

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Fifth Report to the Court of Appeals, transmitting thereby on an emergency basis proposed new Rule 3-513.1 (Participation by Other Remote Means) and proposed amendments to current Rules 1-101, 2-418, 2-802, 2-803, 2-804, 3-326, 3-513, 8-207, 8-606, 16-302, 16-406, 16-502, 16-503, and 20-102.

The Committee's Two Hundred and Fifth 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 June 12, 2020 any written comments they may wish to make to:

rules@mdcourts.gov

Sandra F. Haines, Esquire

Reporter, Rules Committee

Judiciary A-POD

580 Taylor Avenue

Annapolis, Maryland 21401

Suzanne Johnson

Clerk

Court of Appeals of Maryland

May 22, 2020

The Honorable Mary Ellen Barbera,
Chief Judge

The Honorable Robert N. McDonald

The Honorable Shirley M. Watts

The Honorable Michele D. Hotten

The Honorable Joseph M. Getty

The Honorable Brynja M. Booth

The Honorable Jonathan Biran,

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 Hundred and Fifth Report, and recommends that the Court adopt new Rule 3-513.1 and the amendments to existing Rules transmitted with this Report. The proposed changes fall into three categories and are submitted on an emergency basis.

The changes proposed in **Category One** deal principally with what the Committee expects will be required when the courts begin to transition back to full operation. As the Court is acutely aware, except for select categories of proceedings that, for overarching public safety or due process purposes, had to occur, the Maryland courts have essentially been closed for the past ten weeks due to the COVID-19 pandemic. As a result, thousands of cases, pending mostly in the District Court but in the circuit and appellate courts as well, have been "on hold."

Once the transition to full operation begins, the courts will need to deal both with that huge backlog of already pending cases plus a potentially massive influx of new cases. That will place an immense burden on the courts and the litigants that is likely to continue long after the current pandemic itself has become manageable.

The Rules Committee has been in frequent communication with administrative judges and the State Court Administrator regarding possible solutions to that problem. Some of them will involve administrative innovations that do not necessarily require Rules changes, but there appears to be a consensus that a central need will be an expansion of the kinds of proceedings, evidentiary and non-evidentiary, that safely and fairly can be

conducted by remote electronic means. That need is urgent. To deal just with the current problem and its most immediate aftermath, the emergency powers of the Chief Judge may suffice, but administrative judges and court administrators, here and elsewhere, are looking to a "new normal," beyond just public emergencies, of allowing a greater use of reliable remote electronic participation where appropriate, and, in the Committee's view, that requires the kinds of Rules changes submitted with this Report.

The changes proposed in **Category Two** provide for the expediting of proceedings involving children who may be eligible for special immigrant juvenile status and for the transfer by the District Court of final domestic violence protective orders to the appropriate circuit court upon a finding that a divorce or child custody action is pending in that court.

The changes in **Category Three** permit the Court of Special Appeals to streamline the appellate process in that Court and provide for the e-filing of briefs, record extracts, and other papers in both appellate courts in appeals and other proceedings arising out of non-MDEC jurisdictions.

One side problem presented by the pandemic, through its requirement of social distancing, is its impact on the Open Meetings Law ("OML"), to which the Rules Committee is subject. The proposed changes submitted with this Report were first presented to and approved by the appropriate subcommittees of the Rules Committee. Because they are not public bodies (not having been created by statute or Rule), subcommittees are not subject to the OML. The recommendations of the subcommittees were posted on the Judiciary website for quick public comment and contemporaneously were sent to the members of the full Committee by e-mail.

Because it was not possible to have a face-to-face meeting of the 24 Committee members and five staff persons, much less any members of the public, and because it was not feasible to have a conference open to the public on such short notice, the Committee proceeded in the manner approved by the Attorney General in 81 Op. Atty. Gen. 140 (1996) and by the Open Meetings Compliance Board in 9 Official Opinions of the Compliance Board 259 (2015). The members were asked, individually, to consider the changes recommended by the respective subcommittees and transmit any suggested changes or motions to disapprove at their convenience. There was no simultaneous transmission or exchange of responses. Instead, members responded separately and at different times to the Reporter, Sandra Haines. A majority of

the members approved the proposed changes. This Report, containing the Committee's recommendations, is being posted on the Judiciary website for public comment, and any comments received will be transmitted to the Court.

