COURT OF APPEALS STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held via Zoom for Government on Friday, March 11, 2022.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Hon. Vicki Ballou-Watts
Julia Doyle Bernhardt, Esq.
Hon. Pamila J. Brown
Hon. Yvette M. Bryant
Hon. John P. Davey
Mary Ann Day, Esq.
Alvin I. Frederick, Esq.
Pamela Q. Harris, Court Administrator
Arthur J. Horne, Jr., Esq.
Irwin R. Kramer, Esq.
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Stephen S. McCloskey, Esq.
Hon. Douglas R.M. Nazarian
Hon. Paula A. Price
Scott D. Shellenberger, Esq.
Hon. Dorothy J. Wilson
Thurman W. Zollicoffer, Esq.

In attendance:

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

Richard Abbott, Esq., Director, Department of Juvenile and Family Services
Lee Blinder, Executive Director, Trans Maryland
Ksenia Boitsova, Program Administrator, Court Interpreter Program
Raina Brubaker, Esq.
Reza Davani, Esq.
Hon. Michael DiPietro, Baltimore City Circuit Court
Lou Gieszl, Assistant State Court Administrator for Programs
Mallori Heely, JIS
Abigail Hill, Esq., FCCIP Staff Attorney
C.P. Hoffman, Esq., Legal Director, FreeState Justice
Diana Hsu, Senior Health Policy Analyst, Maryland Hospital Association
Cynthia Jurrius, Esq., Program Director, Mediation and Conflict

Resolution
Dorothy Lennig, Esq., House of Ruth
Lisa Mannisi, Esq., Case Administrator, Circuit Court for Anne Arundel County
Hon. John Morrissey, Chief Judge, District Court
Pamela Ortiz, Esq., Director, Access to Justice
Sarah Parks, JIS
Elizabeth Pinolini, Esq.
Rebecca Snyder, Executive Director, MDDC Press
Tom Stahl, Esq.
Nisa Subasinghe, Esq., Domestic & Guardianship Program Manager
Gillian Tonkin, Esq., District Court

The Chair convened the meeting. The Reporter advised that the meeting was being recorded and speaking will be treated as consent to being recorded.

Agenda Item 1. Consideration of proposed amendments to Rule 2-402 (Scope of Discovery).

Mr. Armstrong presented Rule 2-402, Scope of Discovery, for consideration. He noted that a handout version was distributed to the Committee prior to the meeting.

HANDOUT

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 – DISCOVERY

AMEND Rule 2-402 by adding new subsection (g)(1)(C) concerning the protection of draft reports and disclosures of expert witnesses, by adding new

subsection (g)(1)(D) regarding the protection of certain communications with an expert witness, and by adding a Committee note after the new subsections, as follows:

RULE 2-402. SCOPE OF DISCOVERY

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(a) Generally

A party may obtain discovery regarding any matter that is not privileged, including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, and tangible things and the identity and location of persons having knowledge of any discoverable matter, if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery or that the information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. An interrogatory or deposition question otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact.

(b) Limitations and Modifications; Electronically Stored Information Not Reasonably Accessible

(1) Generally

In a particular case, the court, on motion or on its own initiative and after consultation with the parties, by order may

limit or modify these rules on the length and number of depositions, the number of interrogatories, the number of requests for production of documents, and the number of requests for admissions. The court shall limit the frequency or extent of use of the discovery methods otherwise permitted under these rules if it determines that (A) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the burden or cost of the proposed discovery outweighs its likely benefit, taking into account the complexity of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

(2) Electronically Stored Information Not Reasonably Accessible

A party may decline to provide discovery of electronically stored information on the ground that the sources are not reasonably accessible because of undue burden or cost. A party who declines to provide discovery 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 requesting party to evaluate the burdens and costs of providing the discovery and the likelihood of finding responsive information in the identified sources. On a motion to compel discovery, the party from whom discovery is sought shall first establish that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the party requesting discovery shall establish that its need for the discovery

outweighs the burden and cost of locating, retrieving, and producing the information. If persuaded that the need for discovery does outweigh the burden and cost, the court may order discovery and specify conditions, including an assessment of costs.

Committee note: The term "electronically stored information" has the same broad meaning in this Rule that it has in Rule 2-422, encompassing, without exception, whatever is stored electronically. Subsection (b)(2) addresses the difficulties that may be associated with locating, retrieving, and providing discovery of some electronically stored information. Ordinarily, the reasonable costs of retrieving and reviewing electronically stored information are borne by the responding party. At times, however, the information sought is not reasonably available to the responding party in the ordinary course of business. For example, restoring deleted data, disaster recovery tapes, residual data, or legacy systems may involve extraordinary effort or resources to restore the data to an accessible format. This subsection empowers the court, after considering the factors listed in subsection (b)(1), to shift or share costs if the demand is unduly burdensome because of the nature of the effort involved to comply and the requesting party has demonstrated substantial need or justification. *See, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production,* (2d ed. 2007), Principle 13 and related Comment.

(c) Insurance Agreement

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in the action or to indemnify or

reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this section, an application for insurance shall not be treated as part of an insurance agreement.

(d) Work Product

Subject to the provisions of sections (f) and (g) of this Rule, a party may obtain discovery of documents, electronically stored information, and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the materials are discoverable under section (a) of this Rule and that the party seeking discovery has substantial need for the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of these materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(e) Claims of Privilege or Protection

(1) Information Withheld

A party who withholds information on the ground that it is privileged or subject to protection shall describe the nature of the documents, electronically stored information, communications, or things not produced or disclosed in a manner that, without revealing the privileged or protected information, will enable other parties to assess the applicability of the privilege or protection.

(2) Duty of Recipient

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.

(3) Information Produced

Within a reasonable time after information is produced in discovery that is subject to a claim of privilege or of protection, the party 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 subsection (e)(5) of this Rule 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: Rule 19-304.4 (b) of the Maryland Attorneys' Rules of Professional Conduct.

Committee note: Subsection (e)(3) allows a producing party to assert a claim of privilege or protection after production because it is increasingly costly and time-consuming to review all electronically stored information in advance. Unlike the corresponding federal rule, a party must raise a claim of privilege or protection within a "reasonable time." *See Elkton Care Center Associates v. Quality Care Management, Inc.*, 145 Md. App. 532 (2002).

(4) Effect of Inadvertent Disclosure

A disclosure of a communication or information covered by a privilege or protection does not operate as a waiver if the holder of the privilege or work product protection (A) made the disclosure inadvertently, (B) took reasonable precautions to prevent disclosure, and (C) took reasonably prompt measures to rectify the error once the holder knew or should have known of the disclosure.

Committee note: Courts in other jurisdictions are in conflict over whether an inadvertent disclosure of privileged or protected information constitutes a waiver. A few courts find that a disclosure must be intentional to be a waiver. Most courts find a waiver only if the disclosing party acted carelessly in disclosing the communication or information and failed to request its return in a timely manner. A few other courts hold that any mistaken disclosure of protected information constitutes waiver without regard to the protections taken to avoid such a disclosure. *See generally Hopson v. City of Baltimore*, 232 F.R.D. 228 (D. Md. 2005) for a discussion of this case law.

This subsection opts for the middle ground: inadvertent disclosure of privileged or protected information in connection with a state or federal proceeding constitutes a waiver only if the party did not take reasonable precautions to prevent disclosure and did not make reasonable and prompt efforts to rectify the error. This position is in accord with Maryland common law, *see, e.g., Elkton Care Center Associates v. Quality Care Management, Inc.*, 145 Md. App. 532 (2002), and the majority view on whether inadvertent disclosure is a waiver. *See, e.g., Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576-77 (D. Kan. 1997) (work product); *Hydraflow, Inc. v. Enidine, Inc.*, 145 F.R.D. 626, 637 (W.D.N.Y. 1993) (attorney-client privilege); *Edwards v. Whitaker*, 868 F.Supp.

226, 229 (M.D. Tenn. 1994) (attorney-client privilege).

(5) Controlling Effect of Court Orders and Agreements

Unless incorporated into a court order, an agreement as to the effect of disclosure of a communication or information covered by a privilege or protection is binding on the parties to the agreement but not on other persons. If the agreement is incorporated into a court order, the order governs all persons or entities, whether or not they are or were parties.

Committee note: Parties may agree to certain protocols to minimize the risk of waiver of a claim of privilege or protection. One example is a "clawback" agreement, meaning an agreement that production will occur without a waiver of privilege or protection as long as the producing party promptly identifies the privileged or protected documents that have been produced. *See The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production*, (2d ed. 2007), Comment 10.a. Another example is a "quick peek" agreement, meaning that the responding party provides certain requested materials for initial examination without waiving any privilege or protection. The requesting party then designates the documents it wishes to have actually produced, and the producing party may assert any privilege or protection. *Id.*, Comment 10.d.

