STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Fourteenth Report to the Supreme Court of Maryland, recommending proposed new Title 12, Chapter 400 (Partition), containing new Rules 12-401, 12-402, 12-403, 12-404, 12-405, 12-406, 12-407, 12-408, 12-409, and 12-410, and new Title 21 (Remote Electronic Participation in Judicial Proceedings), containing new Rules 21-101, 21-102, 21-103, 21-104, 21-105, 21-201, 21-202, 21-301, and 21-401; new Rules 15-1501 (Petition for Authorization for Minor to Marry) and 17-106 (Remote Electronic Participation); amendments to current Rules 1-101, 1-104, 1-322, 1-322.1, 2-111, 2-501, 2-504, 2-504.1, 2-516, 2-532, 2-533, 2-534, 2-613, 2-647, 3-113, 3-306, 3-516, 3-533, 3-534, 4-212, 4-231, 4-252, 4-322, 4-340, 4-345, 4-348, 4-349, 5-802, 6-206, 6-416, 6-463, 6-502, 7-102, 7-104, 7-501, 8-132, 8-202, 8-205, 8-206, 8-207, 8-303, 8-412, 8-413, 8-422, 8-431, 8-501, 8-602, 8-603, 8-605, 9-205, 9-205.3, 9-303, 10-103, 10-106.1, 10-111, 10-112, 10-202, 10-205, 10-205.1, 10-304, 11-106, 11-108, 11-219, 12-102, 14-207, 14-209, 15-1305, 16-302, 16-309, 16-405, 16-406, 16-502, 16-503, 16-504, 16-914, 16-934, 17-601, 18-103.10, 18-203.10, 19-220, 19-301.0 (1.0), 19-301.4 (1.4), 19-301.6 (1.6), 19-301.7 (1.7), 19-301.8 (1.8), 19-301.9 (1.9), 19-301.10 (1.10), 19-301.11 (1.11), 19-301.12 (1.12), 19-301.14 (1.14), 19-301.17 (1.17),

19-301.18 (1.18), 19-302.3 (2.3), 19-302.4 (2.4), 19-303.3 (3.3), 19-303.7 (3.7), 19-303.9 (3.9), 19-305.1 (5.1), 19-308.3 (8.3), 20-106, 20-203, 20-301, and 20-405; and rescission of current Rule 12-401 and current Title 2, Chapter 800, containing Rules 2-801, 2-802, 2-803, 2-804, 2-805, 2-806, and 2-807; and transmitting, without recommendation, draft new Rule 19-204.1 (Conditional Admission).

The Committee's Two Hundred and Fourteenth 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 March 1, 2023 any written comments they may wish to make to rules@mdcourts.gov or:

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THE SUPREME COURT OF MARYLAND

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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January 30, 2023

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

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

Your Honors:

The Rules Committee submits this, its Two Hundred and Fourteenth Report, and recommends, with one exception, that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report.

This is an extensive Report that includes recommendations (1) emanating from legislation enacted at the 2022 Session of the General Assembly; (2) in one instance, submitted for the Committee's consideration by then-Chief Judge Joseph M. Getty upon a favorable recommendation by the Judicial Council; or (3) that arose from other sources, all of which were considered by the Committee at one or more of its four most recent meetings (September 8, October 21, and November 18, 2022 and January 6, 2023). We have consolidated these many provisions into 19 Categories.[1]

[1] By the time this Report was written and filed, the Constitutional Amendments changing the names of the two appellate courts to the Maryland Supreme Court and the Appellate Court of Maryland, respectively, had taken effect, so we have used those names to match what will be in the Rules. When addressing historical matters – where a Rule came from, for example – we have used the name of the Court at the time.

CATEGORY ONE: CONDITIONAL ADMISSION TO THE BAR

This Item was referred to the Committee by the Court. Upon receipt, and in collaboration with the State Board of Law Examiners, the Committee undertook substantial research into how conditional admission to the bar has been dealt with elsewhere.

In August 2009, the American Bar Association (ABA) adopted a Model Rule permitting an applicant who currently satisfied eligibility requirements for admission, including fitness and moral character requirements, to be conditionally admitted upon demonstration of "recent successful rehabilitation from chemical dependency or successful treatment for mental or other illness, or from any other condition this Court deems appropriate, that has caused conduct that would otherwise have rendered the applicant currently unfit to practice law." The Rule contains 11 sections, nine with a Commentary. In adopting that Model Rule, the ABA noted that 19 States and Puerto Rico already had adopted versions of such a Rule. *See* **EXHIBIT 1.**

The ABA Model Rule cautioned, however, that conditional admission was not intended to apply to all applicants who have rehabilitated themselves from prior conduct "but only to those whose rehabilitation or treatment is sufficiently recent that protection of the public requires monitoring of the applicant for a specified period." It noted also that the availability of conditional admission did not preclude unconditional admission where rehabilitation or treatment had been successful for a sustained time period. Nor did it preclude denial or deferral of admission where rehabilitation or treatment had been of shorter duration.

In its 2021 *Comprehensive Guide to Bar Admission Requirements*, the ABA reported that 26 States now provide for conditional admission, mostly where the problem was substance abuse, debt, or criminal history, although some States added a catchall non-specific "other" reason as well. *Id.* at 5, 6. Six States also had a "structured program for deferring admission." *Id.* *See* **EXHIBIT 2.**

At the Committee's October 21, 2022 meeting, there was robust discussion of whether Maryland should adopt conditional admission. Under the Rule presented by the Attorneys and Judges Subcommittee, conditional admission would be limited to situations involving substance abuse or a mental health condition and require approval of a Conditional Admission Agreement that would (1) be confidential, (2) last for a maximum

of two years unless extended, and (3) be monitored by Bar Counsel or Bar Counsel's designee. The procedures for approving and monitoring such an agreement were complex. The draft Rule (19-204.1) was/is 13 pages long.

Apart from the ABA material, the Committee also had available several law review articles discussing conditional admission. *See* Janice M. Holder, *Completing the Puzzle: Lawyer Assistance and Conditional Admission*, 49 Duq. L. Rev. No. 439 (2011); Stephanie Denzel, *Second-Class Licensure: The Use of Conditional Admission Programs for Bar Applicants with Mental Health and Substance Abuse Histories*, 43 Conn. L. Rev. 889 (2011); and Leslie C. Levin, *The Folly of Expecting Evil: Reconsidering the Bar's Character and Fitness Requirement*, 2014 BYU L. Rev. 775 (2015). *See* **EXHIBIT 3.**

At the Committee's request, the State Board of Law Examiners did a survey of other States with respect to their experiences with conditional admission and received 11 responses--from Connecticut, Idaho, Illinois, Louisiana, Maine, New Mexico, North Dakota, South Dakota, West Virginia, Wisconsin, and Wyoming. The survey asked how many conditional admissions were recommended each year, what was the average monitoring period, how frequently was the conditional admittee "checked," what the cost of monitoring was and who paid those costs, and what percentage of conditionally admitted attorneys were ultimately not fully admitted. The numbers conditionally admitted in a given year ranged from one to four. What we learned was that the number of conditionally admitted attorneys who ultimately are not fully admitted was very small, ranging from zero to one. The majority of the few applicants subjected to conditional admission eventually are fully admitted. *See* **EXHIBIT 4.**

A few of the Committee members who had served on Character Committees felt that conditional admission was unnecessary - that a fair decision to admit or not admit could be made based on what was before them. Other members were concerned about the Conditional Admission Agreement being confidential - that prospective clients should know that the attorney they were seeking to employ has or had a substance abuse or mental health problem that required the Court of Appeals (Supreme Court of Maryland) to place conditions on the attorney's practice.

After considerable discussion, given the miniscule number of conditional admittees elsewhere, the cost of determining and monitoring appropriate conditions, and concern about whether the

fact of a conditional admission (and the conditions) should be made public so that prospective clients would be informed before engaging the attorney, the Committee concluded that conditional admission was not worth doing.

Because this matter was a Court referral, and in light of the fact that 26 States (and the ABA) have adopted a Conditional Admission Rule, the Committee has attached four Exhibits to this Report so that the Court will be better able to make its own judgment.

If the Court wishes to proceed further with conditional admission, we recommend referring the topic back to the Committee to finalize any details and deal with any provisions that the Court would like to add or delete.

CATEGORY TWO: REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

Category Two consists largely of a new Title 21 to the Maryland Rules, with conforming amendments to Rules in other Titles. It is intended to implement the recommendation of the Judicial Council to allow the continuance of remote electronic participation in certain judicial proceedings that was inaugurated several years ago as a response to the onslaught of the COVID-19 virus.

That response initially was implemented through emergency orders entered by the Governor or the Chief Judge of the Court of Appeals but later was supplemented by Rules, including new Chapter 1000 of Title 16 and amendments to Chapter 800 of Title 2. In September 2021, then-Chief Judge Getty appointed a Joint Subcommittee on Post-COVID Operations, chaired by then-Chief Judge of the Court of Special Appeals, Matthew Fader, to review the technology and the operations of the Judiciary during the COVID-19 pandemic and advise the Judicial Council which operations, if any, should remain available as a matter of standard judicial procedure. It was the Report of that Joint Subcommittee that was presented to and approved by the Judicial Council and referred by Chief Judge Getty to the Rules Committee.

Because many of the remote proceedings recommended for retention can apply to District Court and appellate court proceedings, as well as to Circuit Court proceedings, the Committee is recommending that, with some adjustments, the Rules

in Title 2, Chapter 800 be moved to a new Title 21 focused on remote electronic participation by all of those courts.[2]

Proposed Title 21 consists of four Chapters - Chapter 100 (Rules 21-101 through 21-105) containing general provisions, Chapter 200 (Rules 21-201 and 21-202) dealing with civil proceedings, Chapter 300 (Rule 21-301) dealing with criminal and delinquency proceedings, and Chapter 400 (Rule 21-401) dealing with proceedings in the two appellate courts. Current Title 2, Chapter 800 is proposed to be deleted in its entirety.

The Judicial Council Joint Subcommittee also recommended that court-annexed mediation proceedings be allowed to proceed through remote electronic means, although there was initial opposition by mediator groups to some of the provisions drafted by the Rules Committee. That dispute has been resolved. The provisions dealing with mediation are dealt with through new Rule 17-106 and amendments to Rule 9-205.

The Committee, with the concurrence of the ADR practitioners who operate court-annexed ADR programs, believes that, because ADR is a process that is not subject to the same level of court knowledge or control as judicial proceedings, the ultimate decision to conduct a particular ADR remotely, in whole or in part, should be made by the ADR practitioner after consultation with the parties and not by a judge or magistrate. *See* Rules 9-205 (g) and 17-106 (b). The ADR at issue may be a "court-annexed" program, but it is not a judicial proceeding.

Rule 21-101 is a general applicability Rule. Rule 21-102, with some style changes, repeats the definitions taken from Title 2, Chapter 800 and adds one additional definition. Rule 21-103, derived from current Rule 2-802 (b), specifies who in the various courts may order remote participation for various categories of cases. Rule 21-104, which sets certain standards and requirements for remote proceedings, is derived from current Rules 2-804 and 2-805. Rule 21-105, dealing with subpoenas, is taken in part from current Rule 2-807 (d). Rule 21-201 sets forth the kinds of civil proceedings appropriate for remote participation. Rule 21-202 focuses on remote participation in civil jury trials. Rule 21-301 deals with conditions and

[2] It does not appear that the Judicial Council Joint Subcommittee or the Judicial Council itself gave any consideration to whether remote proceedings should be permitted in the Orphans' Courts, and that issue was never presented to or considered by the Rules Committee. With the concurrence of the State Court Administrator, the recommendations in this Category are limited to the District, Circuit, and appellate courts.

procedures in criminal and delinquency proceedings. Rule 21-401 pertains to proceedings in the appellate courts.

We call particular attention to the Committee's adoption of the conclusion of the Judicial Council Joint Subcommittee that remote proceedings generally are not recommended when the trier of fact needs to assess the credibility of evidence, except when the parties consent or the case needs to be tried on an expedited basis and remote proceedings will facilitate the participation of individuals who would have difficulty attending in person.

In light of the addition of new Title 21 and the repeal of Title 2, Chapter 800, conforming amendments are made to Rules 1-101, 2-504, 2-504.1, 4-231, 10-106.1, 10-205, 10-304, 11-106, 11-108, 11-219, 15-1305, 16-302, 16-309, and 20-106. A related conforming amendment is made to Rule 16-503. That Rule is included in Category Ten of this Report.

CATEGORY THREE: UNREPORTED OPINIONS (RULE 1-104)

Category Three consists of proposed amendments to Rule 1-104, dealing with unreported Opinions, which was initially raised by two practitioners and later proposed by the Court of Special Appeals. The Committee examined the issue in the context of unreported Opinions of (1) the Supreme Court or the Appellate Court of Maryland, (2) Maryland trial courts, (3) trial and appellate courts in other States, and (4) Federal trial and appellate courts.

After much debate, the Committee recommends that:

(1) Subsection (a)(1): Unreported Opinions, from any court, do not constitute precedent within the rule of *stare decisis*.

(2) Subsection (a)(2)(A): Unreported Opinions of the Supreme Court or the Appellate Court or that were issued by those Courts under their previous names – the Court of Appeals or the Court of Special Appeals – may be cited in either Court for any purpose other than (i) as precedent or, (ii) except as provided in subsection (a)(2)(B) of the Rule, as persuasive authority. An unreported opinion of either court may be used in any court (i) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (ii) in a criminal action or

related proceeding involving the same defendant, (iii) in a disciplinary action involving the same respondent, or (iv) as persuasive authority as provided in subsection (a)(2)(B) of the Rule.

(3) Subsection (a)(2)(B): An unreported Opinion of the Supreme Court or the Appellate Court other than a *per curiam* Opinion, filed after the effective date of the new Rule may be cited as persuasive authority, but only if no reported authority adequately addresses the issue before the Court. Unreported *per curiam* Opinions may not be cited as persuasive authority. Subsection (a)(2)(B) places certain other conditions as well on the citation of unreported Appellate Court Opinions. A Committee note following subsection (a)(2)(B) notes that unreported Opinions issued after May 1, 2015 are available on the Judiciary website.

(4) Section (b): A memorandum opinion, order, or other decision of a Maryland trial court may be cited for its persuasive value only if no reported Opinion adequately addresses the issue before the court.

(5) Section (c): An unreported or unpublished opinion, order, or other decision issued by (i) a State court in a jurisdiction other than Maryland or (ii) a Federal Court may be cited as persuasive authority if the Court of that jurisdiction or the Federal Court would permit it to be cited for that purpose. The citation must indicate that the opinion is not precedent in the issuing jurisdiction, if that is the case.

(6) Section (d): A party who cites an opinion, order, or decision under section (c) or (d) that is not available in a publicly accessible database is required to attach a copy of the cited document to the document in which it is cited.

CATEGORY FOUR: INFORMATION REPORT (RULE 2-111)

Rule 2-111 currently requires that, unless otherwise provided by an Administrative Order of the Chief Justice of the Supreme Court approved by the Court, a plaintiff must file with the complaint an information report in the form available from the clerk of the Circuit Court. There is an Administrative Order, approved by the Court and initially adopted in 2005,

providing an extensive list of case types that do not require an information report. That list is repeated in a Committee Note to Rule 2-111. On September 9, 2022, Chief Justice Fader requested that the Committee consider whether the list of exemptions should be in the Rule itself.

With that request, the Chief Justice inquired of the Circuit Court clerks whether there should be any subtractions from or additions to the list of exemptions, and the clerks responded with recommendations for some additions to the list. The Committee complied with the Chief Justice's request and that of the clerks and recommends that (1) the list of exemptions should be in the Rule itself, (2) the list should include the case types recommended by the clerks, and (3) the Committee note and the Administrative Order should be repealed. No change is recommended to Rule 2-323 (h), dealing with defendants' information reports.

CATEGORY FIVE: PARTITION

Category Five consists of the deletion of current Rule 12-401 and replacement of it with new Rules 12-401, 12-402, 12-403, 12-404, 12-405, 12-406, 12-407, 12-408, 12-409, and 12-410, all to implement 2022 Md. Laws, Chapters 401 and 402. Those statutes adopted in large measure the Uniform Partition of Heirs Property Act drafted by the National Conference of Commissioners on Uniform State Laws and contained in Code, Real Property Article, § 14-702.

Rule 12-401 makes those Rules applicable in any action where the relief sought is the partition, by sale or in kind, of real property. Rule 12-402 sets out applicable definitions. Rule 12-403 provides the venue for such actions. Rule 12-404 sets forth the required contents for a complaint for partition. Rule 12-405 deals with process and preliminary matters. Rule 12-406 deals with the determination of fair market value. Rule 12-407 deals with the procedures in the event of a cotenant buyout. Rule 12-408 deals with partition in kind. Rule 12-409 deals with partition by sale, and Rule 12-410 deals with the Order of Partition.

CATEGORY SIX: PERSONAL IDENTIFIERS; MILITARY SERVICE AFFIDAVITS (Rules 1-322.1, 3-113, 3-306, 2-501, 2-613, 14-207, 14-209)

Subsection (d)(1) of Rule 1-322.1 is amended to delete the requirement of including the last four digits of a social security or taxpayer identification number (SSN/TIN) in court

filings. How to deal with personal identifiers has been a recurring problem for several years. At one time, the Committee and the Court thought that the problem with those particular identifiers had been solved by requiring, when necessary, disclosure of only the last four digits, which would be restricted information.

The Committee has been advised by Chief Judge John Morrissey that the District Court no longer has any use for a partial SSN/TIN and that, if a full number is required, parties should follow the redaction provisions available in Rule 1-322.1 (d)(4) or (d)(5) and, in an MDEC jurisdiction, file a Notice of Restricted Information as required by Rule 20-201.1.

A new section (b) is added to Rule 3-113 to deal with the problem of potential staleness regarding the filing of military service affidavits that may become necessary in affidavit judgment actions filed pursuant to Rule 3-306. That problem is explained in the Reporter's note to Rule 3-306. Amendments to Rule 3-306 address the problem, as well as the need to exclude personal identifiers in affidavit judgment actions.

In a nutshell, there is no uniform standard in the Federal Law for when a military service affidavit becomes stale, and some Maryland judges have differing views regarding that. This becomes a problem depending on when the need for such an affidavit arises. With the concurrence of Chief Judge Morrissey and Judge Norman Stone, the Committee proposes to deal with that problem by adding a new section (b) to Rule 3-113, a new subsection (c)(4)(E) to Rule 3-306, together with a cross reference following that subsection, and corrective cross references in Rules 2-501, 2-613, 14-207, and 14-209.

CATEGORY SEVEN: CRIMINAL ACTIONS (RULES 4-348, 4-349, 4-212, 4-252, 8-422)

Upon consideration of recommendations from an appellate attorney, the Committee recommends (1) moving the language currently in Rule 4-348 (a) regarding the stay of a sentence of imprisonment imposed by the District Court pending an appeal to, and *de novo* trial in, a Circuit Court to Rule 4-349 (a) and (2) adding a new section (d) to Rule 4-349 providing for the duration of a release by a Circuit Court pending an appeal to, or other review by, an appellate court. As explained in the Reporter's note to Rule 4-349, the new language is intended to clarify when a defendant must surrender to serve a sentence

after being released pending an appeal. Clarifying language also is added to Rule 8-422 (b).

The amendment to Rule 4-212 supplements an existing cross reference, and the amendment to Rule 4-252 adds a new cross reference following subsection (a)(4) of that Rule.

CATEGORY EIGHT: DECEDENT'S ESTATES (RULES 6-416, 6-206, 6-502)

As explained in the Reporter's note, the amendments to Rule 6-416 (1) implement 2022 Md. Laws, Chapter 630 to clarify the law relating to the payment of attorneys' fees and personal representatives' commissions without the need for court approval and (2) make other changes recommended by an MSBA Workgroup created to review that Rule.

The amendment to Rule 6-206 adds a cross reference to Code, Estates and Trusts Article, § 5-606.

New Rule 6-502 implements recommendations from the MSBA Estate and Trust Law Section addressing how firearms, ammunition, and other destructive devices should be identified and dealt with during the pendency of a decedent's estate.

CATEGORY NINE: GUARDIANSHIPS (RULES 10-103, 10-111, 10-112, 10-202, 10-205.1)

The amendment to Rule 10-103 adds to the definition of "interested person" in a guardianship proceeding a person holding a power of attorney of the minor or disabled person and a "supporter" named in a supported decision-making agreement under Code, Estates and Trusts Article, Title 18. *See* 2022 Laws of Maryland, Chapter 631.

The amendments to Rules 10-111 and 10-112 recognize (1) that the Veterans Administration has been renamed the Department of Veteran Affairs and (2) the existence of supporters and supported decision-making agreements.

The amendments to Rule 10-202 update cross-references.

The amendments to Rule 10-205.1 direct that a guardianship of a minor is to be governed by Code, Estates and Trusts Article, § 13-702 rather than § 13-705 and that, if the minor is at least 14 years old, the court shall appoint a qualified individual designated by the minor unless that is not in the best interest of the minor.

CATEGORY TEN: CUSTODY OF EXHIBITS; CONTENTS OF RECORD (RULES 2-516, 3-516, 4-322, 16-405, 16-503, 8-412, 8-413, 20-301)

The amendments to these Rules deal principally with the preservation of exhibits and the contents of the record on appeal.

Rules 2-516 (Civil Procedure - Circuit Courts), 3-516 (Civil Procedure - District Court), and 4-322 (Criminal Causes) require that all exhibits must remain in the custody of the clerk unless the court orders otherwise. Amendments add that, if the court permits someone other than the clerk to be the custodian, it must (1) identify that person on the record and instruct the custodian to secure the exhibit until final determination of the action, including all appellate proceedings, and retain the exhibit as required by law, and (2) instruct the clerk to identify the custodian in a docket entry.

These amendments address problems that have surfaced in some counties in which, at the end of the case in the trial court, the clerk returns an exhibit to the party who offered it and it becomes unavailable when needed in subsequent appellate or collateral proceedings. A cross reference is added to Rule 16-405. Conforming amendments are made to Rule 16-503.

Rules 8-412 and 8-413 deal with the record on appeal. An amendment to Rule 8-412 (e) provides that when the clerk of the lower court transmits a record that does not contain the items specified in Rule 8-413 (a), the appellate clerk, on motion of a party, may extend the time for a party to file the party's brief once the record is complete.

Amendments to Rule 8-413 (a) require the record on appeal to contain copies or photographs of physical exhibits made part of the record below and the original of audio, audiovisual, or video recording that was identified, whether or not offered or admitted into evidence. Additionally, when the Supreme Court reviews an action pending in the Appellate Court, the record shall include the record of any proceedings in the Appellate Court.

A Committee note is added that exhibits may be stored and accessed using a digital storage platform approved by the State Court Administrator and that a party who offers an audio, audiovisual, or visual recording in a format not in common use

must provide the recording to the clerk in a medium and format suitable for transmittal as part of the record.

Section (b) is amended to require the clerk of the lower court's certificate to identify tangible exhibits not included for transmission and the custodians of those exhibits and to transmit them to the appellate court upon request.

Section (c) requires, when an appeal is proceeding on a Statement of the Case in lieu of the entire record, that the appellant reproduce the statement in the appellant's brief.

A conforming amendment to Rule 8-501 updates a reference to Rule 8-413. Rule 8-501 is included in Category Twelve of this Report.

The amendment to Rule 20-301 adds to the required content of the official record in a case all exhibits stored on a digital storage platform approved by the State Court Administrator and referenced in the MDEC system.

CATEGORY ELEVEN: RULES REMANDED FROM THE 211TH REPORT (RULES 3-533, 3-534, 7-104, 7-102)

The Rules in this Category were submitted to the Court previously in the Committee's 211th Report. At the open meeting on that Report, members of the Court expressed concern about appearing to extend certain times to appeal established by the legislature. The Rules were remanded to the Committee for further study. After further discussion, the Committee has updated the proposed amendments to address the concern.

Rules 3-533 and 3-534 deal with motions in the District Court for relief from a judgment entered by that Court - a motion for new trial under Rule 3-533 or to alter or amend the judgment under Rule 3-534. The amendments provide that, if a statute sets an appeal time (from the District Court to a Circuit Court) of less than ten days after entry of the judgment, which several statutes in the Real Property Article do, a motion under the respective Rules does not toll the time for noting an appeal unless the **motion** is filed within the statutory time allowed for an **appeal**, which the current Rules do not require. See the new language recommended for Rule 3-533 (a)(2) and Rule 3-534 (b).

New language added to Rule 7-104 (c) also deals with that issue, but in the context of when a motion under Rule 3-533 or

3-534 was filed but was not successful and the statutory time for appeal to a Circuit Court is less than ten days or between ten and 29 days.

The amendment to Rule 7-102 adds a cross-reference regarding the computation of the amount in controversy in an appeal from the District Court to a Circuit Court when the action involves a claim for possession or repossession of property.

CATEGORY TWELVE: APPELLATE PROCEEDINGS
(RULES 8-132, 8-202, 8-205, 2-532, 2-533, 2-534, 8-206, 8-207, 16-406, 8-303, 8-501, 8-431, 8-603, 8-605, 8-602, 20-405)

Several new procedural requirements or conditions are imposed by the Rules in this category, some to assist *pro se* litigants seeking relief from judgments entered against them. Some of these issues were brought to the Committee's attention by the Court of Appeals or Court of Special Appeals and others by attorneys based on their experiences.

The amendments to the Title 8 Rules deal with appeals from a Circuit Court to the Appellate Court or the Supreme Court.

In Rule 8-132, a new section (b) is added to provide that, if an appeal, application for leave to appeal, or petition for certiorari is improperly filed in the Appellate Court of Maryland, that Court shall not reject the filing but record the date it was received and transfer it to the proper court.

The amendment to Rule 8-202 expands a cross reference regarding the State's right to appeal a decision of the trial court.

The amendments proposed to Rule 8-205 (1) require, with certain exceptions, that a notice of appeal to the Appellate Court in a civil case be accompanied by a Civil Appeal Information Report on a form approved by the State Court Administrator, and (2) state the consequence of failing to file such a report. Those requirements were proposed by the Court of Special Appeals. The amendments to Rules 2-532, 2-533, 2-534, 8-206, 8-207, and 16-406 are conforming ones.

The amendment to Rule 8-303, requested by the Appellate Division of the Public Defender's Office, provides support for the filing of informal petitions for certiorari or answers thereto and for the processing of those documents. This is an

important change. A *pro se* petition is limited to 15 pages but need not be accompanied by the documents otherwise required under subsection (b)(2) of the Rule unless otherwise ordered by the Court.

The amendment to Rule 8-501, requested by the Clerk of the Supreme Court, reduces from 20 to eight the number of record extracts required to be filed in the Supreme Court when a writ of certiorari is issued. At the request of the clerks of both appellate courts, Rules 8-431, 8-501, 8-603, and 8-605 are amended to delete the requirement of filing extra copies of various motions. The clerks have advised that they no longer need those copies. Rule 8-603 is amended also to update the name of the required Civil Appeal Information Report.

An amendment to Rule 8-602 conditions the ability of an appellate court to dismiss an appeal for failure to comply with the Civil Appeal Information Report requirement of Rule 8-205 on the appellant's having been served with notice pursuant to Rule 8-205 (e).

An amendment to Rule 20-405 (c) eliminates the need to file eight paper copies of an electronic submission in an appellate court unless requested by the Court. Amendments to section (d) set new requirements for how service is made in an appellate court prior to docketing of the action in that court. A new Committee note explains that the MDEC system does not allow a party to serve other parties electronically when opening a case in the appellate courts but does permit electronic service once the clerk has docketed the case.

CATEGORY THIRTEEN: AGREEMENT REGARDING FORMER LAW PRACTICE (RULES 18-103.10 AND 18-203.10)

Rule 18-103.10 establishes procedures a newly appointed or elected judge must follow if the judge has left a law firm and intends to be compensated for the value of the judge's ownership interest in the firm or payout of fees for legal services rendered while at the firm.

The agreement must require the payout to be completed within five years, except that upon a finding that the payout cannot be completed within that period without significant and unavoidable harm to a party, the Chief Justice of the Supreme Court may extend the period.

Rule 18-203.10 contains the same provisions with respect to a newly appointed judicial appointee.

CATEGORY FOURTEEN: LEGAL ASSISTANCE BY LAW STUDENTS (RULE 19-220)

Amendments to Rule 19-220 fill a void created by the dissolution of the Maryland State Bar Association ("MSBA") section to which the Rule refers.

Before a law student is authorized to engage in the practice of law under the auspices of a clinical program or externship, the Rule currently requires approval of the clinical program or externship by the section council of the now-defunct MSBA section. The amended Rule substitutes for this requirement a new requirement that the dean of the student's law school certify in a writing filed with the Clerk of the Supreme Court of Maryland that the clinical program or externship complies with the applicable American Bar Association standards and this Rule.

The Rule currently permits supervision of the law student by an attorney who is not a member of the Maryland bar, provided that the supervising attorney has been authorized to practice pursuant to Rule 19-218 and certifies in writing that the attorney has read and is familiar with the Maryland Attorneys' Rules of Professional Conduct and Maryland law pertaining to the attorney's area of practice. The amended Rule requires that this certification be attached to the dean's certification of law students and the clinical program or externship in which each student will be participating.

CATEGORY FIFTEEN: CLIENTS WITH DIMINISHED CAPACITY (RULES 19-301.14, 19-301.0, 19-301.4)

The proposed amendments to Rule 19-301.14 and conforming amendments to other Rules were recommended by a group of experienced attorneys headed by Judge Patrick Woodward, which worked with the Committee in updating the Rule to be consistent with current best practice and recent science and literature regarding the problem of dealing with clients who may have diminished capacity. The work group was, indeed, a blue-ribbon panel.

The background and recommended amendments are summarized well in the four-page Comment that is part of Rule 19-301.14 and the four-page Reporter's note to that Rule.

A new definition, "Diminished capacity," is added to Rule 19-301.0. The work group believed that the definition is essential to the interpretation of Rule 19-301.14. An expanded Comment [6] at the end of Rule 19-301.4 also is recommended.

The amendments to Rules 19-301.6, 19-301.7, 19-301.8, 19-301.9, 19-301.10, 19-301.11, 19-301.12, 19-301.17, 19-301.18, 19-302.3, 19-302.4, 19-303.3, 19-303.7, 19-303.9, 19-305.1, and 19-308.3 are conforming ones.

CATEGORY SIXTEEN: RULES GOVERNING MINORS (RULES 9-205.3 AND 15-1501)

Rule 9-205.3 deals with custody assessments. A proposed amendment to that Rule requires that, in a situation where an adult who allegedly lives in a household with the child cannot be located, the custody evaluation must contain documentation or a description of the evaluator's efforts to locate the adult.

New Rule 15-1501 implements Chapter 175 of the 2022 Laws of Maryland, which prohibits minors under the age of 17 from marrying, requires a child who is 17 and wishes to marry to obtain permission from a Circuit Court to do so, and establishes procedures for obtaining that permission.

A related amendment to Rule 16-914 adds a petition filed pursuant to Rule 15-1501 to the list of case records as to which a custodian ordinarily must deny inspection. Rule 16-914 is included in Category Seventeen of this Report.

CATEGORY SEVENTEEN: ACCESS TO COURT RECORDS (RULES 16-914, 16-502, 16-504, 16-934)

Rule 16-914 (g) is amended to require denial of access to a transcript or audio, video, or digital recording of a court proceeding in an action to which all documentary case records are required to be shielded. That issue was referred to the Committee by Chief Judge John Morrissey. The concern centered on juvenile proceedings that may be open to the public, unless closed by the court, but records in those cases are shielded from public access. The proposed amendment to Rule 16-914 (g) was included in the Committee's Two Hundred and Thirteenth Report, which was remanded to the Committee. The addition to section (g) of the Rule stands independent of the issues to be addressed on remand of the other Rules in that Report and, therefore, is separately resubmitted with this Report.

Conforming amendments are made to Rules 16-502 and 16-504 *solely* to add references to Rule 16-914 (g) and update references to the appellate courts.

Rule 16-934 (a) authorizes a court to permit inspection of a case record that is not otherwise subject to inspection or deny inspection of a case record that otherwise would be subject to inspection if the court finds a compelling reason to do so and that no substantial harm will come from such an order.

The Committee was advised by Judge Robert Taylor, Jr., of the Circuit Court for Baltimore City, of a problem that has arisen when a person who has filed a pleading in a family law case files a petition to preclude or limit inspection of confidential or contact information included in the pleading. What the petitioner often wishes to shield is the petitioner's address or other contact information.

Upon the filing of such a petition, the custodian is required to deny inspection for a period not to exceed five business days in order to give a judge an opportunity to consider whether a temporary order should issue.

A temporary shielding order is in effect for up to ten days, subject to a ten-day extension, but the Committee was advised that serving the original pleading on the other party within 20 days often is impracticable. That can lead to the prospect of contact information becoming available to the defendant on CaseSearch or elsewhere before the defendant is served, which often can take much longer than 20 days, especially if the defendant's whereabouts are unknown or the defendant is evading service.

The Committee found merit in these concerns and recommends:

(1) Immediately upon docketing, a petition to shield or otherwise limit inspection shall be delivered to a judge for consideration.

(2) Without regard to Rule 15-504, the court may enter an order limiting or precluding inspection if it makes the findings specified in subsection (d)(2) of the Rule.

(3) If the petition to limit inspection is filed prior to service of the original pleading, the petition to limit inspection shall be served with the original

pleading, and the court shall hold a hearing on the petition to preclude or limit inspection within 15 days after the earlier of proof of service of the original pleading or the first responsive pleading by the defendant.

(4) If the petition to preclude or limit inspection is filed after all parties have been served, the court shall hold a hearing on the petition within 15 days after the petition to preclude or limit inspection is filed.

(5) If a petition to preclude or limit inspection is filed in an appellate court and that court determines that an evidentiary hearing is required, it may refer the matter to a Circuit Court judge to conduct that hearing.

(6) For good cause, a temporary order precluding or limiting inspection may be extended for up to 30 days.

CATEGORY EIGHTEEN: RULES CHANGES PERTAINING TO CONSTITUTIONAL AMENDMENTS (RULES 4-345, 6-463, 7-501, 17-601)

The ratification of 2022 Md. Laws, Chapter 45 (Constitutional Amendment - Cannabis – Adult Use and Possession) triggered enactment of Section 5 of 2022 Md. Laws, Chapter 26 (Cannabis Reform), which added a new section 10-105.3 to Code, Criminal Procedure Article. The new statute provides a procedure that permits a person incarcerated for possession of cannabis to file an application for resentencing. A cross reference to the new statute is proposed to be added to Rule 4-345.

2022 Md. Laws, Chapter 539 (Circuit Court for Howard County – Judges Sitting as Orphans' Court), ratified by the voters of Maryland in the November 2022 general election, added Howard County to the list of counties where the judges of the Circuit Court sit as the Orphans' Court for the county. Amendments to Rules 6-463, 7-501, and 17-601 conform the Rules to this change.

2021 Md. Laws, Chapters 82 and 83 (Courts of Appeals and Special Appeals – Renaming), also ratified by the voters in November, changed the names of the Court of Appeals and the Court of Special Appeals to the Supreme Court of Maryland and the Appellate Court of Maryland, respectively. The constitutional amendment also changed the titles of the

individuals who serve on Maryland's highest Court from "Judge" to "Justice." The proposed new Rules and the amendments to existing Rules that appear in this Report contain the updated terminology.

Approximately two hundred additional existing Rules have been identified as requiring amendments to conform them to Chapters 82 and 83. These Rules, as to which no substantive changes are proposed, will be transmitted to the Court as the Committee's Two Hundred and Fifteenth Report.

CATEGORY NINETEEN: MISCELLANEOUS PROPOSED CHANGES

1. Rules 1-322 and 9-303

Rule 1-322 deals with the filing of pleadings and other papers. The proposed amendment permits a person to directly file an item by electronic transmission as permitted by Code, Family Law Article, § 4-505.1. That section, enacted by 2022 Md. Laws, Chapter 335, permits a petitioner associated with certain domestic violence programs to file a petition for a temporary protective order electronically. An amendment to Rule 9-303 adds a cross reference to the new statute following section (a).

2. Rule 20-203

Rule 20-203 deals generally with a clerk's duties when a submission is received that does not comply with certain requirements. In most instances, the clerk issues a deficiency notice. As noted in the Reporter's note, however, although the clerk's Quick Reference Guide states that, if a timely correction is filed, it will relate back to the date the deficient document was filed, the current Rule does not make that clear. The Major Projects Committee asked for a clarification.

The proposed amendments are a response to that request. If the deficiency was the failure of the filer to file both a redacted and unredacted submission when that is required under Rule 20-201.1, there is no relation back. If the deficiency was an incorrect case number, a refiling will relate back if filed within 14 days after the notice was sent. An amendment to subsection (d)(2) limits the corrected submission to simply correcting the deficiency and disallows any other modifications.

3. Cross References

Cross-references are added or amended in Rules 2-647 and 5-802.

3. "Housekeeping" Amendments

"Housekeeping" amendments are made to Rules 4-340 and 12-102.

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

Respectfully Submitted,

/ s /

Alan M. Wilner
Chair

AMW:sdm
cc: Gregory Hilton, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

GENERAL ADMISSION

ADD new Rule 19-204.1, as follows:

Rule 19-204.1. CONDITIONAL ADMISSION

(a) Conditional Admission Available

(1) When Permissible

Where an application for admission pursuant to Rule 19-203, a Petition for Admission Without Examination pursuant to Rules 19-215 and 19-216, or an investigation with respect to an application or petition reveals past or current substance abuse or mental health conditions that may affect the applicant's good moral character and fitness for the practice of law, the Court may issue an order that the applicant or petitioner be admitted to the Maryland Bar subject to conditions contained in a Conditional Admission Agreement with terms satisfactory to the applicant, the Board, and Bar Counsel.

(2) Conditional Admission Agreement

A Conditional Admission Agreement shall be in writing and signed by the applicant, the Chair of the Board, Bar Counsel, and any third-party monitor designated in the

Agreement. The Agreement shall: (A) recite the basis for the Agreement; (B) state that the applicant voluntarily consents to its terms, agrees to waive the confidentiality of the applicant's bar application pursuant to Rule 19-105, and agrees to pay all expenses reasonably incurred in connection with the performance and enforcement of the Agreement; (C) state the particular conditions imposed, including the identity of any designated third-party monitor, and a time for performance or completion; and (D) state that all parties to the Agreement acknowledge that the Agreement will not take effect until it is approved by the Supreme Court.

(3) Scope of Conditional Admission

Conditions on an applicant's admission to the Maryland bar, if any, shall be for a specified period, not to exceed two years from its commencement unless extended as described below. All conditions imposed shall be tailored to detect recurrence of behavior related to past or present substance abuse or mental health condition that could render an applicant unfit to practice law or pose a risk to clients or the public, and to promote new or continued treatment, abstinence, or other support. Conditions may include supervised practice, substance abuse treatment and counseling, medical treatment, drug or alcohol screening, mental health treatment and counseling, or other terms appropriate under the circumstances.

(b) Recommendation for Conditional Admission Originating with Character Committee

(1) Conditional Admission Proposed by Character Committee

Following a hearing by the Character Committee pursuant to Rule 19-204 (a)(2) and with the consent of the applicant, the Character Committee may recommend that the Board offer the applicant the opportunity to enter into an Agreement for a recommendation of conditional admission.

(2) Report and Recommendation Prepared by Character Committee

If the applicant agrees to a recommendation of conditional admission, the Character Committee shall prepare a report and recommendation for conditional admission. The report and recommendation for conditional admission shall: (A) include a recitation of the facts supporting the recommendation for conditional admission; (B) state the recommended conditions; and (C) be signed by the applicant and the Chair of the Character Committee.

(3) Report and Recommendation Submitted to Board

The report and recommendation for conditional admission, together with the transcript of the Character Committee hearing and all papers relating to the application, shall be sent to the Board for further proceedings pursuant to Rule 19-204.

(4) Action by Board on Character Committee Recommendation for Conditional Admission

(A) Board Agrees with Character Committee

If, after reviewing the Character Committee's report and recommendation for conditional admission and accompanying documents, the Board concurs with the recommendation for conditional admission, it shall prepare a proposed Conditional Admission Agreement that complies with subsection (a)(2) of this Rule. The Board shall provide a copy of the proposed Conditional Admission Agreement to the applicant for review and signature.

(B) Board Disagrees with Recommendation of Character Committee or Requires Additional Information

If, after reviewing the report and recommendation for conditional admission and accompanying documents, the Board disagrees with the recommendation of the Character Committee for conditional admission or requires additional information before reaching a recommendation on admission, it promptly shall afford the applicant the opportunity for a hearing. The hearing shall be conducted in accordance with the procedures set forth in Rule 19-204. After any hearing, the Board may recommend admission without conditions, conditional admission, or denial of admission. If the Board recommends admission with conditions that differ from the conditions recommended by the Character

Committee, the Board shall prepare a report and recommendation for conditional admission that complies with subsection (b)(2) of this Rule and shall prepare a proposed Conditional Admission Agreement that complies with subsection (a)(2) of this Rule. The Board shall provide a copy of the proposed Conditional Admission Agreement to the applicant for review and signature.

(C) Board Agrees with Recommendation for Conditional Admission but Recommends Amendments to Conditions

If the Board concurs with the recommendation for conditional admission but recommends amendments to the conditions proposed in the Character Committee's report and recommendation for conditional admission, it shall notify the applicant of the proposed amendments. If the applicant accepts the proposed amendments, the Board shall draft a proposed Conditional Admission Agreement that incorporates the amended terms agreed to by the applicant and send a copy of the proposed Conditional Admission Agreement to the applicant to be signed and returned to the Board. If the applicant rejects the proposed amendments, the Board shall proceed in accordance with subsection (b)(4)(B) of this Rule.

(D) Submission of Agreement to Bar Counsel

Upon receipt of a proposed Conditional Admission Agreement signed by the applicant, the Board shall send the

proposed Conditional Admission Agreement to Bar Counsel for review, pursuant to section (d) of this Rule.

(c) Recommendation for Conditional Admission Originating with Board

(1) Following Character Committee Hearing

If, in an application for admission pursuant to Rule 19-203 involving past or current substance abuse or a mental health condition that may affect the applicant's good moral character and fitness for the practice of law, the Board concludes, after reviewing a report and recommendation of the Character Committee recommending admission of an applicant without conditions or recommending denial of the application, that the applicant should be admitted with conditions, it promptly shall afford the applicant the opportunity for a hearing. The hearing shall be conducted in accordance with the procedures set forth in Rule 19-204. Following a hearing, the Board may recommend admission without conditions, recommend denial of the application, or offer the applicant the opportunity to enter into a Conditional Admission Agreement.

(2) Petition Pursuant to Rules 19-215 and 19-216

If, in a Petition for Admission Without Examination pursuant to Rule 19-215 and 19-216 involving past or current substance abuse or a mental health condition that may affect the petitioner's good moral character and fitness for the practice

of law, the Board concludes, after reviewing the character and fitness summary prepared by the National Conference of Bar Examiners and other papers gathered attendant to the Petition, that the petitioner should be admitted with conditions, the Board promptly shall afford the petitioner the opportunity for a hearing on the record made before the Character Committee. Following a hearing, the Board may offer the petitioner the opportunity to enter into a Conditional Admission Agreement.

(3) Applicant or Petitioner Consents to Recommendation for Conditional Admission

If the applicant or petitioner agrees to a recommendation for conditional admission, the Board shall prepare a report and recommendation for conditional admission and a proposed Conditional Admission Agreement that complies with subsection (a)(2) of this Rule. The Board shall provide a copy of the report and recommendation and the proposed Conditional Admission Agreement to the applicant or petitioner for review and signature.

(4) Submission of Conditional Agreement to Bar Counsel

Upon receipt of a proposed Conditional Admission Agreement that has been signed by the applicant or petitioner, the Board shall send the proposed Conditional Admission Agreement to Bar Counsel for review pursuant to section (d) of this Rule.

(d) Review by Bar Counsel; Board

(1) Scope of Review by Bar Counsel

Bar Counsel's review of a proposed Conditional Admission Agreement shall be limited to determining whether any monitoring provisions necessary to implement the proposed Conditional Admission Agreement reasonably can be effectuated and whether a third-party monitor should be designated in the proposed Conditional Admission Agreement.

(2) Notice to Board by Bar Counsel

If the proposed Conditional Admission Agreement signed by the applicant or petitioner contains monitoring provisions that Bar Counsel believes cannot be effectuated reasonably, Bar Counsel shall notify the Board. The notice shall identify each proposed monitoring provision to which Bar Counsel objects. Bar Counsel shall explain each objection and may propose an alternative monitoring provision that reasonably will accomplish the goal of the proposed Conditional Admission Agreement.

(3) Action by Board

If the Board concurs with the alternative monitoring provisions proposed by Bar Counsel, it shall send a revised proposed Conditional Admission Agreement to the applicant or petitioner for review.

(4) Action by Applicant or Petitioner

If the applicant or petitioner agrees to the alternative monitoring provisions proposed by Bar Counsel, the applicant or petitioner shall sign the revised proposed Conditional Admission Agreement and return it to the Board. Upon receipt of a revised proposed Conditional Admission Agreement signed by the applicant or petitioner, the Board shall send the revised proposed Conditional Admission Agreement to Bar Counsel for review and approval. Bar Counsel and any third-party monitor designated by Bar Counsel shall sign the revised proposed Conditional Admission Agreement and return it to the Board. Upon receipt of a proposed Conditional Admission Agreement signed by the applicant or petitioner, Bar Counsel, and any third-party monitor, the Chair of the Board or the Chair's designee shall sign the proposed Conditional Admission Agreement on behalf of the Board.

(5) Rejection of Alternative Monitoring Provision by Prospective Conditional Admittee or Board

If the applicant or petitioner or the Board objects to an alternative monitoring provision proposed by Bar Counsel, and if Bar Counsel cannot determine an alternative monitoring condition acceptable to the Board and applicant or petitioner, the Board shall proceed in accordance with subsection (b)(4)(B) of this Rule.

(e) Review by Court

When a proposed Conditional Admission Agreement is executed by the applicant or petitioner, the Board, Bar Counsel, and any third-party monitor designated by Bar Counsel, the Board shall transmit to the Supreme Court the Board's report and recommendation for conditional admission, together with the proposed Conditional Admission Agreement, any notification and objections of Bar Counsel, the transcripts of all hearings conducted in the matter, the report and recommendation of the Character Committee, if any, and all other papers contained in the bar application or Petition.

(f) Conditional Admission Order

(1) Entry of Order

Upon review of the Board's report and recommendation for conditional admission, the proposed Conditional Admission Agreement, and the other papers contained in the applicant or petitioner's bar admission file, the Court may accept, reject, or modify the terms of the proposed Conditional Admission Agreement, except that the Court may not impose monitoring conditions on Bar Counsel to which Bar Counsel has previously objected. If the proposed Conditional Admission Agreement is accepted in whole or in part or modified, the Supreme Court shall enter a Conditional Admission Order adopting the Conditional Admission Agreement in whole, in part, or as modified.

(2) Monitoring of Terms of Conditional Admission Agreement and Conditional Admission Order

Bar Counsel or Bar Counsel's designee shall monitor compliance with the Conditional Admission Agreement and Conditional Admission Order.

(3) Modification of Conditional Agreement or Conditional Agreement Order

Upon joint motion by Bar Counsel and the attorney, the Supreme Court may reduce or extend a period of conditional admission, or otherwise modify an order entered under this Rule.

(4) Revocation or Modification of Conditional Admission Agreement or Conditional Admission Order upon Default

(A) Declaration of Proposed Default

Bar Counsel may declare a proposed default on a Conditional Admission Agreement or Conditional Admission Order if Bar Counsel determines that the attorney willfully misrepresented or concealed material facts during the negotiation of the Agreement or failed in a material way to comply with the terms of the Conditional Admission Agreement or Conditional Admission Order. Bar Counsel shall provide written notice to the attorney of the proposed default and afford the attorney a reasonable opportunity to refute the determination.

(B) Petition

If the attorney fails to refute the charge or to offer an explanation or proposed remedy satisfactory to Bar Counsel, Bar Counsel shall file a motion to revoke or modify the Conditional Admission Agreement in the Supreme Court. Upon consideration of the motion, the Court may take such action as it finds appropriate, including issuing a show cause order, entering an order designating a judge of any circuit court to conduct a hearing, or entering an order temporarily revoking or modifying the conditional admission pending further order of the Court.

(C) Effect of Revocation

The attorney shall comply with the terms of Rule 19-741 for suspended and disbarred attorneys and the terms of Rule 19-305.3 concerning law-related employment following revocation. An attorney whose conditional admission has been revoked may not reapply for admission until at least two years have passed from the date of the revocation, unless otherwise ordered by the Supreme Court.

(D) Completion of Conditional Term

Unless otherwise ordered by the Supreme Court, all conditions attached to admission shall be lifted at the conclusion of a Conditional Admission Order unless Bar Counsel, no later than 30 days before the conclusion of the conditional admission, files a written petition to revoke or modify the

conditional admission order under subsection (f)(4) of this Rule.

(g) Authority of Bar Counsel

Nothing in this Rule shall restrict or diminish the authority of Bar Counsel to act on any complaint filed against a conditionally admitted attorney.

(h) Confidentiality

Except as provided in Rule 19-105 (c), a report and recommendation for conditional admission, any Conditional Admission Agreement, and all proceedings on conditional admission are confidential and not subject to public inspection.

Source: This Rule is new.

REPORTER'S NOTE

The Court of Appeals requested a draft Rule authorizing conditional admission of bar applicants. Over the course of three meetings, the Attorneys and Judges Subcommittee developed a Rule on conditional admission to present to the Rules Committee. The Subcommittee declined to make a recommendation as to whether conditional admission should be implemented in Maryland. At its October 21, 2022 meeting, the Rules Committee considered the draft Rule. After robust discussion, the Committee determined that it does not recommend adopting conditional admission in Maryland. However, in light of the request of the Court of Appeals, the Committee elected to transmit to the Court this draft Rule on conditional admission.

Section (a) provides that conditional admission to the Maryland Bar is permissible in certain circumstances. The Office of Bar Counsel is responsible for monitoring compliance with the terms and conditions of any conditionally admitted

attorney. The duration of a conditional admission is limited to not more than two years unless extended pursuant to section (f) of this Rule.

Section (b) establishes that the Character Committee may, after the Character Committee hearing and with the consent of the applicant, recommend to the Board that the applicant be offered conditional admission to the Maryland Bar. If the applicant consents to conditional admission, a report and recommendation for conditional admission is prepared by the Character Committee and submitted to the Board for review and action along with the transcript of the Character Committee hearing. If the Board agrees with the recommendation of the Character Committee a draft Conditional Admission Agreement is prepared for review and signature of the parties. If the Board does not agree with the Character Committee's recommendations or requires additional information, a hearing is held by the Board. After this hearing, the Board may recommend admission with or without conditions, or denial of admission to the Bar. If the Board agrees with the Character Committee's recommendation of conditional admission, but not with the proposed terms of admission, the Board will so notify the applicant, and if the applicant consents to the changes, will provide a revised conditional amendment for the review and execution of the parties.

Section (c) covers situations in which the recommendation for conditional admission originates with the Board, and not the Character Committee. A recommendation from the Board for conditional admission can occur following the Character Committee hearing in applications involving current or past substance abuse or mental health conditions that may affect the applicant's character and fitness to practice law. If the Board concludes conditional admission should be extended to an applicant, the applicant must be provided an opportunity for a hearing subject to the procedures in Rule 19-204. The Board may also elect to extend conditional admission to a petitioner under Rules 19-215 and 19-216, subject to providing the petitioner an opportunity for a hearing. If an applicant or petitioner consents to conditional admission, a Conditional Admission Agreement is drafted and sent to Bar Counsel for review.

Section (d) provides for a review of a proposed Conditional Admission Agreement by Bar Counsel solely to assess whether Bar

Counsel's office would have any difficulty monitoring or otherwise complying with Bar Counsel's requirements under this Rule or the Agreement. In the event that Bar Counsel does not agree with the provisions of a Conditional Admission Agreement, Bar Counsel is permitted to so notify the Board and suggest changes to the Agreement. The Board may accept or reject Bar Counsel's suggestions, and the applicant or petitioner is also permitted to ratify or reject any proposed changes to the Agreement.

Section (e) covers when a proposed Conditional Admission Agreement and its accompanying documentation is provided to the Supreme Court for review and subsequent approval or rejection.

Section (f) concerns the Supreme Court's conditional admission order. If an order of conditional admission is entered by the Supreme Court, Bar Counsel or Bar Counsel's representative is responsible for monitoring the conditionally admitted attorney's compliance with the terms and conditions of the order and Agreement. The terms and conditions of a conditional admission order, including a reduction or extension of the period of conditional admission, may be modified upon joint motion by Bar Counsel and the conditionally admitted attorney. Bar Counsel may declare a proposed default of the conditional admission order in certain circumstances and file a petition to revoke or modify a conditional admission order after providing a written notice and a reasonable time to refute the determination to the conditionally admitted attorney. Unless otherwise ordered by the Supreme Court, a period of conditional admission will automatically terminate unless a petition to revoke or modify the conditional admission is filed by Bar Counsel at least 30 days prior to the conclusion of the conditional admission.

Section (g) confirms that Bar Counsel's authority to investigate and file disciplinary actions against conditionally admitted attorneys is not limited in any manner by this Rule.

Section (h) establishes that, except as provided in Rule 19-105, information concerning a conditional admission is confidential and not open to public inspection.

