, the garnishee may file a notice of intent to terminate the writ of garnishment pursuant to subsection (k)(2) of this Rule.

Committee note: A writ of garnishment may direct a garnishee to hold the property of more than one judgment debtor if the name and address of each judgment debtor whose property is sought to be attached is stated in the writ.

(d) Service

The writ shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Promptly after service upon the garnishee, the person making service shall mail a copy of the writ to the judgment debtor's last known address. Proof of service and mailing shall be filed as provided in Rule 3-126. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Answer of Garnishee

The garnishee shall file an answer within 30 days after service of the writ. The answer shall admit or deny that the garnishee is indebted to the judgment debtor or has possession of property of the judgment debtor and shall specify the amount and nature of any debt and describe any property. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the judgment debtor could assert. After answering, the garnishee may pay any garnished indebtedness into court and may deliver to the sheriff any garnished property, which shall then be treated as if levied upon by the sheriff. A garnishee who has filed an answer admitting indebtedness to the judgment debtor or possession of property of the judgment debtor is not required to file an amended answer solely because of an increase

in the garnishee's indebtedness to the judgment debtor or the garnishee's receipt of additional property of the debtor.

(f) When No Answer Filed

If the garnishee fails to file a timely answer, the judgment creditor may proceed pursuant to Rule 3-509 for a judgment by default against the garnishee.

(g) When Answer Filed

If the garnishee files a timely answer, the matters set forth in the answer shall be treated as established for the purpose of the garnishment proceeding unless the judgment creditor files a reply contesting the answer within 30 days after its service. If a timely reply is not filed, the court may enter judgment upon request of the judgment creditor, the judgment debtor, or the garnishee. If a timely reply is filed to the answer of the garnishee, the matter shall proceed as if it were an original action between the judgment creditor as plaintiff and the garnishee as defendant and shall be governed by the rules applicable to civil actions.

(h) Interrogatories to Garnishee

The judgment creditor may serve interrogatories directed to the garnishee pursuant to Rule 3-421. The interrogatories shall contain a notice to the garnishee that, unless answers are served within 30 days after service of the interrogatories or within the time for filing an answer to the writ, whichever is later, the garnishee may be held in contempt of court. The interrogatories shall also inform the garnishee that the garnishee must file a notice with the court

pursuant to Rule 3-401 (b). If the garnishee fails to serve timely answers to interrogatories, the court, upon petition of the judgment creditor and proof of service of the interrogatories, may enter an order in compliance with Rule 15-206 treating the failure to answer as a contempt and may require the garnishee to pay reasonable attorney's fees and costs.

(i) Release of Property; Claim by Third Person

Before entry of judgment, the judgment debtor may seek release of the garnished property in accordance with Rule 3-643, except that a motion under Rule 3-643 (d) shall be filed within 30 days after service of the writ of garnishment on the garnishee. Before entry of judgment, a third person claimant of the garnished property may proceed in accordance with Rule 3-643 (e).

(j) Judgment

The judgment against the garnishee shall be for the amount admitted plus any amount that has come into the hands of the garnishee after service of the writ and before the judgment is entered, but not to exceed the amount owed under the creditor's judgment against the debtor and enforcement costs.

(k) Termination of Writ

(1) Upon Entry of Judgment

Upon entry of a judgment against the garnishee pursuant to section (j) of this Rule, the writ of garnishment and the lien created by the writ shall terminate and the garnishee shall be under no obligation to hold any additional

property of the debtor that may come into its possession after the judgment was entered.

(2) By the Garnishee

If the garnishee has filed an answer and no further filing concerning the writ of garnishment is made within 120 days after the filing of the answer, the garnishee may file, at any time more than 120 days after the filing of the answer, a notice of intent to terminate the writ of garnishment. The notice shall (A) contain a statement that a party may object to termination of the writ by filing a response within 30 days after service of the notice and (B) be served on the judgment debtor and the judgment creditor. If no response is filed within 30 days after service of the notice, the garnishee may file a termination of the garnishment, which shall release the garnishee from any further obligation to hold any property of the debtor.

Committee note: The methods of termination of a writ of garnishment provided in section (k) of this Rule are not exclusive. Section (k) does not preclude a garnishee or other party from filing a motion for a court order terminating a writ of garnishment on any other appropriate basis.

(l) Statement of Satisfaction

Upon satisfaction by the garnishee of a judgment entered against it pursuant to section (j) of this Rule, the judgment creditor shall file a statement of satisfaction setting forth the amount paid. If the judgment creditor fails to file the statement of satisfaction, the garnishee may proceed under Rule 3-626.

Source: This Rule is derived as follows:
Section (a) is new but is consistent with former M.D.R. G47 a and G50 a.
Section (b) is new.
Section (c) is new.

Section (d) is in part derived from former M.D.R. F6 c and 104 a (iii) and is in part new.
Section (e) is in part new and in part derived from former M.D.R. G52 a and b.
Section (f) is new.
Section (g) is new.
Section (h) is derived from former M.D.R. G56.
Section (i) is new.
Section (j) is new.
Section (k) is new.
Section (l) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-646 by adding to section (b) a requirement that a request for a writ include or be accompanied by a military service affidavit, by adding a reference to new Rule 3-640 to section (b), and by making stylistic changes, as follows:

Rule 3-646. GARNISHMENT OF WAGES

(a) Applicability

This Rule governs garnishment of wages under Code, Commercial Law Article, §§ 15-601 through 15-606.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was obtained a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of the judgment debtor, and (4) the name and address of the garnishee. The request shall include or be accompanied by a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* Upon the filing of the request and subject to Rule 3-640, the clerk shall issue a writ of garnishment directed to the garnishee together with a blank answer form provided by the clerk.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue~~,~~;

(2) notify the garnishee of the time within which the answer must be filed and that failure to do so may result in the garnishee being held in contempt~~,~~;

(3) notify the judgment debtor and garnishee that federal and state exemptions may be available~~,~~; and

(4) notify the judgment debtor of the right to contest the garnishment of wages by filing a motion asserting a defense or objection.

(d) Service

The writ and answer form shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Upon issuance of the writ, a copy of the writ shall be mailed to the debtor's last known address. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Response of Garnishee and Debtor

The garnishee shall file an answer within 30 days after service of the writ. The answer shall state whether the debtor is an employee of the garnishee and, if so, the rate of pay and the existence of prior liens. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the debtor could assert. The debtor may file a motion at any time asserting a defense or objection.

(f) When No Answer Filed

If the garnishee fails to file a timely answer, the court on motion of the creditor may order the garnishee to show cause why the garnishee should not be held in contempt and required to pay reasonable attorney's fees and costs.

(g) When Answer Filed

If the answer denies employment, the clerk shall dismiss the proceeding against the garnishee unless the creditor files a request for hearing within 15 days after service of the answer. If the answer asserts any other defense or if the debtor files a motion asserting a defense or objection, a hearing on the matter shall be scheduled promptly.

(h) Interrogatories to Garnishee

Interrogatories may be served on the garnishee by the creditor in accordance with Rule 3-645 (h).

(i) Withholding and Remitting of Wages

While the garnishment is in effect, the garnishee shall withhold all garnishable wages payable to the debtor. If the garnishee has asserted a defense or is notified that the debtor has done so, the garnishee shall remit the withheld wages to the court. Otherwise, the garnishee shall remit them to the creditor or the creditor's attorney within 15 days after the close of the debtor's last pay period in each month. The garnishee shall notify the debtor of the amount withheld each pay period and the method used to determine the amount. If the garnishee is served with more than one writ for the same debtor, the writs shall be satisfied in the order in which served.

(j) Duties of the Creditor

(1) Payments received by the creditor shall be credited first against accrued interest on the unpaid balance of the judgment, then against the principal amount of the judgment, and finally against attorney's fees and costs assessed against the debtor.

(2) Within 15 days after the end of each month in which one or more payments are received from any source by the creditor for the account of the debtor, the creditor shall mail to the garnishee and to the debtor a statement disclosing the payments and the manner in which they were credited. The statement shall not be filed in court, but the creditor shall retain a copy of each statement until 90 days after the termination of the garnishment proceeding and make it available for inspection upon request by any party or by the court.

(3) If the creditor fails to comply with the provisions of this section, the court upon motion may dismiss the garnishment proceeding and order the creditor to pay reasonable attorney's fees and costs to the party filing the motion.

(k) Termination of Garnishment

A garnishment of wages terminates 90 days after cessation of employment unless the debtor is reemployed by the garnishee during that period.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. F6 a.
Section (b) is new.
Section (c) is in part derived from former M.D.R. F6 b and in part new.
Section (d) is in part derived from former M.D.R. F6 c and in part new.
Section (e) is derived from former M.D.R. F6 d and k.
Section (f) is derived from former M.D.R. F6 f.
Section (g) is in part derived from former M.D.R. F6 e and in part new.
Section (h) is derived from former M.D.R. F6 g.
Section (i) is in part derived from former M.D.R. F6 h and in part new.

Section (j) is derived from former M.D.R. F6 j.
Section (k) is derived from former M.D.R. F6 i.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-647 by adding by adding a reference to new Rule 3-640, by adding a requirement that a request for a writ be accompanied by a military service affidavit, and by making stylistic changes, as follows:

Rule 3-647. ENFORCEMENT OF JUDGMENT AWARDING POSSESSION

Upon the written request of the holder of a judgment awarding possession of property and subject to Rule 3-640, the clerk shall issue a writ directing the sheriff to place that party in possession of the property The request shall include or be accompanied by (a) a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* and (b) instructions to the sheriff specifying ~~(a)~~(1) the judgment, ~~(b)~~(2) the property and its location, and ~~(c)~~(3) the party to whom the judgment awards possession. The clerk shall transmit the writ and the instructions to the sheriff. When a judgment awards possession of property or the payment of its value, in the alternative, the instructions shall also specify the value of the property, and the writ shall direct the sheriff to levy upon real or personal property of the judgment debtor to satisfy the judgment if the specified property cannot be found. When the judgment awards possession of real property located partly in the county where the judgment is entered and partly in an adjoining county, the sheriff may execute the writ as to all of the property.

Cross reference: See Code, Real Property Article, § 7-113(c)(1) for an alternate method to take possession of residential real property when the person claiming a right to possession of the property by the terms of a foreclosure sale or court order does not have a court-ordered writ of possession executed by a sheriff or constable.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-640.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-325 by deleting the word "Prepaid" from the title of section (e); by adding new subsection (e)(1) applying to prepaid costs; by renumbering current subsections (e)(1), (e)(2), and (e)(3) as subsections (e)(1)(A), (e)(1)(B), and (e)(1)(C), respectively; by renumbering current subsections (e)(1)(A), (e)(1)(B), and (e)(1)(C) as subsections (e)(1)(A)(i), (e)(1)(A)(ii), and (e)(1)(A)(iii), respectively; by renumbering current subsections (e)(2)(A) and (e)(2)(B) as subsections (e)(1)(B)(i) and (e)(1)(B)(ii), respectively; by adding new subsection (e)(2) pertaining to a request for waiver of open costs at the conclusion of an action; by adding language in subsection (f)(2)(A) pertaining to a party who did not previously request a waiver pursuant to new subsection (e)(2); by adding language to subsection (f)(2)(B) pertaining to action by the court on a request for final waiver pursuant to new subsection (e)(2); and by making stylistic changes, as follows:

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

(a) Scope

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

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

(b) Definition

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

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

(c) No Fee for Filing Request

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

(d) Waiver of Prepaid Costs by Clerk

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

(1) the party is an individual who is represented (A) by an attorney retained through a pro bono or legal services program on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided that an authorized agent of the program provides the clerk with a statement that (i) names the program, attorney, and party; (ii) states that the attorney is associated with the program and the party meets the financial eligibility criteria of the Corporation; and (iii) attests that the payment

of filing fees is not subject to Code, Courts Article, § 5-1002 (the Prisoner Litigation Act), or (B) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

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

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

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

(e) Waiver of ~~Prepaid~~ Costs by Court

(1) Prepaid Costs

~~(1)~~(A) Request for Waiver

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

the claim, application, or request for process and it is not interposed for any improper purpose or delay.

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

~~(2)~~(B) Review by Court; Factors to be Considered

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

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

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

~~(3)~~(C) Order; Payment of Unwaived Prepaid Costs

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

unwaived prepaid costs are not paid in full within the time allowed, the pleading or paper shall be deemed to have been withdrawn.

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

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

(f) Award of Costs at Conclusion of Action

(1) Generally

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

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

(2) Waiver

(A) Request

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

existence of the prior waiver and the party's continued inability to pay by reason of poverty.

(B) Determination by Court

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

Source: This Rule is new.

REPORTER'S NOTE

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("the EJC Report"). One recommendation contained in the EJC Report was for the Rules Committee to consider allowing parties to seek a waiver of all current and future fees and costs at the outset of the case.

Rule 1-325 governs the waiver of costs due to indigence for original civil actions in the District Court or a circuit court and requests for relief in criminal actions that are civil in nature, such as petitions for expungement.

Section (d) provides for the waiver of prepayment of costs by the clerk without court order. In general, prepayment of costs is appropriate where the party is represented by an attorney through the Maryland Legal Services Corporation, Maryland Legal Aid, or Office of the Public Defender or by an attorney who attests that the individual meets the income requirements of those programs. Any other individual who is unable to prepay costs due to indigence must seek a waiver by court order. At the conclusion of the

proceeding, costs are allocated and awarded as required or permitted by law. Subsection (f)(2) provides for a request for waiver of open costs.

Advocates, including the Court Access Committee, suggested that the requirement of a second request for waiver is unduly burdensome, particularly on unrepresented individuals. The Court Access Committee stated that indigent individuals who receive a waiver of prepaid costs are surprised to receive a bill from the court when the case is over.

Proposed amendments to Rule 1-325 add new subsection (e)(2) permitting an individual to request that the court consider the prepayment waiver request as a request for a final waiver of open costs at the conclusion of the action. The individual must attest that the individual does not anticipate a material change in the financial information provided in the prepayment waiver form. The court would be prompted to consider the waiver request at the conclusion of the action as a part of the assessment of costs.

Subsection (f)(2)(A) is amended to clarify that it is applicable to a party who did not request the final waiver pursuant to new subsection (e)(2).

Subsection (f)(2)(B) is amended to permit the court to require a party who was granted a prepayment waiver to file the supplemental affidavit required by subsection (f)(2)(A)(ii) before ruling on the request for a final waiver of open costs.

Additionally, a cross reference following section (d) is updated.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-333 by adding new subsection (a)(1)(B)(ii); by adding new subsection (a)(2) and a Committee note pertaining to "Consecutive Interpretation"; by renumbering subsections (a)(2) through (a)(7) as (a)(3) through (a)(8), respectively; by updating language in re-lettered subsections (a)(7)(A) and (B) governing requirements for a qualified interpreter; by adding new subsection (a)(9) and a Committee note pertaining to "Simultaneous Interpretation"; by renumbering subsection (a)(8) as (a)(10); by adding a Committee note following subsection (b)(2) pertaining to notice by a third party that an individual needs an interpreter; by altering the procedure for obtaining more than one interpreter in the same language in subsection (c)(4); and by making stylistic changes, as follows:

Rule 1-333. COURT INTERPRETERS

(a) Definitions

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

(1) Certified Interpreter

"Certified Interpreter" means an interpreter who is certified by:

(A) the Maryland Administrative Office of the Courts;

(B) any member of the Council for Language Access Coordinators, provided that, if the interpreter was not approved by the Maryland member of the Council, the interpreter has (i) ~~successfully~~ completed successfully the orientation program required by the Maryland member of the Council and (ii) signed an acknowledgement form that the interpreter will comply with the interpreter policies outlined in the Court Interpreter Handbook, including the Maryland Code of Conduct for Court Interpreters;

Committee note: The Council for Language Access Coordinators is a unit of the National Center for State Courts.

(C) the Administrative Office of the United States Courts; or

(D) if the interpreter is a sign language interpreter, the Registry of Interpreters for the Deaf or the National Association of the Deaf.

(2) Consecutive Interpretation

"Consecutive interpretation" means interpretation that takes place immediately after a speaker pauses between segments of speech.

Committee note: Consecutive interpretation is used in a question-and-answer setting when the individual in need of interpretation plays an active role and must speak or respond. Consecutive interpreting is often used during examinations, interviews, and when an individual with limited English proficiency is addressed directly. Consecutive interpretation involves the interpreted rendering of small segments of speech where interpreters preserve every element of information contained in the source language.

~~(2)~~(3) Individual Who Needs an Interpreter

"Individual who needs an interpreter" means a party, attorney, witness, or victim who is deaf or unable adequately to understand or communicate in spoken or written English and a juror or prospective juror who is deaf.

~~(3)~~(4) Interpreter

"Interpreter" means an adult who has the ability to render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written and without explanation.

~~(4)~~(5) Non-Registry Interpreter

"Non-registry interpreter" means an interpreter who has not completed the Maryland Judiciary's orientation program and is not listed on the Court Interpreter Registry.

~~(5)~~(6) Proceeding

"Proceeding" means (A) any trial, hearing, argument on appeal, or other matter held in open court in an action, and (B) an event not conducted in open court that is in connection with an action and is in a category of events for which the court is required by Administrative Order of the Chief Justice of the Supreme Court to provide an interpreter for an individual who needs an interpreter.

~~(6)~~(7) Qualified Interpreter

"Qualified Interpreter" means an interpreter who is not a certified interpreter but who:

(A) has submitted to the Maryland Administrative Office of the Courts a completed ~~Maryland State Judiciary Information Form for Spoken and Sign Language Court Interpreters and an oath~~ application and a signed Acknowledgement Form that the interpreter will comply with the interpreter policies outlined in the Court Interpreter Handbook, including the Maryland Code of Conduct for Court Interpreters;

(B) has ~~successfully completed the Maryland Judiciary's orientation workshop on court interpreting~~ satisfied all the testing and training requirements established by the Court Interpreter Program; and

(C) does not have, in a state or federal court of record, a pending criminal charge or conviction on a charge punishable by a fine of more than $500 or imprisonment for more than six months unless the interpreter has been pardoned or the conviction has been overturned or expunged in accordance with law.

~~(7)~~(8) Registry

"Registry" means the Court Interpreter Registry, a listing of certified and qualified interpreters who have fulfilled the requirements necessary to receive assignments under the Maryland Court Interpreter Program.

(9) Simultaneous Interpretation

"Simultaneous interpretation" means interpretation that takes place as the individual whose speech is being interpreted is speaking.

Committee note: Simultaneous interpretation is often used during opening statements, closing arguments, arguments on motions and objections, sidebar conferences, jury instructions, and other speech when the individual with limited English proficiency is not addressed directly. An interpreter conducting simultaneous interpretation may utilize equipment to transmit the interpreted speech to a headset worn by the individual who requires the interpreter.

Simultaneous interpretation is not part of the record of the proceeding. See Rules 16-502 (a) and 16-503 (a). If the court, the interpreter, a party, an attorney for a party, or the individual with limited English proficiency has and expresses a concern about the clarity or details of the interpretation, the court should request that the interpreter begin using consecutive interpretation to be recorded as part of the court record.

~~(8)~~(10) Victim

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

(b) Spoken Language Interpreters

(1) Applicability

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

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

(2) Application for the Appointment of an Interpreter

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

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

(3) When Additional Application Not Required

(A) Party

If a party who is an individual who needs an interpreter includes on the application a request for an interpreter for all proceedings in the action, the

court shall provide an interpreter for each proceeding without requiring a separate application prior to each proceeding.

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

(B) Continued or Postponed Proceedings

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

(4) Where Timely Application Not Filed

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

(A) Examination on the Record

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

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

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

(B) Scope of Examination

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

(i) identification;

(ii) active vocabulary in vernacular English; and

(iii) the court proceedings.

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

(5) Notice When Interpreter Is Not Needed

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

(c) Selection and Appointment of Interpreters

(1) Certified Interpreter Required; Exceptions

When the court determines that an interpreter is needed, the court shall make a diligent effort to obtain the services of a certified interpreter. If a certified interpreter is not available, the court shall make a diligent effort to obtain the services of a qualified interpreter. The court may appoint a non-registry interpreter only if a registry interpreter is not available. An individual related by blood or marriage to a party or to the individual who needs an interpreter may not act as an interpreter.

Committee note: The court should be cautious about appointing a non-registry interpreter and should consider carefully the seriousness of the case and the availability of resources before doing so.

(2) Inquiry of Prospective Interpreter

(A) Except as provided in subsection (c)(2)(B) of this Rule, before appointing an interpreter under this Rule, the court shall conduct an appropriate inquiry of the prospective interpreter on the record with respect to the interpreter's skills and qualifications and any potential conflicts or other ethical issues. The court may permit the parties to participate in that inquiry.

(B) If the interpreter is a court-employed staff interpreter, the court may dispense with any inquiry regarding the interpreter's skills and qualifications.

Committee note: The court should use the Court Interpreter Inquiry Questions included as an Appendix to these Rules.

(3) Oath

(A) Generally

Before acting as an interpreter in a proceeding, an interpreter shall take an oath to interpret accurately, completely, and impartially and to refrain from knowingly disclosing confidential or privileged information obtained while

serving in the proceeding. If the interpreter is to serve in a grand jury proceeding, the interpreter also shall take an oath that the interpreter will keep secret all matters and things occurring before the grand jury.

(B) Court-employed Staff Interpreters

Upon employment, a court-employed staff interpreter shall make the prescribed oaths in writing and file them with the clerk of each court in which the interpreter will serve and with the Administrative Office of the Courts. The oath shall be applicable to all proceedings in which the interpreter is called to serve and need not be repeated on each occasion.

Committee note: Court-employed staff interpreters often are in and out of court, substituting for other court-employed staff interpreters, and the need for an oath may be overlooked. The intent of subsection (c)(3)(B) is to assure that each applicable prescribed oath has been made.

(4) Multiple Interpreters in the Same Language

~~At the request of a party or on its own initiative, the court may appoint~~ The court shall make a diligent effort to obtain more than one interpreter in the same language ~~to ensure the accuracy of the interpretation or to preserve confidentiality~~ if:

(A) the ~~proceedings are~~ proceeding is expected to exceed ~~three~~ four hours;

(B) the ~~proceedings include~~ proceeding includes complex issues and terminology or other such challenges; or

(C) ~~an opposing party requires an interpreter in the same language~~ the court determines that more than one interpreter is necessary to ensure a fair and just proceeding.

Committee note: To ensure accurate interpretation, an interpreter should be granted reasonable rest periods at frequent intervals.

(d) Removal From Proceeding

A court interpreter may be removed from a proceeding by a judge or judicial appointee within the meaning of Rule 18-200.3 (a)(1), who shall then notify the Maryland Administrative Office of the Courts that the action was taken.

(e) Compensation of Court Interpreters

Compensation for interpreters shall be in accordance with a schedule adopted by the State Court Administrator consistent with Code, Criminal Procedure Article, §§ 1-202 and 3-103 and Code, Courts Article, § 9-114.

Committee note: Code, Courts Article, § 9-114 provides for the appointment of interpreters for certain parties and witnesses, generally. Code, Criminal Procedure Article, §§ 1-202 and 3-103 provide for the appointment of interpreters for certain defendants in criminal proceedings and proceedings under Title 3 of that Article.

Source: This Rule is derived from former Rule 16-819 (2014).

REPORTER'S NOTE

Proposed amendments to Rule 1-333 reflect a series of requests by the Maryland Judicial Council Court Access Committee for updates and clarification.

The Rules Committee was informed that the requirements to be a "certified interpreter" as defined in subsection (a)(1) and a "qualified interpreter" as defined in subsection (a)(7) are being updated. Those updates include changes to the policies in the Court Interpreter Handbook, such as requiring interpreters working in languages that have available certification exams to pass the exam within a certain time. Because these changing requirements are all contained within the Handbook, the proposed amendments to subsections (a)(1) and (a)(7) require the interpreter to sign an

acknowledgement form that the interpreter will comply with the Handbook, which includes the Code of Conduct for Court Interpreters.

The Court Access Committee also requested clarification in the Rules regarding when the interpreter's speech is required to be recorded as part of the court record. See the Reporter's notes to Rules 16-502 and 16-503 for additional information.

Proposed amendments to Rule 1-333 include adding "consecutive interpretation" and "simultaneous interpretation" as defined terms. "Consecutive interpretation" is defined in new subsection (a)(2). A Committee note provides examples of when it may be used, such as examinations and interviews involving an individual with limited English proficiency. "Simultaneous interpretation" is defined in new subsection (a)(9). It is similarly followed by a Committee note providing additional context. The Committee note also points out that simultaneous interpretation is not part of the official court record and suggests that the court should ask the interpreter to switch to consecutive interpretation, which is part of the record, if there are concerns regarding the clarity or details of the interpretation. The terms defined in section (a) are renumbered to accommodate the new subsections.

The proposed Committee note following subsection (b)(2) was requested by the Court Access Committee as part of the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee. The amendment clarifies that other individuals involved in the proceeding, court personnel, or anyone else who has knowledge that an individual needs an interpreter may alert the court to that fact.

The Court Access Committee also sought an update to the requirement for when more than one interpreter in the same language must be assigned. The current provisions of subsection (c)(4) of the Rule require the court to appoint more than one interpreter if a proceeding is expected to exceed three hours. A scheduling policy change, which went into effect in April 2023, now assigns interpreters for either a four-hour minimum (morning or afternoon session) or eight-hour minimum (full-day session). The interpreters report that they can provide services for a four-hour session without requiring a second interpreter. The Court Interpreter Program staff also reported to the Court Access Committee that due to use of interpreting equipment which can interpret for multiple parties simultaneously, it is not necessary for the court to assign multiple interpreters in the same language unless the proceeding will last more than four hours or the court determines it is necessary to ensure a fair and just proceeding. Rule 1-333 (c)(4) is updated to reflect these recommendations.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-502 by creating new subsection (a)(1), containing the language of current section (a); by adding new subsection (a)(2) pertaining to recording of court interpreters; by adding a cross reference to Rule 1-333 (a) following new subsection (a)(2); and by making stylistic changes, as follows:

Rule 16-502. IN DISTRICT COURT

(a) Proceedings to be Recorded

(1) Generally

All trials, hearings, testimony, and other judicial proceedings before a District Court Judge held either in a courtroom or by remote electronic means shall be recorded verbatim in their entirety by a person authorized by the court to do so, except that, unless otherwise ordered by the court, the person responsible for recording need not report or separately record an audio or audio-video recording offered as evidence at a hearing or trial.

