STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundredth Report to the Court of Appeals, transmitting thereby proposed new Rules 5-431 and 20-303 and proposed amendments to current Rules 1-361, 2-231, 2-506, 2-633, 3-123, 3-633, 4-251, 5-404, 5-703, 8-422, 11-121, 16-207, 19-738, 19-802, 20-101, 20-103, 20-107, 20-201, and 20-203.

The Committee's Two Hundredth Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before April 5, 2019 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
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Suzanne Johnson
Clerk
Court of Appeals of Maryland

March 5, 2019

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Clayton Greene, Jr.
The Honorable Robert N. McDonald,
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Joseph M. Getty,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its Two Hundredth Report and recommends that the Court adopt two new Rules and amendments to existing Rules transmitted with this Report, as follows.

Rule 2-231. Class Actions

Current Rule 2-231 permits members of a class to sue **or be sued** as representative parties on behalf of a class if certain requirements are met. That is consistent with Fed. R. Civ. P. 23(a) and similar Rules adopted in many States. Most class action suits involve a class of **plaintiffs** suing named defendants, although it appears that actions against a class of **defendants** have been filed in the Federal courts and in some State courts. *See Defendant Class Actions,* 32 Conn. L. Rev. 1319 (2000). Although actions have been filed against multiple defendants in mass toxic tort cases (*see Philip Morris v. Angeletti*, 358 Md. 689 (2000)), until recently it does not appear that Rule 2-231 actions against a class of defendants have been filed in Maryland courts.

The proposed amendment to Rule 2-231 emanates from such an action filed in the Circuit Court for Montgomery County (*Yang v.*

G & C Gulf, Inc., Case No. 403885V), in which a class of plaintiffs sued a class of defendants. The issue presented to the Rules Committee, at least initially, was not whether class actions should be permitted against a defendant class, but whether Rule 2-231 should be amended, as the Federal Rule had been in 1998, to permit an interlocutory appeal from an order certifying or refusing to certify a class.[1]

After substantial debate at a meeting of the Appellate Subcommittee, three meetings of the Process, Parties and Pleading Subcommittee, and two meetings of the full Rules Committee, the Committee concluded that (1) following the lead of the Supreme Court in *Coopers & Lybrand v. Livesay*, 437 U.S. 463 (1978), an order certifying or rejecting certification of a class is an interlocutory one, (2) such an order normally does not dispose of any claim under Rule 2-602 and therefore could not be immediately appealed under that Rule, and (3) it also was not the kind of interlocutory order from which appeal could be taken under Code, Courts Article, § 12-303. Given that the Court on numerous occasions has made clear that its appellate jurisdiction is determined solely by the Maryland Constitution or statutes enacted by the General Assembly, the Committee

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[1] Fed. R. Civ. P. 23(f) authorizes the Federal appellate courts to permit an appeal from an order granting or denying class action certification, other than from an order certifying a class for purposes of considering a settlement. Time limits are placed on when a petition for permission to appeal must be filed. If an appeal is granted, it does not stay proceedings in the District Court unless the appellate court so orders. The Federal Advisory Committee Note states that the intent of section (f) was to give the Federal Courts of Appeals "unfettered discretion whether to permit the appeal, akin to the discretion exercised by the Supreme Court in acting on a petition for certiorari."

The underlying basis for the amendment appeared to be a pragmatic one. The Advisory Committee pointed out that "[a]n order denying certification may confront the plaintiff with a situation in which the only sure path to appellate review is by proceeding to final judgment on the merits of an individual claim that, standing alone, is far smaller than the costs of litigation," but that "[a]n order granting certification, on the other hand, may force a defendant to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability." That dilemma has been referred to as the "death knell doctrine." *See Microsoft v. Baker*, 137 S. Ct. 1702 (2017).

Evidence was presented to the subcommittees that the Federal appellate courts appear to have differing views regarding interlocutory appeals. Some have been liberal in allowing them; others have not.

concluded that the Court had no authority to permit an interlocutory appeal of this kind simply by Rule. The suggestion was made that, if a counterpart to section (f) of the Federal Rule was desired, interested persons should seek a legislative amendment to § 12-303.

The Committee was concerned, however, about how an action against a defendant class could be administered in light of the different interests that members of a defendant class might have from a plaintiff class. Several particular concerns were expressed, including: (1) the ability to opt out of the class;[2] (2) the manner in which a class representative is selected;[3] and (3) the form of notice that is sent to class members and the method of service.[4]

Given the relative paucity of these kinds of actions, there was little guidance on some of these issues or others that the Committee could not contemplate. The Committee considered limiting certification of a defendant class to situations in

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[2] Rule 2-231(a) states four prerequisites to maintaining a class action, all of which must be met – numerosity, commonality, typicality, and adequacy of representation. *See Philip Morris v. Angeletti, Supra,* 358 Md. at 727. Section (b) sets forth three additional prerequisites, at least one of which must be satisfied: (1) the prosecution of separate actions by or against individual members would create certain listed risks; (2) a party opposing the class has acted in a way that makes appropriate final injunctive or declaratory relief applicable to the class as a whole, or (3) the court finds that the questions of law or fact common to the members of the class predominate over questions affecting only individual members. In a class action based on subsection (b)(3), the court, upon a timely request, will exclude a member from the class; that is not the case when the class action is based on subsections (b)(1) or (b)(2). *See* section (e).

[3] With respect to a plaintiff class, the plaintiff(s) who file the action ordinarily have control over the designation of the class representative. With respect to a defendant class, however, and as actually occurred in the *Yang* case, the representative of the defendant class may be selected by the court or the plaintiffs, which, in a non-opt-out class under subsections (b)(1) or (b)(2), can place significant duties and expenses on that defendant and its attorney that neither wishes to accept.

[4] In the *Yang* case, the first notice of class membership sent to the defendants was a mailed post card that gave little information about the case. Even that notice was not required by the Rule but was directed by the judge. If the defendant received the post card, it could access the pleadings by going to a website.

which only injunctive or declaratory relief is requested, but, in the end, recommends that actions against a defendant class not be permitted at all until experience under the Federal Rule and in other States presents a clearer picture of how some of these issues can be resolved. In the meanwhile, the ability to join multiple defendants, as in *Philip Morris*, proceed in Federal Court under Rule 23, and seek legislation permitting an interlocutory appeal – either discretionarily as under the Federal Rule or as of right – remain as options.

Rule 2-506

Rule 2-506 permits a party who has filed a complaint, counterclaim, cross-claim, or third-party claim to dismiss all or part of that claim (1) without leave of court by stipulation or by notice prior to an adverse party filing an answer, and (2) otherwise with leave of court. Section (c), however provides that, if a counterclaim has been filed before the plaintiff's motion for voluntary dismissal, the action may not be dismissed over the objection of the counterclaimant unless the counterclaim can remain pending for independent adjudication by the court.

On two occasions, the Court of Special Appeals has held, in reported Opinions, that, although a third-party claim is contingent upon and originates from the plaintiff's claim, the defendant/third-party claimant may join independent claims against the third-party defendant in the third-party complaint. *See Roebuck v. Stewart*, 76 Md. App. 298 (1988) and *Moreland v. Aetna*, 152 Md. App. 288 (2003). Thus, a third-party complaint may be entirely derivative from and dependent on the plaintiff's complaint or only partly so. That, in turn, raises the question of whether, to what extent, or under what circumstances, the third-party complaint must or may be dismissed if the plaintiff's complaint against the third-party plaintiff is dismissed. Judge Dan Friedman raised that issue in a concurring Opinion in *Young v. Emkay*, No. 792, S.T. 2016 (Md. App. Unreported, filed February 21, 2018) and requested guidance from the Rules Committee.

The Committee recommends that, with one exception, the court should have discretion to dismiss a third-party complaint when the plaintiff's complaint from which it derives is dismissed. The exception, expressed in language added to section (c), is that, over an objection, the third-party complaint may not be dismissed to the extent that the claim is

non-derivative and, if dismissed and subsequently refiled, it would be barred by an applicable statute of limitations.

Rules 2-633, 3-633, and 1-361

The first two of those Rules, one for the Circuit Courts and one for the District Court, deal with discovery in aid of enforcement of money judgments. They permit the judgment creditor, once the judgment has become enrolled after 30 days, to obtain a court order requiring the debtor or other persons who have property of the debtor or knowledge of concealment or fraudulent transfers by the debtor to appear before a judge or examiner for examination. Section (b) of the Rules requires that the order to appear warn the persons to whom the order is directed that a failure to appear may result their being held in contempt. The order to appear must be served in accordance with Rule 2-121, which allows service by personal delivery, leaving the order at the individual's home with a resident of suitable age, or by certified mail.