MARYLAND RULES OF PROCEDURE

TITLE 21 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

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TITLE 21 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 21-101, as follows:

Rule 21-101. APPLICABILITY

The Rules in this Title apply to judicial proceedings conducted in the Supreme Court, the Appellate Court, a circuit court, or the District Court.

Committee note: This Rule is not intended to limit the ability to conduct alternative dispute resolution proceedings pursuant to Title 17 or Rule 9-205 by remote electronic participation. The prescribed conditions, standards, and requirements for remote electronic participation stated in Title 21 may prove unnecessary in more informal alternative dispute resolution.

Source: This Rule is new.

REPORTER'S NOTE

In September 2021, then-Chief Judge Joseph M. Getty appointed a Joint Subcommittee on Post-COVID Judicial Operations to review the technology and other adaptations used by the Judiciary during the COVID-19 pandemic and to advise which innovations should remain in use moving forward. Individuals serving on the Joint Subcommittee included judges, clerks, administrators, a magistrate, a commissioner, and professionals familiar with the technology used throughout the State. On March 9, 2022, the Joint Subcommittee completed its detailed report, including recommendations concerning remote proceedings and events. The Judicial Council accepted all recommendations from the report. In light of the recommendations in the report,

the Rules Committee prepared new Rules, including a new Title devoted to remote electronic participation in judicial proceedings, and related amendments.

Proposed new Rule 21-101 addresses the applicability of new Title 21, clarifying that the Title applies to judicial proceedings in the Supreme Court, the Appellate Court, a circuit court, or the District Court. A Committee note states that the Rule is not intended to limit remote electronic participation in alternative dispute resolution proceedings.

MARYLAND RULES OF PROCEDURE

TITLE 21 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 21-102, as follows:

Rule 21-102. DEFINITIONS

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

(a) Evidentiary Proceeding

"Evidentiary proceeding" means a judicial proceeding at which evidence will be presented.

(b) Judicial Officer

"Judicial officer" means a judge, magistrate, District Court commissioner, auditor, or examiner.

(c) Judicial Proceeding

"Judicial proceeding" means any proceeding over which a judicial officer presides.

(d) Non-Evidentiary Proceeding

"Non-evidentiary proceeding" means a judicial proceeding, including a conference, presided over by a judicial officer, where neither testimony nor documentary or physical evidence will be presented, other than by stipulation by all parties.

Committee note: Consideration of documents attached to a motion or a response to a motion does not, itself, preclude a hearing on the motion from being deemed a "non-evidentiary proceeding."

(e) Participant

"Participant" includes a party, witness, attorney for a party or witness, judicial officer, and any other individual entitled to speak or make a presentation at the proceeding.

(f) Remote Electronic Participation

"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 by the court pursuant to the Rules in this Title.

(g) Remote Location

"Remote location" means a place other than the courtroom or other physical location where a judicial proceeding or conference is to be or ordinarily would be conducted. For purposes of this definition, the place where a judicial proceeding or conference is to be conducted is the place from which the presiding judicial officer will be participating.

Committee note: Section (g) of this Rule takes account of the situation in which the presiding judicial officer also will be participating from a place other than the court facility.

(h) Video Conferencing

"Video conferencing" means a method of conducting a proceeding by the use of interactive technology that sends

video, voice, and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video monitors and related audio equipment.

(i) Virtual Jury Trial

"Virtual jury trial" means a jury trial conducted by remote electronic participation.

Source: This Rule is derived in part from former Rule 2-801 (2023) and is in part new.

REPORTER'S NOTE

Proposed new Rule 21-102 sets forth definitions applicable to new Title 21. Except for section (b), the definitions are taken from current Rule 2-801, with slight stylistic or clarifying changes. Section (b) defines the term "judicial officer," used throughout the Title.

MARYLAND RULES OF PROCEDURE

TITLE 21 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 21-103, as follows:

Rule 21-103. DECISION TO ORDER REMOTE ELECTRONIC PARTICIPATION

(a) In General

(1) In the District Court

An administrative judge of the District Court, by administrative order posted on the website of the court in that district, may direct that specific categories of proceedings eligible for remote electronic participation under Rule 21-201 or Rule 21-301 be conducted, in whole or in part, in that manner unless otherwise ordered, for good cause, by the presiding judge in a particular case.

(2) In the Circuit Court

The county administrative judge, by administrative order entered as part of the court's case management plan, may direct that specific categories of proceedings eligible for remote electronic participation under Rule 21-201 or Rule 21-301 be conducted, in whole or in part, in that manner unless otherwise

ordered, for good cause, by the presiding judge in a particular case.

(3) In the Appellate Courts

The Chief Judge of the Appellate Court and the Chief Justice of the Supreme Court, by administrative order posted on the Judiciary website, may direct that specific categories of proceedings eligible for remote electronic participation under Rule 21-401 be conducted, in whole or in part, in that manner unless otherwise ordered, for good cause.

(b) In Particular Proceeding

If the court intends to permit or require remote electronic participation on its own initiative in a proceeding that is subject to participation under Rule 21-201, Rule 21-301, or Rule 21-401, but is not subject to the administrative order entered pursuant to section (a) of this Rule, the court shall notify the parties in writing of its intention to do so and afford them a reasonable opportunity to object. An objection shall state specific grounds and may be ruled on without a hearing.

Cross reference: See Rules 21-201 (b), 21-301 (b), and 21-401 (b).

Source: This Rule is derived in part from former Rule 2-802 (b) (2023) and is in part new.

REPORTER'S NOTE

Proposed new Rule 21-103 generally addresses a decision to order remote electronic participation. The Rule is derived from current Rule 2-802 (b), with slight changes and additions.

Subsection (a)(1) provides that, in the District Court, an administrative judge may direct by administrative order that specific case categories be conducted by remote electronic participation. Subsection (a)(2) indicates that this authority belongs to the country administrative judge in the circuit courts. Subsection (a)(3) states that the Chief Justice of the Supreme Court and the Chief Judge of the Appellate Court may enter administrative orders regarding remote electronic participation in the appellate courts.

Section (b) states that, if a certain proceeding is subject to remote electronic participation pursuant to Rule 21-201, Rule 21-301, or Rule 21-401 but is not included in the administrative order, the court must notify the parties if it intends to conduct the proceeding by remote electronic participation. The parties must be given an opportunity to object and any objection must state specific grounds. Section (b) further clarifies that an objection may be ruled on without a hearing.

A cross reference after section (b) points to Rules 21-201 (b), 21-301 (b), and 21-401 (b) concerning objections to remote electronic participation in civil proceedings, criminal and delinquency proceedings, and appellate proceedings, respectively.

MARYLAND RULES OF PROCEDURE

TITLE 21 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 21-104, as follows:

Rule 21-104. CONDITIONS, STANDARDS, AND REQUIREMENTS OF 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 Title, 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 a personal appearance.

(b) Standards

(1) Generally

Except as otherwise provided by subsection (b)(2) of this Rule or by other law, remote electronic participation shall not be permitted unless the process, including connections, software, and equipment, complies with standards developed by

the State Court Administrator and approved by the Chief Justice of the Supreme Court pursuant to section (h) of this Rule.

(2) Exception

The court may excuse non-compliance with subsection (b)(1) of this Rule with the consent of the parties or if it finds that the non-compliance will not cause substantial prejudice to any of 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.

Cross reference: For provisions concerning the selection, appointment, and use of interpreters for court proceedings, including proceedings in which there is remote electronic participation, see Rule 1-333.

(d) Method of Remote Electronic Participation

If remote electronic participation is to be permitted in an evidentiary proceeding, the court, whenever feasible, shall require that the participation be by video conferencing rather than mere audio.

(e) Record

A record of proceedings under Chapter 200 or 300 of this Title, whether conducted in whole or in part by remote electronic means, shall be made in accordance with the applicable provisions of the Rules in Title 16, Chapter 500.

(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 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 "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) or Rule 16-504 (g) and (h). Each court should establish a process to provide the public access to proceedings conducted through remote electronic participation.

(h) Standards and Requirements for Remote Electronic Participation

The State Court Administrator shall develop and present to the Chief Justice of the Supreme Court for approval standards and requirements for the process, connections, software, and equipment for remote electronic participation in judicial proceedings.

(i) Minimum Requirements

The standards for remote electronic participation shall include the following:

(1) All participants shall be able to communicate with each other by sight, hearing, or both as relevant.

(2) Unless waived by the participants, all participants shall be able to observe all physical evidence and exhibits presented during the proceeding, and the process shall permit participants to transmit documents as necessary.

(3) Video quality shall be adequate to allow participants and the fact-finder to observe the demeanor and non-verbal communications of other participants. Sound quality shall be adequate to allow participants to hear clearly what is occurring where each of the participants is located.

Source: This Rule is derived in part from former Rules 2-804 and 2-805 (2023), and is in part new.

REPORTER'S NOTE

Proposed new Rule 21-104 addresses the conditions, standards, and requirements for all remote electronic participation pursuant to Title 21. The Rule is derived from current Rule 2-804 addressing conditions on remote electronic participation and current Rule 2-805 concerning the standards and requirements for remote electronic participation.

Section (a) is derived from current Rule 2-804 (a), with stylistic changes. The section provides that the court shall continue a matter and require personal appearance by a participant if the court determines that the personal appearance is necessary to avoid substantial prejudice to any party or unfairness of the proceeding.

Section (b) is derived from current Rule 2-804 (b), with stylistic differences. Subsection (b)(1) requires that the process for remote electronic participation comply with standards developed by the State Court Administrator and approved by the Chief Justice of the Supreme Court. Subsection (b)(2) indicates the limited circumstances that may excuse noncompliance with subsection (b)(1).

Section (c) and the related cross reference, addressing the participation of interpreters and confidential attorney-client communications, are identical to current Rule 2-804 (c) and the subsequent cross reference.

Section (d), addressing the preference for video conferencing rather than only audio when using remote electronic participation in an evidentiary proceeding, is identical to current Rule 2-804 (d).

Section (e), providing that a record be made of proceedings conducted in whole or in part by remote electronic means, is derived in part from current Rule 2-804 (e) and expanded to apply to proceedings in the District Court as well as the circuit courts.

Section (f) and the related Committee note contain the language currently located in Rule 2-804 (f) and the subsequent Committee note. Section (f) notes that a person may not record or download a recording of a proceeding conducted by remote electronic participation except as directed by the court or with the express consent of the court and all parties as otherwise permitted by the Rules. The Committee note following section

(f) clarifies that remote locations are governed by Rule 16-208 concerning cell phones, other electronic devices, and cameras.

Section (g) is identical to current Rule 2-804 (g) requiring the court to ensure that members of the public have the ability to listen to the non-redacted portion of a proceeding during the course of a proceeding conducted by remote electronic means. The Committee note following section (g) is derived from the Committee note at the end of current Rule 2-804, but is updated to include a reference to the District Court Rule pertaining to obtaining an audio recording. While current Rule 2-804 is only applicable to circuit courts, new Title 21 is also applicable to the District Court pursuant to proposed new Rule 21-101.

Sections (h) and (i) are derived from sections (b) and (c), respectively, of Rule 2-805. The sections address the standards and requirements for the process, connections, software, and equipment for remote electronic participation, including minimum requirements.

MARYLAND RULES OF PROCEDURE

TITLE 21 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 21-105, as follows:

Rule 21-105. SUBPOENAS

(a) Generally

In addition to complying with the content requirements of Rule 2-510, a subpoena issued to require the presence of an individual at a proceeding to be conducted by remote electronic participation shall describe the method by which that presence will be implemented and state that details will be supplied by a court official prior to the court proceeding. The party requesting the subpoena shall provide to the court official in writing an e-mail address for the individual subject to the subpoena if the individual subject to the subpoena is to appear by remote electronic participation. Unless impracticable, the court official shall send log-in information to individuals appearing by remote electronic participation at least five days before the date of the proceeding. The subpoena shall direct the individual subject to the subpoena to contact the party who requested the subpoena within three days after service if the

individual is unable to effect his or her presence by the manner stated in the subpoena.

(b) If Remote Electronic Participation by Witness is Impracticable

If remote electronic participation is impracticable for a witness, the subpoena may direct the witness to appear at the courthouse to participate with appropriate assistance from court personnel. The party requesting the subpoena shall (1) file a return of service and (2) notify the clerk in writing at least three days before the proceeding if a witness was served with a subpoena pursuant to section (b) of this Rule.

Committee note: The party requesting the subpoena should make reasonable efforts to secure an e-mail address for the witness to comply with section (a) of this Rule. However, in the instance where remote electronic participation cannot be secured, section (b) requires the witness to physically appear at the courthouse for assistance in complying with the subpoena.

Source: This Rule is derived from former Rule 2-807 (d) (2023).

REPORTER'S NOTE

Proposed new Rule 21-105 addresses the use of subpoenas for proceedings conducted by remote electronic participation. This language was previously contained in Rule 2-807 (d). Because subpoenas may be utilized in other proceedings conducted by remote electronic participation and not only in virtual civil jury trials, the concepts previously contained in Rule 2-807 (d) have been moved to Chapter 100 of new Title 21 as new Rule 21-105.

Section (a) states the general requirements of a subpoena issued to require the presence of an individual at a proceeding

conducted by remote electronic participation. Section (b) provides that the subpoena may direct a witness to appear at the courthouse to participate by remote electronic participation with assistance if independent remote electronic participation is impracticable. The subsequent Committee note, also taken from current Rule 2-807, explains that the party requesting the subpoena should make reasonable efforts to secure an e-mail address for the witness to comply with section (a) and that, if remote electronic participation cannot be secured, section (b) requires the witness to physically appear at the courthouse for assistance in complying with the subpoena.

MARYLAND RULES OF PROCEDURE

TITLE 21 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

CHAPTER 200 – CIVIL PROCEEDINGS

ADD new Rule 21-201, as follows:

Rule 21-201. PERMISSIBLE REMOTE ELECTRONIC PARTICIPATION IN CIVIL PROCEEDINGS

(a) Proceedings Appropriate for Remote Electronic Participation

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

(1) Non-jury uncontested or contested evidentiary or non-evidentiary proceedings;

(2) Guardianship proceedings;

(3) Scheduling, status, and pretrial conferences;

(4) Proceedings in which remote electronic participation is authorized by other specific law;

Cross reference: See Code, Family Law Article, §§ 4-505.1, 5-326(c), 9.5-110, and 10-328 and Rule 15-1104 (d).

(5) Virtual jury trials conducted pursuant to Rule 21-202; and

(6) If the presiding judicial officer and all parties consent to remote electronic participation, any other proceeding in a civil action.

(b) Objection by a Party

Upon objection by a party in writing or on the record, the court, in determining whether to require remote electronic participation, shall consider and make findings in writing or on the record regarding whether remote electronic participation would be likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding.

(c) Conditions of Remote Electronic Participation by Witness

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

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

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

(2) is not being coached in any way;

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

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

(5) is not recording the proceeding; and

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

Cross reference: For provisions concerning testimony taken by telephone of a witness in a civil case in the District Court, see Rule 3-513.

Committee note: Section (c) of this Rule is not intended to limit any other reasonable conditions that the court may impose for remote electronic participation or to preclude the court from authorizing an accommodation under the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. and Rule 1-332.

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

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

(2) Where a judicial officer has discretion to hold or decline to hold a remote proceeding, the judicial officer should consider (i) the preference of the parties, (ii) whether the proceeding will involve contested evidence, (iii) whether the finder of fact will need to assess witness credibility, (iv) the availability of participants who will be affected by the decision, (v) possible coaching or intimidation of witnesses appearing remotely, (vi) access by witnesses to technology and connectivity that would allow participation, (vii) the length and complexity of the proceeding, (viii) the burden on the

parties and the court, (ix) whether remote participation will cause substantial prejudice to a party or affect the fairness of the proceeding, and (x) any other factors the judicial officer considers relevant.

Source: This Rule is derived in part from recommendations made in the March 9, 2022 Report of the Judicial Council's Joint Subcommittee on Post-COVID Judicial Operations and from former Rules 2-802, 2-803, and 2-806 (2023), and is in part new.

REPORTER'S NOTE

Rule 21-201 addresses remote electronic participation in civil proceedings. Section (a) enumerates the types of proceedings considered appropriate for remote electronic participation, stating that the court may permit or require one, some, or all participants to participate by means of remote electronic participation in any or part of the proceeding. Subsections (a)(1) through (a)(3) list specific case types or proceedings that are appropriate for remote electronic participation. These specific types of proceedings were included in the Report of the Joint Subcommittee on Post-COVID Judicial Operations as either (1) presumptively appropriate for remote proceedings under normal operating conditions at the discretion of the presiding judicial officer or (2) presumptively appropriate for remote proceedings under normal operating conditions such that courts may consider holding such proceedings remotely by default, subject to exceptions, or making remote proceedings an available option for parties to request.

Subsection (a)(4) incorporates the concepts of current Rule 2-806, acknowledging that other law may permit remote electronic participation. The cross reference following subsection (a)(4) cites several examples, including: Code, Family Law Article, § 4-505.1 permitting a hearing by video conferencing on an electronically filed petition for a temporary protective order; Code, Family Law Article, § 5-326(c) authorizing video conferencing to consult with a child for guardianship review hearings; Code, Family Law Article, §§ 9.5-110 and 10-328 permitting testimony of out-of-State witnesses to be taken in another State in cases concerning the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Interstate Family Support Act, respectively; and Rule 15-1104 (d)

permitting remote electronic participation in public or catastrophic emergency hearings.

Subsection (a)(5) cites to proposed Rule 21-202, which permits virtual civil jury trials when (1) the parties and the county administrative judge consent to a virtual jury trial or (2) the court orders a virtual trial due to a state of emergency declared by the Governor and the Chief Justice of the Supreme Court. Subsection (a)(6) serves as a catch-all for other civil proceedings that are not covered by subsections (a)(1) through (a)(5), permitting remote electronic participation in an civil action when the presiding judicial officer and all parties consent to the remote electronic participation.

Section (b) sets forth the process by which a party may object to conducting a proceeding by remote electronic participation. The court must make findings in writing or on the record regarding whether remote electronic participation would be likely to cause substantial prejudice to any party or adversely affect the fairness of the proceeding.

Section (c) lists certain conditions for remote electronic participation by a witness, including requirements for the location and activities of the witness while providing testimony. The section addresses common concerns about possible influences on a witness appearing by remote electronic participation. A Committee note after subsection (c)(1) acknowledges that a witness may be represented by an attorney when testifying in a proceeding. Although the witness must testify alone in a secure room, the attorney for the witness may still be virtually present at the proceeding. The Committee note also clarifies that the Rule is not intended to preclude accommodations for the testimony of a child or of a witness requiring assistance to testify. A cross reference after subsection (c)(6) points to Rule 3-513 concerning the testimony of a witness by telephone in a District Court civil case.

A Committee note following section (c) clarifies that the section is not intended to limit any other reasonable conditions that the court may impose or accommodations that may be permitted for a testifying witness. Section (c) presents minimum conditions, not an exhaustive list of possible conditions, for testimony by remote electronic participation. The Committee note also cites and endorses two important caveats taken directly from the March 9, 2022 Report of the Joint Subcommittee on Post-COVID Judicial Operations.

MARYLAND RULES OF PROCEDURE

TITLE 21 – REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

CHAPTER 200 – CIVIL PROCEEDINGS

ADD new Rule 21-202, as follows:

Rule 21-202. VIRTUAL JURY TRIALS

(a) Applicability

(1) This Rule

This Rule applies to civil actions that the county's case management plan provides are eligible for a virtual jury trial.

Cross reference: See Rule 16-302 (b).

(2) Other Rules

Except to the extent of any inconsistency with this Rule, the other applicable Maryland Rules apply. To the extent there is any inconsistency, this Rule prevails.

(b) Circumstances Warranting Virtual Jury Trial

In any case where (1) the parties consent to and the county administrative judge approves a virtual jury trial or (2) the court orders a virtual trial due to a state of emergency declared by the Governor and the Chief Justice of the Supreme

Court, the trial shall proceed through remote video conferencing.

Committee note: The need for this Rule was a consequence of the COVID-19 pandemic. While not limited to pandemics or other natural disasters, the invocation of this Rule should be considered only in the most dire and emergent circumstances. The Rule is not intended to substitute trial processes on virtual platforms for trials conducted in courthouses where participants can be physically present in a designated location. Trial judges are reminded to employ virtual jury trials as a procedure of last resort and to preserve the time-honored process of public trials with full and unfettered opportunity of parties to participate in the proceedings in person, except as otherwise permitted elsewhere in these Rules.

(c) Pretrial Proceedings

(1) Scheduling Conference

If the court anticipates conducting a virtual jury trial in an action, or upon motion of a party, the court shall conduct a scheduling conference pursuant to Rule 2-504.1. At the scheduling conference, any party may note an objection to a virtual jury trial and provide reasons for the objection. The court shall consider the objection prior to determining whether a virtual jury trial will be held.

(2) Pretrial Conference

(A) Timing

The court shall conduct a pretrial conference no later than ten days before a virtual jury trial.

(B) Prior to Pretrial Conference

To the extent practicable, all proposed exhibits, other than rebuttal and impeachment exhibits, and requested jury selection questions shall be filed with the court and served on the other parties at least ten days before the pretrial conference. To the extent practicable, any objections to the admissibility of an exhibit shall be filed and served within three days after service of the proposed exhibit.

(C) Considerations at Pretrial Conference

In addition to the matters listed in Rule 2-504.2 (b), the court shall consider the following matters in preparation for a virtual jury trial:

(i) confirmation that each attorney, party, and witness has the technology required and the ability to use the technology to participate;

Committee note: The court should direct all participants to familiarize themselves with the video conferencing software, exhibit presentation, use of breakout rooms, bench conferences, and other aspects of the virtual trial.

(ii) appropriate virtual backgrounds to be displayed by each attorney, party, and witness at all times;

(iii) resolution of any objections raised pursuant to subsection (c)(2)(B) of this Rule;

(iv) conversion of exhibits into an electronically viewable format;

(v) identification and resolution of any objections to depositions under Rule 2-419 (d);

(vi) additional instructions to be given pertaining to the remote nature of the jury trial;

Committee note: Instructions should include guidelines for participating in the virtual proceedings, such as a requirement that participants remain visible on camera throughout the entirety of the hearing unless otherwise directed by the court, background noises and other distractions should be minimized, participants may only use their technological device to attend the proceeding, and all other technological devices must be powered off or set on silent mode.

(vii) the method for providing jury instructions to jurors, such as through e-mail or by a court-approved secure file sharing service;

(viii) a trial schedule designed to minimize the fatigue associated with online participation in a virtual trial; and

Committee note: A trial schedule designed to minimize fatigue may include limiting morning and afternoon sessions to three hours and scheduling periodic breaks. The judge and attorneys should make a reasonable effort to agree on the schedule, but if no agreement is reached, the court shall determine an appropriate trial schedule.

(ix) any other matters that can be resolved prior to trial to minimize sidebar conferences or otherwise expedite the trial proceedings.

(D) Pretrial Conference Order

Following the pretrial conference, the court shall enter a Pretrial Conference Order reciting the actions taken and stipulations made. The Order shall control the subsequent

proceedings and may be modified only to prevent manifest injustice.

(d) Jurors

(1) Jury Selection

(A) Juror Qualification Forms

A juror qualification form may be used to collect information regarding a juror's ability to participate in a virtual jury trial. The contents of the form shall comply with Rule 16-309 (b). Except as provided in Rule 2-512 (c), responses to juror qualification forms shall remain confidential.

(B) Examination

Jury selection may occur by video conferencing. In advance of the examination, case-specific written questionnaires may be used to elicit appropriate information. The parties shall have access to the jurors' responses to case-specific written questionnaires in advance of the examination to expedite the selection process.

(C) Additional Jurors

In addition to the alternates ordinarily selected for an in-person jury trial, the court may select up to two additional alternate jurors to serve on the jury panel.

Committee note: The additional alternate jurors permitted by subsection (d)(1)(C) of this Rule account for jurors who experience technical difficulties that could prevent them from

continuing with the trial or who develop a health-related issue that requires them to be excused.

(2) Jury Instructions

(A) The court shall provide empaneled jurors with instructions and training on the use of remote technology and the protocol for informing the court if they experience technical problems during the trial. Designated staff shall be made available to monitor and address technical issues.

Committee note: The court's instructions for contacting designated court staff to convey technical problems or other issues during trial may include instructions for the jurors to contact staff by phone call, text messaging, e-mail, or through video conferencing.

(B) At the commencement of trial, the court shall provide specific instructions and information to the jury that pertain to the remote format of the trial.

Committee note: The trial judge should provide an enhanced jury charge that emphasizes the need for jurors to give their full attention to the trial and to maintain the secrecy of jury deliberations.

(C) After all evidence has been presented, and pursuant to Rule 2-520, the court shall issue instructions to the jury by video conferencing. At the court's discretion, jury instructions may be made available to jurors during deliberations in a digital viewing format.

(3) Jurors' Notes

Jurors shall be permitted to take notes but shall be instructed to destroy or delete those notes at the conclusion of

the trial. A juror's notes may not be reviewed by or relied upon for any purpose by any person other than the author.

Cross reference: See Rule 2-521 (a) regarding jurors' notes during an in-person trial.

(4) Juror Review of Documents

The court shall arrange for documentary evidence and a verdict sheet to be converted into a digital viewing format that is secure and available for juror access during deliberations.

(5) Deliberations

Jurors shall deliberate using the video conferencing software used to participate during the virtual jury trial. For deliberations, jurors shall be placed in a separate virtual breakout room, and no one other than the jurors shall be allowed access to the virtual deliberation room. The court shall ensure that jury deliberations are not recorded. Once a verdict has been reached, the jury foreperson shall notify the designated officer of the court, who will then notify the judge.

(6) Jury Verdict

Once a verdict has been reached, the jury shall be moved from the separate virtual breakout room to the virtual courtroom to return the verdict. The jury shall be polled before it is discharged. If the poll discloses that the jury, or stated majority, has not concurred in the verdict, the court may direct

the jury to retire for further deliberations or may discharge the jury.

Committee note: Although for in-person jury trials, Rule 2-522 (b)(4) requires polling of the jury "on request of a party or on the court's own initiative," subsection (d)(6) of this Rule requires polling of the jury for all virtual jury trials in which a verdict has been reached.

(7) Communication with Court

All communications by a juror shall be made to the court employee designated by the judge to receive them. Upon receipt of a communication from the jury or a juror, the designated employee promptly shall notify the judge of the communication. If the judge determines that the communication pertains to the action, the judge promptly, and before responding to the communication, shall direct that the parties be notified of the communication and invite and consider, on the record, the parties' positions on any response.

Cross reference: See Rule 2-521 (d) for communications with the jury during an in-person trial.

(e) Use of Electronic Devices

In accordance with the standards and requirements set forth in Rule 21-104, court personnel, parties to a case, and witnesses may use technological equipment and video conferencing software to facilitate a virtual jury trial. A juror may use an electronic device with audio and video capabilities and video conferencing software to participate in the virtual jury trial.

A juror may not use the electronic device for any purpose other than participating in the virtual jury trial while the trial is in session. Except during periods specified by the judge or as otherwise permitted by this Rule, other electronic devices shall be turned off or set on silent mode while the trial is in session.

Committee note: An example of a permitted use of an electronic device that otherwise is required to be turned off or set on silent mode is the use of the juror's cell phone to contact designated court staff regarding a technical problem with the video conferencing software.

(f) Recording Proceedings

A person may not record, download, or transmit an audio, audio-video, video, or still image of proceedings under this Rule except as directed by the court for compliance with Rule 21-104 (e) and (f).

Source: This Rule is derived from former Rule 2-807 (2023).

REPORTER'S NOTE

New Rule 21-202 concerning virtual civil jury trials is derived from current Rule 2-807, with some stylistic, clarifying, and conforming changes.

Rule 21-202 (a) addresses the applicability of the Rule and is derived from current Rule 2-807 (a). Section (b) of Rule 21-202 and the subsequent Committee note are derived from current Rule 2-807 (b) and the Committee note after the section, describing the circumstances warranting a virtual civil jury trial.

Proposed Rule 21-202 (c) is identical to current Rule 2-807 (c), with a few changes. Proposed language is added to subsection (c)(2)(C)(i) requiring inquiry into whether, in addition to having the required technology, each attorney, party, and witness has the ability to use the technology to participate. The phrase "of this Rule" is added in subsection (c)(2)(C)(iii). Additional language in the Committee note after subsection (c)(2)(C)(vi) clarifies that instructions should include a requirement that participants remain visible on camera unless otherwise directed by the court and that devices may be on silent mode. Stylistic changes from Rule 2-807 are also proposed in subsection (c)(2)(C)(vii) and in the Committee note following subsection (c)(2)(C)(xiii).

Section (d) and the related Committee notes are derived from current Rule 2-807 (e) and Committee notes concerning jurors in virtual jury trials. An additional sentence added to subsection (d)(5) clarifies that jury deliberations are not recorded. Internal references have been updated in the Committee notes following subsections (d)(1)(C) and (d)(6).

Section (e) and the related Committee note are identical to current Rule 2-807 (f) and the subsequent Committee note, with updated internal references. Similarly, section (f) is derived from current Rule 2-807 (g), with updated internal references.

MARYLAND RULES OF PROCEDURE

TITLE 21 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

CHAPTER 300 – CRIMINAL AND DELINQUENCY PROCEEDINGS

ADD new Rule 21-301, as follows:

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

(a) Proceedings Where Consent Not Required

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

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

(2) discharge-of-counsel hearings with the defendant's knowing and voluntary consent;

(3) proceedings involving Rule 4-271 (a)(1) or the application of *State v. Hicks*, 285 Md. 310 (1979) or its progeny;

(4) initial appearances for detained defendants;

(5) appearances pursuant to bench warrants;

(6) bail reviews;

(7) expungement hearings;

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

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

(10) hearings concerning parking citations;

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

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

(12) sentencings;

(13) three-judge panel-sentencing reviews; and

(14) proceedings in which remote electronic participation is authorized by other specific law.

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

(b) Objection by a Party

Upon objection by a party in writing or on the record, the court, in determining whether to require remote electronic participation, shall consider and make findings in writing or on the record regarding whether remote electronic participation would be likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding.

(c) Other Criminal and Delinquency Proceedings by Consent

(1) Generally

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

(2) Consent by Defendant or Respondent

The court may not accept the consent of a defendant or respondent to waive an in-person proceeding pursuant to subsection (c)(1) of this Rule unless, after an examination of the defendant or respondent in person or by remote electronic participation on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant or respondent, or any combination thereof, the court determines and announces on the record that the consent is made knowingly and voluntarily. The consent of a defendant or respondent pursuant

to this subsection is effective only for the specified proceeding and not for any subsequent proceedings.

(d) Conditions of Remote Electronic Participation by Witness

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

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

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

(2) is not being coached in any way;

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

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

(5) is not recording the proceeding; and

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

Committee note: Section (d) of this Rule is not intended to limit any other reasonable conditions that the court may impose for remote electronic participation or to preclude the court from authorizing an accommodation under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* and Rule 1-332.

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

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

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

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

REPORTER'S NOTE

Rule 21-301 addresses remote electronic participation in criminal and delinquency proceedings. Section (a) enumerates the types of proceedings considered appropriate for remote electronic participation, stating that the court may permit or require one, some, or all participants to participate by means of remote electronic participation in any or part of the proceeding. Subsections (a)(1) through (a)(13) list specific case types or proceedings that are appropriate for remote electronic participation. These specific types of proceedings were included in the March 9, 2022 Report of the Joint

Subcommittee on Post-COVID Judicial Operations as either (1) presumptively appropriate for remote proceedings under normal operating conditions at the discretion of the presiding judicial officer or (2) presumptively appropriate for remote proceedings under normal operating conditions such that courts may consider holding such proceedings remotely by default, subject to exceptions, or making remote proceedings an available option for parties to request. The cross reference following subsection (a)(11) cites to a relevant provision of the Transportation Article of the Code. Subsection (a)(14) acknowledges that other law may permit remote electronic participation in a criminal or delinquency proceeding. The cross reference following subsection (a)(14) cites to Code, Criminal Procedure Article, § 11-303 permitting testimony of a child victim by closed circuit television as an example of remote electronic participation permitted by other law.

Section (b) sets forth the process by which a party may object to conducting a proceeding by remote electronic participation. The court must make findings in writing or on the record regarding whether remote electronic participation would be likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding.

Section (c) addresses other criminal and delinquency proceedings conducted by remote electronic participation by consent. The Joint Subcommittee on Post-COVID Judicial Operations concluded that criminal non-jury evidentiary proceedings should be treated as presumptively inappropriate for remote proceedings under normal operating conditions, subject to case-by-case exceptions, but recommended that the Rules Committee consider a Rule permitting remote electronic participation in certain criminal non-jury evidentiary proceedings upon knowing and voluntary consent and appropriate waivers from defendants. Subsection (c)(1) states generally that participants may utilize remote electronic participation in a proceeding when the presiding judicial officer and all parties consent. Subsection (c)(2) sets forth specific requirements for the court’s acceptance of the knowing and voluntary consent of a defendant or respondent. The subsection clarifies that a defendant’s or respondent’s consent is effective only for the specific proceeding and not for a subsequent proceeding.

Section (d) lists certain conditions for remote electronic participation by a witness, including requirements for the location and activities of the witness while providing testimony. The section addresses common concerns about possible

influences on a witness appearing by remote electronic participation. A Committee note after subsection (d)(1) acknowledges that a witness may be represented by an attorney when testifying in a proceeding. Although the witness must testify alone in a secure room, the attorney for the witness may still be virtually present at the proceeding. The Committee note also explains that the Rule is not intended to preclude accommodations for the testimony of a child or of a witness requiring assistance to testify.

A Committee note following section (d) clarifies that the section is not intended to limit any other reasonable conditions that the court may impose or accommodations that may be permitted for a testifying witness. Section (d) presents minimum conditions, not an exhaustive list of possible conditions, for testimony by remote electronic participation. The Committee note also cites and endorses two important caveats taken directly from the Report of the Joint Subcommittee on Post-COVID Judicial Operations.

MARYLAND RULES OF PROCEDURE

TITLE 21 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

CHAPTER 400 – PROCEEDINGS IN THE SUPREME COURT AND APPELLATE COURT

ADD new Rule 21-401, as follows:

Rule 21-401. PERMISSIBLE REMOTE ELECTRONIC PARTICIPATION IN THE SUPREME COURT AND APPELLATE COURT

(a) Proceedings Appropriate for Remote Electronic Participation

Subject to the conditions in this Title, any other reasonable conditions imposed in a particular proceeding, and the determination of any objection made pursuant to section (b) of this Rule, the Chief Justice of the Supreme Court, the Chief Judge of the Appellate Court, or either's designee, on motion or on the initiative of the Chief Justice, Chief Judge, or either's designee, may permit or require one, some, or all participants to participate by means of remote electronic participation in all or any part of a proceeding in the appellate court.

(b) Objection by a Party

Upon objection by a party in writing or on the record, the Chief Justice or Chief Judge of the appropriate appellate

court, in determining whether to require remote electronic participation, shall consider and make findings in writing or on the record regarding whether remote electronic participation would be likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 21-401 addresses permissible remote electronic proceedings in the appellate courts.

Section (a) provides that the Chief Justice of the Supreme Court, the Chief Judge of the Appellate Court, or a designee of a Chief Justice or Chief Judge of an appellate court may direct that a proceeding be conducted by remote electronic participation.

Section (b) sets forth the process by which a party may object to conducting a proceeding by remote electronic participation. The court must make findings in writing or on the record regarding whether remote electronic participation would be likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 17-106, as follows:

Rule 17-106. REMOTE ELECTRONIC PARTICIPATION

(a) Definition

In this Rule, "remote electronic participation" means simultaneous participation in alternative dispute resolution by means of telephone, video conferencing, or other electronic means from a place other than the physical location where the ADR is to be or ordinarily would be conducted.

(b) Generally

Any or all portions of an alternative dispute resolution or a prehearing conference may be in person or conducted by remote electronic participation. The ADR practitioner or ADR organization, in consultation with the parties, shall determine the format of an ADR. In making that determination, the ADR practitioner or ADR organization shall consider (1) the accessibility of the format to each party, (2) the technological competency of the ADR practitioner, (3) the ability of the format to provide for confidentiality of data and communications, (4) party preference, and (5) whether the format

can be used in a manner that does not affect substantially the fairness of the proceeding.

(c) Participation of Interpreters; Attorney-Client Communications

A remote electronic participation process of an alternative dispute resolution or a prehearing conference shall permit interpreters to perform their function and permit confidential communication between attorneys and their clients during the alternative dispute resolution.

Cross reference: See Rule 1-333 for provisions concerning the selection, appointment, and use of an interpreter for a "proceeding" as defined in section (a) of that Rule, including a proceeding in which there is remote electronic participation.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Title 21 addresses remote electronic participation in judicial proceedings. As noted in the March 9, 2022 Report of the Joint Subcommittee on Post-COVID Judicial Operations, alternative dispute resolution ("ADR") may also be conducted by remote electronic participation. However, the Rules proposed in new Title 21 may contain requirements or conditions that are not applicable to more informal ADR. Accordingly, proposed amendments to Title 17 clarify the use of remote electronic participation in ADR.

New Rule 17-106 sets forth the general use of and requirements for remote electronic participation in ADR. Section (a) defines "remote electronic participation."

Section (b) states that any and all portions of an alternative dispute resolution or prehearing conference may be

in person or conducted by remote electronic participation. The section provides that the ADR practitioner or ADR organization determines the format of the ADR in consultation with the parties. The section sets forth several factors that the ADR practitioner or ADR organization shall consider, derived from the Online Dispute Resolution Standards developed by the National Center for Technology and Dispute Resolution and the International Council for Online Dispute Resolution.

Section (c) requires that the remote electronic participation process allow for interpreters and confidential communications between attorneys and clients. The requirements stated in section (c) are also found in proposed new Title 21. A cross reference following section (c) notes that Rule 1-333 contains provisions concerning the selection, appointment, and use of an interpreter.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205 by adding new section (g), by re-lettering subsequent sections, and by updating internal references, as follows:

Rule 9-205. MEDIATION OF CHILD CUSTODY AND VISTATION DISPUTES

. . .

(d) Court Designation of Mediator

(1) In an order referring a matter to mediation, the court shall:

(A) designate a mediator from a list of qualified mediators approved by the court;

(B) if the court has a unit of court mediators that provides child access mediation services, direct that unit to select a qualified mediator; or

(C) direct an ADR organization, as defined in Rule 17-102, to select a qualified mediator.

(2) If the referral is to a fee-for-service mediation, the order shall specify the hourly rate that the mediator may charge

for mediation in the action, which may not exceed the maximum stated in the applicable fee schedule.

(3) A mediator selected pursuant to subsection (d)(1)(B) or (d)(1)(C) of this Rule has the status of a court-designated mediator.

(4) In designating a mediator, the court is not required to choose at random or in any particular order. The court should endeavor to use the services of as many qualified mediators as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

(5) The parties may request to substitute for the court-designated mediator another mediator who has the qualifications set forth in Rule 17-205 (a)(1), (2), (3), and (6) and subsection (c)(2) of this Rule, whether or not the mediator's name is on the court's list, by filing with the court no later than 15 days after service of the order of referral to mediation a Request to Substitute Mediator.

(A) The Request to Substitute Mediator shall be substantially in the following form:

[Caption of Case]

REQUEST TO SUBSTITUTE MEDIATOR AND SELECTION OF MEDIATOR BY STIPULATION

We agree to attend mediation proceedings pursuant to Rule 9-205 conducted by _____

_____,
(Name, address, and telephone number of mediator)

and we have made payment arrangements with the mediator. We request that the court substitute this mediator for the mediator designated by the court.

_____
(Signature of Plaintiff) (Signature of Defendant)

_____
(Signature of Plaintiff's Attorney, if any) (Signature of Defendant's Attorney, if any)

I, _____,
(Name of Mediator)

agree to conduct mediation proceedings in the above-captioned case in accordance with Rule 9-205 (e), (f), (g), (h), (i), ~~and~~ (j), and (k).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by Rule 9-205 (d)(5).

_____
Signature of Mediator

(B) If the Request to Substitute Mediator is timely filed, the court shall enter an order striking the original designation and substituting the individual selected by the parties to conduct the mediation, unless the court determines after notice

and opportunity to be heard that the individual does not have the qualifications prescribed by subsection (d)(5) of this Rule. If no Request to Substitute Mediator is timely filed, the mediator shall be the court-designated mediator.

(C) A mediator selected by stipulation of the parties and substituted by the court pursuant to subsection (d)(5)(B) of this Rule is not subject to the fee schedule provided for in section ~~(j)~~ (l) of this Rule and Rule 17-208 while conducting mediation proceedings pursuant to the stipulation and designation, but shall comply with all other obligations of a court-designated mediator.

Committee note: Nothing in this Rule or the Rules in Title 17 prohibits the parties from selecting any individual, regardless of qualifications, to assist them in the resolution of issues by participating in ADR that is not court-ordered.

(e) Role of Mediator

The role of a mediator designated by the court or agreed upon by the parties is as set forth in Rule 17-103.

(f) Confidentiality

Confidentiality of mediation communications under this Rule is governed by Rule 17-105.

Cross reference: For the definition of "mediation communication," see Rule 17-102 (h).

Committee note: By the incorporation of Rule 17-105 by reference in this Rule, the intent is that the provisions of the Maryland Mediation Confidentiality Act are inapplicable to mediations under Rule 9-205. See Code, Courts Article, § 3-1802(b)(1).

(g) Format of Mediation

The format of mediation shall be determined by the ADR practitioner or ADR organization in accordance with the provisions of Rule 17-106 (b).

~~(g)~~ (h) Scope of Mediation; Restriction on Fee Increase

(1) The court's initial order may require the parties to attend a maximum of four hours in not more than two mediation sessions. For good cause and upon the recommendation of the mediator, the court may order up to four additional hours. The parties, by agreement, may extend the mediation beyond the number of hours stated in the initial or any subsequent order.

Committee note: Although the parties, without further order of court, may extend the mediation, an amendment to the time requirements contained in a scheduling order may be made only by order of the court.

Cross reference: See Rule 2-504.

(2) Mediation under this Rule shall be limited to the issues of custody and visitation unless the parties agree otherwise in writing.

(3) During any extension of the mediation pursuant to subsection ~~(g)(1)~~ (h)(1) of this Rule or expansion of the issues that are the subject of the mediation pursuant to subsection ~~(g)(2)~~ (h)(2) of this Rule, the mediator may not increase the mediator's hourly rate for providing services relating to the action.

Cross reference: See Rule 17-208, concerning fee schedules and sanctions for noncompliance with an applicable schedule.

~~(h)~~ (i) If Agreement

If the parties agree on some or all of the disputed issues, the mediator shall provide copies of any document embodying the points of agreement to the parties and their attorneys for review and signature. If the document is signed by the parties as submitted or as modified by the parties, a copy of the signed document shall be sent to the mediator, who shall submit it to the court.

Committee note: Mediators often will record points of agreement expressed and adopted by the parties to provide documentation of the results of the mediation. Because a mediator who is not a Maryland lawyer is not authorized to practice law in Maryland, and a mediator who is a Maryland lawyer ordinarily would not be authorized to provide legal advice or services to parties in conflict, a mediator should not be authoring agreements regarding matters in litigation for the parties to sign. If the parties are represented by counsel, the mediator should advise them not to sign the document embodying the points of agreement until they have consulted their attorneys. If the parties, whether represented or not, choose to sign the document, a statement should be added that the points of agreement as recorded by the mediator constitute the points of agreement expressed and adopted by the parties.

~~(i)~~ (j) If No Agreement

If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall so advise the court but shall not state the reasons. The mediator may assist the parties in the completion of a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time,

provided for by Rule 9-204.2. If the court does not order mediation or the case is returned to the court after mediation without an agreement as to all issues in the case, the court promptly shall schedule the case for hearing on any pendente lite or other appropriate relief not covered by a mediation agreement.

~~(j)~~ (k) Evaluation Forms

At the conclusion of the mediation, the mediator shall give to the parties any evaluation forms and instructions provided by the court.

~~(k)~~ (l) Costs

(1) Fee Schedule

Fee schedules adopted pursuant to Rule 17-208 shall include maximum fees for mediators designated pursuant to this Rule, and a court-designated mediator appointed under this Rule may not charge or accept a fee for a mediation proceeding conducted pursuant to that designation in excess of that allowed by that schedule.

(2) Payment of Compensation and Expenses

Payment of the compensation and reasonable expenses of a mediator may be compelled by order of court and assessed among the parties as the court may direct. In the order for mediation, the court may waive payment of the compensation and reasonable expenses.

Source: This Rule is derived in part from the 2012 version of former Rule 9-205 and is in part new.

REPORTER'S NOTE

Amendments are proposed to Rule 9-205 in combination with proposed new Rule 17-106. For additional information, see the Reporter's note to Rule 17-106.

New section (g) is proposed to address the format of mediation conducted pursuant to Rule 9-205. The section provides that the format of the mediation shall be determined by the ADR practitioner or the ADR organization in accordance with the provisions of Rule 17-106 (b).

Additional amendments re-letter subsequent sections and update internal references.

MARYLAND RULES OF PROCEDURE

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MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE — CIRCUIT COURT

~~CHAPTER 800. REMOTE ELECTRONIC PARTICIPATION~~

DELETE Rule 2-801, as follows:

~~Rule 2-801. DEFINITIONS~~

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

~~(a) Evidentiary Proceeding~~

~~"Evidentiary proceeding" means a judicial proceeding at which evidence in any form will be presented.~~

~~(b) Judicial Proceeding~~

~~"Judicial proceeding" means any evidentiary or non-evidentiary proceeding over which a judge, magistrate, auditor, or examiner presides.~~

~~(c) Non-Evidentiary Proceeding~~

~~"Non-evidentiary proceeding" means a judicial proceeding, including a conference, presided over by a judge, magistrate, auditor, or examiner, where neither testimony nor documentary or physical evidence will be presented, other than by stipulation by all parties.~~

~~Committee note: Consideration of documents attached to a motion or a response to a motion does not, itself, preclude a hearing on the motion from being deemed a "non-evidentiary proceeding."~~

~~(d) Participant~~

~~"Participant" includes a party, witness, attorney for a party or witness, judge, magistrate, auditor, or examiner, and any other individual entitled to speak or make a presentation at the proceeding.~~

~~(e) Remote Electronic Participation~~

~~"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 by the court pursuant to the Rules in this Chapter.~~

~~(f) Remote Location~~

~~"Remote location" means a place other than the courtroom or other physical location where a judicial proceeding or conference is to be conducted. For purposes of this definition, the place where a judicial proceeding or conference is to be conducted is the place from which the presiding judicial official will be participating.~~

~~Committee note: Section (f) of this Rule takes account of the situation in which the presiding judicial official also will be participating from a place other than the court facility.~~

~~(g) Video Conferencing~~

~~"Video conferencing" means a method of conducting a judicial proceeding by the use of an interactive technology that sends video, voice, and data signals over a transmission circuit~~

~~so that two or more individuals or groups can communicate with each other simultaneously using video monitors and related audio equipment.~~

~~(h) Virtual Jury Trial~~

~~"Virtual jury trial" means a jury trial conducted by remote electronic participation.~~

~~Source: This Rule is new.~~

REPORTER'S NOTE

Current Chapter 800 of Title 2 details remote electronic participation in civil proceedings in the circuit court. However, proposed new Title 21 has been drafted to address remote electronic participation in all judicial proceedings, not only in civil circuit court cases. Therefore, Chapter 800 is proposed to be deleted in its entirety.