Subsection (e)(5) codifies the well-established proposition that parties can enter into an agreement to limit the effect of waiver by disclosure between or among them. *See, e.g., Dowd v. Calabrese*, 101 F.R.D. 427, 439 (D.D.C. 1984) (no waiver where the parties stipulated in advance that certain testimony at a deposition "would not be deemed to constitute a waiver of the

attorney-client or work product privileges"); *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 290 (S.D.N.Y. 2003) (noting that parties may enter into "so-called 'claw-back' agreements that allow the parties to forego privilege review altogether in favor of an agreement to return inadvertently produced privileged documents"). Of course, such an agreement can bind only the parties to the agreement. The subsection makes clear that if parties want protection from a finding of waiver by disclosure in separate litigation, the agreement must be made part of a court order. Confidentiality orders are important in limiting the costs of privilege review and retention, especially in cases involving electronic discovery. The utility of a confidentiality order is substantially diminished if it provides no protection outside the particular litigation in which the order is entered. Parties are unlikely to be able to reduce the costs of preproduction review for privilege or protection if the consequence of disclosure is that the information can be used by nonparties to the litigation.

Subsection (e)(5) provides that an agreement of the parties governing confidentiality of disclosures is enforceable against nonparties only if it is incorporated in a court order, but there can be no assurance that this enforceability will be recognized by courts other than those of this State. There is some dispute as to whether a confidentiality order entered in one case can bind nonparties from asserting waiver by disclosure in separate litigation. *See generally Hopson v. City of Baltimore*, 232 F.R.D. 228 (D. Md. 2005), for a discussion of this case law.

(f) Trial Preparation - Party's or Witness' Own Statement

A party may obtain a statement concerning the action or its subject matter

previously made by that party without the showing required under section (d) of this Rule. A person who is not a party may obtain, or may authorize in writing a party to obtain, a statement concerning the action or its subject matter previously made by that person without the showing required under section (d) of this Rule. For purposes of this section, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(g) Trial Preparation - Experts

(1) Expected to be Called at Trial

(A) Generally

A party by interrogatories may require any other party to identify each person, other than a party, whom the other party expects to call as an expert witness at trial; to state the subject matter on which the expert is expected to testify; to state the substance of the findings and the opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and to produce any written report made by the expert concerning those findings and opinions. A party also may take the deposition of the expert.

Committee note: This subsection requires a party to disclose the name and address of any witness who may give an expert opinion at trial, whether or not that person was retained in anticipation of litigation or for trial. *Cf. Dorsey v. Nold*, 362 Md. 241 (2001). See Rule 104.10 of the Rules of the U.S. District Court for the District of Maryland. The subsection does not require, however, that a party name himself or

herself as an expert. See *Turgut v. Levin*, 79 Md. App. 279 (1989).

(B) Additional Disclosure with Respect to Experts Retained in Anticipation of Litigation or for Trial

In addition to the discovery permitted under subsection (g)(1)(A) of this Rule, a party by interrogatories may require the other party to summarize the qualifications of a person expected to be called as an expert witness at trial and whose findings and opinions were acquired or obtained in anticipation of litigation or for trial, to produce any available list of publications written by that expert, and to state the terms of the expert's compensation.

(C) Protection for Draft Reports or Disclosures

A party may not discover drafts of any report or disclosure required under Rule 2-402 (g)(1)(A) regardless of the form in which the draft is recorded.

(D) Protection for Communications Between a Party's Attorney and Expert Witnesses

A party may not discover communications between a party's attorney and an expert witness, regardless of the form of the communication, except to the extent that the communication (i) relates to compensation for the expert's study or testimony, (ii) identifies facts or data that the attorney provided and the expert considered in forming the opinion to be expressed, or (iii) identifies assumptions that the party's attorney provided and the expert relied on in forming the opinions to be expressed.

Committee note: Subsections (g)(1)(C) and (g)(1)(D) are derived from Fed. R. Civ. P. 26 (b)(4). See the Advisory Committee notes for the 2010 amendment attached to the

federal provisions for discussion of how these provisions are intended to operate.

(2) Not Expected to Be Called at Trial

When an expert has been retained by a party in anticipation of litigation or preparation for trial but is not expected to be called as a witness at trial, discovery of the identity, findings, and opinions of the expert may be obtained only if a showing of the kind required by section (d) of this Rule is made.

(3) Fees and Expenses of Deposition

Unless the court orders otherwise on the ground of manifest injustice, the party seeking discovery: (A) shall pay each expert a reasonable fee, at a rate not exceeding the rate charged by the expert for time spent preparing for a deposition, for the time spent in attending a deposition and for the time and expenses reasonably incurred in travel to and from the deposition; and (B) when obtaining discovery under subsection (g)(2) of this Rule, shall pay each expert a reasonable fee for preparing for the deposition.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 400 c and the 1980 version of Fed. R. Civ. P. 33 (b).

Section (b) is new and is derived from the 2000 version of Fed. R. Civ. P. 26 (b)(2), except that subsection (b)(2) is derived from the 2006 Fed. R. Civ. P. 26 (b)(2)(B).

Section (c) is new and is in part derived from the 1980 version of Fed. R. Civ. P. 26 (b)(2).

Section (d) is derived from former Rule 400 d.

Section (e) is new and is derived from the 2006 version of Fed. R. Civ. P. 26 (b)(5).

Section (f) is derived from former Rule 400 e.

Subsections (g)(1)(A) and (B) ~~is~~ are derived in part from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule 400 f and is in part new. Subsections (g)(1)(C) and (D) are derived from the 2010 version of Fed. R. Civ. P. 26 (b)(4).

Subsection (g)(2) is derived from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule U12 b.

Subsection (g)(3) is derived in part from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and is in part new.

Rule 2-402 was accompanied by the following Reporter's note:

Rule 2-402 addresses the scope of discovery for civil cases in a circuit court, including the ability to discover documents pertaining to experts. In the Federal Rules of Civil Procedure, Rule 26 addresses certain aspects of civil discovery, including disclosures relating to experts. In 2010, Rule 26 (b)(4)(B) was amended to provide that draft reports of experts are considered work-product and are therefore protected from disclosure. Rule 26 (b)(4)(C) was also added to provide work-product protection to communications between attorneys and experts, with certain exceptions. Proposed changes to Maryland Rule 2-402 mirror the 2010 amendments to Federal Rule of Civil Procedure 26.

Subsection (g)(1) of Rule 2-402 addresses the extent of discovery related to experts retained for trial. Proposed new subsection (g)(1)(C) provides that a party may not discover drafts of any reports or disclosures required by subsection (g)(1)(A).

> Proposed new subsection (g)(1)(D) prohibits discovery of communications between attorneys and experts, with some exceptions. The subsection clarifies that some communications are discoverable, including those relating to compensation, facts and data provided to and considered by the expert, and assumptions provided to and relied on by the expert. Protecting certain attorney communications with an expert witness encourages open communication and concentrates discovery on the communications that contributed to the expert's opinion.
>
> A Committee note after the new subsections states that the subsections are derived from Fed. R. Civ. P. 26 and refers to the guidance provided in the relevant federal Advisory Committee notes. The language of the proposed Committee note is modeled after the first paragraph of the Committee note at the end of Rule 5-902.

Mr. Armstrong said that the proposed amendments make a significant change to the practice surrounding expert reports. He described Maryland's current Rule as "open season," permitting discovery of the expert report, draft reports, notes, and any communications between counsel and the expert. He said that many attorneys view this as a problem because it can prevent open discussion between the expert and the attorney. In some cases, he explained, the attorney retains a consulting expert first for open full communication and then a trial expert. The trial expert has limited communication with the attorney to avoid discovery of certain information. Mr. Armstrong informed the Committee that the proposed amendments

are modeled after Fed. R. Civ. P. 26, which was amended in 2010 to limit discovery of experts and prohibit discovery of draft reports. Under the Federal Rule – and the proposed amendments to Rule 2-402 – the only discoverable information concerns the expert's compensation, the final report, the facts and assumptions provided by counsel, and the opinions themselves.

Mr. Armstrong said that subsection (g)(1)(C) protects draft reports from disclosure. Subsection (g)(1)(D) prohibits discovery of a communication between counsel and the expert except as it relates to compensation, facts and data, and assumptions. He acknowledged that there are pros and cons to each approach, and there are individuals who disagree strongly with the Federal Rule. He said that there will be circumstances, as described in the email comment submitted to the Committee (see Appendix 1), where the Rule can be manipulated to prevent disclosure of relevant and potentially biased information concerning an expert. However, the Discovery Subcommittee recommends that the Federal Rule's approach be adopted.