Though unstated in Rules 2-633 and 3-633, some courts have employed an additional remedy, other than contempt, for non-compliance with the order to appear. At the request of the creditor, they issue a body attachment that causes the person to be arrested and detained until presented before the court. In some instances, that has resulted in the person being detained for several days or weeks.

The Committee was asked by several groups to preclude body attachments from being used for such purposes. After considerable discussion, the Committee was unwilling to ban body attachments entirely but recommends that the Rules be amended (1) to require that the order to appear warn the person not only of the prospect of contempt in the event of non-compliance but also that a body attachment may issue as well, and (2) to preclude the issuance of a body attachment for non-appearance absent a determination by the court (A) that the order to appear was personally delivered to the person or sent by certified mail, restricted delivery, and not just left with some other person at the residence, or (B) as shown by a particularized affidavit, that the person has been evading service willfully. A conforming amendment is made to Rule 1-361.

The Committee is aware of a Florida statute that requires the court clerk to send to a judgment debtor a court form requiring the disclosure of significant financial data that, under pain of contempt, must be completed and returned within 45

days. Although not ready to approve either the particular form used in Florida or a redesigned form of that type, the Committee is exploring an alternative approach that may avoid the need for requiring a personal appearance by the debtor, at least in many cases.

Rule 3-123

Rule 3-123(b) requires that execution of service of process, other than by delivery, mailing, or publication, be made by the sheriff unless the court orders otherwise. That section is amended to conform it to 2018 Md. Laws, Ch.645, which permits, on the plaintiff's request in an action to repossess non-residential property, service on the tenant also to be made by any person authorized under the Md. Rules to serve process. Service by such an individual would be in addition to service by the sheriff. The intent of the statute seems to be to better assure the kind of personal service that is required in order for the landlord to obtain a money judgment against the non-residential tenant for unpaid rent.

Rules 5-404 and 5-413; Rule 4-251

An Amendment to Rule 5-404 and new Rule 5-413 conform to 2018 Md. Laws, Chs. 362 and 363, which, in prosecutions for sexually assaultive behavior, allow evidence of other sexually assaultive behavior by the defendant to be admitted under certain conditions. A conforming amendment is proposed to Rule 4-251.

Rule 5-703

In *Lamalfa v. Hearn*, 457 Md. 350 (2018), the Court considered whether certain medical records relied upon by a testifying expert were properly admitted into evidence under Rule 5-703. The Court noted that, under that Rule, facts or data on which the expert bases his or her opinion may be "disclosed" to the jury if (1) they are of a type reasonably relied on by experts in the field, and (2) are "determined" to be trustworthy, necessary to illuminate testimony, and unprivileged. Questions were raised over the meaning of "disclosed" and whether, in making its determinations, the trial court needed to articulate those determinations on the record and state a basis for them.

In analyzing those questions, the Court concluded that the "best practice" was for the trial court to "explain on the

record" that it has considered the factors stated in the Rule and determined them to be satisfied. It noted, however, that Rule 5-703 did not explicitly require that and that the Maryland Rule differed substantially from the analogous Federal Rule 703. In footnote 7, on page 391, the court referred to the Rules Committee whether Rule 5-703 should be amended.

Rule 5-703, along with the other Rules in Title 5, was drafted during the period 1988-1993. Section (a) followed closely the Federal Rule then in existence. Sections (b) and (c) were generally consistent with the then-current Federal Rule but the text was modified to reflect existing Maryland law. Since then, the Federal Rule has been amended several times, which accounts for some of the current differences. Only Kansas now follows the text of the Maryland Rule.

The Evidence Subcommittee first looked at addressing only the issue referred by the Court – requiring the trial judge to place on the record the necessary determinations – but noted other ambiguities as well. The Subcommittee ultimately decided, with only minor adjustments, to recommend adopting the current Federal Rule, and the full Committee concurred in that recommendation.

The proposed amendments to Rule 5-703 more clearly express four separate principles. Section (a) permits an expert to base an opinion on facts and data of which he/she has been made aware or personally observed. If the court finds on the record that experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for **the opinion** to be admitted. Sections (b) and (c) deal with the **facts or data**, not the opinion. If those facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury over objection only if the court finds on the record that their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect. Section (c) requires that, if those inadmissible facts or data are disclosed pursuant to section (b), the court, on request, must instruct the jury to use those facts or data only for the purpose of evaluating the validity and probative value of the expert's opinion. That addresses the Court's concern over the difference between admission and disclosure. Finally, section (d) makes clear that the Rule does not limit the right of the opposing party to cross examine the expert to test the basis for his/her opinion.

The Committee Note following the Rule explains that, because disclosure of otherwise inadmissible evidence to the trier of fact is an exception to the normal rule, if a timely objection is made, the proponent should have the burden of convincing the judge that the conditions stated in the Rule are satisfied and the judge, in responding to the objection, should make the necessary findings on the record, so that, if there is an appeal, the appellate court will have a basis to review the trial judge's decision.

Rules 8-422 and 11-121

The amendments to these Rules are of a housekeeping nature.

Rule 16-207

The proposed changes to this Rule were requested by the State Court Administrator. Plans relating to problem-solving court programs will be submitted initially to the Office of Problem-Solving Courts for its evaluation and recommendation rather than directly to the State Court Administrator. Additionally, provisions pertaining to monitoring, altering, and terminating existing programs are added to the Rule.

Rule 19-738

At the request of Bar Counsel, this Rule is amended to permit an attorney who has been convicted of a serious crime to have the opportunity to present evidence in support of a disposition other than disbarment.

Rule 19-802

At the request of the Director of the Access to Justice Department of the Administrative Office of the Courts, these amendments clarify who is required to register with the Attorney Information System and who is exempt.

Rules 20-101, 20-103, 20-107, 20-201, 20-203, and 20-303

These are amendments to some of the MDEC Rules recommended by the MDEC Executive Steering Committee and the State Court Administrator.

The amendment to Rule 20-101 expands the definition of "filer" to include each person whose signature appears on the submission. The amendments to Rule 20-103 are intended to

provide guidance and uniformity in what constitutes a deficient filing and to permit the State Court Administrator, with the approval of the Chief Judge of the Court of Appeals, to include in her Policies and Procedures any procedure useful for processing submissions under Code, Real Property Article, § 8-401 (repossession of property for nonpayment of rent). Many of those submissions will be in the form of bulk filings, which present special issues. The changes to Rule 20-107 permit filers in those repossession cases to use a "/s/" signature.

The amendments to Rule 20-201 clarify that the program allowing District Court Commissioners to e-file certain documents with a Circuit Court is no longer a pilot program but a permanent one. The amendments to Rule 20-203 clarify that clerks do not have to serve copies of deficiency notices on persons who have not yet been served with process or if the deficiency was cured. Rule 20-303 is new. It adopts the same procedure with respect to access to a Circuit Court record by an appellate court to records in an appeal from the District Court to a Circuit Court and transfers between Circuit Courts.

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

Respectfully Submitted,

Alan M. Wilner
Chair

AMW:cmp
cc: Suzanne C. Johnson, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 200 – PARTIES

AMEND Rule 2-231 to prohibit the naming and certification of a defendant class in a class action by adding new section (a), by making conforming amendments throughout, and by adding a Committee note, as follows:

RULE 2-231. CLASS ACTIONS

(a) Permitted Classes

Only plaintiff classes may be named in an action and certified by the court. Defendant classes shall not be named or certified.

~~(a)~~(b) Prerequisites to a Class Action

One or more members of a plaintiff class may sue ~~or be sued~~ as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims ~~or defenses~~ of the representative parties are typical of the claims ~~or defenses~~ of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Cross reference: See Code, Courts Article, § 4-402 (d), regarding aggregation of claims for jurisdictional amount.

~~(b)~~(c) Class Actions Maintainable

Unless justice requires otherwise, an action may be maintained as a class action if the prerequisites of section ~~(a)~~(b) are satisfied, and in addition:

(1) the prosecution of separate actions by ~~or against~~ individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent

to the findings include: (A) the interest of members of the class in individually controlling the prosecution ~~or defense~~ of separate actions, (B) the extent and nature of any litigation concerning the controversy already commenced by ~~or against~~ members of the class, (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, (D) the difficulties likely to be encountered in the management of a class action.