Relevant definitions concerning remote electronic participation are now located in Rule 21-102, derived from Rule 2-801.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE — CIRCUIT COURT

~~CHAPTER 800. REMOTE ELECTRONIC PARTICIPATION~~

DELETE Rule 2-802, 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.~~

REPORTER'S NOTE

Rule 2-802 is proposed to be deleted in its entirety. Provisions regarding remote electronic participation in non-evidentiary proceedings are now located in proposed Title 21. For further discussion, see the Reporter's note to Rule 2-801.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE — CIRCUIT COURT

~~CHAPTER 800. REMOTE ELECTRONIC PARTICIPATION~~

DELETE Rule 2-803, 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.~~

REPORTER'S NOTE

Rule 2-803 is proposed to be deleted in its entirety. Provisions regarding remote electronic participation in evidentiary proceedings are now located in proposed Title 21. For further discussion, see the Reporter's note to Rule 2-801.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE — CIRCUIT COURT

~~CHAPTER 800. REMOTE ELECTRONIC PARTICIPATION~~

DELETE Rule 2-804, 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.~~

~~Cross reference: For provisions concerning the selection, appointment, and use of interpreters for court proceedings, including proceedings in which there is remote electronic participation, see Rule 1-333.~~

~~(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 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 "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.~~

REPORTER'S NOTE

Rule 2-804 is proposed to be deleted in its entirety. Provisions regarding the conditions of remote electronic participation are now located in Rule 21-104, derived in part from Rule 2-804. For further discussion, see the Reporter's note to Rule 2-801.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE — CIRCUIT COURT

~~CHAPTER 800. REMOTE ELECTRONIC PARTICIPATION~~

DELETE Rule 2-805, as follows:

~~Rule 2-805. STANDARDS AND REQUIREMENTS~~

~~(a) Existing Remote Electronic Participation Programs~~

~~Remote electronic participation programs in existence on June 30, 2018 may continue in effect, subject to review by the State Court Administrator for consistency with the standards and requirements established under the Rules in this Chapter. After review, the Chief Judge of the Court of Appeals, upon a recommendation by the State Court Administrator, may direct changes necessary to make those programs consistent with the standards and requirements established under the Rules in this Chapter.~~

~~(b) Standards and Requirements for Remote Electronic Participation~~

~~The State Court Administrator shall develop and present to the Chief Judge of the Court of Appeals for approval standards and requirements for the process, connections, software, and equipment for remote electronic participation in judicial proceedings.~~

~~(c) Minimum Requirements~~

~~In addition to complying with the requirements set forth in Rule 2-804, the standards shall include the following requirements:~~

~~In addition to complying with the requirements set forth in Rule 2-804, the standards shall include the following requirements:~~

~~(1) All participants shall be able to communicate with each other by sight, hearing, or both as relevant.~~

~~(2) Unless waived by the participants, all participants shall be able to observe all physical evidence and exhibits presented during the proceeding, and the program shall permit participants to transmit documents as necessary.~~

~~(3) Video quality shall be adequate to allow participants and the fact-finder to observe the demeanor and non-verbal communications of other participants. Sound quality shall be adequate to allow participants to hear clearly what is occurring where each of the participants is located.~~

~~Source: This Rule is new.~~

REPORTER'S NOTE

Rule 2-805 is proposed to be deleted in its entirety. Provisions regarding the standards and requirements of remote electronic participation are now located in Rule 21-104, derived

in part from Rule 2-805. For further discussion, see the Reporter's note to Rule 2-801.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE — CIRCUIT COURT

~~CHAPTER 800. REMOTE ELECTRONIC PARTICIPATION~~

DELETE Rule 2-806, as follows:

~~Rule 2-806. REMOTE ELECTRONIC PARTICIPATION AUTHORIZED BY OTHER SPECIFIC LAW~~

~~Nothing in this Chapter is intended to preclude a court from permitting:~~

~~(a) remote electronic participation in public or catastrophic emergency hearings to be conducted pursuant to Rule 15-1104 (d);~~

~~(b) testimony of out-of-State witnesses to be taken in another State in a case under the Interstate Custody Compact pursuant to Code, Family Law Article, § 9.5-110 or in an action under the Uniform Interstate Family Support Act pursuant to Code, Family Law Article, § 10-328;~~

~~(c) consultation by the court with a child in a guardianship review hearing pursuant to Code, Family Law Article, § 5-326 (c); or~~

~~(d) remote electronic participation in other proceedings to the extent and in the manner authorized by other law.~~

~~Source: This Rule is new.~~

REPORTER'S NOTE

Rule 2-806 is proposed to be deleted in its entirety. Provisions regarding remote electronic participation authorized by other law are now located in proposed Title 21. For further discussion, see the Reporter's note to Rule 2-801.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE — CIRCUIT COURT

~~CHAPTER 800. REMOTE ELECTRONIC PARTICIPATION~~

DELETE Rule 2-807, as follows:

~~Rule 2-807. VIRTUAL JURY TRIALS~~

~~(a) Applicability~~

~~(1) Applicability of this Rule~~

~~This Rule applies to civil actions that the county's case management plan provides are eligible for a virtual jury trial.~~

~~Cross reference: See Rule 16-302 (b).~~

~~(2) Applicability of Other Rules~~

~~Except to the extent of any inconsistency with this Rule, the other applicable Maryland Rules apply. To the extent there is any inconsistency, this Rule prevails.~~

~~(b) Circumstances Warranting Virtual Jury Trial~~

~~In any case where (1) the parties and the county administrative judge consent to a virtual jury trial or (2) the court orders a virtual trial due to a state of emergency declared by the Governor and the Chief Judge of the Court of Appeals, the trial shall proceed through remote video conferencing.~~

~~Committee note: The need for this Rule was a consequence of the COVID-19 pandemic. While not limited to pandemics or other natural disasters, the invocation of this Rule should be considered only in the most dire and emergent circumstances. The Rule is not intended to substitute trial processes on virtual platforms for trials conducted in courthouses where participants can be physically present in a designated location. Trial judges are reminded to employ virtual jury trials as a procedure of last resort and to preserve the time-honored process of public trials with full and unfettered opportunity of parties to participate in the proceedings in person, except as otherwise permitted elsewhere in the Rules of Procedure.~~

~~(c) Pretrial Proceedings~~

~~(1) Scheduling Conference~~

~~If the court anticipates conducting a virtual jury trial in an action, or upon motion of a party, the court shall conduct a scheduling conference pursuant to Rule 2-504.1. At the scheduling conference, any party may note an objection to a virtual jury trial and provide reasons for the objection. The court shall consider the objection prior to determining whether a virtual jury trial will be held.~~

~~(2) Pretrial Conference~~

~~(A) Timing~~

~~The court shall conduct a pretrial conference no later than ten days before a virtual jury trial.~~

~~(B) Prior to Pretrial Conference~~

~~To the extent practicable, all proposed exhibits, other than rebuttal and impeachment exhibits, and requested jury selection questions shall be filed with the court and served on~~

~~the other parties at least ten days before the pretrial conference. To the extent practicable, any objections to the admissibility of an exhibit shall be filed and served within three days after service of the proposed exhibit.~~

~~(C) Considerations at Pretrial Conference~~

~~In addition to the matters listed in Rule 2-504.2 (b), the court shall consider the following matters in preparation for a virtual jury trial:~~

~~(i) an inquiry to confirm that each attorney, party, and witness has the technology required to participate;~~

~~Committee note: The court should direct all participants to familiarize themselves with the video conferencing software, exhibit presentation, use of breakout rooms, bench conferences, and other aspects of the virtual trial.~~

~~(ii) appropriate virtual backgrounds to be displayed by each attorney, party, and witness at all times;~~

~~(iii) resolution of any objections raised pursuant to subsection (c)(2)(B);~~

~~(iv) conversion into electronically viewable format of exhibits to be offered into evidence and, as appropriate, made available to jurors and witnesses;~~

~~(v) identification and determination of any objections to depositions under Rule 2-419 (d) at the pretrial conference;~~

~~(vi) additional instructions that are to be given pertaining to the remote nature of the jury trial;~~

~~Committee note: Instructions should include guidelines for participating in the virtual proceedings, such as a requirement that video cameras remain powered on throughout the entirety of the hearing, background noises and other distractions should be minimized, participants may only use their technological device to attend the proceeding, and all other technological devices must be powered off.~~

~~(vii) the method for providing jury instructions to jurors, such as through e-mail or via a court-approved secure file sharing service;~~

~~(xiii) a trial schedule designed to minimize the fatigue associated with online participation in a virtual trial; and~~

~~Committee note: A trial schedule designed to minimize fatigue may include limiting morning and afternoon sessions to three hours and scheduling periodic breaks. The judge and attorneys should make a reasonable effort to agree on the schedule, but if no agreement is reached, the court determines an appropriate trial schedule.~~

~~(ix) any other matters that can be resolved prior to trial to minimize sidebar conferences or otherwise expedite the trial proceedings.~~

~~(D) Pretrial Conference Order~~

~~Following the pretrial conference, the court shall enter a Pretrial Conference Order reciting the actions taken and stipulations made. The Order shall control the subsequent~~

~~proceedings and may be modified only to prevent manifest injustice.~~

~~(d) Subpoenas~~

~~(1) Generally~~

~~In addition to complying with the content requirements of Rule 2-510, a subpoena issued to require the presence of an individual at a proceeding to be conducted by remote electronic participation shall describe the method by which that presence will be implemented and state that details will be supplied by a court official prior to the court proceeding. The party requesting the subpoena shall provide the court official in writing with an e-mail address for the individual subject to the subpoena if the individual subject to the subpoena is to appear by remote electronic participation. Unless impracticable, the court official shall send log-in information to individuals appearing by remote electronic participation at least five days before the date of the virtual jury trial. The subpoena shall direct the individual subject to the subpoena to contact the party who requested the subpoena within three days if the individual is unable to effect his or her presence by the manner stated in the subpoena.~~

~~(2) If Remote Electronic Participation by Witness is Impracticable~~

~~If it is impracticable for a witness to appear by remote electronic participation for the proceeding, the subpoena may direct the witness to appear at the courthouse to participate with lawful and appropriate assistance from court personnel. The party requesting the subpoena shall (A) file a return of service and (B) notify the clerk in writing at least three days before the trial if a witness was served with a subpoena pursuant to subsection (d)(2) of this Rule.~~

~~Committee note: The party requesting the subpoena should make reasonable efforts to secure an e-mail address for the witness to comply with subsection (d)(1). However, in the instance where remote electronic participation cannot be secured, subsection (d)(2) requires the witness to physically appear at the courthouse for assistance in complying with the subpoena.~~

~~(e) Jurors~~

~~(1) Jury Selection~~

~~(A) Juror Qualification Forms~~

~~A juror qualification form may be used to collect information regarding a juror's ability to participate in a virtual jury trial. The contents of the form shall comply with Rule 16-309 (b). Except as provided in Rule 2-512 (c), responses to juror qualification forms shall remain confidential.~~

~~(B) Examination~~

~~Jury selection may occur by video conferencing. In advance of the examination, case-specific written questionnaires may be used to elicit appropriate information. The parties shall~~

~~have access to the jurors' responses to case-specific written questionnaires in advance of the examination to expedite the selection process.~~

~~(C) Additional Jurors~~

~~In addition to the alternates ordinarily selected for an in-person jury trial, the court may select up to two additional alternate jurors to serve on the jury panel.~~

~~Committee note: The additional alternate jurors permitted by subsection (c)(1)(C) account for jurors who experience technical difficulties that could prevent them from continuing with the trial or who develop a health-related issue that requires them to be excused.~~

~~(2) Jury Instructions~~

~~(A) The court shall provide empaneled jurors with instructions and training on the use of remote technology and the protocol for informing the court if they experience technical problems during the trial. Designated staff shall be made available to monitor and address technical issues.~~

~~Committee note: The Court's instructions for contacting designated court staff to convey technical problems or other issues during trial may include instructions for the jurors to contact staff by phone call, text messaging, email, or through video conferencing.~~

~~(B) At the commencement of trial, the court shall provide specific instructions and information to the jury that pertain to the remote format of the trial.~~

~~Committee note: The trial judge should provide an enhanced jury charge that emphasizes the need for jurors to give their full~~

~~attention to the trial and to maintain the secrecy of jury deliberations.~~

~~(C) After all evidence has been presented, and pursuant to Rule 2-520, the court shall issue instructions to the jury by video conferencing. At the court's discretion, jury instructions may be made available to jurors during deliberations in a digital viewing format.~~

~~(3) Jurors' Notes~~

~~Jurors shall be permitted to take notes but shall be instructed to destroy or delete those notes at the conclusion of the trial. A juror's notes may not be reviewed by or relied upon for any purpose by any person other than the author.~~

~~Cross reference: See Rule 2-521 (a) regarding jurors' notes during an in-person trial.~~

~~(4) Juror Review of Documents~~

~~The court shall arrange for documentary evidence and a verdict sheet to be converted into a digital viewing format that is secure and available for juror access during deliberations.~~

~~(5) Deliberations~~

~~Jurors shall deliberate using the video conferencing software used to participate during the virtual jury trial. For deliberations, jurors shall be placed in a separate virtual breakout room, and no one other than the jurors shall be allowed access to the virtual deliberation room. Once a verdict has been~~

~~reached, the jury foreperson shall notify the designated officer of the court, who will then notify the judge.~~

~~(6) Jury Verdict~~

~~Once a verdict has been reached, the jury shall be moved from the separate virtual breakout room to the virtual courtroom to return the verdict. The jury shall be polled before it is discharged. If the poll discloses that the jury, or stated majority, has not concurred in the verdict, the court may direct the jury to retire for further deliberations or may discharge the jury.~~

~~Committee note: Although for in-person jury trials, Rule 2-522 (b)(4) requires polling of the jury "on request of a party or on the court's own initiative," subsection (c)(6) of this Rule requires polling of the jury for all virtual jury trials in which a verdict has been reached.~~

~~(7) Communication with Court~~

~~All communications by a juror shall be made to the court employee designated by the judge to receive them. Upon receipt of a communication from the jury or a juror, the designated employee shall promptly notify the judge of the communication. If the judge determines that the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' positions on any response.~~

~~Cross reference: See Rule 2-521 (d) for communications with the jury during an in-person trial.~~

~~(f) Use of Electronic Devices~~

~~In accordance with the standards and requirements set forth in Rule 2-805, court personnel, parties to a case, and witnesses may use technological equipment and video conferencing software to facilitate a virtual jury trial. A juror may use an electronic device with audio and video capabilities and video conferencing software to participate in the virtual jury trial. A juror may not use the electronic device for any purpose other than participating in the virtual jury trial while the trial is in session. Except during periods specified by the judge or as otherwise permitted by this Rule, other electronic devices shall be turned off or set on silent mode while the trial is in session.~~

~~Committee note: An example of a permitted use of an electronic device that otherwise is required to be turned off or set on silent mode is the use of the juror's cell phone to contact designated court staff regarding a technical problem with the video conferencing software.~~

~~(g) Recording Proceedings~~

~~A person may not record, download, or transmit an audio, audio-video, video, or still image of proceedings under this Rule except as directed by the court for compliance with Rule 2-804 (e) and (f).~~

~~Source: This Rule is new.~~

REPORTER'S NOTE

Rule 2-807 is proposed to be deleted in its entirety. Provisions regarding virtual civil jury trials are now located in proposed new Rule 21-202. For further discussion, see the Reporter's note to Rule 2-801.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-101 by adding new section (u) pertaining to new Title 21, by replacing "Court of Appeals" with "Supreme Court" and "Court of Special Appeals" with "Appellate Court" throughout this Rule, and by adding two references to Justices, as follows:

Rule 1-101. APPLICABILITY

. . .

(h) Title 8

Title 8 applies to appellate review in the ~~Court of Appeals~~ Supreme Court and the ~~Court of Special Appeals~~ Appellate Court.

. . .

(q) Title 17

Title 17 applies to alternative dispute resolution proceedings in civil actions in the District Court, a circuit court, an orphans' court, and the ~~Court of Special Appeals~~ Appellate Court, except for actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute

resolution. Title 17 also applies to collaborative law processes under the Maryland Uniform Collaborative Law Act.

(r) Title 18

Title 18 applies to Justices, judges, and judicial appointees.

. . .

(t) Title 20

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

(u) Title 21

Title 21 applies to remote electronic participation in judicial proceedings conducted in the Supreme Court, the Appellate Court, a circuit court, or the District Court.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 1-101 adds new section (u) to address the applicability of new Title 21 (Remote Electronic Participation in Judicial Proceedings).

Additionally, throughout this Rule references to the "Court of Appeals" and "Court of Special Appeals" have been replaced with references to the "Supreme Court" and the "Appellate Court" and two references to Justices of the Supreme Court have been added to conform the Rule with the recent amendments to the Maryland Constitution in Chapter 83, Maryland Laws 2021, approved by the voters in the November 2022 general election.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-504 by updating a reference to the Chief Judge of the Court of Appeals to Chief Justice of the Supreme Court in subsection (a)(2) and by updating a reference in subsection (b)(2)(I), as follows:

Rule 2-504. SCHEDULING ORDER

(a) Order Required

(1) Unless otherwise ordered by the County Administrative Judge for one or more specified categories of actions, the court shall enter a scheduling order in every civil action, whether or not the court orders a scheduling conference pursuant to Rule 2-504.1.

(2) The County Administrative Judge shall prescribe the general format of scheduling orders to be entered pursuant to this Rule. A copy of the prescribed format shall be furnished to the Chief ~~Judge of the Court of Appeals~~ Justice of the Supreme Court.

(3) Unless the court orders a scheduling conference pursuant to Rule 2-504.1, the scheduling order shall be entered as soon as practicable, but no later than 30 days after an answer is

filed by any defendant. If the court orders a scheduling conference, the scheduling order shall be entered promptly after conclusion of the conference.

(b) Contents of Scheduling Order

(1) Required

A scheduling order shall contain:

(A) an assignment of the action to an appropriate scheduling category of a differentiated case management system established pursuant to Rule 16-302;

(B) one or more dates by which each party shall identify each person whom the party expects to call as an expert witness at trial, including all information specified in Rule 2-402 (g)(1);

(C) one or more dates by which each party shall file the notice required by Rule 2-504.3 (b) concerning computer-generated evidence;

(D) a date by which all discovery must be completed;

(E) a date by which all dispositive motions must be filed, which shall be no earlier than 15 days after the date by which all discovery must be completed;

Cross reference: See Rule 2-501 (a), which provides that after the date by which all dispositive motions are to be filed, a motion for summary judgment may be filed only with the permission of the court.

(F) a date by which any additional parties must be joined;

(G) a date by which amendments to the pleadings are allowed as of right; and

(H) any other matter resolved at a scheduling conference held pursuant to Rule 2-504.1.

(2) Permitted

A scheduling order also may contain:

(A) any limitations on discovery otherwise permitted under these rules, including reasonable limitations on the number of interrogatories, depositions, and other forms of discovery;

(B) the resolution of any disputes existing between the parties relating to discovery;

(C) a specific referral to or direction to pursue an available and appropriate form of alternative dispute resolution, including a requirement that individuals with authority to settle be present or readily available for consultation during the alternative dispute resolution proceeding, provided that the referral or direction conforms to the limitations of Rule 2-504.1 (e);

(D) an order designating or providing for the designation of a neutral expert to be called as the court's witness;

(E) in an action involving child custody or child access, an order appointing child's counsel in accordance with Rule 9-205.1;

(F) a further scheduling conference or pretrial conference date;

(G) provisions for discovery of electronically stored information;

(H) a process by which the parties may assert claims of privilege or of protection after production;

(I) procedures and requirements the court finds necessary when any proceedings in the action will be conducted by remote electronic participation pursuant to ~~Title 2, Chapter 800~~ Title 21 of these Rules;

(J) a requirement that, to the extent practicable, all documentary exhibits in an MDEC action be indexed, pre-numbered, and pre-filed in accordance with Rule 20-106 (f); and

(K) any other matter pertinent to the management of the action.

...

REPORTER'S NOTE

A reference to the Chief Judge of the Court of Appeals is changed to Chief Justice of the Supreme Court in subsection (a)(2) of Rule 2-504.

The proposed conforming amendment to Rule 2-504 (b)(2)(I) is necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules. The subsection is updated to refer to proposed new Title 21 concerning remote electronic participation.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-504.1 by updating a reference in section (a) and by making a stylistic change, as follows:

Rule 2-504.1. SCHEDULING CONFERENCE

(a) When Required

In any of the following circumstances, the court shall issue an order requiring the parties to attend a scheduling conference, in person or by remote electronic participation pursuant to ~~the Rules in Title 2, Chapter 800~~ Title 21 of these Rules:

(1) in an action placed or likely to be placed in a scheduling category for which the case management plan adopted pursuant to Rule 16-302 (b) requires a scheduling conference;

(2) in an action in which an objection to computer-generated evidence is filed under Rule 2-504.3 (d);

(3) in an action in which jury selection or any other significant proceeding will be conducted by remote electronic participation; or

(4) in an action~~,~~ in which a party requests a scheduling conference and represents that, despite a good faith effort, the

parties have been unable to reach an agreement (A) on a plan for the scheduling and completion of discovery, (B) on the proposal of any party to pursue an available and appropriate form of alternative dispute resolution, or (C) on any other matter eligible for inclusion in a scheduling order under Rule 2-504.

. . .

REPORTER'S NOTE

The proposed conforming amendment to Rule 2-504.1 (a) is necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules. The subsection is updated to refer to proposed new Title 21 concerning remote electronic participation.

A stylistic change is made in subsection (a)(4).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-231 by adding a reference to Rule 21-301 in section (e), by updating a reference in section (e), and by making stylistic changes, as follows:

Rule 4-231. PRESENCE OF DEFENDANT

...

(e) Electronic Proceedings in Circuit Court

A circuit court may conduct an initial appearance under Rule 4-213 (c) or a review of the District Court's release determination in accordance with Rule 21-301 and the procedures, ~~set forth in Rule 2-804 and the~~ standards, and requirements set forth in ~~Rule 2-805~~ Rule 21-104 relating to remote electronic participation, provided that (1) the defendant's right to an attorney is not infringed, (2) the defendant's right to a qualified interpreter under Code, Criminal Procedure Article, § 1-202 is not infringed, and (3) to the extent required by law and practicable, any victim or victim's representative has been notified of the proceeding and has an opportunity to observe it.

Committee note: Except when specifically covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to exhaust all situations.

Source: Sections (a), (b), and (c) of this Rule are derived from former Rule 724 and M.D.R. 724. Sections (d) and (e) are new.

REPORTER'S NOTE

The proposed conforming amendments to Rule 4-231 (e) are necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules, including Rules 2-804 and 2-805. Section (e) is updated to refer to proposed new Rule 21-301 concerning remote electronic participation in criminal cases and new Rule 21-104 incorporating the procedures, standards, and requirements previously set forth in Rules 2-804 and 2-805. Stylistic changes are proposed in section (e) also.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-106.1 by updating the cross reference after subsection (b)(1), as follows:

Rule 10-106.1. PRE-HEARING STATEMENT

...

(b) Contents

The pre-hearing statement form shall be limited to eliciting brief statements addressing the following matters:

(1) whether the minor or alleged disabled person will attend the hearing in person, by remote electronic participation, or not at all, and whether any special accommodations are needed to facilitate participation;

Cross reference: See the Rules in ~~Title 2, Chapter 800~~ Title 21, Remote Electronic Participation in Judicial Proceedings.

...

REPORTER'S NOTE

The proposed conforming amendment to Rule 10-106.1 is necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules. The cross reference after Rule 10-106.1 (b)(1) is updated to refer to proposed new Title 21 concerning remote electronic participation.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF THE PERSON

AMEND Rule 10-205 by updating the cross reference after section (b), as follows:

Rule 10-205. HEARING

...

(b) Guardianship of Alleged Disabled Person

When the petition is for guardianship of the person of an alleged disabled person, the court shall set the matter for jury trial. The alleged disabled person or the attorney representing the person may waive a jury trial at any time before trial. If a jury trial is held, the jury shall return a verdict pursuant to Rule 2-522 (b)(2) as to any alleged disability. Each certificate filed pursuant to Rule 10-202 is admissible as substantive evidence without the presence or testimony of the certifying health care professional unless, not later than 10 days before trial, an interested person who is not an individual under a disability, or the attorney for the alleged disabled person, files a request that the health care professional appear to testify. If the trial date is less than 10 days from the date the response is due, a request that the health care

professional appear may be filed at any time before trial. If the alleged disabled person asserts that, because of his or her disability, the alleged disabled person cannot attend a trial at the courthouse, the court may hold the trial at a place to which the alleged disabled person has reasonable access.

Cross reference: See ~~Rule 2-806~~ Rules 21-201 and 21-202.

Source: This Rule is in part derived from former Rule R77 and is in part new.

REPORTER'S NOTE

The proposed conforming amendment to Rule 10-205 is necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules, including Rule 2-806. The cross reference after Rule 10-205 (b) is updated to refer to proposed new Rules 21-201 and 21-202 concerning remote electronic participation in civil proceedings and virtual civil jury trials.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 – GUARDIAN OF THE PROPERTY

AMEND Rule 10-304 by updating a cross reference after section (a) and by making a stylistic change, as follows:

Rule 10-304. HEARING

(a) Hearing Required

Before ruling on a petition for guardianship of the property, the court shall hold a hearing and give notice of the time and place of the hearing to all interested persons. Upon motion by an alleged disabled person asserting that, because of ~~his or her~~ the alleged disabled person's disability, the alleged disabled person cannot attend a hearing at the courthouse, the court may hold the hearing at a place to which the alleged disabled person has reasonable access.

Cross reference: See Code, Estates and Trusts Article, § 13-211 and ~~Rule 2-806~~ Rule 21-201.

...

REPORTER'S NOTE

The proposed conforming amendment to Rule 10-304 is necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules, including Rule 2-806. The cross reference after Rule

10-304 (a) is updated to refer to proposed new Rule 21-201 concerning remote electronic participation in civil proceedings.

A stylistic change is made in section (a) also.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 11-106 by updating a reference in subsection (b)(1)(E), as follows:

Rule 11-106. SUMMONS

...

(b) Content

(1) Generally

A summons shall contain:

(A) the name of the court and the assigned docket reference;

(B) the name and address of the person summoned;

(C) the date of issue;

(D) the date, time, and place of the scheduled hearing;

(E) if any portion of the hearing is to be conducted by remote means pursuant to ~~Rules 2-801 through 2-806~~ the Rules in Title 21, details regarding the manner of remote participation;

(F) a statement that failure to attend may result in the person summoned being taken into custody; and

(G) a statement that the person summoned shall keep the court advised of the person's address during the pendency of the proceedings.

(2) Production of Child

A summons to a parent, guardian, or custodian of a respondent child shall require the person to produce the child at the place, on the date, and at the time stated in the summons.

Source: This Rule is derived from former Rule 11-104 (2021). Section (b) is new and is derived from former Form 904-S.

REPORTER'S NOTE

The proposed conforming amendment to Rule 11-106 is necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules. Subsection (b)(1)(E) of Rule 11-106 is updated to refer to proposed new Title 21 concerning remote electronic participation.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 11-108 by updating a reference in section (c), as follows:

Rule 11-108. HEARINGS

...

(c) Place of Hearing

A hearing may be conducted in open court, in chambers, remotely in conformance with the procedures and requirements in ~~Rules 2-801 through 2-806~~ the Rules in Title 21, or elsewhere where appropriate facilities are available.

...

REPORTER'S NOTE

The proposed conforming amendment to Rule 11-108 is necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules. Rule 11-108 (c) is updated to refer to proposed new Title 21 concerning remote electronic participation.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 200 – CHILD IN NEED OF ASSISTANCE

AMEND Rule 11-219 by updating a reference in subsection (e)(2)(D), as follows:

Rule 11-219. POST DISPOSITION REVIEW AND MODIFICATION; PERMANENCY PLANS

...

(e) Permanency Plan Hearings

(1) Determination of Permanency Plan

If the court has ordered an out-of-home placement, as defined in Code, Family Law Article, § 5-501(i), it shall, within the times set forth in Code, Courts Article, § 3-823(b) or (c), hold a hearing to determine a permanency plan for the child. At that hearing, the court shall determine the child's permanency plan in accordance with Code, Courts Article, § 3-823(e), (f), and (g) and make findings in accordance with Code, Courts Article, § 3-816.2(a)(2).

(2) Periodic Reviews

(A) Once a permanency plan has been approved pursuant to subsection (e)(1) of this Rule, the court shall hold periodic

hearings at the times set forth in Code, Courts Article, § 3-823(h)(1) to review the current plan.

Committee note: Federal law requires the court to continue to conduct a hearing to review the status of each child under its jurisdiction at least every six months. At that hearing, the court must make the findings required by Code, Courts Article, § 3-816.2(a)(2). See 42 U.S.C. § 675(5)(B).

(B) Notice of the hearing and an opportunity to be heard shall be provided to the parties and other individuals as required by Code, Courts Article, § 3-816.3.

Cross reference: See Code, Courts Article, § 3-816.3 for notice to the child's foster parent, preadoptive parent, or caregiver.

(C) At the review hearing, the court shall consider any written report of a local out-of-home care review board required under Code, Family Law Article, § 5-545 and make the determinations and take the actions required by Code, Courts Article, § 3-823(h)(2) and make the findings required by Code, Courts Article, § 3-816.2(a)(2).

(D) At least every 12 months, the court, at a review hearing, shall consult on the record with the child, in an age-appropriate manner. If the court determines that the child is medically fragile or that it would be detrimental to the child's physical or mental health to be transported to the place where the consultation would occur, the consultation may occur remotely pursuant to Code, Courts Article, § 3-823(j)(3) and ~~Rules 2-801 through 2-806~~ the Rules in Title 21.

(3) Reasonable Efforts Finding

At each hearing under this section, the court shall make a finding as required by Code, Courts Article, § 3-816.1.

Source: This Rule is derived in part from former Rule 11-115 c (2021) and is in part new.

REPORTER'S NOTE

The proposed conforming amendment to Rule 11-219 is necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules. Rule 11-219 (e)(2)(D) is updated to refer to proposed new Title 21 concerning remote electronic participation.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1305 by updating a reference in the Committee note after section (b), as follows:

Rule 15-1305. HEARING

...

(b) Personal Attendance

Personal attendance at the hearing is required by:

(1) the payee, unless, for good cause, the court excuses the payee's personal attendance;

(2) if a person serves as a (A) guardian of the person of the payee, (B) guardian of the property of the payee, or (C) representative payee of the payee, each such person;

(3) the independent professional advisor; and

(4) the petitioner or an officer or employee of the petitioner authorized to testify on behalf of the petitioner in the proceeding.

Committee note: Section (b) of this Rule is not intended to preclude the court from exercising its discretion under ~~Title 2, Chapter 800~~ Title 21 of these Rules to permit testimony of a witness by remote electronic participation. The court should be mindful, however, that the petitioner bears the burden of providing sufficient evidence to permit the court to make the findings required under Rule 15-1307 and consider whether taking the testimony of a witness for the petitioner by remote

electronic participation may adversely affect the credibility of that testimony. Except under extraordinary circumstances, the court should not permit testimony of the payee or a guardian of the payee by remote electronic participation.

...

REPORTER'S NOTE

The proposed conforming amendment to Rule 15-1305 is necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules. The Committee note after Rule 15-1305 (b) is updated to refer to proposed new Title 21 concerning remote electronic participation.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

AMEND Rule 16-302 by updating references in the Committee note after subsection (b)(5)(E), in subsection (b)(5)(H), and in the cross reference following subsection (b)(5)(H), by updating references to the Chief Judge of the Court of Appeals to Chief Justice of the Supreme Court, and by making stylistic changes, as follows:

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

...

(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~~ Justice of the Supreme Court, 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~~ Justice of the Supreme Court.

(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~~ Justice of the Supreme Court.

(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~~ Chief Justice of the Supreme Court, implement the amended plan.

(2) Family Law Actions

(A) The plan shall include appropriate procedures for the granting of emergency relief and expedited case processing in family law actions when there is a credible prospect of imminent and substantial physical or emotional harm to a child or susceptible or older adult.

Committee note: The intent of ~~this~~ subsection (b)(2)(A) of this Rule is that the case management plan contain procedures for assuring that the court can and will deal immediately with a credible prospect of imminent and substantial physical or emotional harm to a child or susceptible or older adult, at least to stabilize the situation pending further expedited proceedings. Circumstances requiring expedited processing include threats to imminently terminate services necessary to the physical or mental health or sustenance of the child or

susceptible or older adult or the imminent removal of the child or susceptible or older adult from the jurisdiction of the court.

Cross reference: See Code, Estates and Trust Article, § 13-601 for definitions of the terms "older adult" and "susceptible adult."

(B) In courts that have a family division, the plan shall provide for the implementation of Rule 16-307.

Cross reference: See Rule 9-204 for provisions that may be included in the case management plan concerning an educational seminar for parties in actions in which child support, custody, or visitation are involved.

(3) Guardianship Actions

The plan shall include appropriate procedures for expedited case processing pursuant to Code, Estates and Trusts Article, § 13-705(f) and Rule 10-201 (b) and (f).

Committee note: The intent of subsection (b)(3) of this Rule is that the case management plan contain procedures for non-emergency expedited case processing for guardianships of the person of disabled adults in connection with medical treatment.

(4) Special Immigrant Juvenile Status Matters

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).

(5) Virtual Jury Trials

In any jurisdiction where the County Administrative Judge deems it appropriate, the plan shall include procedures

for the operation of virtual jury trials. The plan shall consider each phase of a trial and the roles of the judge, courtroom clerk, bailiff, jury office, clerk's office, and Information Technology department. The plan for conducting a virtual jury trial shall include:

(A) categories of civil actions eligible for virtual jury trials;

Committee note: Examples of categories that courts may consider eligible for virtual jury trials include motor torts, slip and fall cases, and contract disputes.

(B) criteria to evaluate and determine which cases are appropriate for virtual trials;

Committee note: Examples of criteria to determine a case's suitability for a virtual trial include the number of plaintiffs and defendants, the number of parties that require translation services, and the complexity of legal issues raised.

(C) procedures for summoning jurors;

(D) methods to determine whether prospective jurors have access to technology with which to participate and the ability to participate in a private space;

(E) alternative means, if available, to offer prospective jurors that lack the ability to participate virtually;

Committee note: Alternative means may include providing each juror a technological device to use throughout the virtual proceedings or providing a secluded location, such as a conference room inside the courthouse or other remote location pursuant to ~~Rule 2-801 (d)~~ Rule 21-102 (g), within which jurors may participate.

(F) exhibits and evidence management;

(G) technical training for bailiffs or other designated court personnel to assist prospective jurors with technical issues during check-in, trial, and deliberations; and

(H) measures to provide public access to virtual trials pursuant to ~~Rule 2-804 (g)~~ Rule 21-104 (g).

Committee note: The intent of subsection (b)(5) of this Rule is to allow for the possibility of remote electronic participation where appropriate, pursuant to the Seventh Administrative Order Restricting Statewide Judiciary Operations Due to the COVID-19 Emergency issued by the Chief Judge of the Court of Appeals on December 22, 2020, and any subsequent orders issued by the Court.

Cross reference: See ~~Title 2, Chapter 800~~ Title 21 of these Rules and Rule 16-309 for provisions that may be included in the case management plan concerning the operation of ~~remote~~ virtual jury trials.

(6) Consultation

In developing, monitoring, and implementing the case management plan, the County Administrative Judge shall (A) consult with the Administrative Office of the Courts and with other County Administrative Judges who have developed such plans, in an effort to achieve as much consistency and uniformity among the plans as is reasonably practicable, and (B) seek the assistance of the county bar association and such other interested groups and persons as the judge deems advisable.

(7) Information Report

As part of the plan, the clerk shall make available to the parties, without charge, a form approved by the County

Administrative Judge that will provide the information necessary to implement the case management plan. The information contained in the information report shall not be used for any purpose other than case management. The clerk of each circuit court shall make available for public inspection a copy of any current administrative order of the Chief ~~Judge of the Court of Appeals~~ Justice of the Supreme Court exempting categories of actions from the information report requirement of Rule 2-111 (a).

...

REPORTER'S NOTE

The proposed conforming amendments to Rule 16-302 are necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules, including Rules 2-801 and 2-804. A reference in the Committee note after subsection (b)(5)(E) is updated to refer to new Rule 21-102 (g), containing the provisions previously in Rule 2-801 (d). A reference in subsection (b)(5)(H) is updated to refer to new Rule 21-104 (g), containing the provisions previously in Rule 2-804 (g). The cross reference after subsection (b)(5)(H) is updated also to refer to proposed new Title 21 concerning remote electronic participation. The terminology in the cross reference is also modified to refer to "virtual" instead of "remote" jury trials.

In addition, stylistic changes are proposed in the Committee notes after subsections (b)(2)(A), (b)(3), and (b)(5)(H).

References to the Chief Judge of the Court of Appeals are changed to Chief Justice of the Supreme Court throughout the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

AMEND Rule 16-309 by updating a reference in section (a), as follows:

Rule 16-309. REMOTE ELECTRONIC PARTICIPATION IN JURY CASES

(a) Applicability

This Rule applies to situations in which any significant proceeding in a case that may be tried before a jury may or will be conducted by remote electronic participation under ~~Rule 2-807~~ Rule 21-202.

...

REPORTER'S NOTE

The proposed conforming amendments to Rule 16-309 are necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules, including Rule 2-807. A reference in section (a) is updated to refer to new Rule 21-202, containing the provisions previously in Rule 2-807.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106 by updating a reference in subsection (f)(1), as follows:

Rule 20-106. USER REGISTRATION

. . .

(f) Pre-filing of Documentary Exhibits

(1) Applicability

This section applies to documents proposed to be offered into evidence at a scheduled hearing or trial in a circuit court. This section does not apply (A) to an exhibit attached to a pleading or other paper or (B) to a rebuttal or impeachment exhibit. If the trial is to be a virtual jury trial conducted pursuant to ~~Rule 2-807~~ Rule 21-202, proposed exhibits shall be filed and handled in accordance with section (c) of that Rule.

...

REPORTER'S NOTE

The proposed conforming amendments to Rule 20-106 are necessitated by the proposed deletion of Title 2, Chapter 800 of the Rules, including Rule 2-807. A reference in subsection (f)(1) is updated to refer to new Rule 21-202, containing the provisions previously in Rule 2-807.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-104 by retitling section (a) to refer to opinions of the appellate courts of Maryland; by creating new subsection (a)(1) stating that unreported opinions of the Supreme Court, the Appellate Court, or either of those courts under their former names are not precedent; by deleting the prohibition of citation to unreported opinions as persuasive authority; by adding a cross reference after subsection (a)(1); by adding new subsection (a)(2)(A) governing citation to unreported opinions generally; by adding an exception to the prohibition of citation to unreported opinions as persuasive authority; by deleting the Committee note following current section (a); by adding new subsection (a)(2)(B) governing citation to signed unreported opinions as persuasive authority under certain circumstances; by adding a Committee note following subsection (a)(2)(B) pertaining to online availability of unreported opinions; by adding new section (b) governing citation to an opinion, order, or decision issued by a Maryland trial court; by adding new section (c) governing citation to opinions by courts in other jurisdictions; by adding a cross reference to Maryland cases pertaining to the persuasive value

of unreported opinions of courts in other jurisdictions; by adding new section (d) governing attaching the cited opinion under certain circumstances; by adding a Committee note following section (d) pertaining to availability of Maryland Business and Technology Case Management Program cases; and by making stylistic changes, as follows:

Rule 1-104. UNREPORTED OPINIONS

(a) ~~Not Authority~~ Opinions of the Appellate Courts of Maryland

(1) Not Precedent

An unreported opinion of the ~~Court of Appeals or Court of Special Appeals~~ Supreme Court, the Appellate Court, or either of those Courts under their former names is ~~neither~~ not precedent within the rule of stare decisis ~~nor persuasive authority~~.

Cross reference: See Rule 8-605.1 regarding reporting of opinions of the Appellate Court.

~~(b)~~ (2) Citation

(A) Generally

An unreported opinion of ~~either Court~~ the Supreme Court, the Appellate Court, or either of those Courts under their former names may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or,

except as provided in subsection (a)(2)(B) of this Rule, as persuasive authority. In any other court, an unreported opinion of either Court may be cited only ~~(1)~~(i) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, ~~(2)~~(ii) in a criminal action or related proceeding involving the same defendant, ~~or (3)~~(iii) in a disciplinary action involving the same respondent, or (iv) as persuasive authority as provided in subsection (a)(2)(B) of this Rule.

~~Committee note: A request that an unreported opinion be designated for reporting is governed by Rule 8-605.1 (b).~~

(B) Persuasive Authority

Unless designated as a *per curiam* opinion, an unreported opinion of the Appellate Court issued after **[effective date of Rule]** may be cited for its persuasive value only if no reported authority adequately addresses an issue before the court. The citation shall clearly identify the opinion as unreported and include the case number, term, and date the opinion was filed. A *per curiam* opinion may not be cited as persuasive authority.

Committee note: Unreported opinions issued after May 1, 2015 are available on the Judiciary website.

(b) Maryland Trial Court Decisions and Opinions

A memorandum opinion, order, or other decision of a Maryland trial court may be cited for its persuasive value only

if no reported authority adequately addresses an issue before the court.

(c) Opinions Issued by Courts in Other Jurisdictions

An unreported or unpublished opinion, order, or other decision issued by a federal court or by a court in a jurisdiction other than Maryland may be cited as persuasive authority if the jurisdiction in which the opinion was issued would permit it to be cited for that purpose. The citation shall indicate that the opinion is not precedent in the issuing jurisdiction.

Cross reference: See *MAS Associates v. Korotki*, 465 Md. 457, 479 n.11 (2019) and *Gambrill v. Bd. Of Educ. of Dorchester County*, 252 Md. App. 342 (2021), *rev'd on other grounds*, 481 Md. 274 (2022) regarding the persuasive value of unreported or unpublished authority from courts in other jurisdictions.

(d) Attachment

If a party cites an opinion, order, or decision under section (b) or (c) of this Rule that is not available in a publicly accessible electronic database, the party shall attach a copy of the cited document to the pleading, brief, or other paper in which the document is cited.

Committee note: The Maryland Business and Technology Case Management Program publishes certain opinions in a database available on the Maryland Judiciary website.

Source: ~~This~~ Section (a) of this Rule is derived in part from former Rule 8-114, which was derived from former Rules 1092 c and 891 a 2, and is in part new. Sections (b), (c), and (d) are new.

REPORTER'S NOTE

Proposed amendments to Rule 1-104 permit citation to unreported opinions as persuasive authority, under certain circumstances. The Rules Committee was informed that courts in other states increasingly permit citations to unreported or unpublished opinions, particularly when there is no published authority on point.

The Court of Special Appeals, now the Appellate Court, was asked to make a recommendation and reached a consensus that citation of unreported opinions should be permitted and recommended certain parameters, which were incorporated into the proposed amendments to Rule 1-104.

Proposed amendments to section (a) retitle the section to govern "Opinions of the Appellate Courts of Maryland." Section (a) refers to unreported opinions of "the Supreme Court, the Appellate Court, or either of those courts under their former names" to make it clear that opinions issued prior to the 2022 name change are also governed by the Rule. New subsection (a)(1) contains the language from current section (a) but deletes "nor persuasive authority." New subsection (a)(2)(A) contains the language of current section (b) with an exception for citation to unreported opinions as persuasive authority under the circumstances contained in subsection (a)(2)(B).

New subsection (a)(2)(B) states the circumstances and manner in which unreported opinions may be cited. Citation is limited to an opinion of the Appellate Court after the effective date of the Rule. The Court of Special Appeals reported that a strong majority of its judges are in favor of a prospective effective date for the new provision. The unreported opinion may be cited for its persuasive value only if there is no reported opinion on point. A *per curiam* opinion cannot be cited. A Committee note after subsection (a)(2)(B) directs the reader to the Judiciary website to access unreported opinions issued after May 1, 2015.

New sections (b) and (c) address citation to other authority that is not precedent. Section (b) applies to Maryland trial court opinions. It permits citation as persuasive authority where no reported authority addresses the issues before the court.

Section (c) governs citation to opinions by courts in other jurisdictions. The Appellate Court – then the Court of Special Appeals – updated its policy regarding citation to unreported opinions of Federal courts and courts of other states in *Gambrill v. Board of Education of Dorchester County*, 252 Md. App. 342, 352 n.6 (2021), *rev'd on other grounds*, 481 Md. 274 (2022). The shift brings the Appellate Court policy in line with the Supreme Court of Maryland. Both appellate courts have now stated that an unreported opinion of a court in another jurisdiction may be cited as persuasive authority if it would be permitted to be cited for that purpose in that jurisdiction. A cross reference to the relevant appellate court cases follows the subsection.

Section (d) governs required attachments when citing an unreported opinion from a Maryland trial court or a court in another jurisdiction. Parties are required to attach a copy of the cited opinion if the opinion is not available in a publicly accessible electronic database. A Committee note states that certain Business and Technology Case Management Program cases in Maryland are compiled on the Judiciary website.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-111 by adding new subsection (a)(1) containing the first sentence of current section (a), by deleting reference to administrative order of the Chief Judge of the Court of Appeals in section (a), by adding a provision related to actions governed by Title 7 of these Rules or commenced by petition, by adding new subsection (a)(2) containing exceptions to the general requirement that a plaintiff file an information report with a complaint, by adding new subsection (a)(3) containing the second sentence of current section (a), by deleting the Committee note following section (a), and by making stylistic changes, as follows:

Rule 2-111. PROCESS – REQUIREMENTS PRELIMINARY TO SUMMONS

(a) Information Report

(1) Generally

Except as otherwise provided by ~~administrative order of the Chief Judge of the Court of Appeals approved by the Court of Appeals~~ this Rule, the plaintiff shall file with the complaint an information report substantially in the form available from the clerk pursuant to Rule 16-302 (b). If an action is governed

by the Rules in Title 7 or commenced in the circuit court by filing a petition, an information report is not required to be filed unless ordered by the court.

(2) Exceptions

An information report is not required to be filed with the complaint in the following actions:

(A) confessed judgment (Rule 2-611);

(B) friendly suit;

(C) burial ground sale (Rule 14-401);

(D) condemnation filed by State Roads Commission for unaccelerated quick-take (Code, Transportation Article, §§ 8-318 through 8-321);

(E) foreclosure (Rules 14-201 through 14-218);

(F) action for release of lien instrument (Rule 12-103);

(G) action against Maryland Automobile Insurance Fund or uninsured motorist (Rules 15-801 through 15-805);

(H) Maryland Uniform Interstate Family Support Act (Code, Family Law Article, §§ 10-301 through 10-371);

(I) mechanics' lien (Rules 12-301 through 12-308);

(J) paternity (Code, Family Law Article, §§ 5-1001 through 5-1048); and

(K) tax sales (Rules 14-501 through 14-506; Code, Tax-Property Article, §§ 14-801 through 14-854).

(3) Effect of Failure to File

If the plaintiff fails to file a required information report with the complaint, the court may proceed without the plaintiff's information to assign the action to any track within the court's differentiated case management system.

~~Committee note: By revised administrative order of the Chief Judge approved by the Court of Appeals on December 2, 2005 effective December 2, 2005, an information report is not required to be filed with a complaint within the following categories:~~
~~(1) Appeal from District Court (Rules 7-101 through 7-116);~~
~~(2) Appeal from orphans' court (Code, Courts Article, § 12-502);~~
~~(3) Certiorari in circuit court (Rule 7-301);~~
~~(4) Judicial review of administrative agency decision (Rules 7-201 through 7-210);~~
~~(5) Transfer from District Court on jury trial prayer (Rule 2-326);~~
~~(6) Confessed judgment (Rule 2-611);~~
~~(7) Contempt for failure to pay child support, when filed by a government agency;~~
~~(8) Dishonored instrument-on transfer from District Court (Code, Commercial Law Article, § 15-802);~~
~~(9) Domestic violence relief under Code, Family Law Article, §§ 4-501 through 4-516, including Rule 3-326(c) transfer;~~
~~(10) Friendly suit;~~
~~(11) Juvenile cause, other than action to terminate parental rights and related adoption or to expunge criminal record (Rules 11-101 through 11-122), which procedures currently are set forth in Rules 11-101 through 11-220, 11-401 through 11-425, and 11-501 through 11-505; and~~
~~(12) The following special proceedings:~~
~~(a) Absent person-termination of property interest (Code, Courts Article, §§ 3-101 through 3-110);~~
~~(b) Burial ground sale (Rule 14-401);~~
~~(c) Condemnation, when filed by State Roads Commission for unaccelerated quick-take (Code, Transportation Article, §§ 8-318 through 8-321);~~
~~(d) Contempt, civil or criminal, other than for violation of order or judgment entered under Code, Family Law Article (Rules 15-201 through 15-208);~~
~~(e) Fiduciary estate (Rules 10-501 through 10-712);~~
~~(f) Foreclosure (Rules 14-201 through 14-210);~~
~~(g) Guardianship, other than action to terminate parental rights (Rules 10-201 through 10-305);~~

~~(h) Habeas corpus (Rules 15-301 through 15-312);~~
~~(i) Judicial release from confinement for mental disorder (Rule 15-601);~~
~~(j) Judicial sale (Rules 14-301 through 14-306);~~
~~(k) Lien instrument-action to release (Rule 12-103);~~
~~(l) Lis pendens-proceeding to establish or terminate (Rule 12-102);~~
~~(m) Maryland Automobile Insurance Fund or uninsured motorist-action against (Rules 15-801 through 15-805);~~
~~(n) Maryland Uniform Interstate Family Support Act (Code, Family Law Article, §§ 10-301 through 10-359);~~
~~(o) Mechanics' lien (Rules 12-301 through 12-308);~~
~~(p) Name change, other than in connection with adoption or divorce (Rule 15-901);~~
~~(q) Paternity, when filed by government agency (Code, Family Law Article, §§ 5-1001 through 5-1048);~~
~~(r) Post conviction (Rules 4-401 through 4-408); and~~
~~(s) Tax sale (Rules 14-501 through 14-506; Code, Tax-Property Article, §§ 14-801 through 14-854).~~

(b) Summons

For each summons to be issued, the plaintiff shall furnish to the clerk a copy of the complaint, a copy of each exhibit or other paper filed with the complaint, and a copy of the information report specified in section (a) of this Rule.

(c) Instructions for the Sheriff

A person requesting service of process by the sheriff shall furnish to the clerk all available information as to the name and location, including the county where service is to be made, of the person to be served. The information required by this section may be included in the caption of the case.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 103 g.
Section (c) is derived from former Rule 103 b.

REPORTER'S NOTE

Proposed amendments to Rule 2-111 are recommended to update and simplify the list of proceedings that do not require an information report to be filed with the complaint. The Rule generally requires an information report to be filed with civil complaints except as otherwise provided by administrative order. The most recent administrative order on this issue is dated December 2, 2005 and is contained in a Committee note following Rule 2-111 (a).

The Court of Appeals referred to the Rules Committee the issue of whether exceptions to the general requirement of an information report filed with a civil case should be embodied in the Rule itself. The Chief Judge asked court clerks and administrators for any insertions or deletions to the list of case types in the 2005 administrative order and was provided with a list of additional proceedings which should be exempted. The Rules Committee determined that the exceptions can properly be inserted in the body of the Rule.

In reviewing the 2005 administrative order and the additional case types identified by the clerks, it was determined that many of those case types are not initiated by "complaints" but rather appeals/judicial review or petitions. The proposed amendments make it clear that those cases never require an information report and new subsection (a)(2) lists only the complaints which do not require an information report.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

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MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

DELETE Rule 12-401, as follows:

~~Rule 12-401. PARTITION OR SALE IN LIEU OF PARTITION~~

~~(a) Scope~~

~~This Rule applies in any action where the relief sought is the partition of real or personal property or the sale of real or personal property in lieu of partition.~~

~~Cross reference: See Code, Real Property Article, § 14-107.~~

~~(b) Judgment for Sale~~

~~(1) When Permitted~~

~~When the relief sought is a sale in lieu of partition, the court shall order a sale only if it determines that the property cannot be divided without loss or injury to the parties interested.~~

~~(2) Conduct of Sale~~

~~The sale shall be conducted in the manner provided by Title 14, Chapter 300 of these Rules.~~

~~(c) Judgment for Partition~~

~~(1) Appointment of Commissioners~~

~~When the court orders a partition, unless all the parties expressly waive the appointment of commissioners, the court shall appoint not less than three nor more than five disinterested persons to serve as commissioners for the purpose of valuing and dividing the property. On request of the court, each party shall suggest disinterested persons willing to serve as commissioners. The order appointing the commissioners shall set the date on or before which the commissioners' report shall be filed. The commissioners shall make oath before a person authorized to administer an oath that they will faithfully perform the duties of their commission. If the appointment of commissioners is waived by the parties, the court shall value and divide the property.~~

~~(2) Report of Commissioners~~

~~Within the time prescribed by the order of appointment, the commissioners shall file a written report. At the time the report is filed the commissioners shall serve on each party pursuant to Rule 1-321 a copy of the report together with a notice of the times within which exceptions to the report may be filed.~~

~~(3) Exceptions to Report~~

~~Within ten days after the filing of the report, a party may file exceptions with the clerk. Within that period or within three days after service of the first exceptions,~~

~~whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise. The court may decide the exceptions without a hearing, unless a request for a hearing is filed with the exceptions or by an opposing party within five days after service of the exceptions.~~

~~(d) Costs~~

~~Payment of the compensation, fees, and costs of the commissioners may be included in the costs of the action and allocated among the parties as the court may direct.~~

~~Source: This Rule is derived as follows:~~
~~Section (a) is new.~~
~~Section (b) is derived from former Rule BJ71.~~
~~Section (c) is derived from former Rule BJ72 and BJ73.~~
~~Section (d) is new.~~

REPORTER'S NOTE

Rule 12-401 is proposed to be deleted in its entirety and replaced with new Title 12, Chapter 400 to implement recent statutory changes to partition actions based on HB 777 cross-filed with SB 92, 2022 Laws of Maryland, Chapters 401 and 402. This new law was based on the Uniform Partition of Heirs Property Act, drafted by the National Conference of Commissioners on Uniform State Laws, and is contained in Code, Real Property Article, §§ 14-701, *et seq.*

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

ADD new Rule 12-401, as follows:

Rule 12-401. APPLICABILITY

The Rules in this Chapter apply in any action where the relief sought is the partition by sale or partition in kind of real property.

Cross reference: See Code, Real Property Article, § 14-702.

Source: This Rule is derived in part from section (a) of former Rule 12-401 (2023) and is in part new.

REPORTER'S NOTE

Proposed new Rule 12-401 sets forth the applicability of the partition Rules contained in Title 12, Chapter 400, and is based on Code, Real Property Article, § 14-702.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

ADD new Rule 12-402, as follows:

Rule 12-402. DEFINITIONS

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

(a) Court

"Court" means the circuit court for a county, sitting as a circuit court.

Committee note: In this Chapter, "court" does not include a circuit court sitting as the Orphans' Court of the county.

(b) Determination of Value

"Determination of value" means a court order determining the fair market value of real property under Code, Real Property Article, § 14-707 or § 14-711 or adopting the valuation of the property agreed to by all cotenants.

Cross reference: See Code, Real Property Article, § 14-701(b).

(c) Partition by Sale

"Partition by sale" means a court-ordered sale of real property, whether by auction, sealed bids, or open-market sale conducted under Code, Real Property Article, § 14-711.

Cross reference: See Code, Real Property Article, § 14-701(c).

(d) Partition in Kind

"Partition in kind" means the division of real property into physically distinct and separately titled parcels.

Cross reference: See Code, Real Property Article, § 14-701(d).

(e) Record

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Cross reference: See Code, Real Property Article, § 14-701(e).

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-402 contains definitions for key concepts used in the Rules in this Chapter that are mostly based on the statutory definitions for these terms in Code, Real Property Article, § 14-701.

The sole exception is the term "court," which is limited by the definition to a circuit court only, as a partition action may not be filed in the District Court. Orphans' courts were excluded from the definition in this Rule because the Rules Committee determined that the procedures involved in partition actions after the legislative changes are sufficiently complex to warrant leaving a circuit court as the sole tribunal for partition actions.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

ADD new Rule 12-403, as follows:

Rule 12-403. VENUE

(a) Generally

An action seeking partition by sale or partition in kind shall be filed in the court for a county in which all or any part of the subject property is located.

(b) Property Located in More than One County

If the property lies in more than one county, the court where proceedings are first filed has jurisdiction over the entire property.

REPORTER'S NOTE

Rule 12-403 specifies the proper venue in which a partition action may be filed, and is based on the venue provisions contained in Code, Courts Article, § 6-203.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

ADD new Rule 12-404, as follows:

Rule 12-404. COMPLAINT

(a) Contents

A complaint for partition by sale or partition in kind shall be signed and verified by the plaintiff and shall contain at least the following information:

(1) a description of the property that is the subject of the action, including its legal description and its street address or common designation, if any;

(2) the fractional interest of the plaintiff in the property and the basis of this interest;

(3) the names of all cotenants that are of record, known to the plaintiff, or reasonably apparent from an inspection of the property or a title report attached pursuant to section (b) of this Rule and the fractional interest of each cotenant;

(4) the names of all persons having an interest in the property;

(5) if the name of a person required to be named as a defendant is not known to the plaintiff, a statement that the

name is unknown and, if applicable, a statement that there are persons unknown to the plaintiff who may (1) have a legal or equitable interest in the property or (2) assert that there may be a cloud on the title;

(6) if the interest of a person required to be named as a defendant is unknown, uncertain, or contingent, a statement by the plaintiff to this effect;

(7) if all cotenants have agreed upon the value or the method of valuation of the property, a record signed by each cotenant confirming the agreed upon valuation or valuation method; and

(8) a request for an order from the court granting a partition in kind or partition by sale.

(b) Exhibit

The complaint may be accompanied by a copy of a title report supported by an affidavit by the person making the title search that a complete search of the public records has been performed in accordance with generally accepted standards of title examination for the period of at least 60 years immediately before the filing of the complaint.

Committee note: A joint tenant may not request a partition in kind or partition by sale unless the joint tenancy is first severed and all joint tenants are rendered tenants in common. This Chapter does not alter the principle that tenants by the entirety property may not be subject to a partition action.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-404 sets forth the required contents of a complaint requesting a partition. This Rule is based on the requirements for a complaint for a quiet title action contained in Rule 12-804 and the provisions in Code, Real Property Article, §§ 14-703 and 14-707.

Section (a) lists the required contents of a complaint. Section (b) provides that the plaintiff may file a copy of a title report with the complaint. If the plaintiff does not attach a title report, the Court has authority pursuant to proposed new Rule 12-405 and Code, Real Property Article, § 14-703 to order a title report.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

ADD new Rule 12-405, as follows:

Rule 12-405. PROCESS; PRELIMINARY MATTERS

(a) Process

(1) In Personam

Service of process in a partition action shall be made pursuant to Rule 2-121.

(2) In Rem or Quasi in Rem

(A) By Order of Court

If, on affidavit of the plaintiff, the court finds that the plaintiff has used reasonable diligence to ascertain the identity and residence of the persons entitled to receive service of process and to serve a summons on such persons, the court may order service pursuant to Rule 2-122. The order shall direct that a copy of the summons, complaint, and the order for publication shall be mailed to a party if the party's address is discovered prior to the expiration of the time prescribed in the order for publication of the summons.