Category One consists of proposed new Rule 3-513.1 and amendments to Rules 2-802, 2-803, 2-804, 3-513, 16-502, 16-503, and 2-418. All of them deal, directly or indirectly, with remote electronic proceedings. The Rules in Title 2, Chapter 800, adopted in April 2018, have allowed the Circuit Courts to conduct both evidentiary and non-evidentiary proceedings by remote electronic means. When those Rules were drafted, consideration was given to extending them to the District Court, but, at the time, that did not seem to be practicable; nor did the District Court request such an extension. The ability of the District Court to conduct proceedings in that manner is now both practicable and critical. That would be accomplished by new Rule 3-513.1 and the amendment to Rule 3-513. The amendments to Rules 2-802 and 2-803 would permit magistrates, examiners, and auditors in the Circuit Courts, with the approval of the county administrative judge, to conduct proceedings by remote electronic means.

The amendments to Rule 2-804 (g) address the impact of the pandemic on the public's right to observe or listen to court proceedings that are open to the public but are conducted by remote electronic means. When the Rule was drafted two years ago, the Committee and the Court tried to give members of the public essentially the same ability to observe electronic proceedings as if they were in the courtroom, through monitors in the clerk's office. That equivalence meant that (1) they would not hear confidential material blocked by "white noise" and (2) they would not be allowed to screen scrape video images, just as they would not be allowed to take pictures in the courtroom. Social distancing would make gathering around court monitors impracticable. Moreover, allowing members of the public remote access to video images streamed by the court would enable them to copy and redistribute (and possibly alter) those video images. The proposed amendments allow for the streaming of the audio, which gives them "real time" what they could get by purchasing a disk pursuant to Rule 16-502 or 16-504.

The amendments to Rules 16-502 and 16-503 make those Rules consistent and require that proceedings held by remote electronic means be officially recorded, just as they would be if held in a courtroom. The Committee is aware that chambers conferences occasionally involve routine procedural matters that may not be recorded currently, and some may question whether

they should be. The Committee's response is that (1) that applies as well to bench conferences that the current Rules require be recorded, even if shielded, and (2) both kinds of conferences may "morph" into significant statements and events, such as a concession, a waiver, an *in limine* ruling, an agreement of some kind that may be relevant to an appeal or a later defense of *res judicata* or collateral estoppel, for which a record is necessary.

Finally, Rule 2-418 currently allows depositions to be taken by telephone. The proposed amendment conforms the Rule to its Federal counterpart, Fed. R. Civ. P. 30, by allowing them to be taken by other electronic means as well. That change was suggested by an outside source.

Category Two consists of amendments to Rules 16-302, 8-207, and 3-326. The first two would require, at the trial and appellate levels, respectively, that proceedings seeking findings of fact necessary to qualify children for special immigration juvenile status to be expedited when the child is nearing his or her 21st birthday or facing an adverse immigration action. Failure to deal with those issues expeditiously can doom the child's ability to achieve that status simply by the passage of time rather than on the merits. As noted above, the amendment to Rule 3-326 would permit the transfer of a final domestic violence protective order to the Circuit Court when there is a divorce or child custody action pending in that court.

Category Three consists of amendments to Rules 1-101 (t), 20-102, 8-606, and 16-406. They permit the appellate courts to apply certain MDEC provisions to proceedings emanating from non-MDEC courts, which would include the courts in Baltimore City, Montgomery and Prince George's County, and certified questions from a Federal court or State Supreme Court. Importantly, the amendments to Rule 1-101 (t) also permit judges, judicial officers, judicial appointees, and court clerks to use digital signatures in the manner authorized in MDEC counties. The amendments to Rule 16-406 were requested by the Court of Special Appeals to assist with the management of cases in that Court.

Respectfully submitted,

/S/

Alan M. Wilner, Chair

AMW:wlp

cc: Suzanne C. Johnson, Clerk

CATEGORY ONE

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL
PROCEEDINGS

AMEND Rule 2-802 to permit remote electronic participation in non-evidentiary proceedings before magistrates, examiners, and auditors with the approval of the county administrative judge or that judge's designee, as follows:

RULE 2-802. NON-EVIDENTIARY PROCEEDINGS

(a) In General

Subject to Rule 2-804, a court, on motion or on its own initiative, may permit or require one or more participants or all participants to participate in a non-evidentiary proceeding by means of remote electronic participation, unless, upon objection by a party, the court finds, with respect to that proceeding, that remote electronic participation would be likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding. With the approval of the county administrative judge or the judge's designee, remote electronic participation in a non-evidentiary proceeding before a

magistrate, examiner, or auditor is permitted in accordance with the Rules in this Chapter.