~~(c)~~(d) Certification

On motion of any party or on the court's own initiative, the court shall determine by order as soon as practicable after commencement of the action whether it is to be maintained as a class action. A hearing shall be granted if requested by any party. The order shall include the court's findings and reasons for certifying or refusing to certify the action as a class action. The order may be conditional and may be altered or amended before the decision on the merits.

~~(d)~~(e) Partial Class Actions; Subclasses

When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class.

~~(e)~~(f) Notice

In any class action, the court may require notice pursuant to subsection ~~(f)~~(g)(2). In a class action maintained under subsection ~~(b)~~(c)(3), notice shall be given to members of the class in the manner the court directs. The notice shall advise that (1) the court will exclude from the class any member who so requests by a specified date, (2) the judgment, whether favorable or not, will include all members who do not request exclusion, and (3) any member who does not request exclusion and who desires to enter an appearance through counsel may do so.

~~(f)~~(g) Orders in Conduct of Actions

In the conduct of actions to which this Rule applies, the court may enter appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument, (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in the manner the court directs to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action, (3) imposing conditions on the representative parties or intervenors, (4) requiring that the pleadings be amended to eliminate allegations as to

representation of absent persons, and that the action proceed accordingly, (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 2-504, and may be altered or amended as may be desirable from time to time.

~~(g)~~(h) Discovery

For purposes of discovery, only representative parties shall be treated as parties. On motion, the court may allow discovery by or against any other member of the class.

~~(h)~~(i) Dismissal or Compromise

A class action shall not be dismissed or compromised without the approval of the court. Notice of a proposed dismissal or compromise shall be given to all members of the class in the manner the court directs.

~~(i)~~(j) Judgment

The judgment in an action maintained as a class action under subsections ~~(b)~~(c)(1) and (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection ~~(b)~~(c)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection ~~(e)~~(f)(1) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

Committee note: Nothing in this Rule is intended to interfere with the court's authority to regulate multiple defendant cases under Rules 2-503, 2-504.1, or 2-212, or any other provision for orderly proceedings in multiple defendant cases contained in these Rules.

Source: This Rule is derived as follows:
Section (a) is new.
Section ~~(a)~~(b) is derived from the 1966 version of Fed. R. Civ. P. 23 (a) and former Rule 209 a.
Section ~~(b)~~(c) is derived from the 1966 version of Fed. R. Civ. P. 23 (b)(1), (2) and (3).
Section ~~(c)~~(d) is derived from the 1966 version of Fed. R. Civ. P. 23 (c)(1).
Section ~~(d)~~(e) is derived from the 1966 version of Fed. R. Civ. P. 23 (c)(4).
Section ~~(e)~~(f) is derived from the 1966 version of Fed. R. Civ. P. 23 (c)(2).
Section ~~(f)~~(g) is derived from the 1966 version of Fed. R. Civ. P. 23 (d).
Section ~~(g)~~(h) is new.
Section ~~(h)~~(i) is derived from the 1966 version of Fed. R. Civ. P. 23 (e) and former Rule 209 d.
Section ~~(i)~~(j) is derived from the 1966 version of Fed. R. Civ. P. 23 (c)(3).

REPORTER'S NOTE

The Committee was advised that, in at least one instance, a defendant in a class action was designated as a representative party of the defendant's class over the defendant's objection, and the class was certified. Absent the availability of an interlocutory appeal, the defendant was forced to bear the substantial costs of serving in this capacity. See Code, Courts and Judicial Proceedings Article, § 12-303. The proposed amendment addresses this issue by prohibiting certification of a defendant class.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-506 to provide that a trial court has discretionary authority to dismiss an action over the objection of a third-party claimant unless the third-party claim is non-derivative and, if refiled, would be barred by an applicable statute of limitations, as follows:

Rule 2-506. VOLUNTARY DISMISSAL

(a) By Notice of Dismissal or Stipulation

Except as otherwise provided in these rules or by statute, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss all or part of the claim without leave of court by filing (1) a notice of dismissal at any time before the adverse party files an answer or (2) a stipulation of dismissal signed by all parties to the claim being dismissed.

(b) Dismissal Upon Stipulated Terms

If an action is settled upon written stipulated terms and dismissed, the action may be reopened at any time upon request of any party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief.

(c) By Order of Court

Except as provided in section (a) of this Rule, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss the claim only by order of court and upon such terms and conditions as the court deems proper. If a counterclaim has been filed before the filing of a plaintiff's motion for voluntary dismissal, the action shall not be dismissed over the objection of the party who filed the counterclaim unless the counterclaim can remain pending for independent adjudication by the court. If a third-party claim has been filed before the filing of a plaintiff's motion for voluntary dismissal, the court, in its discretion, may dismiss the action over the objection of the party who filed the third-party claim, but the court may not dismiss a third-party claim that is non-derivative and, if refiled, would be barred by an applicable statute of limitations.

(d) Effect

Unless otherwise specified in the notice of dismissal, stipulation, or order of court, a dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a party who has previously dismissed in any court of any state or in any court of the United States an action based on or including the same claim.

(e) Costs

Unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action or the part dismissed.

Cross reference: See Code, Courts Article, § 7-202. For settlement of suits on behalf of minors, see Code, Courts Article, § 6-405 and Rule 2-202. For settlement of a claim not in suit asserted by a parent or person in loco parentis under a liability insurance policy, see Code, Insurance Article, § 19-113.

Source: This Rule is derived as follows:
Section (a) is derived in part from the 1968 version of Fed. R. Civ. P. 41(a)(1) and is in part new.
Section (b) is new.
Section (c) is derived in part from former Rule 541 b and the 1968 version of Fed. R. Civ. P 41(a)(2) and is in part new.
Section (d) is derived from former Rule 541 c.
Section (e) is derived from former Rules 541 d and 582 b.

REPORTER'S NOTE

A proposed amendment to Rule 2-506 (c) allows a trial court, with one exception, discretion as to whether to dismiss a third-party claim over the objection of the third-party claimant. The exception is a pending non-derivative third-party claim that, if dismissed and subsequently refiled, would be barred by an applicable statute of limitations. In this situation, the trial court may not dismiss the third-party claim over the objection of the claimant, and the claim must be allowed to proceed.

Whether Maryland trial courts should permit non-derivative third-party claims and, if so, how they should be handled when a matter is voluntarily dismissed, was brought to the Committee's attention on pages 1 and 2 of Judge Friedman's concurring opinion in *Young v. Emkay Title Solutions, LLC* (Court of Special Appeals, No. 00792, September Term 2016, filed February 21, 2018) [Unreported]. Specifically, Judge Friedman noted that there is no controlling authority emanating from the Court of Appeals; rather, the controlling precedent consists of two Court of Special Appeals opinions: *Roebuck v. Steuart*, 76 Md. App. 298

(1988) (holding that a third-party claimant may bring two types of third-party actions – contingent and ancillary); and *Moreland v. Aetna U.S. Healthcare*, 152 Md. App. 288 (2003) (holding that dismissal of ancillary state law third-party claims is discretionary).

The Rules Committee recommends following the holding in *Moreland,* with the exception that a non-derivative third-party claim may not be dismissed over the objection of the third-party claimant if, upon refiling, it would be barred by an applicable statute of limitations.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-633 (b) by requiring that an order to appear for examination warn that a body attachment may issue in the event of non-appearance, by precluding the issuance of a body attachment absent a determination by the court that the judgment debtor was served in person with the order or has been evading service willfully, by adding and updating cross references, and by making stylistic changes, as follows:

Rule 2-633. DISCOVERY IN AID OF ENFORCEMENT

. . .

(b) Examination before a judge or an examiner

(1) Generally

Subject to section (c) of this Rule, on request of a judgment creditor~~,~~ filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or recorded shall issue an order requiring the appearance for examination under oath before a judge or examiner of ~~(1)~~ (A) the judgment debtor, or ~~(2)~~ (B) any other person who may have property of the judgment debtor, be indebted for a sum certain

to the judgment debtor, or have knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor.

(2) Order

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

Cross reference: See Rule 1-361.

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

(3) Sequestration

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

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

. . .