The Chair acknowledged the email comment submitted by Mr. Davani and invited him to speak. Mr. Davani thanked the Chair and said that he would try to avoid repeating his written comment. He explained that Maryland Civil Pattern Jury Instruction 1:3 states that in deciding whether a witness is to

be believed, the jury should consider carefully if the witness's testimony was affected by other factors. Experts are often biased, he explained, and the proposed amendments to Rule 2-402 could allow for concealment of that bias. One of the biggest factors that could impact the witness's testimony is the attorney, and he argued that the jury should have the opportunity to know how much the attorney shaped the opinion and testimony of the expert. He explained that the pattern jury instructions also ask jurors to consider whether the witness's testimony differed from any previous statements the witness made. He said that the amendments would prevent the jury from hearing the "rawest version of the truth" that the expert believes. He also pointed out that he has seen additional discovery disputes litigated in federal court over these issues.

The Chair asked if the Federal Rule permits inquiry into the expert's sources in reaching the conclusions in the report. Mr. Armstrong responded that counsel is entitled to know what information and assumptions were used in the expert's considerations and any sources or methods that were not considered. However, he explained that there are some areas that would not be subject to discovery under the proposed amendments. Mr. Frederick commented that he agrees with Mr. Davani's position. He said that he does not support the proposal, because Maryland's current Rule allows him to learn if

opposing counsel has structured the expert's opinion. If the draft opinion and the final opinion differ, he can question the expert regarding the changes. He also claimed that once the expert has been deposed, counsel can more freely speak with the expert. He cautioned that the Rule change would lead to more experts being deposed to elicit as much information about the opinion as possible. Mr. Frederick moved to reject the proposed amendment to Rule 2-402. The motion was seconded.

Ms. Bernhardt inquired about the difficulty posed by the two different standards in Maryland courts and Federal courts. Mr. Armstrong responded that attorneys must remember what Rules are in play and, occasionally, District of Columbia-based practitioners who operate under the Federal Rule approach are not aware of the difference in Maryland. Ms. Bernhardt also questioned Mr. Frederick's claim that the change would lead to more experts being deposed. Mr. Frederick explained that in a defense case with a limited budget and 15 experts designated by the other attorney, he will choose a few of the experts to depose for cost efficiency. Ms. Bernhardt then asked if the proposed change is seen as friendlier to plaintiffs or defendants. Mr. Armstrong said that he views it as plaintiff-favorable. Mr. Davani commented that he discussed the proposal with a group of plaintiffs' attorneys who were generally in favor of it with him in the minority. He said that he believes

feelings regarding the change depend more on case type. Mr. Zollicoffer remarked that he would welcome the change from the defense perspective. He said that once discovery starts delving into work product, litigation can become bogged down in those issues. Ms. Bernhardt said that it sounds like the proposed amendments would reduce motions practice. Mr. Armstrong said that the Advisory Committee that proposed the Federal Rule amendment believed that motions would be reduced.

The Chair called for a vote on Mr. Frederick's motion to reject the proposed amendments to Rule 2-402. The motion failed by a vote of 5-13. There being no further motion to amend or reject proposed Rule 2-402, it was approved as presented.

Agenda Item 2. Reconsideration of proposed amendments to Rule 9-205 (Mediation of Child Custody and Visitation Disputes).

Judge Bryant presented Rule 9-205, Mediation of Child Custody and Visitation Disputes, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205 by modifying the tagline of section (a), by making stylistic changes to section (a), by adding new subsection (a)(2)(A) defining "abuse," by

adding new subsection (a)(2)(B) defining "coercive control," and by deleting a reference to Code, Family Law Article, § 4-501 and adding a reference to coercive control in subsection (b)(2), as follows:

RULE 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

(a) ~~Scope of Rule~~ Applicability; Definitions

(1) This Rule applies to any action or proceeding under this Chapter in which the custody of or visitation with a minor child is an issue, including:

~~(1)~~(A) an initial action to determine custody or visitation;

~~(2)~~(B) an action to modify an existing order or judgment as to custody or visitation; and

~~(3)~~(C) a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.

(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.

(b) Duty of Court

(1) Promptly after an action subject to this Rule is at issue, the court shall determine whether:

(A) mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties or the child; and

(B) a mediator possessing the qualifications set forth in section (c) of this Rule is available to mediate the dispute.

(2) If a party or a child represents to the court in good faith that there is a genuine issue of abuse~~, as defined in Code, Family Law Article, § 4-501,~~ of the party or child or coercive control of a party and that, as a result, mediation would be inappropriate, the court may not order mediation.

(3) If the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child and that a qualified mediator is available, it shall enter an order requiring the parties to mediate the custody or visitation dispute. The order may stay some or all further proceedings in the action pending the mediation on terms and conditions set forth in the order.

Cross reference: With respect to subsection (b)(2) of this Rule, see Rule 1-341 and Rules 19-303.1 and 19-303.3 of the Maryland Attorneys' Rules of Professional Conduct.

. . .

Rule 9-205 was accompanied by the following Reporter's note:

Rule 9-205 addresses mediation for child custody and visitation disputes. Pursuant to Rule 9-205 (b), the court may not order mediation if a party or a child represents to the court that there is a genuine issue of abuse and mediation would be inappropriate. The Family Mediation and Abuse Screening Workgroup of the Domestic Law Committee asked the Rules Committee to

consider whether language about coercive control should be added to the Rule. The Workgroup raised concerns that Rule 9-205 does not currently include non-physical controlling behaviors in the definition of "abuse." Proposed amendments to Rule 9-205 address issues raised by the Workgroup.

The Rules Committee previously approved amendments to Rule 9-205 at the September 9, 2021 meeting. The proposed amendments were submitted to the Court of Appeals for consideration in the 209th Report and addressed at an open meeting on January 27, 2022. At the open meeting, the Court discussed comments received in response to Rule 9-205, including a letter from Child Justice, Inc. requesting revision of the proposed definition of "coercive control." In the 209th Report, "coercive control" was defined as "a pattern of emotional or psychological manipulation, maltreatment, or intimidation to compel an individual by force or threat of force to engage in conduct from which the individual has a right to abstain or to abstain from conduct in which the individual has a right to engage." The comments requested that the qualifying phrase "by force or threat of force" be removed because coercive control may not always involve violence or threat of violence. Pursuant to the Rules Order issued on February 9, 2022, Rule 9-205 was remanded to the Committee for further study. The Family/Domestic Subcommittee considered and approved amendments to the definition of "coercive control" after the issue was remanded.

The tagline of section (a) is amended to reference both the applicability and definitions of the Rule. Stylistic changes to section (a) include re-lettering the subsections.

> New subsection (a)(2) provides definitions that apply in the Rule, including definitions of "abuse" and "coercive control" in subsections (a)(2)(A) and (a)(2)(B), respectively. The definition of "coercive control" proposed in the 209th Report has been amended. The revised definition, recommended by the House of Ruth and supported by the Workgroup, more clearly distinguishes between abuse and coercive control by removing the requirement that an individual be compelled by force or threat of force for coercive control. Threat of force, however, remains in the definition as a behavior that may be used to compel an individual to act or refrain from acting, against the individual's will.
>
> Proposed amendments to subsection (b)(2) delete a reference to Code, Family Law Article, § 4-501, which is now included in the definitions section of the Rule. A reference to coercive control is added to subsection (b)(2), providing that the court may not order mediation if a party or a child represents to the court in good faith that there is a genuine issue of the coercive control of a party or a child, rendering mediation inappropriate.

Judge Bryant said that the Committee previously had recommended the addition of "coercive control" to Rule 9-205 as a consideration for the court in determining whether to order mediation in custody and visitation disputes. She informed the Committee that the Court of Appeals remanded the proposed amendments to the Rule for further discussion about the definition of "coercive control" in light of a comment by Child

Justice Inc. (see Appendix 2). She said that the revised proposal presented to the Committee includes a definition proposed by the House of Ruth and agreed to by the Judicial Council workgroup, which initially had raised the issue of coercive control. The new definition clarifies that violence or the threat of violence is not always required to find coercive control. This distinguishes the definition from the one for abuse in subsection (a)(2)(A). Ms. Lennig from the House of Ruth and Mr. Abbot from the Judicial Council workgroup were present and expressed support for the amendment.

There being no motion to amend or reject proposed amendments to Rule 9-205, it was approved as presented.

Agenda Item 3. Reconsideration of proposed amendments to Rule 15-901 (Action for Change of Name) and Rule 9-105 (Show Cause Order; Disability of a Party; Other Notice).