Committee note: The intent of this Rule is to allow a court to permit or require remote electronic participation in non-evidentiary proceedings, including (1) status and scheduling conferences, (2) discussion of other administrative matters in which the physical presence of one or more participants is not essential; (3) proceedings limited to the argument of motions, petitions, requests, or applications involving only questions of law or procedure; and (4) judicial review actions to be decided on the record made before an administrative agency.

(b) On Court's Own Initiative

(1) In General

The county administrative judge, by administrative order entered as part of the court's case management plan, may direct that specific categories of non-evidentiary proceedings routinely be conducted, in whole or in part, by remote electronic participation unless otherwise ordered, for good cause, by the presiding judge in a particular case.

(2) In Particular Proceeding

If the court intends to permit or require remote electronic participation on its own initiative in a proceeding not subject to an administrative order entered pursuant to subsection (b)(1) of this Rule, the court shall notify the parties of its intention to do so and afford them a reasonable opportunity to object. An objection shall state specific grounds and may be ruled upon without a hearing.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL
 PROCEEDINGS

AMEND Rule 2-803 to permit remote electronic participation in evidentiary proceedings before magistrates, examiners, and auditors with the approval of the county administrative judge or that judge's designee as follows:

RULE 2-803. EVIDENTIARY PROCEEDINGS

(a) In General

Subject to section (b) of this Rule and Rule 2-804, a court, on motion or on its own initiative, may permit one or more participants or all participants to participate in an evidentiary proceeding by means of remote electronic participation (1) with the consent of all parties, or (2) in conformance with section (c) of this Rule. With the approval of the county administrative judge or the judge's designee, remote electronic participation in an evidentiary proceeding before a magistrate, examiner, or auditor is permitted in accordance with the Rules in this Chapter.

(b) On Court's Own Initiative

If the court intends to permit remote electronic participation pursuant to this Rule on its own initiative, it shall notify the parties of its intention to do so and afford them a reasonable opportunity to object. An objection shall state specific grounds. The court may rule on the objection without a hearing.

(c) Absence of Consent; Required Findings

In the absence of consent by all parties, a court may exercise the authority under section (a) only upon findings that:

(1) participation by remote electronic means is authorized by statute; or

(2) the participant is an essential participant in the proceeding or conference; and

(A) by reason of illness, disability, risk to the participant or to others, or other good cause, the participant is unable, without significant hardship to a party or the participant, to be physically present at the place where the proceeding is to be conducted; and

(B) permitting the participant to participate by remote electronic means will not cause substantial prejudice to any party or adversely affect the fairness of the proceeding.

Committee note: It is not the intent of this section that mere absence from the county or State constitute good cause, although the court may consider the distance involved and whether there

are any significant impediments to the ability of the participant to appear personally.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL
PROCEEDINGS

AMEND Rule 2-804 to require the court to ensure that the public has the ability to remotely listen to non-redactable portions of open proceedings that are conducted by remote electronic means and to expand a Committee note, as follows:

RULE 2-804. CONDITIONS ON REMOTE ELECTRONIC PARTICIPATION

(a) Personal Appearance

If, at any time during a proceeding or conference in which a participant is participating by remote electronic participation under the Rules in this Chapter, the court determines that the personal appearance of the participant is necessary in order to avoid substantial prejudice to a party or unfairness of the proceeding, the court shall continue the matter and require the personal appearance.

(b) Standards

(1) Generally

Except as otherwise provided by law or by subsection (b)(2) of this Rule, remote electronic participation shall not

be permitted unless the process, including connections, software, and equipment, to be used comply with standards developed by the State Court Administrator and approved by the Chief Judge of the Court of Appeals pursuant to Rule 2-805.

(2) Exception

The court may excuse non-compliance with subsection (b) (1) of this Rule (A) with the consent of the parties, or (B) if it finds that the non-compliance will not cause substantial prejudice to the parties or adversely affect the fairness of the proceeding.

(c) Participation of Interpreters; Attorney-Client Communications

The process, including connections, software, and equipment, shall permit interpreters to perform their function and permit confidential communication between attorneys and their clients during the proceeding.

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(d) Method of Remote Electronic Participation

If remote electronic participation is to be permitted in an evidentiary proceeding, the court, whenever feasible, shall

give preference to requiring that the participation be by video conferencing rather than mere audio.

(e) Record

A full record of proceedings conducted, in whole or in part, by remote electronic means shall be made in accordance with Rule 16-503 (a).