Committee note: ~~Section (a)~~ Subsection (a)(1) of this Rule does not apply to ADR proceedings conducted pursuant to Title 17, Chapter 300 of these Rules.

(2) Court Interpreters

If a proceeding involves an individual who needs an interpreter, only consecutive interpretation shall be subject to subsection (a)(1) of this Rule. To

the extent that simultaneous interpretation is captured by the audio recording device provided by the court, it is not part of the record of the proceeding.

Cross reference: For definitions of "individual who needs an interpreter," "consecutive interpretation," and "simultaneous interpretation," see Rule 1-333 (a).

(b) Method of Recording

(1) Generally

Proceedings shall be recorded by an audio recording device provided by the court.

(2) As Authorized By Chief Judge

The Chief Judge of the District Court may authorize recording by additional means, including audio-video recording. Audio-video recording of a proceeding and access to an audio-video recording shall be in accordance with this Rule and Rules 16-503, 16-504, and 16-504.1.

(3) Official Recordings

Except for extended coverage of court proceedings permitted under Title 16, Chapter 600 of these Rules, only official recordings of judicial proceedings in the District Court made in accordance with this Rule are permitted.

. . .

REPORTER'S NOTE

Proposed amendments to Rules 16-502 and 16-503 were requested by the Maryland Judicial Council Court Access Committee to clarify when an interpreter's speech is required to be recorded as part of the court record. See the Reporter's note to Rule 1-333.

The Rules Committee was informed that questions arose during a pilot program providing video remote interpretation ("VRI") in the Circuit Court for Anne Arundel County. When VRI is used, the interpretation of what is being said in the courtroom – referred to as "simultaneous interpretation" – is only heard by the person with limited English proficiency ("LEP") via a headset. The interpretation is not picked up by the court's recording equipment. However, when an interpreter is working in person, the simultaneous interpretation being provided to the person with LEP may be picked up by the court's recording equipment, in whole or in part, and it is unclear if it should be part of the official record of the proceedings. When the person with LEP is addressing the court or engaged in any kind of back-and-forth with the court, the interpreter waits for a pause and stops to interpret what was said to the entire courtroom. This style is called "consecutive interpretation."

The Committee was informed that the recommended policy is that simultaneous interpretation, which is done quickly and solely for the benefit of the LEP speaker to understand what is happening in the courtroom, should not be part of the official record. This policy is in line with the national standard for court interpretation, according to information provided by the Court Access Committee. It was explained that during simultaneous interpretation, the interpreter does not have the opportunity to ask the court for clarification and the rapid interpretation is not as meticulous. Consecutive interpretation, however, should be recorded for the court record to ensure that the LEP speaker was interpreted and interpreted for accurately.

Rule 16-502 is amended to create new subsection (a)(1), containing the contents of current section (a). New subsection (a)(2) sets forth the exception which requires the recording of consecutive interpretation only and excludes simultaneous interpretation, to the extent it is captured by the court's recording equipment, from the official record. A cross reference to Rule 1-333 (a) directs the reader to the definitions of "individual who needs an interpreter," "consecutive interpretation," and "simultaneous interpretation."

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-503 by adding new subsection (a)(3) pertaining to recording of court interpreters, by adding a cross reference to Rule 1-333 (a) following new subsection (a)(3), and by making stylistic changes, as follows:

Rule 16-503. IN CIRCUIT COURT

(a) Proceedings to be Recorded

(1) Proceedings in the Presence of Judge

All trials, hearings, testimony, and other judicial proceedings before a circuit court judge held either in a courtroom or by remote electronic means shall be recorded verbatim in their entirety by a person authorized by the court to do so, except that, unless otherwise ordered by the court, the person responsible for recording need not report or separately record an audio or audio-video recording offered as evidence at a hearing or trial.

Committee note: An audio or audio-video recording offered at a hearing or trial must be marked for identification and made part of the record, so that it is available for future transcription. See Rules 2-516 (b)(1)(A) and 4-322 (c)(1)(A). Section (a) does not apply to ADR proceedings conducted pursuant to Rule 9-205 or Title 17 of these Rules.

(2) Proceedings Before Magistrate, Examiner, or Auditor

Proceedings before a magistrate, examiner, or auditor shall be recorded verbatim in their entirety, except that:

(A) the recording of proceedings before a magistrate may be waived in accordance with Rules 2-541 (d)(3) or 9-208 (c)(3);

(B) the recording of proceedings before an examiner may be waived in accordance with Rule 2-542 (d)(4); and

(C) the recording of proceedings before an auditor may be waived in accordance with Rule 2-543 (d)(3).

(3) Court Interpreters

If a proceeding involves an individual who needs an interpreter, only consecutive interpretation shall be subject to subsections (a)(1) and (a)(2) of this Rule. To the extent that simultaneous interpretation is captured by the audio recording device provided by the court, it is not part of the record of the proceeding.

Cross reference: For definitions of "individual who needs an interpreter," "consecutive interpretation," and "simultaneous interpretation," see Rule 1-333 (a).

(b) Method of Recording

Proceedings may be recorded by any reliable method or combination of methods approved by the County Administrative Judge. If proceedings are recorded by a combination of methods, the County Administrative Judge shall determine which method shall be used to prepare a transcript.

(c) Official Recordings

Except for extended coverage of court proceedings permitted under Title 16, Chapter 600 of these Rules, only official recordings of judicial proceedings in a circuit court made in accordance with this Rule are permitted.

Source: This Rule is derived in part from former Rule 16-404 (2016). Section (c) is new.

REPORTER'S NOTE

Proposed amendments to Rules 16-502 and 16-503 were requested by the Maryland Judicial Council Court Access Committee to clarify when an interpreter's speech is required to be recorded as part of the court record. See the Reporter's notes to Rules 1-333 and 16-502.

Rule 16-503 is amended to add new subsection (a)(3), requiring the recording of consecutive interpretation and excluding simultaneous interpretation, to the extent it is captured by the court's recording equipment, from the official record. A cross reference to Rule 1-333 (a) directs the reader to the definitions of "individual who needs an interpreter," "consecutive interpretation," and "simultaneous interpretation."

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-271 by adding a cross reference after subsection (a)(1), as follows:

Rule 4-271. TRIAL DATE

(a) Trial Date in Circuit Court

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

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

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

(b) Change of Trial Date in District Court

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

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

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rule 746 a and b, and is in part new.
Section (b) is derived from former M.D.R. 746.

REPORTER'S NOTE

An amendment to Rule 4-271 is proposed based on the Supreme Court's decision in *Jackson v. State*, 485 Md. 1 (2023). In *Jackson*, the Court considered whether certain conduct by defense counsel precluded dismissal for a Hicks violation.

A cross reference is proposed following subsection (a)(1), including citations to the statutory basis for the Hicks Rule and to *Jackson v. State*, to ensure that practitioners are aware of the status of the law in this area.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-349 by adding a provision to subsection (a)(1) to clarify that the subsection applies to both the District Court and circuit courts and by revising the provision in subsection (a)(1) pertaining to conditions so that it is consistent with the provisions in subsection (a)(2), as follows:

Rule 4-349. RELEASE AFTER CONVICTION

(a) Authority

(1) Generally

After conviction <u>in the District Court or a circuit court,</u> the trial judge may release the defendant pending sentencing or exhaustion of any appellate review subject to ~~such conditions for further appearance as may be appropriate~~ <u>any appropriate terms and conditions of release</u>. Title 5 of these rules does not apply to proceedings conducted under this Rule.

Cross reference: For review of lower court action in the Appellate Court regarding a stay of enforcement of judgment after an appeal is filed, see Rule 8-422 (c).

(2) Pending De Novo Appeal

On the filing of a notice of appeal in the District Court in a case to be tried de novo, the circuit court, on motion or by consent of the parties, may stay a sentence of imprisonment imposed by the District Court and release the

defendant pending trial in the circuit court, subject to any appropriate terms and conditions of release.

Cross reference: For action upon dismissal of a de novo appeal, see Rule 7-112 (f)(4).

(b) Factors Relevant to Conditions of Release

In determining whether a defendant should be released under this Rule, the court may consider the factors set forth in Rule 4-216.1 (f) and, in addition, whether any appellate review sought appears to be frivolous or taken for delay. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(c) Conditions of Release

The court may impose different or greater conditions for release under this Rule than had been imposed upon the defendant before trial pursuant to Rule 4-216, 4-216.1, 4-216.2, or 4-216.3. When the defendant is released pending sentencing, the condition of any bond required by the court shall be that the defendant appear for further proceedings as directed and surrender to serve any sentence imposed. When the defendant is released pending any appellate review, the condition of any bond required by the court shall be that the defendant prosecute the appellate review according to law and, upon termination of the release pending appeal pursuant to subsection (d)(1) of this Rule, surrender to serve any sentence required to be served or appear for further proceedings as directed. The bond shall continue until discharged by order of the court or until surrender of the defendant, whichever is earlier.

(d) Release Pending Appeal

(1) Duration of Release

An order releasing a defendant pending appellate review pursuant to this Rule shall continue until the earliest of the following: (A) the defendant exhausts appellate review by way of appeal, application for leave to appeal, or petition for writ of certiorari in the Supreme Court or the Supreme Court of the United States; (B) the defendant allows the deadline to pass for seeking further appellate review of an adverse disposition; (C) the defendant allows the deadline to pass for filing the statement required by subsection (d)(2) of this Rule, or indicates in such a statement that the defendant does not intend to seek further review; or (D) a court revokes the order of release in accordance with section (e) of this Rule.

(2) Writ of Certiorari in Supreme Court of the United States

Within 30 days after the Supreme Court denies review or issues its opinion affirming the judgment of conviction, a defendant who has been released pending appellate review shall file a statement indicating whether the defendant intends to petition for a writ of certiorari in the Supreme Court of the United States and, if so, providing a non-binding statement of the questions that the defendant intends to present for review in the petition. The statement shall be filed with the court that ordered release pursuant to this Rule.

Cross reference: See U.S. S. Ct. Rule 10 for considerations governing review on certiorari, U.S. S. Ct. Rule 13 for the time for petitioning, and U.S. S. Ct. Rule 14.1 for the required contents of a petition for a writ of certiorari.

(e) Amendment of Order of Release

The court that ordered the release, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 776 a and M.D.R. 776 a.
Section (b) is derived from former Rule 776 c and M.D.R. 776 c.
Section (c) is derived from former Rules 776 b and 778 b and M.D.R. 776 b and M.D.R. 778 b.
Sections (d) and (e) are new.

REPORTER'S NOTE

A District Court judge has brought an issue to the attention of the Rules Committee concerning a provision of subsection (a)(1) of Rule 4-349 that causes some confusion amongst District Court personnel and practitioners. The issue is whether subsection (a)(1) provides authority for the District Court to impose conditions of release consistent with ensuring attendance and public safety during the pendency of an appeal or whether it permits conditions of release only to ensure attendance.

To address this concern and resolve any potential ambiguities between the provisions of subsection (a)(1) and subsection (a)(2), the Committee proposes that subsection (a)(1) be revised to explicitly state that it applies to both the District Court and circuit courts. In addition, the provision in subsection (a)(1) pertaining to conditions of release is proposed to be amended to match the provisions contained in subsection (a)(2).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

AMEND Rule 4-707 by changing the title of the Rule; by deleting section (a); by re-lettering current section (b) as section (a); by adding new section (b) pertaining to a response to an answer, comprised of the provisions of former Rule 4-708; and by making stylistic changes, as follows:

Rule 4-707. ~~DENIAL OF PETITION;~~ APPOINTMENT OF COUNSEL<u>; RESPONSE TO ANSWER</u>

~~(a) Denial of Petition~~

~~Upon consideration of the State's answer, the court may deny the petition if it finds as a matter of law that (1) the petitioner has no standing or (2) the facts alleged in the petition do not entitle the petitioner to relief.~~

~~(b)~~(a) Appointment of Counsel

If the court finds that a petitioner who has requested the appointment of counsel is indigent, the court may appoint counsel within 30 days after the State has filed its answer unless ~~(1) the court denies the petition as a matter of law or (2)~~ counsel has already filed an appearance to represent the petitioner.

<u>(b) Response to answer</u>

<u>The petitioner may file a response to the State's answer no later than 60 days after service of the answer. The response may (1) challenge the adequacy</u>

or the accuracy of the answer, (2) request that a search of other law enforcement agency databases or logs be conducted for the purpose of identifying the source of physical evidence used for DNA testing, and (3) be accompanied by an amendment to the petition. The petitioner shall serve the response on the State's Attorney. The court may not rule on the petition prior to the filing of a response or, if no response if filed, prior to the expiration of the 60-day period referenced in this section.

Source: This Rule is new.

REPORTER'S NOTE

The Supreme Court in *Satterfield v. State*, 483 Md. 452 (2023), found Rules 4-707 and 4-708, when read together, "provide two or more possible alternative interpretations … for the purposes of rule construction" and are, therefore, "inconsistent." (*Id*, at page 476, internal quotations omitted).

In order to resolve the inconsistency between Rule 4-707 and Rule 4-708 and to bring the Rules into conformity with the Supreme Court's holding in *Satterfield*, it is proposed that Rule 4-708 be deleted and its substance be added to Rule 4-707 as new section (b). In addition, section (a) of Rule 4-707 is deleted to ensure that these revisions are true to the holding in *Satterfield.* Language is added to the end of section (b) of Rule 4-707 clarifying that the trial court may not rule on the petition until after 60 days have passed or a response has been filed.

Stylistic changes to Rule 4-707 also are proposed.

Conforming amendments are also proposed to subsection (b)(1) of Rule 4-709.

~~MARYLAND RULES OF PROCEDURE~~

~~TITLE 4 – CRIMINAL CAUSES~~

~~CHAPTER 700 – POST CONVICTION DNA TESTING~~

DELETE Rule 4-708, as follows:

~~Rule 4-708. RESPONSE TO ANSWER~~

~~The petitioner may file a response to the answer no later than 60 days after the later of service of the State's answer or entry of an order appointing counsel pursuant to Rule 4-707. The response may (1) challenge the adequacy or the accuracy of the answer, (2) request that a search of other law enforcement agency databases or logs be conducted for the purpose of identifying the source of physical evidence used for DNA testing, and (3) be accompanied by an amendment to the petition. The petitioner shall serve the response on the State's Attorney.~~

~~Source: This Rule is new.~~

REPORTER'S NOTE

See the Reporter's note to Rule 4-707.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

AMEND Rule 4-709 by adding a reference to the petition, answer, and any response to subsection (b)(1), as follows:

Rule 4-709. HEARING; PROCEDURE IF NO HEARING

(a) When Required

Except as otherwise provided in subsection (b)(2) of this Rule, the court shall hold a hearing if, from the petition, answer, and any response, the court finds that the petitioner has standing to file the petition and the petition is filed in the appropriate court, and finds one of the following:

(1) specific scientific identification evidence exists or may exist that is related to the judgment of conviction, a method of DNA testing of the evidence may exist that is generally accepted within the relevant scientific community, and there is or may be a reasonable probability that the testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing;

(2) if the State contends that it has been unable to locate the evidence, there is a genuine dispute as to whether the State's search was adequate;

(3) if the State contends that the evidence existed or may have existed but was destroyed, there is a genuine dispute whether the destruction was in conformance with any relevant governing protocols or was otherwise lawful;

(4) the State is unable to produce scientific evidence that the State was required to preserve pursuant to Code, Criminal Procedure Article, § 8-201(j)(1); or

(5) there is some other genuine dispute as to whether DNA testing or a DNA database or log search by a law enforcement agency should be ordered.

(b) When Not Required

(1) For Denial of Petition

The court shall deny the petition without a hearing if, from the petition, answer, and any response, it finds that:

(A) the petitioner has no standing to request DNA testing or a search of a law enforcement agency DNA database or logs; or

(B) as a matter of law, the facts alleged in the petition pursuant to subsections (a)(2) and (3) of Rule 4-704 do not entitle the petitioner to relief under Code, Criminal Procedure Article, § 8-201.

(2) For Grant of Petition

The court may enter an order granting the petition without a hearing if the State and the petitioner enter into a written stipulation as to DNA testing or a DNA database or log search and the court is satisfied with the contents of the stipulation. An order for DNA testing shall comply with the requirements of Rule 4-710 (a)(2)(B).

(c) When Hearing Is Discretionary

In its discretion, the court may hold a hearing when one is not required.

(d) Time of Hearing

Any hearing shall be held within (1) 90 days after service of any response to the State's answer or, (2) if no response is timely filed, 120 days after service of the State's answer.

(e) Written Order If No Hearing

If the court declines to hold a hearing, it shall enter a written order stating the reasons why no hearing is required. A copy of that order shall be served on the petitioner and the State's Attorney.

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

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-707.

In conjunction with the proposed amendments to Rule 4-707 and the proposed deletion of Rule 4-708, the phrase "from the petition, answer, and any response" is proposed to be added to subsection (b)(1) of Rule 4-709 as a conforming amendment.

MARYLAND RULES OF PROCEDURE

TITLE 21 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

CHAPTER 300 – CRIMINAL AND DELINQUENCY PROCEEDINGS

AMEND Rule 21-301 by moving the language of current section (b) to new subsection (d)(1); by re-lettering current section (c) as section (b); by adding new section (c) addressing the findings needed to permit testimony by remote electronic means over objection; by adding a cross reference after new section (c); by adding new section (d), consisting of subsection (d)(1) with the language of current section (b) and new subsection (d)(2) about the findings required in certain proceedings for testimony by remote electronic means; by re-lettering current section (d) as section (e); and by updating internal references throughout the Rule, as follows:

Rule 21-301. PERMISSIBLE REMOTE ELECTRONIC PARTICIPATION IN CRIMINAL AND DELINQUENCY PROCEEDINGS

(a) Proceedings Presumptively Appropriate for Remote Electronic Participation

Subject to the conditions in this Title, any other reasonable conditions the court may impose in a particular proceeding, and resolution of any objection made pursuant to ~~section (b)~~ subsection (d)(1) of this Rule, the court, on motion or on its own initiative, may permit or require one, some, or all participants to participate by means of remote electronic participation in all or any part of the following types of criminal and delinquency proceedings:

(1) appearances pursuant to bench warrants;

(2) bail reviews;

(3) expungement hearings;

(4) hearings concerning non-incarcerable traffic citations for which the law permits, but does not require, that the defendant appear;

Cross reference: See Code, Transportation Article, § 16-303(h).

(5) hearings concerning parking citations;

(6) initial appearances for detained defendants;

(7) juvenile detention hearings where the respondent already is detained;

(8) motions hearings not involving the presentation of evidence;

(9) pretrial hearings involving Rule 5-702 where the proposed expert witness is the sole participant to appear remotely;

(10) proceedings in which remote electronic participation is authorized by specific law;

Cross reference: See Code, Criminal Procedure Article, § 11-303.

(11) proceedings involving Rule 4-271 (a)(1) or the application of State v. Hicks, 285 Md. 310 (1979) or its progeny, other than a motion to dismiss that involves the presentation of evidence; and

(12) with the knowing and voluntary consent of the defendant pursuant to subsection ~~(c)(2)~~(b)(2) of this Rule:

(A) discharge-of-counsel hearings;

(B) plea agreements not likely to result in incarceration or where the defendant already is incarcerated;

(C) sentencings; and

(D) three-judge panel sentencing reviews.

~~(b) Objection by a Party~~

~~Upon objection by a party in writing or on the record, the court, before requiring remote electronic participation in any proceeding, shall make findings in writing or on the record that (1) remote electronic participation is not likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding and (2) no party lacks the ability to participate by remote electronic participation in the proceeding.~~

~~(c)~~(b) Other Criminal and Delinquency Proceedings by Consent

(1) Generally

Subject to the conditions in this Title and any other reasonable conditions the court may impose in a particular case, one, some, or all participants may participate by remote electronic participation in all or any part of any other proceeding in which the presiding judicial officer and all parties consent to remote electronic participation.

(2) Consent by Defendant or Respondent

The court may not accept the consent of a defendant or respondent to waive an in-person proceeding pursuant to ~~subsections (a)(12) or (c)(1)~~ subsection (a)(12) or (b)(1) of this Rule unless, after an examination of the defendant or respondent in person or by remote electronic participation on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant or respondent, or any combination thereof, the court

determines and announces on the record that the consent is made knowingly and voluntarily. The consent of a defendant or respondent pursuant to this subsection is effective only for the specified proceeding and not for any subsequent proceedings.

(c) If No Presumption or Consent

In a criminal or delinquency proceeding not described in subsections (a)(1) to (a)(11) of this Rule, the court may allow testimony by means of remote electronic participation over the objection of a party only upon a finding that:

(1) there is a necessity for the witness to testify remotely;

(2) the equipment and procedures for such testimony comply with the requirements of Rule 21-104; and

(3) requiring in-person testimony would undermine important public policy considerations in the administration of justice.

Cross reference: See *Maryland v. Craig*, 497 U.S. 836 (1990); *Spinks v. State*, 252 Md. App. 604 (2021); and *White v. State*, 223 Md. App. 353 (2015).

(d) Objection by a Party; Findings

(1) Generally

Upon objection by a party in writing or on the record, the court, before requiring remote electronic participation in any proceeding, shall make findings in writing or on the record that (1) remote electronic participation is not likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding and (2) no party lacks the ability to participate by remote electronic participation in the proceeding.

(2) Additional Findings

In ruling on an objection to the taking of testimony by remote electronic means in a criminal or delinquency proceeding not described in subsections (a)(1) to (a)(11) of this Rule, the court also shall make findings with respect to the requirements set forth in section (c) of this Rule.

~~(d)~~(e) Conditions of Remote Electronic Participation by Witness

Unless otherwise ordered by the court, conditions of remote electronic participation in criminal and delinquency proceedings shall include ensuring that a witness:

(1) is alone in a secure room when testifying, and, upon request, shares the surroundings to demonstrate compliance;

Committee note: Subsection ~~(d)(1)~~(e)(1) of this Rule aims to mirror the separation between a witness and an attorney for the witness while the witness is providing testimony. This subsection does not prohibit remote electronic participation in a proceeding by an attorney for a witness. Nothing in this Rule shall preclude accommodations for a child witness or a witness who otherwise needs assistance when testifying.

(2) is not being coached in any way;

(3) is not referring to any documents, notes, or other materials while testifying, unless permitted by the court;

(4) is not exchanging text messages, e-mail, or in any way communicating with any third parties while testifying;

(5) is not recording the proceeding; and

(6) is not using any electronic devices other than a device necessary to facilitate the remote electronic participation.

Committee note: Section ~~(d)~~(e) of this Rule is not intended to limit any other reasonable conditions that the court may impose for remote electronic participation or to preclude the court from authorizing an accommodation

under the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. and Rule 1-332.

The Rules Committee endorses two caveats stated in the March 9, 2022 Report of the Judicial Council's Joint Subcommittee on Post-COVID Judicial Operations:

(1) Remote proceedings generally are not recommended when the finder of fact needs to assess the credibility of evidence but may be appropriate when the parties consent or the case needs to be heard on an expedited basis and remote proceedings will facilitate the participation of individuals who would have difficulty attending in person; and

(2) Where a judicial officer has discretion to hold or decline to hold a remote proceeding, the judicial officer should consider (i) the preference of the parties, (ii) whether the proceeding will involve contested evidence, (iii) whether the finder of fact will need to assess witness credibility, (iv) the availability of participants who will be affected by the decision, (v) possible coaching or intimidation of witnesses appearing remotely, (vi) access by witnesses to technology and connectivity that would allow participation, (vii) the length and complexity of the proceeding, (viii) the burden on the parties and the court, (ix) whether remote participation will cause substantial prejudice to a party or affect the fairness of the proceeding, (x) a defendant's or juvenile respondent's right of confrontation, and (xi) any other factors the judicial officer considers relevant.

Source: This Rule is derived in part from recommendations made in the March 9, 2022 Report of the Judicial Council's Joint Subcommittee on Post-COVID Judicial Operations and from former Rules 2-802 and 2-803 (2023), and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 21-301 address when remote electronic participation may be permitted during a criminal trial. It was brought to the attention of the Rules Committee that Rule 21-301, effective July 1, 2023, does not address testimony by remote electronic participation at a criminal trial over the defendant's objection. However, courts have allowed testimony by video conferencing in criminal proceedings, over objection, after evaluating the impact on the defendant's Sixth Amendment rights. *See Maryland v. Craig*, 497 U.S. 836 (1990). Testimony by remote electronic participation may be necessary in certain circumstances. For example, in *Spinks v. State*, 252 Md. App. 604 (2021), the victim testified via Skype over the defendant's objection

because, after leaving the country to attend to his mother's medical condition, he could not re-enter the United States due to an expired visa. Similarly, in *White v. State*, 223 Md. App. 353 (2015), the testimony of an out-of-state witness was permitted by remote electronic participation because a serious back condition prevented her travel. Accordingly, proposed amendments to Rule 21-301 authorize remote testimony over the defendant's objection if certain findings establish that the testimony is consistent with Sixth Amendment requirements.

Rule 21-301 is restructured to account for a new section addressing the situation described above. Under the Rule's revised structure, section (a) still addresses proceedings that are presumptively appropriate for remote electronic participation. Section (b), formerly section (c), addresses remote electronic participation by the consent of the parties.

New section (c) addresses permissible remote electronic participation when there is neither a presumption nor consent of the parties. The section lists the findings required before testimony by remote electronic participation may be permitted over a party's objection and aims to protect the Sixth Amendment rights of the defendant. A proposed cross reference after the section cites to the three cases used to derive the criteria in section (c).

Section (d) concerns objections by a party. Subsection (d)(1) consists of the substance of transferred section (b). New subsection (d)(2) pertains to additional findings required when there is neither a presumption nor consent. Section (e), formerly section (d), provides the required conditions of remote electronic participation.

To account for the restructured Rule, internal references are updated in the stem of section (a), in subsections (a)(12) and (b)(2), and in the Committee notes after subsections (e)(1) and (e)(6).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

APPENDIX OF FORMS

FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-503.2 by adding the word "tort" to the waiver and release to conform to the enabling statute, as follows:

Form 4-503.2. GENERAL WAIVER AND RELEASE

I, _____, hereby release and forever discharge _____
(complainant)
and the _____,
(law enforcement agency)
all of its officers, agents and employees, and any and all other persons from any and all tort claims which I may have for wrongful conduct by reason of my arrest, detention, or confinement on or about _____.