REPORTER'S NOTE

Proposed amendments to Rules 2-633 and 3-633 address concerns raised regarding the issuance of body attachments to enforce an order for a judgment debtor to appear in court or before the examiner when (1) the order to appear does not warn of that possibility, and (2) the order was not served on the debtor in person, but was left with someone else at the residence. Evidence was presented to the General Assembly that some debtors were taken into custody pursuant to a body attachment when they had not, in fact, received the order to appear. The current Rule requires that the order to appear warn of the possibility of contempt but not of the more immediate and onerous prospect of physical seizure by a law enforcement officer.

The amendments add to both Rules a requirement that an order to appear for examination contain a warning that the failure to appear could result in the issuance of a body attachment. The amendments also provide that the issuance of a body attachment must be based on a determination by the court that the judgment debtor had been personally served with the order to appear or had been willfully evading service.

Finally, a cross reference is added to both Rules following new subsection (b)(2), and the cross reference following section (b) is updated to include a reference to Code, Courts Article, § 6-411. Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-633 (b) by requiring that an order to appear for examination warn that a body attachment may issue in the event of non-appearance, by precluding the issuance of a body attachment absent a determination by the court that the judgment debtor was served in person with the order or has been evading service willfully, by adding and updating cross references, and by making stylistic changes, as follows:

Rule 3-633. DISCOVERY IN AID OF ENFORCEMENT

. . .

(b) Examination before a judge or an examiner

(1) Generally

Subject to section (c) of this Rule, on request of a judgment creditor~~,~~ filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or recorded shall issue an order requiring the appearance for examination under oath before a judge or person authorized by the Chief Judge of the Court to serve as an examiner of ~~(1)~~ (A) the judgment debtor, or ~~(2)~~ (B) any other person who may have

property of the judgment debtor, be indebted for a sum certain to the judgment debtor, or have knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor.

(2) Order

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

Cross reference: See Rule 1-361.

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

(3) Sequestration

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

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

. . .

REPORTER’S NOTE

See the Reporter’s Note to Rule 2-633.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-361 by adding references to Rules 2-633 and 3-633 to the cross reference following section (a), as follows:

Rule 1-361. EXECUTION OF WARRANTS AND BODY ATTACHMENTS

(a) Generally

A person arrested on a warrant or taken into custody on a body attachment shall be brought before the judicial officer designated in the specific instructions in the warrant or body attachment.

Cross reference: See Rules 4-102, 4-212, and 4-347 concerning warrants. See Rules 1-202, 2-510, 2-633, 3-510, 3-633, 4-266, and 4-267 concerning body attachments.

(b) Warrants Without Specific Instructions

If a warrant for arrest issued by a judge does not contain specific instructions designating the judicial officer before whom the arrested person is directed to appear:

(1) The person arrested shall be brought without unnecessary delay, and in no event later than 24 hours after the arrest, before a judicial officer of the District Court sitting in the county where the arrest was made, and

(2) The judicial officer shall determine the person's

eligibility for release, establish any conditions of release, and direct how the person shall be brought before the judge who issued the warrant.

(c) Body Attachments Without Specific Instructions

If a body attachment does not specify what is to be done with the person taken into custody, the person shall be brought without unnecessary delay before the judge who issued the attachment. If the court is not in session when the person is taken into custody, the person shall be brought before the court at its next session. If the judge who issued the attachment is not then available, the person shall be brought before another judge of the court that issued the attachment. That judge shall determine the person's eligibility for release, establish any conditions of release, and direct how the person shall be brought before the judge who issued the attachment.

Committee note: Code, Courts Article, § 2-107 (a)(3) requires that a warrant for arrest issued by a circuit court contain certain instructions to the sheriff or other law enforcement officer who will be executing the warrant. This Rule provides procedures for processing a person taken into custody on a warrant or body attachment that does not contain this information.

REPORTER'S NOTE

References to Rules 2-633 and 3-633 are proposed to be added to the cross reference following Rule 1-361 (a) in light of proposed amendments to Rules 2-633 and 3-633 that concern body attachments issued by the court in proceedings for discovery in aid of enforcement of money judgments.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-123 by conforming the Rule to an amendment to Code, Real Property Article, § 8-401, as follows:

RULE 3-123. PROCESS--BY WHOM SERVED

(a) Generally

Service of process may be made by a sheriff or, except as otherwise provided in this Rule, by a competent private person, 18 years of age or older, including an attorney of record, but not by a party to the action.

(b) Sheriff

(1) All process requiring execution other than delivery, mailing, or publication shall be executed by the sheriff of the county where execution takes place, unless the court orders otherwise and notwithstanding subsection (b)(2).

(2) Upon a request from a plaintiff in an action to repossess nonresidential property under Code, Real Property Article, § 8-401, service of process on a tenant may be directed to any person authorized to serve process under section (a), in addition to the service required under subsection (b)(1).

(c) Elisor

When the sheriff is a party to or interested in an action so as to be disqualified from serving or executing process, the court, on application of any interested party, may appoint an elisor to serve or execute the process. The appointment shall be in writing, signed by a judge, and filed with the clerk issuing the process. The elisor has the same power as the sheriff to serve or execute the process for which the elisor was appointed and is entitled to the same fees.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 104 b 1 and h 2 and 116 a.
Section (b) is in part derived from former M.D.R. 116 a and is in part new.
Section (c) is derived from former M.D.R. 117 a and b.

REPORTER'S NOTE

An amendment to Code, Real Property Article, § 8-401, became effective on October 1, 2018. This amendment allows a plaintiff to request service of process by a "person authorized under the Maryland Rules to serve process" in an action for repossession of nonresidential property. This is in addition to service by sheriff, which remains a requirement for an action to proceed.

Proposed amendments to Rule 3-123 include a new subsection (b)(2) that permits, in an action for repossession of nonresidential property, service by a person authorized under section (a).

In effect, service of process must be made by the sheriff of the appropriate county or municipality, but a plaintiff may elect, in addition to service by sheriff, to attempt service of process by a competent private person, 18 years of age or older, including an attorney of record, so long as the person is not a party to the action.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 400 – RELEVANCY AND ITS LIMITS

AMEND Rule 5-404 by adding a reference to Rule 5-413, as follows:

Rule 5-404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

. . .

(b) Other Crimes, Wrongs, or Acts

Evidence of other crimes, wrongs, or other acts including delinquent acts as defined by Code, Courts Article §3-8A-01 is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, ~~or~~ absence of mistake or accident~~.~~, or in conformity with Rule 5-413.

. . .

REPORTER'S NOTE

Rule 5-404 (b) is proposed to be amended by adding a reference to proposed new Rule 5-413.

The new text adds an example of an additional purpose for which other crimes evidence may be admissible. Under Rule 5-413, and in accordance with Code, Courts Article, §10-923, in a prosecution for sexually assaultive behavior, evidence of other sexually assaultive behavior for which the defendant is not on trial may be admissible.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 400 – RELEVANCY AND ITS LIMITS

ADD new Rule 5-413, as follows:

Rule 5-413. SEX OFFENSE CASES; OTHER SEXUALLY ASSAULTIVE BEHAVIOR BY DEFENDANT

In prosecutions for sexually assaultive behavior as defined in Code, Courts Article, §10-923 (a), evidence of other sexually assaultive behavior by the defendant occurring before or after the offense for which the defendant is on trial may be admitted in accordance with §10-923.

Cross reference: See Rule 4-251 (b)(4), concerning the time for determination of a motion in the District Court.

Source: This Rule is new.

REPORTER'S NOTE

New Rule 5-413 is proposed in light of Chapters 362/363, 2018 Laws of Maryland (HB 301/SB 270), which added Code, Courts Article §10-923.

A cross reference following the Rule refers to the time for determination of a motion of intent to introduce evidence of other sexually assaultive behavior that is filed in a criminal action in the District Court.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-251, by adding a reference to a motion under Code, Courts Article, §10-923, as follows:

Rule 4-251. MOTIONS IN DISTRICT COURT

. . .

(b) When Made; Determination

(1) A motion asserting a defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense shall be made and determined before the first witness is sworn and before evidence is received on the merits.

(2) A motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial.

(3) A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court.

(4) Other motions<u>, including a motion under Code, Courts Article, §10-923,</u> may be determined at any appropriate time.

. . .