Cross reference: See Code, Real Property Article, § 14-705.

(B) Plaintiff's Obligations upon Service by Publication

If the court orders service by publication, the plaintiff shall (i) post, no later than ten days after the date the order is issued, a copy of the summons, complaint, and publication notice in a conspicuous place on the property that is the subject of the action; (ii) file proof that the summons has been served, posted, and published as required in the order; and (iii) ensure that the legal description and street address or other common designation, if any, of the property are included in the publication.

Cross reference: See Code, Real Property Article, § 14-706.

(b) Preliminary Matters

Upon motion of any party or on its own initiative, the court may issue an order:

(1) for the appointment of an attorney to protect the interest of any party to the same extent and effect as provided under Rule 2-203;

(2) to require joinder of any additional parties that are necessary and proper; and

(3) to require that the plaintiff (A) procure a title report supported by an affidavit by the person making the title search that a complete search of the public records has been performed in accordance with generally accepted standards of title examination for the appropriate period as determined by the court, but not less than 60 years, and (B) designate a place

where the title report shall be kept for inspection, use, and copying by the parties.

Cross reference: See Code, Real Property Article, § 14-703.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-405 pertains to service of process and preliminary matters in partition actions.

Service of process is covered in section (a). In subsection (a)(1), basic service of process in a partition action is tied to Rule 2-121.

Subsection (a)(2) permits in rem or quasi in rem service in certain circumstances as provided in Rule 2-122 and referenced in Code, Real Property Article, § 14-705. If alternative service is used in a partition action, the Rule places certain obligations upon the plaintiff in accordance with Code, Real Property Article, § 14-706.

Section (b) of this Rule is based on Code, Real Property Article, § 14-703 and pertains to preliminary matters in a partition action. The court is permitted, upon motion of a party or sua sponte, to issue an order: (1) appointing an attorney pursuant to Rule 2-203; (2) requiring joinder of any additional party the court deems necessary to the action; or (3) requiring the plaintiff to take certain actions with respect to a title report.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

ADD new Rule 12-406, as follows:

Rule 12-406. DETERMINATION OF FAIR MARKET VALUE

(a) Generally

Except as set forth in section (b) of this Rule, the court shall determine the fair market value of the property by ordering a sworn or verified appraisal from a disinterested real estate appraiser licensed in the State. The real estate appraiser shall file a copy of the sworn or verified appraisal with the court. The court may allocate the costs of the appraisal among the parties.

Cross reference: See Code, Real Property Article, §§ 14-707(a) and (e).

(b) Other Methods of Determining Fair Market Value

(1) Previously Completed Appraisal

A previously completed appraisal may be filed as evidence of fair market value if the appraisal is dated not earlier than six months prior to the filing of the complaint seeking partition and the appraisal was completed by a disinterested real estate appraiser licensed in the State. When a previously completed appraisal is filed, the court shall

direct the clerk to send notice pursuant to section (c) of this Rule.

(A) If no Objection Filed

If no party objects to the appraised value, the court may accept a previously completed appraisal filed with the court as evidence of fair market value.

(B) If Objection Filed

If a party objects to the appraised value, the court shall conduct a hearing to determine the fair market value of the property pursuant to section (d) of this Rule.

Cross reference: See Code, Real Property Article, § 14-707(b).

(2) By Agreement of Cotenants

If all cotenants have agreed to the fair market value of the property or to a method of valuation, the court shall adopt the agreed-upon fair market value or the value produced by the agreed-upon method of valuation.

Cross reference: See Code, Real Property Article, § 14-707(c).

(3) Evidentiary Value of Appraisal Outweighed by Court

If the cotenants do not agree on a valuation, or to a method of valuation, and the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal and no previously completed appraisal was filed under subsection (b)(1) of this Rule, the court, after holding a hearing pursuant to section (d) of this Rule, shall determine

the fair market value of the property and direct the clerk to send notice to the parties of the fair market value determination.

Cross reference: See Code, Real Property Article, § 14-707(d).

(c) Notice to Parties of Filing of Appraisal

If an appraisal is obtained under section (a) or filed pursuant to subsection (b)(1) of this Rule, not later than ten days after the appraisal is filed, the court shall direct the clerk to send notice to each party with a known address stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the office of the Clerk of the court; and

(3) that a party may file an objection to the appraisal with the court no later than 30 days after the notice is sent.

Cross reference: See Code, Real Property Article, § 14-707(f).

(d) Valuation Hearing

(1) When Scheduled

If an appraisal is filed with the court pursuant to section (a) of this Rule, if a party objects to an appraisal filed pursuant to subsection (b)(1) of this Rule, or if the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal pursuant to subsection (b)(3) of this Rule, the court shall conduct a hearing to determine the fair market value of the property. If an

appraisal was filed, the hearing shall be held no sooner than 30 days after a copy of the notice of appraisal is sent to each party pursuant to section (c) of this Rule.

(2) Evidence Considered at Valuation Hearing

At the hearing, the court may consider an appraisal filed with the court pursuant to this Rule and any other evidence of valuation offered by a party.

(e) Determination or Adoption of Valuation; Notice

(1) Post-Valuation Hearing Determination

After a valuation hearing is concluded, but prior to considering the merits of a complaint seeking partition, the court shall determine the fair market value of the property.

(2) Adoption of Agreed-Upon or Non-Disputed Valuation

If no valuation hearing was held pursuant to section (d) of this Rule, prior to considering the merits of a complaint seeking partition, the court shall adopt either (A) the valuation based on a previously completed appraisal that meets the criteria set forth in subsection (b)(1) of this Rule and that has not been objected to by any party, or (B) the valuation that the parties have agreed upon pursuant to subsection (b)(2) of this Rule.

(3) Notice

The court shall direct the clerk to send notice to the parties of the value determined under subsection (e)(1) of this Rule or adopted under subsection (e)(2) of this Rule.

Cross reference: See Code, Real Property Article, §§ 14-707(g)-(h).

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-406 establishes the procedures to be followed by the parties and the court in determining the fair market value of real property that is subject to a partition action. The procedures closely follow the statutory language in Code, Real Property Article, § 14-707.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

ADD new Rule 12-407, as follows:

Rule 12-407. COTENANT BUYOUT

(a) Generally

Code, Real Property Article, § 14-708 governs procedures for a court-supervised buyout of a cotenant's interest.

(b) Required Notices

The court shall direct the clerk to issue any notices required by Code, Real Property Article, § 14-708.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-407 incorporates by reference the statutory requirements established by the General Assembly in Code, Real Property Article, § 14-708 in partition actions involving a buyout by a cotenant.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

ADD new Rule 12-408, as follows:

Rule 12-408. PARTITION IN KIND

(a) Initial Determination

(1) Generally

If all of the interests of the cotenants that requested partition by sale are not purchased by other cotenants pursuant to Rule 12-407, or, if after the conclusion of a buyout, a cotenant remains that has requested partition in kind, the court, after consideration of the factors listed in subsection (a)(2) of this Rule, shall order partition in kind unless it finds that partition in kind will result in great prejudice to the cotenants as a group.

(2) Statutory and Other Factors to be Considered by Court

In determining whether partition in kind would result in great prejudice to the cotenants as a group, the court shall consider the following, without giving undue weight to any individual factor:

(A) whether the property practicably can be divided among the cotenants;

(B) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(C) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenants who are or were relatives of the cotenants or each other;

(D) the sentimental attachment of a cotenant to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(E) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(F) the degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(G) any other relevant factor.

(3) Request to Combine Individual Interests

The court shall approve a written request by two or more parties to have their individual interests in the property combined.

(b) Partition Procedure

(1) Writ of Survey

Following an order requiring partition in kind, the court shall issue a writ of survey pursuant to Rule 12-101 for the property to be partitioned in kind.

(2) Selection of Surveyor

If the parties agree on a single surveyor, the court shall issue the writ of survey to that surveyor. If the parties do not agree on a single surveyor, the court shall issue a writ of survey to a disinterested surveyor chosen by the court.

(3) Contents of Survey

The survey shall describe the property by metes and bounds and shall locate all improvements on a survey plat of the property. If the parties agree on lines of division, those lines shall be shown on the plat. If the parties do not agree upon lines of division, the court appointed surveyor shall prepare a plat dividing the property in kind adopting lines of division in accordance with the writ of survey and in accordance with local law.

(4) Survey to be Filed With Clerk

The surveyor shall file the survey and plat with the clerk who shall send notice of the filing to each party.

(5) Objection to Survey

(A) Deadline to Object

An objection to the survey or the survey plat shall be filed no later than thirty days after the clerk sends notice.

(B) No Objection to Survey Received

If no objections are filed to the survey and plat showing division, the court shall order partition in kind pursuant to the agreed division shown on the survey plat.

(C) Objection to Survey Received

If the parties were not able to agree on lines of division, the court shall conduct a hearing to consider each party's concerns, and enter an order approving the survey or instructing the surveyor to make changes to the plat to make the lines of division the court determines to be fair and equitable.

(6) Order of Partition

The order of partition shall approve a final plat showing the lines of division for recordation in the case and among the land records.

(c) Post Hearing Action By Court

(1) Partition in Kind Ordered by Court

If the court orders partition in kind, the court may require that one or more cotenants pay one or more other

cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held. The court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if their interests were not purchased by other cotenants pursuant to Rule 12-407, a portion of the property representing the combined interest of these cotenants as determined by the court and this portion of the property shall remain undivided.

(2) Partition in Kind Not Ordered by Court

If the court does not order partition in kind, the court shall either order partition by sale pursuant to Rule 12-409 or, if no cotenant requested partition by sale, dismiss the action.

Cross reference: See Code, Real Property Article, §§ 14-709 - 14-710.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-408 establishes the procedures to be followed when the court is considering ordering a partition in kind.

Sections (a) and (c) of this Rule are based on the statutory provisions contained in Code, Real Property Article, §§ 14-709 and 14-710.

Section (b) of this Rule is based on Rule 12-101. The Rules Committee determined that a writ of survey will be needed

by the court in an action where it is determined that a partition in kind is appropriate.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

ADD new Rule 12-409, as follows:

Rule 12-409. PARTITION BY SALE

(a) Generally

If the court orders a partition by sale of property, the sale shall be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(b) Open-Market Sale

(1) Selection of Broker

If the court orders an open-market sale, the court, by order, shall appoint a real estate broker licensed in the State to offer the property for sale. No later than ten days after the order for open-market sale is entered, the parties may submit to the court a written stipulation of the name of a qualified broker, and the court shall appoint that broker. If no broker is timely selected by the parties, the court shall appoint a disinterested, qualified broker.

(2) Order of Appointment of Broker

The order of appointment shall require the broker to offer the property for sale in a commercially reasonable manner for at least the fair market value as determined in accordance with Rule 12-406. The order shall establish a reasonable commission for the broker and set such other terms and conditions as the court may require.

(3) Reporting Requirements for Court-Appointed Brokers

(A) Generally

A real estate broker appointed under section (b) of this Rule to offer property for open-market sale shall file a report with the court no later than seven days after receiving an offer to purchase the property.

(B) Contents of Report

A report to the court required by subsection (b)(3)(A) of this Rule shall contain at least the following:

(i) a description of the property to be sold to each buyer;

(ii) the name of each buyer;

(iii) the proposed purchase price, and if the proposed purchase price is less than the fair market value established by the court pursuant to Rule 12-406, a justification, if any, for why the court should consider accepting the lower price;

(iv) the terms and conditions of the proposed sale, including the terms of any owner financing;

(v) the amounts to be paid to lienholders;

(vi) a statement of contractual or other arrangements or conditions of the broker's commission; and

(vii) other material facts relevant to the sale.

A report filed under this subsection shall be sealed until the next status hearing is held by the court pursuant to subsection (b)(5) of this Rule.

(4) Offers to Purchase

(A) Fair Market Value Offers Received in Reasonable Time

If the real estate broker appointed under this section obtains an offer to purchase the property, the broker shall comply with the reporting requirements in subsection (b)(3) of this Rule and the sale may be completed in accordance with the applicable State laws after a hearing is held pursuant to subsection (b)(5) of this Rule.

(B) No Fair Market Value Offers Received in Reasonable Time

If the real estate broker appointed under this section does not obtain an offer to purchase the property for at least the fair market value in a reasonable time, the court, after a hearing held pursuant to subsection (b)(5) of this Rule, may: (i) approve the highest outstanding offer, if any; (ii) re-determine the fair market value of the property and order that the property continue to be offered for an additional period of

time; or (iii) order that the property be sold by sealed bids or at an auction.

(5) Status Hearing

(A) Conduct of Hearing

After the property has been offered for sale for a period of time determined by the court, the court shall hold an evidentiary hearing during which the court shall: (i) review each pending offer to purchase the property, if any; and (ii) take testimony from each cotenant that wishes to testify and any other witness called by a party that the court determines necessary to its consideration of the status of the property's listing for sale.

(B) Post Hearing

After the hearing, the court shall issue an order: (i) directing the broker to accept a pending offer, (ii) extending the time for the broker to offer the property for sale at the existing listing price or at a lower price specified by the court, or (iii) directing the property to be sold by sealed bids or auction.

(C) Post Open Market Sale Procedures

If open market sale is approved, the real estate broker appointed by the court to conduct the open market sale of the property shall proceed in accordance with State law other than Code, Real Property Article, Title 14, Subtitle 7.

Cross reference: See Code, Real Property Article, § 14-711.

(c) Sale by Sealed Bids

If the court orders a sale by sealed bids, the court shall issue an order establishing the terms and conditions of the sale. The procedures set forth in Title 14, Chapter 300 of these Rules shall apply to the sale.

(d) Sale by Auction

If the court orders a sale by auction, the court shall issue an order establishing the terms and conditions of the sale. The procedures set forth in Title 14, Chapter 300 of these Rules shall apply to the sale.

(e) Purchaser's Share of Proceeds

If a purchaser is entitled to a share of the proceeds of the sale, the purchaser also is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

Cross reference: See Code, Real Property Article, §§ 14-711 and 14-712.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-409 establishes the procedures to be followed when the court has rejected a partition in kind and determined that a partition by sale is the appropriate resolution to a complaint seeking a partition. This Rule is based on the statutory

provisions contained in Code, Real Property Article, §§ 14-711 and 14-712.

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 400 – PARTITION

ADD new Rule 12-410, as follows:

Rule 12-410. ORDER OF PARTITION - RECORDING

Upon the entry of a final order granting a partition in kind, the prevailing party shall cause a certified copy of the final order granting a partition in kind and the final approved plat to be recorded among the land records of each county where any part of the property is located.

Cross reference: See Code, Courts Article, § 6-203.

Source: This Rule is new.

REPORTER'S NOTE

Rule 12-410 is based on the provisions contained in Code, Courts Article, § 6-203 and Rule 12-811, and requires the prevailing party to record a certified copy of the final order granting a partition in kind and the approved plat in the land records of each county where the property is located. This is to ensure that constructive notice of the partition of the property is effectuated, and that the partition in kind will be discoverable during any subsequent title search.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-322.1 by deleting "the last four digits of the Social Security or taxpayer identification number or" from subsection (d)(1) and by making a clarifying amendment to the Committee note following subsection (d)(1), as follows:

Rule 1-322.1. EXCLUSION OF PERSONAL IDENTIFIER INFORMATION IN COURT FILINGS

(a) Applicability

This Rule applies only to pleadings and other papers filed in an action on or after July 9, 2013 by a person other than a judge or judicial appointee. The Rule does not apply to administrative records, business license records, or notice records, as those terms are defined in Rule 16-903.

Committee note: Although not subject to this Rule, judges and judicial appointees should be aware of the purpose of the Rule and refrain from including personal identifier information in their filings, unless necessary.

Cross reference: For the definition of "action," see Rule 1-202. For the prohibition against including certain personal information on recordable instruments, see Code, Real Property Article, § 3-111. For the prohibition against publicly posting or displaying on an Internet Website certain personal information contained in court records, including notice records, see Code, Courts Article, § 1-205.

(b) Generally

Except as otherwise provided in this Rule, required by law, permitted by court order, or required to implement a court order, the filer of any paper or electronic filing with a court shall not include in the filing the following personal identifier information:

(1) an individual's Social Security number or taxpayer identification number; or

(2) the numeric or alphabetic characters of a financial or medical account identifier.

(c) Exceptions

Unless otherwise provided by law or court order, section (b) of this Rule does not apply to the following:

(1) a financial account identifier that identifies the property allegedly subject to forfeiture in a forfeiture proceeding; or

(2) the record of an administrative agency proceeding.

(d) Alternatives

If, by reason of the nature of the action, it is necessary to include in a filing personal identifier information described in section (b) of this Rule, the filer may:

(1) include in the filing only ~~the last four digits of the Social Security or taxpayer identification number or~~ the last four characters of the financial or medical account identifier,

unless that identifier consists of fewer than eight characters, in which event all characters shall be redacted;

Committee note: Financial accounts include credit and debit card accounts, bank accounts, brokerage accounts, insurance policies, and annuity contracts. ~~PIN numbers~~ Personal identification numbers (PINs) or other account passwords also may need to be redacted, as well as health information identifiers.

(2) file the unredacted document under seal, if permitted by order of court;

(3) if the full information is required to be provided only to another party or to a court official, other than a judge or judicial appointee, provide the information separately to that party or official and file only a certificate that the information has been so provided;

Committee note: It may be necessary to provide personal identifier information to a court official, including a clerk, sheriff, or constable, in order for that official to send or serve notices, summonses, or other documents. Subsection (d)(3) of this Rule is not intended to permit *ex parte* communications with a judge.

(4) if the full information is required to be in the filing and the filing is a paper filing, file the paper in duplicate, one copy with the information redacted as required by section (b) of this Rule and one copy without redaction, together with instructions to the clerk to shield the unredacted copy in conformance with the Rules in Title 16, Chapter 900; or

(5) if the full information is required to be in the filing and the filing is electronic, designate, in conformance with the

applicable electronic filing requirements, the information to be redacted or shielded for purposes of public access.

Cross reference: See Rule 20-201.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 1-322.1 were requested by District Court Chief Judge John P. Morrissey. Rule 1-322.1 provides that personal identifier information (Social Security and taxpayer identification numbers and financial or medical account identifiers) generally should not be included in a filing. If, however, use of the identifier is necessary, section (d) provides alternatives, including shielding and redaction, to prevent the information from being made public. One option currently is the use of the last four digits or characters of the identifier.

Rule 16-915 states that even the last four digits of a Social Security number (SSN) or taxpayer identification number (TIN) are considered restricted information and must be redacted in a public filing. An MDEC filing that includes restricted information not properly redacted and accompanied by a Notice must be rejected by clerks pursuant to Rule 20-201.1, as amended by Rules Order dated February 9, 2022.

The District Court reports that it does not have any use for a partial SSN/TIN in a filing. If a full number is necessary in the litigation, parties should follow the redaction provisions available in Rule 1-322.1 (d)(4) or (d)(5) and, in an MDEC jurisdiction, file a Notice of Restricted Information as required in Rule 20-201.1. Chief Judge Morrissey has requested that the reference to the last four digits of a SSN or TIN be removed.

A proposed amendment to Rule 1-322.1 deletes "the last four digits of the Social Security or taxpayer identification number" from subsection (d)(1). The last four characters of a financial or medical account identifier are not restricted information and therefore not causing the same redaction issues.

The phrase "PIN numbers" in the Committee note following subsection (d)(1) is also corrected to read "Personal identification numbers (PINs)" to clarify a redundancy.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-113 by adding new section (b) governing renewal of summons in an action for judgment on affidavit and by making a stylistic change, as follows:

Rule 3-113. PROCESS – DURATION, DORMANCY, AND RENEWAL OF SUMMONS

(a) Generally

A summons is effective for service only if served within 60 days after the date it is issued. A summons not served within that time shall be dormant, renewable only on written request of the plaintiff.

Committee note: See *Neel v. Webb Fly Screen Mfg. Co.*, 187 Md. 34, 48 A.2d 331 (1946).

(b) Judgment on Affidavit – Military Service Affidavit

A request for renewal of a summons in an action seeking judgment on affidavit pursuant to Rule 3-306 shall be accompanied by either (1) a statement that there has been no change to the information provided in the most recently filed military service affidavit or (2) a supplemental military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*

Source: ~~This~~ Section (a) of this Rule ~~is new and~~ replaces former M.D.R. 103 d 2. Section (b) is new.

REPORTER'S NOTE

Proposed amendments to Rule 3-113 address a concern raised by the Chief Judge of the District Court regarding the potential staleness of military service affidavits that are filed in affidavit judgment actions pursuant to Rule 3-306. Military service affidavits are required by § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq*. See the Reporter's note to Rule 3-306 for more information.

Proposed new section (a) contains the current text of the Rule.

Proposed new section (b) provides that the request for renewal of a summons in an affidavit judgment action must be accompanied by either a statement that there has been no change to the information provided most recently regarding the defendant's military service or a supplementary affidavit in compliance with the Servicemembers Civil Relief Act.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 300 – PLEADINGS AND MOTIONS

AMEND Rule 3-306 by adding new subsection (c)(4)(E) pertaining to an affidavit of military service, by adding a cross reference to Rule 3-113 following subsection (c)(4)(E), by deleting current subsection (d)(4)(C) and replacing the language with a new requirement pertaining to a statement from the plaintiff, and by making stylistic changes, as follows:

Rule 3-306. JUDGMENT ON AFFIDAVIT

(a) Definitions

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

(1) Charge-Off

"Charge-off" means the act of a creditor that treats an account receivable or other debt as a loss or expense because payment is unlikely.

(2) Charge-Off Balance

"Charge-off balance" means the amount due on the account or debt at the time of charge-off.

(3) Consumer Debt

"Consumer debt" means a secured or unsecured debt that is for money owed or alleged to be owed and arises from a consumer transaction.

(4) Consumer Transaction

"Consumer transaction" means a transaction involving an individual seeking or acquiring real or personal property, services, future services, money, or credit for personal, family, or household purposes.

(5) Original Creditor

"Original creditor" means the lender, provider, or other person to whom a consumer originally was alleged to owe money pursuant to a consumer transaction. "Original creditor" includes a creditor excluded from the definition of "debt buyer" in Code, Courts Article, § 5-1201(i)(2) and the Central Collection Unit, a unit within the State Department of Budget and Management.

(6) Original Consumer Debt

"Original consumer debt" means the total of the consumer debt alleged to be owed to the original creditor, consisting of principal, interest, fees, and any other charges.

Committee note: If there has been a charge-off, the amount of the "original consumer debt" is the same as the "charge-off balance."

(7) Principal

"Principal" means the unpaid balance of the funds borrowed, the credit utilized, the sales price of goods or services obtained, or the capital sum of any other debt or obligation arising from a consumer transaction, alleged to be owed to the original creditor. It does not include interest, fees, or charges added to the debt or obligation by the original creditor or any subsequent assignees of the consumer debt.

(8) Future Services

"Future services" means one or more services that will be delivered at a future time.

(9) Future Services Contract

"Future services contract" means an agreement that obligates a consumer to purchase a future service from a provider.

(10) Provider

"Provider" means any person who sells a service or future service to a consumer.

(b) Demand for Judgment by Affidavit

In an action for money damages a plaintiff may file a demand for judgment on affidavit at the time of filing the complaint commencing the action. The complaint shall be supported by an affidavit showing that the plaintiff is entitled to judgment as a matter of law in the amount claimed.

(c) Affidavit and Attachments - General Requirements

The affidavit shall:

(1) be made on personal knowledge;

(2) set forth such facts as would be admissible in evidence;

(3) show affirmatively that the affiant is competent to testify to the matters stated in the affidavit; and

(4) include or be accompanied by:

(A) supporting documents or statements containing sufficient detail as to liability and damages, including the precise amount of the claim and any interest claimed;

(B) if interest is claimed, an interest worksheet substantially in the form prescribed by the Chief Judge of the District Court;

(C) if attorneys' fees are claimed, sufficient proof evidencing that the plaintiff is entitled to an award of attorneys' fees and that the fees are reasonable; ~~and~~

(D) if the claim is founded upon a note, security agreement, or other instrument, the original or a photocopy of the executed instrument, or a sworn or certified copy, unless the absence thereof is explained in the affidavit~~.~~; and

(E) a military service affidavit in compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*

Cross reference: See Rule 3-113 (b) pertaining to compliance with § 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.* in a request for renewal of summons.

(d) If Claim Arises from Assigned Consumer Debt

If the claim arises from consumer debt and the plaintiff is not the original creditor, the affidavit also shall include or be accompanied by (i) the items listed in this section, and (ii) an Assigned Consumer Debt Checklist, substantially in the form prescribed by the Chief Judge of the District Court, listing the items and information supplied in or with the affidavit in conformance with this Rule. Each document that accompanies the affidavit shall be clearly numbered as an exhibit and referenced by number in the Checklist.

(1) Proof of the Existence of the Debt or Account

Proof of the existence of the debt or account shall be made by a certified or otherwise properly authenticated photocopy or original of at least one of the following:

(A) a document signed by the defendant evidencing the debt or the opening of the account;

(B) a bill or other record reflecting purchases, payments, or other actual use of a credit card or account by the defendant; or

(C) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant.

(2) Proof of Terms and Conditions

(A) Except as provided in subsection (d)(2)(B) of this Rule, if there was a document evidencing the terms and conditions to which the consumer debt was subject, a certified or otherwise properly authenticated photocopy or original of the document actually applicable to the consumer debt at issue shall accompany the affidavit.

(B) Subsection (d)(2)(A) of this Rule does not apply if (i) the consumer debt is an unpaid balance due on a credit card; (ii) the original creditor is or was a financial institution subject to regulation by the Federal Financial Institutions Examination Council or a constituent federal agency of that Council; and (iii) the claim does not include a demand or request for attorneys' fees or interest on the charge-off balance in excess of the Maryland Constitutional rate of six percent per annum.

Committee note: This Rule is procedural only, and subsection (d)(2)(B)(iii) is not intended to address the substantive issue of whether interest in any amount may be charged on a part of the charge-off balance that, under applicable and enforceable Maryland law, may be regarded as interest.

Cross reference: See Federal Financial Institutions Examination Council Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36903--36906 (June 12, 2000).

(3) Proof of Plaintiff’s Ownership

The affidavit shall contain a statement that the plaintiff owns the consumer debt. It shall include or be accompanied by:

(A) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and

(B) a certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to each successive owner, including the plaintiff.

Committee note: If a bill of sale or other document transferred debts in addition to the consumer debt upon which the action is based, the documentation required by subsection (d)(3)(B) of this Rule may be in the form of a redacted document that provides the general terms of the bill of sale or other document and the document's specific reference to the debt sued upon.

(4) Identification and Nature of Debt or Account

The affidavit shall include the following information:

(A) the name of the original creditor;

(B) the full name of the defendant as it appears on the original account;

(C) ~~the last four digits of the social security number for the defendant appearing on the original account, if known~~ a statement as to whether the plaintiff knows the Social Security number of the defendant;

(D) the last four digits of the original account number; and

(E) the nature of the consumer transaction, such as utility, credit card, consumer loan, retail installment sales agreement, service, or future services.

(5) Future Services Contract Information

If the claim is based on a future services contract, the affidavit shall contain facts evidencing that the plaintiff currently is entitled to an award of damages under that contract.

(6) Account Charge-Off Information

If there has been a charge-off of the account, the affidavit shall contain the following information:

(A) the date of the charge-off;

(B) the charge-off balance;

(C) an itemization of any fees or charges claimed by the plaintiff in addition to the charge-off balance;

(D) an itemization of all post-charge-off payments received and other credits to which the defendant is entitled; and

(E) the date of the last payment on the consumer debt or of the last transaction giving rise to the consumer debt.

(7) Information for Debts and Accounts Not Charged Off

If there has been no charge-off, the affidavit shall contain:

(A) an itemization of all money claimed by the plaintiff, (i) including principal, interest, finance charges, service charges, late fees, and any other fees or charges added to the principal by the original creditor and, if applicable, by subsequent assignees of the consumer debt and (ii) accounting for any reduction in the amount of the claim by virtue of any payment made or other credit to which the defendant is entitled;

(B) a statement of the amount and date of the consumer transaction giving rise to the consumer debt, or in instances of multiple transactions, the amount and date of the last transaction; and

(C) a statement of the amount and date of the last payment on the consumer debt.

(8) Licensing Information

The affidavit shall include a list of all Maryland collection agency licenses that the plaintiff currently holds and provide the following information as to each:

(A) license number,

(B) name appearing on the license, and

(C) date of issue.

Cross reference: See Code, Courts Article, § 5-1203(b)(2), concerning the plaintiff's requirements if a judgment on affidavit under section (d) of this Rule is denied.

(e) Subsequent Proceedings

(1) When Notice of Intention to Defend Filed

If the defendant files a timely notice of intention to defend pursuant to Rule 3-307, the plaintiff shall appear in court on the trial date prepared for a trial on the merits. If the defendant fails to appear in court on the trial date, the court may proceed as if the defendant failed to file a timely notice of intention to defend.

(2) When No Notice of Intention to Defend Filed

(A) If the defendant fails to file a timely notice of intention to defend, the plaintiff need not appear in court on the trial date and the court may determine liability and damages on the basis of the complaint, affidavit, and supporting documents filed pursuant to this Rule. If the defendant fails to appear in court on the trial date and the court determines that the pleading and documentary evidence are sufficient to entitle the plaintiff to judgment, the court shall grant the demand for judgment on affidavit.

(B) If the court determines that the pleading and documentary evidence are insufficient to entitle the plaintiff to judgment on affidavit, the court may deny the demand for judgment on affidavit or may grant a continuance to permit the plaintiff to supplement the documentary evidence filed with the demand. If the defendant appears in court at the time set for trial and it is established to the court's satisfaction that the defendant may have a meritorious defense, the court shall deny

the demand for judgment on affidavit. If the demand for judgment on affidavit is denied or the court grants a continuance pursuant to this section, the clerk shall set a new trial date and mail notice of the reassignment to the parties, unless the plaintiff is in court and requests the court to proceed with trial.

Cross reference: Rule 3-509.

(f) Reduction in Amount of Damages

Before entry of judgment, the plaintiff shall inform the court of any reduction in the amount of the claim by virtue of any payment or other credit.

(g) Notice of Judgment on Affidavit

When a demand for judgment on affidavit is granted, the clerk shall mail notice of the judgment promptly after its entry to each party at the latest address stated in the pleadings. The notice shall inform (1) the plaintiff of the right to obtain a lien on real property pursuant to Rule 3-621, and (2) the defendant of the right to file a motion to vacate the judgment within 30 days after its entry pursuant to Rule 3-535 (a). The clerk shall ensure that the docket or file reflects compliance with this section.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former M.D.R. 610 a.
Section (c) is derived from former M.D.R. 610 a.
Section (d) is new.

Section (e) is derived from former M.D.R. 610 b, c, and d.
Section (f) is derived from former M.D.R. 610 e.
Section (g) is derived from former M.D.R. 610 d.

REPORTER'S NOTE

Proposed amendments to Rule 3-306 were requested by the Chief Judge of the District Court. Rule 1-322.1 provides that personal identifier information, including Social Security numbers (SSNs), taxpayer identification numbers (TINs), and financial or medical account identifiers, generally should not be included in a filing. Rule 16-915 states that even the last four digits of a Social Security number or taxpayer identification number are restricted information and must be redacted in a public filing.

Rule 3-306 (d) requires the last four digits of a debtor's SSN, if known, be included in an affidavit judgment action where the claim arises from assigned consumer debt. The requirement is set forth in Code, Courts Article, § 5-1203, which was modeled after the Rule in 2016. The Rules Committee was informed that due to changes in practices surrounding the use of partial Social Security numbers, it is no longer necessary or practical for a partial identifier to be included in a filing under Rule 3-306. Proposed amendments to Rule 3-306 (d)(4)(C) delete the current requirement and substitute a statement from the filer that the filer does or does not know the SSN of the debtor.

The Chief Judge of the District Court also contacted the Committee earlier this year regarding the differing opinions among judges and the bar as to when a military service affidavit, required by the Servicemembers Civil Relief Act (SCRA), becomes stale in an affidavit judgment action. In those cases, which are governed by Rule 3-306, the plaintiff files the complaint and the military service affidavit contemporaneously using the same District Court form. This differs from other default judgment or foreclosure situations where the military service affidavit is not submitted until the plaintiff moves for entry of default. Depending upon how long it takes to serve the defendant in an affidavit judgment action, it can take months for a case to be ripe for judgment. Judges are reluctant to rely on a military service affidavit after a certain period, but the length of that period differs among judges.

There is no standard in federal law for when an SCRA affidavit becomes stale. Because the SCRA is a federal requirement and there is no guidance from the federal government, there is no standard for staleness of military service affidavits that can be established and included in the Maryland Rules.

To address the potential for a military service affidavit to become stale after the initial filing of the complaint due to multiple requests for renewal of summons, a proposed amendment to Rule 3-113 would require a plaintiff in an affidavit judgment action who requests a renewal of summons to state that the military service affidavit information in the complaint is unchanged or file a supplemental military service affidavit. The Chief Judge of the District Court, Chief Clerk of the District Court, and other stakeholders agreed that this solution is feasible. A proposed amendment to Rule 3-306 adds new subsection (c)(4)(E) requiring a military service affidavit as part of the affidavit submitted with the complaint. A cross reference following the new subsection refers to the new section in Rule 3-113.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-501 by updating the citation in a cross reference following section (f), as follows:

Rule 2-501. MOTION FOR SUMMARY JUDGMENT

. . .

(f) Entry of Judgment

The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. By order pursuant to Rule 2-602 (b), the court may direct entry of judgment (1) for or against one or more but less than all of the parties to the action, (2) upon one or more but less than all of the claims presented by a party to the action, or (3) for some but less than all of the amount requested when the claim for relief is for money only and the court reserves disposition of the balance of the amount requested. If the judgment is entered against a party in default for failure to appear in the action, the clerk promptly

shall send a copy of the judgment to that party at the party's last known address appearing in the court file.

Cross reference: Section ~~521~~ 3931 of the Servicemembers Civil Relief Act, ~~50 U.S.C. app. §§ 501 *et seq.*~~ 50 U.S.C. §§ 3901 *et seq.*, imposes specific requirements that must be fulfilled before a default judgment may be entered.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 2-501 update a reference to the Servicemembers Civil Relief Act. The statute was recodified several years ago. The corrected citation is in the cross reference following section (f).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-613 by updating the citation in a cross reference following section (g), as follows:

Rule 2-613. MOTION FOR SUMMARY JUDGMENT

. . .

(g) Finality

A default judgment entered in compliance with this Rule is not subject to the revisory power under Rule 2-535 (a) except as to the relief granted.

Cross reference: Section ~~521~~ 3931 of the Servicemembers Civil Relief Act, ~~50 U.S.C. app. §§ 501 *et seq.*~~ 50 U.S.C. §§ 3901 *et seq.*, imposes specific requirements that must be fulfilled before a default judgment may be entered.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is new.
Section (c) is new.
Section (d) is new.
Section (e) is new.
Section (f) is new. The second sentence is derived from the last sentence of the 1937 version of Fed. R. Civ. P. 55(b)(2).
Section (g) is new.

REPORTER'S NOTE

Proposed amendments to Rule 2-613 update a reference to the Servicemembers Civil Relief Act. The statute was recodified

several years ago. The corrected citation is in the cross reference following section (g).

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 200 – FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-207 by updating the statutory reference in subsection (b)(5), as follows:

Rule 14-207. PLEADINGS; SERVICE OF CERTAIN AFFIDAVITS, PLEADINGS, AND PAPERS

. . .

(b) Exhibits

Except as provided in section (c) of this Rule, a complaint or order to docket shall include or be accompanied by:

. . .

(5) with respect to any defendant who is an individual, an affidavit in compliance with ~~§ 521~~ § 3931 of the Servicemembers Civil Relief Act, ~~50 U.S.C. app. § 501 *et seq.*~~ 50 U.S.C. §§ 3901 *et seq.*;

. . .

REPORTER'S NOTE

Proposed amendments to Rule 14-207 update a reference to the Servicemembers Civil Relief Act. The statute was recodified several years ago. The corrected reference is in subsection (b)(5).

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 200 – FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-209 by updating the citation in a cross reference following section (e), as follows:

Rule 14-209. SERVICE IN ACTIONS TO FORECLOSE ON RESIDENTIAL PROPERTY; NOTICE

. . .

(e) Affidavit of Service, Mailing, and Notice

. . .

(5) Contents of Affidavit of Notice Required by Local Law

An affidavit of the sending of a notice required by local law shall (A) state (i) the date the notice was given, (ii) the name and business address of the person to whom the notice was given, (iii) the manner of delivery of the notice, and (iv) a reference to the specific local law of the county or municipal corporation, or both, requiring the notice and (B) be accompanied by a copy of the notice that was given.

Cross reference: See the Servicemembers Civil Relief Act, ~~50 U.S.C. app. §§ 501 *et seq.*~~ 50 U.S.C. §§ 3901 *et seq.*

Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (b) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 14-209 update a reference to the Servicemembers Civil Relief Act. The statute was recodified several years ago. The corrected citation is in the cross reference following subsection (e)(5).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-348 by updating a reference and deleting certain language in section (a), and by eliminating the cross reference after section (a), as follows:

Rule 4-348. STAY OF EXECUTION OF SENTENCE

(a) Sentence of Imprisonment

The filing of an appeal or a petition for writ of certiorari in any appellate court, including the Supreme Court of the United States, stays a sentence of imprisonment during any period that the defendant is released pursuant to Rule 4-349, unless a court orders otherwise pursuant to section ~~(d)~~ (e) of that Rule. ~~On the filing of a notice of appeal in a case that is tried de novo, the circuit court, on motion or by consent of the parties, may stay a sentence of imprisonment imposed by the District Court and release the defendant pending trial in the circuit court, subject to any appropriate terms and conditions of release.~~

~~Cross reference: See Rule 4-349.~~

(b) Fine

Upon the filing of an appeal or petition of writ of certiorari in any appellate court, a sentence to pay a fine or a fine and costs may be stayed by the court upon terms the court deems proper, but any bond required to stay the payment pending appeal may not exceed the unpaid amount of the fine and costs, if any.

(c) Other Sentences

Any other sentence or any order or condition of probation may be stayed upon terms the court deems proper.

Source: This Rule is derived from former Rule 778 a and M.D.R. 778 a.

REPORTER'S NOTE

Rule 4-348 addresses the stay of execution of a sentence. Proposed amendments to section (a) delete certain language that is moved to Rule 4-349. For further discussion, see the Reporter's note for Rule 4-349.

Proposed amendments also delete the cross reference to Rule 4-349 after section (a).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-349 by deleting the word "general" from the tagline of section (a), by creating new subsection (a)(1) with the language of current section (a), by adding a cross reference after subsection (a)(1), by adding new subsection (a)(2) concerning release pending de novo appeal in circuit court, by adding a cross reference after subsection (a)(2), by clarifying the required condition of bond when the defendant is released pending appellate review in section (c), by adding new subsections (d)(1) and (d)(2) concerning the duration of the defendant's release pending appeal, by adding a cross reference after new section (d), by re-lettering current section (d) as section (e), and by adding clarifying language in section (e), as follows:

Rule 4-349. RELEASE AFTER CONVICTION

(a) ~~General~~ Authority

(1) Generally

After conviction the trial judge may release the defendant pending sentencing or exhaustion of any appellate review subject to such conditions for further appearance as may

be appropriate. Title 5 of these rules does not apply to proceedings conducted under this Rule.

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

(2) Pending De Novo Appeal

On the filing of a notice of appeal in the District Court in a case to be tried de novo, the circuit court, on motion or by consent of the parties, may stay a sentence of imprisonment imposed by the District Court and release the defendant pending trial in the circuit court, subject to any appropriate terms and conditions of release.

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

(b) Factors Relevant to Conditions of Release

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

(c) Conditions of Release

The court may impose different or greater conditions for release under this Rule than had been imposed upon the defendant

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

(d) Release Pending Appeal

(1) Duration of Release

An order releasing a defendant pending appellate review pursuant to this Rule shall continue until the earliest of the following: (A) the defendant exhausts appellate review by way of appeal, application for leave to appeal, or petition for writ of certiorari in the Supreme Court or the Supreme Court of the United States; (B) the defendant allows the deadline to pass for seeking further appellate review of an adverse disposition; (C) the defendant allows the deadline to pass for filing the statement required by subsection (d)(2) of this Rule, or

indicates in such a statement that the defendant does not intend to seek further review; or (D) a court revokes the order of release in accordance with section (e) of this Rule.

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

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

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

~~(d)~~ (e) Amendment of Order of Release

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

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

REPORTER'S NOTE

The Rules Committee was contacted by an appellate attorney concerning possible amendments to Rules 4-348, 4-349, and 8-422. The attorney asked the Committee to address ambiguities concerning the duration of a defendant's release and the stay of a sentence of imprisonment pending appeal. Proposed amendments to the Rules provide clarification, including the appropriate action during the period when a defendant may file a petition for certiorari after issuance of an appellate court's mandate.

Rule 4-349 concerns the release of a defendant after conviction, whether pending sentencing or the exhaustion of appellate review. Section (a) is divided into two subsections and the tagline is updated. Subsection (a)(1) is created from the language of former section (a). A new cross reference after subsection (a)(1) indicates that Rule 8-422 (c) addresses review by the Appellate Court of a lower court action concerning the stay of enforcement of a judgment pending appeal. New subsection (a)(2) is derived from the second sentence of current Rule 4-348 (a). Upon review, it was determined that the language in Rule 4-348 (a) concerns the release of the defendant and, therefore, is more appropriately included in Rule 4-349. A new cross reference after subsection (a)(2) refers to provisions in Rule 7-112 addressing the actions of a circuit court upon dismissal of the *de novo* criminal appeal of a defendant who was sentenced to confinement and released pending appeal.

Concerns expressed to the Committee suggested that the Rules are ambiguous about when a defendant must surrender to serve a sentence after being released pending appeal. Proposed amendments to section (c) clarify that a defendant must surrender to serve a sentence when release pending appeal is terminated pursuant to subsection (d)(1).

New section (d) explicitly addresses the duration of release pending appeal. Subsection (d)(1) explains that an

order releasing the defendant continues until the earliest of several enumerated events. Subsection (d)(2) addresses the appropriate timeframe of release pending a writ of certiorari to the Supreme Court of the United States. This subsection enables a court to determine whether a petition for a writ of certiorari appears frivolous or solely for the purpose of extending the defendant's release. A cross reference after new section (d) cites the relevant federal rules governing petitions for a writ of certiorari.

Current section (d) is re-lettered as section (e) to account for the addition of a new section. New language is added to the first sentence of section (e) to clarify that the order of release issued pursuant to this Rule may be revoked or amended by the court that ordered the release.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-212 by adding a reference to the cross reference after section (e), as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR WARRANT

...

(e) Execution of Warrant - Defendant Not in Custody

Unless the defendant is in custody, a warrant shall be executed by the arrest of the defendant. Unless the warrant and charging document are served at the time of the arrest, the officer shall inform the defendant of the nature of the offense charged and of the fact that a warrant has been issued. A copy of the warrant and charging document shall be served on the defendant promptly after the arrest. The defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest or, if the warrant so specifies, before a judicial officer of the circuit court without unnecessary delay and in no event later than the next session of court after the date of arrest. The court shall process the defendant pursuant to Rule

4-216, 4-216.1, or 4-216.2 and may make provision for the appearance or waiver of counsel pursuant to Rule 4-215.

Committee note: The amendments made in this section are not intended to supersede Code, Courts Article, § 10-912.

Cross reference: See Code, Criminal Procedure Article, § 4-109 and Code, Courts Article, § 1-605 concerning invalidation and destruction of unserved warrants, summonses, or other criminal process for misdemeanor offenses.

...

REPORTER'S NOTE

Rule 4-212 concerns the issuance, service, and execution of process in a criminal case. A cross reference after section (e) highlights Code, Criminal Procedure Article, § 4-109 concerning the invalidation and destruction of unserved criminal process for misdemeanor offenses. Upon review, it was determined that Code, Courts Article, § 1-605 also addresses the invalidation and destruction of certain unserved criminal process. § 1-605(d)(7) permits the invalidation and destruction of certain arrest warrants by the Chief Judge of the District Court when specified conditions are met. A proposed amendment adds Code, Courts Article, § 1-605 to the cross reference after section (e).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-252 by adding a cross reference after subsection (a)(4), as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

(a) Mandatory Motions

In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:

(1) A defect in the institution of the prosecution;

(2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;

(3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;

(4) An unlawfully obtained admission, statement, or confession; and

Cross reference: See Code, Courts Article, § 3-8A-14.2 regarding admissibility of a statement made by a child, including a child charged as an adult, during a custodial interrogation.

(5) A request for joint or separate trial of defendants or offenses.

...

REPORTER'S NOTE

Chapter 50, 2022 Laws of Maryland (SB 53), also known as the Child Interrogation Protection Act, creates certain procedural requirements when taking a child into custody. New Code, Courts Article, § 3-8A-14.2 governs custodial interrogations of children, including those charged as adults. The statute addresses the requirements for custodial interrogations of minors and the admissibility of statements made during a custodial interrogation. Because the new statute applies to both minors and minors charged as adults, the new provisions may apply to cases under either Title 11 or Title 4 of the Rules.

At the May 20, 2022 Rules Committee meeting, the Committee approved the addition of a cross reference in Rule 11-419 concerning motions in juvenile cases. The proposed cross reference in Rule 4-252 mirrors the cross reference added to Rule 11-419, with the addition of the phrase "including a child charged as an adult" to explain why the law is also applicable to Rule 4-252. The placement of the cross reference also parallels the location of the cross reference in Rule 11-419, after the subsection addressing the matter of "[a]n unlawfully obtained admission, statement, or confession."

MARYLAND RULES OF PROCEDURE

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

CHAPTER 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-422 by adding a reference to Rule 4-348 and clarifying language to section (b) and by updating references to the appellate courts, as follows:

Rule 8-422. STAY OF ENFORCEMENT OF JUDGMENT

(a) Civil Proceedings

(1) Generally

Stay of an order granting an injunction is governed by Rules 2-632 and 8-425. Except as otherwise provided in the Code or Rule 2-632, an appellant may stay the enforcement of any other civil judgment from which an appeal is taken by filing with the clerk of the lower court a supersedeas bond under Rule 8-423, alternative security as prescribed by Rule 1-402 (e), or other security as provided in Rule 8-424. The bond or other security may be filed at any time before satisfaction of the judgment, but enforcement shall be stayed only from the time the security is filed.

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,

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.

(2) When Security Filed After Partial Execution

If a supersedeas bond or other security is filed after partial execution on the judgment, the clerk of the lower court shall issue a writ directing the sheriff who has possession of any property attached to stay further proceedings and surrender the property upon payment of all accrued costs of the execution.

(3) Death of Appellant

A bond or other security filed shall not be voided by the death of the appellant pending the appeal.

(b) Criminal Proceedings

Stay of enforcement of a judgment in a criminal proceeding is governed by Rule 4-348. Release pending appeal is governed by Rule 4-349.

Cross reference: For provisions permitting a stay without the filing of a bond, see Code, Criminal Procedure Article, § 7-109.

(c) Review of Lower Court Action by the ~~Court of Special Appeals~~ Appellate Court

After an appeal has been filed, on motion of a party who has first sought relief in the lower court, the ~~Court of Special Appeals~~ Appellate Court, with or without a hearing, may (1) deny the motion; (2) increase, decrease, or fix the amount of the supersedeas or criminal appeal bond; (3) enter an order as to

the surety or security on the bond, other security, or the conditions of the stay; or (4) enter an order directing further proceedings in the lower court.

(d) Continuation in ~~Court of Appeals~~ Supreme Court of Previously Filed Security

A bond or other security previously filed to stay enforcement of a judgment of the lower court shall continue in effect pending review of the case by the ~~Court of Appeals~~ Supreme Court. On motion, the ~~Court of Appeals~~ Supreme Court, with or without a hearing, may take such action as may be appropriate, including increasing or decreasing the amount of the bond, any security on the bond, or any other security.

Source: This Rule is derived as follows:
Subsection (a)(1) is derived from former Rule 1017 a and c.
Subsection (a)(2) is derived from former Rule 1017 d.
Subsection (a)(3) is derived from former Rule 1017 f.
Section (b) is new.
Section (c) is derived from former Rule 1020 d.
Section (d) is derived from former Rule 816.

REPORTER'S NOTE

Rule 8-422 addresses the stay of enforcement of a judgment while a case is on appeal in the Supreme Court or the Appellate Court. Section (b) concerns a stay of enforcement of a judgment in a criminal proceeding. Proposed amendments to section (b) clarify that Rule 4-348 concerns stay of enforcement of a judgment. Additional language notes that Rule 4-349 governs release pending appeal in criminal cases.

References to the Court of Appeals are changed to the Supreme Court and references to the Court of Special Appeals are changed to the Appellate Court throughout the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 – ADMINISTRATION OF ESTATES

AMEND Rule 6-416 by reversing subsections (b)(1) and (b)(2); by adding reference to Code, Estates and Trusts Article, § 7-602(a) to new subsection (b)(1)(A); by changing a reference to Code, Estates and Trusts Article, § 7-603(a) to § 7-601(a) in new subsection (b)(1)(A); by clarifying that the personal representative may pay certain fees and commissions without court approval in new subsections (b)(1)(A) and (b)(2); by deleting from new subsection (b)(1)(A) a provision pertaining to attorney's fees and personal representative's commissions authorized under Code, Estates and Trusts Article, § 7-603(b); by adding language to new subsection (b)(1)(A) governing the timing of payment by consent; by altering the language in the form in new subsection (b)(1)(B); by deleting the Committee note following the form in new subsection (b)(1)(B); and by making stylistic changes, as follows:

Rule 6-416. ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

(a) Subject to Court Approval

(1) Contents of Petition

(A) Generally

When a petition for the allowance of attorney's fees or personal representative's commissions is required, it shall be verified and shall state in reasonable detail the basis for the current request and (i) the amount of all fees or commissions previously allowed, (ii) the amount of fees or commissions that the petitioner reasonably estimates will be requested in the future, (iii) the amount of fees or commissions currently requested, (iv) any additional fees or commissions anticipated or previously allowed in connection with an election by or on behalf of a surviving spouse to take an elective share, and (v) that the notice required by subsection (a)(3) of this Rule has been given.

(B) Compensation in Connection with an Elective Share

When a petition for the allowance of additional attorney's fees or personal representative's commissions in connection with an election by or on behalf of a surviving spouse to take an elective share under Code, Estates and Trusts Article, § 7-603(b) is required, it shall be verified and shall state in reasonable detail the basis for the current request and (i) the amount of all fees or commissions previously allowed, (ii) the amount of fees or commissions that the petitioner reasonably estimates will be requested in the future, (iii) the amount of fees or commissions currently requested, (iv) the

amount of fees or commissions under this subsection consented to by all interested persons, and (v) that the notice required by subsection (a)(3) of this Rule has been given. A petition under this subsection may be combined with a petition under subsection (a)(1)(A) of this Rule.

Committee note: Code, Estates and Trusts Article, § 7-603(b)(2) states that the amount of compensation or attorney's fees consented to by all interested persons is presumed to be reasonable.

(2) Filing – Separate or Joint Petitions

Petitions for attorney's fees and personal representative's commissions shall be filed with the court and may be filed as separate or joint petitions.

(3) Notice

The personal representative shall serve on each unpaid creditor who has filed a claim and on each interested person a copy of the petition accompanied by a notice in the following form:

NOTICE OF PETITION FOR ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

You are hereby notified that a petition for allowance of attorney's fees or personal representative's commissions has been filed. You have 20 days after service of the petition within which to file written exceptions and to request a hearing.

(4) Allowance by Court

Upon the filing of a petition, the court, by order, shall allow attorney's fees or personal representative's commissions as it considers appropriate, subject to any exceptions.

(5) Exception

An exception shall be filed with the court within 20 days after service of the petition and notice and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's commissions becomes final. Upon the filing of timely exceptions, the court shall set the matter for hearing and notify the personal representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing.

(b) Payment of Attorney's Fees and Personal Representative's Commissions Without Court Approval

~~(1) Payment of Contingency Fee for Services Other Than Estate Administration~~

~~Payment of attorney's fees may be made without court approval if:~~

~~(A) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the decedent or by a previous personal representative;~~

~~(B) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the current personal representative of the decedent's estate provided that the personal representative is not acting as the retained attorney and is not a member of the attorney's firm;~~

~~(C) the fee does not exceed the terms of the contingency fee agreement;~~

~~(D) a copy of the contingency fee agreement is on file with the register of wills; and~~

~~(E) the attorney files a statement with each account stating that the scope of the representation by the attorney does not extend to the administration of the estate.~~

~~(2)~~ (1) Consent in Lieu of Court Approval

(A) Procedure

Upon the filing of a completed Consent to Compensation for Personal Representative and/or Attorney form substantially in the form set forth in subsection ~~(b)(2)(B)~~ (b)(1)(B) of this Rule, ~~payment of~~ the personal representative may pay attorney's fees and personal representative's commissions ~~may be made~~ without court approval if the combined sum of all payments of attorney's fees authorized under Code, Estates and Trusts

Article, § 7-602(a) and personal representative's commissions authorized under Code, Estates and Trusts Article, ~~§ 7-603 (a)~~ § 7-601(a) does not exceed the amounts provided in Code, Estates and Trusts Article, § 7-601(b). ~~In addition, attorney's fees and personal representative's commissions authorized under Code, Estates and Trusts Article, § 7-603 (b) may be included in the Consent form and paid without court approval if the total combined sum of all payments of attorney's fees and personal representative's commissions authorized under Code, Estates and Trusts Article, §§ 7-603 (a) and 7-603 (b) does not exceed the amounts provided in Code, Estates and Trusts Article, § 7-601.~~ Unless the Consent form is filed simultaneously with the final account or final report under modified administration, each payment consented to must be for services rendered by the attorney or personal representative prior to the date of the consent.