This General Waiver and Release is conditioned on the expungement of the record of my arrest, detention, or confinement and compliance with Code*, Criminal Procedure Article, § 10-105, as applicable, and shall be void if these conditions are not met.

WITNESS my hand and seal this _____(Date)

TESTE:

_____
Witness

_____(Seal)
Signature

* The reference to "Code" in this General Waiver and Release is to the Annotated Code of Maryland.

REPORTER'S NOTE

The Rules Committee proposes an amendment to Form 4-503.2 in order to bring the form into closer alignment with Code, Criminal Procedure Article, § 10-105(c)(1).

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 200 – CONSTRUCTION, INTERPRETATION, DEFINITIONS

AMEND Rule 1-202 by adding new section (j) defining "digital media" and by re-lettering current sections (j) through (ff) as (k) through (gg), respectively, as follows:

Rule 1-202. DEFINITIONS

. . .

(j) Digital Media

"Digital media" means material in an audio, audiovisual, or video format that can be transmitted and stored electronically.

~~(j)~~(k) Guardian

. . .

~~(k)~~(l) Holiday

. . .

~~(l)~~(m) Individual

. . .

~~(m)~~(n) Individual Under Disability

. . .

~~(n)~~(o) Judge

. . .

~~(o)~~(p) Judgment

. . .

~~(p)~~(q) Levy

. . .

~~(q)~~(r) Money Judgment

. . .

~~(r)~~(s) Newspaper of General Circulation

. . .

~~(s)~~(t) Original Pleading

. . .

~~(t)~~(u) Paper

. . .

~~(u)~~(v) Person

. . .

~~(v)~~(w) Pleading

. . .

~~(w)~~(x) Proceeding

. . .

~~(x)~~(y) Process

. . .

~~(y)~~(z) Property

. . .

~~(z)~~(aa) Return

. . .

~~(aa)~~(bb) Senior Judge; Senior Justice

. . .

~~(bb)~~(cc) Sheriff

. . .

~~(cc)~~(dd) Subpoena

. . .

~~(dd)~~(ee) Summons

. . .

~~(ee)~~(ff) Warrant; Arrest Warrant; Bench Warrant; Search Warrant

. . .

~~(ff)~~(gg) 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 (a) is derived from former Rule 5 a.
Section (b) is derived from former Rule 5 c.
Section (c) is new.
Section (d) is derived from former Rule 5 aa.
Section (e) is derived from former Rule 5 e.
Section (f) is derived from former Rule 5 f.
Section (g) is derived from former Rule 5 g.
Section (h) is derived from former Rule 5 h.
Section (i) is new.
Section (j) is new.
Section ~~(j)~~(k) is derived from former Rule 5 m.
Section ~~(k)~~(l) is new.
Section ~~(l)~~(m) is new.
Section ~~(m)~~(n) is derived from former Rule 5 r.
Section ~~(n)~~(o) is derived from former Rule 5 n.
Section ~~(o)~~(p) is derived from former Rule 5 o.
Section ~~(p)~~(q) is new.

Section ~~(q)~~(r) is new.
Section ~~(r)~~(s) is new.
Section ~~(s)~~(t) is derived from the last sentence of former Rule 5 v.
Section ~~(t)~~(u) is new.
Section ~~(u)~~(v) is derived from former Rule 5 q.
Section ~~(v)~~(w) is new and adopts the concept of federal practice set forth in the 1963 version of Fed. R. Civ. P. 7 (a).
Section ~~(w)~~(x) is derived from former Rule 5 w.
Section ~~(x)~~(y) is derived from former Rule 5 y.
Section ~~(y)~~(z) is derived from former Rule 5 z.
Section ~~(z)~~(aa) is new.
Section ~~(aa)~~(bb) is new.
Section ~~(bb)~~(cc) is derived from former Rule 5 cc.
Section ~~(cc)~~(dd) is derived from former Rule 5 ee.
Section ~~(dd)~~(ee) is new.
Section ~~(ee)~~(ff) is derived in part from former Rule 702 h and M.D.R. 702 m and is in part new.
Section ~~(ff)~~(gg) is derived from former Rule 5 ff.

REPORTER'S NOTE

Proposed amendments to Rule 1-202 add new section (j) to define "digital media." The term is used in a series of proposed amendments to refer to recordings that are transmitted and stored electronically. Current sections (j) through (ff) are re-lettered.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-322 by adding new subsection (a)(6) pertaining to digital media, as follows:

Rule 1-322. FILING OF PLEADINGS, PAPERS, AND OTHER ITEMS

(a) Generally

The filing of pleadings, papers, and other items with the court shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the item the date the judge accepted it for filing and forthwith transmit the item to the office of the clerk. On the same day that an item is received in a clerk's office, the clerk shall note on it the date it was received and enter on the docket that date and any date noted on the item by a judge. The item shall be deemed filed on the earliest of (1) the filing date noted by a judge on the item, (2) the date noted by the clerk on the item, or (3) the date established under section (d) of this Rule. No item may be filed directly by electronic transmission, except (1) pursuant to an electronic filing system approved under Rule 16-203, (2) as permitted by Rule 14-209.1, (3) as provided in section (b) of this Rule, (4) as permitted by Code, Family Law Article, § 4-505.1, ~~or~~ (5) pursuant to Title 20 of these Rules, or (6) digital media submitted using a digital storage platform approved by the State Court Administrator.

(b) Electronic Transmission of Mandates of the Supreme Court of the United States

A Maryland court shall accept a mandate of the Supreme Court of the United States transmitted by electronic means unless the court does not have the technology to receive it in the form transmitted, in which event the clerk shall promptly so inform the Clerk of the Supreme Court of the United States and request an alternative method of transmission. The clerk of the Maryland court may request reasonable verification of the authenticity of a mandate transmitted by electronic means.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 1-322 implements proposed changes throughout the Rules which explicitly reference use of a digital storage platform for submission and maintenance of digital media items used as exhibits. See the Reporter's note to Rule 1-202 for additional information.

Rule 1-322 prohibits direct electronic transmission except as authorized. Proposed new subsection (a)(6) authorizes digital media, as defined by Rule 1-202, to be transmitted using a digital storage platform approved by the State Court Administrator.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-516 by adding new subsection (a)(1) consisting of the contents of current section (a); by adding "at a hearing or trial" to the first sentence of new subsection (a)(1); by deleting "and, unless the court orders otherwise, shall remain in the custody of the clerk" from new subsection (a)(1); by adding a Committee note following new subsection (a)(1) pertaining to pre-marked exhibits; by adding new subsection (a)(2) pertaining to custody of exhibits; by adding a Committee note following new subsection (a)(2) pertaining to custody of exhibits returned to parties; by expanding the cross reference following section (a); by replacing "visual" with "video" in the tagline and contents of section (b); by deleting the provision regarding a copy for future transcription in subsection (b)(1)(A); by adding a Committee note following subsection (b)(1)(A) pertaining to the method of providing a copy of a recording to the court; by adding "or in a format" to subsection (b)(1)(C); by adding a cross reference to Rules 8-413 (a)(4) and 20-402 (a)(2) following section (b); by deleting the provision requiring an additional copy to the court in subsection (b)(2); and by making stylistic changes, as follows:

Rule 2-516. EXHIBITS AND RECORDINGS

(a) Generally

(1) Formation of Record

All exhibits marked for identification at a hearing or trial, whether or not offered in evidence and, if offered, whether or not admitted, shall form part of the record ~~and, unless the court orders otherwise, shall remain in the custody of the clerk~~. With leave of court, a party may substitute a photograph or copy for any exhibit.

Committee note: Exhibits that are pre-marked by a party or pre-filed at the direction of the court do not constitute part of the record prior to being marked or offered as provided in subsection (a)(1) of this Rule.

(2) Custody of Exhibits

Unless the court orders otherwise, all exhibits shall remain in the custody of the clerk. If the court orders that the custodian of an exhibit be someone other than the clerk, the court shall: (A) state the identity of the custodian on the record; (B) instruct the custodian, until relieved of the responsibility by law or by court order, to secure the exhibit until final determination of the action, including all appellate proceedings, and retain the exhibit as required by Rule 16-405 and any statutory retention provisions; and (C) instruct the clerk to make a docket entry identifying the court-ordered custodian of the exhibit.

Committee note: The requirements of subsection (a)(2) of this Rule also apply to exhibits returned to the parties at the conclusion of a proceeding.

Cross reference: See Rule 16-405 regarding filing and removal of papers and exhibits.

(b) Audio, Audiovisual, or ~~Visual~~ Video Recordings

(1) Recording

A party who offers or uses an audio, audiovisual, or ~~visual~~ video recording at a hearing or trial shall:

(A) ensure that the recording is marked for identification and made part of the record and that an additional copy is provided to the court~~, so that it is available for future transcription~~;

Committee note: A party may provide the court with a copy of a recording in a physical media format or in a digital media format using a digital storage platform approved by the State Court Administrator.

(B) if only a portion of the recording is offered or used, ensure that a description that identifies the portion offered or used is made part of the record; and

(C) if the recording is not on a medium or in a format in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record, and upon request present it to an appellate court in a format designated by the court.

Cross reference: See Rules 8-413 (a)(4) and 20-402 (a)(2) regarding inclusion of audio, audiovisual, and video recordings, including any digital media, in the record on appeal.

(2) Transcript of Recording

A party who offers or uses a transcript of the recording at a hearing or trial shall ensure that the transcript is made part of the record ~~and provide an additional copy to the court~~.

Cross reference: For a schedule of retention and disposal of court records, see Rule 16-205.

Source: This Rule is derived in part from former Rule 635 b and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 2-516 alter certain provisions governing the custody of exhibits. Parallel amendments are proposed in the relevant portions of Rule 4-322.

Proposed new subsection (a)(1) contains the provisions of current section (a), with amendments. Subsection (a)(1) clarifies that exhibits marked for identification "at a hearing or trial" constitute part of the record. A Committee note further clarifies that exhibits that are pre-marked or pre-filed are not yet part of the record.

Proposed new subsection (a)(2) pertains to custody of exhibits. Although the Rules are structured to make the clerk the default custodian of exhibits, the Rules Committee was informed that in many jurisdictions it is common for exhibits to be returned to parties at the conclusion of trial. This practice is permitted under the current Rules because the court may order an alternate custodian who is not the clerk, but there is no procedure for issuing and documenting that order. It appears that in some jurisdictions, there is no formal documentation pertaining to exhibits that are returned to the parties.

The provisions in subsection (a)(2) create a procedure for appointing a custodian of an exhibit other than the clerk, including a statement on the record, instructions to secure and retain the exhibit as required by law, and a docket entry of the identity of the custodian. A Committee note following subsection (a)(2) clarifies that the requirements of that subsection apply when exhibits are returned to the parties at the conclusion of a proceeding. The cross reference following the section is expanded to provide context.

Proposed amendments to section (b) change "visual" to "video" in the section title and subsection (b)(1). The reference to future transcription is deleted from subsection (b)(1)(A). The Committee has been informed that recordings rarely are transcribed later, but as custodian of the record, the court should be provided with a copy of a recording used in court. Subsection (b)(1)(C) is amended to require the recording to be provided to the court in a medium or format in common use by the general public. A cross reference to the relevant provisions in Rules 8-413 and 20-402 is added after subsection (b)(1).

Subsection (b)(2) is amended to remove the requirement that a party provide an additional copy of a transcript to the court.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-516 by creating new section (a) containing the current language of the Rule pertaining to exhibits generally; by adding "at a hearing or trial" to section (a); by deleting "and, unless the court orders otherwise, shall remain in the custody of the clerk" from section (a); by adding a Committee note after section (a); by adding new section (b) pertaining to custody of exhibits in an action where an appeal would be tried de novo; by adding a cross reference following new section (b); and by adding new section (c) pertaining to custody of exhibits if an appeal would be heard on the record; as follows:

Rule 3-516. EXHIBITS

(a) Generally

All exhibits marked for identification at a hearing or trial, whether or not offered in evidence and, if offered, whether or not admitted, shall form part of the record ~~and, unless the court orders otherwise, shall remain in the custody of the clerk~~. With leave of court, a party may substitute a photograph or copy for any exhibit.

Committee note: Exhibits that are pre-marked by a party or pre-filed at the direction of the court do not constitute part of the record prior to being marked or offered as provided in section (a) of this Rule.

(b) If Appeal is De Novo

In an action where an appeal would be tried de novo, exhibits shall be returned to the parties at the conclusion of the proceeding unless the court orders otherwise.

Cross reference: See Rule 7-102 (a) concerning appeals tried de novo.

(c) If Appeal is on the Record

In an action where an appeal would be heard on the record made in the District Court, exhibits shall remain in the custody of the District Court clerk unless the court orders otherwise.

Source: This Rule is derived from former Rule 635 b.

REPORTER'S NOTE

Proposed amendments to Rule 3-516 alter certain provisions governing the custody of exhibits.

Proposed new section (a) contains the current provisions of the current Rule, with amendments. New section (a) clarifies that exhibits marked for identification "at a hearing or trial" constitute part of the record. A Committee note further clarifies that exhibits that are pre-marked or pre-filed are not yet part of the record. Language pertaining to custody of exhibits is deleted from the section.

Proposed new sections (b) and (c) address custody of exhibits and differentiate between appeals that are tried de novo and appeals heard on the record. Proposed section (b) clarifies that, unless the court orders otherwise, exhibits are to be returned to the parties if an appeal would be tried de novo. A cross reference to Rule 7-102 (a), which lists the circumstances where an appeal is heard de novo, follows section (b).

Proposed new section (c) states that the clerk is the custodian of exhibits if an appeal would be heard on the record.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-322 by adding new subsection (a)(1) consisting of current section (a); by adding "at a hearing or trial" to the first sentence of new subsection (a)(1); by deleting "and, unless the court orders otherwise, shall remain in the custody of the clerk" from new subsection (a)(1); by adding a Committee note following new subsection (a)(1) pertaining to pre-marked exhibits; by adding new subsection (a)(2) pertaining to custody of exhibits; by adding a Committee note following new subsection (a)(2) pertaining to custody of exhibits returned to parties; by expanding the cross reference following section (a); by adding new subsection (a)(3) pertaining to a District Court appeal tried de novo; by replacing "visual" with "video" in the tagline and contents of section (c); by deleting the provision regarding a copy for future transcription in subsection (c)(1)(A); by adding a Committee note following subsection (c)(1)(A) pertaining to the method of providing a copy of a recording to the court; by adding "or in a format" to subsection (c)(1)(C); by adding a cross reference to Rules 8-413 (a)(4) and 20-402 (a)(2) following subsection (c)(1); by deleting the provision requiring an additional copy to the court in subsection (c)(2); and by making stylistic changes, as follows:

Rule 4-322. EXHIBITS, COMPUTER-GENERATED EVIDENCE, AND RECORDINGS

(a) Generally

(1) Formation of Record

All exhibits marked for identification at a hearing or trial, whether or not offered in evidence and, if offered, whether or not admitted, shall form part of the record ~~and, unless the court orders otherwise, shall remain in the custody of the clerk~~. With leave of court, a party may substitute a photograph or copy for any exhibit.

Committee note: Exhibits that are pre-marked by a party or pre-filed at the direction of the court do not constitute part of the record prior to being marked or offered as provided in subsection (a)(1) of this Rule.

(2) Custody of Exhibits – Generally

Unless the court orders otherwise and except as provided in subsection (a)(3) of this Rule, all exhibits shall remain in the custody of the clerk. If the court orders that the custodian of an exhibit be someone other than the clerk, the court shall: (A) state the identity of the custodian on the record; (B) instruct the custodian, until relieved of the responsibility by law or by court order, to secure the exhibit until final determination of the action, including all appellate proceedings, and retain the exhibit as required by Rule 16-405 and any statutory retention provisions; and (C) instruct the clerk to make a docket entry identifying the court-ordered custodian of the exhibit.

Committee note: The requirements of subsection (a)(2) of this Rule also apply to exhibits returned to the parties at the conclusion of a proceeding, including any exhibits returned to the State's Attorney or law enforcement. Additionally, statutes may govern retention of certain evidence by the State. See, e.g., Code, Criminal Procedure Article, § 8-201, requiring the State to preserve scientific identification evidence.

Cross reference: See Rule 16-405 regarding filing and removal of papers and exhibits.

(3) District Court – Appeal Tried De Novo

In an action in District Court where an appeal would be tried de novo, exhibits shall be returned to the parties at the conclusion of the proceeding unless the court orders otherwise.

Cross reference: See Rule 7-102 (a) concerning appeals tried de novo.

(b) Preservation of Computer-Generated Evidence

A party who offers or uses computer-generated evidence at any proceeding shall preserve the computer-generated evidence, furnish it to the clerk in a manner suitable for transmittal as a part of the record on appeal, and present the computer-generated evidence to an appellate court if the court so requests.

Cross reference: For the definition of "computer-generated evidence," see Rule 2-504.3.

Committee note: This section requires the proponent of computer-generated evidence to reduce the computer-generated evidence to a medium that allows review on appeal. The medium used will depend upon the nature of the computer-generated evidence and the technology available for preservation of that computer-generated evidence. No special arrangements are needed for preservation of computer-generated evidence that is presented on paper or through spoken words. Ordinarily, the use of technology that is in common use by the general public at the time of the hearing or trial will suffice for preservation of other computer-generated evidence. However, when the computer-generated evidence involves the creation of a three-dimensional image or is perceived through a sense other than sight or hearing, the proponent of the computer-generated evidence must make other arrangements for preservation of the computer-generated evidence and any subsequent presentation of it that may be required by an appellate court.

(c) Audio, Audiovisual, or ~~Visual~~ Video Recordings

(1) Recording

A party who offers or uses an audio, audiovisual, or ~~visual~~ video recording at a hearing or trial shall:

(A) ensure that the recording is marked for identification and made part of the record and that an additional copy is provided to the court~~, so that it is available for future transcription~~;

Committee note: A party may provide the court with a copy of a recording in a physical media format or in a digital media format using a digital storage platform approved by the State Court Administrator.

(B) if only a portion of the recording is offered or used, ensure that a description that identifies the portion offered or used is made part of the record; and

(C) if the recording is not on a medium or in a format in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record, and upon request present it to an appellate court in a format designated by the court.

Cross reference: See Rules 8-413 (a)(4) and 20-402 (a)(2) regarding inclusion of audio, audiovisual, and video recordings, including any digital media, in the record on appeal.

(2) Transcript of Recording

A party who offers or uses a transcript of the recording at a hearing or trial shall ensure that the transcript is made part of the record ~~and provide an additional copy to the court~~.

Cross reference: For a schedule of retention and disposal of court records, see Rule 16-205.

REPORTER'S NOTE

Proposed amendments to Rule 4-322 alter certain provisions governing the custody of exhibits. Parallel amendments are proposed in the relevant portions of Rule 2-516. See the Reporter's note to that Rule.

Proposed new subsection (a)(1) contains the provisions of current section (a), with amendments. Subsection (a)(1) clarifies that exhibits marked for identification "at a hearing or trial" constitute part of the record. A Committee note further clarifies that exhibits that are pre-marked or pre-filed are not yet part of the record.

A new Committee note following subsection (a)(2) references statutes governing retention of certain evidence by the State. It is derived from a Committee note in Rule 16-405. The cross reference to Rule 16-405 following section (a) is expanded to provide context.

Proposed new subsection (a)(2) pertains to custody of exhibits. It creates a procedure for appointing a custodian of an exhibit other than the clerk, including a statement on the record, instructions to secure and retain the exhibit as required by law, and making a docket entry of the identity of the custodian. A Committee note following subsection (a)(2) clarifies that the requirements of that subsection apply when exhibits are returned to the parties or law enforcement personnel at the conclusion of a proceeding.

New subsection (a)(3) governs custody of exhibits in a District Court action where an appeal will be tried de novo. It is modeled after the same proposed new provision in Rule 3-516.

Section (c) is amended to change "visual" to "video" in the section tagline and in subsection (c)(1). The reference to future transcription is deleted from subsection (c)(1)(A). The Committee has been informed that recordings rarely are transcribed later, but as custodian of the record, the court should be provided with a copy of a recording used in court. Subsection (c)(1)(C) is amended to require the recording to be provided to the court in a medium or format in common use by the general public. A cross reference to the relevant provisions in Rules 8-413 and 20-402 is added after subsection (c)(1). Subsection (c)(2) is amended to remove the requirement that a party provide an additional copy of a transcript to the court.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 300 – OFFICIAL RECORD

AMEND Rule 20-301 by changing the term of art "MDEC action" to "action" throughout this Rule; by adding new subsection (a)(4) pertaining to exhibits that are recordings; and by re-lettering current subsections (a)(4) through (a)(6) as (a)(5) through (a)(7), respectively, as follows:

Rule 20-301. CONTENT OF OFFICIAL RECORD

(a) Generally

The official record of an ~~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 audio, audiovisual, or video recording exhibits, including digital media, that are made part of the record pursuant to Rule 2-516, Rule 3-516, or Rule 4-322;

~~(4)~~(5) all tangible items offered or admitted into evidence that could not be filed electronically or scanned into the MDEC system;

~~(5)~~(6) a transcript of all court recordings of proceedings in the ~~MDEC~~ action; and

~~(6)~~(7) all other documents or items that, for good cause, the court orders be part of the record.

(b) Hyperlinks

A hyperlink embedded in a submission is not a part of the official record unless it is linked to another document that is a part of the official record.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-301 add new subsection (a)(4), which incorporates into the official record of an action recordings that are made part of the court's record.

Recordings made part of the record pursuant to Rule 2-516, Rule 3-516, or Rule 4-322 may be on physical media, such as a hard drive, disc, or flash drive, but also may be submitted digitally using an approved platform. The current provisions of Rule 20-301 do not incorporate a digital submission that is stored outside of MDEC into the official record in an action.

Additionally, in the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete references to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform this Rule to the amendments of Rule 20-101, it is proposed to delete the obsolete reference to "MDEC" from each term "MDEC action."

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-109 by adding new subsection (a)(4) governing the contents of the record on an appeal heard on the record made in the District Court; by adding a Committee note following new subsection (a)(4) pertaining to use of a digital storage platform; by creating new section (b) containing existing language from current section (a); by re-lettering sections (b) through (e) as sections (c) through (f), respectively; by deleting language in new section (c) encouraging parties to agree to a statement of the case; and by making stylistic changes, as follows:

Rule 7-109. RECORD – CONTENTS AND FORM

(a) Contents of Record

The record on appeal shall include:

(1) a certified copy of the docket entries in the District Court~~,~~;

(2) a transcript, if required by Rule 7-113~~,~~;

(3) all original papers filed in the action in the District Court except a supersedeas bond or alternative security and those other items that the parties stipulate may be omitted~~.~~; and

(4) in an appeal heard on the record made in the District Court pursuant to Rule 7-102 (b), copies or photographs of physical exhibits made part of the

record pursuant to Rule 3-516 or Rule 4-322 and the original of any audio, audiovisual, or video recording made part of the record pursuant to Rule 3-516 or Rule 4-322.

Committee note: Exhibits that are audio, audiovisual, or video recordings may be stored and accessed using a digital storage platform approved by the State Court Administrator. Absent any dispute as to the authenticity or accuracy of the file, the file stored on the approved digital storage platform is considered the original for the purposes of this Rule.

(b) Formation of Record; Original Papers

The clerk of the District Court shall append a certificate clearly identifying the papers included in the record. The District Court may order that the original papers in the action be kept in the District Court pending the appeal, in which case the clerk of the District Court shall transmit only a certified copy of the original papers.

~~(b)~~(c) Statement of Case in Lieu of Entire Record

If the parties agree that the questions presented by an appeal can be determined without an examination of the entire record or a trial de novo, as the case may be, they may sign and, upon approval by the District Court, file with the clerk of the District Court a statement showing how the questions arose and were decided, and setting forth only those facts or allegations that are essential to a decision of the questions. ~~The parties are strongly encouraged to agree to such a statement.~~ The statement, the judgment from which the appeal is taken, and any opinion of the District Court shall constitute the record on appeal. The circuit court may~~, however,~~ direct the

District Court clerk to transmit all or part of the balance of the record in the District Court as a supplement to the record on appeal.

~~(e)~~(d) Duties of District Court Clerk

The clerk shall prepare and attach to the beginning of the record a certified copy of the docket entries in the District Court. The original papers shall be fastened together in one or more file jackets and numbered consecutively, except that the pages of a transcript of testimony need not be renumbered. The clerk shall also prepare and transmit with the record a statement of the costs of preparing and certifying the record, the costs taxed against each party prior to the transmission of the record, and the costs of all transcripts and of copies, if any, of the transcripts for each of the parties. The clerk shall serve a copy of the docket entries on each party.

~~(d)~~(e) Correction of Record

On motion or on its own initiative, the circuit court may order that an error or omission in the record be corrected.

~~(e)~~(f) Return of Record to District Court Pending Appeal

Upon a determination that the record needs to be returned to the District Court because of a proceeding pending in that court, the circuit court may order that the record be so returned, subject to the conditions stated in the order.

Source: This Rule is derived from former Rules 1326 and 1327.

REPORTER'S NOTE

Proposed amendments to Rule 7-109 update and clarify certain provisions pertaining to the contents and form of the record in an appeal on the record made in the District Court.

Section (a) is proposed to be reformatted so that its subsections are in a list. This structure is modeled after Rule 8-413 (a). New subsection (a)(4) pertains to an appeal heard on the record made in the District Court. It requires the District Court to include exhibits made part of the record in the record on appeal. A Committee note following the subsection states that recorded exhibits may be stored and accessed using a digital storage platform. The remainder of current section (a) is placed in new section (b).