Judge Bryant presented Rule 15-901, Action for Change of Name, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 900 – NAME - CHANGE OF**; JUDICIAL DECLARATION OF GENDER IDENTITY**

AMEND Rule 15-901 by amending the Chapter title, by revising the applicability section of the Rule, by deleting language

pertaining to venue from section (b); by adding new subsections (b)(1) and (b)(2) pertaining to venue for petitions by an adult and on behalf of a minor, respectively; by adding new subsection (c)(1)(B) pertaining to venue; by re-lettering the subsequent subsections in subsection (c)(1); by altering subsection (c)(1)(G) pertaining to consent to the name change of a minor; by adding a Committee note pertaining to petitions on behalf of minors; by altering a cross reference following subsection (c)(1); by adding new subsection (c)(2)(B) pertaining to written consents to the name change of a minor; by moving current section (e) to new section (d); by re-captioning section (d) to pertain to notice to parents, guardians, and custodians who do not consent to a petition on behalf of a minor; by deleting current subsection (e)(2) pertaining to publication; by deleting certain provisions in current section (d) so that service must comply with Rule 2-121; by re-lettering current section (f) as section (e) pertaining to an objection to a petition; by adding language to section (e) pertaining to failure by a parent, guardian, or custodian to object to a petition on behalf of a minor; by adding a Committee note following new section (e) regarding the right to object to a petition by an adult; by re-lettering current section (g) as section (f) pertaining to action by the court and hearings; by creating new subsection (f)(1) with language from current section (g) pertaining to court action on a petition by an adult; by adding a Committee note following subsection (f)(1) regarding the 30-day delay before the court may enter an order on a petition for a name change for an adult; by adding new subsection (f)(2) pertaining to court action and hearing requirements for a petition on behalf of a minor; and by making stylistic changes, as follows:

Rule 15-901. ACTION FOR CHANGE OF NAME

(a) Applicability

This Rule applies to actions for change of name other than in connection with an adoption**, ~~or~~ divorce, or declaration of gender identity**.

(b) Venue

~~An action for change of name shall be brought in the county where the person whose name is sought to be changed resides.~~

(1) Change of Name of an Adult

An action for change of name of an adult shall be brought in the county where the adult resides, carries on a regular business, is employed, habitually engages in a vocation, or was born.

(2) Change of Name of a Minor

An action for change of name of a minor shall be brought by an adult petitioner on behalf of the minor in the county where the minor resides or where a parent, guardian, or custodian of the minor resides.

(c) Petition

(1) Contents

~~The~~ An action for change of name shall be commenced by filing a petition captioned "In the Matter of ..." [stating the name of the ~~person~~ individual whose name is sought to be changed] "for change of name to ..." [stating the change of name desired]. The petition shall be under oath and shall contain ~~at least~~ the following information:

(A) the name, address, and date and place of birth of the ~~person~~ individual whose name is sought to be changed;

(B) a statement as to why venue is appropriate;

~~(B)~~ (C) whether the ~~person~~ individual whose name is sought to be changed has ever been known by any other name and, if so, the name or names and the circumstances under which they were used;

~~(C)~~ (D) the change of name desired;

~~(D)~~ (E) all reasons for the requested change;

~~(E)~~ (F) a certification that the petitioner is not requesting the name change for any illegal or fraudulent purpose;

~~(F)~~ (G) if the ~~person~~ individual whose name is sought to be changed is a minor, (i) a statement explaining why the petitioner believes that the name change is in the best interest of the minor; (ii) ~~the names and addresses of that person's parents~~ the name and address of each parent and any guardian or custodian of the minor; (iii) whether each of those persons consents to the name change; (iv) whether the petitioner has reason to believe that any parent, guardian, or custodian is unfamiliar with the English language and the language the petitioner reasonably believes the individual can understand; (v) if the minor is at least ten years old, whether the minor consents to the name change; and (vi) if the minor is younger than ten years old, a statement that the minor does not object to the name change; and

Committee note: A petition filed on behalf of a minor may contain sensitive information pertaining to the minor. The petitioner may request that the court seal or otherwise limit inspection of a case record as provided in Rule 16-934.

~~(G)~~ (H) whether the ~~person~~ individual whose name is sought to be changed has ever registered as a sexual offender and, if so, ~~the~~ each full ~~name(s)~~ name, ~~(~~including ~~suffixes)~~ any suffix, under which the ~~person~~ individual was registered **and the state**

where the registration requirement originated.

Cross reference: See Code, Criminal Procedure Article, § 11-705, which requires a registered sexual offender whose name has been changed by order of court to send written notice of the change to ~~the Department of Public Safety and Correctional Services~~ each law enforcement unit where the registrant resides or habitually lives within ~~seven~~ three days after the order is entered.

(2) Documents to Be Attached to Petition

The petitioner shall attach to the petition:

(A) a copy of a birth certificate or other documentary evidence from which the court can find that the current name of the person whose name is sought to be changed is as alleged; and~~.~~

(B) if the individual whose name is sought to be changed is a minor, (i) the written consent of each parent, guardian, and custodian of the minor or an explanation why the consent is not attached, and (ii) the written consent of the minor, if the minor is at least ten years old.

~~(c) Notice~~ (d) Minors – Notice to Nonconsenting Parent, Guardian, or Custodian

~~(1) Issued by Clerk~~

Upon the filing of ~~the~~ a petition for change of name of a minor, if the written consent of each parent, guardian, and custodian of the minor was not filed pursuant to subsection (c)(2)(B) of this Rule, the clerk shall sign and issue a ~~notice~~ Notice that ~~(A)~~ (1) includes the caption of the action, ~~(B)~~ (2) describes the substance of the petition and the relief sought, and ~~(C)~~ (3) states that any objection to the name change shall be filed no later than 30 days after service of the

petition. If the petition states that a nonconsenting parent, guardian, or custodian may be unfamiliar with the English language, the clerk shall issue two versions of the Notice, one in English and one in the other language indicated in the petition. ~~the latest date by which an objection to the petition may be filed.~~

~~(2) Publication~~

~~Unless the court on motion of the petitioner orders otherwise, the notice shall be published one time in a newspaper of general circulation in the county in which the action was pending at least fifteen days before the date specified in the notice for filing an objection to the petition. The petitioner shall thereafter file a certificate of publication.~~

~~(d) Service of Petition - When Required~~

~~If the person whose name is sought to be changed is a minor, a~~ The Notice, in English and, if applicable, in the additional language indicated in the petition, a copy of the petition, and any attachments~~, and the notice issued pursuant to section (c) of this Rule~~ shall be served ~~upon that person's parents and any guardian or custodian~~ in the manner provided by Rule 2-121 upon each nonconsenting parent, guardian, or custodian of the minor. ~~When proof is made by affidavit that good faith efforts to serve a parent, guardian, or custodian pursuant to Rule 2-121 (a) have not succeeded and that Rule 2-121 (b) is inapplicable or that service pursuant to that Rule is impracticable, the court may order that service may be made by (1) the publication required by subsection (c)(2) of this Rule and (2) or mailing a copy of the petition, any attachments, and notice by first class mail to the last known address of the parent, guardian, or custodian to be served.~~

~~(f)~~ (e) Objection to Petition

Any person may file an objection to the petition. The objection ~~shall be filed within the time specified in the notice and~~ shall be supported by an affidavit ~~which~~ that sets forth the reasons for the objection. The affidavit shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The objection and affidavit shall be served upon the petitioner in accordance with Rule 1-321. The petitioner may file a response within 15 days after being served with the objection and affidavit. A parent, guardian, or custodian of a minor who does not file an objection within 30 days after being served in accordance with section (d) of this Rule shall be deemed to have consented to the name change of the minor. ~~A person desiring a hearing shall so request in the objection or response under the heading "Request for Hearing."~~

Committee note: Nothing in this Rule is intended to abrogate the right of a person who learns of a requested name change to object to the name change where there is personal knowledge of an illegal or fraudulent purpose or harm to the rights of others.

~~(g)~~(f) Action by Court; Hearing

(1) Name Change of Adult

~~After the time for filing objections and responses has expired, the~~ The court may hold a hearing or may rule on ~~the~~ a petition to change the name of an adult without a hearing and shall enter an appropriate order, except that the court shall not deny the petition without a hearing ~~if one was requested by the petitioner~~. The court may not enter an order earlier than 30 days after the petition was filed.

Committee note: Although there is no publication or other required notice of a requested name change of an adult, if a person learns of a requested name change, the 30-day delay in the entry of an order after the petition is filed affords a period of time within which an objection could be filed.