(B) Form of Consent

The consent stating the amounts of the payments shall be signed by (i) each creditor who has filed a claim that is still open and (ii) all interested persons, and filed with the register substantially in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

IN THE ESTATE OF: _____ Estate No. _____

CONSENT TO COMPENSATION FOR
PERSONAL REPRESENTATIVE AND/OR ATTORNEY

I understand that the law, Estates and Trusts Article, § 7-601, provides a formula to establish the maximum total commissions to be paid for personal representative's commissions. If the total compensation for personal representative's commissions and attorney's fees being requested falls within the maximum allowable commissions, and the request is consented to by all unpaid creditors who have filed claims and all interested persons, this payment need not be subject to review or approval by the Court. A creditor or an interested party may, but is not required to, consent to these fees.

The formula sets total compensation at 9% of the first $20,000 of the adjusted estate subject to administration PLUS 3.6% of the excess over $20,000. Based on this formula, the adjusted estate subject to administration known at this time is _____. The total allowable statutory maximum commission based on the adjusted estate subject to administration known at this time is _____, LESS any personal representative's commissions and attorney's fees previously approved as required by law and paid. To date, $ _____ in personal representative's commissions and $ _____ in attorney's fees have been paid.

IF ALL REQUIRED CONSENTS ARE NOT OBTAINED, A PETITION SHALL BE FILED, AND THE COURT SHALL DETERMINE THE AMOUNT TO BE PAID.

Cross reference: See 90 Op. Att'y. Gen. 145 (2005).

Total combined commissions and fees being requested for services prior to _____, 20__ are $_____, ~~including $_____ under Code, Estates and Trusts Article, § 7-603(a) and $_____ under Code, Estates and Trusts Article § 7-603(b),~~ to be paid as follows:

Amount	To	Name of Personal Representative/Attorney
_____		_____
_____		_____
_____		_____
_____		_____

I have read this entire form and I hereby consent to the payment of personal representative and/or attorney's fees in the above amount.

Date	Signature	Name (Typed or Printed)
_____		
_____		
_____		
_____		
_____		

_____ _____
Attorney Personal Representative

_____ _____
Address Personal Representative

_____
Telephone Number

_____
Facsimile Number

_____
Email Address

~~Committee note: Nothing in this Rule is intended to relax requirements for approval and authorization of previous payments.~~

(2) Payment of Contingency Fee for Services Other Than Estate Administration

The personal representative may pay attorney's fees without court approval if:

(A) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the decedent or by a previous personal representative;

(B) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the current personal representative of the decedent's estate provided that the personal representative is not acting as the retained attorney and is not a member of the attorney's firm;

(C) the fee does not exceed the terms of the contingency fee agreement;

(D) a copy of the contingency fee agreement is on file with the Register of Wills; and

(E) the attorney files a statement with each account stating that the scope of the representation by the attorney does not extend to the administration of the estate.

(3) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§ 7-502, 7-601, 7-602, 7-603, and 7-604.

REPORTER'S NOTE

Proposed amendments to Rule 6-416 implement Chapter 630, 2022 Laws of Maryland (SB 468). The statute clarifies existing law governing payment of attorney's fees and personal representative's commissions without court approval. The bill changes the introductory phrase of Code, Estates and Trusts Article, § 7-604 from "Payment of commissions to personal representatives under § 7-601 of this subtitle, and attorney's fees under § 7-602 of this subtitle may be made" to "The personal representative may pay commissions to personal representatives under § 7-601 of this subtitle, and attorney's fees under § 7-602." The clarification was requested by the Estate and Trust Section of the Maryland State Bar Association to address concerns in some jurisdictions where Orphans' Court judges are denying the fees and commissions or requiring the payment recipients to defend the sums. The legislature was informed that this practice contravenes the intent of the statute, which was enacted in 1997 to streamline payments that are consented to by creditors and interested persons and not more than the statutorily permitted fees.

The Committee also recommends that subsections (b)(1) and (b)(2) be reversed. Payment of a contingency fee for services other than estate administration is less common than payment for

past services by consent, according to practitioners. Reversing the subsections in the Rule places the more common mechanism for payment first.

An informal workgroup assembled to review Rule 6-416 with the intention of updating the consent form in the Rule also recommended certain amendments to current subsection (b)(2)(A). Statutory references are updated and clarified. Additionally, the workgroup identified an issue with the current Rule, which was amended last year to implement the new elective share law. The following sentence was added in 2021: "In addition, attorney's fees and personal representative's commissions authorized under Code, Estates and Trusts Article, § 7-603 (b) may be included in the Consent form and paid without court approval if the total combined sum of all payments of attorney's fees and personal representative's commissions authorized under Code, Estates and Trusts Article, §§ 7-603 (a) and 7-603 (b) does not exceed the amounts provided in Code, Estates and Trusts Article, § 7-601." The provision in § 7-603 (b) governs elective share fees. It was added to the consent payment Rule because it provides that those fees are presumed reasonable if consented to by all interested persons. However, § 7-604 (a) only provides that commissions under § 7-601 and fees under § 7-602 can be paid without court approval. The Orphans Court judges on the workgroup identified the provision in the Rules as concerning because elective share-related commissions are not included in the statute authorizing payment without court approval. The Committee recommends the deletion of the provision. A corresponding section of the form in current subsection (b)(2)(B) is also recommended to be deleted.

New subsections (b)(1)(A) and (b)(2) of Rule 6-416 are amended to state that the personal representative may make the payments permitted by the Rule without court approval if the conditions are met.

The statute was also amended by Chapter 630 to add what proponents called an "anti-abuse" provision. The provision requires that payments be for services rendered prior to the date of the consent. There is an exception to permit payment for prospective tasks where the consent form is filed simultaneously with the final account or final report under modified administration.

Current Rule 6-416 (b)(2)(A) is amended to include the requirement that the consent be for services rendered prior to

the date of the consent, unless the form is filed with the final account or final report.

The Committee also recommends deletion of the Committee note following current section (b). It appears that the Committee note was added to the Rule in 2010 to clarify that previous payments must have been approved, either by petition or by consent. The Committee suggested that, due to the confusing wording of the Committee note and the amendment to current subsection (b)(2)(A) that declares consent be for services rendered prior to the consent, the Committee note is not necessary.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 – SMALL ESTATE

AMEND Rule 6-206 by adding a cross reference following section (b) and by making stylistic changes, as follows:

Rule 6-206. PROCEEDING AFTER PETITION

If the register finds that the petition for administrative probate of a small estate and additional information filed in the proceeding are accurate, the register shall:

(a) appoint the petitioner personal representative of the small estate and issue letters of administration according to the form set forth in Rule 6-207;

(b) direct the petitioner to pay fees due the register, expenses of administration, allowable funeral expenses, and statutory family allowances, and, if necessary, to sell property of the decedent in order to pay them; and

Cross reference: See Code, Estates and Trusts Article, § 5-606(c) prohibiting the register from collecting fees in connection with certain small estates.

(c) if it appears that there will be property remaining after those payments have been made, or if the petitioner has requested probate of a will even though there may be no property remaining after the payments have been made, admit the will to

probate, direct the publication of the Notice of Appointment in accordance with Rule 6-209, and serve a copy of the Notice of Appointment, together with the Notice to Interested Persons (Rule 6-210), upon all interested persons; and

(d) enter an order in the form provided in Rule 6-208 and serve a copy on the personal representative.

Cross reference: Code, Estates and Trusts Article, §§ 5-603 and 8-105.

REPORTER'S NOTE

A proposed amendment to Rule 6-206 implements Chapter 716, 2022 Laws of Maryland (HB 187). The statute prohibits the Register of Wills from collecting fees in a small estate where the surviving spouse is the sole legatee or heir and the value of the property subject to administration is $100,000 or less. A cross reference to the statute is added after Rule 6-206 (b). A stylistic change also is made.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 500 – MISCELLANEOUS PROVISIONS

ADD new Rule 6-502, as follows:

Rule 6-502. AFFIDAVIT OF ATTEMPT TO COMPLY WITH FEDERAL, STATE, AND LOCAL LAWS RELATED TO FIREARMS, AMMUNITION, AND DESTRUCTIVE DEVICES

(a) Generally

The personal representative shall file with the register of wills a verified affidavit of compliance with federal, State, and local laws regarding the disposition of firearms, ammunition, and destructive devices. The verified affidavit shall be filed at the time of the filing of:

(1) a Schedule B in a small estate that reports the ownership of any firearm, ammunition, or destructive device by the decedent;

(2) a final report in a modified administration that reports the ownership of any firearm, ammunition, or destructive device by the decedent; or

(3) an account that reports the disposition, or proposed disposition, of any firearm, ammunition, or destructive device.

Cross reference: For a definition of firearm, see Code, Criminal Law Article, § 4-208 and Code, Public Safety Article, §

5-101; for a definition of ammunition, see Code, Criminal Law Article, § 4-110 and Code, Public Safety Article, § 5-133.1; and for a definition of destructive device, see Code, Criminal Law Article, § 4-501.

(b) Form of Affidavit

An affidavit of attempt to comply with federal, State, and local laws related to firearms, ammunition, and destructive devices shall be substantially in the form posted on the Register of Wills forms website.

REPORTER'S NOTE

The Rules Committee proposes that new Rule 6-502 be approved by the Court. This proposed Rule is the result of a workgroup formed by the MSBA Estate and Trust Law Section in order to address how firearms, ammunition, and destructive devices should be identified during the pendency of a decedent's estate. There is no existing statute or Rule that directly addresses firearms, ammunition, and destructive devices as stand-alone assets in an estate. As a result, there are concerns about possible underreporting of these assets in estate filings and the lack of awareness of the federal, State, and local laws applicable to these assets. The workgroup was also interested in establishing a uniform practice throughout the State for the reporting of guns in estates.

Proposed Rule 6-502 requires in section (a) that a verified affidavit of compliance with federal, State, and local laws related to firearms, ammunition, and destructive devices (the "Affidavit") must be filed with the Register of Wills by the personal representative when: (1) a Schedule B is filed in a small estate; (2) a final report is filed in an estate subject to a modified administration; or (3) an account that reports the disposition of a firearm, ammunition, or destructive device. A cross reference is proposed following subsection (a)(3) to provide citations to State law that define the terms "firearm," "ammunition," and "destructive device."

Section (b) of the Rule indicates that the affidavit shall be substantially in the form posted on the Register of Wills forms website.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-103 by adding a supporter and a person holding a power of attorney to the definition of "interested person" in subsection (f)(1) and by making stylistic changes, as follows:

Rule 10-103. DEFINITIONS

...

(f) Interested Person

(1) In connection with a guardianship of the person or the authorization of emergency protective services, "interested person" means the minor or the disabled person; the guardian and heirs of that person; a governmental agency paying benefits to that person or a person or agency eligible to serve as guardian of the person under Code, Estates and Trusts Article, § 13-707; the Department of Veterans Affairs as directed by Code, Estates and Trusts Article, § 13-801; a supporter named in a supported decision-making agreement under Code, Estates and Trusts Article, Title 18; a person holding a power of attorney of the minor or disabled person; and any other person designated by the court.

(2) In connection with a guardianship of the property or other fiduciary proceedings, "interested person" means a person who would be an interested person under subsection (f)(1) of this Rule and a current income beneficiary of the fiduciary estate; a fiduciary and co-fiduciary of the fiduciary estate; and the creator of the fiduciary estate.

(3) If an interested person is a minor or disabled person, "interested person" includes a fiduciary appointed for that person, or, if none, the parent or other person who has assumed responsibility for the interested person.

Cross reference: Code, Estates and Trusts Article, §§ 13-101(j) and ~~§~~ 13-801.

...

REPORTER'S NOTE

Proposed amendments to Rule 10-103 clarify the definition of "interested person" in subsection (f)(1) by adding additional persons to the list.

Chapter 631, 2022 Laws of Maryland (SB 559) recently added Title 18, Supported Decision Making, to the Estates and Trusts Article of the Code. According to the Revised Fiscal and Policy Note, the purpose of the new title "is to assist adults by (1) obtaining support for the adult to make, communicate, or effectuate decisions that correspond to the adult's will, preferences, and choices and (2) preventing the need for the appointment of a substitute decision maker, including a guardian of the person or property." Several states have already formalized the supported decision-making process. According to the written testimony of the Center for Public Representation submitted for the February 17, 2022 hearing before the Senate Judicial Proceedings Committee of the Maryland General Assembly, "At least 18 states and the District of Columbia have already

passed statutes that formally recognize SDM agreements and/or specifically require courts to rule out SDM as a less restrictive option before appointing a guardian." Although a supported decision-making agreement is contemplated outside of court intervention, the existence of an agreement may prove relevant to guardianship proceedings. Accordingly, proposed amendments to Rule 10-103 (f)(1) add a supporter selected by an alleged disabled person pursuant to a supported decision-making agreement to the list of individuals considered interested persons in guardianship matters.

The definition of "interested person" in Rule 10-103 (f)(1) is also amended to add a person holding a power of attorney. Petitioners are already prompted to include these individuals as interested persons in a guardianship petition pursuant to Rule 10-112, but they are not currently referenced in Rule 10-103. Proposed amendments clarify the involvement of a person holding a power of attorney by adding to the Rule 10-103 definition of "interested person."

Stylistic changes are proposed to the cross reference after section (f).

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-111 by replacing references to "Veterans Administration" with "Department of Veterans Affairs," as follows:

Rule 10-111. PETITION FOR GUARDIANSHIP OF MINOR

A petition for guardianship of a minor shall be in substantially the following form:

. . .

4. The minor

[ ] is a beneficiary of the ~~Veterans Administration~~ Department of Veterans Affairs and the guardian may expect to receive benefits from that ~~Administration~~ Department.

[ ] is not a beneficiary of the ~~Veterans Administration~~ Department of Veterans Affairs.

. . .

ADDITIONAL INSTRUCTIONS

1. The required exhibits are as follows:

(a) A copy of any instrument nominating a guardian [Code, Estates and Trusts Article, § 13-701 and Maryland Rule 10-301 (d)];
(b) If the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of

Veterans Affairs, a certificate of the Administrator or the Administrator's authorized representative, setting forth the age of the minor as shown by the records of the ~~Veterans Administration~~ Department of Veterans Affairs, and the fact that appointment of a guardian is a condition precedent to the payment of any moneys due the minor from the ~~Veterans Administration~~ Department of Veterans Affairs shall be prima facie evidence of the necessity for the appointment [Code, Estates and Trusts Article, § 13-802 and Maryland Rule 10-301 (d)].

2. Attached additional sheets to answer all the information requested in this petition, if necessary.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 10-111 replace obsolete references to the "Veterans Administration" with the current name of the federal department, "Department of Veterans Affairs."

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-112 by replacing references to "Veterans Administration" with "Department of Veterans Affairs," by adding a supporter to the list of interested persons in a petition for guardianship of alleged disabled person, by requiring any written supported decision-making agreement to be an exhibit to a petition, and by re-lettering the list of required exhibits, as follows:

Rule 10-112. PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

A petition for guardianship of an alleged disabled person shall be substantially in the following form:

[CAPTION]

In the Matter of In the Circuit Court for

_____

(Name of Alleged Disabled Individual) (County)

_____

(docket reference)

PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

...

4. The alleged disabled person

[ ] is a beneficiary of the ~~Veterans Administration~~ Department of Veterans Affairs and the guardian may expect to receive benefits from that ~~Administration~~ Department.

[ ] is not a beneficiary of the ~~Veterans Administration~~ Department of Veterans Affairs.

...

8. The following is a list of the names, addresses, telephone numbers, and e-mail addresses, if known of all interested persons (see Code, Estates and Trusts Article, § 13-101(k)):

...

Any Person Holding a Power of Attorney of the Alleged Disabled Person: _____

Alleged Disabled Person's Attorney: _____

A Supporter Pursuant to a Supported Decision-Making Agreement: _____

Any Other Person Who Has Assumed Responsibility for the Alleged Disabled Person: _____

...

ADDITIONAL INSTRUCTIONS

1. The required exhibits are as follows:

(a) A copy of any instrument nominating a guardian;

(b) A copy of any power of attorney (including a durable power of attorney for health care) which the alleged disabled person has given to someone;

(c) A copy of any written supported decision-making agreement (see Code, Estates and Trusts Article, § 18-107);

~~(c)~~ (d) Signed and verified certificates of two health care professionals who have examined or evaluated the alleged disabled person. The health care professionals shall be either two physicians licensed to practice medicine in the United States or one such licensed physician and one licensed psychologist, licensed certified social worker-clinical, or nurse practitioner. An examination or evaluation by at least one of the health care professionals must have occurred within 21 days before the filing of the petition (see Code, Estates and Trusts Article, § 13-303 and § 1-102(a) and (b)).

2. Attach additional sheets to answer all the information requested in this petition, if necessary.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 10-112 replace obsolete references to the "Veterans Administration" with the current name of the federal department, "Department of Veterans Affairs."

Chapter 631, 2022 Laws of Maryland (SB 559) recently added Title 18, Supported Decision Making, to the Estates and Trusts Article of the Code. For additional information regarding the new Title, see the Reporter's note for Rule 10-103.

Proposed amendments to Rule 10-112 update the form of a petition for guardianship of alleged disabled person to account for possible utilization of supporters. A supporter pursuant to a supported decision-making agreement is added to the list of interested persons in section eight of the petition. Similarly, a copy of any written supported decision-making agreement is added as a required exhibit to the petition. The section of the form that sets forth the required exhibits is re-lettered to account for the addition.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-202 by replacing the current cross reference after subsection (b)(1) with a cross reference to Code, Estates and Trusts Article, § 13-702; by deleting the cross reference after section (b); and by making stylistic changes, as follows:

Rule 10-202. CERTIFICATES AND CONSENTS

(a) Certificates

(1) Generally Required

If guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of the following persons who have examined or evaluated the alleged disabled person: (A) ~~(i)~~ two physicians licensed to practice medicine in the United States, or (B) ~~(ii)~~ one such licensed physician and one licensed psychologist, licensed certified social worker-clinical, or nurse practitioner. An examination or evaluation by at least one of the health care professionals shall have been within 21 days before the filing of the petition.

(2) Form

Each certificate required by subsection (a)(1) of this Rule shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

(3) Absence of Certificates

(A) Refusal to Permit Examination

If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination or evaluation by a physician, psychologist, licensed certified social worker-clinical, or nurse practitioner, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

(B) Appointment of Health Care Professionals by Court

If the court finds after a hearing that examinations are necessary, it shall appoint (i) two physicians or (ii) one physician and one psychologist, licensed certified social worker-clinical, or nurse practitioner to conduct the

examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

Cross reference: See Code, Estates and Trusts Article, § 13-705.

(b) Consent to Guardianship of a Minor

(1) Generally

If guardianship of the person of a minor child is sought, consent of each parent shall be obtained if possible. If a parent's consent cannot be obtained because the parent cannot be contacted, located, or identified, the petitioner shall file an affidavit of attempts to contact, locate, or identify substantially in the form set forth in Rule 10-203. If the failure to obtain consent is for some other reason, an affidavit shall be filed which states why the parent's consent could not be obtained.

~~Cross reference: For a hearing when a parent objects to a guardianship, see Rule 10-205. For procedures for a child in need of assistance, see Code, Courts Article, § 3-801 et seq.~~

Cross reference: See Code, Estates and Trusts Article, § 13-702.

(2) Form of Parent's Consent to Guardianship

The parent's consent to guardianship of a minor shall be filed with the court substantially in the following form:

[CAPTION]

PARENT'S CONSENT TO GUARDIANSHIP OF A MINOR

I, _____,_____
(name of parent) (relationship)

of _____, a minor, declare that:
(minor's name)

1. I am aware of the Petition of _____
(petitioner's name)

to become guardian of _____.
(minor's name)

2. I understand that the reason the guardianship is needed is _____

_____

and if the need for the guardianship is expected to end before the child reaches the age of majority

_____.
(state time frame or date it is expected to end)

3. I believe that it is in the best interest of _____
(minor's name)
that the Petition for Guardianship be granted.

4. I understand that I have the right to revoke my consent at any time.

I solemnly affirm under the penalties of perjury that the contents of this document are true based on my personal knowledge.

_____
Signature of Parent Date

_____

_____
Address

_____
Telephone Number

~~Cross reference: See Code, Estates and Trusts Article, § 13-705. Rule 1-341.~~

Source: This Rule is in part derived from former Rule R73 b 1 and b 2 and is in part new.

REPORTER'S NOTE

Chapters 619/620, 2022 Laws of Maryland (HB 808/SB 508) recently modified Code, Courts Article, § 13-702. The amendments provide that a hearing on a petition for guardianship of a minor shall be held "as prescribed by the Maryland Rules." Rule 10-205 (a) provides that a hearing shall be held on a petition for guardianship of the person of a minor. Therefore, although no amendments to Rule 10-202 are needed in direct response to Chapters 619/620, the new legislation prompted review of several Title 10 Rules and resulted in the proposal of related amendments to Rule 10-202.

A cross reference after subsection (b)(1) is deleted and replaced with a new cross reference. The first sentence of the current cross reference cites Rule 10-205 for the hearing requirement when an objection to a petition for guardianship of a minor is filed. In earlier versions of Rule 10-205, section (a) required a hearing on the petition for guardianship of a minor only if an objection was filed in response to the show cause order. By Rules Order dated December 4, 2018, Rule 10-205 (a) was amended to require a hearing on such petitions, regardless of whether an objection was filed. Accordingly, proposed amendments delete the first sentence of the cross reference after subsection (b)(1) because a hearing will always be held on a petition for guardianship of the person of a minor. The second sentence of the current cross reference cites to the Code provisions concerning a child in need of assistance

("CINA"). CINA matters differ from Title 10 guardianship proceedings. Proposed amendments therefore delete the current cross reference to avoid confusion of the different case types. A new cross reference to Code, Estates and Trusts Article, § 13-702 replaces the deleted cross reference after subsection (b)(1). § 13-702 provides additional information about the appointment of a guardian of a minor by the court.

The cross reference following section (b) citing to Code, Estates and Trusts Article, § 13-705 and Rule 1-341 is proposed to be deleted. § 13-705 addresses the process of seeking guardianship of a disabled person, including the required certificates of competency, and Rule 1-341 concerns bad faith and unjustified proceedings. Before current section (b) was added to Rule 10-202 in 2015, the cross reference to § 13-705 and Rule 1-341 appeared at the end of the Rule, following the provisions concerning certificates, now section (a). As a result of the addition of section (b), the cross reference now follows provisions regarding consents to guardianship of a minor and is separated from the certificate provisions for guardianship of a disabled person. In 2021, the reference to § 13-705 was restored to a cross reference at the end of section (a) following the certificate provisions and the reference after section (b) is no longer needed. The Rules Committee also determined that the purpose of a cross reference to Rule 1-341 is unclear and may cause confusion. Accordingly, the cross reference to Rule 1-341 is deleted also.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-205.1 by creating new subsection (a)(1) with the language of current section (a) and deleting the phrase "minor or" from the subsection, by re-lettering current section (b) as subsection (a)(2), and by adding new section (b) with subsections (b)(1) and (b)(2) addressing appointment of a guardian of the person of a minor, as follows:

Rule 10-205.1. APPOINTMENT OF GUARDIAN - CRITERIA; ORDER

(a) Guardianship of the Person of a Disabled Person

(1) Whether to Appoint Guardian

In determining whether to appoint a guardian of the person of a ~~minor or~~ disabled person, the court shall apply the criteria set forth in Code, Estates and Trusts Article, § 13-705.

~~(b)~~ (2) Whom to Appoint

In determining whom to appoint as a guardian, the court shall apply the criteria set forth in Code, Estates and Trusts Article, § 13-707 and, with respect to an individual, give preference to an individual who has completed or commits to complete within 120 days or such other time that the court

directs a training program in conformance with the Guidelines for Court-Appointed Guardians of the Person attached as an Appendix to the Rules in this Title.

(b) Guardianship of the Person of a Minor

(1) Whether to Appoint Guardian

In determining whether to appoint a guardian of the person of a minor, the court shall apply the criteria set forth in Code, Estates and Trusts Article, § 13-702.

(2) Whom to Appoint

If the minor is at least 14 years old, the court shall appoint a qualified individual designated by the minor, unless appointment of that individual is not in the best interests of the minor.

Cross reference: See Code, Estates and Trusts Article, § 13-702.

(c) Order

An order appointing a guardian of the person shall comply with the requirements of Rule 10-108.

Cross reference: Note the requirement in Rule 10-108 (a)(1)(H) requiring the guardian to complete certain orientation and training programs.

Source: This Rule is new.

REPORTER'S NOTE

Chapters 619/620, 2022 Laws of Maryland (HB 808/SB 508) amended Code, Estates and Trusts Article, § 13-702 to set forth the findings required to grant a guardianship of the person of a minor. Rule 10-205.1 concerns the appointment of a guardian of the person, including the criteria for appointment and whom to appoint. Proposed amendments to the Rule clarify the different considerations when a guardian of the person is appointed for a disabled person or a minor.

Proposed amendments to Rule 10-205.1 combine current sections (a) and (b) to create new section (a) addressing guardianship of the person of a disabled person. A new tagline is added to section (a), while the current language and tagline of section (a) are used to create new subsection (a)(1). The phrase "minor or" is deleted from subsection (a)(1) because guardianship of the person of a minor is no longer addressed in section (a). Current section (b) is re-lettered as new subsection (a)(2).

Proposed new section (b) addresses guardianship of the person of a minor. The subsections mirror those in section (a) concerning guardianship of the person of a disabled person. Subsection (b)(1) references the criteria used when considering whether to appoint a guardian. Subsection (b)(2) provides that, if the minor is at least 14 years old, the court shall appoint a qualified individual designated by the minor, unless such appointment is not in the minor's best interests.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-516 by adding new subsection (a)(1) consisting of current section (a); by deleting "and, unless the court orders otherwise, shall remain in the custody of the clerk" from subsection (a)(1); by adding new subsection (a)(2) pertaining to custody of exhibits; by adding a Committee note following subsection (a)(2) pertaining to custody of exhibits returned to parties; by adding "regarding filing and removal of papers and exhibits" to the cross reference following section (a); by relocating the provision regarding a copy for future transcription to new subsection (b)(1)(B); by re-lettering subsections (b)(1)(B) and (b)(1)(C) as (b)(1)(C) and (b)(1)(D), respectively; by adding "or in a format" to subsection (b)(1)(D); by adding a cross reference to Rules 8-413 (a)(4) and 20-402 (a)(2) following section (b); and by making stylistic changes, as follows:

Rule 2-516. EXHIBITS AND RECORDINGS

(a) Generally

(1) Formation of Record

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

(2) Custody of Exhibits

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

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

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

(b) Audio, Audiovisual, or Visual Recordings

(1) Recording

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

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

(B) provide an additional copy to the court for future transcription;

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

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

Cross reference: See Rule 8-413 (a)(4) and 20-402 (a)(2) regarding inclusion of audio, audiovisual, and visual recordings in the record on appeal.

(2) Transcript of Recording

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

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

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

REPORTER'S NOTE

Proposed amendments to Rule 2-516 alter certain provisions governing the custody of exhibits. Parallel amendments are proposed in the relevant portions of Rules 3-516 and 4-322.

Proposed new subsection (a)(1) pertains to formation of the record. The subsection contains the provisions in current section (a) with stylistic changes.

Proposed new subsection (a)(2) pertains to custody of exhibits. Though the Rules are structured to make the clerk the default custodian of exhibits, the Rules Committee was informed that in many jurisdictions it is common for exhibits to be returned to parties at the conclusion of trial. This practice is permitted under the current Rules because the court may order an alternate custodian who is not the clerk, but there is no procedure for issuing and documenting that order. It appears that in some jurisdictions, there is no formal documentation when exhibits are returned to the parties. The provisions in subsection (a)(2) create a procedure for appointing a custodian of an exhibit other than the clerk, including a statement on the record, instructions to secure and retain the exhibit as required by law, and docketing the custodian. A Committee note following subsection (a)(2) clarifies that the requirements of that subsection apply when exhibits are returned to the parties at the conclusion of a proceeding. The cross reference following the section is expanded to provide context.

Section (b) is amended to separate the provisions in subsection (b)(1)(A) pertaining to marking a recording for identification and providing an additional copy to the court for future transcription. Subsection (b)(1)(D) is amended to require the recording to be provided to the court in a format in common use by the general public.

A cross reference to the relevant provisions in Rules 8-413 and 20-402 is added after subsection (b)(1).

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-516 by creating new section (a) containing the current language of the Rule pertaining to exhibits generally, by deleting "and, unless the court orders otherwise, shall remain in the custody of the clerk" from section (a), by adding new section (b) pertaining to custody of exhibits, by adding a Committee note following section (b) pertaining to custody of exhibits returned to parties, and by making stylistic changes, as follows:

Rule 3-516. EXHIBITS

(a) Generally

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

(b) Custody of Exhibits

Unless the court orders otherwise, all exhibits shall remain in the custody of the clerk. If the court orders that

the custodian of an exhibit be someone other than the clerk, the court shall: (1) state the identity of the custodian on the record; (2) instruct the custodian to (A) secure the exhibit until final determination of the action, including all appellate proceedings, and (B) retain the exhibit as required by statutory retention provisions; and (3) instruct the clerk to make a docket entry identifying the court-ordered custodian of the exhibit.

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

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

REPORTER'S NOTE

Proposed amendments to Rule 3-516 add new section (b) governing custody of exhibits. The provisions are derived from proposed amendments to Rules 2-516 and 4-322. See the Reporter's notes to those Rules for more information.

Proposed subsection (b)(2)(B) differs from the parallel provisions in Rule 2-516 because Rule 16-405 (Filing and Removal of Papers) only applies to circuit courts.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-322 by adding new subsection (a)(1) consisting of current section (a); by deleting "and, unless the court orders otherwise, shall remain in the custody of the clerk" from subsection (a)(1); by adding new subsection (a)(2) pertaining to custody of exhibits; by adding a Committee note following subsection (a)(2) pertaining to custody of exhibits returned to parties; by expanding the cross reference following section (a); by relocating the provision regarding a copy for future transcription to new subsection (c)(1)(B); by re-lettering subsections (c)(1)(B) and (c)(1)(C) as (c)(1)(C) and (c)(1)(D), respectively; by adding "or in a format" to subsection (c)(1)(D); by adding a cross reference to Rules 8-413 (a)(2) and 20-402 (a)(2) following subsection (c)(1); and by making stylistic changes, as follows:

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

(a) Generally

(1) Formation of Record

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

(2) Custody of Exhibits

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

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

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

(b) Preservation of Computer-Generated Evidence

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

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

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

(c) Audio, Audiovisual, or Visual Recordings

(1) Recording

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

(A) ensure that the recording is marked for identification and made part of the record ~~and that an additional copy is~~

~~provided to the court, so that it is available for future transcription~~;

(B) provide an additional copy to the court for future transcription;

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

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

Cross reference: See Rule 8-413 (a)(4) and 20-402 (a)(2) regarding inclusion of audio, audiovisual, and visual recordings in the record on appeal.

(2) Transcript of Recording

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

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

REPORTER'S NOTE

Proposed amendments to Rule 4-322 alter certain provisions governing the custody of exhibits. Parallel amendments are proposed in the relevant portions of Rules 2-516 and 3-516.

Proposed new subsection (a)(1) pertains to formation of the record. The subsection contains the provisions in current section (a) with stylistic changes.

Proposed new subsection (a)(2) pertains to custody of exhibits. Though the Rules are structured to make the clerk the default custodian of exhibits, the Rules Committee was informed that in many jurisdictions it is common for exhibits to be returned to parties at the conclusion of trial. In criminal proceedings, the state's exhibits – particularly weapons and contraband – are handed off to law enforcement for secure storage. This practice is permitted under the current Rules because the court may order an alternate custodian who is not the clerk, but there is no procedure for issuing and documenting that order. It appears that in some jurisdictions, there is no formal documentation when exhibits are returned to the parties. The provisions in subsection (a)(2) create a procedure for appointing a custodian of an exhibit other than the clerk, including a statement on the record, instructions to secure and retain the exhibit as required by law, and docketing the custodian. A Committee note following subsection (a)(2) clarifies that the requirements of that subsection apply when exhibits are returned to the parties at the conclusion of a proceeding, including law enforcement. The Committee note also references statutes governing retention of certain evidence by the State. It is derived from a Committee note in Rule 16-405. The cross reference following the section is expanded to provide context.

Section (c) is amended to separate the provisions in subsection (c)(1)(A) pertaining to marking a recording for identification and providing an additional copy to the court for future transcription. A cross reference to the relevant provisions in Rules 8-413 and 20-402 is added after subsection (c)(1). Subsection (c)(1)(D) is amended to require the recording to be provided to the court in a format in common use by the general public. The Committee was informed that sometimes file formats are an issue when including a copy of a recording in the record on appeal.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 400 – CIRCUIT COURTS – CLERKS' OFFICES

AMEND Rule 16-405 by adding a cross reference following section (e), as follows:

Rule 16-405. FILING AND REMOVAL OF PAPERS

(a) Applicability; Other Rules

(1) Generally

This Rule applies to the filing in a circuit court of items filed in paper form and to tangible exhibits. Items filed in electronic form shall be handled by the clerk in accordance with the Rules governing electronic filing and the maintenance of electronic records.

(2) Other Rules

This Rule is subject to Rules governing the sealing or shielding of court records or information contained in court records.

(b) Flat Filing

Papers received by the clerk for filing shall be filed flat in an appropriate folder.

(c) Docket Entries

Each case file shall include a copy of the docket entries pertaining to that case.

(d) Exhibits Filed with Pleadings

Unless not practicable, the clerk shall file exhibits with the papers the exhibits accompany. If that is not practicable, the clerk shall file exhibits by any other convenient and practicable method.

(e) Removal of Papers and Exhibits

(1) Papers and Exhibits Filed with the Clerk

A paper or exhibit filed with the clerk in an action may not be removed from the clerk's office, except:

(A) by direction of a judge of the court;

(B) upon signing a receipt, by an attorney of record in the case for the purpose of presenting the paper or exhibit to the court;

(C) upon signing a receipt, by an auditor, magistrate, or examiner or examiner-magistrate in connection with the performance of his or her official duties; or

(D) pursuant to the Rules in Title 20.

(2) Exhibits Offered During Trial

(A) Exhibits that are introduced in evidence or marked for identification during the trial of an action and that had not previously been filed with the clerk shall be retained by the clerk or other person designated by the court.

(B) Except as otherwise required by law, upon the entry of judgment in the case and after the time for appeal has expired, or, if an appeal has been taken, the clerk has received a mandate issued by the final appellate court to consider a direct appeal from the judgment and the time for seeking any possible further review has expired, the clerk shall send written notice to all counsel of record and to each self-represented party advising that if no request to withdraw the exhibits is received within 30 days from the date of the notice, the exhibits will be disposed of. Unless (i) a request is received by the clerk within 30 days after the date of notice, (ii) the court within that period orders otherwise, or (iii) destruction of the exhibits at that time is precluded by law, the clerk shall dispose of the exhibits in any appropriate manner, including destruction.

Committee note: Some statutes require that certain evidence be retained. See, for example, Code, Criminal Procedure Article, § 8-201, requiring the State to preserve scientific identification evidence.

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

(f) Record of Removed Papers

Whenever a court file or any paper contained in it is removed from the clerk's office pursuant to this Rule, the clerk shall maintain an appropriate record of its location. If the file or papers are removed from the courthouse, the clerk shall

make a notation on the docket of the removal and return of the item.

Source: This Rule is derived from former Rule 16-306 (2016).

REPORTER'S NOTE

Proposed amendments to Rule 16-405 add a cross reference to Rules 2-516, 3-516, and 4-322 following section (e). These Rules, as amended, apply to custody of exhibits.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-503 by updating references to Rules 2-516 and 4-322 in the Committee note following subsection (a)(1) and by deleting the cross reference following section (b), as follows:

Rule 16-503. IN CIRCUIT COURT

(a) Proceedings to be Recorded

(1) Proceedings in the Presence of Judge

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

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

(2) Proceedings Before Magistrate, Examiner, or Auditor

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

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

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

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

(b) Method of Recording

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

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

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

REPORTER'S NOTE

Proposed amendments to Rule 16-503 are conforming in light of proposed changes to other Rules. References to Rules 2-516 and 4-322 are updated in the Committee note following subsection (a)(1).

The cross reference after section (b) is deleted as obsolete in light of the proposed deletion of Title 2, Chapter 800 and adoption of new Title 21.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-412 by adding new section (e) permitting a party to file a motion seeking an extension of time to file a brief when an incomplete record is transmitted and by updating references to the Court of Appeals to Supreme Court and references to the Court of Special Appeals to Appellate Court, as follows:

RULE 8-412. RECORD – TIME FOR TRANSMITTING

(a) To the ~~Court of Special Appeals~~ Appellate Court

Unless a different time is fixed by Rule 8-204 or by an order entered pursuant to section (d) of this Rule, the clerk of the lower court shall transmit the record to the ~~Court of Special Appeals~~ Appellate Court within the applicable time specified in this section:

(1) in a civil action proceeding under Rule 8-207 (a), thirty days after the first notice of appeal is filed;

(2) in all other civil actions subject to Rule 8-205 (a), sixty days after the date of an order entered pursuant to Rule 8-206 (c); or

(3) in all other actions, sixty days after the date the first notice of appeal is filed.

Cross reference: Rule 8-207 (a).

(b) To the ~~Court of Appeals~~ Supreme Court

Unless a different time is fixed by order entered pursuant to section (d) of this Rule, the clerk of the court having possession of the record shall transmit it to the ~~Court of Appeals~~ Supreme Court within 15 days after entry of a writ of certiorari directed to the ~~Court of Special Appeals~~ Appellate Court, or within sixty days after entry of a writ of certiorari directed to a lower court other than the ~~Court of Special Appeals~~ Appellate Court.

. . .

(e) When Incomplete Record is Transmitted

When the clerk of the lower court transmits a record that does not contain the items specified in Rule 8-413 (a), the appellate court, on motion of a party, may extend the time for a party to file the party's brief once the record is complete.

Source: This Rule is derived from former Rules 1025 and 825.

REPORTER'S NOTE

The proposed amendment to Rule 8-412 creates a procedure for extending the time to file a brief when the transmitted record of the case is incomplete. New section (e) allows a party to request an extension if an incomplete record is

transmitted to the appellate court. References to the Court of Appeals and Court of Special Appeals are updated to Supreme Court and Appellate Court, respectively, throughout the Rule.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 400 – PRELIMINARY PROCEDURES

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

exhibits be retained pursuant to Rule 16-405 or as otherwise ordered by the court; by requiring in subsection (b)(2) that the clerk locate and transmit exhibits to the appellate court upon request; by creating new subsection (b)(3) pertaining to disputes and modification of the record with current language, by re-lettering sections (b) and (c) as sections (c) and (d), respectively, and by separating the re-lettered sections into subsections; by deleting from new subsection (c)(1) a provision encouraging parties to agree to a statement of the case; by updating references to the Court of Appeals to Supreme Court and references to the Court of Special Appeals to Appellate Court; and by making stylistic changes, as follows:

Rule 8-413. RECORD – CONTENTS AND FORM

(a) Contents of Record

The record on appeal shall include:

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

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

(3) copies or photographs of any physical exhibits made part of the record pursuant to Rules 2-516, 3-516, 4-322, or 20-301;

(4) the original of any audio, audiovisual, or video recording identified, whether or not offered in evidence and, if offered, whether or not admitted;

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

A party who offers or uses an audio, audiovisual, or visual recording in a format not in common use by the general public is required to provide the recording to the clerk in a medium and format suitable for transmittal as part of the record. See Rule 2-516 (b)(1) and Rule 4-322 (c)(1) pertaining to the use of a recording at a hearing or trial.

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

and

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

(b) Formation of Record; Disputes

(1) Certificate

The clerk of the lower court shall append a certificate clearly identifying the papers and copies or photographs of exhibits included in the record. The certificate also shall identify the tangible exhibits not included for transmission and the custodian of each exhibit.

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

(2) Original Papers and Exhibits

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

(3) Disputes; Correction and Modification

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

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

(1) Generally

If the parties agree that the questions presented by an appeal can be determined without an examination of all the pleadings and evidence, they may sign and, upon approval by the lower court, file a statement showing how the questions arose

and were decided, and setting forth only those facts or allegations that are essential to a decision of the questions. ~~The parties are strongly encouraged to agree to such a statement.~~ The statement, the judgment from which the appeal is taken, and any opinion of the lower court shall constitute the record on appeal. The appellant shall reproduce the statement in the appellant's brief, either in lieu of the statement of facts or as an appendix to the brief.

(2) Supplement

The appellate court may~~, however,~~ direct the lower court clerk to transmit all or part of the balance of the record in the lower court as a supplement to the record on appeal. ~~The appellant shall reproduce the statement in the appellant's brief, either in lieu of the statement of facts or as an appendix to the brief.~~

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

(1) Attachments

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

(2) Statement of Cost

The clerk shall ~~also~~ prepare and transmit with the record a statement of the cost of preparing and certifying the record, the costs taxed against each party prior to the transmission of the record, and the cost of all transcripts and of copies, if any, of the transcripts for each of the parties.

(3) Service on Parties

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

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

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

REPORTER'S NOTE

Proposed amendments to Rule 8-413 alter certain provisions pertaining to the record on appeal. At its October 2021 meeting, the Rules Committee approved amendments to Rule 8-413 proposed by the Office of the Public Defender that would require the record on appeal to include "all exhibits marked for identification." The amendments sought to address appellate counsel's ability to locate recordings played at trial, such as body worn camera footage or recorded statements, that are not typically transcribed.

Discussions with the OPD, prosecutors, and clerks of the appellate courts identified a range of concerns with the operation of current Rule 8-413 and Rules 2-516, 3-516, and 4-322, which govern the record of proceedings at the trial court level. A survey of clerks across the state revealed varying practices for custody, storage, and documentation of exhibits. For example, some jurisdictions retain all exhibits, including weapons and contraband, in secure locations at the courthouse. Others never store those items due to space and safety concerns.

Proposed amendments to Rule 8-413 and Rules 2-516, 3-516, and 4-322, attempt to update and standardize exhibit practices across the state while retaining flexibility for individual jurisdictions.

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

Proposed amendments to section (a) of Rule 8-413 add new subsection (a)(3) requiring copies or photographs of any physical exhibits made part of the trial record to be part of the record on appeal. New subsection (a)(4) addresses recordings specifically by requiring that the original recording be included in the record on appeal. The Clerk of the Appellate Court, then the Court of Special Appeals, and appellate practitioners supported transmitting the original recording exhibit to the appellate court rather than a copy.

A Committee note following subsection (a)(4) refers to exhibits which may be stored on a digital storage platform outside of MDEC. The note states that exhibits may be stored and accessed this way and, absent a dispute about the uploaded files' authenticity or accuracy, should be considered the originals. The Committee note also calls attention to the requirements in Rules 2-516 and 4-322 that a recording used in court that is not in a format used by the general public be furnished for the appellate record in a common format. The Rules Committee was informed that there are occasionally problems with incompatible file formats, corrupted files, and other issues when a recording is part of the record. The Clerk of the intermediate appellate court requested that the appellate Rule draw the attention of the parties to the duty to ensure that a recording offered at trial can be accessed and played by the appellate court. Current subsection (a)(3) is renumbered as subsection (a)(5). New subsection (a)(6) contains a provision moved from elsewhere in the Rule pertaining to the record of appellate proceedings when the Supreme Court reviews an action pending or decided by the Appellate Court.

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

Proposed new subsection (b)(1) requires that the certificate appended to the record by the clerk identify the papers and copies or photographs of exhibits as well as the

custodian of tangible exhibits not included in the record for transmission. A cross reference following the subsection refers to the trial court Rules governing custody of exhibits.

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

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

Current section (b) is re-lettered as section (c) with subsections added. Proposed new subsection (c)(1) contains existing provisions regarding a statement of the case in lieu of the entire record. A sentence encouraging use of this mechanism is deleted. The Rules Committee was informed that a statement of the case on appeal is not used but may be appropriate in some matters and should remain available as an option. The last sentence from current section (b) pertaining to a reproduction of the statement in the appellant's brief is relocated from the end of the section to the end of new subsection (c)(1). New subsection (c)(2) contains existing provisions related to supplementing the statement of the case.

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

References to the Court of Appeals and Court of Special Appeals are updated to Supreme Court and Appellate Court, respectively.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 300 – OFFICIAL RECORD

AMEND Rule 20-301 by adding new subsection (a)(1) pertaining to exhibits stored on a digital storage platform and referenced in the MDEC system and by renumbering subsections (a)(4) through (a)(6) as (a)(5) through (a)(7), as follows:

Rule 20-301. CONTENT OF OFFICIAL RECORD

(a) Generally

The official record of an MDEC action consists of:

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

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

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

(4) all exhibits included in the records that are stored on a digital storage platform approved by the State Court Administrator and that are referenced in the MDEC system;

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

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

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

(b) Hyperlinks

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

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-301 are recommended to accommodate the use of ShareFile and other digital storage platforms outside of MDEC to store and transmit certain exhibits in judicial proceedings.

Courts across the country, including in Maryland, pivoted to platforms like ShareFile – an application for sending, receiving, and organizing files online – to securely share documents and files during the pandemic. Some courts have continued to use ShareFile for digital evidence that requires a higher resolution than a File and Serve scan or is in a non-scannable format (such as an exhibit that is an audio recording or body-worn camera footage).

The exhibits tab in Odyssey reflects the location of the exhibit by linking to the document in ShareFile. The Rules Committee was informed that ShareFile is being used as a temporary platform for digital evidence while the Judiciary considers a more permanent software solution. At least one

clerk's office has questioned how ShareFile records should be treated on appeal.

Rule 20-301 governs the content of the official record in an MDEC action but does not capture exhibits uploaded and stored outside of MDEC. The Committee recommends creation of a new category in Rule 20-301 to address exhibits stored on a digital storage platform approved by the State Court Administrator. The bracketed language would also require the exhibit to be referenced within MDEC.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-533 by adding new subsection (a)(2) pertaining to the effect of a shortened appeal time by statute, by adding a cross reference after section (a), and by making stylistic changes, as follows:

Rule 3-533. MOTION FOR NEW TRIAL

(a) Time for Filing

(1) Generally

~~Any~~ Subject to subsection (a)(2) of this Rule, any party may file a motion for new trial within ten days after entry of judgment. A party whose judgment has been amended on a motion to amend the judgment may file a motion for new trial within ten days after entry of the amended judgment.

(2) Appeal Time of Less than Ten Days Provided by Statute

If a statute provides for an appeal time of less than ten days after entry of judgment, a motion under this Rule, even if timely filed, does not toll the time to appeal unless the motion is filed within the statutory time period allowed for an appeal.

Cross reference: For shorter appeal times provided by statute, see Code, Real Property Article, §§ 8-401 and 8A-1701. See Rule

7-104 (c) concerning the time for filing a notice of appeal when a motion has been filed under this Rule.

. . .

REPORTER'S NOTE

Proposed amendments to Rules 3-533 and 3-534 conform them to amendments made to Rule 7-104 relating to the impact of filing post-judgment motions in proceedings where a statute requires an appeal to be noted less than ten days after entry of judgment. See the Reporter's note following Rule 7-104 for more information.

The Rules Committee was informed that practitioners opposed requiring a timely motion in these cases to be filed within the shorter appeal time because parties may learn of the judgment against them too late to appeal but do still want to file post-judgment motions. An order denying those motions is appealable and subject to an abuse of discretion review.

Proposed new subsection (a)(2) is derived from the Committee note following section (c) in Rule 7-104. It clarifies that post-judgment motions pursuant to this Rule may be filed within 10 days and be considered timely, but must be filed within the statutory time to appeal to preserve that right.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-534 by creating new section (a) containing the current language of the Rule, by adding new section (b) pertaining to the effect of a shortened appeal time by statute, by adding a cross reference after section (b), and by making stylistic changes, as follows:

Rule 3-534. MOTION TO ALTER OR AMEND JUDGMENT

(a) Generally

~~On~~ Subject to section (b) of this Rule, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial.

(b) Appeal Time of Less than Ten Days Provided by Statute

If a statute provides for an appeal time of less than ten days after entry of judgment, a motion under this Rule, even if

timely filed, does not toll the time to appeal unless the motion is filed within the statutory time period allowed for an appeal.

Cross reference: For shorter appeal times provided by statute, see Code, Real Property Article, §§ 8-401 and 8A-1701. See Rule 7-104 (c) concerning the time for filing a notice of appeal when a motion has been filed under this Rule.

Source: This Rule is derived from the 1983 version of Fed. R. Civ. P. 52 (b) and the 1966 version of Fed. R. Civ. P. 59 (a).

REPORTER'S NOTE

Proposed amendments to Rules 3-533 and 3-534 conform them to proposed amendments to Rule 7-104 relating to the impact of filing post-judgment motions in proceedings where a statute requires an appeal to be noted less than ten days after entry of judgment. See the Reporter's notes following Rules 7-104 and 3-533 for more information.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

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

AMEND Rule 7-104 by adding to the cross reference following section (a), by adding new subsection (c)(2) pertaining to the time for filing an appeal under certain circumstances, by expanding the Committee note following section (c) to clarify the time for filing certain motions, and by making stylistic changes, as follows:

Rule 7-104. NOTICE OF APPEAL – TIMES FOR FILING

(a) Generally

Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.

Cross reference: For shorter appeal times provided by statute, see Code, Real Property Article, §§ 8-332, 8-401, 8-402, 8-402.1, 8A-1701, 8A-1702, 8A-1703, 14-109, ~~and~~ 14-120, and 14-132.

(b) Criminal Action – Motion for New Trial

In a criminal action, when a timely motion for a new trial is filed pursuant to Rule 4-331 (a), the notice of appeal shall be filed within 30 days after the later of (1) entry of

the judgment or (2) entry of a notice withdrawing the motion or an order denying the motion.

(c) Civil Action – Post Judgment Motions

(1) Generally

~~In~~ Except as provided in subsection (c)(2) of this Rule, in a civil action, when a timely motion is filed pursuant to Rule 3-533 or Rule 3-534, the notice of appeal shall be filed within 30 days after entry of ~~(1)~~ (A) a notice withdrawing the motion or ~~(2)~~ (B) an order denying a motion pursuant to Rule 3-533 or disposing of a motion pursuant to Rule 3-534. A notice of appeal filed before the withdrawal or disposition of either of these motions does not deprive the District Court of jurisdiction to dispose of the motion.

(2) Shorter Appeal Time Provided by Statute

(A) Between Ten and 29 Days

If a statute provides for an appeal time between ten and 29 days, inclusive, and a timely motion is filed pursuant to Rule 3-533 or Rule 3-534, the notice of appeal shall be filed within the time stated in the statute for an appeal after (i) a notice withdrawing the motion or (ii) an order denying a motion pursuant to Rule 3-533 or disposing of a motion pursuant to Rule 3-534.

(B) Less than Ten Days

If a statute provides for an appeal time of less than ten days and a motion pursuant to Rule 3-533 or Rule 3-534 is filed within the time to appeal stated in the statute, the notice of appeal shall be filed within the time stated in the statute for an appeal after (i) a notice withdrawing the motion or (ii) a copy of an order denying a motion pursuant to Rule 3-533 or disposing of a motion pursuant to Rule 3-534 is sent pursuant to Rule 1-324. If the copy of the order is sent by mail, three days shall be added to the time within which an appeal may be noted.

Committee note: In cases involving a statutory appeal time that is shorter than the time to file a motion under Rule 3-533 or Rule 3-534 (e.g., Code, Real Property Article, §§ 8-401 and 8A-1701), such motions must be filed within the statutory appeal time in order to toll the time to appeal pursuant to subsection (c)(2)(B) of this Rule. A motion filed under Rule 3-533 or Rule 3-534 that is not filed within the statutory appeal time may still be timely if filed within the time permitted by those Rules, but it does not toll the time to appeal.

A motion filed pursuant to Rule 3-535, if filed within ten days or, if applicable, within the time stated in subsection (c)(2)(B) of this Rule after entry of judgment, will have the same effect as a motion filed pursuant to Rule 3-534, for purposes of this Rule. *Unnamed Attorney v. Attorney Grievance Commission*, 303 Md. 473, 494 A.2d 940 (1985); *Sieck v. Sieck*, 66 Md.App. 37, 502 A.2d 528 (1986).

(d) Appeals by Other Party – Within Ten Days

If one party files a timely notice of appeal, any other party may file a notice of appeal within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by this Rule.

(e) Date of Entry

"Entry" as used in this Rule occurs on the day when the District Court enters a record on the docket of the electronic case management system used by that court.

Source: This Rule is in part derived from former Rule 1312 and in part new.

REPORTER'S NOTE

Proposed amendments to Rule 7-104 address an issue raised in a Court of Appeals case regarding the appropriate time to appeal a District Court summary ejectment decision where timely post-trial motions have been filed pursuant to Rules 3-533 and 3-534 (*Lee v. WinnCompanies LLC*, No. 25, Sept. Term 2020 (cert. petition dismissed)). The Court of Appeals, now the Supreme Court, referred the matter to the Rules Committee for consideration.