The remaining proposed amendments are primarily stylistic. Current sections (b) through (e) are re-lettered as (c) through (f), respectively. A statement in re-lettered section (c) that encourages parties to agree to a statement of the case is proposed for deletion.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE SUPREME COURT AND THE APPELLATE COURT

CHAPTER 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-413 by adding new subsection (a)(3) pertaining to inclusion of copies or photographs of exhibits in the record on appeal; by adding new subsection (a)(4) pertaining to the inclusion of the original of any recording in the record on appeal; by adding a Committee note following new subsection (a)(4) referencing use of a digital storage platform and the requirement that a recording in a format not in common use be provided to the clerk in a suitable format; by renumbering current subsection (a)(3) as subsection (a)(5); by relocating a provision pertaining to inclusion of the record of proceedings before the Appellate Court from the end of current section (a) to new subsection (a)(6); by creating new section (b) pertaining to formation of the record and disputes; by adding new subsection (b)(1) pertaining to the certificate by the clerk of the lower court; by requiring that a certificate under subsection (b)(1) identify tangible exhibits and their custodians; by adding a cross reference to Rules 2-516, 3-516, and 4-322 regarding custody of exhibits after subsection (b)(1); by adding subsection (b)(2) containing existing provisions pertaining to original papers and exhibits; by requiring in subsection (b)(2) that original exhibits be retained pursuant to Rule 16-405 or as otherwise ordered by the court; by requiring in subsection (b)(2) that the clerk locate and transmit exhibits to the appellate court upon request; by

creating new subsection (b)(3) consisting of existing provisions pertaining to disputes and modification of the record using existing language from the Rule; by re-lettering sections (b) and (c) as sections (c) and (d), respectively; by separating the re-lettered sections into subsections; by deleting from new subsection (c)(1) a provision encouraging parties to agree to a statement of the case; and by making stylistic changes, as follows:

Rule 8-413. RECORD – CONTENTS AND FORM

(a) Contents of Record

The record on appeal shall include:

(1) a certified copy of the docket entries in the lower court~~,~~;

(2) the transcript required by Rule 8-411~~, and~~;

(3) a copy or photograph of any physical exhibit made part of the record pursuant to Rule 2-516, Rule 3-516, or Rule 4-322;

(4) the original of any audio, audiovisual, or video recording made part of the record pursuant to Rule 2-516, Rule 3-516, or Rule 4-322;

Committee note: Exhibits that are audio, audiovisual, or video recordings may be stored and accessed using a digital storage platform approved by the State Court Administrator. Absent any dispute as to the authenticity or accuracy of the file, the file stored on the approved digital storage platform is considered the original for the purposes of this Rule.

A party who offers or uses an audio, audiovisual, or video recording in a format not in common use by the general public is required to provide the recording to the clerk in a medium and format suitable for transmittal as part of the record. See Rule 2-516 (b) and Rule 4-322 (c) pertaining to the use of a recording at a hearing or trial.

~~(3)~~(5) all original papers filed in the action in the lower court except a supersedeas bond or alternative security and those other items that the parties stipulate may be omitted~~.~~; and

(6) when the Supreme Court reviews an action pending in or decided by the Appellate Court, the record of any proceedings in the Appellate Court.

(b) Formation of Record; Disputes

(1) Certificate

The clerk of the lower court shall append a certificate clearly identifying:

(A) the papers included in the record, including any copy or photograph substituted for an exhibit;

(B) any tangible exhibits not included for transmission and the custodian of each exhibit; and

(C) any digital media included in the record and instructions for access by the appellate court.

Cross reference: See Rules 2-516, 3-516, and 4-322 regarding custody of exhibits.

(2) Original Papers and Exhibits

The lower court may order that the original papers in the action be kept in the lower court pending the appeal, in which case the clerk of the lower court shall transmit only a certified copy of the original papers. Original exhibits shall be retained pursuant to Rule 16-405 or as otherwise ordered by the court. The clerk of the lower court shall transmit an original exhibit to the appellate court upon request by the appellate court.

(3) Disputes; Correction and Modification

The lower court, by order, shall resolve any dispute whether the record accurately discloses what occurred in the lower court, and shall cause the record to conform to its decision. The lower court ~~shall~~ also shall correct or modify the record if directed by an appellate court pursuant to Rule 8-414 (b)(2). ~~When the Supreme Court reviews an action pending in or decided by the Appellate Court, the record shall also include the record of any proceedings in the Appellate Court.~~

~~(b)~~(c) Statement of Case in Lieu of Entire Record

(1) Generally

If the parties agree that the questions presented by an appeal can be determined without an examination of all the pleadings and evidence, they may sign and, upon approval by the lower court, file a statement showing how the questions arose and were decided, and setting forth only those facts or allegations that are essential to a decision of the questions. ~~The parties are strongly encouraged to agree to such a statement.~~ The statement, the judgment from which the appeal is taken, and any opinion of the lower court shall constitute the record on appeal. The appellant shall reproduce the statement in the appellant's brief, either in lieu of the statement of facts or as an appendix to the brief.

(2) Supplement

The appellate court may~~, however,~~ direct the lower court clerk to transmit all or part of the balance of the record in the lower court as a supplement to the record on appeal. ~~The appellant shall reproduce the statement in the~~

~~appellant's brief, either in lieu of the statement of facts or as an appendix to the brief.~~

~~(e)~~(d) Duties of Lower Court Clerk

(1) Attachments

The clerk shall prepare and attach to the beginning of the record a cover page, a complete table of contents, and the certified copy of the docket entries in the lower court. The original papers shall be fastened together in one or more binders and numbered consecutively, except that the pages of a transcript of testimony need not be renumbered.

(2) Statement of Cost

The clerk shall ~~also~~ prepare and transmit with the record a statement of the cost of preparing and certifying the record, the costs taxed 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.

(3) Service on Parties

The clerk shall serve a copy of the docket entries on each party.

Cross reference: See Code, Criminal Procedure Article, § 11-104(f)(2) for victim notification procedures.

Source: This Rule is derived in part from former Rule 1026 and Rule 826 and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 8-413 alter certain provisions pertaining to the record on appeal. Discussions with the Maryland Office of the Public Defender, prosecutors, and clerks identified a range of concerns with the

operation of current Rule 8-413 and Rules 2-516, 3-516, and 4-322, which govern the record of proceedings at the trial court level.

Proposed amendments to Rule 8-413 and Rules 2-516, 3-516, and 4-322, attempt to update and standardize exhibit practices across the State while retaining flexibility for individual jurisdictions. See the Reporter's notes to those Rules 2-516, 3-516, and 4-322.

The Rules Committee also proposes certain modifications to accommodate the use of digital storage platforms outside of MDEC (e.g. ShareFile) in judicial proceedings. See the Reporter's note to Rule 20-301.

Amendments to section (a) of Rule 8-413 add new subsection (a)(3) requiring copies or photographs of any physical exhibits that are made part of the trial record to be part of the record on appeal. New subsection (a)(4) addresses recordings specifically by requiring that the original recording be included in the record on appeal.

A Committee note following subsection (a)(4) refers to exhibits that may be stored on a digital storage platform outside of MDEC. The note states that exhibits may be stored and accessed this way and, absent a dispute about the uploaded files' authenticity or accuracy, are to be considered the originals. The Committee note also calls attention to the requirements in Rules 2-516 and 4-322 that a recording used in court that is not in a format used by the general public be furnished for the appellate record in a common format.

Current subsection (a)(3) is renumbered as subsection (a)(5). New subsection (a)(6) contains a provision moved from elsewhere in the Rule pertaining to the record of appellate proceedings when the Supreme Court reviews an action pending or decided by the Appellate Court.

Proposed new section (b) contains existing provisions from current section (a) with additional provisions intended to integrate the amendments to Rules 2-516, 3-516, and 4-322 regarding custody of exhibits and contents of the record.

Proposed new subsection (b)(1) requires that the certificate appended to the record by the clerk identify the papers and copies or photographs of exhibits as well as the custodian of tangible exhibits not included in the record for transmission. A cross reference following the subsection refers to the trial court Rules governing custody of exhibits.

Proposed new subsection (b)(2) governs the retention of original papers and exhibits. In addition to existing provisions pertaining to original papers in the action, a new provision requires original exhibits to be retained as required by Rule 16-405 or as otherwise ordered by the court. The clerk of the lower court must transmit an original exhibit to the appellate court upon request.

Proposed new subsection (b)(3) contains existing provisions related to disputes and correction and modification of the record. The last sentence is deleted and moved to new subsection (a)(6).

Current section (b) is re-lettered as section (c), with subsections added. Proposed new subsection (c)(1) contains existing provisions regarding a statement of the case in lieu of the entire record. A sentence encouraging use of this mechanism is deleted. The Rules Committee was informed that a statement of the case on appeal rarely is used but may be appropriate in some matters and should remain available as an option. The last sentence from current section (b) pertaining to a reproduction of the statement in the appellant's brief is relocated from the end of the section to the end of new subsection (c)(1). New subsection (c)(2) contains existing provisions related to supplementing the statement of the case.

Current section (c) is re-lettered as section (d), with subsections added to separate the provisions. New subsection (d)(1) deals with attachments to the record. Subsection (d)(2) governs the statement of cost. Subsection (d)(3) governs service on the parties.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 300 – OFFICIAL RECORD

AMEND Rule 20-402 by clarifying the tagline of subsection (a)(2)(B) and by changing "audio-video" to "audiovisual" in subsection (a)(2)(B), as follows:

Rule 20-402. TRANSMITTAL OF RECORD

(a) Certification and Transmittal

(1) Certification

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

(2) Transmittal of the Record to 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 dockets 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 Not in Electronic Format in the MDEC System

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~~ audiovisual, 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.

(b) Custody of Trial Court Submissions

Upon the docketing and transmittal provided for in subsection (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 of the appellate court. Except as otherwise ordered by the appellate court, 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.

(c) Appellate Submissions During Pendency of Appeal

Subject to section (e) of this Rule and unless otherwise ordered by the appellate court, submissions filed with or by the appellate court during the

pendency of the appeal after the date of the docketing and transmittal pursuant to subsection (a)(2) of this Rule shall be part of the appellate court record.

(d) Remote Access by Appellate Judges and Personnel

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.

(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 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

Proposed amendments to Rule 20-402 delete "non-electronic" from the tagline for subsection (a)(2)(B) and clarify that "non-electronic" refers to items not in the MDEC system. A related amendment to Rule 20-101 adds a definition for "electronic filing," which makes it clear that the term refers to items in electronic format in the MDEC system. A stylistic amendment in that subsection changes "audio-video" to "audiovisual."

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 16-904 by expanding the cross reference following section (c), by expanding the Committee note following section (c), and by making stylistic changes, as follows:

Rule 16-904. GENERAL POLICY

(a) Presumption of Openness

Judicial records 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 judicial record shall permit a person to inspect a judicial record in accordance with Rules 16-922 through 16-924. Subject to the Rules in this Chapter, inspection of case records through the MDEC program is governed by Title 20 of the Maryland Rules.

Cross reference: See ~~Rule~~ Rules 16-922, 16-923, 16-924, and 20-109.

(b) Protection of Records

To protect judicial records and prevent unnecessary interference with the official business and duties of the custodian and other judicial personnel, a clerk is not required to permit public 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.

(c) Exhibit Pertaining to Motion or Marked for Identification

Unless a judicial proceeding is not open to the public or the court expressly orders otherwise and except for identifying information shielded pursuant to law, a case record that consists of an exhibit (1) submitted in support of or in opposition to a motion or (2) marked for identification by the clerk at a ~~trial or~~ hearing or trial or 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~~ Rules 2-516, 3-516, and 4-322 concerning exhibits.

Committee note: Section (c) 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 need to protect privacy, safety, or security recognized by law permits particular evidence, or the evidence in particular cases, to be shielded. See Rule 16-934 authorizing a court to permit inspection of a case record that is not otherwise subject to inspection or to deny inspection of a case record that otherwise would be subject to inspection.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 16-904 make stylistic and clarifying changes to conform the Rule to proposed changes in Rule 2-516, 3-516, and 4-322.

The cross reference following section (c) is expanded to refer to all Rules governing exhibits and contents of the record at trial. The Committee note following section (c) also is expanded to refer parties and their attorneys to Rule 16-934, which authorizes the court to make case-by-case determinations regarding public access to filings which are otherwise deemed public or non-public by Rule or by law. Concerns were expressed that filers may not be aware that exhibits are presumed to be public unless otherwise ordered. The reference to Rule 16-934 alerts filers to the mechanism to seek to limit public inspection of an exhibit.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 16-905 by adding a Committee note following section (c); by adding new section (d) pertaining to access to digital media case records; by adding a cross reference following new section (d); and by re-lettering sections (d) and (e) as (e) and (f), respectively; as follows:

Rule 16-905. COPIES

(a) Entitlement

Except as otherwise provided by the Rules in this Chapter or by other law, a person entitled to inspect a judicial record is entitled to have a copy or printout of the record. The copy or printout may be in paper form or, subject to Rules 16-917 and 16-918 and the Rules in Title 20, in electronic form. A judge's signature may be redacted or otherwise withheld on a copy.

(b) Certified Copy

To the extent practicable and unless the court determines otherwise for good cause, a certified copy of a judicial record filed with the clerk shall be made by any authorized clerk of the court in which the case was filed or to which it was transferred.

Committee note: The court may direct the custodian not to certify a copy of a case record upon a determination that the certified copy may be used for an improper purpose.

(c) Uncertified Copy

Copies or printouts in paper form that are obtained from a terminal or kiosk located in a courthouse are uncertified.

Committee note: In an action available through MDEC, members of the public are entitled to an uncertified copy of unshielded case records and unshielded parts of case records in any courthouse of the State regardless of where the action was filed or is pending. See Rule 20-109 (g)(2).

(d) Digital Media

If a case record consists of digital media, a copy of the record shall consist of a document containing instructions for accessing the digital media.

Cross reference: See Rule 1-202 for the definition of "digital media."

~~(d)~~(e) Metadata

(1) Definition

(A) In this Rule, "metadata" means information generally not visible when an electronic document is printed that describes the history, tracking, or management of the electronic document, including information about data in the electronic document that describes how, when, or by whom the data was collected, created, accessed, or modified and how the data is formatted.

(B) Metadata does not include (i) a spreadsheet formula, (ii) a database field, (iii) an externally or internally linked file, or (iv) a reference to an external file or a hyperlink.

(2) Removal

A custodian may remove metadata from an electronic document before providing the electronic document to an applicant by using a software program or function or converting the electronic document into a different format.

~~(e)~~(f) Conditions

The custodian may set a reasonable time schedule to make copies or printouts and may charge a reasonable fee for the copy or printout.

Source: This Rule is derived in part from former Rule 16-904 (2019) and in part from Code, General Provisions Article, § 4-205.

REPORTER'S NOTE

Proposed amendments to Rule 16-905 clarify certain provisions pertaining to copies of case records.

A proposed Committee note following section (c) states that the public may obtain an uncertified copy of a public case record in an action available in MDEC from any courthouse, regardless of where the action was filed. Committee staff was informed that a member of the public was told by a clerk's office that the clerk could not print the MDEC records of another county. This is incorrect as applied to uncertified copies.

Proposed new section (d) sets forth the method of providing a "copy" of a case record that is digital media. Such records are submitted using an approved digital storage platform and not in a physical format. The proposed business process for public access to copies of digital media is a printout generated with instructions for access.

A cross reference to the definition of "digital media" is added following new section (d).

Sections (d) and (e) are re-lettered as (e) and (f), respectively.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-918 by updating a reference to Rule 20-101 in subsection (b)(1), by adding new section (d) pertaining to access to digital media, and by adding a Committee note following new section (d), as follows:

Rule 16-918. ACCESS TO ELECTRONIC RECORDS

(a) In General

Subject to the other Rules in this Title and in Title 20 and other applicable law, a 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)~~(r), that the custodian is on notice is included in an electronic judicial record.

(2) Certain Identifying Information

(A) In General

Except as provided in subsection (b)(2)(B) of this 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) Exceptions

(i) 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.

(ii) Subsection (b)(2) of this Rule does not apply to briefs, appendices, petitions for writ of certiorari, motions, and oppositions filed in the Supreme Court or the Appellate Court.

(C) Notice to Custodian

A person who places in a 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 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 to access judicial records and parts of judicial records that are open to inspection, including judicial records as to which remote access is otherwise prohibited. To the extent authorized by administrative order of the Chief Justice of the Supreme Court, computer terminals or kiosks may be made available at other facilities for that purpose.

Cross reference: Rule 20-109.

Committee note: Although use of a courthouse computer terminal or kiosk is free of charge, the cost of obtaining a copy of the records is governed by Rule 16-905.

(d) Access to Digital Media

Unless otherwise ordered by the court, digital media shall be viewable upon request at a terminal or kiosk located in a courthouse.

Committee note: Accessing digital media may involve playing a sound recording. The clerk should make appropriate accommodations to avoid disruptions to staff and patrons, including providing headphones at the terminal or kiosk.

Source: This Rule is derived from former Rule 16-910 (2019) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 16-918 set forth the procedure for providing public access to digital media. Rule 1-202 is amended to define digital media as audio, audiovisual, and video material that can be transmitted and stored electronically. Digital media may be submitted to the court using an approved digital storage platform.

In the future, the public should be able to access digital media using the storage platform at a terminal or kiosk at the courthouse, similar to the provisions of Rule 16-918 (c). At this time, however, the Judiciary is not equipped to facilitate access to digital media on demand at a terminal or kiosk. The State Court Administrator requested that access be provided "upon request" to allow the court to facilitate access. A Committee note suggests that a clerk may need to make accommodations for playing sound recordings.

A conforming amendment to subsection (b)(1) updates a reference to 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-101 by adding new section (f), by adding a cross reference following new section (f), by deleting sections (m) and (n) as obsolete, by re-lettering sections, by deleting each reference to "MDEC County" throughout this Rule, and by adding the word "implements" to re-lettered section (n), as follows:

Rule 20-101. DEFINITIONS

. . .

(f) Electronic Filing

"Electronic filing" means a filing capable of being entered into the MDEC system in accordance with the Rules in this Title. "Electronic filing" does not include digital media submitted and maintained on a digital storage platform approved by the State Court Administrator.

Cross reference: See Rule 20-106 (c) regarding submissions that are entered into the MDEC system.

~~(f)~~(g) Filer

. . .

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

. . .

~~(h)~~(i) Hyperlink

. . .

~~(i)~~(j) Judge

. . .

~~(j)~~(k) Judicial Appointee

. . .

~~(k)~~(l) Judicial Personnel

. . .

~~(l)~~(m) MDEC or MDEC System

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

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

~~(m) MDEC Action~~

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

~~(n) MDEC County~~

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

~~(o)~~(n) MDEC Start Date

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

~~(p)~~(o) 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.

~~(q)~~(p) Redact

. . .

~~(r)~~(q) Registered User

. . .

~~(s)~~(r) Restricted Information

. . .

~~(t)~~(s) Scan

. . .

~~(u)~~(t) Signature

. . .

~~(v)~~(u) Submission

. . .

~~(w)~~(v) Tangible Item

. . .

~~(x)~~(w) Trial Court

. . .

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-101 clarify that the term "electronic filing" as used throughout Title 20 refers to a filing that is capable of being entered into the MDEC system. Additional amendments are proposed in the wake of the MDEC roll-out in Baltimore City, the final MDEC county, which eliminates the need to differentiate in the Rules between MDEC and non-MDEC counties and actions.

Proposed new section (f) defines the term "electronic filing." The term and definition are intended to differentiate MDEC filings from "digital media" filings, defined as a proposed new term in Rule 1-202. "Digital media" are items submitted by electronic means but not currently capable of being submitted through or maintained by the MDEC system. See the Reporter's note to Rule 1-202. The definition of "electronic filing" proposed in Rule 20-101 makes clear that it refers only to MDEC filings, not digital media.

In section (l), the phrase "in an MDEC County" is proposed to be deleted as obsolete and to conform to the proposed deletion of section (n).

Section (m), "MDEC Action," is proposed to be deleted from this Rule as the definition of "Action" in Rule 1-202 now applies to all Rules, rendering the definition contained in section (m) of this Rule superfluous.

Section (n), "MDEC County," is proposed to be deleted as obsolete now that all counties state-wide are using MDEC.

The provision "becomes an MDEC County" is replaced with "implements MDEC" in new section (n) to conform to the proposed deletion of current section (n).

Sections of Rule 20-101 are re-lettered to account for the additions and deletions discussed above.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106 by changing the term of art "MDEC action" to "action" throughout this Rule and by adding new subsection (e)(3), 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 ~~MDEC~~ action shall file electronically the attorney's entry of appearance and all subsequent submissions in the action.

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

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

(3) Self-represented Litigants

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

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

(b) Exceptions

(1) MDEC System Outage

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

(2) Other Unexpected Event

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

Committee note: This subsection is intended to apply to events such as an unexpected loss of power, a computer failure, or other unexpected event that

prevents the filer from using the equipment necessary to effect an electronic filing.

(3) Other Good Cause

For other good cause shown, the administrative judge having direct administrative supervision over the court in which an ~~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 registered user's control, the registered user is temporarily unable to file submissions electronically shall constitute good cause.

. . .

(e) Exhibits and Other Documents Offered in Open Court

(1) Exhibits

(A) Generally

Unless otherwise approved by the court, a document offered into evidence as an exhibit in open court shall be offered in paper form. The document shall be appropriately marked.

Committee note: In a document-laden action, if practicable, the court and the parties are encouraged to agree to electronically prefiling documents to be offered into evidence, instead of offering them in paper form. Prefiling merely facilitates the offering of the document and does not constitute, of itself, an admission of the documents.

(B) 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.

(2) Documents Other than Exhibits

(A) Generally

Except as otherwise provided in subsection (e)(2)(B) of this Rule, if a document in paper form is offered in open court for inclusion in the record, but not as an exhibit, the court shall accept the document, and the clerk shall follow the procedure set forth in subsection (e)(1)(B) of this Rule.

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.

(B) Certain Submissions by Registered Users

If a registered user offers a submission that requires prepayment of a fee, or an entry of appearance, whether or not a fee is required, in open court for inclusion in the record, but is not as an exhibit, the court may accept the submission conditionally, subject to it being electronically filed by the registered user. In criminal proceedings, the submission shall be filed by the end of the day that the submission was offered in court. In all proceedings other than criminal, the submission shall be filed no later than the end of the next business day after the submission was offered in court. If the registered user fails to file by the applicable deadline, the court may strike the submission.

(3) Digital Media

Digital media offered in open court and included in the record pursuant to Rule 2-516, Rule 3-516, or Rule 4-322 shall be (A) submitted using a digital storage platform approved by the State Court Administrator and (B) referenced in the MDEC system by docket entry.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 20-106 sets forth the procedure for submitting to the court digital media that is used in open court and made part of the court record. See the Reporter's notes to Rules 2-516, 3-516, and 4-322.

Additionally, in the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete references to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform Rule 20-106 to the amendments of Rule 20-101, it is proposed to delete each obsolete reference to "MDEC" from the term "MDEC action."

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE—CIRCUIT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 by updating a reference to Rule 1-202 in the cross reference following section (d) and by making stylistic changes, as follows:

Rule 2-131. APPEARANCE

. . .

(d) Effect

The entry of an appearance is not a waiver of the right to assert any defense in accordance with these rules. Special appearances are abolished.

Cross reference: See Rules 1-311, 1-312, and 1-313; Rules 19-214, 19-215, and 19-216 of the Rules Governing Admission to the Bar. See also Rule 1-202 ~~(u)~~(v) for the definition of ~~"person".~~ "person."

Source: This Rule is in part derived from former Rule 124 and in part new.

REPORTER'S NOTE

A proposed conforming amendment to Rule 2-131 updates a reference to a section of Rule 1-202. The proposed addition of new section (j) to Rule 1-202 requires re-lettering of subsequent sections.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE—CIRCUIT COURT

CHAPTER 200 – PARTIES

AMEND Rule 2-221 by updating a reference to Rule 1-202 in the cross reference following section (a), as follows:

Rule 2-221. INTERPLEADER

(a) Interpleader Action

An action for interpleader or in the nature of interpleader may be brought against two or more adverse claimants who claim or may claim to be entitled to property. The claims of the several defendants or the title on which their claims depend need not have a common origin or be identical but may be adverse to and independent of each other. The plaintiff may deny liability in whole or in part to any or all of the defendants. A defendant may likewise obtain interpleader by way of counterclaim or cross-claim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted by Rule 2-212. The complaint for interpleader shall specify the nature and value of the property and may be accompanied by payment or tender into court of the property. The complaint may request, and the court may grant prior to entry of the order of interpleader pursuant to section (b) of this Rule, appropriate ancillary relief, including ex parte or preliminary injunctive relief.

Cross reference: For the definition of ~~property~~ "property," see Rule 1-202 ~~(y)~~(z).

. . .

REPORTER'S NOTE

A proposed conforming amendment to Rule 2-221 updates a reference to a section of Rule 1-202. See the Reporter's note to Rule 2-131.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE—DISTRICT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-131 by updating a reference to Rule 1-202 in the cross reference following section (d), and by making stylistic changes, as follows:

Rule 3-131. APPEARANCE

. . .

(d) Effect

The entry of an appearance is not a waiver of the right to assert any defense in accordance with these rules. Special appearances are abolished.

Cross reference: See Rules 1-311, 1-312, and 1-313; Rules 19-214 and 19-215 of the Rules Governing Admission to the Bar. See also Rule 1-202 ~~(u)~~(v) for the definition of ~~"person",~~ "person," and Code, Business Occupations and Professions Article, § 10-206(b)(1), (2), and (4) for certain exceptions applicable in the District Court.

Source: This Rule is in part derived from former Rule 124 and in part new.

REPORTER'S NOTE

A proposed conforming amendment to Rule 3-131 updates a reference to a section of Rule 1-202. See the Reporter's note to Rule 2-131.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE—DISTRICT COURT

CHAPTER 200 – PARTIES

AMEND Rule 3-221 by updating a reference to Rule 1-202 in the cross reference following section (a) and by making a stylistic change, as follows:

Rule 3-221. INTERPLEADER

(a) Interpleader Action

An action for interpleader or in the nature of interpleader may be brought against two or more adverse claimants who claim or may claim to be entitled to property. The claims of the several defendants or the title on which their claims depend need not have a common origin or be identical but may be adverse to and independent of each other. The plaintiff may deny liability in whole or in part to any or all of the defendants. A defendant may likewise obtain interpleader by way of counterclaim or cross-claim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted by Rule 3-212. The complaint for interpleader shall specify the nature and value of the property and may be accompanied by payment or tender into court of the property. The complaint may request, and the court may grant prior to entry of the order of interpleader pursuant to section (b) of this Rule, appropriate ancillary relief, including ex parte or preliminary injunctive relief.

Cross reference: For the definition of ~~property,~~ "property," see Rule 1-202 ~~(y)~~(z).

. . .