REPORTER'S NOTE

Rule 4-251 (b)(4) is proposed to be amended by adding a reference to Code, Courts Article, §10-923, which applies to motions of intent to introduce sexually assaultive behavior.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 700 – OPINIONS AND EXPERT TESTIMONY

AMEND Rule 5-703 by changing the title consistent with Fed. R. Evid. 703, by deleting current section (a), by adding new sections (a) and (b) based on Fed. R. Evid. 703, by replacing the current Committee note with a new Committee note, and by making stylistic changes, as follows:

Rule 5-703. BASES OF AN EXPERT'S OPINION TESTIMONY ~~BY EXPERTS~~

~~(a) In General~~

~~The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.~~

(a) Admissibility of Opinion

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If the court finds on the record that experts in the particular field would reasonably rely on those kinds of facts or data in

forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

(b) If Facts or Data Inadmissible

If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury over objection only if the court finds on the record that their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

~~(b)~~(c) ~~Disclosure~~ Instruction to Jury

~~If determined to be trustworthy, necessary to illuminate testimony, and unprivileged, facts or data reasonably relied upon by an expert pursuant to section (a) may, in the discretion of the court, be disclosed to the jury even if~~ If ~~those~~ facts ~~and~~ or data ~~are~~ not admissible in evidence~~.~~ are disclosed to the jury under this Rule ~~Upon request~~, the court, upon request, shall instruct the jury to use those facts and data only for the purpose of evaluating the validity and probative value of the expert's opinion or inference.

~~(c)~~(d) Right to Challenge Expert

This Rule does not limit the right of an opposing party to cross-examine an expert witness or to test the basis of the expert's opinion or inference.

~~Committee note: Subject to Rule 5-403, and in criminal cases the confrontation clause, experts who rely on information from others may relate that information in their testimony if it is~~

~~of a type reasonably relied upon by experts in the field. If it is inadmissible as substantive proof, it comes in merely to explain the factual basis for the expert opinion. The opposing party then is entitled to an instruction to the jury that it may consider the evidence only for that limited purpose. See, e.g., *Maryland Dept. of Human Resources v. Bo Peep Day Nursery*, 317 Md. 573 (1989); *Attorney Grievance Commission v. Nothstein*, 300 Md. 667 (1984); *Beahm v. Shortall*, 279 Md. 321 (1977); *Hartless v. State*, 327 Md. 558 (1992).~~

Committee note: This Rule is derived from Fed. R. Evid. 703, except that it clarifies that the court must make the requisite findings on the record, which the Court, in *Lamalfa v. Hearn*, 457 Md. 350 (2018) declared to be a "best practice." Disclosure of inadmissible evidence to a jury is an exception to the normal rule, and if a timely objection is made, the proponent should have the burden of convincing the judge that the conditions stated in the Rule are satisfied, and the judge should make that finding on the record so that, in the event of an appeal, the appellate court will have a basis to review the trial court's decision. An appellate court may find that the failure to make timely objection constitutes a waiver.

Source: ~~Section~~ Sections (a) and (b) of this Rule ~~is~~ are derived from ~~F.R.Ev.~~ Fed. R. Evid. 703. Sections ~~(b) and~~ (c) and (d) are derived from Ky.R.Ev. 703(b) and (c).

REPORTER'S NOTE

Proposed amendments to Rule 5-703 delete current section (a) and replace it with new sections (a) and (b) that are based upon current Fed. R. Evid. 703. In addition to stylistic changes to the Federal Rule, the Rules Committee recommends that the phrase, "over objection," be included in new section (b) and that the requirement of findings "on the record" be included in both new sections.

Sections (a) and (b) of the Committee's proposal differ from the Federal Rule as follows (showing the comparison by underlining and strikethroughs):

(a) Admissibility of Opinion

An expert may base an opinion on facts or data in the case that the expert has been

made aware of or personally observed. If the court finds on the record that experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

(b) If Facts or Data Inadmissible

~~But if~~ If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury over objection only if the court finds on the record that their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Current sections (b) and (c) of the Rule are relettered (c) and (d), respectively, and conforming amendments to the tagline and text of relettered section (c) are made.

The current Committee note at the end of the Rule is deleted. In its place, a new Committee note that includes a reference to *Lamalfa v. Hearn*, 457 Md. 350 (2018) is added.

Additionally, the title of the Rule is amended to conform it to the Federal Rule.

MARYLAND RULES OF PROCEDURE

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

Chapter 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-422 to update the cross reference following subsection (a)(1), as follows:

Rule 8-422. PRELIMINARY PROCEDURES

(a) Civil Proceedings

(1) Generally

. . .

Cross reference: For provisions permitting a stay without the filing of a bond, see Code, Family Law Article, § 5-518 and Courts Article, § 12-701 (a)(1). For provisions limiting the extent of the stay upon the filing of a bond, see Code, ~~Article 2B, § 16-101~~ Alcoholic Beverages Article, §4-908; Courts Article, § 12-701 (a)(2); Insurance Article § 2-215 (j)(2); and Tax-Property Article, § 14-514. For general provisions governing bonds filed in civil actions, see Title 1, Chapter 400 of these Rules.

. . .

REPORTER'S NOTE

The Cross reference to Code, Article 2B, §16-101 in Rule 8-422 is obsolete. Code, Art. 2B has been repealed in its entirety. The obsolete reference is proposed to be updated to Code, Alcoholic Beverages Article, §4-908, which includes a provision limiting the extent of a stay of a decision by a local licensing board on appeal.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 11-121 (a) to revise an internal reference, as follows:

Rule 11-121. COURT RECORDS—CONFIDENTIALITY

(a) Sealing of Records

Files and records of the court in juvenile proceedings, including the docket entries and indices, are confidential and shall not be open to inspection except by order of the court or as otherwise expressly provided by law. On termination of the court's juvenile jurisdiction, the filed and records shall be sealed pursuant to Section 3-828 (c) of the Courts Article, and all index references shall be marked "sealed." If a hearing is open to the public pursuant to the Code, Courts Article ~~§3-812~~ §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are not confidential.

(b) Unsealing of Records

Sealed files and records of the court in juvenile proceedings may be unsealed and inspected by order of the court.

Cross reference: For confidentiality in appellate proceedings, see Rule 8-121 (Appeals from Courts Exercising Juvenile Jurisdiction--Confidentiality).

Source: This Rule is derived from former Rule 921.

REPORTER'S NOTE

The reference to Code, Courts Article §3-812 in Rule 11-121 (a) is obsolete. Currently, Code, Courts Article §3-812 governs CINA proceedings, which are not open to the public. The proposed amendment to the Rule updates the reference to Code, Courts Article §3-8A-13 (f), which applies to hearings in certain juvenile proceedings that are open to the public.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-207 to revise the procedure for approval of a problem-solving court program and to add provisions pertaining to monitoring, altering, and terminating existing programs, as follows:

Rule 16-207. PROBLEM SOLVING COURT PROGRAMS

(a) Definition

(1) Generally

Except as provided in subsection (a)(2) of this Rule, “problem-solving court program” means a specialized court docket or program that addresses matters under a court's jurisdiction through a multi-disciplinary and integrated approach incorporating collaboration by the court with other governmental entities, community organizations, and parties.

(2) Exceptions

(A) The mere fact that a court may receive evidence or reports from an educational, health, rehabilitation, or social service agency or may refer a person before the court to such an agency as a condition of probation or other dispositional option does not make the proceeding a problem-solving court program.

(B) Juvenile court truancy programs specifically authorized by statute do not constitute problem-solving court programs within the meaning of this Rule.

(b) Applicability

This Rule applies in its entirety to problem-solving court programs submitted for approval on or after ~~July 1, 2016~~ [Date], 2019. Sections (a), (e), (f), and (g) of this Rule apply also to problem-solving court programs in existence on ~~July 1, 2016~~ [Date], 2019.

(c) Submission of Plan

After initial consultation with the Office of Problem-Solving Courts and any officials whose participation in the programs will be required, the County Administrative Judge of a circuit court or a District Administrative Judge of the District Court may prepare and submit to the ~~State Court Administrator~~ Office of Problem-Solving Courts a detailed plan for a problem-solving court program in a form approved by the State Court Administrator ~~consistent with the protocols and requirements in an Administrative Order of the Chief Judge of the Court of Appeals~~.

Committee note: Examples of officials to be consulted, depending on the nature of the proposed program, include individuals in the Office of the State's Attorney, Office of the Public Defender; Department of Juvenile Services; health, addiction, and education agencies; the Division of Parole and Probation; and the Department of Human Services.