Amendments to Rules 7-104, 3-533, and 3-534 were previously approved by the Rules Committee and transmitted to the Court of Appeals in the Two Hundred and Eleventh Report. At its open meeting on the Report, the Court expressed concern with Rule 7-104, discussed further below, and remanded Rule 7-104 and the accompanying Rules to the Committee for further consideration.

Proposed amendments to section (c) create a new subsection (c)(2). The new subsection announces an exception to the general Rule that, where motions pursuant to Rules 3-533 and 3-534 are timely filed, the time to appeal a civil decision is tolled until the motions are withdrawn or disposed of, at which time the parties have 30 days to appeal.

Subsection (c)(2)(A) applies to cases where the time to appeal, by statute, is at least ten days but less than 30 days. In those matters, the time to appeal following the withdrawal or disposition of motions is the time to appeal stated in the statute.

Subsection (c)(2)(B) applies to cases where the time to appeal, by statute, is less than ten days. In the Two Hundred

and Eleventh Report, the Committee recommended that in these cases, the time to appeal should be ten days after post-judgment motions are withdrawn or ruled on by the court. Unlike the initial judgment, which is rendered in open court, the Committee was informed that post-judgment motions are typically ruled on in chambers and mailed to the parties. In summary ejectment proceedings (Code, Real Property Article, § 8-401), a party has four days after rendition of judgment to note an appeal. A mobile home park repossession judgment (Code, Real Property Article, § 8A-1701) must be appealed within two days of judgment, an even shorter time. These cases are not filed electronically and frequently involve unrepresented parties who will not receive the ruling by mail in time to note an appeal if the time to appeal runs from the date the court enters its order.

At the open meeting, the Court of Appeals agreed that parties must be given a meaningful opportunity to receive notice of the court's ruling on post-judgment motions but was reluctant to summarily extend the time to appeal in these cases to ten days following the withdrawal of or ruling on the motions. The Court suggested that the statutory time to appeal run from the mailing of the court's order with additional time permitted for mailing.

Proposed amendments to subsection (c)(2)(B)(ii) state that, in cases where the time to appeal is less than ten days by statute, the time to note an appeal is the time stated in the statute after a copy of an order ruling on the motion is sent pursuant to Rule 1-324. Rule 1-324 (a) provides that, where an order or ruling of the court is not made in the course of a hearing or trial, the clerk shall send a copy or the order or ruling to all parties. If a copy of the order is sent by mail, Rule 7-104 (c)(2)(B) provides that three days shall be added to the time to appeal. The three-day extension is derived from Rule 1-203 (c), which adds three days to the time a party has to act when service is made by mail.

Practitioners opposed restricting timely motions under Rule 3-533 and 3-534 to the statutory appeal time when that time is less than ten days because they advised that parties may learn of the judgment against them too late to appeal but do still want to file post-judgment motions. An order denying those motions is appealable and subject to an abuse of discretion review. The proposed new language in the Committee note following section (c) emphasizes that subsection (c)(2)(B) will only apply if post-judgment motions are filed during the time to

appeal, but such motions can still be filed timely and are ripe for consideration even if the time to appeal the underlying judgment has passed. The existing Committee note is amended to extend its concept to circumstances outlined in subsection (c)(2)(B).

Additionally, proposed amendments to the cross reference following section (a) add an additional statute which requires an appeal to be noted in less than the default time of 30 days.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT

TO THE CIRCUIT COURT

AMEND Rule 7-102 by adding a cross reference after subsection (b)(1), as follows:

Rule 7-102. MODES OF APPEAL

(a) De Novo

Except as provided in section (b) of this Rule, an appeal shall be tried de novo in all civil and criminal actions.

Cross reference: For examples of appeals to the circuit court that are tried de novo, see Code, Courts Article, § 12-401(f), concerning a criminal action in which sentence has been imposed or suspended following a plea of guilty or nolo contendere and an appeal in a municipal infraction or Code violation case; Code, Courts Article, § 3-1506, concerning an appeal from the grant or denial of a petition seeking a peace order; and Code, Family Law Article, § 4-507, concerning an appeal from the grant or denial of a petition seeking relief from abuse.

(b) On the Record

An appeal shall be heard on the record made in the District Court in the following cases:

(1) a civil action in which the amount in controversy exceeds $5,000 exclusive of interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

Cross reference: For computation of the amount in controversy in an action involving a claim for possession or repossession of

property, see *Velicky v. Copycat Building LLC*, 476 Md. 435 (2021) and *Purvis v. Forest Street Apartments*, 286 Md. 398 (1979).

(2) any matter arising under § 4-401(7)(ii) of the Courts Article;

(3) any civil or criminal action in which the parties so agree;

(4) an appeal from an order or judgment of direct criminal contempt if the sentence imposed by the District Court was less than 90 days' imprisonment; and

(5) an appeal by the State from a judgment quashing or dismissing a charging document or granting a motion to dismiss in a criminal case.

Source: This Rule is new but is derived in part from Code, Courts Article, § 12-401(b), (c), and (f).

REPORTER'S NOTE

Proposed amendments to Rule 7-102 were previously transmitted to the Court in the Two Hundred and Eleventh Report of the Rules Committee. After concerns about proposed amendments to Rule 7-104 were raised at the open meeting, the subsequent Rules Order remanded Rule 7-104 and accompanying Rules to the Committee for further consideration. Rule 7-102 was included in the remand.

On November 29, 2021, *Velicky v. Copycat Building LLC,* 476 Md. 435 (2021) was filed. In *Velicky*, the Court held that the value of the right to repossession of property must be considered when determining the mode of an appeal from the District Court to a circuit court. Accordingly, a cross reference to *Velicky* addressing the computation of the amount in controversy in actions involving claims for possession or

repossession of property is added after Rule 7-102 (b)(1). The proposed cross reference also cites *Purvis v. Forest Street Apartments*, 286 Md. 398 (1979), which contains the analysis relied upon by the Court in *Velicky*.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 8-132 by creating new section (a) containing the existing language of the Rule, by adding new section (b) pertaining to an appeal improperly filed in the Appellate Court, by adding a cross reference following section (b), and by updating references to the Court of Appeals to Supreme Court and references to the Court of Special Appeals to the Appellate Court, as follows:

Rule 8-132. TRANSFER OF APPEAL IMPROPERLY TAKEN

(a) Appeal to Improper Court

If the ~~Court of Appeals~~ Supreme Court or the ~~Court of Special Appeals~~ Appellate Court determines that an appellant has improperly noted an appeal to it but may be entitled to appeal to another court exercising appellate jurisdiction, the Court shall not dismiss the appeal but shall instead transfer the action to the court apparently having jurisdiction, upon the payment of costs provided in the order transferring the action.

(b) Appeal Improperly Filed in the Appellate Court

If a notice of appeal, application for leave to appeal, or petition for certiorari is improperly filed in the Appellate Court, the Court shall not reject the filing but shall note on the filing the date when it was received and transfer the filing to the proper court. The receiving court shall docket the filing using the date that the filing was received by the Appellate Court.

Cross reference: See Rules 8-201 and 8-204 regarding filing of a notice of appeal or application for leave to appeal to the Appellate Court in the lower court. See Rule 8-303 regarding filing of a petition for writ of certiorari in the Supreme Court.

Source: This Rule is in part derived from former Rule 814 and in part new.

REPORTER'S NOTE

The proposed amendment to Rule 8-132 addresses a concern raised by the Clerk of the Appellate Court – then the Court of Special Appeals – regarding notices of appeal and petitions for certiorari directed to the proper court but filed in the wrong court.

A notice of appeal to the Appellate Court is properly filed in the circuit court. A petition for certiorari to the Supreme Court must be filed in that court. The Clerk informed the Rules Committee that, in some instances, unrepresented or inexperienced litigants incorrectly file a notice of appeal or petition for certiorari in the Appellate Court. A petition for writ of certiorari is transferred to the Court of Appeals pursuant to this Rule, but a notice of appeal –noted "to" the Appellate Court but improperly filed "in" that Court – cannot receive the same treatment under the current wording. The Clerk informed the Committee that in these cases, his office immediately rejects the filing and informs the appellant of the

mistake, but the appellant may not have time to file in the proper circuit court before the time to appeal lapses.

Proposed new section (b) governs proper appeals and petitions filed in the incorrect court. The section instructs the Appellate Court to note the date the filing was received and transfer the filing to the proper court, either the trial court for a notice of appeal or the Supreme Court for a petition for writ of certiorari. Once transferred, the filing must be docketed with the date it was received by the Appellate Court.

References to the Court of Appeals and Court of Special Appeals are changed to Supreme Court and Appellate Court, respectively.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 – OBTAINING REVIEW IN ~~COURT OF SPECIAL APPEALS~~ THE APPELLATE COURT

AMEND Rule 8-202 by expanding the cross reference following section (a), as follows:

Rule 8-202. NOTICE OF APPEAL — TIMES FOR FILING

(a) Generally

Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.

Cross reference: See Code, Courts Article, § 12-302(c)(4) pertaining to the State's right to appeal a decision of the trial court in certain circumstances.

(b) Criminal Action – Motion for New Trial

In a criminal action, when a timely motion for a new trial is filed pursuant to Rule 4-331 (a), the notice of appeal shall be filed within 30 days after the later of (1) entry of the judgment or (2) entry of a notice withdrawing the motion or an order denying the motion.

(c) Civil Action – Post-Judgment Motions

In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, 2-534, or 11-218, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532, 2-534, or 11-218. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion. If a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, 2-534, or 11-218, the notice of appeal shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it.

Committee note: A motion filed pursuant to Rule 2-535, if filed within ten days after entry of judgment, will have the same effect as a motion filed pursuant to Rule 2-534, for purposes of this Rule. *Unnamed Att'y v. Attorney Grievance Comm'n*, 303 Md. 473, 494 A.2d 940 (1985); *Sieck v. Sieck*, 66 Md.App. 37, 502 A.2d 528 (1986).

(d) When Notice for in Banc Review Filed

A party who files a timely notice for in banc review pursuant to Rule 2-551 or 4-352 may file a notice of appeal provided that (1) the notice of appeal is filed within 30 days after entry of the judgment or order from which the appeal is taken and (2) the notice for in banc review has been withdrawn

before the notice of appeal is filed and prior to any hearing before or decision by the in banc court. A notice of appeal by any other party shall be filed within 30 days after entry of a notice withdrawing the request for in banc review or an order disposing of it. Any earlier notice of appeal by that other party does not deprive the in banc court of jurisdiction to conduct the in banc review.

(e) Appeals by Other Party – Within Ten Days

If one party files a timely notice of appeal, any other party may file a notice of appeal within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by this Rule.

(f) Date of Entry

"Entry" as used in this Rule occurs on the day when the clerk of the lower court enters a record on the docket of the electronic case management system used by that court.

Cross reference: Rule 2-601.

Source: This Rule is derived from former Rule 1012.

REPORTER'S NOTE

Proposed amendments to Rule 8-202 expand the cross reference following section (a) to provide context for the citation to Code, Courts Article, § 12-301(c)(4).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 – OBTAINING REVIEW IN ~~COURT OF SPECIAL APPEALS~~ THE APPELLATE COURT

AMEND Rule 8-205 by adding "Information" to the caption of section (b), by deleting the language of current section (b) and replacing it with new language requiring a notice of appeal to be accompanied by a Civil Appeal Information Report, by adding a Committee note after section (b) pertaining to the effect of a failure to file a Civil Appeal Information Report, by deleting current section (c), by re-lettering current section (d) as section (c), by changing the time for an appellee to file a supplemental report from seven days to ten days after service of the appellant's notice of appeal and Information Report, by re-lettering current section (e) as section (d), by adding new section (e) regarding notice of failure to file an Information Report, by changing the caption of section (f) from "Confidentiality" to "Use of Report," by updating references to the Court of Special Appeals to the Appellate Court, and by making stylistic changes, as follows:

Rule 8-205. INFORMATION REPORTS

(a) Applicability

This Rule applies to appeals in all civil actions in the ~~Court of Special Appeals~~ Appellate Court except juvenile causes, appeals from guardianships terminating parental rights, appeals from actions for a writ of error coram nobis, and applications and appeals by prisoners seeking relief relating to confinement or conditions of confinement.

(b) Information Report by Appellant Required

~~Upon the filing of a notice of appeal, the clerk of the lower court shall provide to the appellant an information report form prescribed by the Court of Special Appeals. Unless an expedited appeal is elected pursuant to Rule 8-207, the appellant shall file with the Clerk of the Court of Special Appeals a copy of the notice of appeal and a complete and accurate information report.~~

A notice of appeal in a civil case filed pursuant to Rule 8-201 shall be accompanied by a completed Civil Appeal Information Report. The Information Report shall be in a form approved by the State Court Administrator and posted on the Judiciary website.

Committee note: The failure to file a completed Civil Appeal Information Report is not cause for a circuit court to strike or reject the filing. Rule 8-602 (c)(2) governs dismissal of an appeal by the Appellate Court for failure to file a completed Information Report.

~~(c) Time for Filing~~

~~When a notice of appeal is filed more than ten days after the entry of judgment, the information report shall be filed within ten days after the filing of the notice. When the notice of appeal is filed within ten days after the entry of judgment, the information report shall be filed within ten days after the expiration of that ten-day period, if no post-judgment motion pursuant to Rule 2-532, 2-533, or 2-534 or a notice for in banc review pursuant to Rule 2-551 has been timely filed.~~

~~Cross reference: Rule 8-202(c).~~

~~(d)~~ (c) Report by Appellee

Within ~~seven~~ ten days after service of appellant's ~~information report~~ notice of appeal and Civil Appeal Information Report, each appellee may file with the Clerk of the ~~Court of Special Appeals~~ Appellate Court a supplemental report containing any other information needed to clarify the issues on appeal or otherwise assist in the implementation of Rule 8-206.

~~(e)~~ (d) Disclosure of Post-Judgment Motions

If the filing, withdrawal, or disposition of a motion pursuant to Rule 2-532, 2-533, or 2-534 has not been disclosed in ~~an information report~~ a Civil Appeal Information Report or supplemental report, the party filing the motion shall notify the Clerk of the ~~Court of Special Appeals~~ Appellate Court of the filing and of the withdrawal or disposition.

(e) Failure to File Report

If the appellant fails to file a Civil Appeal Information Report as required by this Rule, the Clerk of the Appellate Court promptly shall serve a notice on all parties stating that the Information Report has not been filed and the Court may dismiss the appeal pursuant to Rule 8-602 if the appellant does not file an Information Report within 15 days after service of the notice.

(f) ~~Confidentiality~~ Use of Report

Information contained in ~~an information report~~ a Civil Appeal Information Report or a supplemental report shall not (1) be treated as admissions, (2) limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a scheduling conference under Rule 8-206 or during ADR under Title 17, Chapter 400 of these Rules.

Cross reference: See Rule 17-102 (a) for the definition of ADR and Rule 17-402 concerning the use of Information Reports by the CSA ADR division.

Source: This Rule is derived from former Rule 1023 with the exception of section (a), which is derived from former Rule 1022, section (e), which is new, and section (f), the substance of which was transferred from Rule 8-206.

REPORTER'S NOTE

Proposed amendments to Rule 8-205 alter the procedure for filing a Civil Appeal Information Report. References to "information report" are changed to "Civil Appeal Information Report" for clarity.

The Clerk of the Appellate Court – then the Court of Special Appeals – suggested that the Information Report,

generally filed within ten days after the notice of appeal, should be filed with the notice of appeal. The notice and Information Report can be transmitted to the Appellate Court at the same time, avoiding ten days of "dead time" before the appeal begins to be processed.

Proposed amendments to Rule 8-205 delete the contents of current section (b) and replace it with the new requirement that the notice of appeal must be accompanied by the Information Report. A Committee note following section (b) provides that failure to file a completed Information Report is not cause for the circuit court to strike or reject a filing. Rule 8-602 (c)(2) governs dismissal of an appeal by the Appellate Court for failure to comply with Rule 8-205.

Current section (c) is deleted because the Information Report is now filed with the notice of appeal.

Current section (d) is re-lettered as section (c). The time for the appellee to file a supplemental Information Report is changed from seven days to ten days.

Current section (e) is re-lettered as section (d).

New section (e) instructs the Clerk of the Appellate Court to serve a notice on the parties if the appellant does not file the Information Report with the notice of appeal as required. The notice informs the parties that the Information Report was not filed and instructs the appellant to file the Information Report within 15 days or risk dismissal of the appeal pursuant to Rule 8-602.

Section (f) is recaptioned "Use of Report" to more accurately describe the contents of the section.

References to the Court of Special Appeals are updated to the Appellate Court throughout.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-532 by changing "information report" to "Civil Appeal Information Report" in the cross reference following section (b) and by updating a reference to the Court of Special Appeals to the Appellate Court, as follows:

Rule 2-532. MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

. . .

(b) Time for Filing

. . .

Cross reference: See Rule 8-205 requiring notice to the Clerk of the ~~Court of Special Appeals~~ Appellate Court of information not disclosed in ~~an information report~~ a Civil Appeal Information Report regarding the filing of a motion under this Rule, or its withdrawal or disposition.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 2-532 are conforming amendments to proposed changes to Rule 8-205. References to "information report" are changed to "Civil Appeal Information Report" for clarity. Also in the cross reference following section (b), a reference to the Court of Special Appeals is updated to the Appellate Court.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-533 by changing "information report" to "Civil Appeal Information Report" in the cross reference following section (a) and by updating a reference to the Court of Special Appeals to the Appellate Court, as follows:

Rule 2-533. MOTION FOR NEW TRIAL

(a) Time for Filing

. . .

Cross reference: See Rule 8-205 requiring notice to the Clerk of the ~~Court of Special Appeals~~ Appellate Court of information not disclosed in ~~an information report~~ a Civil Appeal Information Report regarding the filing of a motion under this Rule, or its withdrawal or disposition.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 2-533 are conforming amendments to proposed changes to Rule 8-205. References to "information report" are changed to "Civil Appeal Information Report" for clarity. Also in a cross reference following section (a), a reference to the Court of Special Appeals is updated to the Appellate Court.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-534 by changing "information report" to "Civil Appeal Information Report" in the cross reference and by updating a reference to the Court of Special Appeals to the Appellate Court, as follows:

Rule 2-534. MOTION TO ALTER OR AMEND A JUDGMENT – COURT DECISION

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

Cross reference: See Rule 8-205 requiring notice to the Clerk of the ~~Court of Special Appeals~~ Appellate Court of information

not disclosed in ~~an information report~~ a Civil Appeal Information Report regarding the filing of a motion under this Rule, or its withdrawal or disposition.

Source: This Rule is derived from the 1963 version of Fed. R. Civ. P. 52 (b) and the 1966 version of Fed. R. Civ. P. 59 (a).

REPORTER'S NOTE

Proposed amendments to Rule 2-534 are conforming amendments to proposed changes to Rule 8-205. References to "information report" are changed to "Civil Appeal Information Report" for clarity. A reference to the Court of Special Appeals is also updated to the Appellate Court.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 – OBTAINING REVIEW IN ~~COURT OF SPECIAL APPEALS~~ THE APPELLATE COURT

AMEND Rule 8-206 by changing "information report" to "Civil Appeal Information Report" in section (a), by updating references to the Court of Special Appeals to the Appellate Court, and by updating a reference to the Court of Appeals to the Supreme Court, as follows:

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

(a) ADR

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

(b) Scheduling Conference

(1) Order to Attend

Upon the filing of any appeal to the ~~Court of Special Appeals~~ Appellate Court, the Chief Judge or a judge designated

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

(2) Purposes

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

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

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

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

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

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

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

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

. . .

REPORTER'S NOTE

Proposed amendments to Rule 8-206 are conforming amendments to proposed changes to Rule 8-205. References to "information report" are changed to "Civil Appeal Information Report" for clarity. References to the Court of Special Appeals are updated to the Appellate Court. A reference to the Court of Appeals is also updated to the Supreme Court.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 – OBTAINING REVIEW IN ~~COURT OF SPECIAL APPEALS~~ THE APPELLATE COURT

AMEND Rule 8-207 by changing "information report" to "Civil Appeal Information Report" in subsection (a)(2) and by updating references to the Court of Appeals to the Supreme Court and references to the Court of Special Appeals to the Appellate Court, as follows:

Rule 8-207. MOTION FOR NEW TRIAL

(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~~ Appellate Court (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, (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~~ Appellate Court or by order of the ~~Court of Appeals~~ Supreme Court 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.

(2) In the ~~information report~~ Civil Appeal Information Report filed pursuant to Rule 8-205, the appellant shall state whether the appeal is subject to this section.

. . .

(4) The clerk of the lower court shall transmit the record to the ~~Court of Special Appeals~~ Appellate Court within thirty days after (A) the date of the order entered pursuant to Rule 8-206 (c), or (B) the filing of a notice of appeal in a juvenile cause subject to this Rule or from a guardianship terminating parental rights subject to this Rule.

. . .

(6) Any motion for reconsideration pursuant to Rule 8-605 shall be filed within 15 days after the filing of the opinion of the Court or other order disposing of the appeal. Unless the mandate is delayed pursuant to Rule 8-605 (d) or unless

otherwise directed by the Court, the Clerk of the ~~Court of Special Appeals~~ Appellate Court shall issue the mandate upon the expiration of 15 days after the filing of the court's opinion or order.

(b) By Election of Parties

(1) Election

Within 20 days after the first notice of appeal is filed or within the time specified in an order entered pursuant to Rule 8-206 (c), the parties may file with the Clerk of the ~~Court of Special Appeals~~ Appellate Court a joint election to proceed pursuant to this Rule.

. . .

(10) Applicability of Other Rules

The Rules of this Title governing appeals to the ~~Court of Special Appeals~~ Appellate Court shall be applicable to expedited appeals except to the extent inconsistent with this Rule.

Source: This Rule is derived in part from former Rule 1029 and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 8-207 are conforming amendments to proposed changes to Rule 8-205. References to "information report" are changed to "Civil Appeal Information Report" for clarity. References to the Court of Appeals and Court of

Special Appeals are updated to Supreme Court and Appellate Court, respectively.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 400 – CIRCUIT COURTS – CLERKS' OFFICES

AMEND Rule 16-406 by adding a requirement that a Civil Appeal Information Report accompanying a notice of appeal be transmitted to the Clerk of the Appellate Court and by replacing "Court of Special Appeals" with "Appellate Court" in the tagline and in the body of the Rule, as follows:

Rule 16-406. NOTICE TO ~~COURT OF SPECIAL APPEALS~~ THE APPELLATE COURT

Upon the filing of (1) a notice of appeal or application for leave to appeal to the ~~Court of Special Appeals~~ Appellate Court, (2) a timely motion pursuant to Rule 2-532, 2-533, or 2-534 if filed after the filing of a notice of appeal, or (3) an order striking a notice of appeal pursuant to Rule 8-203, the clerk of the circuit court immediately shall send via email, or via the MDEC system if from an MDEC County, a copy of the paper filed to the Clerk of the ~~Court of Special Appeals~~ Appellate Court. If a notice of appeal is accompanied by a Civil Appeal Information Report required by Rule 8-205, the Information Report shall be transmitted in the same manner as the notice of appeal.

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

REPORTER'S NOTE

Proposed amendments to Rule 16-406 implement a change to the way Civil Appeal Information Reports are filed in civil appeals. Proposed amendments to Rule 8-205 require an Information Report in a civil appeal to be filed in conjunction with the notice of appeal in circuit court.

A sentence is added to Rule 16-406 to state that where a notice of appeal is accompanied by an Information Report, the report should be transmitted in the same manner. References to the Court of Special Appeals are updated to the Appellate Court.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 300 – OBTAINING APPELLATE REVIEW IN THE ~~COURT OF APPEALS~~ SUPREME COURT

AMEND Rule 8-303 by adding new section (c) concerning informal certiorari petitions, cross-petitions, and answers in the Supreme Court; by re-lettering former sections (c) through (g) as sections (d) through (h), respectively; by adding a provision to section (g) concerning the minimum number of votes for certiorari to be granted; and by updating references to the "Court of Appeals" to the "Supreme Court" and references to the "Court of Special Appeals" to the "Appellate Court," as follows:

Rule 8-303. PETITION FOR WRIT OF CERTIORARI – PROCEDURE

(a) Filing

A petition for a writ of certiorari shall be filed with the Clerk of the ~~Court of Appeals~~ Supreme Court. The petition or cross-petition shall be accompanied by the filing fee prescribed pursuant to Code, Courts Article, § 7-102 unless:

(1) if the petition or cross-petition is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1; or

(2) if the petition or cross-petition is in a criminal action, the fee has been waived by an order of court or the petitioner is represented by the Public Defender's Office.

Cross reference: Rule 1-325.

(b) Petition; Cross-Petition

(1) Contents

The petition or cross-petition shall present accurately, briefly, and clearly whatever is essential to a ready and adequate understanding of the points requiring consideration. Except with the permission of the ~~Court of Appeals~~ Supreme Court, a petition or cross-petition, including a cross-petition that answers a petition, shall not exceed 3,900 words. A petition and cross-petition shall contain the following information:

(A) A reference to the action in the lower court by name and docket number;

(B) A statement whether the case has been decided by the ~~Court of Special Appeals~~ Appellate Court;

(C) If the case is then pending in the ~~Court of Special Appeals~~ Appellate Court, a statement whether briefs have been filed in that Court or the date briefs are due, if known;

(D) A statement whether the judgment of the circuit court has adjudicated all claims in the action in their entirety, and the rights and liabilities of all parties to the action;

(E) The date of the judgment sought to be reviewed and the date of any mandate of the ~~Court of Special Appeals~~ Appellate Court;

(F) The questions presented for review;

(G) A particularized statement of why review of those issues by the ~~Court of Appeals~~ Supreme Court is desirable and in the public interest;

(H) A reference to pertinent constitutional provisions, statutes, ordinances, or regulations;

(I) A concise statement of the facts material to the consideration of the questions presented; and

(J) A concise argument in support of the petition or cross-petition.

(2) Documents

A copy of each of the following documents shall be submitted with the petition or cross-petition at the time it is filed:

(A) The docket entry evidencing the judgment of the circuit court;

(B) Any opinion of the circuit court;

(C) Any written order issued under Rule 2-602 (b);

(D) If the case has not been decided by the ~~Court of Special Appeals~~ Appellate Court, all briefs that have been filed in the ~~Court of Special Appeals~~ Appellate Court; and

(E) Any opinion of the ~~Court of Special Appeals~~ Appellate Court.

(3) Where Documents Unavailable

If a document required by subsection (b)(2) of this Rule is unavailable, the petitioner shall state the reason for the unavailability. If a document required to be submitted with the petition or cross-petition becomes available after the petition or cross-petition is filed but before it has been acted upon, the petitioner shall file it as a supplement to the petition or cross-petition as soon as it becomes available.

(4) Previously Served Documents

Copies of any brief or opinion previously served upon or furnished to another party need not be served upon that party.

(c) Informal Petitions, Cross-Petitions, and Answers

A self-represented party may file an informal petition for writ of certiorari, cross-petition for writ of certiorari, or answer to a petition for writ of certiorari. An informal petition for writ of certiorari, cross-petition for certiorari, or answer to a petition for writ of certiorari is not subject to the requirements of Rule 8-112 and shall not exceed 15 pages in length. An informal petition for writ of certiorari or cross-petition for writ of certiorari shall contain the information required in subsection (b)(1) of this Rule, but need not be accompanied by the documents required in subsection (b)(2) of

this Rule unless otherwise ordered by the Supreme Court. The Supreme Court may authorize the use of a form for filing an informal petition for writ of certiorari, cross-petition for writ of certiorari, or answer to a petition for writ of certiorari. Any such form shall be made available electronically on the Judiciary website, or in paper form in the office of the Clerk of the Supreme Court. Section (c) of this Rule does not limit the ability of the Clerk of the Supreme Court to accept a petition for writ of certiorari, cross-petition for writ of certiorari, or answer to a petition for writ of certiorari, that does not meet the requirements of this Rule.

~~(c)~~ (d) Sanction

Failure to comply with section (b) of this Rule is a sufficient reason for denying the petition or cross-petition.

~~(d)~~ (e) Answer

(1) Time to File

Within 15 days after service of the petition or cross-petition, any other party may file an original answer to the petition or cross-petition stating why the writ should be denied. If an amicus curiae brief is filed in support of the petition or cross-petition pursuant to Rule 8-511 (e), the deadline to answer is automatically extended to 15 days after service of the amicus curiae brief.

(2) Word Limits

Except with the permission of the ~~Court of Appeals~~ Supreme Court: (A) an answer to a petition shall not exceed 3,900 words, and (B) a reply to a cross-petition shall not exceed 1,500 words.

~~(e)~~ (f) Stay of Judgment of ~~Court of Special Appeals~~ Appellate Court or of a Circuit Court

Upon the filing of a petition for a writ of certiorari, or upon issuing a writ on its own motion, the ~~Court of Appeals~~ Supreme Court may stay the issuance, enforcement, or execution of a mandate of the ~~Court of Special Appeals~~ Appellate Court or the enforcement or execution of a judgment of a circuit court.

~~(f)~~ (g) Disposition

On review of the petition or cross-petition and any answer, the Court, unless otherwise ordered, shall grant or deny the petition or cross-petition without the submission of briefs or the hearing of argument. The Court may not grant a petition or cross-petition with fewer than three affirmative votes. If the petition or cross-petition is granted, the Court shall:

(1) direct further proceedings in the ~~Court of Appeals~~ Supreme Court;

(2) dismiss the appeal pursuant to Rule 8-602;

(3) affirm the judgment of the lower court;

(4) vacate or reverse the judgment of the lower court;

(5) modify the judgment of the lower court;

(6) remand the action to the lower court for further proceedings pursuant to Rule 8-604 (d); or

(7) an appropriate combination of the above.

~~(g)~~ (h) Duty of Clerk

The Clerk of the ~~Court of Appeals~~ Supreme Court shall send a copy of the order disposing of the petition or cross-petition to the clerk of the lower court. If the order directs issuance of a writ of certiorari, the Clerk shall issue the writ to the lower court.

Source: This Rule is derived from former Rule 811.

REPORTER'S NOTE

The Rules Committee proposes amending Rule 8-303 to add new section (c), permitting informal petitions, cross-petitions, and answers to petitions for writ of certiorari to be filed in the Supreme Court.

This proposal, which originated with the Appellate Division of the Office of the Public Defender, has two goals: (1) that pro se petitions be exempted from complying with technical procedural requirements set forth in Rule 8-112 and Rule 8-303 (b)(2); and (2) that pro se petitioners be given access to fillable templates approved by the Supreme Court.

Section (g) of this Rule is proposed to be amended to specify that the minimum number of votes required for certiorari to be granted is three.

References to the Court of Appeals and the Court of Special Appeals are updated to the Supreme Court and the Appellate Court, respectively, throughout the Rule.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 by updating a reference to Rule 8-413 in section (b), by changing the number of copies required in section (k) to eight, and by replacing "Court of Appeals" with "Supreme Court" and "Court of Special Appeals" with "Appellate Court" throughout this Rule, as follows:

Rule 8-501. RECORD EXTRACT

(a) Duty of Appellant

Unless otherwise ordered by the appellate court or provided by this Rule, the appellant shall prepare and file a record extract in every case in the ~~Court of Appeals~~ Supreme Court, subject to section (k) of this Rule, and in every civil case in the ~~Court of Special Appeals~~ Appellate Court. The record extract shall be included as an attachment to appellant's brief, or filed as a separate volume with the brief in the number of copies required by Rule 8-502 (c).

(b) Exceptions

Unless otherwise ordered by the court, a record extract shall not be filed (1) when an agreed statement of the case is

filed pursuant to Rule 8-207 or 8-413 ~~(b)~~ (c) or (2) in an appeal in the ~~Court of Special Appeals~~ Appellate Court from a criminal case or from child in need of assistance proceedings, extradition proceedings, inmate grievance proceedings, juvenile delinquency proceedings, permanency planning proceedings, or termination of parental rights proceedings.

Cross reference: See Rule 8-504 (b) for the contents of a required appendix to appellant's brief in criminal cases in the ~~Court of Special Appeals~~ Appellate Court.

...

(k) Record Extract in ~~Court of Appeals~~ Supreme Court on Review of Case From ~~Court of Special Appeals~~ Appellate Court

When a writ of certiorari is issued to review a case pending in or decided by the ~~Court of Special Appeals~~ Appellate Court, unless the ~~Court of Appeals~~ Supreme Court orders otherwise, the appellant shall file in that Court ~~20~~ eight copies of any record extract that was filed in the ~~Court of Special Appeals~~ Appellate Court within the time the appellant's brief is due. If a record extract was not filed in the ~~Court of Special Appeals~~ Appellate Court or if the ~~Court of Appeals~~ Supreme Court orders that a new record extract be filed, the appellant shall prepare and file a record extract pursuant to this Rule.

(l) Deferred Record Extract; Special Provisions Regarding Filing of Briefs

...

(7) The time for filing page-proof copies of a brief or a final brief may be extended as provided in subsections (l)(7)(A), (B), and (C) of this Rule.

(A) In the ~~Court of Appeals~~ Supreme Court, the time for filing page-proof copies of a brief or final briefs may be extended by stipulation of counsel filed with the clerk so long as the final briefs set out in subsections (l)(3) and (5) of this Rule are filed at least 30 days, and any reply brief set out in subsections (l)(4) and (5) of this Rule is filed at least ten days, before the scheduled argument.

(B) In the ~~Court of Special Appeals~~ Appellate Court, by joint stipulation filed with the Clerk, the parties may extend the time for filing a page-proof brief or final brief by no more than 30 days from the original due date of the page-proof brief or final brief. The time to file a reply brief may be extended by stipulation so long as the reply brief will be filed at least ten days before argument or the date of submission of the case on the briefs.

(C) The ~~Court of Special Appeals~~ Appellate Court, on its own initiative or on motion filed pursuant to Rule 1-204, may extend the time for filing a brief. Absent urgent and previously unforeseeable circumstances, a motion shall be filed at least five days before the applicable due date. The motion

shall: (1) state that the moving party has sought consent of the other parties and whether each party consents to the extension; and (2) if the requested due date is more than 30 days after the original due date, identify good cause for the extension required.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 8-501 (b) is a conforming amendment in light of proposed amendments to Rule 8-413. Section (b) in Rule 8-413 is now section (c).

The proposed amendment to section (k), proposed by the Rules Committee at the request of the Clerk of the Court of Appeals, now the Supreme Court, changes from twenty to eight the number of copies of the record extract to be filed with the Court when a writ of certiorari is issued.

References to the Court of Appeals and Court of Special Appeals are updated to the Supreme Court and Appellate Court, respectively, throughout the Rule.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-431 by deleting the requirement from section (e) that copies accompany an original motion or response, as follows:

Rule 8-431. MOTIONS

. . .

(e) Filing~~; Copies~~

The original of a motion and any response shall be filed with the Clerk. ~~It shall be accompanied by (1) seven copies when filed in the Court of Appeals and (2) four copies when filed in the Court of Special Appeals, except as otherwise provided in these rules.~~

. . .

REPORTER'S NOTE

The Rules Committee proposes, at the request of the Clerks of the appellate courts, that Rule 8-431 be amended to remove the requirement that copies of motions and responses be filed. The Clerks have indicated that copies of motions and responses are no longer required.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 600 – DISPOSITION

AMEND Rule 8-603 by changing "information report" to "Civil Appeal Information Report" in subsection (a)(2), by deleting the requirement from section (b) requiring copies to accompany an original motion to dismiss or response, and by updating references to the Court of Appeals to the Supreme Court and references to the Court of Special Appeals to the Appellate Court, as follows:

Rule 8-603. MOTION TO DISMISS APPEAL

(a) Time for Filing

Unless included in the appellee's brief as permitted by section (c) of this Rule or by order of the appellate court, a motion to dismiss shall be filed within the following time periods:

(1) ten days after the record was or should have been filed pursuant to Rule 8-412 if the motion is based on subsection (b)(2), (c)(1), (c)(3), or (c)(4) of Rule 8-602;

(2) ten days after the ~~information report~~ Civil Appeal Information Report was or should have been filed pursuant to

Rule 8-205 if the motion is based on subsection (c)(2) of Rule 8-602;

(3) ten days after the appellant's brief was or should have been filed pursuant to Rule 8-502 if the motion is based on subsection (c)(5) or (6) of Rule 8-602;

(4) ten days after the case becomes moot, if the motion is based on subsection (c)(8) of Rule 8-602.

(b) Where Filed~~; Number of Copies~~

A motion to dismiss and any response shall be filed with the Clerk of the appellate court. ~~If the motion or response is not included in a brief as permitted by section (c) of this Rule, an original shall be filed together with three copies in the Court of Special Appeals or seven copies in the Court of Appeals.~~

...

(f) Separate Oral Argument

(1) Not Unless Directed by the Court

Oral argument on a motion to dismiss will not be held in advance of argument on the merits unless directed by order of the Court.

(2) Briefs

If the Court directs oral argument on a motion to dismiss in advance of argument on the merits, the parties, with permission of the Court, may file briefs in support of or in

opposition to the motion. Not later than one day before the date assigned for argument (A) an original shall be filed with the Clerk together with three copies in the ~~Court of Special Appeals~~ Appellate Court or seven copies in the ~~Court of Appeals~~ Supreme Court, and (B) a copy shall be delivered to other parties. Unless otherwise ordered by the Court, the briefs shall not exceed 2,600 words in the ~~Court of Special Appeals~~ Appellate Court or 6,500 words in the ~~Court of Appeals~~ Supreme Court.

(3) Time; Number of Counsel

Unless otherwise ordered by the Court, separate oral argument on a motion to dismiss is restricted to 15 minutes for each side, and only one attorney may argue for each side.

Source: This Rule is derived from former Rules 1036, 1037, 836, and 837.

REPORTER'S NOTE

Proposed amendments to Rule 8-603 (a)(2) are conforming amendments to proposed changes to Rule 8-205. References to "information report" are changed to "Civil Appeal Information Report" for clarity.

Amendments to section (b) are proposed, at the request of the Clerks of the appellate courts, to remove the requirement that copies of motions to dismiss and responses be filed. The Clerks have indicated that copies of motions and responses are no longer required.

References to the Court of Appeals and Court of Special Appeals are updated to the Supreme Court and Appellate Court, respectively, in subsection (f)(2).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 600 – DISPOSITION

AMEND Rule 8-605 by adding a reference to a Justice in section (a), by deleting from section (d) the requirement that copies accompany a motion for reconsideration or response filed, and by updating references to the Court of Appeals to the Supreme Court, references to the Court of Special Appeals to the Appellate Court, and references to the United States Supreme Court to the Supreme Court of the United States, as follows:

Rule 8-605. RECONSIDERATION

(a) Motion; Response; No Oral Argument

Except as otherwise provided in Rule 8-602 (e), a party may file pursuant to this Rule a motion for reconsideration of a decision by the Court that disposes of the appeal. The motion shall be filed (1) before issuance of the mandate or (2) within 30 days after the filing of the opinion of the Court, whichever is earlier. A response to a motion for reconsideration may not be filed unless requested on behalf of the Court by at least one Justice or judge who concurred in the opinion or order. Except to make changes in the opinion that do not change the decision

in the case, the Court ordinarily will not grant a motion for reconsideration unless it has requested a response. There shall be no oral argument on the motion.

(b) Content

A motion or response ordinarily shall be limited to addressing one or more of the following:

(1) whether the Court's opinion or order did not address a material factual or legal matter raised in the lower court and argued by a party in its submission to the Court, and if not raised or argued, a brief statement as to why it was not raised or argued;

(2) whether a material change in the law relevant to the appeal occurred after the case was submitted and was not addressed in the Court's opinion or order;

(3) whether the court's opinion determined the outcome of the appeal on an issue not raised in the briefs or proceedings below;

(4) whether there is a significant consequence of the decision that was not addressed in the opinion;

(5) if the motion or response is filed in the ~~Court of Appeals~~ Supreme Court, whether and how the Court's opinion or order is in material conflict with a decision of the ~~United States~~ Supreme Court of the United States or a decision of the ~~Court of Appeals~~ Supreme Court; or

(6) if the motion or response is filed in the ~~Court of Special Appeals~~ Appellate Court, whether and how the Court's opinion or order is in material conflict with a decision of the ~~United States~~ Supreme Court of the United States or the ~~Court of Appeals~~ Supreme Court or a reported opinion of the ~~Court of Special Appeals~~ Appellate Court.

. . .

(d) ~~Copies--~~Filing

~~(1) In Court of Special Appeals~~

~~In the Court of Special Appeals, the original of the motion and any response shall be filed together with four copies if the opinion of the Court was unreported or 13 copies if reported.~~

~~(2) In Court of Appeals~~

~~In the Court of Appeals, the original and seven copies of the motion and any response shall be filed.~~

A motion for reconsideration and any response shall be filed with the Clerk of the appellate court.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 8-605 (a) adds that a Justice who concurred in the opinion or order may request a response to a motion for reconsideration.

The Rules Committee, at the request of the Clerks of the appellate courts, proposes that section (d) of Rule 8-605 be amended to remove the requirement that copies of motions for reconsideration and responses be filed with the Court. The Clerks have indicated that copies of motions for reconsideration and responses are no longer required.

References to the Court of Appeals, the Court of Special Appeals, and the United States Supreme Court are updated to Supreme Court, Appellate Court, and Supreme Court of the United States, respectively.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 600 – DISPOSITION

AMEND Rule 8-602 by adding to subsection (c)(2) the requirement that an appellant receive notice pursuant to Rule 8-205 (e) prior to dismissal for failure to comply with that Rule, by adding references to Justice throughout the Rule, and by making stylistic changes, as follows:

Rule 8-602. DISMISSAL BY COURT

(a) On Motion or Court's Initiative

The court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative.

(b) When Mandatory

The ~~Court~~ court shall dismiss an appeal if:

(1) the appeal is not allowed by these Rules or other law; or

(2) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202.

(c) When Discretionary

The court may dismiss an appeal if:

(1) the appeal was not properly taken pursuant to Rule 8-201;

(2) the appellant has failed to comply with the requirements of Rule 8-205 after being served with a notice pursuant to Rule 8-205 (e);

(3) the record was not transmitted within the time prescribed by Rule 8-412, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court reporter, or the appellee;

(4) the contents of the record do not comply with Rule 8-413;

(5) a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502;

(6) the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or 8-504;

(7) the proper person was not substituted for the appellant pursuant to Rule 8-401; or

(8) the case has become moot.

Cross reference: Rule 8-501 (m).

(d) Determination by Court

An order of the Court dismissing an appeal or denying a motion to dismiss an appeal may be entered by the Chief Justice

or Chief Judge, an individual Justice or judge of the Court designated by the Chief Justice or Chief Judge, or the number of Justices or judges required by law to decide an appeal.

Cross reference: For the number of Justices or judges required by law to decide an appeal, see Maryland Constitution, Article IV, § 14 and Code, Courts Article, § 1-403.

(e) Reconsideration of Dismissal

(1) Motion for Reconsideration

No later than 20 days after the entry of an order dismissing an appeal, a party may file a motion for reconsideration of the dismissal.

(2) Number of Judges; Exception

A motion for reconsideration shall be determined by the number of Justices or judges required by law to decide an appeal, except that an individual Justice or judge who entered an order of dismissal may rescind the order and reinstate the appeal. The Justices or judges who determine the motion for reconsideration may include one or more of the Justices or judges who entered the order of dismissal.

Committee note: Although an individual Justice or judge who entered an order of dismissal may rescind the order and reinstate the appeal upon a timely filed motion for reconsideration, a motion for reconsideration of the dismissal may be denied only by the number of Justices or judges required by law to decide an appeal.

(3) Determination of Motion for Reconsideration

The Court shall rescind an order of dismissal if:

(A) the Court determines that the appeal should not have been dismissed;

(B) the appeal was dismissed pursuant to subsection (c)(2), (c)(3), or (c)(5) of this Rule and the Court finds that there was good cause for the failure to comply with the applicable subsection of the Rule; or

(C) the appeal was dismissed pursuant to subsection (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of this Rule and the Court finds that the interests of justice require reinstatement of the appeal.

(4) Reinstatement

If an order of dismissal is rescinded, the case shall be reinstated on the docket on the terms and conditions prescribed by the Court.

(5) No Further Reconsideration by the Court

If an order dismissing an appeal is reconsidered under this section, the party who filed the motion for reconsideration may not obtain further reconsideration of the motion.

(f) Judgment Entered after Notice Filed

A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

(g) Entry of Judgment not Directed Under Rule 2-602

(1) If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602 (b), the appellate court, as it finds appropriate, may (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative, or (D) if a final judgment was entered by the lower court after the notice of appeal was filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment.

(2) If, upon remand, the lower court decides not to direct entry of a final judgment pursuant to Rule 2-602 (b), the lower court shall promptly notify the appellate court of its decision and the appellate court shall dismiss the appeal. If, upon remand, the lower court determines that there is no just reason for delay and directs the entry of a final judgment pursuant to Rule 2-602 (b), the case shall be returned to the appellate court after entry of the judgment. The appellate court shall treat the notice of appeal as if filed on the date of entry of the judgment.

(3) If the appellate court enters a final judgment on its own initiative, it shall treat the notice of appeal as if filed

on the date of the entry of the judgment and proceed with the appeal.

Source: This Rule is in part derived from former Rules 1035 and 835 and in part new.

REPORTER'S NOTE

Proposed amendments to Rule 8-602 effectuate a change to the filing of Civil Appeal Information Reports suggested by the Clerks of the appellate courts.

Proposed amendments to Rule 8-205 require the Civil Appeal Information Report, when required, to accompany the notice of appeal filed in circuit court. New section (e) of that Rule requires the Clerk of the Appellate Court to notify the parties if an Information Report has not been filed and instruct the appellant to file the Information Report within 15 days or risk dismissal pursuant to Rule 8-602.

Rule 8-602 (c)(2) is amended to require that the appellant have been served with the notice required by Rule 8-205 (e).

References to Justices are added throughout the Rule. Stylistic changes are made in section (b) and subsection (g)(1).

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 – APPELLATE REVIEW

AMEND Rule 20-405 by deleting the requirement from section (c) that eight paper copies be filed in addition to an electronic submission, unless requested by the Court; by updating references to Rules 18-409 and 18-408 in subsection (c)(5) with references to Rules 18-437 and 18-436 (c), respectively; by adding new subsection (d)(2) concerning service of electronic submissions prior to docketing; by adding a Committee note following section (d); by replacing "Court of Appeals" with "Supreme Court" throughout this Rule; and by making stylistic changes, as follows:

Rule 20-405. OTHER SUBMISSIONS

. . .

(c) When Paper Copies Required from Persons Who File Electronically

An attorney or other registered user who files any of the following submissions electronically ~~also~~ shall file ~~eight~~ copies of the submission in paper form only upon request of the Court:

(1) a petition for certiorari to the ~~Court of Appeals~~ Supreme Court or a response to the petition;

(2) a petition to the ~~Court of Appeals~~ Supreme Court for a writ of mandamus, a writ of prohibition, or other extraordinary relief or a response to the petition;

(3) a motion for reconsideration filed pursuant to Rule 8-605 or a response to the motion;

(4) in an attorney grievance matter, (A) exceptions filed in the ~~Court of Appeals~~ Supreme Court pursuant to Rule 19-728 or a response to the exceptions, (B) recommendations concerning the appropriate disposition of a matter under Rule 19-740 (c) or a response to the recommendations, (C) a petition filed in the ~~Court of Appeals~~ Supreme Court under Rule 19-737, 19-738, 19-739 (b), or 19-752 or a response to the petition, (D) an application filed in the ~~Court of Appeals~~ Supreme Court pursuant to Rule 19-735 (a) or a response to the application;

(5) in a matter reaching the ~~Court of Appeals~~ Supreme Court from the Commission on Judicial Disabilities, (A) exceptions filed in the ~~Court of Appeals~~ Supreme Court to the findings, conclusions, and recommendation of the Commission pursuant to Rule ~~18-409~~ 18-437 or a response to the exceptions, or (B) an agreement to discipline by consent filed in the ~~Court of Appeals~~ Supreme Court pursuant to Rule ~~18-408 (l)~~ 18-436 (c); or

(6) any other petition filed in the ~~Court of Appeals~~ Supreme Court invoking the original jurisdiction of that Court or a response to the petition.

(d) Service of Submissions Filed Electronically

(1) Generally

Except as provided in subsection (d)(2) of this Rule, ~~Service~~ service of an electronically filed submission shall be made in accordance with Rule 20-205 (d).

(2) Prior to Docketing

Before the clerk has docketed the action in which the filing is made, service shall be made:

(A) in accordance with Rule 1-321 (a), coupled with service by electronic mail to counsel of record for all represented parties, unless the electronic service address is unknown and not identifiable through reasonable efforts;

(B) by electronic mail, with the recipient's consent; or

(C) if the filing relates to an action in which the parties may be served in accordance with Rule 20-205 (d), by attaching the filing to a notice of service that the party files and serves electronically in the Appellate Court or a circuit court.

Committee note: The MDEC system does not allow a party to serve other parties electronically when opening a case in the appellate courts, such as when a party files a petition for certiorari. Electronic service under subsection (d)(1) of this Rule is available once the clerk has docketed the case.

. . .

REPORTER'S NOTE

The Rules Committee, at the request of the Clerks of the appellate courts, proposes that section (c) of Rule 20-405 be amended to remove the requirement that eight paper copies of submissions submitted electronically be filed with the Court. The Clerks have informed the Rules Committee that paper copies of other submissions are no longer required. A housekeeping amendment is also proposed to subsection (c)(5) to correct out-of-date references to Rules 18-409 and 18-408 (l) with references to Rules 18-437 and 18-436 (c), respectively.

Section (d) is amended to address service of electronically filed submissions prior to a case being docketed by the clerk of the court. The existing version of section (d) is added to proposed new subsection (d)(1), and a provision is added to the general Rule excepting proposed new subsection (d)(2).

Proposed new subsection (d)(2) is added to provide guidance to the practitioner in cases where service of submissions filed electronically is needed but not able to be effectuated through MDEC, such as with petitions for certiorari or mandamus.

A new explanatory Committee note is proposed following section (d). Stylistic changes are also proposed throughout the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 – MARYLAND CODE OF JUDICIAL CONDUCT

RULES GOVERNING EXTRAJUDICIAL ACTIVITY

AMEND Rule 18-103.10 by deleting the cross reference following section (a), by adding new section (c) concerning administrative matters pertaining to a judge receiving payments relating to the judge's former practice of law, and by adding a cross reference following section (c), as follows:

Rule 18-103.10. PRACTICE OF LAW

(a) In General

Except as expressly allowed by this Rule, a judge shall not practice law.

~~Cross reference: See Code, Courts Article, § 1-203.~~

(b) Exceptions

(1) A judge may act self-represented in a matter involving the judge or the judge's interest and, if without compensation, may give legal advice to and draft or review documents for a member of the judge's family.

(2) To the extent expressly allowed by law and subject to other applicable provisions of this Code, a part-time judge of

an orphans' court who is an attorney may practice law, provided that:

(A) the judge shall not use the judge's judicial office to further the judge's success in the practice of law; and

(B) the judge shall not appear as an attorney in the court in which the judge serves.

Cross reference: See Code, Estates and Trusts Article, § 2-109 for restrictions on the practice of law by a part-time judge of an orphans' court.

(c) Agreement Relating to Former Law Practice

(1) Application

Section (c) of this Rule applies to a newly appointed or elected judge, other than a part-time judge of an orphans' court, who (A) is leaving a law practice in order to accept the judgeship and (B) is entitled by an agreement for the sale of the law practice or for the relinquishment of the judge's interest in the law practice to be compensated for the value of the judge's ownership interest in the law practice or for fees for services rendered by the judge prior to the judge's appointment or election but not yet collected.

(2) Required Agreement Regarding Deferred Payments

If any compensation to which a judge may be entitled under subsection (c)(1) of this Rule is to be paid after the judge takes the oath of office, the judge, prior to taking the oath, shall enter into an agreement with all prospective payors

that (A) subject to subsection (c)(3) of this Rule, requires all deferred payments to be made in a reasonably prompt manner and within five years, and (B) sets a fixed schedule for such payments to be made.

(3) Alteration of Schedule

The agreement shall acknowledge that, upon a finding that due to legitimate and extenuating circumstances full payment cannot be completed within a five-year period without significant and unavoidable harm to a party to the agreement, the parties, with the written approval of the Chief Justice of the Supreme Court, may extend the time for full payment beyond five years for a reasonable period.

(4) Filing Copy of Agreement

The judge shall file a copy of the fully executed agreement and any amendment to it approved under subsection (c)(3) of this Rule with the State Court Administrator.

Cross reference: See Code, Courts Article, § 1-203.

COMMENT

[1] A judge may act self-represented in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 18-101.3.

[2] Section (a) and subsection (b)(1) of this Rule limit the practice of law in a representative capacity but not in a self-represented capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other

dealings with legislative and other governmental bodies. In so doing, however, a judge must not abuse the prestige of office for any reason, including advancement of an interest of the judge or the judge's family. See Rules 18-102.4 (b) and 18-103.2 (c).

[3] This Rule allows a judge to give legal advice to, and draft legal documents for, a member of the judge's family. Except for a part-time Orphans' Court judge allowed to practice law, however, a judge must not receive any compensation from, or act as an advocate or negotiator for, a member of the judge's family in a legal matter.

Source: This Rule is derived in part from former Rule 3.10 of Rule 16-813 (2016) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 18-103.10 add new section (c) consisting of four subsections. The intent of the proposed revision is to establish procedures that a newly elected or appointed full-time judge must follow in order to receive payments relating to the judge's former law practice.