(2) Name Change of Minor

The court may hold a hearing or may rule on a petition to change the name of a minor without a hearing and enter an appropriate order if (A) the written consent of the minor, if required, has been filed, and (B) each parent, guardian, and custodian (i) has filed a written consent pursuant to subsection (c)(2)(B) of this Rule, or (ii) having been served pursuant to section (d) of this Rule, did not timely file an objection. In all other cases in which a name change of a minor is requested, the court shall hold a hearing and enter an appropriate order no earlier than 30 days after all nonconsenting parents, guardians, or custodians have been served in accordance with section (d) of this Rule.

Source: This Rule is derived in part from former Rules BH70 through BH75 and is in part new.

Rule 15-901 was accompanied by the following Reporter's note:

Proposed changes to Rule 15-901 were transmitted to the Court of Appeals by the 209th Report of the Rules Committee. At the open meeting on that Report, a concern was raised about potentially sensitive information relating to minors that might be included in a petition on behalf of a minor. For example, subsection (c)(1)(G) requires statements about the petitioner's belief that the name change is in the best interest

of the minor and the minor's own support or opposition to the name change. These statements could be pro forma but could contain details that are more private. The Court remanded Rule 15-901 to the Rules Committee to consider whether any of the information pertaining to minors should be subject to shielding or redaction. No current Rules would specifically shield any of this information from public inspection.

To address the Court's concern, a proposed Committee note following subsection (c)(1)(G) has been drafted. The Committee note, shown in bold type, informs a petitioner that there may be sensitive information in a petition on behalf of a minor and directs the filer to Rule 16-934 (Case Records – Court Order Denying or Permitting Inspection Not Otherwise Authorized by Rule) to request that the court limit inspection of this information. By permitting a request to limit inspection, the proposal gives the petitioner flexibility to ask for the court to exercise its authority without putting a redaction burden on the petitioner when one may not be necessary.

Proposed amendments previously approved by the Rules Committee conform the Rule to a recent statutory change and address recommendations by the Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Work Group. The title of the Chapter is amended to include actions for judicial declaration of gender identity, which are addressed in proposed new Rule 15-902.

Section (a), Applicability, is amended in light of proposed new Rule 15-902.

Section (b) is amended to strike the current language related to venue and add new subsections (b)(1) and (b)(2). Subsection (b)(1) governs venue for a petition by an adult. It is derived in part from Code, Courts Article, § 6-201. The

Committee was advised that certain circumstances may exist where an individual born in Maryland but now living in another state or country may need to seek a name change in Maryland. In response, the Committee recommends allowing an adult to file a petition under Rule 15-901 in the county where the adult was born. Subsection (b)(2) governs venue for a petition on behalf of a minor. It is derived from Code, Courts Article, §6-202 (5), which applies to certain family law actions related to a child.

Section (c) is amended to add additional required information in a petition. New subsection (c)(1)(B) requires a statement regarding venue in light of the provision permitting a petition to be filed in the county where the adult petitioner was born. The remaining subsections in (c)(1) are re-lettered. Subsection (c)(1)(G) requires a petition on behalf of a minor to state why the petitioner believes their name change is in the minor's best interest and whether parents, guardians, and custodians of the minor consent to the name change. Subsection (c)(1)(G) also requires a statement if the petitioner has reason to believe that a parent, guardian, or custodian may be unfamiliar with the English language. This information is used when the clerk generates the Notice in section (d). If the minor is at least ten years old, the consent of the minor is also required. If the minor is younger, the requirement is that the minor does not object to the name change. This language is derived from the adoption statutes, including Code, Family Law Article, §§ 5-338, 5-3A-35, and 5-3B-20. The Committee note following subsection (c)(1)(G) refers to a petition to limit public inspection of potentially sensitive information pertaining to a minor, as discussed above. The cross reference following subsection (c)(1) is amended to conform with current law. Subsection (c)(2) is amended to add subsection (c)(2)(B),

which requires the consents mentioned in subsection (c)(1)(G) to be attached to the petition. Subsection (c)(1)(H) is amended to require a petitioner who has ever registered as a sex offender to include the state where that registration requirement originated.

Sections (d) and (e) are reversed. New section (d) applies only to Notice to nonconsenting parents, guardians, and custodians of a minor. The clerk must issue a Notice to inform the parent, guardian, or custodian of the action and the right to object. If the petitioner disclosed in the petition that a parent, guardian, or custodian may be unfamiliar with the English language, the clerk must issue the notice in English and in the language indicated in the petition. The Access to Justice Office in the Administrative Office of the Courts advised that a form notice can be translated into multiple languages, though case-specific documents cannot be translated. Service of the notice is in the manner provided by Rule 2-121.

Section (e), applicable to the name change of an adult or a minor, states that any person may file an objection to the petition. The bolded language requires the clerk to issue the notice in English and in a second language where the petition indicated that a parent, guardian, or custodian entitled to notice may lack familiarity with the English language. The Access to Justice Department of the Administrative Office of the Courts has advised that generic court forms and notices are translated but case-specific orders and documents are not. If the notice under section (d) is standardized, it can be translated into five priority languages and additional languages as needed. A Committee note following the section states that a person with knowledge of any fraud, illegal purpose, or harm to the rights of others may object. A parent, guardian, or custodian of

a minor who fails to file an objection within 30 days of service is deemed to have consented to the name change of the minor.

Former subsection (e)(2), publication, is deleted. Code, Courts Article, § 3-2201 requires the court to waive the publication requirement on motion by the petitioner. The Work Group informed the Subcommittee that after consultation with the Maryland State Police and a representative for various credit reporting agencies, it was determined that publication is an antiquated method of providing notice and is not used by those entities to track name changes. An increasing number of states have eliminated the publication requirement without any substitute notice method, including New York (by statute) and New Jersey (by court rule) in 2020. Other states that do not require publication sometimes require specific notice to interested persons, such as creditors and law enforcement, require additional documentation, such as a background check. The Subcommittee discussed the necessity of public notice for an adult name change and what, if any, standing another individual may have to object. Currently, there will be a public record of the name change through court records, although no notice will occur if the petitioner requests publication waiver, as is now permitted by law. Unless the file is shielded or sealed due to safety concerns or other good cause, the name change action can be located in court records, including Maryland Judiciary Case Search.

Section (f) governs action by the court on a petition. New subsection (f)(1) pertains to the name change of an adult. It permits the court to hold a hearing or rule without a hearing and enter an appropriate order. The court may not deny a petition without a hearing and may not enter an order earlier than 30 days after the petition is filed. A Committee note explains that the 30-day waiting period is to permit a person

who learns of the name change to object, if there is cause.

New subsection (f)(2) applies to petitions on behalf of a minor. After the notices issued pursuant to section (d) have been served, the court may hold a hearing or rule without a hearing and enter an appropriate order so long as the minor consents to the name change, if required, and the required consents have been filed or a nonconsenting parent, guardian, or custodian has been served and has not timely objected. Where a parent, guardian, or custodian objects, the court must hold a hearing. The hearing cannot be held earlier than 30 days after all nonconsenting parents, guardians, and custodians have been served.

Judge Bryant explained that Rule 15-901 was remanded by the Court of Appeals to consider whether certain information pertaining to minors should be subject to shielding due to its sensitive nature. She said that the proposed amendments require a petition to change the name of a minor to state why the name change is in the child's best interest. She said that the Family/Domestic Subcommittee recommends adding a Committee note following subsection (c)(1)(G) permitting the petitioner to request shielding of certain information. Other changes to the Rule since it was last approved by the Rules Committee are shown in bold. Judge Bryant also noted that Title 15 is renamed to include reference to proposed new Rule 15-902.

The Chair said that he raised several stylistic changes in an email to Judge Bryant but wished to raise additional points before the Committee. He said that subsection (c)(1)(G)(vi) requires the petition on behalf of a minor under the age of 10 to include a statement that the minor not object to the name change. He questioned whether the subsection should clarify that this statement must be true. Judge Nazarian also asked whether a petition missing this statement, indicating that a minor does object, necessitates denial of the petition or a hearing. Judge Bryant suggested rephrasing the subsection to require the petition to "state whether the minor objects."

The Chair also pointed out that subsection (c)(1)(G)(iv) requires the petition on behalf of a minor to state if a parent, guardian, or custodian of the minor is known to be unfamiliar with the English language and what language that individual can understand. Ms. Bernhardt suggested that the subsection be amended to add "if so" before "the language the petitioner reasonably believes the individual can understand." Judge Bryant inquired if the petition is required to be under oath. The Reporter confirmed that the petition is under oath.