(d) Approval of Plan

After review of the plan and consultation with such other judicial entities as the State Court Administrator may direct, ~~the State Court Administrator~~ the Office of Problem-Solving Courts shall submit the plan, together with any comments and a recommendation, ~~to the Judicial Council for review by the Council and~~ to the State Court Administrator. The State Court Administrator shall review the materials and make a recommendation to the Chief Judge of the Court of Appeals. The program shall not be implemented until it is approved by order of the Chief Judge of the Court of Appeals.

(e) Acceptance of Participant into Program

(1) Written Agreement Required

As a condition of acceptance into a program and after the advice of an attorney, if any, a prospective participant shall execute a written agreement that sets forth:

(A) the requirements of the program;

(B) the protocols of the program, including protocols concerning the authority of the judge to initiate, permit, and consider ex parte communications pursuant to Rule 18-102.9 of the Maryland Code of Judicial Conduct;

(C) the range of sanctions that may be imposed while the participant is in the program, if any; and

(D) any rights waived by the participant, including rights under Rule 4-215 or Code, Courts Article, § 3-8A-20.

Committee note: The written agreement shall be in addition to any advisements that are required under Rule 4-215 or Code, Courts Article, § 3-8A-20, if applicable.

(2) Examination on the Record

The court may not accept the prospective participant into the program until, after examining the prospective participant on the record, the court determines and announces on the record that the prospective participant understands the agreement and knowingly and voluntarily enters into the agreement.

(3) Agreement to be Made Part of the Record

A copy of the agreement shall be made part of the record.

(f) Immediate Sanctions; Loss of Liberty or Termination from Program

If permitted by the program and in accordance with the protocols of the program, the court, for good cause, may impose an immediate sanction on a participant, except that if the participant is considered for the imposition of a sanction involving the loss of liberty or termination from the program, the participant shall be afforded notice, an opportunity to be heard, and the right to be represented by an attorney before the court makes its decision. If a hearing is required by section

(f) of this Rule and the participant is not represented by an attorney, the court shall comply with Rule 4-215 in a criminal action or Code, Courts Article, § 3-8A-20 in a delinquency action before holding the hearing.

Committee note: In considering whether a judge should be disqualified pursuant to Rule 18-102.11 of the Maryland Code of Judicial Conduct from post-termination proceedings involving a participant who has been terminated from a problem-solving court program, the judge should be sensitive to any exposure to ex parte communications or inadmissible information that the judge may have received while the participant was in the program.

(g) Credit for Incarceration Time Served

If a participant is terminated from a program, any period of time during which the participant was incarcerated as a sanction during participation in the program shall be credited against any sentence imposed or directed to be executed in the action.

(h) Continued Program Operation

(1) Monitoring

Each problem-solving court program shall provide the Office of Problem-Solving Courts with the information requested by that Office regarding the program.

(2) Report and Recommendation

(A) The Office of Problem-Solving Courts shall submit to the Chief Judge of the Court of Appeals, through the State Court Administrator, annual reports and recommendations as to the status and operations of the various problem-solving court

programs. The Office of Problem-Solving Courts shall provide to the Chief Judge of the District Court a copy of each report and recommendation that pertains to a problem-solving court program in the District Court.

(B) The Chief Judge of the Court of Appeals may require information regarding the status and operation of a problem-solving court program and may direct that a program be altered or terminated.

Source: This Rule is derived from former Rule 16-206 (2016).

REPORTER'S NOTE

The State Court Administrator has requested that Rule 16-207 be amended to streamline the process for approval of a new problem-solving court program. Under the proposed revised procedure, the plan for a new program is submitted to the Office of Problem-Solving Courts, which will review the plan in consultation with such other judicial entities as the State Court Administrator may direct. Currently, the Specialty Courts and Dockets Committee of the Judicial Council reviews the plans, and it is anticipated that this entity will continue in its consultative role, but without the involvement of the full Judicial Council. The Office of Problem-Solving Courts will then submit the plan, together with any comments and a recommendation, to the State Court Administrator. The State Court Administrator will review the materials and provide a recommendation to the Chief Judge of the Court of Appeals. The revised Rule retains the current prohibition against implementation of a program until it has been approved by Order of the Chief Judge of the Court of Appeals.

A new section (h) adds to the Rule provisions pertaining to monitoring existing problem-solving court programs and authorizes the Chief Judge of the Court of Appeals to direct that an existing program be altered or terminated.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

AMEND Rule 19-738 by restoring previously deleted language to section (b), by adding provisions pertaining to evidence in support of a disposition other than disbarment, and by making stylistic changes, as follows:

Rule 19-738. DISCIPLINE ON CONVICTION OF CRIME

(a) Definition

In this Rule, "conviction" includes a judgment ~~of conviction~~ entered upon acceptance by the court of a plea of nolo contendere.

(b) Duty of Attorney

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

Cross reference: Rule 19-701 (l).

(c) Petition Upon Conviction

(1) Generally

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

(2) Contents

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

(d) Temporary Suspension

Upon filing of the petition pursuant to section (c) of this Rule, the Court of Appeals shall issue an order requiring the attorney to show cause within 15 days from the date of the order why the attorney should not be suspended immediately from the practice of law until the further order of the Court of Appeals. If, after consideration of the petition and the answer to the order to show cause, the Court of Appeals determines that the attorney has been convicted of a serious crime, the Court may enter an order suspending the attorney from the practice of

law until final disposition of the disciplinary or remedial action. The Court of Appeals shall vacate the order and terminate the suspension if the conviction is reversed or vacated.

Cross reference: Rule 19-742.

(e) Petition When Imposition of Sentence is Delayed

(1) Generally

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

(2) Contents

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

(3) Interim Temporary Suspension

Upon the filing of the petition, the Court of Appeals shall issue an order requiring the attorney to show cause within the time specified in the order why the attorney should not be suspended immediately from the practice of law, on an interim basis, until further order of the Court of Appeals. If, after consideration of the petition and any answer to the order to show cause, the Court of Appeals determines that the attorney was found guilty of a serious crime but that sentencing has been delayed for a period of more than 30 days, the Court may enter an order suspending the attorney from the practice of law on an interim basis pending further action by the trial court and further order of the Court of Appeals.

(4) Entry of Judgment of Conviction or Order for New Trial

Upon the imposition of sentence and entry of a judgment of conviction or upon the granting of a new trial by the trial court, Bar Counsel shall inform the Court of Appeals and attach a certified copy of the judgment of conviction or order granting a new trial. If a judgment of conviction was entered, Bar Counsel may file a petition under section (c) of this Rule. The Court shall then proceed in accordance with section (d) of this Rule but may order that any interim suspension remain in effect pending disposition of the new petition. If the trial court has vacated the finding of guilt and granted a new trial, or if the attorney received probation before judgment, the Court of

Appeals shall dismiss the petition for interim suspension and terminate any interim suspension that has been ordered.

(f) Statement of Charges

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

(g) Further Proceedings

When a petition filed pursuant to section (c) of this Rule alleges the conviction of a serious crime and the attorney denies the conviction or intends to present evidence in support of a disposition other than disbarment, the Court of Appeals may enter an order designating a judge pursuant to Rule 19-722 to hold a hearing in accordance with Rule 19-727.

(1) No Appeal of Conviction

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

(2) Appeal of Conviction

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

(A) If, after completion of appellate review, the conviction is reversed or vacated, the judge to whom the action

is assigned shall either dismiss the petition or hear the action on the basis of evidence other than the conviction.

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

(3) Effect of Incarceration

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

(h) Right to Earlier Hearing

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

(i) Conclusive Effect of Final Conviction

In any proceeding under this Chapter, a final judgment of any court of record convicting an attorney of a crime, whether the conviction resulted from acceptance by the court of a plea of guilty or nolo contendere, or a verdict after trial, is conclusive evidence of the attorney's guilt of that crime. As

used in this Rule, "final judgment" means a judgment as to which all rights to direct appellate review have been exhausted. The introduction of the judgment does not preclude the Commission or Bar Counsel from introducing additional evidence or the attorney from introducing evidence or otherwise showing cause why ~~no discipline~~ a disposition other than disbarment should be ~~imposed~~ entered.

(j) Duties of Clerk of Court of Appeals

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

Source: This Rule is derived from former Rule 16-771 (2016).

REPORTER'S NOTE

Changes to Rule 19-738 are proposed that add previously deleted language back into section (b) and that address dispositions other than disbarment.