(f) Recording of Proceedings

A person may not record or download a recording of the proceedings except (1) as directed by the court for compliance with section (e) of this Rule, or (2) with the express consent of the court and all parties pursuant to the Rules in Title 16, Chapter 600 or Rule 16-208.

Committee note: Any remote location shall be considered to be governed by Rule 16-208.

(g) Public Access

If ~~remote electronic participation will result in a~~ proceeding that otherwise would be ~~conducted in open court and~~ be accessible to the public being conducted entirely open to the public is conducted entirely by remote electronic means, the court shall ensure that members of the public ~~who wish to do so~~ shall have substantially the same ability to ~~observe or listen~~ to the non-redactable portions of the proceeding through ~~monitors or other equipment at the courthouse~~ during the course

of the proceeding ~~as they would have had in open court~~ through remote electronic means.

Committee note: The "non-redactable" portions of a proceeding are those portions of the proceeding that are not required to be safeguarded or redacted from an audio recording obtained by a member of the public in accordance with Rule 16-504 (g) and (h). Each court may need to include in its case management plan a process to provide the public access to proceedings conducted through remote electronic participation.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 500 - TRIAL

AMEND Rule 3-513 by deleting section (a) concerning the definition of "telephone," as follows:

RULE 3-513. TESTIMONY TAKEN BY TELEPHONE

~~(a)~~ Definition

~~In this Rule, "telephone" means a landline telephone and does not include a cellular phone.~~

~~(b)~~ (a) When Testimony Taken by Telephone Allowed;

Applicability

A court may allow the testimony of a witness to be taken by telephone (1) upon stipulation by the parties or (2) subject to sections ~~(e)~~ (d) and ~~(f)~~ (e) of this Rule, on motion of a party to the action and for good cause shown. This Rule applies only to testimony by telephone and does not preclude testimony by other remote means allowed by law or, with the approval of the court, agreed to by the parties.

Cross reference: For an example of testimony by other means allowed by law, see Code, Family Law Article, § 9.5-110.

~~(e)~~ (b) Time for Filing Motion

Unless for good cause shown the court allows the motion to be filed later, a motion to take the testimony of a witness by telephone shall be filed at least 30 days before the trial or hearing at which the testimony is to be offered.

~~(d)~~(c) Contents of Motion

The motion shall state the witness's name and, unless excused by the court:

- (1) address and telephone number for the witness;
- (2) the subject matter of the witness's expected testimony;
- (3) the reasons why testimony taken by telephone should be allowed, including any circumstances listed in section ~~(e)~~(d) of this Rule;

(4) the location from which the witness will testify;

(5) whether there will be any other individual present in the room with the witness while the witness is testifying and, if so, the reason for the individual's presence and the individual's name, if known; and

(6) whether transmission of the witness's testimony will be from a wired handset, a wireless handset connected to the landline, or a speaker phone.

~~(e)~~(d) Good Cause

A court may find that there is good cause to allow the testimony of a witness to be taken by telephone if:

(1) the witness is otherwise unavailable to appear because of age, infirmity, or illness;

(2) personal appearance of the witness cannot be secured by subpoena or other reasonable means;

(3) a personal appearance would be an undue hardship to the witness; or

(4) there are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by telephone.

Committee note: This section applies to the witness's unavailability to appear personally in court, not to the witness's unavailability to testify.

~~(f)~~ (e) When Testimony Taken by Telephone Is Prohibited

If a party objects, a court shall not allow the testimony of a witness to be taken by telephone unless the court finds that:

(1) the witness is not a party and will not be testifying as an expert;

(2) the demeanor and credibility of the witness are not likely to be critical to the outcome of the proceeding;

(3) the issue or issues about which the witness is to testify are not likely to be so determinative of the outcome of the proceeding that the opportunity for face-to-face cross-examination is needed;

(4) a deposition taken under these Rules is not a fairer way to present the testimony;

(5) the exhibits or documents about which the witness is to testify are not so voluminous that testimony by telephone is impractical;

(6) adequate facilities for taking the testimony by telephone are available;

(7) failure of the witness to appear in person is not likely to cause substantial prejudice to a party; and

(8) no other circumstance requires the personal appearance of the witness.

~~(g)~~(f) Use of Deposition

A deposition of a witness whose testimony is received by telephone may be used by any party for any purpose for which the deposition could have been used had the witness appeared in person.