Judge Bryant moved to amend subsection (c)(1)(G)(iv) to add "if so" and subsection (c)(1)(G)(vi) to read "whether the minor objects." The Reporter noted for the record the additional stylistic changes that were proposed to the Rule. "Sensitive"

in the new Committee note following subsection (c)(1)(G) is proposed to be changed to "confidential" and "or been required to register" is proposed to be added to subsection (c)(1)(H). Judge Bryant added those proposed amendments to her motion. By consensus, the Committee approved the amendments.

The Chair said that he also wished to draw the Committee's attention to the new language in Rule 15-901 (d), which requires notice of the name change of a minor to a parent, guardian, or custodian in a language that the individual can understand. He noted that the issue is part of a larger discussion to be had about the kind of notice an individual with limited English proficiency is entitled to receive and who should give that notice. Proposed Rule 15-901 (d) provides that the clerk shall issue notice of the name change action in the language indicated in the petition. The Chair explained that he thought it was an important issue to raise at this stage even if the Committee does not take any action. The new Title 11 Rules governing juvenile proceedings provide for translation of certain items in those cases under Rule 11-112.

Ms. Ortiz said that the proposed amendment to Rule 15-901 (d) requires the clerk to provide the notice in the "target language" of the recipient identified in the petition. She said that the Access to Justice Office provides interpreters in more than 65 languages and offers modest translation services for

documents. Currently, the office maintains public-facing documents and forms in priority languages (Spanish, French, Russian, Chinese, and Korean). The office is not able to translate case-specific documents and each new translation request can take 45 days to turn around. To comply with the new Juvenile Rules, Ms. Ortiz explained that template forms are being developed in those priority languages, but the office is still developing a process to obtain translations in additional languages. According to Ms. Ortiz, one solution is a form document in multiple languages, referred to as a multilingual advisement, that would advise the party of interpretation and translation options. She expressed concern that proposed Rule 15-901 requires a translated version of the petition to be provided by the court in addition to the notice. Assistant Reporter Cobun responded that it was the intent of the Subcommittee that only the Notice be provided in the translated language, not the petition. Judge Bryant confirmed that the Subcommittee did not intend to require translation of the petition. Ms. Ortiz said that a form Notice can be more easily translated. The Chair said that he recognizes that the Committee cannot solve this logistical problem. He suggested that the General Assembly may be better equipped to address these concerns and provide funding for language access. He added that limiting the translations to the most common

languages raises an equal protection problem that disadvantages individuals who speak other languages.

Ms. Ortiz said that a multilingual advisement is an approach that can supplement having a library of translated documents. Mr. Abbott said that this will most likely be the approach to implement Rule 11-112 of the Juvenile Rules. Ms. Boitsova said that attorneys are interpreting Rule 11-112 to require translation of any document that requires an action from a party, including case-specific documents. She said that the office has trouble finding interpreters for lesser-used languages and noted that translation of documents is a more precise skill than interpretation.

Ms. Ortiz suggested adding something to Rule 15-901 referring to the option of a multilingual advisement. Judge Bryant suggested a Committee note stating that if the Notice is not available in the language requested, the clerk shall issue a multilingual advisement as to what steps the party should take to have the documents translated. Ms. Ortiz said that the note should reference a "standard multilingual advisement." Ms. Lindsey agreed with the proposed Committee note. The Chair asked if the Rule can remain as it is if a Committee note is added and, if so, if the exact wording of the Committee note can be declared a matter of style so that the Rule does not need to be brought back before the Committee. Judge Nazarian moved to

add a Committee note following section (d) using Judge Bryant and Ms. Ortiz's suggested language, to be styled by the Style Subcommittee. By consensus, the Committee approved the amendment.

There being no further motion to amend or reject proposed amendments to Rule 15-901, the Rule was approved as amended.

Judge Bryant presented Rule 9-105, Show Cause Order; Disability of a Party; Other Notice, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-105 by deleting section (d) and by re-lettering sections (e) through (g) as (d) through (f), as follows:

RULE 9-105. SHOW CAUSE ORDER; DISABILITY OF A PARTY; OTHER NOTICE

. . .

~~(d) Notice of Name Change~~

~~If the person to be adopted is an adult and the petitioner desires to change the name of the person to be adopted to a surname other than that of the petitioner, notice of a proposed change of name shall also be given in the manner provided in Rule 15-901.~~

. . .

~~(e)~~(d) Form of Show Cause Order

. . .

~~(f)~~(e) Form of Notice of Objection

. . .

~~(g)~~(f) Form of Notice for Service by Publication and Posting

. . .

Source: This Rule is in part derived from former Rule D74 and is in part new.

Rule 9-105 was accompanied by the following Reporter's note:

> The proposed deletion of section (d) in Rule 9-105 is a conforming amendment necessitated by the proposed amendments to Rule 15-901. Section (d) required a petitioner adopting an adult who seeks a name change other than to the surname of the petitioner to comply with the notice requirements of Rule 15-901. The proposed amendments to Rule 15-901 delete the notice and publication requirement for adult name change petitions.

Judge Bryant explained that the proposed amendments are conforming ones previously approved by the Committee due to the proposed amendments to Rule 15-901. There being no motion to

amend or reject the proposed amendments to Rule 9-105, the Rule was approved as presented.

Agenda Item 4. Consideration of proposed new Rule 15-902 (Action for Judicial Declaration of Gender Identity) and proposed amendments to Rule 16-914 (Case Records — Required Denial of Inspection – Certain Categories).

Judge Bryant presented new Rule 15-902, Action for Judicial Declaration of Gender Identity, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 900 – NAME - CHANGE OF; JUDICIAL DECLARATION OF GENDER IDENTITY

ADD new Rule 15-902, as follows:

RULE 15-902. ACTION FOR JUDICIAL DECLARATION OF GENDER IDENTITY

(a) Applicability

This Rule applies to actions for judicial declaration of gender identity, with or without a name change.

Committee note: Under certain circumstances, a judicial declaration of gender identity may be necessary to change an individual's gender designation on a birth certificate or to affirm the individual's gender identity in legal, administrative, and other contexts.

Cross reference: See Rule 16-914 (p) concerning inspection of a case record in an action filed under this Rule. For a change

of name without a judicial declaration of gender identity, see Rule 15-901.

(b) Venue

(1) Declaration of Gender Identity of an Adult

An action for judicial declaration of gender identity shall be brought in the county where the adult resides, carries on a regular business, is employed, habitually engages in a vocation, or was born.

(2) Declaration of Gender Identity of a Minor

An action for judicial declaration of gender identity of a minor shall be brought by an adult petitioner on behalf of the minor in the county where the minor resides or where a parent, guardian, or custodian of the minor resides, or where the minor was born.

(c) Petition

(1) Contents

An action for judicial declaration of gender identity shall be commenced by filing a petition captioned "In the Matter of ..." [stating the name of the individual for whom the declaration is sought] "for judicial declaration of gender identity as..." [stating the gender designation desired]. The petition shall be under oath and shall contain the following information:

(A) the name, address, and date and place of birth of the individual for whom the relief requested is sought;

(B) a statement as to why venue is appropriate;

(C) the gender identity declaration desired;

(D) all reasons for the relief requested;

(E) a certification that the petitioner is not requesting the relief for any illegal or fraudulent purpose; and

(F) if the individual for whom the declaration is sought is a minor, (i) a statement explaining why the petitioner believes that the relief requested is in the best interest of the minor; (ii) the name and address of each parent and any guardian or custodian of the minor; (iii) whether each of those individuals consents to the relief requested; (iv) whether the petitioner has reason to believe that any parent, guardian, or custodian is unfamiliar with the English language and the language the petitioner reasonably believes the individual can understand; (v) if the minor is at least ten years old, whether the minor consents to the declaration of gender identity; and (vi) if the minor is younger than 10 years old, a statement that the minor does not object to the relief requested.

(2) Change of Name

If the petitioner also requests a name change, the petition shall include the following information:

(A) whether the individual whose name is sought to be changed has ever been known by any other name and, if so, the name or names and the circumstances under which they were used;

(B) the change of name desired; and

(C) whether the individual whose name is sought to be changed has ever registered as a sexual offender and, if so, each full name, including any suffix, under which the individual was registered and the state where the registration requirement originated.

Cross reference: See Code, Criminal Procedure Article, §11-705, which requires a registered sexual offender whose name has

been changed by order of court to send written notice of the change to each law enforcement unit where the registrant resides or habitually lives within three days after the order is entered.

(3) Documents to Be Attached to the Petition

The petitioner shall attach to the petition:

(A) if the individual for whom relief is sought is a minor, (i) the written consents OF each parent, guardian, or custodian of the minor or an explanation why the consent is not attached, and (ii) the written consent of the minor, if the minor is at least 10 years old;

(B) any documentation in support of the requested declaration of gender identity; and

(C) if the petitioner requests a name change, a copy of a birth certificate or other documentary evidence from which the court can find that the current name of the person whose name is sought to be changed is as alleged.