REPORTER'S NOTE

A proposed conforming amendment to Rule 3-221 updates a reference to a section of Rule 1-202. See the Reporter's note to Rule 2-131.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-202 by updating a reference to Rule 1-202 in the cross reference following section (a), as follows:

Rule 9-202. PLEADING

(a) Signing – Telephone Number - E-mail Address

A party shall personally sign each pleading filed by that party and, if the party is not represented by an attorney, shall state in the pleading a telephone number at which the party may be reached during ordinary business hours and an e-mail address, if any, through which the party may be contacted.

Cross reference: See Rule 1-202 ~~(v)~~(w).

. . .

REPORTER'S NOTE

A proposed conforming amendment to Rule 9-202 updates a reference to a section of Rule 1-202. See the Reporter's note to Rule 2-131.

MARYLAND RULES OF PROCEDURE

TITLE 13 – RECEIVERS AND ASSIGNEES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 13-101 by updating a reference to Rule 1-202 in section (i) and subsection (j)(2), as follows:

Rule 13-101. DEFINITIONS

. . .

(i) Person

"Person" has the meaning set forth in Rule 1-202 ~~(u)~~(v) and includes an individual, an estate, a business, a nonprofit entity, a public corporation, a governmental unit, an instrumentality, and any other legal entity.

Cross reference: See Code, Commercial Law Article, § 24-101(n).

(j) Property

(1) For proceedings under Code, Commercial Law Article, Title 24:

(A) "Property" means all of a person's right, title, and interest, both legal and equitable, in real and personal property, tangible and intangible, wherever located and however acquired.

(B) "Property" includes proceeds, products, offspring, rent, and profits of or from the property.

(C) "Property" does not include:

(i) any power that the owner may exercise solely for the benefit of another person; or

(ii) property impressed with a trust, except to the extent that the owner has a residual interest.

Cross reference: See Code, Commercial Law Article, § 24-101(p).

(2) For all other proceedings, "property" has the meaning set forth in Rule 1-202 ~~(y)~~(z).

. . .

REPORTER'S NOTE

A proposed conforming amendment to Rule 13-101 updates references to sections of Rule 1-202. See the Reporter's note to Rule 2-131.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 100 – COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-103 by updating a reference to Rule 1-202 in the cross reference, as follows:

Rule 16-103. CHIEF JUDGE OF THE APPELLATE COURT

Subject to the provisions of this Chapter, other applicable law, and the direction of the Chief Justice of the Supreme Court, the Chief Judge of the Appellate Court is responsible for the administration of the Appellate Court 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 Appellate Court, the provisions of this Rule shall be applicable to the senior judge present in the Appellate Court.

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

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

REPORTER'S NOTE

A proposed conforming amendment to Rule 16-103 updates a reference to a section of Rule 1-202. See the Reporter's note to Rule 2-131.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 600 – EXTENDED COVERAGE OF COURT PROCEEDINGS

AMEND Rule 16-601 by updating a reference to Rule 1-202 in the cross reference following section (e), as follows:

Rule 16-601. DEFINITIONS

. . .

(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 Justice or Chief Judge of that court or the senior justice or judge of a panel of which the Chief Justice or Chief Judge is not a member.

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

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

REPORTER'S NOTE

A proposed conforming amendment to Rule 16-601 updates a reference to a section of Rule 1-202. See the Reporter's note to Rule 2-131.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE—CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-551 by updating a reference to Rule 20-101 in section (c) and by making a stylistic change, as follows:

Rule 2-551. IN BANC REVIEW

. . .

(c) Memoranda

Within 30 days after the filing of the notice for in banc review the party seeking review shall file a memorandum stating concisely the questions presented, any facts necessary to decide them, and supporting argument. Within 15 days thereafter, an opposing party who wishes to dispute the questions, facts, or arguments presented shall file a memorandum stating the alternative questions presented, any additional or different facts, and supporting argument. Any person filing a memorandum under this section who is not required to file electronically under MDEC shall file four copies of the memorandum in paper form.

Cross reference: See Rule 20-101 ~~(l)~~(m) for the definition of ~~MDEC~~ "MDEC".

. . .

REPORTER'S NOTE

A proposed amendment to Rule 2-551 is a conforming one in light of proposed amendments to Rule 20-101. The proposed addition of new section (f) to Rule 20-101 requires re-lettering of subsequent sections. A reference to the re-lettered section is updated in Rule 2-551.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-107 by updating a reference to Rule 20-101 in the cross reference following section (a), as follows:

Rule 20-107. MDEC SIGNATURES

(a) Signature by Filer; Additional Information Below Signature

Subject to sections (b), (c), and (d) of this Rule, when a filer is required to sign a submission, the submission shall:

(1) include the filer's signature on the submission, and

(2) provide the following information below the filer's signature: the filer's address, e-mail address, and telephone number and, if the filer is an attorney, the attorney's identifying Attorney Number registered with the Attorney Information System. That information shall not be regarded as part of the signature. A signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

Cross reference: For the definition of "signature" applicable to MDEC submissions, see Rule 20-101 ~~(u)~~(t).

. . .

REPORTER'S NOTE

A proposed amendment to Rule 20-107 is a conforming one in light of proposed amendments to Rule 20-101. The proposed addition of new section (f) to Rule 20-101 and the deletion of current sections (m) and (n) requires re-lettering of certain sections. A reference to the re-lettered section is updated in Rule 20-107.

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 by adding new section (f) pertaining to restricted information in the record of an administrative agency proceeding, by re-lettering current section (f) as section (g), by adding to new section (g) a requirement to shield certain records, and by deleting the Committee note at the end of the Rule, as follows:

Rule 7-206. RECORD – GENERALLY

(a) Applicability

This Rule does not apply to judicial review of a decision of the Workers' Compensation Commission, except as otherwise provided by Rule 7-206.1.

(b) Contents; Expense of Transcript

The record shall include the transcript of testimony and all exhibits and other papers filed in the agency proceeding, except those papers the parties agree or the court directs may be omitted by written stipulation or order included in the record. If the testimony has been recorded but not transcribed before the filing of the petition for judicial review, the first petitioner, if required by the agency and unless otherwise ordered by the court or provided by law, shall pay the expense of transcription, which shall be taxed as costs and may be apportioned as provided in Rule 2-603. A petitioner who pays the cost of

transcription shall file with the agency a certification of costs, and the agency shall include the certification in the record.

(c) Statement in Lieu of Record

If the parties agree that the questions presented by the action for judicial review can be determined without an examination of the entire record, they may sign and, upon approval by the agency, file a statement showing how the questions arose and were decided and setting forth only those facts or allegations that are essential to a decision of the questions. The parties are strongly encouraged to agree to such a statement. The statement, any exhibits to it, the agency's order of which review is sought, and any opinion of the agency shall constitute the record in the action for judicial review.

(d) Time for Transmitting

Except as otherwise provided by this Rule, the agency shall transmit to the clerk of the circuit court the original or a certified copy of the record of its proceedings within 60 days after the agency receives the first petition for judicial review.

(e) Shortening or Extending the Time

Upon motion by the agency or any party, the court may shorten or extend the time for transmittal of the record. The court may extend the time for no more than an additional 60 days. The action shall be dismissed if the record has not been transmitted within the time prescribed unless the court finds that the inability to transmit the record was caused by the act or omission of the agency, a stenographer, or a person other than the moving party.

(f) Restricted Information

The record shall be accompanied by an Administrative Agency Restricted Information Statement completed on a form approved by the State Court Administrator. The completed Statement shall indicate whether any part of the record contains restricted information as defined by Rule 20-101 (r). The Statement shall be subject to public inspection.

~~(f)~~(g) Duty of Clerk

Upon the filing of the record, the clerk shall notify the parties of the date that the record was filed. If the Statement filed pursuant to section (f) of this Rule indicates that the record contains restricted information, the clerk shall shield the record from public inspection. Otherwise, the record shall be subject to public inspection.

~~Committee note: Code, Article 2B, § 175(e)(3) provides that the decision of a local liquor board shall be affirmed, modified, or reversed by the court within 90 days after the record has been filed, unless the time is "extended by the court for good cause."~~

Source: This Rule is in part derived from former Rule B7 and in part new.

REPORTER'S NOTE

Proposed amendments to Rule 7-206 were prompted by a request for clarification by the Assistant Attorney General for the Workers' Compensation Commission. Title 7, Chapter 200 governs judicial review of administrative agency proceedings, including the Commission. Rule 7-206 sets forth the procedure for preparing and filing the record of proceedings before the agency (Rule 7-206.1 (b) adopts the bulk of those provisions for the record of the Commission).

The Commission's attorney contacted the Committee because a clerk's office refused to accept the record of proceedings before the Commission, filed

pursuant to Rule 7-206, because it contained unredacted personal identifier information in violation of Rule 1-332.1. A review of Rule 1-332.1 and Title 7, Chapter 200 indicates that the record of an administrative agency proceeding can be construed as being excused from the requirements of Rule 1-332.1 (subsection (c)(2) of that Rule exempts the record of an administrative agency proceeding).

The Committee was informed that these records are largely filed in paper form and frequently contain information such as Social Security Numbers, medical records, and financial information which is typically excluded from public versions of court records. The Workers' Compensation Commission contends that it is impractical for the Commission to review every record of proceedings before the Commission to redact or shield information that should not be publicly accessible. These records tend to be voluminous and sometimes consist almost entirely of confidential material. The Committee was also informed of an instance where a record of proceedings before the Criminal Injury Compensation Board containing sensitive medical information was submitted in paper form to a clerk's office with no motion or proposal to restrict access.

Proposed amendments to Rule 7-206 create new section (f) requiring the record to be accompanied by a form to be devised by the State Court Administrator (the "Administrative Agency Restricted Information Statement"). The form must indicate whether any portion of the record contains restricted information as defined by Rule 20-101 (r) ("'Restricted information' means information that, by Rule or other law, is not subject to public inspection or is prohibited from being included in a court record absent a court order"). The form itself is subject to public inspection. This provision is modeled after Rule 20-201.1 (a)(1). Current section (f) is re-lettered as section (g).

Proposed amendments to re-lettered section (g) instruct the clerk to shield the record from public inspection if the Statement indicates that the record contains restricted information.

A Committee note at the end of the Rule containing an obsolete statutory reference is recommended for deletion. The provision contained in the Committee note was removed from the Code in 2015 (Chapter 41, 2015 Laws of Maryland (HB 64)).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-914 by adding new section (r) and by adding a cross reference following new section (r), as follows:

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

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

...

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

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

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

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

REPORTER'S NOTE

Proposed amendments to Rule 16-914 exempt from public inspection the record of an administrative agency proceeding filed pursuant to Rule 7-206 in certain circumstances. See the Reporter's note to Rule 7-206 for more information.

The Committee was informed that in some cases, the record of proceedings before an agency – e.g. the Workers' Compensation Commission or the Criminal Injury Compensation Board – are voluminous and consist of documents containing financial information, medical information, and other highly sensitive material. Proposed new section (r) states that if the Administrative Agency Restricted Information Statement required by proposed amendments to Rule 7-206 indicates that the record contains restricted information, the custodian shall deny inspection of the record. The other pleadings and papers filed in the circuit court would remain presumptively open for public inspection, subject to the Rules in Title 16, Chapter 900.

A cross reference is added following the new section to the relevant Rules governing filing the record of an administrative agency proceeding as well as the Public Information Act ("the PIA"). The PIA and various Code of Maryland Regulations ("COMAR") provisions govern public access to records held by administrative agencies. If a record filed pursuant to Rule 7-206 contains restricted information and is shielded by the court, a member of the public may request access to portions of the record directly from the agency via the PIA, at which time the agency should follow its procedures for compliance, including redaction of non-public information.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE SUPREME COURT AND THE APPELLATE COURT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 8-132 by adding clarifying language in section (b) and by adding a cross reference following section (b), as follows:

Rule 8-132. TRANSFER OF APPEAL IMPROPERLY TAKEN

(a) Appeal to Improper Court

If the Supreme Court or the Appellate Court determines that an appellant has improperly noted an appeal to it but may be entitled to appeal to another court exercising appellate jurisdiction, the Court shall not dismiss the appeal but shall instead transfer the action to the court apparently having jurisdiction, upon the payment of costs provided in the order transferring the action.

(b) Appeal Improperly Filed in the Appellate Court

If a notice of appeal, application for leave to appeal, or petition for certiorari is improperly filed in the Appellate Court, the Court shall not reject the filing but shall note on the filing the date when it was received and transfer the filing to the proper court. The receiving court shall docket the filing using the date that the filing was received by the Appellate Court or, if applicable, deemed filed pursuant to Rule 1-322 (d).

Cross reference: See Rule 1-322 (d) governing filings by self-represented individuals confined in certain facilities.

Cross reference: See Rules 8-201 and 8-204 regarding filing of a notice of appeal or application for leave to appeal to the Appellate Court in the lower court. See Rule 8-303 regarding filing of a petition for writ of certiorari in the Supreme Court.

Source: This Rule is in part derived from former Rule 814 and in part new.

REPORTER'S NOTE

Proposed amendments to Rule 8-132 were requested by the Clerk of the Appellate Court of Maryland to clarify the relationship between the provisions of section (b) of the Rule and the so-called "Prison Mailbox Rule" located in Rule 1-322 (d). Rule 1-322 (d) states that a pleading or paper filed by a self-represented individual confined in a correctional or detention facility without direct access to the mail is "deemed to have been filed" when it was deposited into an outgoing mail receptacle or given to an employee authorized to collect prisoner mail.

Rule 8-132 was amended in 2023 to add section (b), which applies to situations where an appellant files the correct type of appeal but does so with the wrong court (e.g. filing a notice of appeal with the Appellate Court rather than in the circuit court). The new section specifies that when the filing is transferred to the proper court, the receiving court should docket the filing "using the date that the filing was received by the Appellate Court." Filings subject to Rule 1-322 (d) are marked with the date of receipt and the "deemed filed" date as required by that Rule. The Committee recommends clarifying that a filing transferred pursuant to Rule 8-132 (b) which is subject to Rule 1-322 (d) should be docketed using the "deemed filed" date proscribed by Rule 1-322 (d).

A cross reference to Rule 1-322 (d) is added after the section.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE SUPREME COURT

AND THE APPELLATE COURT

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-511 by creating new subsection (c)(1) containing the current provisions of section (c), with amendments; by adding new subsection (c)(2); and by deleting section (g), as follows:

Rule 8-511. AMICUS CURIAE

(a) Authorization to File Amicus Curiae Brief

An amicus curiae brief may be filed only:

(1) upon written consent of all parties to the appeal;

(2) by the Attorney General in any appeal in which the State of Maryland may have an interest;

(3) upon request by the Court;

(4) as provided in subsection (e)(1) of this Rule; or

(5) upon the Court's grant of a motion filed under section (b) of this Rule.

(b) Motion and Brief

(1) Content of Motion

A motion requesting permission to file an amicus curiae brief shall:

(A) identify the interest of the movant;

(B) state the reasons why the amicus curiae brief is desirable;

(C) state whether the movant requested of the parties their consent to the filing of the amicus curiae brief and, if not, why not;

(D) state the issues that the movant intends to raise; and

(E) identify every person, other than the movant, its members, or its attorneys, who made a monetary or other contribution to the preparation or submission of the brief, and identify the nature of the contribution.

(2) Attachment of Brief

The proposed amicus curiae brief shall be attached to the motion.

(3) If Motion Granted

If the motion is granted, the brief shall be regarded as having been filed when the motion was filed. Promptly after the order granting the motion is filed, the amicus curiae shall file and serve paper copies of the brief as required by Rule 8-502 (c).

(c) Time for Filing

(1) Generally

Except as required by subsection (e)(3) of this Rule and unless the Court orders otherwise, an amicus curiae brief shall be filed ~~at or before the time specified for the filing of the principal brief of the appellee~~ no later than seven days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party shall file its brief no later than seven days after the appellant's or petitioner's principal brief is filed.

(2) Late Filing

An amicus curiae brief may be filed after the time specified in subsection (c)(1) of this Rule only with leave of court. An order authorizing late filing of an amicus curiae brief shall specify the time within which an opposing party may answer.

(d) Compliance With Rules 8-503 and 8-504

(1) Generally

An amicus curiae brief shall comply with the applicable provisions of Rules 8-503 and 8-504, except as provided in subsection (d)(2) of this Rule.

(2) Exception

An amicus curiae brief filed pursuant to subsection (e)(1) or (f)(3) of this Rule shall comply with the applicable provisions of Rule 8-112. It may, but need not, comply with the provisions of Rules 8-503 and 8-504.

(e) Brief Supporting or Opposing Discretionary Review

(1) Motion Not Required

An amicus curiae brief may be filed in the Supreme Court on the question of whether the Court should issue a writ of certiorari or other extraordinary writ, or in the Appellate Court on the question of whether the Court should grant an application for leave to appeal. A motion requesting permission to file such an amicus brief is not required, provided that the amicus curiae brief is signed by an attorney pursuant to Rule 1-311.

(2) Required Contents

A brief filed pursuant to subsection (e)(1) of this Rule shall state whether, if the writ is issued or application is granted, the amicus curiae intends to seek

consent of the parties or move for permission to file an amicus curiae brief on the issues before the Court.

(3) Time for Filing

(A) Unless the Court orders otherwise, an amicus curiae brief on the question of whether the Supreme Court should issue a writ of certiorari or other extraordinary writ shall be filed within seven days after the petition is filed.

(B) Unless the Court orders otherwise, an amicus curiae brief on the question of whether the Appellate Court should grant an application for leave to appeal shall be filed within 15 days after the record is transmitted pursuant to Rule 8-204 (c)(1).

(4) Length

A brief filed pursuant to subsection (e)(1) of this Rule shall not exceed 1,900 words.

(f) Reply Brief; Oral Argument; Brief Supporting or Opposing Motion for Reconsideration

Without permission of the Court, an amicus curiae may not (1) file a reply brief, (2) participate in oral argument, or (3) file a brief in support of, or in opposition to, a motion for reconsideration. Permission may be granted only for extraordinary reasons.

~~(g) Appellee's Reply Brief~~

~~Within ten days after the later of (1) the filing of an amicus curiae brief that is not substantially in support of the position of the appellee or (2) the~~

~~entry of an order granting a motion under section (b) that permits the filing of a brief not substantially in support of the position of the appellee, the appellee may file a reply brief limited to the issues in the amicus curiae brief that are not substantially in support of the appellee's position and are not fairly covered in the appellant's principal brief. Any such reply brief shall not exceed 3,900 words.~~

Source: This Rule is derived in part from Fed.R.App.P. 29 and Sup.Ct.R. 37 and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 8-511 update the timing standards for amicus curiae briefs. By letter dated December 20, 2023, Chief Justice Fader requested that the Rules Committee consider whether the Supreme Court should adopt the amicus brief schedule used by federal appeals courts. Currently, Rule 8-511 (c) requires that an amicus curiae brief must be filed "at or before the time specified for the filing of the principal brief of the appellee."

Fed.R.App.P. 29 and Sup.Ct.R. 37 both provide that an amicus curiae brief must be filed "no later than 7 days after the principal brief of the party being supported is filed." According to the Advisory Committee Notes on Fed.R.App.P. 29, the "7-day stagger" was adopted in 1998 "because it is long enough to permit an amicus to review the completed brief of the party being supported and avoid repetitious argument."

Maryland significantly revised Rule 8-511 in 2013 and adopted the current timing standard in section (c). At the June 2013 meeting where the amendments were discussed, the Rules Committee acknowledged that the timing standard differed from the federal appellate courts but there was no significant discussion of the reason for deviating from the Federal Rules.

Proposed amendments to section (c) require an amicus curiae brief to be filed no later than seven days after the principal brief of the party being supported. An amicus curiae brief that does not support either party is due no later than seven days after either party's principal brief. New subsection (c)(2) clarifies that later filing may only occur with leave of court.

Section (g) is deleted as unnecessary in light of the new timing standards in section (c).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISION

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

Rule 17-102. DEFINITIONS

. . .

(g) MACRO

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

~~(g)~~(h) Mediation

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

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

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

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

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

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

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

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

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

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

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

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

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

REPORTER'S NOTE

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

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

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

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

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

Rule 17-202. GENERAL PROCEDURE

. . .

(c) Designation of ADR Practitioner

(1) Direct Designation

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

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

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

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

Committee note: Examples of the use of indirect designation are referrals of indigent litigants to publicly funded community mediation centers and referrals of one or more types of cases to a mediation unit of the court.

(d) Discretion in Designation

In designating an ADR practitioner, the court is not required to choose at random or in any particular order from among the qualified ADR practitioners or organizations on its lists. The court should endeavor to use the services of as diverse a range of ~~as many~~ qualified persons as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

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

. . .

(f) Objection; Alternatives

. . .

(5) Ruling

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

. . .

REPORTER'S NOTE

Proposed amendments to Rule 17-202 implement a request by the Judicial Council's Alternative Dispute Resolution Committee and the Mediation and Conflict Resolution Office ("MACRO") in the Administrative Office of the Courts. Currently, individual courts approve and maintain lists of ADR practitioners available to provide services in those courts. MACRO intends to centralize this process by requiring practitioners to apply directly to MACRO. MACRO will review the applications for compliance with the requirements of this Title and will maintain the lists of practitioners approved to work in each court as well as the ADR organizations approved by each court to provide services.

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

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

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

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

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

Rule 17-205. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Basic Qualifications

A mediator designated by the court shall:

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

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

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

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

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

provide documentation of continuing education in the manner required by MACRO and approved by the State Court Administrator;

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

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

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

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

. . .

REPORTER'S NOTE

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

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

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

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

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

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

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

Rule 17-207. PROCEDURE FOR APPROVAL

(a) Generally

(1) Scope

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

(2) Application

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

(3) Documentation

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

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

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

(4) Action on Application

(A) Determination

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

(B) Notice to Applicant

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

(C) Notice to Court

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

(5) ~~Court-~~Approved ADR Practitioner and Organization Lists

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

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

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

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

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

(6) Public Access to Lists

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

(7) Designation as Inactive

After notice and a reasonable opportunity to respond, MACRO may designate a practitioner on an approved list as "inactive" for failure to maintain the continuing education requirements set forth in Rule 17-205 (a)(5). MACRO

shall notify the applicable courts when a practitioner has been designated as "inactive." If the practitioner subsequently comes into compliance with the continuing education requirements, MACRO shall notify the applicable courts that the practitioner no longer is designated as "inactive."

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

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

(b) Business and Technology and Health Care Malpractice Programs

(1) Scope

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

(2) Application

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

(3) Documentation

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

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

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

(4) Action on Application

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

approve or disapprove the application. MACRO shall notify the applicant of the action ~~of the Committee~~ and the reasons for a disapproval.

(5) Court-Approved ADR Practitioner Lists

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

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

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

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

(6) Public Access to Lists

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

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

(7) Designation as Inactive

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

compliance with the continuing education requirements, MACRO shall notify the applicable courts that the practitioner no longer is designated as "inactive."

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

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

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

REPORTER'S NOTE

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

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

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

The procedure in current subsection (a)(4) is proposed to be deleted and replaced. New subsection (a)(4)(A) sets forth the determination to be made by MACRO on receipt of an application. New subsection (a)(4)(B) requires MACRO to notify the applicant of the decision to either approve or disapprove the application and the reasons for a disapproval. New subsection (a)(4)(C) provides that MACRO shall share the application and materials with the administrative judge or the judge's designee in each jurisdiction where the applicant will seek designation.

The Committee was informed that the administrative judges are in favor of this proposed process to streamline applications and approvals. Judges in

each court will maintain their discretion regarding the designation of practitioners for cases, but MACRO will oversee the initial screening for baseline qualifications and monitor continuing education compliance.

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

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

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

Current subsection (a)(7) is re-lettered as subsection (a)(8). Amendments to the subsection alter the process for removing a practitioner from an approved list when the practitioner fails to maintain required qualifications or for other good cause. After providing notice to the practitioner and a reasonable opportunity to respond, the county administrative judge or that judge's designee may determine that a practitioner should be removed from an approved list. The county administrative judge or that judge's designee will notify MACRO of the determination, and MACRO will remove the practitioner from the court's list. MACRO will then determine if the reason for the removal is one that should be shared with other courts where the practitioner is eligible to serve.

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

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 300 – PROCEEDINGS IN DISTRICT COURT

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

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

(a) Limited to Qualified Individuals

(1) Court-Designated Mediator

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

(2) Court-Designated Settlement Conference Chair

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

(b) Designation Procedure

(1) Court Order

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

(2) Duty of ADR Office

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

(3) Discretion in Designation or Selection

Neither the court nor the ADR Office is required to choose at random or in any particular order from among the qualified individuals. They should endeavor to use the services of as diverse a range of ~~as many~~ qualified individuals as practicable, but the court or ADR Office may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

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

(4) ADR Practitioner Selected by Agreement of Parties

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

Source: This Rule is new.

REPORTER'S NOTE

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

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

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

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

Rule 17-602. AUTHORITY TO ORDER ADR

. . .

(f) Designation of ADR Practitioner

(1) Generally

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

(2) Discretion in Designation

In designating an individual under subsection (e)(1)(B) of this Rule, the court is not required to choose at random or in any particular order from among the qualified individuals on its lists. The court should endeavor to use the services of as diverse a range of ~~as many~~ qualified individuals as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training,

background, experience, expertise, or temperament of the available prospective designees.

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

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

Source: This Rule is new.

REPORTER'S NOTE

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

An internal reference is updated in subsection (f)(1). Subsection (f)(2) is amended to add the requirement that the court should attempt to use as diverse a range of qualified practitioners as practicable. The Committee note following subsection (f)(2) is updated to explain the intent of the "diverse range" addition.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

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

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

(a) Court-Designated Mediators

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

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

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

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

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

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

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

. . .

REPORTER'S NOTE

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

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

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

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

AMEND Rule 17-604 by requiring in subsection (a)(1) that an individual file an application with MACRO and use a form approved by the State Court Administrator, by deleting the Committee note following subsection (a)(1), by deleting the language in section (b) and replacing it with a new procedure for action by MACRO on an application; by providing in subsection (c)(1) that MACRO shall maintain lists of approved individuals, by adding new subsection (c)(2) creating a process for designating a practitioner as inactive, by re-lettering current subsection (c)(2) as (c)(3), by adding to new subsection (c)(3) a provision for the Chief Judge of the orphans' court to notify MACRO that a practitioner should be removed from a list, and by making stylistic changes, as follows:

Rule 17-604. PROCEDURE FOR APPROVAL

(a) Application

(1) Generally

An individual seeking designation to conduct mediation or settlement conference proceedings shall file an application with ~~the Chief Judge of the orphans' court from which~~ MACRO indicating the county or counties from which the individual is willing to accept referrals. The application shall be substantially in the form approved by the ~~Chief Judge~~ State Court

Administrator and posted to the Judiciary website. An individual may apply for designation to conduct both mediations and settlement conferences ~~but shall file a separate application for each. The Chief Judge may select a designee to accept and maintain the applications~~.