~~(h)~~(g) Costs

Unless the court orders otherwise for good cause, all costs of testimony taken by telephone shall be paid by the movant and may not be charged to any other party.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 500 - TRIAL

ADD Rule 3-513.1, as follows:

RULE 3-513.1. PARTICIPATION BY OTHER REMOTE ELECTRONIC MEANS

(a) Definition

In this Rule, "remote electronic participation" means simultaneous participation in a judicial proceeding or conference from a remote location by means of telephone, video conferencing, or other electronic means approved in accordance with section (b) of this Rule.

(b) Remote Electronic Participation

Notwithstanding the provisions of Rule 3-513, to the extent practicable and in conformance with guidelines established by the Chief Judge of the District Court, after consultation with the State Court Administrator, and posted on the Judiciary website, a presiding judge may permit remote electronic participation by participants. If a proceeding that otherwise would be open to the public is conducted entirely by remote electronic means, the court shall ensure that members of the public shall have the ability to listen to the non-

redactable portions of the proceeding during the course of the proceeding through remote electronic means.

Committee Note: The use of remote electronic participation under this Rule is in addition to the availability of testimony taken by telephone pursuant to Rule 3-513. The "non-redactable" portions of a proceeding are those portions of the proceeding that are not required to be safeguarded or redacted from an audio recording obtained by a member of the public in accordance with Rule 16-502 (f) and (g).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-502, to require that all judicial proceedings conducted before a District Court judge be recorded and to specify that an audio or audio-video recording offered as evidence need not be separately reported or recorded, as follows:

RULE 16-502. IN DISTRICT COURT

(a) Proceedings to be Recorded

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

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

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MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-503, to require that all judicial proceedings before a circuit court judge be recorded, to change the person responsible for recording proceedings, and to add a Committee note, as follows:

RULE 16-503. IN CIRCUIT COURT

(a) Proceedings to be Recorded

(1) Proceedings in the Presence of Judge

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

. . . .

Cross reference: See Rule 2-804 (e) requiring proceedings held remotely to be recorded in accordance with this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-418, to add language permitting a deposition to be taken by other remote electronic means, as follows:

RULE 2-418. DEPOSITION - BY TELEPHONE OR OTHER REMOTE ELECTRONIC MEANS

The parties may stipulate ~~in writing~~, or the court on motion may order, that a deposition be taken by telephone or other remote electronic means. The officer before whom the deposition is taken may administer the oath by telephone or other remote electronic means. For the purpose of these rules, a deposition taken by telephone or other remote electronic means is taken at the place where the deponent answers the questions.

Source: This Rule is new and is derived from the ~~1980~~ 2020 version of Fed. R. Civ. P. 30 (b) ~~(7)~~ (4).

CATEGORY TWO

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE

MANAGEMENT

AMEND Rule 16-302 to require a certain addition to a case management plan pertaining to Special Immigrant Juvenile Status matters; to renumber current subsections (b)(4) and (b)(5) as subsections (b)(5) and (b)(6), respectively; and to add a Committee note following new subsection (b)(4), as follows:

RULE 16-302. ASSIGNMENT OF ACTIONS FOR TRIAL; CASE MANAGEMENT PLAN

(a) Generally

The County Administrative Judge in each county shall supervise the assignment of actions for trial in a manner that maximizes the efficient use of available judicial personnel, brings pending actions to trial, and disposes of them as expeditiously as feasible.

(b) Case Management Plan; Information Report

(1) Development and Implementation

(A) The County Administrative Judge shall develop and, upon approval by the Chief Judge of the Court of Appeals, implement a case management plan for the prompt and efficient scheduling and disposition of actions in the circuit court. The plan shall include a system of differentiated case management in which actions are classified according to complexity and priority and are assigned to a scheduling category based on that classification and, to the extent practicable, follow any template established by the Chief Judge of the Court of Appeals.

(B) The County Administrative Judge shall send a copy of the plan and all amendments to it to the State Court Administrator. The State Court Administrator shall review the plan or amendments and transmit the plan or amendments, together with any recommended changes, to the Chief Judge of the Court of Appeals.

(C) The County Administrative Judge shall monitor the operation of the plan, develop any necessary amendments to it, and, upon approval by the Chief Judge of the Court of Appeals, implement the amended plan.

(2) Family Law Actions

. . .

(3) Guardianship Actions

. . .

(4) Special Immigrant Juvenile Status Actions

The plan shall include appropriate procedures for expedited case processing for petitions and motions for findings or determinations of fact necessary to a grant of Special Immigrant Juvenile Status for the purposes of 8 U.S. Code § 1101(a)(27)(J) in which the child will turn 21 years of age within six months or is subject to an adverse immigration action as defined in Code, Estates and Trusts Article, § 13-901 (b).