At the request of Bar Counsel, amendments are made to sections (g) and (i) to reference "a disposition other than disbarment."

Under the change to section (g), if Bar Counsel learns that an attorney who has been convicted of a serious crime intends to present evidence in support of a disposition other than disbarment, Bar Counsel may file a petition with the Court of Appeals, and the Court may enter an order designating a judge to hold a hearing.

Under section (i), if a final judgment demonstrating an attorney's conviction of a crime is introduced at a proceeding, the final judgment constitutes conclusive evidence of guilt. The introduction of the final judgment, however, does not preclude the attorney from submitting evidence or otherwise showing cause why a disposition other than disbarment should be entered.

At the same time that changes to sections (g) and (i) were considered by the Attorneys and Judges Subcommittee, the issue of language previously deleted from section (b) was raised.

In 2013, the Rules Committee voted to recommend an amendment to section (b) as follows:

> ~~(a)~~ (b) Duty of Attorney ~~Charged~~
>
> An attorney charged with a serious crime in this State or any other jurisdiction shall promptly inform Bar Counsel in writing of ~~the criminal charge~~ (1) the filing of the charge, (2) any finding or verdict of guilty on such charge, and (3) the entry of a judgment of conviction on such charge. ~~Thereafter, the attorney shall promptly notify Bar Counsel of the final disposition of the charge in each court that exercises jurisdiction over the charge.~~

After consideration, the Committee believes the restoration of language requiring prompt disclosure of "the final disposition of the charge in each court that exercises jurisdiction over the charge," located at new subsection (b)(4), is appropriate. In the restored language, a stylistic change is made – the word "exercises" is replaced by the word "exercised."

Additionally, a stylistic change is made in section (a) – the words "of conviction" are deleted, to conform to terminology used with respect to the disposition of a charge upon which a plea of nolo contendere was entered and accepted by the court.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 800 – ATTORNEY INFORMATION SYSTEM

AMEND Rule 19-802 to revise and clarify the list of categories of attorneys required to register with AIS, to add a new section (b) containing exceptions to the registration requirement, to add a new section (d)(2) pertaining to the timing of a certain registration requirement, and to make stylistic changes, as follows:

Rule 19-802. REGISTRATION

(a) Required

~~The following individuals shall register with AIS:~~

~~(1) attorneys~~ Subject to section (b) of this Rule, each attorney who is admitted to the Maryland bar or otherwise permitted to practice law in Maryland~~, including attorneys whose status is~~ shall register with AIS. This includes:

~~(A) active, inactive, or retired;~~

~~(B) suspended pursuant to Rule 19-606 or 19-741;~~

~~(C) subject to a temporary suspension order or decertification order entered under Rule 19-409 or 19-503;~~

~~(D) a judge, magistrate, or examiner;~~

~~(E) a judicial law clerk; or~~

~~(F) an attorney authorized to practice law in Maryland pursuant to 19-215 (legal services program) or 19-216 (military spouse).~~

(1) magistrates, examiners, and active and senior judges;

(2) judicial law clerks;

(3) attorneys who are subject to a temporary decertification order entered pursuant to Rule 19-409 or 19-503;

(4) out-of-state attorneys who are authorized to practice law in Maryland pursuant to Rule 19-218 (legal service program) and who, pursuant to section (h) of that Rule, are required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund;

(5) out-of-state attorneys who are authorized to practice law in Maryland pursuant to Rule 19-219 (military spouse); and

(6) attorneys who are not required to make payments to the Client Protection Fund and Disciplinary Fund but who wish to make voluntary contributions to one or both Funds.

(b) Exceptions

Attorneys in the following categories need not register so long as they remain in one of those categories:

(1) attorneys who have been placed and remain on inactive status pursuant to Rule 19-739 or permanent retired status pursuant to Rule 19-740;

(2) attorneys who are suspended pursuant to Rule 19-606 or 19-741;

(3) attorneys who have been approved by the trustees of the Client Protection Fund for inactive/retired status pursuant to Rule 19-605, regardless of whether they are engaged in the limited practice of law permitted by that Rule;

(4) out-of-state attorneys who are authorized to practice law in Maryland pursuant to Rule 19-218 (legal service program) and who, pursuant to section (h) of that Rule, are not required to make payments to the Client Protection Fund and Disciplinary Fund;

(5) out-of-state attorneys admitted *pro hac vice* pursuant to Rule 19-217; and

(6) former judges who have not been approved for recall as senior judges and are not actively practicing law in Maryland.

~~(b)~~(c) Manner of Registration

Registration shall be made in the manner specified by the Administrative Office of the Courts and shall include the

information required by the Administrative Office of the Courts, as posted on the Judiciary Website.

~~(c)~~(d) When Registration Required

(1) Subject to ~~subsection (c)(2)~~ subsections (d)(2) and (3) of this Rule, attorneys required to register shall do so on or before June 1, 2019.

(2) Attorneys who are admitted to the Maryland bar or who otherwise become subject to registration after that date shall register as part of the admission process or process authorizing their practice in Maryland.

(3) Attorneys who no longer are in one of the categories listed in section (b) of this Rule shall register no later than 30 days after becoming subject to the registration requirement of section (a) of this Rule.

~~(d)~~(e) Obligation to Keep Information Current

Attorneys shall update their AIS account within 30 days after becoming aware of a change in the information. AIS and constituent agencies have the right to rely on the latest information in AIS for billing and disciplinary purposes and for other correspondence or communication.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 19-802 revise and clarify the registration requirements of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-101 by expanding the definition of “filer” to include each person whose signature appears on a submission, as follows:

Rule 20-101. DEFINITIONS

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

(a) Appellate Court

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

(b) Business Day

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

(c) Clerk

"Clerk" means the Clerk of the Court of Appeals, the Court of Special Appeals, or a circuit court, an administrative

clerk of the District Court, and authorized assistant clerks in those offices.

(d) Concluded

An action is "concluded" when

(1) final judgment has been entered in the action;

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

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

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

(e) Filer

"Filer" means a person who is accessing the MDEC system for the purpose of filing a submission and includes each person whose signature appears on the submission for that purpose.

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

(f) Hand-Signed or Handwritten Signature

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

(g) Hyperlink

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

(h) Judge

"Judge" means a judge of the Court of Appeals, Court of Special Appeals, a circuit court, or the District Court of Maryland and includes a senior judge when designated to sit in one of those courts.

(i) Judicial Appointee

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

(j) Judicial Personnel

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

(k) MDEC or MDEC System

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

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

filers may use as an intermediary. (2) The second component - the electronic case management system - accepts submissions filed through the PESP, maintains the official electronic record in an MDEC county, and performs other case management functions.

(l) MDEC Action

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

(m) MDEC County

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

(n) MDEC Start Date

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

(o) MDEC System Outage

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

(2) For judges, judicial appointees, clerks, and judicial personnel, "MDEC system outage" means the inability of the MDEC

electronic filing system or the MDEC electronic case management system to receive electronic submissions.

(p) Redact

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

(q) Registered User

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

(r) Restricted Information

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

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

(s) Scan

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

(t) Signature

Unless otherwise specified, "signature" means the signer’s typewritten name accompanied by a visual image of the signer’s handwritten signature or by the symbol /s/.

Cross reference: Rule 20-107.

(u) Submission

"Submission" means a pleading or other document filed in an action. "Submission" does not include an item offered or admitted into evidence in open court.

Cross reference: See Rule 20-402.

(v) Tangible Item

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

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

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

(w) Trial Court

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

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

Source: This Rule is new.

REPORTER’S NOTE

A proposed amendment to Rule 20-101 (e) expands the definition of a “filer” to include each person whose signature appears on an MDEC submission.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-103 by revising language in section (b)(1); by deleting the Committee note currently following subsection (b)(1)(B) and relocating it to follow subsection (b)(1)(A); and by adding new subsection (b)(1)(C) pertaining to submissions under Code, Real Property Article §8-401, as follows:

Rule 20-103. ADMINISTRATION OF MDEC

(a) General Authority of State Court Administrator

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

(b) Policies and Procedures

(1) Authority to Adopt

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

applicable law. The policies and procedures may ~~be supplemented by~~ include:

(A) examples of deficiencies in submissions that the State Court Administrator has determined constitute a material violation of the Rules in Title 20 or an applicable policy or procedure and justify the issuance of a deficiency notice under Rule 20-203 (d); ~~and,~~

Committee note: The examples of deficiencies listed by the State Court Administrator are not intended (1) to be an exclusive or exhaustive list of deficiencies justifying the issuance of a deficiency notice, or (2) to preclude a judge from determining that the submission does not materially violate a Rule in Title 20 or an applicable policy or procedure. They are intended, however, to require the clerk to issue a deficiency notice when the submission is deficient in a manner listed by the State Court Administrator. See Rule 20-201 (d).