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

(2) Documentation

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

(b) Action on Application

(1) Determination

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

(2) Notice to Applicant

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

(3) Notice to Court

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

(c) Lists

(1) Generally

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

(2) Designation as Inactive

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

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

After notice and a reasonable opportunity to respond, the Chief Judge or another judge of the court designated by the Chief Judge may remove an individual from a list for failure to maintain the required qualifications or for other good cause. The Chief Judge or the judge's designee shall notify MACRO

of the determination, the reasons for the determination, and whether the reasons for the determination are relevant to the practitioner's ability to serve in other courts. Upon receipt of such notification from the court, MACRO shall remove the practitioner from the orphans' court's list. If the reason for removal is relevant to the practitioner's eligibility to serve in other courts, MACRO shall notify the other courts of the practitioner's removal.

Source: This Rule is new.

REPORTER'S NOTE

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

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

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

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

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

Current subsection (c)(2) is re-lettered as subsection (c)(3). The subsection is amended to add "from List" to the caption and a removal procedure comparable to the procedure set forth in Rule 17-207 is added. A provision is added to require the Chief Judge of the orphans' court or a designee to notify MACRO of a determination that an individual should be removed from a list. The Chief Judge is also authorized to designate another judge of the court to make the determination.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

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

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

(a) Applicability; Definitions

. . .

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

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

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

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

. . .

(c) Qualifications of Court-Designated Mediator

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

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

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

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

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

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

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

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

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

(d) Court Designation of Mediator

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

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

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

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

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

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

(4) In designating a mediator, the court is not required to choose at random or in any particular order. The court should endeavor to use the services of as diverse a range of ~~as many~~ qualified mediators as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

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

(5) The parties may request to substitute for the court-designated mediator another mediator who has the qualifications set forth in Rule 17-205 (a)(1), (2), (3), and (6) and subsection (c)(2) of this Rule, whether or not the mediator's name is on ~~the court's~~ MACRO's list, by filing with the court no later than 15

days after service of the order of referral to mediation a Request to Substitute Mediator.

. . .

(f) Confidentiality

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

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

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

. . .

REPORTER'S NOTE

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

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

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

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

Subsection (d)(4) is amended to require that the court should attempt to use as diverse a range of qualified practitioners as practicable. A Committee

note following subsection (d)(4) explains the intent of the "diverse range" addition.

The cross reference following section (f) is updated.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

ADMISSION OF OUT-OF-STATE ATTORNEYS

AMEND Rule 19-217 by adding a provision to subsection (b)(1) requiring the attorney to provide the case number and parties' names for every prior pro-hac vice admission during the five years immediately proceeding the filing of the motion, and by making stylistic changes to subsection (b)(1), as follows:

Rule 19-217. SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEYS PRO HAC VICE

(a) Motion for Special Admission

(1) Generally

A member of the Bar of this State who (A) is an attorney of record in an action pending (i) in any court of this State, or (ii) before an administrative agency of this State or any of its political subdivisions, or (B) is representing a client in an arbitration taking place in this State that involves the application of Maryland law, may move that an attorney who is a member in good standing of the Bar of another state be admitted to practice in this State for the limited purpose of appearing and participating in the action as co-counsel with the movant.

Committee note: "Special admission" is a term equivalent to "admission pro hac vice." It should not be confused with "special authorization" permitted by Rules 19-218 and 19-219.

(2) Where Filed

(A) If the action is pending in a court, the motion shall be filed in that court.

(B) If the action is pending before an administrative agency, the motion shall be filed in the circuit court for the county in which the principal office of the agency is located or in any other circuit court in which an action for judicial review of the decision of the agency may be filed.

(C) If the matter is pending before an arbitrator or arbitration panel, the motion shall be filed in the circuit court for the county in which the arbitration hearing is to be held or in any other circuit court in which an action to review an arbitral award entered by the arbitrator or panel may be filed.

(3) Other Requirements

The motion shall be in writing and shall include the following:

(A) the full name, address, telephone number, and email address of the attorney to be specially admitted; and

(B) the movant's certification that copies of the motion have been served on the agency or the arbitrator or arbitration panel, and all parties of record.

(C) The motion shall be substantially in the form provided in Appendix 19-A, Form A.1.

Cross reference: See Appendix 19-A following Title 19, Chapter 200 of these Rules for Forms 19-A.1 and 19-A.2, providing the form of a motion and order for the Special Admission of an out-of-state attorney.

(b) Certification by Out-of-State Attorney

The attorney whose special admission is moved shall certify in writing:

(1) the number of times the attorney has been specially admitted during the five years immediately preceding the filing of the motion, ~~and~~ the courts that granted admission, and, for each case in which the attorney was specially admitted, the case number and the names of the parties, and

(2) each unique identifying number previously issued to the attorney by the Attorney Information System, Client Protection Fund, or Maryland Judicial Information Systems (JIS) for use with Maryland Electronic Courts (MDEC).

The certification shall be substantially in the form provided in Appendix 19-A, Form A.1 and may be filed as a separate paper or may be included in the motion under an appropriate heading.

(c) Order

The court by order may admit specially or deny the special admission of an attorney. In either case, the clerk shall forward a copy of the order to the State Court Administrator, who shall maintain a record of all attorneys granted or denied special admission in the Attorney Information System. When the order grants or denies the special admission of an attorney in an action pending before an administrative agency, the clerk also shall forward a copy of the order to the agency.

(d) Limitations on Out-of-State Attorney's Practice

An attorney specially admitted pursuant to this Rule may act only as co-counsel for a party represented by an attorney of record in the action who is admitted to practice in this State. The specially admitted attorney may participate in the court or administrative proceedings only when accompanied

by the Maryland attorney, unless the latter's presence is waived by the judge or administrative hearing officer presiding over the action. An attorney specially admitted is subject to the Maryland Attorneys' Rules of Professional Conduct during the pendency of the action or arbitration.

Cross reference: See Code, Business Occupations and Professions Article, § 10-215.

Committee note: This Rule is not intended to permit extensive or systematic practice by attorneys not admitted in Maryland. Because specialized expertise or other special circumstances may be important in a particular case, however, the Committee has not recommended a numerical limitation on the number of special admissions to be allowed any out-of-state attorney.

Source: This Rule is derived from former Rule 19-214 (2018).

REPORTER'S NOTE

The Supreme Court, in a letter to the Chair of the Rules Committee dated December 20, 2023, asked the Committee to consider whether subsection (b)(1) of Rule 19-217 should be amended to require the attorney seeking pro-hac vice admission to list each of the case numbers in which the attorney was previously specially admitted.

In response to the Court's letter, subsection (b)(1) of this Rule is proposed to be amended to add this requirement along with the names of the parties to each case to the list of requirements already in the subsection. Conforming amendments are proposed to Form A.1 in Appendix 19-A.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

APPENDIX 19-A: FORMS FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY

AMEND Form 19-A.1 by adding lines to the "Certificate As to Special Admissions" section for the attorney to provide the case number and parties' names for prior pro-hac vice admissions, as follows:

Form 19-A.1. MOTION FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY UNDER RULE 19-217

(Caption)

MOTION FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY UNDER RULE 19-217

I, _____, attorney of record in this case, move that the court admit, _____ (name), an out-of-state attorney who is a member in good standing of the Bar of _____, for the limited purpose of appearing and participating in this case as co-counsel with me.

Out-of-State Attorney Information:

_____
(Full Name)

_____

_____
(Address)

_____
(Telephone)

_____
(Email Address)

Unless the court has granted a motion for reduction or waiver, the $100.00 fee required by Code, Courts and Judicial Proceedings Article, § 7-202 (f) is included with this motion.

I [ ] do [ ] do not request that my presence be waived under Rule 19-217 (d).

_____
Signature of Moving Attorney

_____
Name

_____

_____
Address

_____
Telephone

_____
Email Address

Attorney for _____

CERTIFICATE AS TO SPECIAL ADMISSIONS

I, _____, certify on this ____ day of _____, _____, that during the preceding five years, I have been specially admitted in the State of Maryland _____ times by the following courts:

Date	Court	Case Number and Parties' Names
_____	_____	_____
_____	_____	_____
_____	_____	_____

I have previously been issued the following unique identifying numbers by the Maryland Judiciary:

Attorney Information System _____
Client Protection Fund _____
Maryland Electronic Courts (MDEC) _____

_____
Signature of Out-of-State Attorney

_____
Name

_____

_____
Address

_____
Telephone

_____
Email Address

(Certificate of Service)

Source: This Form is derived from former Form RGAB-14/M (2016).

REPORTER'S NOTE

The Supreme Court, in a letter to the Chair to the Rules Committee dated December 20, 2023, has asked the Committee to consider whether subsection (b)(1) of Rule 19-217 should be amended to require the attorney seeking pro-hac vice admission to list each of the case numbers in which the attorney was previously specially admitted.

In response to the Court's letter, subsection (b)(1) of Rule 19-217 is proposed to be amended to add this requirement along with the names of the parties to the list of requirements already in the subsection. In addition, conforming amendments are proposed to Form A.1 in Appendix 19-A.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

SPECIAL AUTHORIZATION TO PRACTICE

AMEND Rule 19-218 by revising the provision in section (d) relating to the expiration of special authorization privileges; by deleting the cross reference following section (d) and relabeling it, with minor amendments, as a Committee note following subsection (d)(3)(A); by adding a provision to section (e) requiring notice of an attorney's change in status from unpaid to paid; and by making stylistic changes, as follows:

Rule 19-218. SPECIAL AUTHORIZATION FOR OUT-OF-STATE ATTORNEYS AFFILIATED WITH PROGRAMS PROVIDING LEGAL SERVICES TO LOW-INCOME INDIVIDUALS

(a) Definition

As used in this Rule, "legal services program" means a program operated by (1) an entity that provides civil legal services to low-income individuals in Maryland who meet the financial eligibility requirements of the Maryland Legal Services Corporation and is on a list of such programs provided by the Corporation to the State Court Administrator and posted on the Judiciary website pursuant to Rule 19-505; (2) the Maryland Office of the Public Defender; (3) a clinic offering pro bono legal services and operating in a

courthouse facility; or (4) a local pro bono committee or bar association affiliated project that provides pro bono legal services.

(b) Eligibility

Pursuant to this Rule, a member of the Bar of another state who is employed by or associated with a legal services program may practice in this State pursuant to that program if (1) the individual is a graduate of a law school meeting the requirements of Rule 19-201 (a)(2) and (2) the individual will practice under the supervision of a member of the Bar of this State.

Cross reference: For the definition of "State," see Rule 19-101 (l).

(c) Proof of Eligibility

To obtain authorization to practice under this Rule, the out-of-state attorney shall file with the Clerk of the Supreme Court a written request accompanied by (1) evidence of graduation from a law school as defined in Rule 19-201 (a)(2), (2) a certificate of the highest court of another state certifying that the attorney is a member in good standing of the Bar of that state, and (3) a statement signed by the Executive Director of the legal services program that includes (A) a certification that the attorney is currently employed by or associated with the program, (B) a statement as to whether the attorney is receiving any compensation other than reimbursement of reasonable and necessary expenses, and (C) an agreement that, within ten days after cessation of the attorney's employment or association, the Executive Director will file the Notice required by section (e) of this Rule.

(d) Certificate of Authorization to Practice

(1) Issuance of Certificate

Upon the filing of the proof of eligibility required by this Rule, the Clerk of the Supreme Court shall issue a certificate under the seal of the Court certifying that the attorney is authorized to practice under this Rule, subject to the automatic termination provision of section (e) of this Rule.

(2) Contents of Certificate

The certificate shall state

~~(1)~~(A) the effective date,

~~(2)~~(B) whether the attorney ~~(A)~~(i) is authorized to receive compensation for the practice of law under this Rule or ~~(B)~~(ii) is authorized to practice exclusively as a pro bono attorney pursuant to Rule 19-504, and

~~(3)~~(C) pursuant to subsection (d)(3), any expiration date of the special authorization to practice.

(3) Expiration Date of Certificate

(A) If Attorney Is Paid

If the attorney is receiving compensation for the practice of law under this Rule, the expiration date shall be no later than ~~two~~ four years after the effective date. The Court may extend the expiration date of the certificate beyond four years for good cause shown.

Committee note: An attorney who intends to practice law in Maryland for compensation for more than four years should apply for admission to the Maryland Bar.

(B) If Attorney is Not Paid

If the attorney is receiving no compensation other than reimbursement of reasonable and necessary expenses, no expiration date shall be stated.

~~Cross reference: An attorney who intends to practice law in Maryland for compensation for more than two years should apply for admission to the Maryland Bar.~~

(e) Notice to Supreme Court of Automatic Termination or Status Change of Specially Authorized Attorney

Authorization to practice under this Rule is automatically terminated if the attorney ceases to be employed by or associated with the legal services program. Within ten days after cessation of the attorney's employment or association or after an attorney's status with the legal services program changes from pro bono to paid, the Executive Director of the legal services program shall file with the Clerk of the Supreme Court notice of the termination of authorization or change in status.

(f) Disciplinary Proceedings in Another Jurisdiction

Promptly upon the filing of a disciplinary proceeding in another jurisdiction, an attorney authorized to practice under this Rule shall notify the Executive Director of the legal services program of the disciplinary matter. An attorney authorized to practice under this Rule who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel and the Clerk of the Supreme Court promptly of the discipline, resignation, or inactive status.

(g) Revocation or Suspension

At any time, the Court, in its discretion, may revoke or suspend an attorney's authorization to practice under this Rule by written notice to the attorney. By amendment or deletion of this Rule, the Court may modify, suspend, or revoke the special authorizations of all out-of-state attorneys issued pursuant to this Rule.

(h) Special Authorization not Admission

Out-of-state attorneys authorized to practice under this Rule are not, and shall not represent themselves to be, members of the Bar of this State, except in connection with practice that is authorized under this Rule. They are required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund, except that an attorney who is receiving no compensation other than reimbursement of reasonable and necessary expenses is not required to make the payments.

(i) Rules of Professional Conduct

An attorney authorized to practice under this Rule is subject to the Maryland Attorneys' Rules of Professional Conduct.

(j) Reports

Upon request by the Administrative Office of the Courts, an attorney authorized to practice under this Rule shall timely file an IOLTA Compliance Report in accordance with Rule 19-409 and a Pro Bono Legal Service Report in accordance with Rule 19-503.

Source: This Rule is derived from former Rule 19-215 (2018).

REPORTER'S NOTE

The Supreme Court, in a letter to the Chair of the Rules Committee dated September 21, 2023, asked the Committee to consider whether Rule 19-218 should be amended to explicitly state that special authorization status may be extended past two years by the Court for good cause shown.

The original purpose behind the two-year timeframe in section (d) when it was adopted by the Supreme Court on August 23, 2018, was to serve as a sunset provision during Maryland's transition to the UBE and to help legal service programs address critical staffing shortages.

In addition to reinstating the provision permitting the Supreme Court to extend the expiration of an attorney's special authorization status, proposed amendments to section (d) extend the length of the authorization from two years to four years. Rule 19-215 permits an out-of-state attorney to apply for admission to the Maryland Bar if the attorney meets certain requirements, including requisite professional experience for three of the last five years.

The Committee was informed that an out-of-state attorney who may lack the three years of experience could gain that experience working for a legal service program through special authorization. Extending the special authorization duration from two years to four years would permit such attorneys to obtain the requisite professional experience and apply for admission pursuant to Rules 19-215 and 19-216. The Committee determined that extending the initial duration to four years would open a pathway to admission for out-of-state attorneys – three years to gain requisite experience and an additional year to apply to the Bar – and potentially reduce the extensions requested by the Court.

A Committee note is relocated after new subsection (d)(3)(A) and instructs attorneys who intend to practice law in Maryland for compensation for more than four years to apply for admission to the Maryland Bar.

Proposed amendments to section (e) clarify that the legal services program must notify the Court if the individual ceases to be employed with the program or ceases to work pro bono. This amendment would apply when an attorney's status with the program changes and special authorization should be terminated, but the attorney remains associated with the program.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.15 by replacing the provision in section (c) pertaining to informed consent with a provision specifying when an attorney may withdraw a fee from the attorney's escrow account; by making a stylistic change to Comment [1]; by deleting Comment [3]; by renumbering Comments [4], [5], and [6] as Comments [3], [4], and [5] respectively; and by adding a cross reference following renumbered Comment [3], as follows:

Rule 19-301.15. SAFEKEEPING PROPERTY (1.15)

(a) An attorney shall hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property. Funds shall be kept in a separate account maintained pursuant to Title 19, Chapter 400 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the attorney and shall be preserved for a period of at least five years after the date the record was created.

(b) An attorney may deposit the attorney's own funds in a client trust account only as permitted by Rule 19-408 (b).

(c) ~~Unless the client gives informed consent, confirmed in writing, to a different arrangement, an attorney shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the attorney's own benefit only as fees are earned or expenses incurred.~~ An attorney shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the attorney only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, an attorney shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, an attorney shall deliver promptly to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render promptly a full accounting regarding such property.

(e) When an attorney in the course of representing a client is in possession of property in which two or more persons (one of whom may be the attorney) claim interests, the property shall be kept separate by the attorney until the dispute is resolved. The attorney shall distribute promptly all portions of the property as to which the interests are not in dispute.

Cross reference: For the duties of an attorney with respect to attorney trust account funds that are presumed abandoned, see Rule 19-414.

COMMENT

[1] ~~A~~ An attorney should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property of clients or third persons, including prospective clients, must be kept separate from the attorney's business and personal property and, if money, in one or more trust accounts. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities. An attorney should maintain on a current basis books and records in accordance with generally accepted accounting practice and the Rules in Title 19, Chapter 400 and comply with any other record-keeping rules established by law or court order.

[2] Normally it is impermissible to commingle the attorney's own funds with client funds, and section (b) of this Rule provides that it is permissible only as permitted by Rule 19-408 (b). Accurate records must be kept regarding which part of the funds are the attorney's.

~~[3] Section (c) of Rule 19-301.15 (1.15) permits advances against unearned fees and unincurred costs to be treated as either the property of the client or the property of the attorney. Unless the client gives informed consent, confirmed in writing, to a different arrangement, the Rule's default position is that such advances be treated as the property of the client, subject to the restrictions provided in section (a) of this Rule. In any case, at the termination of an engagement, advances against fees that have not been incurred must be returned to the client as provided in Rule 19-301.16 (d) (1.16).~~

~~[4]~~[3] Attorneys often receive funds from which the attorney's fee will be paid. The attorney is not required to remit the client funds that the attorney reasonably believes represent fees owed. However, an attorney may not hold funds to coerce a client into accepting the attorney's contention. The disputed portion of the funds must be kept in a trust account and the attorney should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be distributed promptly.

Cross reference: See Rule 19-301.16 (d) (1.16) for requirements concerning the requirement to refund any advance payment of fee or expense that has not been earned or incurred.

~~[5]~~[4] Section (e) of this Rule also recognizes that third parties may have lawful claims against specific funds or other property in a attorney's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. An attorney may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such

cases, when the third-party claim is not frivolous under applicable law, the attorney must refuse to surrender the funds or property to the client until the claims are resolved. An attorney should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the attorney may file an action to have a court resolve the dispute.

~~[6]~~[5] The obligations of an attorney under this Rule are independent of those arising from activity other than rendering legal services. For example, an attorney who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the attorney does not render legal services in the transaction and is not governed by this Rule.

Model Rules Comparison: Rule 19-301.15 (1.15) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of ~~changes to Rule 19-301.15 (c) (1.15), the addition of Comment [3], and~~ the omission of ABA Comment [6].

REPORTER'S NOTE

In its Rules Order pertaining to the 211th Report of the Rules Committee, the Supreme Court repealed the common law "attorneys lien." In the wake of this change, the Rules Committee received a request to revise Rule 19-301.15 to bring it into closer alignment with American Bar Association Model Rules of Professional Conduct Rule 1.15 (Model Rule 1.15).

The Rules Committee proposes a revision to section (c) that replaces the provision establishing an exception to the general rule that an attorney may not withdraw fees from the attorney's escrow account until they are earned with a provision that merely contains the general rule. To conform to this revision, Comment [3] is proposed to be deleted and a new cross-reference to Rule 19-301.16 following Comment [3] is proposed.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.16 to conform to ABA Model Rule 1.16 by adding a provision to section (a) pertaining to an attorney's responsibilities prior to accepting representation, by adding new subsection (a)(4) specifying situations in which an attorney is required to decline or terminate representation of a client, by adding a provision to Comment [1] providing clarification and examples of when an attorney may be required to decline or terminate a representation, by adding a provision to Comment [2] providing additional details an attorney must consider when declining or terminating representation of a client, and by making a stylistic change to Comment [7], as follows:

Rule 19-301.16. DECLINING OR TERMINATING REPRESENTATION (1.16)

(a) An attorney shall inquire into and assess the facts and circumstances of each representation to determine whether the attorney may accept or continue the representation. Except as stated in section (c) of this Rule, an attorney shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Maryland Attorneys' Rules of Professional Conduct or other law;

(2) the attorney's physical or mental condition materially impairs the attorney's ability to represent the client; ~~or~~

(3) the attorney is discharged; or

(4) the client or prospective client seeks to use or persists in using the attorney's services to commit or further a crime or fraud, despite the attorney's discussion pursuant to Rules 19-301.2 (d) and 19-301.4 (a)(4) regarding the limitations on the attorney assisting with the proposed conduct.

(b) Except as stated in section (c) of this Rule, an attorney may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the attorney's services that the attorney reasonably believes is criminal or fraudulent;

(3) the client has used the attorney's services to perpetrate a crime or fraud;

(4) the client insists upon action or inaction that the attorney considers repugnant or with which the attorney has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the attorney regarding the attorney's services and has been given reasonable warning that the attorney will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the attorney or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) An attorney must comply with applicable law requiring notice to or permission of a tribunal when terminating representation. When ordered to do so by a tribunal, an attorney shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, an attorney shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of another attorney, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The attorney may retain papers relating to the client to the extent permitted by other law.

COMMENT

[1] Section (a) imposes an obligation on an attorney to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation imposed by section (a) continues throughout the representation. A change in the facts and circumstances relating to the representation may trigger an attorney's need to make further inquiry and assessment. For example, a client traditionally uses an attorney to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank. The same client then asks the attorney to create a multi-tier corporate structure, formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the attorney's trust account. Another example is when, during the course of a representation, a new party is named or a new entity becomes involved. An attorney should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 19-301.2 (c) (1.2) and 19-306.5 (6.5). See also Rule 19-301.3 (1.3), Comment [4].

Mandatory Withdrawal--[2] An attorney ordinarily must decline or withdraw from representation if the client demands that the attorney engage in conduct that is illegal or violates the Maryland Attorneys' Rules of Professional

Conduct or other law. The attorney is not obligated to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that an attorney will not be constrained by a professional obligation. Under paragraph (a)(4), the attorney's inquiry into and assessment of the facts and circumstances will be informed by the risk that the client or prospective client seeks to use or persists in using the attorney's services to commit or further a crime or fraud. This analysis means that the required level of an attorney's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation. Factors to be considered in determining the level of risk may include: (i) the identity of the client, such as whether the client is a natural person or an entity and, if an entity, the beneficial owners of that entity; (ii) the attorney's experience and familiarity with the client; (iii) the nature of the requested legal services; (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money laundering or terrorist financing); and (v) the identities of those depositing into or receiving funds from the attorney's client trust account, or any other accounts in which client funds are held.

[3] When an attorney has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 19-306.2 (6.2). Similarly, court approval or notice to the court is often required by applicable law before an attorney withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the attorney engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the attorney may be bound to keep confidential the facts that would constitute such an explanation. The attorney's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Attorneys should be mindful of their obligation to both clients and the court under Rules 19-301.6 (1.6) and 19-303.3 (3.3).

Discharge--[4] A client has a right to discharge an attorney at any time, with or without cause, subject to liability for payment for the attorney's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge an appointed attorney may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor attorney is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the attorney, and in any event the discharge may be

seriously adverse to the client's interests. The attorney should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 19-301.14 (1.14).

Optional Withdrawal--[7] An attorney may withdraw from representation in some circumstances. The attorney has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the attorney reasonably believes is criminal or fraudulent, for ~~a~~ an attorney is not required to be associated with such conduct even if the attorney does not further it. Withdrawal is also permitted if the attorney's services were misused in the past even if that would materially prejudice the client. The attorney may also withdraw where the client insists on taking action or inaction that the attorney considers repugnant or with which the attorney has a fundamental disagreement.

[8] An attorney may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal--[9] Even if the attorney has been unfairly discharged by the client, an attorney must take all reasonable steps to mitigate the consequences to the client. The attorney may retain papers as security for a fee only to the extent permitted by law, subject to the limitations in section (d) of this Rule. See Rule 19-301.15 (1.15).

Model Rules Comparison: Rule 19-301.16 (1.16) is substantially similar to the language of the ~~Ethics 2000 Amendments~~ amendments to the ABA Model Rules of Professional Conduct approved as Resolution 23A100 in August of 2023, with the exception of the addition of "or inaction" to Rule 19-301.16 (b)(4) (1.16) and Comment [7], the omission of the last sentence of Comment [2], and the addition of "subject to the limitations in section (d) of this Rule" to Comment [9].

REPORTER'S NOTE

The American Bar Association (the "ABA") passed resolution 23A100 (the "Resolution") modifying Model Rule of Professional Conduct 1.16 and its comments [1] and [2] in August of 2023. The Rules Committee recommends that Rule 19-301.16 be revised to incorporate the changes to ABA Model Rule

1.16 in the Resolution in section (a), new subsection (a)(4), and Comments [1] and [2] of this Rule. A stylistic change is also proposed in Comment [7].