Committee note: The intent of subsection (b)(4) of this Rule is to create procedures to expedite proceedings where a child is within six months of turning age 21 after which he or she will be unable to obtain federal Special Immigrant Juvenile Status ("SIJS"); this subsection is not intended to preclude a court from hearing an SIJS matter on an expedited basis for another reason.

~~(4)~~(5) Consultation

...

~~(5)~~(6) Information Report

...

Source: This Rule is derived from former Rule 16-202 (2016).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 - OBTAINING REVIEW IN THE COURT OF SPECIAL APPEALS

AMEND Rule 8-207 by adding language to subsection (a)(1) to authorize an expedited appeal from a judgment or other appealable order related to a federal determination of Special Immigrant Juvenile Status and by making stylistic changes, as follows:

RULE 8-207. EXPEDITED APPEAL

(a) Adoption, Guardianship, Child Access, Child in Need of Assistance, Special Immigrant Juvenile Status Cases

(1) This section applies to every appeal to the Court of Special Appeals (A) from a judgment granting or denying a petition (i) for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, or (ii) to declare that a child is a child in need of assistance, ~~and~~ (B) from a judgment granting, denying, or establishing custody of or visitation with a minor child or from an interlocutory order taken pursuant to Code, Courts Article, § 12-303(3)(x), and (C) from a judgment or other appealable order

granting or denying a petition or motion for an order containing findings or determinations of fact necessary to a grant of Special Immigrant Juvenile Status by the Secretary of Homeland Security or other authorized federal agency or official. Unless otherwise provided for good cause by order of the Court of Special Appeals or by order of the Court of Appeals if that Court has assumed jurisdiction over the appeal, the provisions of this section shall prevail over any other rule to the extent of any inconsistency.

. . .

Source: This Rule is derived from former Rule 1029.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-326 by re-lettering current section (c) as subsection (c)(1), by adding a requirement to new subsection (c)(1) that the required circuit court action be "pending," by adding new subsection (c)(2) governing transfer of a domestic violence action after a final protective order is entered, and by adding a Cross reference following section (c), as follows:

Rule 3-326. DISMISSAL OR TRANSFER OF ACTION

(a) Improper venue

A defense of improper venue may be raised by motion before or at commencement of trial. If a court on motion or on its own initiative determines that venue is improper, it may dismiss the action or, if it determines that in the interest of justice the action should not be dismissed, it may transfer the action to any county in which it could have been brought.

(b) Convenience of the parties and witnesses

On motion of any party, the court may transfer any action to any other county where the action might have been brought if

the transfer is for the convenience of the parties and witnesses and serves the interests of justice.

(c) Domestic violence action

(1) Transfer before Final Protective Order Hearing

~~(1)~~(A) In an action under Code, Family Law Article, Title 4, Subtitle 5, after entering a temporary protective order, the District Court, on motion or on its own initiative, may transfer the action to a circuit court for the final protective order hearing if, after inquiry, the District Court finds that ~~(A)~~(i) there is ~~an~~ a pending action in the circuit court involving one or more of the parties in which there is an existing order or request for relief similar to that being sought in the District Court and ~~(B)~~(ii) in the interests of justice, the action should be heard in the circuit court.

~~(2)~~(B) In determining whether a hearing in the circuit court is in the interests of justice, the Court shall consider ~~(A)~~(i) the safety of each person eligible for relief, ~~(B)~~(ii) the convenience of the parties, ~~(C)~~(iii) the pendency of other actions involving the parties or children of the parties in one of the courts, ~~(D)~~(iv) whether a transfer will result in undue delay, ~~(E)~~(v) the services that may be available in or through each court, and ~~(F)~~(vi) the efficient operation of the courts.

~~(3)~~(C) The consent of the parties is not required for a transfer under this section.

~~(4)~~(D) After the action is transferred, the circuit court has jurisdiction for the purposes of enforcing and extending the temporary protective order as allowed by law.

Cross references: See Code, Family Law Article, § 4-505 (c) concerning the duration and extension of a temporary protective order.

(2) Transfer after Entry of Final Protective Order

(A) In an action under Code, Family Law Article, Title 4, Subtitle 5, after entering a final protective order, the District Court, on motion or on its own initiative, may transfer the action to a circuit court if, after inquiry, the District Court finds that (i) the petitioner and the respondent have a pending divorce case in the circuit court or (ii) the petitioner and the respondent have a pending child custody case in the circuit court.