(d) Minors – Notice to Nonconsenting Parent, Guardian, or Custodian

(1) Notice

Upon the filing of a petition under this Rule on behalf of a minor, if the written consent of each parent, guardian, and custodian of the minor was not filed pursuant to subsection (c)(3)(A) of this Rule, the clerk shall sign and issue a Notice that (a) includes the caption of the action, (b) describes the substance of the petition and the relief sought, and (c) states that any objection to the relief requested shall be filed no later than 30 days after service of the petition. If the petition states that a nonconsenting parent,

guardian, or custodian may be unfamiliar with the English language, the clerk shall issue two versions of the Notice, one in English and one in the other language indicated in the petition. The Notice, in English and, if applicable, in the additional language indicated in the petition, a copy of the petition, and any attachments shall be served in the manner provided by Rule 2-121 upon each nonconsenting parent, guardian, or custodian of the minor.

(2) Objection to Petition

A parent, guardian, or custodian of a minor who does not consent to the relief requested may file an objection no later than 30 days after being served in accordance with subsection (d)(1) of this Rule. The objection shall be supported by an affidavit that sets forth the reasons for the objection. The affidavit shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The objection and affidavit shall be served upon the petitioner in accordance with Rule 1-321. The petitioner may file a response within 15 days after being served with the objection and affidavit. A parent, guardian, or custodian of a minor who does not file an objection within 30 days after being served in accordance with subsection (d)(1) of this Rule shall be deemed to have consented to the relief requested.

(e) Action by Court; Hearing

(1) Petition Filed by an Adult

The court may hold a hearing or may grant the relief requested without a hearing and shall enter an appropriate order, except that the court may not deny any of the relief requested without a hearing.

(2) Petition Filed on Behalf of a Minor

The court may hold a hearing or may grant the relief requested on a petition filed on behalf of a minor without a hearing and enter an appropriate order if (A) the written consent of the minor, if required, has been filed, and (B) each parent, guardian, and custodian (i) has filed a written consent pursuant to subsection (c)(3)(A) of this Rule, or (ii) having been served pursuant to subsection (d)(1) of this Rule, did not timely file an objection. In all other cases, the court shall hold a hearing no earlier than 30 days after all nonconsenting parents, guardians, or custodians have been served in accordance with subsection (d)(1) of this Rule and enter an appropriate order. To aid the court in evaluating the best interests of the minor, the court may order further proceedings, which may include a specific issue evaluation using the procedure set forth in Rule 9-205.3. The court may not deny any of the relief requested without a hearing.

Committee note: Not all individuals identify as cisgender or transgender or on a binary of male or female. See *In re K.L.*, 252 Md.App. 148 (2021), citing *Grimm v. Gloucester County School Board*, 972 F. 3d 586 (4th Cir. 2020).

Cross reference: See *In re K.L.*, 252 Md.App. 148 (2021); *In re Heilig*, 372 Md. 692 (2003); Code, Health General Article, §4-211; and Code, Transportation Article, §12-305.

Source: This Rule is new.

Rule 15-902 was accompanied by the following Reporter's note:

Proposed new Rule 15-902 is recommended by the Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Work

Group. Maryland courts may, under their equitable power, issue a declaration of gender identity for an individual (see *In re Heilig*, 372 Md. 692 (2003) and *In re K.L.*, 252 Md.App. 148 (2021)). Petitions by transgender and gender nonconforming individuals are filed and ruled on, but there is no standard process and no Rule governing access to court records relating to the petitions.

Proposed new Rule 15-902 applies to actions seeking a judicial declaration of gender identity, with or without a name change. The Family/Domestic Subcommittee recommends permitting a name change in conjunction with a judicial declaration of gender identity to allow a petitioner seeking both to file one action and pay one filing fee. A Committee note following section (a) explains the purposes of a judicial declaration of gender identity. A cross reference to Rule 16-914 (p), pertaining to inspection of a case record in an action under this Rule, and to Rule 15-901, pertaining to a change of name without a judicial declaration of gender identity, also follows section (a).

Section (b) governs venue. It is largely modeled after Rule 15-901 (b), as that Rule is proposed to be amended. See the Reporter's note to Rule 15-901. The only provision that is different from its counterpart in Rule 15-901 is subsection (b)(2), which permits filing in the jurisdiction where a minor was born. The Subcommittee was informed that the provision is proposed for cases involving minors living outside of Maryland who cannot access a judicial declaration of gender identity in their home states.

Section (c) is also largely modeled after Rule 15-901, as proposed to be amended. Subsection (c)(1) contains provisions from Rule 15-901 that apply to both a name change and a judicial

declaration of gender identity, as well as a statement about the gender identity declaration that is desired. Subsection (c)(2) contains additional required information if the petitioner is also seeking a change of name. Subsection (c)(3)(A) is borrowed from Rule 15-901 regarding attachments to a petition on behalf of a minor. Subsection (c)(3)(B) requires the petitioner to attach "any other documentation in support of the requested gender identity." The LGBTQ+ Family Law Work Group recommended against requiring any specific documentation from a petitioner, but case law and administrative statutes cited at the end of the Rule direct a petitioner to possible documents that may be provided to assist the court. Subsection (c)(3)(C) addresses the documents required to be attached when the petitioner also requests a name change.

Section (d) is modeled after Rule 15-901 (d) and (e). Subsection (d)(2) permits an objection only by a nonconsenting parent, guardian, or custodian of a minor. Because actions under Rule 15-902 are shielded from public view, and due to the personal nature of the requested relief, only the parents, guardians, and custodians of the minors will receive notice of the action and have standing to object.

Section (e) is modeled after Rule 15-901 (f). Subsection (e)(2), pertaining to a minor, adds a provision for the court to order further proceedings, which may include a specific issue evaluation, to aid in determining the best interests of a minor. The Subcommittee was concerned that parents may file a petition for judicial declaration of gender identity on behalf of a minor who is apathetic or unsure about gender identity, particularly for a minor under the age of 10 who must only "not object." The provision permits the court to order further investigation to determine the minor's feelings on the issue and assist the court

in determining if the declaration is in the minor's best interest.

Judge Bryant informed the Committee that courts are already presiding over petitions for declarations of gender identity. She said that the goal of the proposed Rule is to add uniformity to the process and provide information to judges handling these cases. She noted that the Rule was proposed by the Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Workgroup. The Rule is largely modeled after Rule 15-901 with maximum flexibility to the court when handling petitions on behalf of minors.

The Reporter pointed out that stylistic changes made to Rule 15-901 should be made in Rule 15-902, where applicable. By consensus, the Committee approved the amendments.

There being no motion to further amend or reject proposed new Rule 15-902, the Rule was approved as amended.

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

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-914 by adding new section (p) pertaining to a judicial declaration of gender identity, 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:

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) adoption;

(B) guardianship; or

(C) revocation of a consent to adoption or guardianship for which there is no pending adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, public agency guardianship terminating parental rights, voluntary placement, child in need of supervision, peace order, and truancy actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, § 3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection unless the record was ordered expunged.

Committee note: In most instances, the "child" or "children" referred to in this section will be minors, but, as Juvenile Court jurisdiction extends until a child is 21, in some cases, the children legally may be adults. The Juvenile Court also has jurisdiction over certain proceedings against an adult. Case records pertaining to these proceedings are not subject to this section. See Rule 11-507.

(b) Case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, § 4-504, which shall be sealed until the earlier of service or denial of the petition.

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

(d) In any action or proceeding, a record created or maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, Human Services Article, §§ 1-202 and 1-203 and Code, Family Law Article, § 5-707.

(e) Except for docket entries and orders entered under Rule 10-108, papers and submissions filed in guardianship actions or proceedings under Title 10, Chapter 200, 300, 400, or 700 of the Maryland Rules.

Committee note: Most filings in guardianship actions are likely to be permeated with financial, medical, or psychological information regarding the minor or disabled person that ordinarily would be sealed or shielded under other Rules. Rather than require custodians to pore through those documents to redact that kind of information, this Rule shields the documents themselves subject to Rule 16-934, which permits the court, on a motion and for good cause, to permit inspection of case records that otherwise are not subject to inspection. There may be circumstances in which that should be allowed. The guardian, of course, will have access to the case records and may need to share some of them with third persons in order to perform his or her duties, and this Rule is not intended

to impede the guardian from doing so. Public access to the docket entries and to orders entered under Rule 10-108 will allow others to be informed of the guardianship and to seek additional access pursuant to Rule 16-934.