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION REINSTATEMENT

AMEND Rule 19-752 by adding new subsection (i)(2) pertaining to petitions withdrawn by the petitioner prior to the due date of Bar Counsel's response and by making stylistic changes, as follows:

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

(a) Scope of Rule

This Rule applies to an attorney who has been disbarred, suspended indefinitely, suspended for a fixed period longer than six months, or transferred to disability inactive status or who has resigned from the practice of law.

(b) Reinstatement Not Automatic

An attorney subject to this Rule is not automatically reinstated upon expiration of the period of suspension. An attorney is not reinstated until the Supreme Court enters an Order of Reinstatement.

(c) Petition for Reinstatement

(1) Requirement

An attorney who seeks reinstatement under this Rule shall file a verified petition for reinstatement with the Clerk of the Supreme Court and serve a

copy on Bar Counsel. The attorney shall be the petitioner. Bar Counsel shall be the respondent.

(2) Timing Following Order of Suspension or Disbarment

(A) If the attorney was suspended for a fixed period, the petition may not be filed earlier than 30 days prior to the end of the period of suspension.

(B) If the attorney was suspended for an indefinite period or disbarred, the petition may not be filed earlier than ~~(i)~~ the time specified in the order of suspension or disbarment.

(3) Content

The petition shall be captioned "In the Matter of the Petition for Reinstatement of XXXXX to the Bar of Maryland" and state or be accompanied by the following:

(A) docket references to all prior disciplinary or remedial actions, including all actions pending as of the date of the attorney's disbarment or suspension, to which the attorney was a party;

(B) a copy of the order that disbarred or suspended the attorney, placed the attorney on inactive status, or accepted the resignation of the attorney and any opinion of the Court that accompanied the order;

(C) that the attorney has complied in all respects with the provisions of Rule 19-741 or, if applicable, Rule 19-743, and with any terms or conditions stated in the disciplinary or remedial order;

(D) that the attorney has paid all assessments and applicable late fees owed to the Client Protection Fund pursuant to Rule 19-605 and the Disciplinary

Fund pursuant to Rule 19-705 as of the effective date of the attorney's suspension, disbarment, transfer to disability inactive status, or resignation;

(E) a description of the conduct or circumstances leading to the order of disbarment, suspension, placement on inactive status, or acceptance of resignation;

(F) facts establishing the attorney's subsequent conduct and reformation, present character, present qualifications and competence to practice law, and ability to satisfy the criteria set forth in section (h) of this Rule; and

(G) a statement that, to the best of the attorney's knowledge, information, and belief, no complaints or disciplinary proceedings are currently pending against the attorney.

(d) Information for Bar Counsel

(1) Generally

Upon the filing of the petition, the attorney shall separately supply to Bar Counsel, in writing, the following information:

(A) the attorney's current address, e-mail address, if any, and telephone number;

(B) the information specified in subsection (c)(2) or (c)(3) of this Rule, as applicable;

(C) evidence establishing compliance with all applicable requirements set forth in section (h) of this Rule;

(D) a statement of whether the attorney has applied for reinstatement in any other jurisdiction and the current status of each such application; and

(E) any other information that the attorney believes is relevant to determining whether the attorney possesses the character and fitness necessary for reinstatement; and

(2) If Disbarred or Suspended

If the attorney has been disbarred or suspended, the information supplied to Bar Counsel shall include:

(A) the address of each residence of the attorney during the period of discipline, with inclusive dates of each residence;

(B) the name, address, e-mail address, if any, and telephone number of each employer, associate, and partner of the attorney during the period of discipline, together with (i) the inclusive dates of each employment, association, and partnership, (ii) the positions held, (iii) the names of all immediate supervisors, and (iv) if applicable, the reasons for termination of the employment, association, or partnership;

(C) the case caption, general nature, and disposition of each civil and criminal action pending during the period of discipline to which the attorney was a party or in which the attorney claimed an interest;

(D) a statement of monthly earnings and all other income during the period of discipline, including the source;

(E) copies of the attorney's state and federal income tax returns for the three years preceding the effective date of the order of disbarment or suspension and each year thereafter;

(F) a statement of the attorney's assets and financial obligations;

(G) the names and addresses of all creditors;

(H) a statement identifying all other business or occupational licenses or certificates applied for or held during the period of discipline and the current status of each application; and

(I) the name and address of each financial institution at which the attorney maintained or was signatory on any account, safe deposit box, deposit, or loan during the period of discipline and written authorization for Bar Counsel to obtain financial records pertaining to such accounts, safe deposit boxes, deposits, or loans.

(3) If Transferred to Disability Inactive Status

If the attorney was transferred to disability inactive status, the information supplied to Bar Counsel shall include:

(A) the name, address, and telephone number of each health care provider or addiction care provider and institution that examined or treated the attorney for incapacity during the period of inactive status; and

(B) a written waiver of any physician-patient privilege with respect to each psychiatrist, psychologist, or psychiatric-mental health nursing specialist named in subsection (d)(3)(A) of this Rule.

(e) Response to Petition

(1) Generally

Within 30 days after service of the petition, Bar Counsel shall file and serve on the attorney a response. Except as provided in subsection (d)(2) of this Rule, the response shall admit or deny the averments in the petition in

accordance with Rule 2-323 (c). The response may include Bar Counsel's recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement.

(2) Consent

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

(f) Disposition

(1) Consent by Bar Counsel

If, pursuant to subsection (e)(2) of this Rule, Bar Counsel has filed a consent to reinstatement, and if the attorney has complied with subsection (h)(2)(H) of this Rule, the Clerk shall proceed in accordance with Rule 19-751 (e)(1).

(2) Other Cases

In other cases, upon review of the petition and Bar Counsel's response, the Court may (A) without a hearing, dismiss the petition or grant the petition and enter an order of reinstatement with such conditions as the Court deems appropriate, or (B) order further proceedings in accordance with section (g) of this Rule.

(g) Further Proceedings

(1) Order Designating Judge

If the Court orders further proceedings pursuant to subsection (f)(2)(B) of this Rule, it shall enter an order designating a judge of any circuit court to hold a hearing.

(2) Discovery

The judge shall allow reasonable time for Bar Counsel to investigate the petition and, subject to Rule 19-726, to take depositions and complete discovery.

(3) Hearing

The applicable provisions of Rule 19-727 shall govern the hearing and the findings and conclusions of the judge, except that the attorney shall have the burden of proving the averments of the petition by clear and convincing evidence.

(4) Proceedings in Supreme Court

The applicable provisions of Rules 19-728 and 19-740 (a), (b), and (d) shall govern subsequent proceedings in the Supreme Court. The Court may (A) dismiss the petition, (B) order reinstatement, with such conditions as the Court deems appropriate, or (C) remand for further proceedings.

(h) Criteria for Reinstatement

(1) Generally

In determining whether to grant a petition for reinstatement, the Supreme Court shall consider the nature and circumstances of the attorney's conduct that led to the disciplinary or remedial order and the attorney's (A)

subsequent conduct, (B) current character, and (C) current qualifications and competence to practice law.

(2) Specific Criteria

The Court may order reinstatement if the attorney meets each of the following criteria or presents sufficient reasons why reinstatement should be ordered in the absence of satisfaction of one or more of those criteria:

(A) the attorney has complied in all respects with the provisions of Rule 19-741 or, if applicable, Rule 19-743 and with the terms and conditions of prior disciplinary or remedial orders;

(B) the attorney has not engaged in or attempted or offered to engage in the unauthorized practice of law during the period of disbarment, suspension, or inactive status;

(C) if the attorney was transferred to disability inactive status, the incapacity or infirmity, including alcohol or drug abuse, no longer exists and is not likely to recur in the future;

(D) if the attorney was disbarred or suspended, the petitioner recognizes the wrongfulness and seriousness of the professional misconduct for which discipline was imposed;

(E) the attorney has not engaged in any professional misconduct or, other than minor traffic or municipal infractions, any unlawful activity since the imposition of discipline;

(F) the attorney currently has the requisite honesty and integrity to practice law;

(G) the attorney has kept informed about recent developments in the law and is competent to practice law; and

(H) the attorney has complied with all financial obligations required by these Rules or by court order, including (i) payment of all outstanding assessments, including late fees, if any, owed to the Client Protection Fund pursuant to Rule 19-605 and the Disciplinary Fund pursuant to Rule 19-705 that accrued prior to the attorney's suspension, disbarment, transfer to disability inactive status, or resignation, (ii) reimbursement of all amounts due to the attorney's former clients, (iii) payment of restitution which, by court order, is due to the attorney's former clients or any other person, (iv) reimbursement of the Client Protection Fund for all claims that arose out of the attorney's practice of law and satisfaction of all judgments arising out of such claims, and (v) payment of all costs assessed by court order or otherwise required by law.

(i) Subsequent Petitions

(1) Limit on Petitions

Except upon order of the Supreme Court, an attorney may not file a petition for reinstatement sooner than one year after the Court denied a prior petition for reinstatement. Absent leave of Court or the consent of Bar Counsel, an attorney may not file more than three petitions for reinstatement.

(2) Withdrawn Petitions

A petition for reinstatement that is withdrawn by the petitioner no later than ten days prior to the time Bar Counsel's response is due does not count toward the limit set forth in subsection (i)(1) of this Rule.

(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;

(2) pass the Uniform Bar Examination;

(3) successfully complete the Maryland Law Component required for admission to the Maryland Bar;

(4) take the Multistate Professional Responsibility Examination and earn a score that meets or exceeds the passing score in Maryland established by the Board of Law Examiners;

(5) attend a bar review course approved by Bar Counsel and submit to Bar Counsel satisfactory evidence of attendance;

(6) submit to Bar Counsel evidence of successful completion of a professional ethics course at an accredited law school;

(7) engage an attorney satisfactory to Bar Counsel to monitor the attorney's legal practice for a period stated in the order of reinstatement;

(8) limit the nature or extent of the attorney's future practice of law in the manner set forth in the order of reinstatement;

(9) 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;

(10) 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;

(11) issue an apology to one or more persons; or

(12) take any other corrective action that the Court deems appropriate.

(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.

(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 Supreme Court 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 Supreme Court to practice law, the Clerk of the Supreme Court 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.

(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 demonstrate substantial compliance with the order, including any condition of reinstatement imposed under Rule 19-741 (e) 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 19-740, except section (c) of Rule 19-740, shall govern any subsequent proceedings in the Supreme Court. 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 Supreme Court, in a letter to the Chair of the Rules Committee dated December 20, 2023, asked the Committee to consider whether section (i) of Rule 19-752 should be amended to establish that a petition withdrawn by a petitioner before it is acted on by the Court should not count toward the limit of three petitions contained in this section.

In response to the Court's letter, stylistic changes are proposed in which section (i) is divided into two subsections. Subsection (i)(1) is comprised of existing section (i). Subsection (i)(2) is comprised of a new provision responsive to the Court's letter and indicates that a withdrawn petition in certain circumstances does not count toward the limit of three imposed in subsection (i)(1) provided that the withdrawal occurs no later than 10 days prior to the time Bar Counsel's response is due.

An additional stylistic change is proposed in subsection (h)(2)(A).

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-101 by deleting the provision from section (t) that differentiates between MDEC and non-MDEC counties, as follows:

Rule 1-101. APPLICABILITY

. . .

(t) Title 20

Title 20 applies to electronic filing and case management in the trial and appellate courts of this State as specified in Rule 20-102. ~~Where practicable, Rules 20-101 (e), 20-101 (g), 20-101 (u), and 20-107 may be applied to the signature of a justice, judge, judicial officer, judicial appointee, or court clerk in proceedings in a county that is not an MDEC County to the same extent they apply in an MDEC County, and Rules 20-403 through 20-406 may be applied in appeals and other proceedings in the Supreme Court and Appellate Court arising out of a court that is a non-MDEC court to the same extent they apply in matters arising out of a court in an MDEC County~~.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC

and non-MDEC counties. As a result, it is proposed that the second sentence of section (t) of Rule 1-101 be deleted as obsolete.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-105 by changing the term of art "MDEC action" to "action" throughout this Rule; by deleting, as obsolete, subsection (a)(2); by deleting, as obsolete, subsection (c)(1) pertaining to non-MDEC actions; by deleting the cross reference following section (c); and by making stylistic changes, as follows:

Rule 1-105. OFFICIAL RECORD OF MARYLAND RULES AND APPELLATE DECISIONS

(a) Applicability; Definitions

This Rule applies to decisions of the Supreme Court, the Appellate Court, or either of those Courts under their former names and to the Maryland Rules of Procedure. In this Rule, (1) "decision" means an opinion or order of the Supreme Court, the Appellate Court, or either of those Courts under their former names, ~~(2) "MDEC action" has the meaning stated in Rule 20-101,~~ and ~~(3)~~(2) the definitions in Code, State Government Article, § 10-1601 shall apply.

. . .

(c) Decisions

~~(1) In a Non-MDEC Action~~

~~The official record of a decision of the Supreme Court or the Appellate Court in a non-MDEC action is the paper slip opinion or order filed with the Clerk of that Court. The decision may be cited as provided in subsection (c)(3) of this Rule.~~

~~(2) In an MDEC Action~~

(1)~~(A)~~ In MDEC

The official record of a decision of the Supreme Court or the Appellate Court in an ~~MDEC~~ action shall be the electronic record of the decision filed in the MDEC system.

(2)~~(B)~~ Prior to MDEC

Notwithstanding the provisions of Rule 20-301, prior to July 1, 2018, the official record of a decision of the Supreme Court or the Appellate Court shall be the paper slip opinion or order filed with the Clerk of that Court. Regardless of whether the official record of a decision in an ~~MDEC~~ action is in electronic or paper form, the decision may be cited as provided in subsection (c)(3) of this Rule.

~~Cross reference: For the definition of "MDEC action," see Rule 20-101.~~

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC actions. As a result, it is proposed to revise Rule 1-105 to conform to the changes also proposed in Rule 20-102 (where the term "MDEC action" is deleted).

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-321 by deleting, as obsolete, the cross reference following section (b) of this Rule, as follows:

Rule 1-321. SERVICE OF PLEADINGS AND PAPERS OTHER THAN ORIGINAL PLEADINGS

. . .

(b) Service After Entry of Limited Appearance

Every document required to be served upon a party's attorney that is to be served after entry of a limited appearance also shall be served upon the party and, unless the attorney's appearance has been stricken pursuant to Rules 2-132 or 3-132, upon the limited appearance attorney.

~~Cross reference: See Rule 1-324 with respect to the sending of notices by a clerk when a limited appearance has been entered.~~

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC actions. An amendment is proposed to delete the cross reference following section (b) of Rule 1-321 to conform to the proposed revisions to Rule 1-324.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-324 by deleting, as obsolete, section (b) and the Committee note following section (b) and by making stylistic changes, 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 MDEC action as defined in Rule 20-101 (m), 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 forward to the client all such notifications, including any received after termination of the limited appearance.~~

~~Committee note: If an attorney has entered a limited appearance in an affected action, section (a) of this Rule requires the MDEC system or the clerk to send all court notifications to both the party and the party's limited representation attorney prior to termination of the limited appearance.~~

~~(c)~~(b) Inapplicability of Rule

This Rule does not apply to show cause orders and does not abrogate the requirement for notice of a summary judgment set forth in Rule 2-501(f).

Source: This Rule is in part derived from former Rule 1219 and is in part new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC actions. As a result, it is proposed to delete section (b) and the Committee note following section (b) of Rule 1-324 and re-letter the remaining section.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-541 by deleting the provisions in subsection (e)(1), in the Committee note following subsection (e)(1), in subsection (e)(5), and in the Committee note following subsection (e)(5) distinguishing between MDEC counties and non-MDEC counties, as follows:

Rule 2-541. MAGISTRATES

. . .

(e) Recommendations and Report

(1) Notification of Recommendations

The magistrate shall notify each party of the recommendations and contents of the proposed order, either (A) on the record at the conclusion of the hearing or (B) thereafter in writing filed with the clerk, who shall serve the recommendations and proposed order on each party as provided by Rule 20-205 ~~in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county~~. The clerk shall make a docket entry notation of the date and method of the notification.

Committee note: Rule 20-205 (c) requires that the clerk ~~in a MDEC county~~ serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

(2) Notice of Intent to File Exceptions

Within five days from notice of the recommendations pursuant to subsection (e)(1) of this Rule, a party intending to file exceptions shall file a notice of intent to do so with the clerk. The clerk promptly shall notify the magistrate of the filing and make a docket entry of the date and method of the notification. The failure to file a timely notice of intent to file exceptions is a waiver of the right to file exceptions.

(3) Filing of Report

Only the recommendations in the form of a proposed order or judgment need be filed unless the court has directed the magistrate to file a report or if a notice of intent to file exceptions is filed. If the court directed that a report be filed, the magistrate shall file a written report with the recommendations. If a notice of intent to file exceptions is filed, the report shall be filed within 30 days after the notice of intent to file exceptions is filed or within such other time as the court directs.

(4) Contents of Report

Unless otherwise ordered, the report shall include findings of fact and conclusions of law and recommendations in the form of a proposed order or judgment, and shall be accompanied by the original exhibits. A transcript of the proceedings before the magistrate need not be prepared prior to the report unless the magistrate directs, but, if prepared, shall be filed with the report.

(5) Service of Report

Unless service has been made in open court pursuant to subsection (e)(1) of this Rule, the clerk shall serve a copy of any written report, together with the

recommendations in the form of a proposed order or judgment, on each party as provided by Rule 20-205 ~~in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county~~.

Committee note: Rule 20-205 (c) requires that the clerk ~~in a MDEC county~~ serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete references to MDEC counties in subsections (e)(1) and (e)(5) and in the Committee notes following these two subsections of Rule 2-541.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-265 by adding a provision to subsection (b)(4) concerning the use of subpoenas obtained through the AIS portal, as follows:

Rule 4-265. SUBPOENA FOR HEARING OR TRIAL

. . .

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manner:

. . .

(4) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC or through the AIS portal, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 4-265 clarifies in subsection (b)(4) that an attorney of record may use the subpoena tool contained in the AIS portal in the same manner as a subpoena obtained from a clerk through MDEC. This revision is intended to conform the Rule to the current practice whereby many

attorneys make use of the subpoena tool contained in the AIS portal to obtain blank subpoenas which are then filled out by the attorney and served on the appropriate party.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-103 by deleting the provision of section (e) referring to non-MDEC counties, as follows:

Rule 7-103. METHOD OF SECURING APPELLATE REVIEW

. . .

(e) Transmittal of Record

After all required fees have been paid, the clerk shall transmit the record as provided in Rules 7-108 and 7-109. The clerk shall enter on the docket a statement of the fees paid~~, and, in a non-MDEC county, forward the filing fee with the record to the clerk of the circuit court~~.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to non-MDEC counties in section (e) of Rule 7-103.

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 by deleting the provision of section (d) referring to an "MDEC county," 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 may file electronically ~~if the court to which the record is transmitted is the circuit court for an "MDEC county" as defined in Rule 20-101 (n)~~.

Cross reference: See Code, Labor and Employment Article, § 9-739.

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to an MDEC county in section (d) of Rule 7-206.1.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE SUPREME COURT AND APPELLATE COURT

CHAPTER 200 – OBTAINING REVIEW IN THE APPELLATE COURT

AMEND Rule 8-201 by deleting the provision of section (c) referring to circuit courts in non-MDEC counties, as follows:

Rule 8-201. METHOD OF SECURING REVIEW-- THE APPELLATE COURT

. . .

(c) Transmittal of Record

After all required fees have been deposited, the clerk shall transmit the record as provided in Rules 8-412 and 8-413. The clerk shall enter on the docket a statement of the fees paid, and, if the lower court is ~~a circuit court in a non-MDEC county or~~ an orphans' court, forward the filing fee with the record to the Clerk of the Appellate Court.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to circuit courts in non-MDEC counties in section (c) of Rule 8-201.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE SUPREME COURT AND APPELLATE COURT

CHAPTER 600 – DISPOSITION

AMEND Rule 8-606 by deleting the term "non-MDEC court" in subsection (d)(1) and adding a provision pertaining to orphans' courts, and by adding a Committee note following subsection (d)(1), as follows:

Rule 8-606. MANDATE

. . .

(d) Transmission--Mandate and Record

(1) Generally

Except as provided in subsection (d)(2) of this Rule, upon issuance of the mandate, the Clerk shall transmit it to the appropriate lower court. Unless the appellate court orders otherwise, the original papers comprising the record shall be transmitted with the mandate. If the proceeding emanated from ~~a non-MDEC court~~ an orphans' court, the mandate shall be transmitted to the lower court in paper form.

Committee note: In Harford County, Howard County, and Montgomery County, direct appeal to the Appellate Court is the only method of appellate review of a judgment of an orphans' court. See Code, Courts Article, § 12-502. In all other jurisdictions, the appellant has the option of a direct appeal to the Appellate Court or an appeal to the circuit court for the county.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC courts. As a result, it is proposed to delete the obsolete reference to a non-MDEC court in subsection (d)(1) of Rule 8-606 and replace it with a reference to an orphans' court. Orphans' courts remain the last potential source for appellate matters in the State that do not originate in MDEC. A Committee note is proposed following subsection (d)(1) to spotlight the avenues of appeal available for review of a judgment of an orphans' courts.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205.3 by deleting the provision in the Committee note following subsection (i)(4) pertaining to non-MDEC circuit courts, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

. . .

(i) Report of Assessor

. . .

(4) Report of Mental Health Evaluation

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

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

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC courts. As a result, it is proposed to delete the obsolete reference to non-MDEC courts in the Committee note following subsection (i)(4) of 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 9-208 by deleting the provision in subsection (e)(1) and in the Committee note following subsection (e)(1) pertaining to MDEC counties, as follows:

Rule 9-208. REFERRAL OF MATTERS TO STANDING MAGISTRATES

. . .

(e) Findings and Recommendations

(1) Generally

Except as otherwise provided in section (d) of this Rule, the magistrate shall prepare written recommendations, which shall include a brief statement of the magistrate's findings and shall be accompanied by a proposed order. The magistrate shall provide notice of the recommendations and contents of the proposed order to each party, either (A) on the record at the conclusion of the hearing or (B) within ten days after the conclusion of the hearing in a matter referred pursuant to subsection (a)(1) of this Rule or within 30 days after the conclusion of the hearing in a matter referred pursuant to subsection (a)(2) of this Rule, by filing the written recommendations and proposed order with the clerk, who promptly shall serve the recommendations and proposed order on each party as provided by Rule 20-205 ~~in MDEC counties or Rule 1-~~

~~321 in Baltimore City until it becomes an MDEC county~~. If the parties were notified by the magistrate on the record, the magistrate shall file the written recommendations and proposed order with the clerk promptly after the hearing. The clerk shall make a docket entry notation of the date and method of notification.

Committee note: Rule 20-205 (c) requires that the clerk ~~in a MDEC county~~ serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to MDEC counties in subsection (e)(1) and in the Committee note following subsection (e)(1) of Rule 9-208.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 11-103 by deleting the provision in subsection (c)(3) pertaining to MDEC and non-MDEC counties, as follows:

Rule 11-103. MAGISTRATES

. . .

(c) Report and Recommendations

(1) Contents of Reports

The magistrate's report shall be a written report that includes proposed findings of fact, conclusions of law, and recommendations, and be accompanied by a proposed order.

(2) When Filed

Within 10 days after completing a disposition hearing or a post-disposition proceeding that requires a court order, the magistrate shall transmit to a judge assigned to the court the entire file in the case, together with the magistrate's report.

(3) Service

A copy of the report and proposed order shall be served on each party as provided by Rule 20-205 ~~in MDEC counties or Rule 1-321 in non-MDEC counties~~.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to MDEC and non-MDEC counties in subsection (c)(3) of Rule 11-103.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 11-107 by deleting the provision in section (b) pertaining to MDEC and non-MDEC counties, as follows:

Rule 11-107. SERVICE OF PAPERS

. . .

(b) Other Papers

Except as otherwise provided by law, all other papers filed with the court, other than a petition or citation, shall be served in the manner provided by Rule 20-205 ~~in MDEC counties or Rule 1-321 in non-MDEC counties~~.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to MDEC and non-MDEC counties in section (b) of Rule 11-107.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 400 – CIRCUIT COURTS – CLERKS' OFFICES

AMEND Rule 16-402 by deleting the provision in section (b) pertaining to pre-MDEC data processing systems in certain counties and by adding a provision to section (b) prohibiting the use of any non-MDEC case management system, as follows:

Rule 16-402. OPERATIONS

. . .

(b) General Operations

The State Court Administrator shall develop policies, procedures, and standards for all judicial and non-judicial operations of the clerks' offices, including case processing, records management, forms control, accounting, budgeting, inventory, and data processing. ~~The data processing systems in Baltimore City, Prince George's County, and Montgomery County in effect on July 1, 2016 shall not be replaced,~~ No case management system other than ~~by~~ MDEC~~,~~ may be used in the State except by order of the Chief Justice of the Supreme Court.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. Now that the only data processing system used statewide is MDEC, it is proposed to delete the obsolete reference to pre-MDEC data processing systems in Baltimore City, Prince George's County, and Montgomery County in section (b) of Rule 16-402 and to add a provision to clarify that no other case management system may be used without the approval of the Chief Justice of the Supreme Court

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 400 – CIRCUIT COURTS – CLERKS' OFFICES

AMEND Rule 16-406 by deleting obsolete provisions that pertain to sending email from non-MDEC counties, as follows:

Rule 16-406. NOTICE TO THE APPELLATE COURT

Upon the filing of (1) a notice of appeal or application for leave to appeal to the Appellate Court, (2) a timely motion pursuant to Rule 2-532, 2-533, or 2-534 if filed after the filing of a notice of appeal, or (3) an order striking a notice of appeal pursuant to Rule 8-203, the clerk of the circuit court immediately shall send ~~via email, or~~ via the MDEC system ~~if from an MDEC County,~~ a copy of the paper filed to the Clerk of the Appellate Court. If a notice of appeal is accompanied by a Civil Appeal Information Report required by Rule 8-205, the Information Report shall be transmitted in the same manner as the notice of appeal.

Source: This Rule is derived from former Rule 16-309 (2016).

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As a result, it is proposed to delete the obsolete reference to a clerk sending an email notice in non-MDEC counties in Rule 16-406.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

AMEND Rule 16-901 by replacing the words "MDEC Actions" with "an Action" in the cross reference following section (b), as follows:

Rule 16-901. SCOPE OF CHAPTER

. . .