(B) The consent of the parties is not required for a transfer under this section.

(C) After the action is transferred, the circuit court has jurisdiction for the purposes of modifying and enforcing the final protective order as allowed by law.

(D) If the respondent notes an appeal of the final protective order, the circuit court shall treat the request as a de novo appeal of the District Court order. An appeal shall be considered timely if it is filed within 30 days of the entry of the order.

Cross reference: See Code, Family Law Article, § 4-506 (j) concerning the duration and extension of a final protective order.

(d) Action for dishonored check

(1) Transfer to circuit court

In an action for damages exceeding \$ 25,000 for a dishonored check or other instrument pursuant to Code, Commercial Law Article, § 15-802, the District Court shall transfer the action to an appropriate circuit court upon a separate written demand filed by a defendant within 10 days after the time for filing a notice of intention to defend pursuant to Rule 3-307. Failure to file a timely demand constitutes a waiver of the right to transfer the case to a circuit court.

(2) Transmittal of record to circuit court

When a timely demand is filed, the clerk shall transmit the record to the circuit court within 15 days. At any time before the record is transmitted pursuant to this section, the District Court may determine on motion or on its own initiative that the demand for transfer was not timely filed or that the action was not entitled to be transferred pursuant to Code, Courts Article, § 4-402 (f).

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 317.

Section (b) is derived from U.S.C. Title 28, § 1404 (a).

Section (c) is new.

Section (d) is new.

CATEGORY THREE

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 by applying to non-MDEC counties, where practicable, MDEC provisions regarding the signatures of judges, judicial officers, judicial appointees and court clerks and MDEC procedures for appellate review, as follows:

RULE 1-101. APPLICABILITY

. . .

(t) Title 20

Title 20 applies to electronic filing and case management in the trial and appellate courts of this State as specified in Rule 20-102. Where practicable, Rules 20-101 (f), 20-101 (t), and 20-107 may be applied to the signature of a judge, judicial officer, judicial appointee, or court clerk in proceedings in a county that is not an MDEC County to the same extent they apply in an MDEC County, and (2) Rules 20-403 through 20-406 may be applied in appeals and other proceedings in the Court of Appeals and Court of Special Appeals arising out of a court that is a non-MDEC court to the same extent they apply in matters arising out of a court in an MDEC County.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-102 by adding a new subsection (b)(1)(A) to generally apply the Rules in Title 20 to appellate proceedings in the Court of Appeals and Court of Special Appeals, by adding a new subsection (b)(2)(B) to provide certain exceptions to the application of Title 20, by adding a Committee note after section (c), and by making stylistic changes, as follows:

RULE 20-102. APPLICATION OF TITLE

(a) Trial Courts

(1) New Actions and Submissions

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

(2) Existing Documents; Pending and Reopened Cases

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

(b) Appellate Courts

(1) Appellate Proceedings

(A) Generally

Except as provided in subsection (b)(1)(B) of this Rule, This this Title applies to all appellate appeals and other proceedings in the Court of Special Appeals or Court of Appeals seeking the review of a judgment or order entered in any action to which section (a) of this Rule applies.

(B) Exception

For appeals from an action to which section (a) of this Rule does not apply, the clerk of the lower court shall

transmit the record in accordance with Rules 8-412 and 8-413, and, upon completion of the appellate proceeding, the clerk of the appellate court shall transmit the mandate and return the record to the lower court in accordance with Rule 8-606 (d) (1).

(2) Other Proceedings

If so ordered by the Court of Appeals in a particular matter or action, the Title also applies to ~~(1)~~(A) a question certified to the Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act, Code, Courts Article, §§ 12-601-12-613; and ~~(2)~~(B) an original action in the Court of Appeals allowed by law.

(c) Applicability of Other Rules

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

Committee note: The intent of the 2020 amendments to this Rule is to expand MDEC to appeals and certain other proceedings in the Court of Special Appeals and Court of Appeals that emanate from non-MDEC subdivisions. That requires certain clarifications. First, unless they are registered users under Rule 20-104, self-represented litigants and other persons subject to Rule 20-106 (a) (4) may not file electronically. See Rule 20-106. They will continue to file their submissions to the appellate court in paper form, unless otherwise permitted by the Court. Second, unless otherwise permitted by the appellate court, trial courts in non-MDEC subdivisions shall continue to transmit the record in accordance with Rules 8-412 and 8-413 and not Rule 20-402.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

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

SPECIAL APPEALS

CHAPTER 600 - DISPOSITION

AMEND Rule 8-606 by adding language to subsection (d)(1) to require the transmittal of the mandate in paper form if the appellate proceeding emanated from a non-MDEC court, as follows:

RULE 8-606. MANDATE

(a) To Evidence Order of the Court

Any disposition of an appeal, including a voluntary dismissal, shall be evidenced by the mandate of the Court, which shall be certified by the Clerk under the seal of the Court and shall constitute the judgment of the Court.