(B) with the approval of the Chief Judge of the Court of Appeals, the approval of pilot projects and programs in one or more courts to test the fiscal and operational efficacy of those projects or programs~~.~~; and,

~~Committee note: The examples of deficiencies listed by the State Court Administrator are not intended (1) to be an exclusive or exhaustive list of deficiencies justifying the issuance of a deficiency notice, or (2) to preclude a judge from determining that the submission does not materially violate a Rule in Title 20 or an applicable policy or procedure. They are intended, however, to require the clerk to issue a deficiency notice when the submission is deficient in a manner listed by the State Court Administrator. See Rule 20-201 (d).~~

(C) with the approval of the Chief Judge of the Court of Appeals, any provision necessary or useful with respect to procedure for the filing and processing of submissions under

Code, Real Property Article, § 8-401, nonpayment of rent, as defined by the State Court Administrator.

(2) Publication of Policies and Procedures

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

Source: This Rule is new.

REPORTER'S NOTE

In Rule 20-103, the Committee proposes that the language "be supplemented by" in subsection (b)(1) be replaced by the word "include."

The Committee note that currently follows subsection (b)(1)(B) is relocated directly following subsection (b)(1)(A), which references examples of deficiencies.

Proposed new subsection (b)(1)(C) authorizes the State Court Administrator to adopt, with the approval of the Chief Judge of the Court of Appeals, any provision necessary or useful with respect to submissions under Code, Real Property Article, § 8-401 non-payment of rent cases.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-107 by adding a provision pertaining to signatures in actions for nonpayment of rent under Code, Real Property Article, § 8-401, as follows:

Rule 20-107. MDEC SIGNATURES

(a) Signature by Filer; Additional Information Below Signature

Subject to sections (b), (c), and (d) of this Rule, when a filer is required to sign a submission, the submission shall:

(1) include the filer’s signature on the submission, and

(2) provide the following information below the filer’s signature: the filer’s address, e-mail address, and telephone number and, if the filer is an attorney, the attorney's Client Protection Fund ID number. That information shall not be regarded as part of the signature. A signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

Cross reference: For the definition of "signature" applicable to MDEC submissions, see Rule 20-101 (t).

(b) Signature by Judge, Judicial Appointee, or Clerk

A judge, judicial appointee, or clerk shall sign a submission by:

(1) personally affixing the judge's, judicial appointee's, or clerk's signature to the submission by using an electronic process approved by the State Court Administrator, or

(2) hand-signing a paper version of the submission and scanning the hand-signed submission into the MDEC system.

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

(c) Multiple Signatures on a Single Document

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

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

(1) Generally

When a person is required to sign a document under oath, affirmation, or with verification, the signer shall hand-sign the document. The filer shall scan the hand-signed document and file the scanned document electronically. The

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

(2) Actions for Nonpayment of Rent

In an action for nonpayment of rent under Code, Real Property Article, § 8-401, a person who signs a document under oath, affirmation, or with verification may use a signature as defined in Rule 20-101 (t). A person who signs a document under this subsection is subject to the provisions of Rule 20-107 (e).

(e) Verified Submissions

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

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

Source: This Rule is new.

REPORTER’S NOTE

In Rule 20-107, proposed new subsection (d)(2) provides that a person who signs a document under oath, affirmation, or with verification in an action for nonpayment of rent under Code, Real Property Article, § 8-401 may use a signature as defined in Rule 20-101 (t) and makes the person signing the document subject to the provisions of Rule 20-107 (e).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-201 (m)(1)(B) by deleting language pertaining to pilot programs and by adding language pertaining to policies and procedures for certain direct filings into the MDEC system by District Court Commissioners, as follows:

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

. . .

(m) Filings by Certain Judicial Officers and Employees

(1) District Court Commissioners

(A) Filings in District Court

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

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

(B) Filings in Circuit Court

Subject to approval by the Chief Judge of the Court of Appeals, the State Court Administrator may adopt policies and procedures ~~for one or more pilot programs~~ permitting District Court Commissioners to file electronically with a circuit court reports of pretrial release proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-216, 4-216.1, 4-217, 4-267, or 4-347. ~~A pilot program~~ The policies and procedures shall permit District Court Commissioners to enter those filings directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a circuit court clerk.

(2) Circuit Court Employees

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

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

. . .

REPORTER'S NOTE

Proposed amendments to Rule 20-201 (m)(1)(B) delete current language that refers to pilot programs. New language permits the State Court Administrator, subject to approval by the Chief Judge of the Court of Appeals, to adopt policies and procedures for certain direct filings by District Court Commissioners into circuit court proceedings, subject to post-filing review by a circuit court clerk.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-203 to provide that the clerk is not required to send certain notifications to parties that have not been served and to clarify that a deficiency notice is not sent if the deficiency is cured prior to the notice being sent, as follows:

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

(a) Time and Scope of Review

(1) Inapplicability of Section

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

(2) Review by Clerk

As soon as practicable, the clerk shall review a submission for compliance with Rule 20-201 (g) and the published policies and procedures for acceptance established by the State Court Administrator.

(b) Docketing

(1) Generally

The clerk shall promptly correct errors of non-compliance that apply to the form and language of the proposed docket entry for the submission. The docket entry as described by the filer and corrected by the clerk shall become the official docket entry for the submission. If a corrected docket entry requires a different fee than the fee required for the original docket entry, the clerk shall advise the filer, electronically, if possible, or otherwise by first-class mail of the new fee and the reasons for the change. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

(2) Submission Signed by Judge or Judicial Appointee

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

(3) Submission Generated by Clerk

The clerk shall enter on the docket each writ, notice, or other submission generated by the clerk.

(c) Striking of Certain Non-compliant Submissions

If, upon review pursuant to section (a) of this Rule, the clerk determines that a submission, other than a submission filed by a judge or, subject to Rule 20-201 (m), by a judicial appointee, fails to comply with the requirements of Rule 20-201

(g), the clerk shall (1) make a docket entry that the submission was received, (2) strike the submission, (3) notify the filer and all ~~other~~ parties that have been served of the striking and the reason for it, and (4) enter on the docket that the submission was stricken for non-compliance with the applicable subsection of Rule 20-201 (g), and that notice pursuant to this section was sent. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court. Any fee associated with the filing shall be refunded only on motion and order of the court.

(d) Deficiency Notice

(1) Issuance of Notice

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

(2) Judicial Review; Striking of Submission

The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct

the clerk to withdraw the deficiency notice. Unless (A) the judge issues such an order, or (B) the deficiency is otherwise resolved within 14 days after the notice was sent, upon notification by the clerk, the court shall strike the submission.

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

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

(2) Shielding of Unredacted Version of Submission

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

(3) Shielding on Motion of Party

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

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-203 (c)(3) and (d)(1) provide that the clerk does not send notices of stricken submissions and deficiencies to parties that have not yet been served.

The amendment to subsection (d)(1) also clarifies that a deficiency notice is not sent if the deficiency has been corrected prior to the sending of the notice. This amendment harmonizes inconsistent practices across jurisdictions.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 300 – OFFICIAL RECORD

ADD new Rule 20-303, as follows:

Rule 20-303. RECORD OF ACTION TRANSFERRED OTHER THAN TO AN APPELLATE COURT

(a) Between the District Court and a Circuit Court

The record of an action transferred from the District Court to a circuit court upon demand for a jury trial or on appeal shall be deemed to be within the custody and jurisdiction of the circuit court unless and until returned to the District Court in accordance with the applicable provisions of the Rules in Titles 2, 3, 4, and 7.

(b) Between Circuit Courts

The record of an action transferred between circuit courts shall be deemed to be within the custody and jurisdiction of the court to which the action is transferred in accordance with the applicable provisions of the Rules in Titles 2, 4, 11, and 16.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 20-303 fills a perceived gap in the Rules in Title 20 by clarifying that when an action is transferred

between the District Court and a circuit court or between circuit courts, the court to which the action is transferred is deemed to have custody of and jurisdiction over the record in accordance with the applicable provisions of the Rules in other Titles.