(f) The following case records in criminal actions or proceedings:

(1) A case record that has been ordered expunged pursuant to Rule 4-508.

(2) The following case records pertaining to search warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601, except as authorized by a judge under that Rule.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d)(3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, § 4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) Unless entered into evidence at a hearing or trial or otherwise ordered by the court, a case record pertaining to (i) a pen register or trace device applied for or ordered pursuant to Rule 4-601.1, (ii) an emergency order applied for or entered pursuant to Rule 4-602, (iii) the interception of wire or oral communications

applied for or ordered pursuant to Rule 4-611, or (v) an order for electronic device location information applied for or entered pursuant to Rule 4-612.

(5) A case record maintained under Code, Courts Article, § 9-106, of the refusal of an individual to testify in a criminal action against the individual's spouse.

(6) Subject to Rules 16-902 (c) and 4-341, a presentence investigation report prepared pursuant to Code, Correctional Services Article, § 6-112.

(7) Except as otherwise provided by law, a case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, § 15-108, (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, § 14-110, or (D) the Attorney General when acting pursuant to Article V, § 3 of the Maryland Constitution or other law or a federal law enforcement agency.

Cross reference: See Code, Criminal Procedure Article, §§ 1-203.1, 9-101, 14-110, and 15-108, and Rules 4-612 and 4-643 dealing, respectively, with electronic device location, extradition warrants, States' Attorney, State Prosecutor, and grand jury subpoenas, and Code, Courts Article, §§ 10-406, 10-408, 10-4B-02, and 10-4B-03 dealing with wiretap and pen register orders. See also Code, Criminal Procedure Article, §§ 11-110.1 and 11-114 dealing with HIV test results.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of judicial records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(8) A case record required to be shielded by Code, Criminal Procedure

Article, Title 10, Subtitle 3 (Criminal Records--Shielding).

Cross reference: See Code, Criminal Law Article, § 5-601.1 governing confidentiality of judicial records pertaining to a citation issued for a violation of Code, Criminal Law Article, § 5-601 involving the use or possession of less than 10 grams of marijuana.

(9) The following case records pertaining to a child excluded from the jurisdiction of the Juvenile Court under Code, Courts Article, § 3-8A-03(d)(1), (4), or (5):

(A) A case record pertaining to a case where a motion to transfer jurisdiction to the Juvenile Court pursuant to Code, Criminal Procedure Article, § 4-202 is pending or the time for filing such motion has not expired.

(B) A case record pertaining to a case transferred to the Juvenile Court.

Committee note: Nothing in this Rule precludes a clerk from divulging a case number to an attorney for the purpose of entering an appearance in the case or petitioning the court for access to the court file to determine whether to enter an appearance in the case.

(g) A transcript or an audio, video, or digital recording of any court proceeding that was closed to the public pursuant to Rule, order of court, or other law.

(h) Subject to the Rules in Title 16, Chapter 500, backup audio recordings, computer disks, and notes of a court reporter that have not been filed with the clerk.

(i) The following case records containing medical or other health information:

(1) A case record, other than an autopsy report of a medical examiner, that (A)

consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health-General Article, § 18-338.1, § 18-338.2, or § 18-338.3.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health-General Article, § 5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, § 18-201 or § 18-202.

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled individual, declared confidential by Code, Health-General Article, § 7-1003.

(6) A case record relating to a petition for an emergency evaluation made under Code, Health-General Article, § 10-622 and declared confidential under § 10-630 of that Article.

(j) A case record that consists of the federal, state, or local income tax return of an individual.

(k) A case record that:

(1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or

(2) in accordance with Rule 16-934 (b) is the subject of a pending petition to preclude or limit inspection.

(l) A case record that consists of a financial statement filed pursuant to Rule 9-202, a Child Support Guideline Worksheet filed pursuant to Rule 9-206, or a Joint Statement of Marital and Non-marital Property filed pursuant to Rule 9-207.

Cross reference: See also Rule 9-203.

(m) A document required to be shielded under Rule 20-203 (e)(1).

(n) An unredacted document filed pursuant to Rule 1-322.1 or Rule 20-203 (e)(2).

(o) A parenting plan or joint statement prepared and filed pursuant to Rules 9-204.1 and 9-204.2.

(p) An action for judicial declaration of gender identity filed pursuant to Rule 15-902.

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

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

The proposed amendment to Rule 16-914 is recommended by the Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Work Group in conjunction with proposed new Rule 15-902. It is recommended that an action for judicial declaration of gender identity be shielded from public inspection due to the risk of discrimination and harm faced by transgender and gender nonconforming individuals. See the Reporter's note to Rule 15-902 for more information.

Judge Bryant said that new section (p) provides for shielding of petitions filed pursuant to Rule 15-902. Mr. Laws asked if a name change requested as part of a petition for judicial declaration of gender identity under Rule 15-902 will be open to public inspection. Judge Bryant responded that the name change would not be public when it is tied to a declaration of gender identity. Mr. Laws said that publication of name changes, which the Committee removed from Rule 15-901 in response to a statute that was enacted last year, was an anti-fraud measure. He explained that when concerns were raised about removing publication, the response was that the name change case would be a matter of public record. He asked if there was a way to bifurcate the name change and the gender identity portions of a petition and permit the name change portion to be publicly accessible. Judge DiPietro responded that when legislation was passed last year to require the court to waive publication on request, the Legislature was advised that many states were doing away with publication. He said that the credit reporting agencies and law enforcement do not rely on court records to locate debtors, instead using Social Security numbers. Judge DiPietro went on to explain that transgender individuals are at greater risk of harm if their identities are publicized and social media now makes harassment of transgender and nonbinary individuals easier. Even making the name change

portion of the petition subject to inspection risks "outing" a transgender individual who is asking the court to change the individual's name from a traditionally masculine name to a traditionally feminine name, for example. He pointed out that a creditor can petition the court for information on a debtor who may have changed names. Ms. Lindsey said that, procedurally, it is very difficult to have only a portion of a document subject to public inspection. The Chair asked whether the court could issue two orders, a public one changing the individual's name and a shielded one declaring the individual's gender identity.

Mr. Laws said that he is concerned that a name change that is not public will cause difficulties. He used the example of property searches where a name comes up in the search and he needs to determine if there is a judgment against that individual. He said that it is of some significance when a name is changed, and making only that portion of the petition public does not raise the same privacy concerns. Ms. Lindsey suggested permitting a petition for judicial declaration of gender identity to be filed, followed by an additional petition for name change in that action with the name change portion open to the public. Ms. Day pointed out that "Jane Doe" changing his name to "John Doe" would make the reason for the change obvious and defeat the purpose of shielding the petition for declaration of gender identity for safety and privacy reasons.

The Chair called for a motion. There being no motion to amend or reject the proposed amendment to Rule 16-914, the Rule was approved as presented.

Agenda Item 5. Consideration of proposed housekeeping amendments to Rule 9-205.3 (Custody and Visitation-Related Assessments).

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

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205.3 by correcting a reference in subsection (f)(4), as follows:

RULE 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

...

(f) Description of Custody Evaluation

(1) Mandatory Elements

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

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

(B) an interview of each party and any adult who performs a caretaking role for the child or lives in a household with the child;

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

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

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

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

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

(G) screening for intimate partner violence;

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

(I) a custody and visitation recommendation based upon an analysis of the

facts found or, if such a recommendation cannot be made, an explanation of why.

(2) Optional Elements — Generally

Subject to subsection (f)(3) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

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

(B) a review of additional records;

(C) employment verification;

(D) a mental health evaluation;

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

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

(3) Elements of Specific Issue Evaluation

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

(4) Optional Elements Requiring Court Approval

The custody evaluator or specific issue evaluation assessor may not include an optional element listed in subsection ~~(f)(2)(E), (F), or (G)~~ (f)(2)(D), (E), or

> (F) if any additional cost is to be assessed for the element unless, after notice to the parties and an opportunity to object, the court approved inclusion of the element.
>
> ...

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

> By Rules Order entered on February 9, 2022, Rule 9-205.3 was amended to delete former subsection (f)(2)(D). Accordingly, subsections (f)(2)(E), (F), and (G) were re-lettered as subsections (f)(2)(D), (E), and (F), respectively. Conforming amendments update the internal reference to these subsections in subsection (f)(4).

The Reporter explained that after a recent amendment to Rule 9-205.3 was made, it was discovered that conforming amendments to internal references in the Rule had been inadvertently omitted. She said that the proposed amendments were circulated via email. The Chair called for a motion to approve the proposed amendments. A motion was made and seconded. By consensus, the Committee approved the Rule as presented.

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