(b) When Issued

(1) Generally

Subject to subsections (b)(2), (3), and (4) of this Rule, unless the Court orders otherwise, the Clerk shall issue the mandate upon the expiration of 30 days after the filing of the Court's opinion or entry of the Court's order.

(2) Voluntary Dismissal

Upon a voluntary dismissal, the Clerk shall issue the mandate immediately.

(3) Court of Special Appeals--Expedited Appeal

In any appeal proceeding under Rule 8-207(a), issuance of the mandate shall be as provided in Rule 8-207(a)(6).

(4) Motion for Reconsideration

If a timely motion for reconsideration is filed, unless the Court orders otherwise:

(A) the Clerk shall delay issuance of the mandate until the filing of (i) a withdrawal of the motion, or (ii) an order of the Court deciding the motion;

(B) if the Court denies the motion or grants it solely to make changes in the opinion or previous order that the Court finds do not change the principal decision in the case, the Clerk shall issue the mandate immediately upon the filing of the order; or

(C) if the Court order, with or without an accompanying new opinion, grants the motion in such manner that the Court finds does change the principal decision in the case, the Clerk shall issue the mandate upon the expiration of 30 days after the filing of the order.

(c) To Contain Statement of Costs

The mandate shall contain a statement of the order of the Court assessing costs and the amount of the costs taxable to each party.

(d) Transmission--Mandate and Record

(1) Generally

Except as provided in subsection (d)(2) of this Rule, upon issuance of the mandate, the Clerk shall transmit it to the appropriate lower court. Unless the appellate court orders otherwise, the original papers comprising the record shall be transmitted with the mandate. If the proceeding emanated from a non-MDEC court, the mandate shall be transmitted to the lower court in paper form.

(2) Court of Special Appeals--Delayed Return

If a petition for a writ of certiorari is filed pursuant to Rule 8-303 while the record is in the possession of the Court of Special Appeals, the Clerk of the Court of Special Appeals shall not return the record to the lower court until (A) the petition is denied, or (B) if the petition is granted, the Court of Special Appeals takes action in accordance with the mandate of the Court of Appeals.

(e) Effect of Mandate

Upon receipt of the mandate, the clerk of the lower court shall enter it promptly on the docket and the lower court shall proceed in accordance with its terms. Except as otherwise

provided in Rule 8-611(b), the assessment of costs in the mandate shall not be recorded and indexed as provided by Rule 2-601(c).

Cross reference: Code, Courts Article, § 6-408.

Source: This Rule is derived from former Rules 1076, 1077, 876, and 877.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 400 - CIRCUIT COURTS - CLERKS' OFFICES

AMEND Rule 16-406 by deleting the requirement that the circuit courts transmit a certain monthly report to the Court of Special Appeals and by adding a requirement that the circuit courts electronically transmit certain documents to the Clerk of the Court of Special Appeals immediately upon the filing of the documents in the circuit court, as follows:

RULE 16-406. NOTICE TO COURT OF SPECIAL APPEALS

~~By the third business day of each month, the Clerk of each circuit court shall send to the Clerk of the Court of Special Appeals a list of all actions in which, during the preceding calendar month,~~ Upon the filing of (1) a notice of appeal or application for leave to appeal to the Court of Special Appeals, ~~was filed,~~ (2) a timely motion pursuant to Rule 2-532, 2-533, or 2-534 ~~was~~ if filed after the filing of a notice of appeal, or (3) an order striking a notice of an appeal to the Court of Special Appeals was stricken pursuant to Rule 8-203, the clerk of the circuit court immediately shall send via email, or via the MDEC system if from an MDEC County, a copy of the paper filed to the Clerk of the Court of Special Appeals. ~~The list~~

~~shall include the title and docket number of the case, the name and address of the attorney for each appellant, and the date on which the notice of appeal, the motion, or the dismissal was filed.~~

Source: This Rule is derived from former Rule 16-309 (2016).