Subsection (c)(1) establishes that section (c) applies to a new full-time judge leaving the private practice of law who is eligible to receive compensation for the judge's ownership interest in the firm or payout of fees for services rendered.

Subsection (c)(2) requires that a judge who meets the criteria in subsection (c)(1) must, prior to taking the judicial oath, execute an agreement with the firm that establishes that all deferred payments called for in the agreement will be promptly paid in a reasonable manner within five years.

Subsection (c)(3) specifies that the term of the agreement required in subsection (c)(2) may, in certain circumstances and with the written consent of all parties and the Chief Justice of the Supreme Court, be extended beyond five years for a reasonable period of time.

Subsection (c)(4) requires the judge to file a copy of the fully executed agreement and any subsequent amendments with the State Court Administrator.

The cross reference following section (a) is also proposed to be moved to the end of new section (c).

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 200 – MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

RULES GOVERNING EXTRA-OFFICIAL ACTIVITY

AMEND Rule 18-203.10 by deleting existing section (c), by adding new section (c) concerning administrative matters pertaining to a judicial appointee receiving payments related to the judicial appointee's former practice of law, and by deleting the Committee note following section (c), as follows:

Rule 18-203.10. PRACTICE OF LAW

(a) In General

Except as expressly allowed by this Rule, a judicial appointee shall not practice law.

(b) Exceptions

(1) A judicial appointee may act self-represented in a matter involving the judicial appointee or the judicial appointee's interest and, if without compensation, may give legal advice to and draft or review documents for a member of the judicial appointee's family.

(2) To the extent not expressly prohibited by law or by the appointing authority and subject to other applicable provisions

of this Code, a part-time judicial appointee who is an attorney may practice law, provided that:

(A) the judicial appointee shall not use his or her position to further the judicial appointee's success in the practice of law; and

(B) the judicial appointee shall not practice or appear in the appointing court, as an individual in a matter involving the judicial appointee or the judicial appointee's interest.

~~(c) Prior to assuming official duties, a full-time judicial appointee shall enter into an agreement for payments, if any, relating to the judicial appointee's former law practice. A payment period limited to a maximum of five years is presumptively reasonable.~~

(c) Agreement Relating to Former Law Practice

(1) Application

Section (c) of this Rule applies to a newly appointed full-time judicial appointee, who (A) is leaving a law practice in order to accept the appointment and (B) is entitled by an agreement for the sale of the law practice or for the relinquishment of the judicial appointee's interest in the law practice to be compensated for the value of the ownership interest in the law practice or for fees for services rendered by the judicial appointee prior to the judicial appointee's appointment but not yet collected.

(2) Required Agreement Regarding Deferred Payments

If any compensation to which a judicial appointee may be entitled under subsection (c)(1) of this Rule is to be paid after the judicial appointee takes the oath of office or assumes official duties, the judicial appointee, before the earlier of taking the oath or assuming official duties, shall enter into an agreement with all prospective payors that (A) subject to subsection (c)(3) of this Rule, requires all deferred payments to be made in a reasonably prompt manner and within five years, and (B) sets a fixed schedule for such payments to be made.

(3) Alteration of Schedule

The agreement shall acknowledge that, upon a finding that due to legitimate and extenuating circumstances full payment cannot be completed within a five-year period without significant and unavoidable harm to a party to the agreement, the parties, with the written approval of the Chief Justice of the Supreme Court, may extend the time for full payment beyond five years for a reasonable period.

(4) Filing Copy of Agreement

The judicial appointee shall file a copy of the fully executed agreement and any amendment to it approved under subsection (c)(3) of this Rule with the State Court Administrator.

~~Committee note: Section (c) of this Rule does not appear in Rule 18-103.10, dealing with judges. A 2005 Administrative Order of the Chief Judge of the Court of Appeals contains a comparable provision pertaining to judges.~~

COMMENT

[1] A judicial appointee may act self-represented in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judicial appointee must not use the prestige of office to advance the judicial appointee's personal or family interests. See Rule 18-201.3.

Source: This Rule is derived in part from former Rule 3.10 of Rule 16-814 (2016) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 18-203.10 delete existing section (c) and replace it with a new section (c) consisting of four subsections. The intent of the proposed revision is to clarify the procedures that a newly appointed full-time judicial appointee must follow in order to receive payments relating to the appointee's former law practice.

Subsection (c)(1) establishes that section (c) applies to a newly appointed full-time judicial appointee leaving the private practice of law who is eligible to receive compensation for the judicial appointee's ownership interest in the firm or payout of fees for services rendered.

Subsection (c)(2) requires that a judicial appointee who meets the criteria in subsection (c)(1) must, prior to taking the oath or assuming official duties, whichever occurs first, execute an agreement with the firm that establishes that all deferred payments called for in the agreement will be promptly paid in a reasonable manner within five years.

Subsection (c)(3) specifies that the term of the agreement required in subsection (c)(2) may, in certain circumstances and with the written consent of all parties and the Chief Justice of the Supreme Court, be extended beyond five years for a reasonable period of time.

Subsection (c)(4) requires the judicial appointee to file a copy of the fully executed agreement and any subsequent amendments with the State Court Administrator.

The Committee note following section (c) is deleted as the proposed changes to Rule 18-103.10 render it obsolete.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

AMEND Rule 19-220 by removing from subsections (a)(2) and (a)(3) obsolete references in the definitions to the Maryland State Bar Association's Section of Legal Education and Admission to the Bar, by adding a provision to subsection (a)(2) requiring a clinical program to comply with certain standards, by adding provisions to subsection (c)(1) pertaining to the contents of the certification of students and requiring the certification to be signed by the law school dean, by adding a Committee note following subsection (c)(1), by adding new subsection (c)(2) pertaining to certifications in which the supervising attorney is not a Maryland attorney, by replacing "Court of Appeals" with "Supreme Court" and "Court of Special Appeals" with "Appellate Court" throughout this Rule, and by making stylistic changes, as follows:

Rule 19-220. LEGAL ASSISTANCE BY LAW STUDENTS

(a) Definitions

As used in this Rule, the following terms have the following meanings:

(1) Law School

"Law school" means a law school that meets the requirements of Rule 19-201 (a)(2).

(2) Clinical Program

"Clinical program" means a law school program for credit in which a student obtains experience in the operation of the legal system by engaging in the practice of law that is (A) ~~is~~ under the direction of a faculty member of the school and (B) ~~has been approved by the Section Council of the Section of Legal Education and Admission to the Bar of the Maryland State Bar Association, Inc.~~ in compliance with the applicable American Bar Association standards for clinical programs.

(3) Externship

"Externship" means a field placement for credit in a government or not-for-profit organization in which a law student obtains experience in the operation of the legal system by engaging in the practice of law, that is (A) ~~is~~ under the direction of a faculty member of a law school, (B) ~~is~~ in compliance with the applicable American Bar Association ~~standard~~ standards for study outside the classroom, and (C) ~~has been approved by the Section Council of the Section of Legal Education and Admission to the Bar of Maryland State Bar Association, Inc., and (D) is~~ not part of a clinical program of a law school.

(4) Supervising Attorney

"Supervising attorney" means an attorney who has been approved by the dean of the law school in which a law student is enrolled, or by the dean's designee, to supervise the student's practice of law under this Rule and who is either: (A) ~~an attorney who is~~ a member in good standing of the Bar of this State, or (B) an attorney who has been authorized to practice pursuant to Rule 19-218 and who certifies in writing to the Clerk of the ~~Court of Appeals~~ Supreme Court that the attorney has read and is familiar with the Maryland Attorneys' Rules of Professional Conduct, as well as the Maryland law and Rules relating to any particular area of law in which the individual intends to practice. ~~Service as a supervising attorney for a clinical program or externship must be approved by the dean of the law school in which the law student is enrolled or by the dean's designee.~~

Cross reference: See Rule 19-305.1 (5.1) for the responsibilities of a supervising attorney.

(b) Eligibility

A law student enrolled in a clinical program or externship is eligible to engage in the practice of law as provided in this Rule if the student:

(1) is enrolled in a law school;

(2) has read and is familiar with the Maryland Attorneys' Rules of Professional Conduct and the relevant Maryland Rules of Procedure; and

(3) has been certified in accordance with section (c) of this Rule.

(c) Certification

(1) Contents and Filing

The dean of the law school shall file the certification of a student with the Clerk of the ~~Court of Appeals~~ Supreme Court. The certification shall be signed by the dean and shall state:

(A) the name of the student and the clinical program or externship in which the student is enrolled;

(B) that the clinical program or externship is in compliance with the applicable American Bar Association standards and this Rule;

(C) ~~state~~ that the student is in good academic standing and has successfully completed legal studies in the law school amounting to the equivalent of at least one-third of the total credit hours required to complete the law school program~~. It also shall state its~~;

(D) the effective date of the student's authorization under this Rule; and

(E) the expiration date of the student's authorization, which shall be no later than one year after the effective date.

Committee note: The dean may file a certification that lists the names of more than one student.

(2) Attachment

If a student will be supervised by a supervising attorney who is not a member of the bar of this State, the dean shall attach to the certification required by subsection (c)(1) of this Rule a written certification of each such supervising attorney in compliance with subsection (a)(4)(B) of this Rule.

~~(2)~~(3) Withdrawal or Suspension

The dean may withdraw the certification of a student at any time by mailing a notice to that effect to the Clerk of the ~~Court of Appeals~~ Supreme Court. The certification shall be suspended automatically upon the issuance of an unfavorable report of the Character Committee made in connection with the student's application for admission to the Bar. Upon any reversal of the unfavorable report, the certification shall be reinstated.

(d) Practice

In connection with a clinical program or externship, a law student for whom a certification is in effect may appear in any trial court or the ~~Court of Special Appeals~~ Appellate Court, or before any administrative agency, and may otherwise engage in

the practice of law in Maryland, provided that the supervising attorney (1) is satisfied that the student is competent to perform the duties assigned, (2) assumes responsibility for the quality of the student's work, (3) directs and assists the student to the extent necessary, in the supervising attorney's professional judgment, to ensure that the student's participation is effective on behalf of the client the student represents, and (4) accompanies the student when the student appears in court or before an administrative agency. The law student shall neither ask for nor receive personal compensation of any kind for service rendered under this Rule, but may receive academic credit pursuant to the clinical program or externship.

Source: This Rule is derived from former Rule 19-217 (2018).

REPORTER'S NOTE

The Clerk of the Supreme Court recently discovered while processing a routine request to certify law students who wish to participate in a law school's Maryland Clinic that the Maryland State Bar Association ("MSBA") no longer has a Section of Legal Education and Admission to the Bar (the "Section") or a comparable section.

Rule 19-220 currently does not require an affirmative certification to the Supreme Court that a clinical program or externship adheres to applicable American Bar Association ("ABA") standards. The current definition of clinical program contains no reference to applicable ABA standards, although such reference is made in the definition of externship.

The following proposed revisions fill the void in this Rule left by the dissolution of the Section and the fact that clinical programs in Maryland are currently not required by Rule to adhere to ABA standards. They also require a law school dean to certify to the Supreme Court that clinical programs and externships adhere to the applicable ABA standards.

The references to the obsolete MSBA Section contained in the definitions in subsections (a)(2) and (a)(3) are deleted. A new provision is added to subsection (a)(2) requiring a clinical program to comply with the ABA standards for such programs. Subsection (a)(4) is proposed to be re-styled so that the provision requiring the dean's approval is moved from the end of the subsection to the beginning.

Section (c) is amended to clarify the information that will be required to be submitted in a law school dean's certification of the students participating in a clinical program or externship. Included in the certification of the students is the dean's certification that the clinical program or externship is in compliance with the applicable ABA standards and this Rule. Additionally, if a supervising attorney is not a Maryland attorney, proposed new subsection (c)(2) requires that the attorney's subsection (a)(4)(B) certification be attached to the dean's certification of the students. A Committee note is proposed to be added following subsection (c)(1) to clarify that the dean's certification may list more than one student. Stylistic changes are also proposed to section (c).

References throughout this Rule to the "Court of Appeals" and "Court of Special Appeals" have been replaced with references to the "Supreme Court" and the "Appellate Court" to conform the Rule with the recent amendments to the Maryland Constitution in Chapter 83, Maryland Laws 2021, approved by the voters in the November 2022 general election.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.14 by adding and deleting certain language and replacing the word "normal" with "typical" in section (a); by deleting and adding certain language to section (b); by replacing certain terms, deleting certain language, and adding additional language in Comment [1]; by replacing certain terms and adding language about clients with legal representatives in Comment [2]; by adding language to Comment [3] concerning the participation of third parties in communications; by replacing certain terms and adding language to Comment [4] concerning the involvement of a representative of the client; by replacing a term and adding language regarding advocacy for a client's position in Comment [5]; by replacing certain terms, deleting certain language, and adding language in Comment [6] regarding assessment of a client's capacities; by adding and deleting certain language in Comment [7]; by adding language concerning a client's rights and replacing a certain term in Comment [8]; and by making stylistic changes, as follows:

Rule 19-301.14. CLIENT WITH DIMINISHED CAPACITY (1.14)

(a) When a client has diminished capacity, ~~client's capacity to make adequately considered decisions in connection with a representation is diminished whether because of minority, mental impairment or for some other reason,~~ the attorney shall, as far as reasonably possible, maintain a ~~normal~~ typical client-attorney relationship with the client.

(b) When the attorney reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the attorney may take reasonably necessary protective action~~, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian~~ to address those risks.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 19-301.6 (1.6). When taking protective action pursuant to section (b) of this Rule, the attorney is impliedly authorized under Rule 19-301.6 (a) (1.6) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

COMMENT

[1] The ~~normal~~ typical client-attorney relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. See Rule 19-300.1. When the client ~~is a minor or suffers from a~~ has diminished ~~mental~~ capacity, however, maintaining the ~~ordinary~~ typical client-attorney relationship may not be possible in all respects. In particular, a severely incapacitated individual may have limited or no ~~power~~ ability to make legally binding decisions. Nevertheless, to an increasing extent the law recognizes intermediate degrees of ~~competence~~ capacity. Indeed, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. A client with diminished capacity also may have such ability with supported decision-making or other accommodations. For example, it is recognized that some individuals ~~of advanced age~~ can be quite capable of handling routine financial matters while needing special legal protection concerning ~~major~~ more complex transactions. In addition, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody or their property. Consideration of and, when appropriate, deference to these opinions are especially important in cases involving children in Child In Need of Assistance (CINA) and related Termination of Parental Rights (TPR) and adoption proceedings. With respect to these categories of cases, the Maryland Foster Care Court Improvement Project has prepared Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings. The Guidelines are included in an appendix to the Maryland Rules. Also included in an Appendix to the Maryland Rules are Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access, developed by the Maryland Judicial Conference Committee on Family Law. When representing a minor or alleged disabled person in a guardianship proceeding, the attorney should be familiar with and follow the Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship Proceedings, an appendix to Title 10 of the Maryland Rules.

[2] The fact that a client ~~suffers a disability~~ has diminished capacity or requires supports or accommodations does not ~~diminish~~ lessen the attorney's obligation to treat the client with attention and respect. Even if the individual has a

legal representative, the attorney should as far as possible accord the represented individual the status of client, particularly in maintaining communication. If an individual has a legal representative, such as a guardian, attorney in fact, or court-appointed attorney, the individual is not precluded from consulting with or retaining independent counsel to remove or modify the powers of that legal representative.

[3] The client may wish to have family members or other individuals participate in discussions with the attorney to aid and support them in their communication or decision-making. When necessary to assist in the representation, the presence of such individuals generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the attorney must keep the client's interests foremost and, except for protective action authorized under section (b) of this Rule, must look to the client, and not family members, to make decisions on the client's behalf. The attorney should afford the client the opportunity to communicate privately with the attorney without the presence and influence of others. See Rules 19-301.4 (1.4) and 19-301.6 (a) (1.6).

[4] If a legal representative has already been appointed for the client, the attorney should ordinarily look to the representative for decisions on behalf of the client, upon confirmation with the client of the representative's authority. However, where the client retains the right to carry out an act, or the attorney reasonably believes the client has the ability to make certain decisions, the attorney must respect and advocate for the client's position. For example, an individual under guardianship retains the right to challenge or modify the terms of the individual's guardianship. In matters involving a minor, whether the attorney should look to the parents as natural guardians may depend on the type of proceeding or matter in which the attorney is representing the minor. If the attorney represents the guardian as distinct from the ~~ward~~ individual under guardianship, and is aware that the guardian is acting adversely to the ~~ward's~~ interest of the individual under guardianship, the attorney may have an obligation to prevent or rectify the guardian's misconduct. See Rule 19-301.2 (d) (1.2).

Taking Protective Action - [5] If an attorney reasonably believes that a client is at risk of substantial physical, financial, or other harm unless action is taken, and that a ~~normal~~ typical client-attorney relationship cannot be maintained as provided in section (a) of this Rule because the client lacks sufficient capacity to communicate or to make adequately

considered decisions in connection with the representation, then section (b) of this Rule permits the attorney to take protective measures deemed necessary. Such measures could include: consulting with family members, delaying action if feasible to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney, or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the attorney should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections. In litigation involving the capacity of the client, such as a guardianship proceeding, the attorney should advocate for the client's expressed position when deciding what, if any, protective action should be taken. See Rule 19-301.2 (1.2).

[6] In determining the extent of the client's ~~diminished capacity~~ capacities, the attorney should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision; variability of state of mind and ability to ~~appreciate~~ evaluate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. ~~In appropriate circumstances, the attorney may seek guidance from an appropriate diagnostician.~~ The attorney also should review existing supports and services that enhance a client's decision-making, what factors impede such decision-making, and whether additional supports or accommodations are available or could be made available. Because the assessment of capacities involves more than a diagnosis, the attorney may seek guidance from an appropriate clinician with expertise in assessing the client's relevant cognitive and functional abilities. An attorney does not violate Rule 19-301.6 (1.6) by seeking an assessment provided that the engagement provides for appropriate confidentiality.

[7] ~~If~~ Except for cases where the attorney represents a minor or alleged disabled person in a guardianship proceeding, if a legal representative has not been appointed, the attorney should consider whether appointment of a guardian ad litem, conservator, or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's

benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that ~~minors or~~ individuals with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the attorney. In considering alternatives, however, the attorney should be aware of any law that requires the attorney to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition - [8] Disclosure of the client's diminished capacity could adversely affect the client's interests, which may include constitutional and legal rights. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 19-301.6 (1.6). Therefore, unless authorized to do so, the attorney may not disclose such information. When taking protective action pursuant to section (b) of this Rule, the attorney is impliedly authorized to make the necessary disclosures, even when the client directs the attorney to the contrary. Nevertheless, given the risks of disclosure, section (c) of this Rule limits what the attorney may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the attorney should determine whether it is likely that the ~~person~~ individual or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The attorney's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance - [9] In an emergency where the health, safety, or a financial interest of an individual with seriously diminished capacity is threatened with imminent and irreparable harm, an attorney may take legal action on behalf of such an individual even though the individual is unable to establish a client-attorney relationship or to make or express considered judgments about the matter, when the individual or another acting in good faith on that individual's behalf has consulted with the attorney. Even in such an emergency, however, the attorney should not act unless the attorney reasonably believes that the individual has no other attorney, agent, or other representative available. The attorney should

take legal action on behalf of the individual only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. An attorney who undertakes to represent ~~a~~ an individual in such an exigent situation has the same duties under these Rules as the attorney would with respect to a client.

[10] An attorney who acts on behalf of an individual with seriously diminished capacity in an emergency should keep the confidences of the individual as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The attorney should disclose to any tribunal involved and to any other attorney involved the nature of ~~his or her~~ the attorney's relationship with the individual. The attorney should take steps to regularize the relationship or implement other protective solutions as soon as possible.

Model Rules Comparison: Rule 19-301.14 (1.14) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of deleting certain language from sections (a) and (b), retaining elements of existing Maryland language ~~in~~ and further revising Comment [1], and further revising Comments ~~[5]~~[2] through [8] and [10].

REPORTER'S NOTE

Proposed amendments to Rule 19-301.14 (1.14) were recommended to the Rules Committee by a group of experienced practitioners. The group, convened by the Hon. Patrick Woodward under the auspices of the Committee, included Bar Counsel, a defense attorney in grievance matters, practitioners with experience representing minors in different proceedings, public defenders, a managing attorney from Disability Rights Maryland, and members of the Elder & Disability Law and Estate & Trust Law Sections of the Maryland State Bar Association. According to a Memorandum prepared by Judge Woodward and presented to the Committee, "The group's goals were 1) to update the rule to be consistent with current best practice and most recent science and literature around capacities and decisional supports and accommodations; 2) to address the misuse of the rule by practitioners to the disadvantage of the legal rights of clients; and 3) to provide additional guidance to attorneys whose clients may have diminished capacity, including

representation that is based on each client's abilities, the availability of supports or accommodations, and a focus on context rather than an actual or suspected diagnosis." Proposed amendments to Rule 1.14, as well as changes to Rules 19-301.0 and 19-301.4, address these goals.

The current language of Rule 1.14 (a) discusses a client's diminished capacity without fully setting forth a definition for the term. Accordingly, related amendments to Rule 19-301.0 propose a definition for "diminished capacity." See the Reporter's note to Rule 19-301.0 for further details. Proposed amendments to Rule 1.14 (a) therefore streamline the section by deleting certain language and substituting the newly defined term. The current language limiting the Rule's application to "decisions in connection with a representation" is also eliminated to ensure that the Rule is not too narrow in scope. Furthermore, the word "normal" in section (a) is replaced with "typical" when describing the client-attorney relationship. Use of the word "normal" in this context implies the existence of an "abnormal" relationship and may stigmatize people with disabilities or older adults. The District of Columbia's version of 1.14 also uses the phrase "typical client-lawyer relationship." See DC RPC Rule 1.14 (a).

Amendments to Rule 1.14 (b) include the addition of a comma after "taken" to clarify that three distinct elements must exist before an attorney may take protective action. Current section (b) states that consulting with individuals or entities that have the ability to take action to protect the client may be an example of reasonably necessary protective action. Proposed amendments delete this language from section (b). Examples of protective action are addressed in Comment [5] and leaving one example in the text of the Rule inappropriately suggests that it is a priority action. Similarly, the reference to seeking the appointment of a guardian ad litem, conservator, or guardian is deleted from section (b). The Rules Committee was informed that, despite the adoption of Rules and guidelines to clarify, this language has been misinterpreted to authorize attorneys representing alleged disabled persons in guardianship proceedings to consent to guardianship contrary to the views or rights of their clients, to disclose privileged information, and to impose the attorneys' own beliefs as to what is in the best interest of their clients. Deleting this language from section (b) would support the efforts of the Domestic Law Committee's Guardianship & Vulnerable Adults Workgroup to ensure that all respondents in guardianship proceedings receive zealous

representation. The deleted phrase is replaced with the phrase "to address the above risks."

The proposed amendments to Rule 1.14 also include several changes to the Comments. In Comment [1], amendments aim to make the comment more consistent with the proposed amendments to section (a) and the proposed definition of "diminished capacity" in Rule 1.0. For example, replacing the terms "normal" and "ordinary" with "typical" updates Comment [1] with person-centered language that is more respectful. A reference to Rule 19-300.1 is proposed to highlight the collection of roles and responsibilities encompassed in a typical attorney-client relationship. The reference to an individual having "no power" to make legally binding decisions is changed to "limited," recognizing that certain individuals with disabilities retain certain rights, even under guardianship. A proposed new sentence modernizes the Rule by recognizing the potential use of supported decision-making and accommodations to provide individuals the capacity to make and communicate decisions. A reference to the Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship Proceedings is added to the end of the Comment.

Amendments to Comment [2] also promote consistency with the other proposed amendments to Rules 1.14 and 1.0. A new sentence at the end of the comment clarifies that an individual with a legal representative is not precluded from consulting with or retaining independent counsel to remove or modify the powers of that representative. The Committee was informed that this language addresses the issue of individuals under guardianship being unable to retain counsel because attorneys do not believe they can provide or feel uncomfortable providing representation. Similar issues have arisen in cases of abusive agents acting under powers of attorney. The additional language in Comment [2] aims to educate the bench and bar to ensure that the appointment of a legal representative is not used to exploit or control an individual.

The proposed addition of language to the first sentence in Comment [3] recognizes the role of family members or other individuals in assisting a client with communication. The new sentence added to the end of Comment [3] provides guidance to attorneys to help eliminate potential influence by third parties. References to Rules 19-301.4 (1.4) and 19-301.6 (a) (1.6) highlight that confidentiality is not waived when a third party is required for communication as part of the

representation of the client, but attorneys should guard against undue influence or bias.

Additional language added to Comment [4] notes that the attorney should confirm a representative's authority with the client before looking to the representative for decisions on the client's behalf. The new language further acknowledges that an attorney must advocate for the client's position where the client retains certain rights and the attorney reasonably believes that the client has the ability to make certain decisions. The term "ward" is also replaced throughout the comment with the phrase "individual under guardianship."

Amendments to Comment [5] promote consistency of use of terms throughout the Rule and make stylistic changes. In addition, new language added to the end of Comment [5] reiterates that an attorney should advocate for a client's expressed position in litigation involving a client's capacity. A reference to Rule 19-301.2 (1.2) reinforces the obligations of an attorney in the context of litigation.

Comment [6] concerns an attorney's assessment of a client's capacity. Proposed amendments replace "diminished capacity" with the plural "capacities" to reinforce that the apparent capacity of an individual may be fluid based on the time and place of a conversation. The term "appreciate" is replaced with "evaluate" to mirror the proposed definition of "diminished capacity." Proposed new language in Comment [6] acknowledges that an assessment of capacities should include consideration of appropriate supports or accommodations. A sentence referencing the guidance of a diagnostician is deleted. Proposed new language acknowledges that a capacity assessment involves more than a diagnosis and addresses the ability of an attorney to seek guidance from a clinician. The proposed new final sentence of Comment [6] addresses concerns about confidentiality when seeking an assessment.

Proposed amendments to Comment [7] address concerns about the misuse of Rule 1.14 by attorneys representing respondents in guardianship matters. The new language clarifies that the attorney should consider whether appointment of a guardian ad litem, conservator, or guardian is necessary to protect the client's interests, except for cases where the attorney represents the respondent in a guardianship proceeding. Other amendments in Comment [7] are stylistic or proposed for consistent use of terms throughout the Rule.

Proposed language added to Comment [8] emphasizes that a client's interests may include constitutional and legal rights that may be impacted by disclosure of a client's diminished capacity. A stylistic amendment, replacing the term "person" with "individual" is also proposed.

Stylistic amendments are proposed in Comments [9] and [10].

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.0 by adding a definition of "diminished capacity" as new section (d); by re-lettering subsequent sections; by making stylistic changes in re-lettered sections (e), (i), (p), and (q); by adding new Comment [2] concerning the definition of diminished capacity; by renumbering subsequent Comments; by updating internal references; and by making stylistic changes, as follows:

Rule 19-301.0. TERMINOLOGY (1.0)

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that an attorney promptly transmits to the person confirming an oral informed consent. See section ~~(f)~~ (g) of this Rule for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then

the attorney must obtain or transmit it within a reasonable time thereafter.

(c) "Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(d) "Diminished capacity" means a decreased ability to receive and understand information, evaluate that information, or make or communicate decisions, even with appropriate supports or accommodations, whether because of minority, mental impairment, or some other reason.

~~(d)~~ (e) "Firm" or "law firm" denotes:

(1) an association of an attorney or attorneys in a law partnership, professional corporation, sole proprietorship or other association formed for the practice of law; or

(2) a legal services organization or the legal department of a corporation, government, or other organization.

~~(e)~~ (f) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

~~(f)~~ (g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the attorney has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

~~(g)~~ (h) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

~~(h)~~ (i) "Law firm~~.~~" ~~See Rule 19-301.0 (d) (1.0)~~ has the meaning stated in section (e) of this Rule.

~~(i)~~ (j) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

~~(j)~~ (k) "Reasonable" or "reasonably" when used in relation to conduct by an attorney denotes the conduct of a reasonably prudent and competent attorney.

~~(k)~~ (l) "Reasonable belief" or "reasonably believes" when used in reference to an attorney denotes that the attorney believes the matter in question and that the circumstances are such that the belief is reasonable.

~~(l)~~ (m) "Reasonably should know" when used in reference to an attorney denotes that an attorney of reasonable prudence and competence would ascertain the matter in question.

~~(m)~~ (n) "Screened" denotes the isolation of an attorney from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated attorney is obligated to protect under these Rules or other law.

~~(n)~~ (o) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

~~(o)~~ (p) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal decision directly affecting a party's interests in a particular matter.

~~(p)~~ (q) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video-recording, and e-mail. A "signed" writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

COMMENT

Confirmed in Writing - [1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, ~~then~~ the attorney must obtain or transmit it within a reasonable time thereafter. If an attorney has obtained a client's informed consent, the attorney may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Diminished Capacity – [2] When an attorney is presented with signs that a client is or appears to be struggling with the ability to receive, understand, or process information, a "decreased ability" may be present. Examples of factors that could impede an individual's decision-making include a minor's age, a temporary or permanent mental impairment, addiction, and physical or emotional trauma. In some cases, a decreased ability may be alleviated or eliminated by the use of supports and accommodations that maximize the ability to make, communicate, or effectuate the client's own decisions. Examples of supports and accommodations include effective communication devices or services, using assistance of appropriate third parties, providing an environment supportive of the client's abilities, and modifying the attorney's communication and counseling technique with the client. See generally Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. Diminished capacity can be situational in nature, varying in degree, or affect some but not all decisions. See Rule 19-301.14 (1.14).

Firm - ~~[2]~~[3] Whether two or more attorneys constitute a firm within section ~~(c)~~(e) of this Rule can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated attorneys are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of attorneys could be regarded as a firm for purposes of the Rule providing that the same attorney should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one attorney is attributed to another.

~~[3]~~[4] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Maryland Attorneys' Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly

employed. A similar question can arise concerning an unincorporated association and its local affiliates.

~~[4]~~[5] Similar questions can also arise with respect to attorneys in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud - ~~[5]~~[6] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent - ~~[6]~~[7] Many of the Maryland Attorneys' Rules of Professional Conduct require the attorney to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 19-301.2 (c) (1.2), 19-301.6 (a) (1.6), and 19-301.7 (b) (1.7). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The attorney must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct, and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for an attorney to advise a client or other person of facts or implications already known to the client or other person to seek the advice of another attorney. An attorney need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, an attorney who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in

making decisions of the type involved, and whether the client or other person is independently represented by another attorney in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by another attorney in giving the consent should be assumed to have given informed consent.

~~[7]~~[8] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, an attorney may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of the client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 19-301.7 (b) (1.7) and 19-301.9 (a) (1.9). For a definition of "writing" and "confirmed in writing," see sections ~~(p)~~(q) and (b) of this Rule. Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 19-301.5 (c) (1.5) and 19-301.8 (a) (1.8). For a definition of "signed," see section ~~(p)~~(q) of this Rule.

Screened - ~~[8]~~[9] This definition applies to situations where screening of a personally disqualified attorney is permitted to remove imputation of a conflict of interest under Rules 19-301.10 (1.10), 19-301.11 (1.11), 19-301.12 (1.12), or 19-301.18 (1.18).

~~[9]~~[10] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified attorney remains protected. The personally disqualified attorney should acknowledge the obligation not to communicate with any of the other attorneys in the firm with respect to the matter. Similarly, other attorneys in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified attorney with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce, and remind all affected attorneys of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened attorney to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened attorney relating to the matter, denial of access by

the screened attorney to firm files or other materials relating to the matter, and periodic reminders of the screen to the screened attorney and all other firm personnel.

~~[10]~~[11] In order to be effective, screening measures must be implemented as soon as practical after an attorney or law firm knows or reasonably should know that there is a need for screening.

Model Rules Comparison: Rule 19-301.0 (1.0) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for the retention of the definition of "consult" and "consultation," the addition of the definition of "diminished capacity," the addition of a cross reference to "law firm," and the appropriate redesignation of ~~subsections~~ sections.

REPORTER'S NOTE

Rule 19-301.0 (1.0) defines important terms used throughout the Attorneys' Rules of Professional Conduct. A group of experienced practitioners, as discussed in the Reporter's note to Rule 1.14, pointed out that the term "diminished capacity," essential to interpretation of Rule 19-301.14 (1.14), is not defined. Proposed amendments add a definition of "diminished capacity," update internal references, and make stylistic changes.

The proposed amendments generally define "diminished capacity" in new section (d). The proposed definition was derived, in part, from language about the basis for the appointment of a guardian in Section 301 of the Uniform Guardianship Conservatorship and Other Protective Proceedings Act ("UGCOPPA") and is consistent with guidance in the 2nd Edition of Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers (ABA & APA, 2021). § 301 (a)(1)(A) of the UGCOPPA states that a guardian may be appointed for an adult upon evidence that, among other factors, "the respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making." The proposed definition provides additional guidance by creating sequential questions for the

attorney to consider when dealing with a client. First, can the client receive and understand information? Second, can the client evaluate the information? Third, can the client make and communicate a decision? Overall, defining "diminished capacity" helps attorneys as they attempt, often without formal training, to assess the capacity of prospective and current clients in accordance with the Attorneys' Rules of Professional Conduct.

Current sections (d) through (p) are re-lettered as sections (e) through (q). Stylistic changes are made to re-lettered sections (e), (i), (p), and (q).

Proposed Comment [2] addresses the new definition of "diminished capacity." The Comment enumerates several factors that may impede an individual's decision-making and provides examples of supports and accommodations that may alleviate or eliminate such factors. The Comment also cites to the Americans with Disabilities Act and to related Rule 19-301.14 (1.14).

Current Comments [2] through [10] are renumbered as Comments [3] through [11]. Internal references within renumbered Comments [3] and [8] are updated to conform with the proposed amendments. Stylistic amendments are also made to Comments [1], [7], [9] and [10].

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.4 by updating references in subsection (a)(1) and Comment [5], by replacing the phrase "suffers from" with "has" in Comment [6], and by adding language to Comment [6] concerning communication facilitated by third parties, as follows:

Rule 19-301.4. COMMUNICATION (1.4)

(a) An attorney shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 19-301.0 ~~(f)~~ (g) (1.0), is required by these Rules;

(2) keep the client reasonably informed about the status of the matter;

(3) promptly comply with reasonable requests for information; and

(4) consult with the client about any relevant limitation on the attorney's conduct when the attorney knows that the client expects assistance not permitted by the Maryland Attorneys' Rules of Professional Conduct or other law.

(b) An attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COMMENT

[1] Reasonable communication between the attorney and the client is necessary for the client effectively to participate in the representation.

Communicating with Client - [2] If these Rules require that a particular decision about the representation be made by the client, subsection (a)(1) of this Rule requires that the attorney promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the attorney to take. For example, an attorney who receives from an opposing attorney an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the attorney to accept or to reject the offer. See Rule 19-301.2 (a) (1.2).

[3] Under Rule 19-301.2 (a) (1.2), an attorney is required, when appropriate, to consult with the client about the means to be used to accomplish the client's objectives. In some situations - depending on both the importance of the action under consideration and the feasibility of consulting with the client - this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the attorney to act without prior consultation. In such cases the attorney must nonetheless act reasonably to inform the client of actions the attorney has taken on the client's behalf. Additionally, subsection (a)(2) of this Rule requires that the attorney keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] An attorney's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, subsection (a)(3) of this Rule requires prompt compliance with the request, or if

a prompt response is not feasible, that the attorney, or a member of the attorney's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters - [5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, where there is time to explain a proposal made in a negotiation, the attorney should review all important provisions with the client before proceeding to an agreement. In litigation an attorney should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, an attorney ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the attorney should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when an attorney asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 19-301.0 ~~(f)~~ (g) (1.0).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or ~~suffers from~~ has diminished capacity. See Rule 19-301.14 (1.14). When a third party is used to facilitate communication as part of the representation, the attorney should guard against the possibility of bias or undue influence on the part of the facilitator. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the attorney should address communications to the appropriate officials of the organization. See Rule 19-301.13 (1.13). Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information - [7] In some circumstances, an attorney may be justified in delaying transmission of

information when the client would be likely to react imprudently to an immediate communication. Thus, an attorney might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. An attorney may not withhold information to serve the attorney's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to an attorney may not be disclosed to the client. Rule 19-303.4 (c) (3.4) directs compliance with such rules or orders.

Model Rules Comparison: Rule 19-301.4 (1.4) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for the deletion of Model Rule 1.4 (a)(2) and the redesignation of subsections as appropriate, ~~and~~ wording changes to Comment [3], and additions to Comment [6].

REPORTER'S NOTE

Rule 19-301.4 (1.4) concerns an attorney's communication. Amendments are proposed in conjunction with changes to Rules 19-301.14 (1.14) and 19-301.0 (1.0).

Changes to the references to Rule 19-301.0 (f) in subsection (a)(1) and Comment [5] are necessitated by the proposed amendments to Rule 19-301.0.

The majority of the changes proposed in Rule 1.4 are contained in Comment [6]. Proposed amendments replace the phrase "suffers from" with "has" in reference to diminished capacity to implement more respectful and person-centered language. A new sentence in Comment [6] notes that the attorney should guard against the possibility of bias or undue influence by a third party used to facilitate communication. The Rules Committee was informed that many complaints to Bar Counsel concern claims of undue influence by third parties, including translators and interpreters, over clients. The new sentence in Comment [6] highlights for attorneys the possibility of undue influence by third parties.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.6 by updating references in Comments [2] and [9], as follows:

Rule 19-301.6. CONFIDENTIALITY OF INFORMATION (1.6)

...

COMMENT

...

[2] A fundamental principle in the client-attorney relationship is that, in the absence of the client's informed consent, the attorney must not reveal information relating to the representation. See Rule 19-301.0 ~~(f)~~(g) (1.0) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-attorney relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the attorney even as to embarrassing or legally damaging subject matter. The attorney needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to attorneys in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, attorneys know that almost all clients follow the advice given, and the law is upheld.

...

[9] Subsection (b)(2) of this Rule is a limited exception to the rule of confidentiality that permits the attorney to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or a fraud, as defined in Rule 19-301.0 ~~(e)~~(f) (1.0), that is reasonably certain to result in substantial injury to the financial or property interests of

another and in furtherance of which the client has used or is using the attorney's services. Such a serious abuse of the client-attorney relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although subsection (b)(2) of this Rule does not require the attorney to reveal the client's misconduct, the attorney may not counsel or assist the client in conduct the attorney knows is criminal or fraudulent. See Rule 19-301.2 (d) (1.2). See also Rule 19-301.16 (1.16) with respect to the attorney's obligation or right to withdraw from the representation of the client in such circumstances. Where the client is an organization, the attorney should consult Rule 19-301.13 (b) (1.13).

...

REPORTER'S NOTE

Conforming amendments to Rule 19-301.6 (1.6) are necessitated by proposed amendments to Rule 19-301.0 (1.0). References in Comments [2] and [9] are updated to refer to the appropriate re-lettered sections of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.7 by updating references in Comments [1], [17], [18], and [20], as follows:

Rule 19-301.7. CONFLICT OF INTEREST--GENERAL RULE (1.7)

...

COMMENT

General Principles--[1] Loyalty and independent judgment are essential elements in the attorney's relationship to a client. Conflicts of interest can arise from the attorney's responsibilities to another client, a former client or a third person or from the attorney's own interests. For specific Rules regarding certain conflicts of interest, see Rule 19-301.8 (1.8). For former client conflicts of interest, see Rule 19-301.9 (1.9). For conflicts of interest involving prospective clients, see Rule 19-301.18 (1.18). For definitions of "informed consent" and "confirmed in writing," see Rule 19-301.0 ~~(f)~~ (g) and (b) (1.0).

...

[17] Subsection (b)(3) of this Rule describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this subsection requires examination of the context of the proceeding. Although this subsection does not preclude an attorney's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 19-301.0 ~~(o)~~ (p) (1.0)), such representation may be precluded by subsection (b)(1) of this Rule.

Informed Consent--[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 19-301.0 ~~(f)~~ (g) (1.0) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the attorney represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the attorney cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing--[20] Section (b) of this Rule requires the attorney to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the attorney promptly records and transmits to the client following an oral consent. See Rule 19-301.0 (b) (1.0). See also Rule 19-301.0 ~~(p)~~ (q) (1.0) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the attorney must obtain or transmit it within a reasonable time thereafter. See Rule 19-301.0 (b) (1.0). The requirement of a writing does not supplant the need in most cases for the attorney to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes

or ambiguities that might later occur in the absence of a writing.

...

REPORTER'S NOTE

Conforming amendments to Rule 19-301.7 (1.7) are necessitated by proposed amendments to Rule 19-301.0 (1.0). References in Comments [1], [17], [18], and [20] are updated to refer to the appropriate re-lettered sections of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.8 by updating references in Comments [2] and [13], as follows:

Rule 19-301.8. CONFLICT OF INTEREST; CURRENT CLIENTS; SPECIFIC RULES (1.8)

...

COMMENT

...

[2] Subsection (a)(1) of this Rule requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Subsection (a)(2) of this Rule requires that the client also be advised, in writing, of the desirability of seeking independent legal advice. It also requires that the client be given a reasonable opportunity to obtain such advice. Subsection (a)(3) of this Rule requires that the attorney obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the attorney's role. When necessary, the attorney should discuss both the material risks of the proposed transaction, including any risk presented by the attorney's involvement, and the existence of reasonably available alternatives and should explain why independent legal advice is desirable. See Rule 19-301.0 ~~(f)~~ (g) (1.0) (definition of informed consent).

...

Aggregate Settlements--[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single attorney. Under Rule 19-301.7 (1.7), this is one of the risks that should be discussed before undertaking the representation, as part of

the process of obtaining the clients' informed consent. In addition, Rule 19-301.2 (a) (1.2) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this section is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the attorney must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 19-301.0 ~~(f)~~ (g) (1.0) (definition of informed consent). Attorneys representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-attorney relationship with each member of the class; nevertheless, such attorneys must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

...

REPORTER'S NOTE

Conforming amendments to Rule 19-301.8 (1.8) are necessitated by proposed amendments to Rule 19-301.0 (1.0). References in Comments [2] and [13] are updated to refer to the appropriate re-lettered sections of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.9 by updating a reference in Comment [9], as follows:

Rule 19-301.9. DUTIES TO FORMER CLIENTS (1.9)

...

COMMENT

...

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under sections (a) and (b) of this Rule. See Rule 19-301.0 ~~(f)~~ (g) (1.0). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 19-301.7 (1.7). With regard to disqualification of a firm with which an attorney is or was formerly associated, see Rule 19-301.10 (1.10).

Model Rules Comparison: Rule 19-301.9 (1.9) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for wording changes to Comments [2] and [6].

REPORTER'S NOTE

A conforming amendment to Rule 19-301.9 (1.9) is necessitated by proposed amendments to Rule 19-301.0 (1.0). A reference in Comment [9] is updated to refer to the appropriate re-lettered section of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.10 by updating references in Comments [1], [4], [7], and [8] and by making a stylistic change, as follows:

Rule 19-301.10. IMPUTATION OF CONFLICT OF INTEREST - GENERAL RULE (1.10)

...

COMMENT

Definition of "Firm"--[1] A "firm" is defined in Rule 19-301.0 ~~(d)~~ (e) (1.0). Whether two or more attorneys constitute a firm within this definition can depend on the specific facts. See Rule 19-301.0 (1.0), Comments ~~[2]--[4]~~ [3] – [5]. An attorney is deemed associated with a firm if held out to be a partner, principal, associate, of counsel, or similar designation. An attorney ordinarily is not deemed associated with a firm if the attorney no longer practices law and is held out as retired or emeritus. An attorney employed for short periods as a contract attorney ordinarily is deemed associated with the firm only regarding matters to which the attorney gives substantive attention.

Principles of Imputed Disqualification--[2] The rule of imputed disqualification stated in section (a) gives effect to the principle of loyalty to the client as it applies to attorneys who practice in a law firm. Such situations can be considered from the premise that a firm of attorneys is essentially one attorney for purposes of the rules governing loyalty to the client, or from the premise that each attorney is vicariously bound by the obligation of loyalty owed by each attorney with whom the attorney is associated. Section (a) of this Rule operates only among the attorneys currently associated in a firm. When an attorney moves from one firm to another, the

situation is governed by Rules 19-301.9 (b) (1.9), 19-301.10 (b) (1.10) and 19-301.10 (c) (1.10).

[3] The rule in section (a) of this Rule does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one attorney in a firm could not effectively represent a given client because of strong political beliefs, for example, but that attorney will do no work on the case and the personal beliefs of the attorney will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by an attorney in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that attorney, the personal disqualification of the attorney would be imputed to all others in the firm.

[4] The rule in section (a) of this Rule also does not prohibit representation by others in the law firm where the individual prohibited from involvement in a matter is a non-attorney, such as a paralegal or legal secretary. Nor does section (a) of this Rule prohibit representation if the attorney is prohibited from acting because of events before the individual became an attorney, for example, work that the individual did while a law student. Such individuals, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the non-attorneys and the firm have a legal duty to protect. See Rules 19-301.0 ~~(m)~~(n) (1.0) and 19-305.3 (5.3).

[5] Rule 19-301.10 (b) (1.10) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by an attorney who formerly was associated with the firm. The Rule applies regardless of when the formerly associated attorney represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 19-301.7 (1.7). Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated attorney represented the client and any other attorney currently in the firm has material information protected by Rules 19-301.6 (1.6) and 19-301.9 (c) (1.9).

[6] Where the conditions of section (c) of this Rule are met, imputation is removed, and consent to the new

representation is not required. Attorneys should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify an attorney from pending litigation.

[7] Requirements for screening procedures are stated in Rule 19-301.0 ~~(m)~~(n) (1.0). Section (c) of this Rule does not prohibit the screened attorney from receiving a salary or partnership share established by prior independent agreement, but that attorney may not receive compensation directly related to the matter in which the attorney is disqualified.

[8] Rule 19-301.10 (d) (1.10) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 19-301.7 (1.7). The conditions stated in Rule 19-301.7 (1.7) require the attorney to determine that the representation is not prohibited by Rule 19-301.7 (b) (1.7) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 19-301.7 (1.7), Comment [22]. For a definition of informed consent, see Rule 19-301.0 ~~(f)~~(g) (1.0).

[9] Where an attorney has joined a private firm after having represented the government, imputation is governed by Rule 19-301.11 (b) and (c) (1.11), not this Rule. Under Rule 19-301.11 (d) (1.11), where an attorney represents the government after having served clients in private practice, nongovernmental employment, or in another government agency, former-client conflicts are not imputed to government attorneys associated with the individually disqualified attorney.

[10] Where an attorney is prohibited from engaging in certain transactions under Rule 19-301.8 (1.8), section (j) of that Rule, and not this Rule, determines whether that prohibition also applies to other attorneys associated in a firm with the personally prohibited attorney.

Model Rules Comparison: Rule 19-301.10 (1.10) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for changes to Comment [1] and to provide for screening in Rule 19-301.10 (c) (1.10) and Comments [6] and [7], with the appropriate redesignation of sections. These screening provisions, along with Rule 19-301.0 ~~(m)~~(n) (1.0) and Comments ~~[8] - [10]~~[9] – [11]

under Rule 19-301.0 (1.0) are substantially the same as former Rule 1.10 (b) (adopted January 1, 2000) with additional guidance on how to make screening effective.

REPORTER'S NOTE

Conforming amendments to Rule 19-301.10 (1.10) are necessitated by proposed amendments to Rule 19-301.0 (1.0). References in Comments [1], [4], [7], and [8] are updated to refer to the appropriate re-lettered subsections and renumbered Comments of Rule 1.0. A stylistic change is made in Comment [9].

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.11 by updating references in Comments [1] and [6], as follows:

Rule 19-301.11. SPECIAL CONFLICT OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES (1.11)

...

COMMENT

[1] An attorney who has served or is currently serving as a public officer or employee is personally subject to the Maryland Attorneys' Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 19-301.7 (1.7). In addition, such an attorney may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 19-301.0 ~~(f)~~ (g) (1.0) for the definition of informed consent.

...

[6] Sections (b) and (c) of this Rule contemplate a screening arrangement. See Rule 19-301.0 ~~(m)~~ (n) (1.0) (requirements for screening procedures). These sections do not prohibit an attorney from receiving a salary or partnership share established by prior independent agreement, but that attorney may not receive compensation directly relating the attorney's compensation to the fee in the matter in which the attorney is disqualified.

...

REPORTER'S NOTE

Conforming amendments to Rule 19-301.11 (1.11) are necessitated by proposed amendments to Rule 19-301.0 (1.0). References in Comments [1] and [6] are updated to refer to the appropriate re-lettered sections of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.12 by updating references in Comments [3] and [5] and by making stylistic changes, as follows:

Rule 19-301.12. FORMER JUDGE, ARBITRATOR, MEDIATOR, OR OTHER THIRD-PARTY NEUTRAL (1.12)

...

COMMENT

[1] This Rule generally parallels Rule 19-301.11 (1.11). The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as an attorney in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 19-301.11 (1.11).

[2] The term "adjudicative officer" includes such officials as judges pro tempore, referees, special magistrates, hearing officers, and other parajudicial officers, and also attorneys who serve as part-time judges. See Title 18, Chapter 200, Maryland Code of Conduct for Judicial Appointees.

[3] Like former judges, attorneys who have served as arbitrators, mediators, or other third-party neutrals may be asked to represent a client in a matter in which the attorney participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 19-301.0 ~~(f)~~ (g) and (b) (1.0). Other law or codes of ethics

governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 19-302.4 (2.4).

[4] Although attorneys who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 19-301.6 (1.6), they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, section (c) of this Rule provides that conflicts of the personally disqualified attorney will be imputed to other attorneys in a law firm unless the conditions of this section are met.

[5] Requirements for screening procedures are stated in Rule 19-301.0 ~~(m)~~ (n) (1.0). Subsection (c)(1) of this Rule does not prohibit the screened attorney from receiving a salary or partnership share established by prior independent agreement, but that attorney may not receive compensation directly related to the matter in which the attorney is disqualified.

...

REPORTER'S NOTE

Conforming amendments to Rule 19-301.12 (1.12) are necessitated by proposed amendments to Rule 19-301.0 (1.0). References in Comments [3] and [5] are updated to refer to the appropriate re-lettered sections of Rule 1.0. Stylistic changes are made in Comments [2] and [3].

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.17 by updating a reference in Comment [7], as follows:

Rule 19-301.17. SALE OF LAW PRACTICE (1.17)

...

COMMENT

...

Other Applicable Ethical Standards--[7] Attorneys participating in the sale of a law practice are subject to the ethical standards applicable to the involvement of another attorney in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 19-301.1 (1.1)); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts which can be agreed to (see Rule 19-301.7 (1.7) regarding conflicts and Rule 19-301.0 ~~(f)~~(g) (1.0) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 19-301.6 (1.6) and 19-301.9 (1.9)).

...

REPORTER'S NOTE

A conforming amendment to Rule 19-301.17 (1.17) is necessitated by proposed amendments to Rule 19-301.0 (1.0). A reference in Comment [7] is updated to refer to the appropriate re-lettered section of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-301.18 by updating references in Comments [5] and [7], as follows:

Rule 19-301.18. DUTIES TO PROSPECTIVE CLIENT (1.18)

...

COMMENT

...

[5] An attorney may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the attorney from representing a different client in the matter. See Rule 19-301.0 ~~(f)~~ (g) (1.0) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the attorney's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under section (c) of this Rule, the attorney is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the attorney has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under section (c) of this Rule, the prohibition in this Rule is imputed to other attorneys as provided in Rule 19-301.10 (1.10), but, under section (d) of this Rule, imputation may be avoided if the attorney obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if, under section (d) of this Rule, all disqualified attorneys are timely screened. See Rule 19-301.0 ~~(m)~~ (n) (1.0) (requirements for screening procedures). Section (d) of this Rule does not prohibit the screened attorney from receiving a salary or partnership share

established by prior independent agreement, but that attorney may not receive compensation directly related to the matter in which the attorney is disqualified.

...

REPORTER'S NOTE

Conforming amendments to Rule 19-301.18 (1.18) are necessitated by proposed amendments to Rule 19-301.0 (1.0). References in Comments [1] and [7] are updated to refer to the appropriate re-lettered sections of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-302.3 by updating a reference in Comment [5], as follows:

Rule 19-302.3. EVALUATION FOR USE BY THIRD PARTIES (2.3)

...

COMMENT

...

Obtaining Client's Informed Consent--[5] Information relating to an evaluation is protected by Rule 19-301.6 (1.6). In many situations, providing an evaluation to a third party poses no significant risk to the client; thus the attorney may be impliedly authorized to disclose information to carry out the representation. See Rule 19-301.6 (a) (1.6). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the attorney must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 19-301.6 (a) (1.6) and 19-301.0 ~~(f)~~ (g) (1.0).

...

REPORTER'S NOTE

A conforming amendment to Rule 19-302.3 (2.3) is necessitated by proposed amendments to Rule 19-301.0 (1.0). A reference in Comment [5] is updated to refer to the appropriate re-lettered section of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-302.4 by replacing "Court of Appeals" with "Supreme Court" in Comment [2], by updating a reference in Comment [5], and by making stylistic changes, as follows:

Rule 19-302.4. ATTORNEY SERVING AS THIRD-PARTY NEUTRAL (2.4)

...

COMMENT

...