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

The Rules in this Chapter do not limit access to (1) judicial records by authorized judicial officials or employees in the performance of their official duties or to government agencies or officials to whom access is permitted by law, or (2) a case record by a party or attorney of record in the action.

Cross reference: For other Rules that affect access to judicial records, see Rule 16-502 (In District Court), Rule 16-504 (Electronic Recording of Circuit Court Proceedings), Rule 16-504.1 (Access to Electronic Recording of Circuit Court Proceedings), and Rule 20-109 (Access to Electronic Records in ~~MDEC Actions~~ an Action).

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC actions. A conforming amendment is proposed to delete the obsolete reference to "MDEC Actions" from the cross reference following section

(b) of Rule 16-901 and update the title of Rule 20-109 to its revised title, Access to Electronic Records in an Action.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.2 by deleting, as obsolete, the provisions in section (c) and Comment [8] pertaining to Rule 1-324, as follows:

Rule 19-301.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND ATTORNEY (1.2)

. . .

(c) An attorney may limit the scope of the representation in accordance with applicable Maryland Rules if (1) the limitation is reasonable under the circumstances, (2) the client gives informed consent, and (3) the scope and limitations of any representation, beyond an initial consultation or brief advice provided without a fee, are clearly set forth in a writing~~, including any duty on the part of the attorney under Rule 1-324 to forward notices to the client~~.

. . .

COMMENT

. . .

[8] An attorney and a client may agree that the scope of the representation is to be limited to clearly defined specific tasks or objectives, including: (1) without entering an appearance, filing papers, or otherwise participating on the client's behalf in any judicial or administrative proceeding, (i) giving legal advice to the client regarding the client's rights, responsibilities, or obligations with respect to particular matters, (ii) conducting factual investigations for the client, (iii) representing the client in settlement negotiations or in private alternative dispute resolution proceedings, (iv)

evaluating and advising the client with regard to settlement options or proposed agreements, or (v) drafting documents, performing legal research, and providing advice that the client or another attorney appearing for the client may use in a judicial or administrative proceeding; or (2) in accordance with applicable Maryland Rules, representing the client in discrete judicial or administrative proceedings, such as a court-ordered alternative dispute resolution proceeding, a pendente lite proceeding, or proceedings on a temporary restraining order, a particular motion, or a specific issue in a multi-issue action or proceeding. Before entering into such an agreement, the attorney shall fully and fairly inform the client of the extent and limits of the attorney's obligations under the agreement~~, including any duty on the part of the attorney under Rule 1-324 to forward notices to the client~~.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC actions. An amendment is proposed to delete the provision pertaining to Rule 1-324 from section (c) and Comment [8] of Rule 19-301.2 to conform to the proposed revisions to Rule 1-324.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-102 by deleting each reference to an MDEC county, by deleting the phrases "in a pending or reopened action in that court" and "in a pending or reopened action in the District Court" from subsection (a)(2), by deleting the Committee note following section (c), and by making stylistic changes, as follows:

Rule 20-102. APPLICATION OF TITLE

(a) Trial Courts

(1) New Actions and Submissions

On and after the MDEC start date in a county, this Title applies to (A) new actions filed in ~~a~~ the trial court for ~~an MDEC~~ that 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 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.

(2) Existing Documents~~; Pending and Reopened Cases~~

With the approval of the State Court Administrator, (A) the County Administrative Judge of ~~the~~ a circuit court ~~for an MDEC county~~, by order, may direct that all or some of the documents that were filed prior to the 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 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

(1) Appellate Proceedings

(A) Generally

Except as provided in subsection (b)(1)(B) of this Rule, this Title applies to all appellate proceedings in the Appellate Court and Supreme Court seeking the review of a judgment or order entered in any action.

(B) Exception

For appeals from an action to which section (a) of this Rule does not apply, the clerk of the lower court shall transmit the record in accordance with Rules 8-412 and 8-413, and, upon completion of the appellate proceeding, the clerk of the appellate court shall transmit the mandate and return the record to the lower court in accordance with Rule 8-606 (d)(1).

(2) Other Proceedings

This Title also applies to (A) a question certified to the Supreme Court pursuant to the Maryland Uniform Certification of Questions of Law Act, Code,

Courts Article, §§ 12-601-12-613; and (B) an original action in the Supreme Court allowed by law.

Committee note: After the Supreme Court has received and docketed a certification order pursuant to Rule 8-304 or Rule 8-305, parties who are registered users must file any subsequent papers electronically.

(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.

~~Committee note: The intent of the 2020 amendments to this Rule is to expand MDEC to appeals and certain other proceedings in the Appellate Court and Supreme Court that emanate from non-MDEC subdivisions. That requires certain clarifications. First, unless they are registered users under Rule 20-104, self-represented litigants and other persons subject to Rule 20-106 (a)(4) may not file electronically. See Rule 20-106. They will continue to file their submissions to the appellate court in paper form, unless otherwise permitted by the Court. Second, unless otherwise permitted by the appellate court, trial courts in non-MDEC subdivisions shall continue to transmit the record in accordance with Rules 8-412 and 8-413 and not Rule 20-402.~~

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. An amendment is proposed to delete each obsolete reference to "MDEC County" Rule 20-102.

Subsection (a)(1) is proposed to be amended to remove the reference to an MDEC county. Several stylistic changes shift the focus of subsection (a)(1) from the concept of MDEC counties to individual courts in counties after the MDEC start date.

Subsection (a)(2) is proposed to be amended to remove the limiting phrases "in a pending or reopened action in that court" and "in a pending or

reopened action in the District Court." When MDEC originally was implemented, these phrases were considered necessary so that the focus of the various clerks' offices around the state was to convert only active cases into MDEC after a "go live" date rather than back-scanning older non-active files. Now that MDEC has been implemented state-wide, this limiting language is no longer necessary. The tagline of the subsection is updated accordingly.

The obsolete Committee note following section (c) is also proposed to be deleted.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-104 by changing the term of art "MDEC action" to "action" throughout this Rule, 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.

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

(c) 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 username and a password, which together shall enable the registered user to file submissions electronically in an ~~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 change the assigned username and password in conformance with the policies and procedures published by the State Court Administrator.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete references to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform Rule 20-104 to the amendments of Rule 20-101, it is proposed to delete each obsolete reference to "MDEC" from the term "MDEC action."

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109 by deleting the word "MDEC" from each instance of "MDEC Action" in sections (a) and (b), subsection (f)(2), the Committee note following subsection (g)(2), and section (h); by moving the phrases "to all case records in that action" and "to case records" in section (b); by adding the phrase "to electronic case records" in section (b); by deleting the provision concerning MDEC jurisdictions in subsection (j)(2); by correcting a reference to a Title 16 Rule in subsection (g)(2); and by making stylistic changes, as follows:

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

(a) Generally

Except as otherwise provided in this Rule, access to electronic judicial records in an ~~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 for a party in an ~~MDEC~~ action shall have full access to all case records in that action, including remote access to electronic case records~~, to all case records in that action~~. An attorney for a victim or victim's

representative shall have access to case records, including remote access to electronic case records, ~~to case records~~ as provided in Rule 1-326 (d).

(c) Judges and Judicial Appointees

Judges and judicial appointees shall have full access, including remote access, to judicial records to the extent that such access is necessary to the performance of their official duties. The Chief Justice of the Supreme Court, 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 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) Judiciary Contractors

The State Court Administrator, by written directive, may allow appropriate access for Judiciary contractors from their respective work stations to judicial records to the extent that such access is necessary to the performance of their official duties. Before access under this section is granted to a contractor, the contractor shall sign a non-disclosure agreement on a form approved by the Chief Justice of the Supreme Court.

(f) Court-Designated ADR Practitioners

(1) Definition

In this section, "ADR practitioner" means an individual who conducts ADR under the Rules in Title 17, and includes a mediator designated pursuant to Rule 9-205.

(2) Access to Case Records

During the period of designation of a court-designated ADR practitioner in an ~~MDEC~~ action, and subject to any protective order issued by the court or other law, the ADR practitioner shall have full access, including remote access, to all case records in that action. In an action in the circuit court, the ADR practitioner shall file a notice of the designation with the clerk and, promptly upon completion of all services rendered pursuant to the designation, a notice that the designation is terminated. If not terminated earlier, the designation shall end when the case is closed.

Committee note: The special access provided by section (f) of this Rule may be needed to assist the ADR practitioner in rendering the services anticipated by the designation but should end when no further services are anticipated.

(g) Public Access

(1) Access Through CaseSearch

Members of the public shall have free access to information posted on CaseSearch.

(2) Unshielded Documents

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 courts make available for that purpose. Each 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 ~~Rule 16-904 (c)~~ Rule 16-905 (c) and (d).

Committee note: The intent of subsection (g)(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.

(h) 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 ~~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.

(i) Government Agencies and Officials

Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional information contained in case records to government agencies and officials (1) who are approved for such access by the Chief Justice of the Supreme Court, 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 Justice.

(j) CASA Program

(1) Definition

In this section, "CASA program" means a Court-Appointed Special Advocate Program created pursuant to Code, Courts Article, § 3-830.

Committee note: CASA programs provide trained volunteers (1) to provide background information to the Juvenile Courts to aid them in making decisions in the child's best interest, and (2) to ensure that children who are the subject of proceedings within the jurisdiction of the court are provided appropriate case planning and services. See Code, Courts Article, §§ 3-830 and 3-8A-32. CASA programs are county-based. They are created in a county with the support of the Juvenile Court for that county. The overall CASA program is administered by the Administrative Office of the Courts, which may adopt rules governing the operation of the program, including supervision of the volunteers.

More than a dozen CASA programs have been created throughout the State, some of which serve the Juvenile Courts in more than one county. Upon an appointment to assist a child in a particular case, the director of the program assigns a volunteer attached to that program to provide that assistance. The confidentiality that applies to court records in juvenile cases does not prohibit review of a court record by a "Court-Appointed Special Advocate for the child" in a proceeding involving that child. See Code, Courts Article, §§ 3-827(a)(2) and 3-8A-27(b)(2). The purpose of this section is to clarify how that access and ability to file reports may be accomplished through MDEC.

(2) Registered Users; Reports

Each CASA program shall inform the clerk of the circuit court for each county within its authorized service area in writing of the name of and contact information for not more than two staff persons who are registered users authorized by the program to have remote access and to file reports through MDEC on behalf of the program. Except as otherwise ordered by the court, only those registered users may file reports and have remote access to court records on behalf of the program. CASA program registered users must file

reports through MDEC ~~if the program's service area is located in an MDEC jurisdiction~~.

(3) Limitations; Access

The ability to file reports and have remote access to court records shall be limited to cases in which the CASA program or a volunteer on behalf of the program has been appointed by the court to provide service and is allowed only for the period during which service is being provided in that case pursuant to the order of appointment. Unless otherwise ordered by the court, access shall include notices of hearings and all other records not under seal.

(4) Control of Records

The registered user with remote access (A) shall keep exclusive control over the records obtained and (B) may not permit such records to be shared with or copied for anyone other than (i) an authorized volunteer designated by the CASA program to provide service to the child pursuant to the order of appointment and (ii) CASA program staff authorized to supervise the volunteer. Any order expunging the court records in a case in which the CASA program participated shall include the expungement of records in that case obtained and maintained by the program.

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC

and non-MDEC counties. As part of the process of removing obsolete references to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform Rule 20-109 to the amendments of Rule 20-101, it is proposed to delete each obsolete reference to "MDEC" from the term "MDEC action," and to delete the now obsolete reference concerning "an MDEC jurisdiction" in section (j)(2).

A proposed amendment to section (a) clarifies that the Rule applies to "electronic judicial records in an action."

Revisions are also proposed to section (b) to clarify that parties and attorneys of record are intended to have access to all case records in their action, to include remote access to electronic case records to the extent that they exist.

Proposed amendments to subsection (g)(2) update an internal reference to the Title 16, Chapter 900 Rule governing copies.

Stylistic changes are also proposed to the title of this Rule and in the Committee note following section (f).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-201 by deleting the word "MDEC" from each instance of "MDEC Action" in sections (b) and (e), by deleting the provision concerning "MDEC counties" in the Committee note following subsection (l)(2), and by adding the phrase "in MDEC" to the Committee note following subsection (l)(2), as follows:

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

(a) Scope

Subject to section (l) of this Rule, sections (b), (c), and (e) of this Rule apply to all filers. Sections (d), (f), (g), (h), (j), (k), and (l) 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 ~~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.

(f) Service Contact Information

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. If the submission is the registered user's initial submission in an action, or if a change in the e-mail address is made, the filer also shall provide service contact information by using the “Actions” drop-down box that is part of the MDEC submission process.

Committee note: If the “Actions” drop-down box is not used to provide service contact information when an initial submission is filed in an action, the default e-mail address for subsequent notifications and service of other parties' submission in the action will be the e-mail address that the filer used when transmitting the initial submission in the action.

(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.

(h) Restricted Information

Except as provided in Rule 20-201.1, a submission filed by a filer shall not contain any restricted information.

(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. If all or part of a submission is to be sealed or shielded pursuant to Rule 20-201.1, the electronic file name shall so indicate.

(j) 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 (j) 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 (j) [formerly lettered (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.

(k) Fee

(1) Generally

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.

(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.

(l) 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 (l)(1)(A), as well as subsections (l)(1)(B) and (l)(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 Justice of the Supreme Court, the State Court Administrator may adopt policies and procedures permitting District Court Commissioners to file electronically with a circuit 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. The policies and procedures 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 (l)(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 in MDEC. That delegated authority is a ministerial one, to act on behalf of and for the convenience of the judge or judicial appointee and not an authority covered by subsection (l)(2).

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete references to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted and the definition of "Action" being revised to cover all actions including actions filed in MDEC.

To conform Rule 20-201 to the amendments of Rule 20-101, it is proposed to delete each obsolete reference to "MDEC" from the term "MDEC action," and to replace the now obsolete reference concerning "MDEC counties" from the Committee note following subsection (l)(2) with new language clarifying that the delegation referred to in the note is in MDEC.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-204 by changing the term of art "MDEC action" to "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 ~~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 the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete references to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform Rule 20-204 to the amendments of Rule 20-101, it is proposed to delete the obsolete reference to "MDEC" from the term "MDEC action."

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-205 by changing the term of art "MDEC action" to "action" in section (c), as follows:

Rule 20-205. SERVICE

(a) Original Process

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

(b) Subpoenas

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

(c) Court Orders and Communications

The clerk is responsible for serving writs, notices, official communications, court orders, and other dispositions, in the manner set forth in Rule 1-321, on persons 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 ~~MDEC~~ action, and (C) are persons entitled to receive service of copies of tangible items that are in paper form.

(d) Other Electronically Filed Submissions

(1) On the effective date of filing, the MDEC system shall electronically serve on registered users entitled to service all other submissions filed electronically.

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

(2) The filer is responsible for serving, in the manner set forth in Rule 1-321, persons 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 action, or (C) are persons entitled to receive service of copies of tangible items that are in paper form.

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

Source: This Rule is new.

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete references to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform Rule 20-205 to the amendments of Rule 20-101, it is proposed to delete the obsolete reference to "MDEC" from the term "MDEC action" in section (c).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 – APPELLATE REVIEW

AMEND Rule 20-405 by changing the term of art "MDEC action" to "action" in section (b), as follows:

Rule 20-405. OTHER SUBMISSIONS

(a) Applicability

This Rule applies to a document filed in an appellate court that is not a brief, record extract, or appendix.

(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 ~~MDEC~~ action shall be filed electronically.

. . .

REPORTER'S NOTE

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete references to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform Rule 20-405 to the amendments of Rule 20-101, it is proposed to delete the obsolete reference to "MDEC" from the term "MDEC action" in section (b).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 500 – MISCELLANEOUS RULES

AMEND Rule 20-501 by changing the term of art "MDEC action" to "action" in the Committee note following subsection (b)(2), as follows:

Rule 20-501. MDEC SYSTEM OUTAGE

(a) Posting of Notices

(1) Outage Onset Notice

In the event of an MDEC system outage, the State Court Administrator, as expeditiously as possible, shall notify each registered user by posting an MDEC outage notice on the Judiciary website or by other electronic means. The notice shall state the date and time of the onset of the outage.

(2) Outage Termination Notice

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 on the Judiciary website or by other electronic means. The outage termination notice shall state the date and time of the termination of the outage.

(b) Effect of Notice

(1) Electronic Submissions--Expiring Time Extended

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 an outage termination notice is posted.

(2) Paper Submissions—Accepted

If, 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.

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

In the wake of the MDEC roll-out in Baltimore City, the final MDEC county, there is no longer a need to differentiate in the Rules between MDEC and non-MDEC counties. As part of the process of removing obsolete references to this concept in the Rules, proposed revisions to Rule 20-101 result in the definition of "MDEC Action" being deleted.

To conform Rule 20-501 to the amendments of Rule 20-101, it is proposed to delete the obsolete reference to "MDEC" from the term "MDEC action" in the Committee note following subsection (b)(2).

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-301 by altering certain provisions in section (c) pertaining to margins, as follows:

Rule 1-301. FORM OF COURT PAPERS

. . .

(c) Size of Papers – Backers Prohibited

Except as otherwise provided, any paper filed shall be 8 ½ inches wide and 11 inches in length, shall have a ~~top margin and left hand margin of not less than 1 ½ inches~~ margin of not less than one inch at the top and bottom and on each side, and shall be without a back or cover.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 1-301 update the margin requirements for papers filed with the court. A practitioner contacted the Rules Committee regarding this provision in 2023 and pointed out that, with MDEC, bound paper files are no longer utilized, negating the need for extra space in the top and left margins. The Committee recommends updating this provision to require a margin of at least one inch on all sides of a paper.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 400 – RELEVANCY AND ITS LIMITS

AMEND Rule 5-404 by making stylistic changes, as follows:

Rule 5-404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

(a) Character Evidence

(1) Prohibited Uses

Subject to subsections (a)(2) and (3) of this Rule, evidence of a person's character or character trait is not admissible to prove that the person acted in accordance with the character or trait on a particular occasion.

(2) Criminal and Delinquency Cases

Subsection (a)(2) of this Rule applies in a criminal case and in a delinquency case. For purposes of subsection (a)(2), "accused" means a defendant in a criminal case and an individual alleged to be delinquent in an action in juvenile court, and "crime" includes a delinquent act as defined ~~by~~ in Code, Courts Article, § 3-8A-01.

(A) Character of Accused

An accused may offer evidence of the accused's pertinent trait of character. If the evidence is admitted, the prosecution may offer evidence to rebut it.

(B) Character of Victim

Subject to the limitations in Rule 5-412, an accused may offer evidence of an alleged crime victim's pertinent trait of character. If the evidence is admitted, the prosecutor may offer evidence to rebut it.

(C) Homicide Case

In a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) Character of Witness

Evidence of the character of a witness with regard to credibility may be admitted under Rules 5-607, 5-608, and 5-609.

(b) Other Crimes, Wrongs, or Acts

Evidence of other crimes, wrongs, or ~~other~~ acts, including delinquent acts as defined ~~by~~ in Code, Courts Article § 3-8A-01, is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

Source: This Rule is derived from F.R.Ev. 404.

REPORTER'S NOTE

Proposed amendments to Rule 5-404 make stylistic corrections to the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-208 by adding to subsection (b)(3)(A) a reference to matters scheduled to be heard on a court docket that day, as follows:

Rule 16-208. CELL PHONES; OTHER ELECTRONIC DEVICES; CAMERAS

. . .

(b) Possession and Use of Electronic Devices

(1) Generally

Subject to inspection by court security personnel and the restrictions and prohibitions set forth in section (b) of this Rule, a person may (A) bring an electronic device into a court facility and (B) use the electronic device for the purpose of sending and receiving phone calls and electronic messages and for any other lawful purpose not otherwise prohibited.

(2) Restrictions and Prohibitions

(A) Rule 5-615 Order

An electronic device may not be used to facilitate or achieve a violation of an order entered pursuant to Rule 5-615 (d).

(B) Photographs and Video

Except as permitted in accordance with this Rule, Rules 16-502, 16-503, 16-504, or 16-603, or as expressly permitted by the Local Administrative Judge, a person may not (i) take or record a photograph, video, or other visual

image in a court facility, or (ii) transmit a photograph, video, or other visual image from or within a court facility.

Committee note: The prohibition set forth in subsection (b)(2)(B) of this Rule includes still photography and moving visual images. It is anticipated that permission will be granted for the taking of photographs at ceremonial functions.

(C) Interference with Court Proceedings or Work

An electronic device shall not be used in a manner that interferes with court proceedings or the work of court personnel.

Committee note: An example of a use prohibited by subsection (b)(2)(C) of this Rule is a loud conversation on a cell phone near a court employee's work station or in a hallway near the door to a courtroom.

(D) Jury Deliberation Room

An electronic device may not be brought into a jury deliberation room after deliberations have begun.

(E) Courtroom

Except with the express permission of the presiding judge or as otherwise permitted by this Rule, Rules 16-502, 16-503, 16-504, or 16-603, all electronic devices inside a courtroom shall remain off and no electronic device may be used to receive, transmit, or record sound, visual images, data, or other information.

(F) Security or Privacy Issues in a Particular Case

Upon a finding that the circumstances of a particular case raise special security or privacy issues that justify a restriction on the possession or use of electronic devices, the Local Administrative Judge or the presiding judge may enter an order limiting or prohibiting the possession of electronic devices in a

courtroom or other designated areas of the court facility. The order shall provide for notice of the designated areas and for the collection of the devices and their return when the individual who possessed the device leaves the courtroom or other area. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(3) Reasonable and Lawful Use by Attorneys

(A) Generally

Subject to subsection (b)(2)(F) of this Rule, the attorneys in a proceeding currently being heard or scheduled to be heard on a court docket that day, their employees, and their agents are permitted the reasonable and lawful use of an electronic device in connection with the proceeding provided that:

(i) the electronic device makes no audible sound;

(ii) the electronic device is positioned so the screen is unseen by the trier of fact or any witness;

(iii) the electronic device is not used to record any part of the proceeding; and

(iv) the electronic device is not used to communicate with any other person during the proceeding without the express permission of the court.

(B) Denial of Use

A court may not deny reasonable and lawful use of an electronic device in a courtroom by an attorney, except upon a finding of good cause made on the record.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 16-208 clarify and expand upon a provision added to the Rule in 2022 which allowed attorneys in a proceeding and their employees or agents to make "reasonable and lawful use of an electronic device" in the courtroom, with certain caveats, at the trial table.

A practitioner informed the Rules Committee that attorneys frequently need to make use of a laptop or other electronic device in the courtroom while waiting for a case to be called. Since the Rule change, the Committee was informed that some judges view the Rule as permitting this use while others do not.

There are a number of reasons that an attorney may find it necessary or desirable to use a device prior to arrival at the trial table, including reviewing a client's file or preparing for a hearing in another courtroom. Prior to widespread electronic case filing and case management, this would have involved carrying paper files. The Committee recommends an amendment to subsection (b)(3)(A) to state that reasonable and lawful use of electronic devices is permitted by attorneys in proceedings currently being heard or scheduled to be heard that day.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 700 – MISCELLANEOUS JUDICIAL UNITS

AMEND Rule 16-701 by adding the State Court Administrator to the membership of the Committee in section (b), as follows:

Rule 16-701. RULES COMMITTEE

. . .

(b) Membership

The Committee shall consist of one incumbent judge of the Appellate Court, three incumbent circuit court judges, three incumbent judges of the District Court, one member of the State Senate, one member of the House of Delegates, one clerk of a circuit court, the State Court Administrator, and such other individuals determined by the Supreme Court. All members shall be appointed by the Supreme Court.

. . .

(d) Terms

. . .

(2) Members with No Terms

(A) The Chair and the members appointed from the State Senate and the House of Delegates have no terms and serve at the pleasure of the Supreme Court.

(B) The State Court Administrator has no term.

. . .

REPORTER'S NOTE

The State Court Administrator is referenced as having no term in Rule 16-701 (d)(2)(B) but is not explicitly listed in the membership of the Committee in section (b). The proposed amendment to the Rule adds the State Court Administrator to the list of required members.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-305.5 by replacing an obsolete reference to Rule 19-215 with the correct reference to Rule 19-218 in comment [17], as follows:

Rule 19-305.5. UNAUTHORIZED PRACTICE OF LAW; MULTI-JURISDICTIONAL PRACTICE OF LAW (5.5)

. . .

COMMENT

. . .

[17] If an employed attorney establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the attorney is governed by Md. Code, Business Occupations and Professions Article, § 1-206(d). In general, the employed attorney is subject to disciplinary proceedings under the Maryland Rules and must comply with Md. Code, Business Occupations and Professions Article, § 10-215 (and Rule 19-214) for authorization to appear before a tribunal. See also Rule ~~19-215~~ 19-218 (as to legal services attorneys).

. . .

REPORTER'S NOTE

The Rules Committee proposes an amendment to comment [17] of Rule 19-305.5 to replace the obsolete reference to Rule 19-215 with the correct reference to Rule 19-218.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

AMEND Rule 19-504 by replacing obsolete references to Rule 19-215 in sections (a) and (b) with the correct reference to Rule 19-218, as follows:

Rule 19-504. PRO BONO ATTORNEY

(a) Definition

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

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

(b) Authorization to Practice as a Pro Bono Attorney

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

. . .

REPORTER'S NOTE

The Rules Committee proposes amendments to sections (a) and (b) of Rule 19-504 to replace the obsolete references to Rule 19-215 with Rule 19-218.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

AMEND Rule 19-505 by replacing an obsolete reference to Rule 19-215 with the correct reference to Rule 19-218, as follows:

Rule 19-505. LIST OF PRO BONO AND LEGAL SERVICES PROGRAMS

At least once a year, the Maryland Legal Services Corporation shall provide to the State Court Administrator a current list of all grantees and other entities recognized by the Corporation that serve low-income individuals who meet the financial eligibility criteria of the Corporation. The State Court Administrator shall post the current list on the Judiciary website along with information about pro bono opportunities in court-based legal services programs.

Cross reference: See Rules 1-325, 1-325.1, ~~19-215~~ 19-218, and 19-605.

Source: This Rule is derived from former Rule 16-905 (2016).

REPORTER'S NOTE

The Rules Committee proposes an amendment to the cross reference of Rule 19-505 to replace the obsolete reference to Rule 19-215 with the correct reference to Rule 19-218.