[2] The role of a third-party neutral is not unique to attorneys, although, in some court-connected contexts, only attorneys are allowed to serve in this role or to handle certain types of cases. In performing this role, the attorney may be subject to court rules or other law that apply either to third-party neutrals generally or to attorneys serving as third-party neutrals. See Title 17 of the Md. Rules. Attorney-neutrals may also be subject to various codes of ethics, such as the Maryland Standards of Conduct for Mediators, Arbitrators and Other ADR Practitioners adopted by the Maryland ~~Court of Appeals~~ Supreme Court or the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association.

[3] Unlike non-attorneys who serve as third-party neutrals, attorneys serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and an attorney's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, section (b) of this Rule requires ~~a~~ an attorney-neutral to inform unrepresented parties that the attorney is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others,

particularly those who are using the process for the first time, more information may be required. Where appropriate, the attorney should inform unrepresented parties of the important differences between the attorney's role as third-party neutral and ~~a~~ an attorney's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this section will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

...

[5] Attorneys who represent clients in alternative dispute-resolution processes are governed by the Maryland Attorneys' Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 19-301.0 ~~(o)~~ (p) (1.0)), the attorney's duty of candor is governed by Rule 19-303.3 (3.3). Otherwise, the attorney's duty of candor toward both the third-party neutral and other parties is governed by Rule 19-304.1 (4.1).

Model Rules Comparison: This Rule, newly added to the Model Rules by the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, is substantially similar to the ABA Rule, with the exception of changing "will" to "may" in the fifth sentence of Comment [3].

REPORTER'S NOTE

A conforming amendment to Rule 19-302.4 (2.4) is necessitated by proposed amendments to Rule 19-301.0 (1.0). A reference in Comment [5] is updated to refer to the appropriate re-lettered section of Rule 1.0.

A reference to the Court of Appeals is changed to the Supreme Court in Comment [2]. Stylistic changes are made in Comment [3].

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-303.3 by updating references in Comments [1] and [13], as follows:

Rule 19-303.3. CANDOR TOWARD THE TRIBUNAL (3.3)

...

COMMENT

[1] This Rule governs the conduct of an attorney who is representing a client in the proceedings of a tribunal. See Rule 19-301.0 ~~(o)~~ (p) (1.0) for the definition of "tribunal." It also applies when the attorney is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, subsection (a)(4) of this Rule requires an attorney to take reasonable remedial measures if the attorney comes to know that a client who is testifying in a deposition has offered evidence that is false.

...

Constitutional Requirements--[13] The general rule--that an advocate must disclose the existence of perjury with respect to a material fact, even that of a client--applies to defense attorneys in criminal cases, as well as in other instances. However, the definition of the attorney's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to an attorney in criminal cases. Section (e) of this Rule is intended to protect from discipline the attorney who does not make disclosures mandated by sections (a) through (d) of this Rule only when the attorney acts in the "reasonable belief" that disclosure would jeopardize a constitutional right of the client. For a definition of "reasonable belief," see Rule 19-301.0 ~~(k)~~ (l) (1.0).

...

REPORTER'S NOTE

Conforming amendments to Rule 19-303.3 (3.3) are necessitated by proposed amendments to Rule 19-301.0 (1.0). References in Comments [1] and [13] are updated to refer to the appropriate re-lettered sections of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-303.7 by updating a reference in Comment [6], as follows:

Rule 19-303.7. ATTORNEY AS WITNESS (3.7)

...

COMMENT

...

Conflict of Interest--[6] In determining if it is permissible to act as advocate in a trial in which the attorney will be a necessary witness, the attorney must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 19-301.7 (1.7) or 19-301.9 (1.9). For example, if there is likely to be substantial conflict between the testimony of the client and that of the attorney, the representation involves a conflict of interest that requires compliance with Rule 19-301.7 (1.7). This would be true even though the attorney might not be prohibited by section (a) of this Rule from simultaneously serving as advocate and witness because the attorney's disqualification would work a substantial hardship on the client. Similarly, an attorney who might be permitted to simultaneously serve as an advocate and a witness by subsection (a)(3) of this Rule might be precluded from doing so by Rule 19-301.9 (1.9). The problem can arise whether the attorney is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the attorney involved. If there is a conflict of interest, the attorney must secure the client's informed consent, confirmed in writing. In some cases, the attorney will be precluded from seeking the client's consent. See Rule 19-301.7 (1.7). See Rule 19-301.0 (b) (1.0) for the definition of "confirmed in writing" and Rule 19-301.0 ~~(f)~~ (g) (1.0) for the definition of "informed consent."

...

REPORTER'S NOTE

A conforming amendment to Rule 19-303.7 (3.7) is necessitated by proposed amendments to Rule 19-301.0 (1.0). A reference in Comment [6] is updated to refer to the appropriate re-lettered section of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-303.9 by updating a reference in Comment [5], as follows:

Rule 19-303.9. ADVOCATE IN NON-ADJUDICATIVE PROCEEDINGS (3.9)

...

COMMENT

...

[5] When an attorney appears before a legislative body or administrative agency acting in an adjudicative capacity, the legislative body or administrative agency is considered a "Tribunal" for purposes of these Rules, and all Rules relating to representation by an attorney before a Tribunal apply. See Rule 19-301.0 ~~(o)~~ (p) (1.0) for the definition of "Tribunal."

Model Rules Comparison: Rule 19-303.9 (3.9) has been rewritten to retain elements of existing Maryland language, to incorporate some changes from the Ethics 2000 Amendments to the ABA Model Rules, and to incorporate further revisions.

REPORTER'S NOTE

A conforming amendment to Rule 19-303.9 (3.9) is necessitated by proposed amendments to Rule 19-301.0 (1.0). A reference in Comment [5] is updated to refer to the appropriate re-lettered section of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-305.1 by updating a reference in Comment [1], as follows:

Rule 19-305.1. RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY ATTORNEYS (5.1)

...

COMMENT

[1] Section (a) of this Rule applies to attorneys who have managerial authority over the professional work of a firm. See Rule 19-301.0 ~~(d)~~ (e) (1.0). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; attorneys having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and attorneys who have intermediate managerial responsibilities in a firm. Section (b) of this Rule applies to attorneys who have supervisory authority over the work of other attorneys in a firm.

...

REPORTER'S NOTE

A conforming amendment to Rule 19-305.1 (5.1) is necessitated by proposed amendments to Rule 19-301.0 (1.0). A reference in Comment [1] is updated to refer to the appropriate re-lettered section of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-308.3 by updating a reference in Comment [1], as follows:

Rule 19-308.3. REPORTING PROFESSIONAL MISCONDUCT (8.3)

...

COMMENT

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Maryland Attorneys' Rules of Professional Conduct. Attorneys have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense. For the definition of "knows" under these Rules, see Rule 19-301.0 ~~(g)~~ (h) (1.0).

...

REPORTER'S NOTE

A conforming amendment to Rule 19-308.3 (8.3) is necessitated by proposed amendments to Rule 19-301.0 (1.0). A reference in Comment [1] is updated to refer to the appropriate re-lettered section of Rule 1.0.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205.3 by adding language to subsection (f)(1)(B) and by updating a reference to the Chief Judge of the Court of Appeals to the Chief Justice of the Supreme Court, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

...

(f) Description of Custody Evaluation

(1) Mandatory Elements

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

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

(B) an interview of each party and any adult who performs a caretaking role for the child or lives in a household with the child or, if an adult who lives in a household with the child cannot be located despite best efforts by the custody evaluator, documentation or a description of the custody evaluator's

efforts to locate the adult and any information gained about the adult;

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

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

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

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

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

(G) screening for intimate partner violence;

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

(I) a custody and visitation recommendation based upon an analysis of the facts found or, if such a recommendation cannot be made, an explanation of why.

(2) Optional Elements — Generally

Subject to subsection (f)(4) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

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

(B) a review of additional records;

(C) employment verification;

(D) a mental health evaluation;

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

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

(3) Elements of Specific Issue Evaluation

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

(4) Optional Elements Requiring Court Approval

The custody evaluator or specific issue evaluation assessor may not include an optional element listed in subsection (f)(2)(D), (E), or (F) if any additional cost is to

be assessed for the element unless, after notice to the parties and an opportunity to object, the court approved inclusion of the element.

...

(n) Fees

(1) Applicability

Section (n) of this Rule does not apply to a circuit court for a county in which all custody evaluations are performed by court employees, free of charge to the litigants.

(2) Fee Schedules

Subject to the approval of the ~~Chief Judge of the Court of Appeals~~ Chief Justice of the Supreme Court, the county administrative judge of each circuit court shall develop and adopt maximum fee schedules for custody evaluations. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide custody evaluation services and the ability of litigants to pay for those services. A custody evaluator appointed by the court may not charge or accept a fee for custody evaluation services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal of the individual from all lists maintained pursuant to subsection (e)(1) of this Rule.

. . .

REPORTER'S NOTE

By Rules Order entered on February 9, 2022, amendments to Rule 9-205.3, initially proposed to the Rules Committee by the Custody Evaluation Workgroup, were adopted. Subsection (f)(1)(B) was amended to require that a custody evaluator interview each party, any adult who performs a caretaking role, and any adult who lives in a household with the child.

Concerns were brought to the attention of the Committee that the Rule is unclear about the required actions of an evaluator if an adult member of a household refuses to cooperate with the evaluation. Proposed amendments to Rule 9-205.3 add language to subsection (f)(1)(B) clarifying that, if an adult who lives in a household with the child cannot be located despite best efforts by the evaluator, documentation or a description of the evaluator's efforts to locate the adult and any information gained about the adult may be included in the evaluation in lieu of an interview.

A reference to the Chief Judge of the Court of Appeals is changed to Chief Justice of the Supreme Court in section (n).

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1500 – MARRIAGE OF MINORS

ADD new Rule 15-1501, as follows:

Rule 15-1501. PETITION FOR AUTHORIZATION FOR MINOR TO MARRY

(a) Applicability

This Rule applies to petitions filed pursuant to Code, Family Law Article, Title 5, Subtitle 2A for authorization for a minor who is 17 years old to marry.

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

(b) Petitioner

A petition for authorization for a minor to marry shall be filed by the minor seeking authorization who is 17 years old.

(c) Venue

A petition for authorization for a minor to marry shall be filed in the circuit court for the county in which the minor resides.

(d) Petition

(1) Contents of Petition

A petition for authorization for a minor to marry shall be titled "In the Matter of _____ for Authorization to

Marry." The petition shall comply with Rules 2-303 through 2-305 and shall set forth:

(A) The minor's full name, date of birth, address, and the length of time that the minor has resided at the stated address;

(B) The intended spouse's full name, date of birth, address, and the length of time that the intended spouse has resided at the stated address;

(C) A statement explaining (i) how the minor and the intended spouse met and (ii) how long the minor and the intended spouse have known each other;

(D) A statement explaining the minor's maturity, capacity for self-sufficiency, and capacity for self-support independent of the minor's parents, guardian, legal custodian, or intended spouse;

(E) The name and last known address of each living parent, guardian, or legal custodian of the minor;

(F) A statement of whether the minor and intended spouse are related by blood or marriage and, if so, in which degree of relationship; and

(G) A statement of whether the minor or intended spouse was married previously, and the date and place of each death or judicial determination that ended any former marriage.

(2) Exhibits

A petitioner for authorization for a minor to marry shall attach the following exhibits:

(A) A copy of any criminal record concerning either the minor or the intended spouse;

(B) A list of any cases previously filed between the minor and the intended spouse;

(C) A copy of any peace order or protective order issued against either the minor or the intended spouse;

(D) Any documentary evidence that the minor is mature and capable of self-sufficiency and self-support independent of the minor's parents, guardian, legal custodian, or intended spouse;

(E) A copy of any divorce decree or death certificate that supports the marital status of the minor or the intended spouse;

(F) A copy of (i) the minor's birth certificate and (ii) the intended spouse's birth certificate; and

(G) If applicable, a certificate from a licensed physician, licensed physician assistant, or certified nurse practitioner stating that the physician, physician assistant, or nurse practitioner has examined one of the parties to be married and has found that the party is pregnant or has given birth to a child.

Cross reference: See Code, Family Law Article, § 5-2A-01.

(e) Appointment of Attorney

(1) Generally

Upon the filing of a petition by a minor, the court shall appoint an attorney for the minor if unrepresented and may appoint a Child's Best Interest Attorney.

Cross reference: See Rule 19-301.8 (1.8).

(2) Eligibility for Appointment

To be eligible for appointment to represent the minor, an attorney shall:

(A) be a member in good standing of the Maryland Bar; and

(B) have experience in matters concerning family law.

(3) Fees

The court may order that reasonable and necessary fees of an appointed attorney be paid by the intended spouse, the minor, the minor's parents, guardians, or legal custodians, or as the court otherwise directs.

(f) Notice

(1) Notice of Hearing

Upon the filing of a petition under this Rule, the court shall set a hearing date. The court shall send to the minor a written notice of the date, time, and location of the hearing.

(2) Notice to Minor

Upon the filing of a petition for authorization for a minor to marry, the clerk shall issue notice to the minor containing the information required by Code, Family Law Article, § 5-2A-02.

(3) Notice to Parent, Guardian, or Legal Custodian

Upon the filing of a petition for authorization for a minor to marry, the clerk shall issue notice to each living parent, guardian, or legal custodian listed in the petition. The notice shall advise that the parent, guardian, or legal custodian has a right to support or oppose the petition.

(g) Service

(1) Service on Intended Spouse

The minor shall serve on the intended spouse:

(A) a copy of the petition and attached exhibits; and

(B) a copy of the notice of the hearing issued by the court pursuant to subsection (f)(1) of this Rule.

(2) Service on Parent, Guardian, or Legal Custodian

The minor shall serve on each living parent, guardian, or legal custodian:

(A) a copy of the petition and attached exhibits;

(B) a copy of the notice of the hearing issued pursuant to subsection (f)(1) of this Rule; and

(C) a copy of the notice issued pursuant to subsection (f)(3) of this Rule.

(3) Method and Proof of Service

The method of service pursuant to subsections (g)(1) and (g)(2) of this Rule shall be as provided in Rule 2-121. Proof

of service shall be filed in accordance with the method described in Rule 2-126.

(h) Hearing

(1) Hearing Required

The court may not act on a petition under this Rule without a hearing.

(2) In Camera Interview

The court shall conduct an in camera interview of the minor outside the presence of other parties, including the intended spouse and the minor's parents, guardian, or legal custodian.

(3) Applicable Presumptions

The presumptions applicable at a hearing on a petition for authorization for a minor to marry are governed by Code, Family Law Article, § 5-2A-03.

(4) Specific Issue Evaluation

To aid the court in evaluating the best interests of the minor, the court may order further proceedings, which may include a specific issue evaluation using the procedure set forth in Rule 9-205.3.

(i) Final Order

(1) Order Granting Petition for Authorization to Marry

(A) The court may grant a petition for authorization to marry if, after a hearing, the court makes written findings

that: (i) the minor is 17 years old; (ii) the minor seeks to marry voluntarily and free from force, coercion, and fraud; and (iii) the minor is mature and capable of self-sufficiency and self-support.

(B) The clerk shall provide to the minor a certified copy of the order granting authorization to marry.

(2) Order Denying Petition for Authorization to Marry

The court shall deny a petition for authorization to marry if, after a hearing, the court makes written findings that:

(A) Marriage is not in the best interest of the minor;

(B) The intended spouse at any time has been in a position of authority over, in a position of special trust with, or has had a professional relationship with the minor;

(C) The intended spouse has been convicted or adjudicated delinquent for (i) any crime against a minor, (ii) a crime of violence pursuant to Code, Criminal Law Article, § 14-101, (iii) a sexual crime under Code, Criminal Law Article, Title 3, Subtitle 3, or (iv) human trafficking under Code, Criminal Law Article, Title 3, Subtitle 11;

(D) The minor or intended spouse is pregnant or has a child with the other party that evidences that the minor was the victim of a sexual crime committed by the intended spouse; or

(E) A protective order or peace order was issued against the intended spouse, regardless of whether the minor was the person to be protected.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 175, 2022 Laws of Maryland (HB 83) modifies the process by which minors may marry. The law prohibits minors under the age of 17 from marrying and requires that a petition for authorization for a minor to marry be filed with a circuit court. New Subtitle 2A of the Family Law Article governs this process. The Subtitle provides that the Supreme Court may adopt Rules to implement the new provisions.

Proposed new Rule 15-1501 sets forth the process for a minor filing a petition for authorization to marry. The structure of the new Rule mirrors Rule 15-1302 concerning structured settlements and utilizes similar language.

Section (a) addresses the applicability of the Rule. A cross reference following section (a) points to the proposed new section of Rule 16-914 that states that an action for petition for authorization for a minor to marry is not subject to inspection. See the Reporter's note for Rule 16-914 for further information.

Section (b) sets forth who may file a petition for authorization for a minor to marry. The petitioner must be a minor who is 17 years old.

Section (c) states the proper venue for a petition for authorization to marry. The petition shall be filed in the circuit court for the county in which the minor resides.

Section (d) concerns the requirements for a petition for authorization for a minor to marry. Subsection (d)(1) lists the required contents of a petition. The majority of the content requirements are derived from new Code, Family Law Article, § 5-2A-01(b). In addition to the statutory requirements, the petitioner is required in subsection (b)(1)(F) to provide a

statement as to whether the minor and intended spouse are related by blood or marriage and, if so, in which degree of relationship. Subsection (b)(1)(G) further requires that the petition include a statement of whether the minor or intended spouse was married previously, and the date and place of each death or judicial determination that ended any former marriage.

The required attachments to a petition for authorization for a minor to marry are listed in subsection (d)(2). The listed attachments are derived in part from Code, Family Law Article, § 5-2A-01(b) and are in part new. Subsections (d)(2)(A) through (D) require that information about other cases involving the parties be attached. These required attachments are derived from Code, Family Law Article, § 5-2A-01(b)(4), requiring a petition to include a copy of any criminal record and any peace order or protective order concerning either party. Subsection (d)(2)(D) of Rule 15-1501 requires documentary evidence of the minor's maturity and self-sufficiency and is derived from § 5-2A-01(b)(5). Subsection (d)(2)(E) of Rule 15-1501 requires a copy of any divorce decree or death certificate to support the asserted marital status of a party. Subsection (d)(2)(F) requires a copy of the minor's birth certificate and the intended spouse's birth certificate to verify the ages of the parties. Subsection (d)(2)(G) requires the attachment of a certificate from a licensed physician, licensed physician assistant, or certified nurse practitioner stating that the physician, physician assistant, or nurse practitioner has examined one of the parties to be married and has found that the party is pregnant or has given birth to a child, if applicable. This requirement was derived from existing Code, Family Law Article, § 2-301.

A cross reference after section (d) cites to Code, Family Law Article, § 5-2A-01 containing the statutory requirements of a petition for authorization for a minor to marry.

Section (e) address the appointment of an attorney when a petition for authorization for a minor to marry is filed. Subsection (e)(1) contains the general statement that the court shall appoint an attorney to represent the minor as required by Code, Family Law Article, § 5-2A-02. The Rules Committee, noting that the statute does not specify appropriate court action if the minor is already represented when the petition is filed, determined that appointment of an attorney for the minor shall occur if the minor is unrepresented. In addition to appointing an attorney to represent the minor, the Committee determined that a Best Interest Attorney may provide beneficial

information to the court in some cases. Therefore, although not strictly required, subsection (e)(1) provides that the court also may appoint a Child's Best Interest Attorney. A cross reference to Rule 19-301.8 of the Attorneys' Rules of Professional Conduct highlights that an attorney must be aware of conflicts of interest. This cross reference aims to address concerns about the role of parents, guardians, or others when an attorney represents a minor.

Subsection (e)(2) lists the requirements of an attorney eligible for appointment in these cases. As noted in subsection (e)(2)(B), Code, Family Law Article, § 5-2A-02 requires that the appointed attorney have "family law experience."

Subsection (e)(3) addresses payment of fees for an appointed attorney. Payment may be made by the intended spouse, the minor, the minor's parents, guardians, or legal custodians, or as the court otherwise directs. The new statutory provisions do not state who is responsible for payment of attorney's fees for representation of the minor. The Fiscal and Policy Note (Revised) for Chapter 175 explains, "Although the bill does not specify who is responsible for compensating attorneys appointed by the court to represent petitioners, for purposes of this fiscal and policy note, it is assumed that circuit courts will generally be able to utilize *pro bono* attorneys." Subsection (e)(3) therefore grants discretion to the court in ordering payment of reasonable and necessary fees.

Section (f) lists the various notices issued when a petition for authorization for a minor to marry is filed. Pursuant to Code, Family Law Article, § 5-2A-02, an evidentiary hearing on the petition is required. Subsection (f)(1) of Rule 15-1501 requires that notice of the date, time, and location of the hearing be sent to the minor. Subsection (f)(2) requires the issuance of notice to the minor containing the information required by new Code, Family Law Article, § 5-2A-02. Subsection (f)(3) requires that certain notice be issued to each living parent, guardian, or legal custodian listed in the petition. The subsection implements the statutory requirement of § 5-2A-02 that the court notify each living parent, guardian, or legal custodian of the individual's right to support or oppose the petition.

Section (g) sets forth the service requirements for a petition for authorization for a minor to marry. Although the Rule indicates that the minor is responsible for service, the minor must be represented by an attorney, alleviating potential

concerns about a minor effectuating service. Subsection (g)(1) requires that a copy of the petition, attached exhibits, and the hearing notice be served on the intended spouse. Subsection (g)(2) requires that a copy of the petition, attached exhibits, the hearing notice, and the notice issued pursuant to Rule 15-1501 (f)(3) be served on each living parent, guardian, or legal custodian of the minor. Subsection (g)(3) specifies that personal service pursuant to Rule 2-121 is required and proof of service must be filed pursuant to Rule 2-126.

Section (h) concerns the conduct of a hearing on a petition for authorization for minor to marry. Subsection (h)(1) states the general hearing requirement as provided by Code, Family Law Article, § 5-2A-02. Subsection (h)(2) requires an in camera interview of the minor, implementing § 5-2A-03(a). Subsection (h)(3) references the applicable presumptions set forth in § 5-2A-03. The court may require additional information about the best interest of the minor to make an informed decision on the petition. Subsection (h)(4) addresses these concerns by noting that the court may order further proceedings, including a specific issue evaluation, to aid in evaluating the minor's best interest.

Section (i) concerns the issuance of a final order on the petition. Subsection (i)(1) addresses orders granting a petition for authorization for a minor to marry. Subsection (i)(1)(A) states that the court may enter an order authorizing the marriage after making findings consistent with Code, Family Law Article, § 5-2A-03(c). Subsection (i)(1)(B) indicates that the clerk must provide the minor with a certified copy of the order as required by § 5-2A-04.

Subsection (i)(2) addresses orders denying a petition for authorization for a minor to marry. Subsection (i)(2)(A) is derived from Code, Family Law Article § 5-2A-03(d) which provides that a court "may deny a petition" if the marriage is not in the petitioner's best interest. Subsections (i)(2)(B) through (F) of Rule 15-1501 are derived from Code, Family Law Article, § 5-2A-03(e) which states that the court "may not issue an order granting authorization to marry" if the court makes any of the listed findings. Although these two statutory sections use slightly different language, subsection (i)(2) combines § 5-2A-03(d) and (e) to state that a petition shall not be granted if any of the listed findings are made.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-914 by adding a provision pertaining to proceedings as to which all documentary case records are shielded to section (g) and by adding new section (q) pertaining to petitions for authorization for minor to marry, as follows:

Rule 16-914. CASE RECORDS--REQUIRED DENIAL OF INSPECTION--CERTAIN CATEGORIES

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

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

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

(A) adoption;

(B) guardianship; or

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

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

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

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

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

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

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

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

Committee note: Most filings in guardianship actions are likely to be permeated with financial, medical, or psychological information regarding the minor or disabled person that ordinarily would be sealed or shielded under other Rules. Rather than require custodians to pore through those documents to redact that kind of information, this Rule shields the documents themselves subject to Rule 16-934, which permits the court, on a motion and for good cause, to permit inspection of case records that otherwise are not subject to inspection. There may be circumstances in which that should be allowed. The guardian, of course, will have access to the case records and may need to share some of them with third persons in order to perform his or her duties, and this Rule is not intended to impede the guardian from doing so. Public access to the docket entries and to orders entered under Rule 10-108 will allow others to be informed of the guardianship and to seek additional access pursuant to Rule 16-934.

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

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

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

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

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

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

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

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

(4) Unless entered into evidence at a hearing or trial or otherwise ordered by the court, a case record pertaining to (i) a pen register or trace device applied for or ordered pursuant to Rule 4-601.1, (ii) an emergency order applied for or entered pursuant to Rule 4-602, (iii) the interception of wire or oral communications applied for or ordered pursuant to Rule 4-611, or

(iv) an order for electronic device location information applied for or entered pursuant to Rule 4-612.

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

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

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

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

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

(8) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3 (Criminal Records – Shielding).

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

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

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

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

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

(g) A transcript or an audio, video, or digital recording of (1) any court proceeding that was closed to the public pursuant to Rule, order of court, or other law or (2) a proceeding in an action as to which all documentary case records are required to be shielded.

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

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

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

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

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

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

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally

disabled individual, declared confidential by Code, Health-General Article, § 7-1003.

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

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

(k) A case record that:

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

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

(l) A case record that consists of a financial statement filed pursuant to Rule 9-202, a Child Support Guideline Worksheet filed pursuant to Rule 9-206, or a Joint Statement of Marital and Non-marital Property filed pursuant to Rule 9-207.
Cross reference: See also Rule 9-203.

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

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

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

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

(q) A petition for authorization for minor to marry action filed pursuant to Rule 15-1501.

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

REPORTER'S NOTE

Proposed amendments to Rule 16-914 (g) address a question raised by the Chief Judge of the District Court regarding access to audio recordings of proceedings as to which documentary records are shielded.

Juvenile proceedings are generally open to the public, unless the courtroom is closed by court order, but records in those cases are shielded from public access. Chapter 12, 2021 Laws of Maryland (SB 314 of the 2020 Regular Session), which was enacted after the Governor's veto was overridden, shields court records concerning a juvenile charged as an adult automatically under the Courts Article until after the time for filing a motion to transfer the matter to Juvenile Court has expired and no motion has been filed or a motion to transfer has been denied. The statute was designed to treat the records of a juvenile charged as an adult the same, in effect, as the records of a juvenile that is the subject of a delinquency petition until it is known whether the case will remain in the criminal court or be transferred to Juvenile Court.

The District Court Chief Judge raised a question regarding the availability of recordings of bail review hearings in the District Court for a juvenile charged as an adult. The bail review is a public proceeding, but all police and court records concerning the juvenile are shielded.

In the context of Title 16, the term "case records" appears to have been intended to refer to documentary records in a case and not the audio recording made pursuant to Title 16, Chapter 500. Rule 16-903 defines "case record" as "all or any portion of a paper, document, exhibit, order, notice, docket entry, or

other record, whether in paper, electronic, or other form, that is made, entered, filed with, or maintained by the clerk of a court in connection with an action or proceeding." The clerk does not maintain the audio recording and it is not part of the record of the case as defined in various trial Rules.

Rule 16-914 (g), however, does address access to a transcript or recording of a court proceeding that was closed to the public. Proposed amendments to Rule 16-914 (g) add "an action as to which all documentary case records are required to be shielded" to the provision. The intent of the amendments is to codify what appears to be existing practice as to access to audio of juvenile cases shielded pursuant to Rule 16-914 (a), petitions for relief from abuse shielded pursuant to Rule 16-914 (b) before the petition has been served or denied, and guardianship cases shielded pursuant to Rule 16-914 (e).

Proposed amendments to Rule 16-914 also add new section (q) in conjunction with proposed new Rule 15-1501 (Petition for Authorization for Minor to Marry). Due to the sensitive and personal contents of the file related to the minor, proposed amendments to Rule 16-914 shield a petition for authorization for a minor to marry from public inspection.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-502 by adding new subsection (g)(1)(B) related to provisions in Rule 16-914 (g), by deleting "section (g) of" from subsection (g)(3), by adding "that is subject to Rule 16-914 (g)" to subsection (g)(3), by updating references to the Chief Judge of the Court of Appeals to Chief Justice of the Supreme Court, and by making stylistic changes, as follows:

Rule 16-502. IN DISTRICT COURT

(a) Proceedings to be Recorded

All trials, hearings, testimony, and other judicial proceedings before a District Court Judge held either in a courtroom or by remote electronic means shall be recorded verbatim in their entirety, 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.

(b) Method of Recording

(1) Generally

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

(2) As Authorized By Chief Judge

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

(c) Control of and Direct Access to Electronic Recordings

(1) Under Control of District Court

Electronic recordings made pursuant to this Rule shall be under the control of the District Court.

(2) Restricted Access or Possession

No person other than an authorized Court official or employee of the District Court may have direct access to or possession of an official electronic recording.

(d) Filing of Recordings

Subject to section (c) of this Rule, audio recordings and any other recording authorized by the Chief Judge of the District Court shall be maintained by the court in accordance with the standards specified in an administrative order of the ~~Chief Judge of the Court of Appeals~~ Chief Justice of the Supreme Court.

Cross reference: See Rule 16-505 (a) providing for an administrative order of the ~~Chief Judge of the Court of Appeals~~ Chief Justice of the Supreme Court.

(e) Court Reporters and Persons Responsible for Recording Court Proceedings

Regulations and standards adopted by the ~~Chief Judge of the Court of Appeals~~ Chief Justice of the Supreme Court pursuant to Rule 16-505 (a) apply with respect to court reporters and persons responsible for recording court proceedings employed in or designated by the District Court.

(f) Safeguarding Confidential Portions of Proceedings

If a portion of a proceeding involves placing on the record matters that, on motion, the court finds should and lawfully may be shielded from public access and inspection, the court shall direct that appropriate safeguards be placed on that portion of the recording. The clerk shall create a log listing the recording references for the beginning and end of the safeguarded portions of the recording. The log shall be kept in the court file, and a copy of the log shall be kept with the recording.

(g) Right to Obtain Copy of Audio Recording

(1) Generally

Except (A) for proceedings closed pursuant to law, (B) as provided in Rule 16-914 (g), ~~(B)~~ (C) as otherwise provided in this Rule, or ~~(C)~~ (D) as ordered by the court, the authorized

custodian of an official audio recording shall make a copy of the audio recording available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

(2) Redacted Portions of Recording

Unless otherwise ordered by the District Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court directed be safeguarded pursuant to section (f) of this Rule are redacted from any copy of a recording made for a person under subsection (g)(1) of this Rule. Delivery of the copy may be delayed for a period reasonably required to accomplish the redaction.

(3) Exceptions

Upon written request and subject to the conditions in ~~section (g) of~~ this Rule, the custodian shall make available to the following persons a copy of the audio recording of proceedings that were closed pursuant to law, that is subject to Rule 16-914 (g), or from which safeguarded portions have not been redacted:

(A) the ~~Chief Judge of the Court of Appeals~~ Chief Justice of the Supreme Court;

(B) the Chief Judge of the District Court;

(C) the District Administrative Judge having supervisory authority over the court;

(D) the presiding judge in the case;

(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that (i) the transcript of unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (g)(3) of this Rule; and

(I) any other person authorized by the District Administrative Judge.

Source: This Rule is derived from former Rule 16-504 (2016).

REPORTER'S NOTE

Proposed amendments to Rule 16-502 (g) conform it to proposed amendments to Rule 16-914 (g) pertaining to audio of proceedings where all case records are shielded. Recordings governed by Rule 16-914 are added to subsections (g)(1) and (g)(3). See the Reporter's note to Rule 16-914 for more information.

References to the Chief Judge of the Court of Appeals are changed to Chief Justice of the Supreme Court throughout the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-504 by adding new subsections (h)(1)(C), (i)(1)(B), and (j)(1)(B) pertaining to recordings of proceedings that were subject to Rule 16-914 (g); by re-lettering subsection (h)(1)(C) as (h)(1)(D); by adding "proceedings that were subject to Rule 16-914 (g)" to subsection (h)(3); by updating references to the Chief Judge of the Court of Appeals, Court of Appeals, and Court of Special Appeals to their new names throughout; and by making stylistic changes, as follows:

Rule 16-504. ELECTRONIC RECORDING OF CIRCUIT COURT PROCEEDINGS

(a) Control of and Direct Access to Electronic Recordings

(1) Under Control of Court

Electronic recordings made pursuant to Rule 16-503 and this Rule are under the control of the court.

(2) Restricted Access or Possession

No person other than a duly authorized official or employee of the circuit court shall have direct access to or possession of an official electronic recording.

(b) Filing of Recordings

Audio and audio-video recordings shall be maintained by the court in accordance with standards specified in an administrative order of the ~~Chief Judge of the Court of Appeals~~ Chief Justice of the Supreme Court.

(c) Court Reporters

Regulations and standards adopted by the ~~Chief Judge of the Court of Appeals~~ Chief Justice of the Supreme Court under Rule 16-505 (a) apply with respect to court reporters employed in or designated by a circuit court.

(d) Presence of Court Reporters Not Necessary

Unless otherwise ordered by the court with the approval of the administrative judge if circuit court proceedings are recorded by audio or audio-video recording, which is otherwise effectively monitored, a court reporter need not be present in the courtroom.

(e) Identification Label

Whenever proceedings are recorded by electronic audio or audio-video means, the clerk or other designee of the court shall affix to each electronic audio or audio-video recording a label containing the following information:

(1) the name of the court;

(2) the docket reference of each proceeding included on the recording;

(3) the date on which each proceeding was recorded; and

(4) any other identifying letters, marks, or numbers necessary to identify each proceeding recorded.

(f) Information Required to be Kept

(1) Duty to Keep

The clerk or other designee of the court shall keep the following items:

(A) a proceeding log identifying (i) each proceeding recorded on an audio or audio-video recording, (ii) the time the proceeding commenced, (iii) the time of each recess, and (iv) the time the proceeding concluded;

(B) an exhibit list;

(C) a testimonial log listing (i) the recording references for the beginning and end of each witness's testimony and (ii) each portion of the audio or audio-video recording that has been safeguarded pursuant to section (g) of this Rule.

(2) Location of Exhibit List and Logs

The exhibit list shall be kept in the court file. The proceeding and testimonial logs shall be kept with the audio or audio-video recording.

(g) Safeguarding Confidential Portions of Proceeding

If a portion of a proceeding involves placing on the record matters that, on motion, the court finds should and

lawfully may be shielded from public access and inspection, the court shall direct that appropriate safeguards be placed on that portion of the recording. For audio and audio-video recordings, the clerk or other designee shall create a log listing the recording references for the beginning and end of the safeguarded portions of the recording.

(h) Right to Obtain Copy of Audio Recording

(1) Generally

Except (A) for proceedings closed pursuant to law, (B) as provided in Rule 16-914 (g), ~~(B)~~ (C) as otherwise provided in this Rule, or ~~(C)~~ (D) as ordered by the court, the authorized custodian of an audio recording shall make a copy of the audio recording or, if practicable, the audio portion of an audio-video recording, available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

(2) Redacted Portions of Recording

Unless otherwise ordered by the County Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court has directed be safeguarded pursuant to section (g) of this Rule are redacted from any copy of a recording made for a person under subsection

(h)(1) of this Rule. Delivery of the copy may be delayed for a period reasonably required to accomplish the redaction.

(3) Exceptions

Upon written request and subject to the conditions in section (h) of this Rule, the custodian shall make available to the following persons a copy of the audio recording or, if practicable, the audio portion of an audio-video recording of proceedings that were closed pursuant to law, proceedings that were subject to Rule 16-914 (g), or proceedings from which safeguarded portions have not been redacted:

(A) the ~~Chief Judge of the Court of Appeals~~ Chief Justice of the Supreme Court;

(B) the County Administrative Judge;

(C) the Circuit Administrative Judge having supervisory authority over the court;

(D) the presiding judge in the case;

(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of

the proceeding, provided that (i) the transcript of unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (h)(3) of this Rule; and

(I) any other person authorized by the County Administrative Judge.

(3) Violation of Restriction on Use

A willful violation of subsection (j)(2) of this Rule may be punished as a contempt.

(i) Right to Listen to and View Audio-Video Recording

(1) Generally

Except for (A) proceedings closed pursuant to law, (B) proceedings that were subject to Rule 16-914 (g), ~~or~~ (C) as otherwise provided in this Rule, or (D) as ordered by the Court, the authorized custodian of an audio-video recording, upon written request from any person, shall permit the person to listen to and view the recording at a time and place designated by the court, under the supervision of the custodian or other designated court official or employee.

Committee note: If space is limited and there are multiple requests, the custodian may require several persons to listen to

and view the recording at the same time or accommodate the requests in the order they were received.

(2) Safeguarded Portions of Recording

Unless otherwise ordered by the County Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court directed to be safeguarded pursuant to section (g) of this Rule are not available for listening or viewing. Access to the recording may be delayed for a period reasonably necessary to accomplish the safeguarding.

(3) Copying Prohibited

A person listening to and viewing the recording may not make a copy of it or have in his or her possession any device that, by itself or in combination with any other device, can make a copy. The custodian or other designated court official or employee shall take reasonable steps to enforce this prohibition, and any willful violation of the prohibition may be punished as a contempt.

(j) Right to Obtain Copy of Audio-Video Recording

(1) Who May Obtain Copy

Upon written request and subject to the conditions in this section, the custodian shall make available to the following persons a copy of the audio-video recording, including a recording of (A) proceedings that were closed pursuant to law,

(B) proceedings that were subject to Rule 16-914 (g), (C) or proceedings or from which safeguarded portions have not been redacted:

(A) the ~~Chief Judge of the Court of Appeals~~ Chief Justice of the Supreme Court;

(B) the County Administrative Judge;

(C) the Circuit Administrative Judge having supervisory authority over the court;

(D) the presiding judge in the case;

(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that, (i) if the recording is of a proceeding closed pursuant to law or from which safeguarded portions have not been redacted, the transcript, when filed with the court, shall be placed under seal or otherwise shielded by order of the court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded

portions shall be prepared for or delivered to any person not listed in subsection (j)(1) of this Rule;

(I) the ~~Court of Appeals or the Court of Special Appeals~~ Supreme Court or Appellate Court pursuant to Rule 8-415 (c); and

(J) any other person authorized by the County Administrative Judge.

(2) Restrictions on Use

Unless authorized by an order of court, a person who receives a copy of an electronic recording under this section shall not:

(A) make or cause to be made any additional copy of the recording; or

(B) except for a non-sequestered witness or an agent, employee, or consultant of the party or attorney, give or electronically transmit the recording to any person not entitled to it under subsection (j)(1) of this Rule.

(3) Violation of Restriction on Use

A willful violation of subsection (j)(2) of this Rule may be punished as a contempt.

Cross reference: See Rule 16-505 (a) concerning regulations and standards applicable to court reporting in all courts of the State.

Source: This Rule is derived ~~form~~ from former Rules 16-404, 16-405, and 16-406 (2016).

REPORTER'S NOTE

Proposed amendments to Rule 16-504 are conforming amendments to Rule 16-914 (g). See the Reporter's note to that Rule for more information.

Under the proposed amendment to Rule 16-914 (g), recordings of proceedings subject to that section are not available to the public. References to those proceedings are added to Rule 16-504 in subsections (h)(1)(C), (h)(3), (i)(1)(B), and (j)(1)(B).

References to the Chief Judge of the Court of Appeals, Court of Appeals, and Court of Special Appeals are updated to their new names throughout the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 4 – RESOLUTION OF DISPUTES

AMEND Rule 16-934 by separating current section (c) into subsections, by adding language to subsection (c)(2) requiring a petition to seal or otherwise limit inspection to be delivered to a judge immediately upon docketing, by deleting certain language from subsection (d)(2), by adding new subsection (d)(3) addressing service and hearing on a petition to preclude or limit inspection that is filed prior to service of the original pleading, by adding new subsection (d)(4) addressing a hearing on a petition to preclude or limit inspection that is filed after parties have been served in the underlying action, by adding new subsection (d)(5) addressing referral of a petition from an appellate court to a circuit court for an evidentiary hearing, by adding new subsection (d)(6) permitting extension of a temporary order precluding inspection, by deleting current subsection (d)(3) and creating new subsection (e)(1) with language from the deleted subsection, by renumbering current subsections (d)(1) through (d)(6) as subsections (d)(2) through (d)(7), by updating internal references in subsection (d)(6)(C),

by adding language to the Committee note after section (h), and by making stylistic changes, as follows:

Rule 16-934. CASE RECORDS – COURT ORDER DENYING OR PERMITTING INSPECTION NOT OTHERWISE AUTHORIZED BY RULE

(a) Purpose; Scope

(1) Generally

This Rule is intended to authorize a court to permit inspection of a case record that is not otherwise subject to inspection, or to deny inspection of a case record that otherwise would be subject to inspection, if the court finds, by clear and convincing evidence, (1) a compelling reason under the particular circumstances to enter such an order, and (2) that no substantial harm will come from such an order.

(2) Exception

This Rule does not apply to, and does not authorize a court to permit inspection of, a case record where inspection would be contrary to the United States or Maryland Constitution, a Federal statute or regulation that has the force of law, a Maryland statute other than the PIA, or to a judicial record that is not subject to inspection under Rule 16-911 (c), (d), (e), or (f).

(b) Petition

(1) A party to an action in which a case record is filed, and a person who is the subject of or is specifically identified in a case record may file in the action a petition:

(A) to seal or otherwise limit inspection of a case record filed in that action that is not otherwise shielded from inspection under the Rules in this Chapter or Title 20 or other applicable law; or

(B) subject to subsection (a)(2) of this Rule, to permit inspection of a case record filed in that action that is not otherwise subject to inspection under the Rules in this Chapter or Title 20 or other applicable law.

(2) Except as provided in subsection (b)(3) of this Rule, the petition shall be filed with the court in which the case record is filed and shall be served on:

(A) all parties to the action in which the case record was filed; and

(B) each identifiable person who is the subject of the case record.

(3) A petition to shield a judicial record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 shall be filed in the county where the judgment of conviction was entered and shall state that the petition is filed pursuant to this Rule and that it should be shielded. The petition shall be shielded,

subject to further order of the court. Service shall be made, and proceedings shall be held as directed in that Subtitle.

(4) The petition shall be under oath and shall state with particularity the circumstances that justify an order under this Rule. Unless the court orders otherwise, the petition and any response to it shall be shielded.

(c) Shielding of Record Upon Petition

(1) ~~This section~~ Section (c) of this Rule does not apply to a petition filed pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 or a submission pursuant to Rule 20-201.1 (d).

(2) Upon the filing of a petition to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue. Immediately upon docketing, a petition to seal or otherwise limit inspection of a case record shall be delivered to a judge for consideration.

(d) Temporary Order Precluding or Limiting Inspection

(1) The court shall consider a petition to preclude or limit inspection filed under this Rule on an expedited basis.

(2) ~~In conformance with the provisions of Rule 15-504 (Temporary Restraining Order), the~~ The court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other statement under oath that (A) there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection pursuant to this Rule, and (B) immediate, substantial, and irreparable harm will result to the person seeking the relief or on whose behalf the relief is sought if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.

(3) If a petition to preclude or limit inspection is filed by a plaintiff prior to service of the original pleading, the petition to preclude or limit inspection shall be served on the defendant with the original pleading. The court shall hold a hearing on the petition to preclude or limit inspection within 15 days after the earlier of (A) filing of proof of service of the original pleading or (B) filing of the first responsive pleading by the defendant.

(4) If a petition to preclude or limit inspection is filed after all parties have been served in the underlying action, the court shall hold a hearing on the petition within 15 days after the petition to preclude or limit inspection is filed.

(5) If a petition to preclude or limit inspection is filed in an appellate court and the appellate court determines that an evidentiary hearing is needed pursuant to this Rule, the appellate court may refer the matter to a judge of a circuit court to conduct the evidentiary hearing.

(6) For good cause shown, a temporary order precluding or limiting inspection may be extended for up to 30 days after service under subsection (d)(3) or filing under subsection (d)(4) of this Rule.

~~(3) A court may not enter an order permitting inspection of a case record that is not otherwise subject to inspection under the Rules in this Chapter in the absence of an opportunity for a full adversary hearing.~~

(e) Final Order

(1) A court may not enter an order permitting inspection of a case record that is not otherwise subject to inspection under the Rules in this Chapter in the absence of an opportunity for a full adversary hearing.

~~(1)~~(2) After an opportunity for a full adversary hearing, the court shall enter a final order:

(A) precluding or limiting inspection of a case record that is not otherwise shielded from inspection under the Rules in this Chapter;

(B) permitting inspection, under such conditions and limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under the Rules in this Chapter; or

(C) denying the petition.

~~(2)~~(3) A final order shall include or be accompanied by findings regarding the interest sought to be protected by the order.

~~(3)~~(4) A final order that precludes or limits inspection of a case record shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected by the order.

~~(4)~~(5) A final order granting relief under Code, Criminal Procedure Article, Title 10, Subtitle 3 shall include the applicable provisions of the statute. If the order pertains to a judgment of conviction in (A) an appeal from a judgment of the District Court or (B) an action that was removed pursuant to Rule 4-254, the order shall apply to the records of each court in which there is a record of the action, and the clerk shall transmit a copy of the order to each such court.

~~(5)~~(6) In determining whether to permit or deny inspection, the court shall determine, upon clear and convincing evidence:

(A) whether a special and compelling reason exists to preclude, limit, or permit inspection of the particular case record, and, if so, a description of that reason;

(B) whether any substantial harm is likely to come from the order and, if so, the nature of that harm; and

(C) if the petition seeks to permit inspection of a case record that has been previously sealed by court order under subsection ~~(e)(1)(A)~~ (e)(2)(A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections ~~(e)(2), (3), and (5)(A)~~ (e)(3), (4), and (6)(A) of this Rule.

~~(6)~~ (7) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order within 30 days after a hearing was held or waived.

(f) Filing of Order

A copy of any temporary or final order shall be filed in the action in which the case record in question was filed and, except as otherwise provided by law, shall be subject to public inspection.

(g) Non-Exclusive Remedy

This Rule does not preclude a court from exercising its authority under other law to enter an appropriate order that seals, shields, or limits inspection of a case record or that makes a case record subject to inspection.

(h) Request to Shield Certain Information

(1) ~~This subsection~~ Section (h) of this Rule applies to a request, filed by an individual entitled to make it, (A) to shield information in a case record that is subject to shielding under Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) or (B) in a criminal or juvenile delinquency action, to shield the address or telephone number of a victim, victim's representative or witness.

(2) The request shall be in writing and filed with the person having custody of the record.

(3) If the request is granted, the custodian shall deny inspection of the shielded information. The shield shall remain in effect until terminated or modified by order of court. Any person aggrieved by the custodian's decision may file a petition under section (b) of this Rule.

Committee note: If a court or District Court Commissioner grants a request to shield information under section (h) of this Rule, no adversary hearing is held unless a hearing is required by statute or a person seeking inspection of the shielded information files a petition under section (b) of this Rule.

Source: This Rule is derived from former Rule 16-912 (2019).

REPORTER'S NOTE

Concerns about Rule 16-934, specifically the court's ability to shield information for only a limited time before

service is completed in an underlying action, were brought to the attention of the Rules Committee by Judge Robert Taylor, Jr., of the Circuit Court for Baltimore City. Current Rule 16-934 (d)(2) permits the issuance of a temporary shielding order *ex parte* pursuant to Rule 15-504 governing temporary restraining orders. A temporary shielding order may therefore be in effect for ten days and be reissued, if a motion to extend time is filed, for one additional ten-day period. Judge Taylor noted that this shielding procedure proves unworkable if the responding party has not yet been served in the underlying action. Particularly in the family law context, the court receives numerous petitions from self-represented litigants seeking to shield their addresses based on claims of physical abuse or threats from the other party. The Committee agreed that serving an opposing party with original pleadings within twenty days is often impracticable and the current Rule does not permit longer shielding while a party works to complete service. As a result, crucial confidential information such as mailing addresses or other contact information may become public and available to an opposing party.

Proposed amendments to Rule 16-934 (c) separate the section concerning the shielding of records upon petition into subsections (c)(1) and (c)(2). A stylistic amendment is proposed in new subsection (c)(1). Concerns were raised that petitions to shield or limit inspection of a case record may not reach a judge for consideration before expiration of the five-day period during which the clerk may unilaterally shield the information. A new sentence added to the end of subsection (c)(2) clarifies that a petition to seal or otherwise limit inspection of a case record shall be delivered to a judge immediately upon docketing.

Several amendments are proposed in section (d) addressing temporary orders to preclude or limit inspection of a case record. A stylistic amendment adds clarifying language to subsection (d)(1). The proposed deletion of language in subsection (d)(2) eliminates the reference to Rule 15-504. This amendment makes clear that the time limitations for temporary restraining orders pursuant to Rule 15-504 are no longer applicable to Rule 16-934.

New subsection (d)(3) states that if a petition to preclude or limit inspection is filed prior to service of the original pleading, the petition shall be served with the original pleading. The subsection further provides that a hearing shall be held on the petition within 15 days after filing of proof of

service of the original pleading or filing of the defendant's first responsive pleading, whichever is earliest. New subsection (d)(4) states that a hearing shall be held within 15 days if a petition to preclude or limit inspection is filed after service has been made in the underlying action.

The Committee also considered concerns about conducting adversarial evidentiary hearings in the appellate courts. New subsection (d)(5) permits referral of a petition by an appellate court to a circuit court for hearing if an evidentiary hearing is needed. New subsection (d)(6) permits the extension of a temporary shielding order for up to 30 days for good cause shown. Together, these new subsections account for the appropriate procedure if a petition is filed before or after service in the underlying action and create a more reasonable time frame for temporarily shielding information.

Current subsection (d)(3) states that a hearing is required before an order permits inspection of a case record not otherwise subject to inspection. However, section (d) concerns temporary orders precluding or limiting inspection. Because current subsection (d)(3) does not appear to fit within that category and instead addresses an order *permitting* inspection, proposed amendments delete current subsection (d)(3). New subsection (e)(1) is created with the language from deleted subsection (d)(3). Subsequent subsections are renumbered accordingly.

A stylistic amendment is proposed in subsection (h)(1). In addition, the phrase "a hearing is required by statute" is proposed to be added to the Committee note after section (h). Under Code, Courts Article, § 3-1510(e)(1)(ii) or Family Law Article, § 4-512(d)(1), a hearing shall be scheduled on the request to shield if the initial petition for a peace or protective order was denied or dismissed. Therefore, the addition to the Committee note acknowledges that a hearing may be needed if required by statute.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-345 by adding a citation to the cross reference after section (f), as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Cross reference: See *State v. Brown*, 464 Md. 237 (2019), concerning an evident mistake in the announcement of a sentence.

(d) Desertion and Non-Support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the

sentence or place the defendant on probation under the terms and conditions the court imposes.

(e) Modification Upon Motion

(1) Generally

Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Cross reference: Rule 7-112 (b).

Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health - General Article, § 8-507.

(2) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that

states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(3) Inquiry by Court

Before considering a motion under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, § 11-403(e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

(f) Open Court Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present at the hearing. No hearing shall be held on a motion to modify or reduce the

sentence until the court determines that the notice requirements in subsection (e)(2) of this Rule have been satisfied. If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Cross reference: See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto. See Code, Criminal Procedure Article, § 10-105.3 regarding an application for resentencing by a person incarcerated after a conviction of possession of cannabis under Code, Criminal Law Article, § 5-601.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

REPORTER'S NOTE

Chapter 26, 2022 Laws of Maryland (HB 837) amends and adds new provisions to the Code related to certain offenses involving cannabis. A new section of the Criminal Procedure Article, § 10-105.3, details the procedure for an application for resentencing filed by a person incarcerated after having been convicted of possession of cannabis under Code, Criminal Law Article, § 5-601. Because voters of the State ratified the constitutional amendments of Chapter 45 of the Acts of the General Assembly of 2022 (HB 1), Code, Criminal Procedure Article, § 10-105.3 became effective on January 1, 2023.

An addition to the cross reference after Rule 4-345 (f) has been prepared based on new Code, Criminal Procedure Article, § 10-105.3. The cross reference cites to § 10-105.3 and indicates that the section addresses an application for resentencing filed by a person incarcerated after a conviction of possession of cannabis under Code, Criminal Law Article, § 5-601.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 – ADMINISTRATION OF ESTATES

AMEND Rule 6-463 by updating a reference to the Appellate Court and adding a reference to Howard County, as follows:

Rule 6-463. APPEALS

An appeal from a judgment of the court may be taken (a) to the ~~Court of Special Appeals~~ Appellate Court of Maryland pursuant to Code, Courts Article, § 12-501, or (b) except in Harford, Howard, and Montgomery Counties, to the circuit court for the county pursuant to Code, Courts Article, § 12-502 and Title 7, Chapter 500 of these Rules.

REPORTER'S NOTE

Chapter 539, 2022 Laws of Maryland (HB 868) alters the composition of the Orphans' Court for Howard County. Instead of electing three judges for the Orphans' Court, constitutional amendments add Howard County to the list of counties requiring the judges of the circuit court of the county to sit as an Orphans' Court. The new structure of the Orphans' Court of Howard County is used in both Harford County and Montgomery County. Additional amendments to Code, Courts Article, § 12-502 clarify that the subsection permitting appeals of an orphans' court judgment to a circuit court no longer applies to Howard County. The constitutional amendments and other changes in the bill became effective on proclamation of the Governor after the constitutional amendment was ratified by voters in the November 2022 election.

A proposed amendment to Rule 6-463 adds Howard County to the list of counties in which an appeal from a judgment of the Orphans' Court may not be taken to the circuit court. Pursuant to Chapter 539, Code, Courts Article, § 12-502 no longer is applicable to Howard County.

Additionally, a reference to the Court of Special Appeals is updated to reflect the court's new name, the Appellate Court.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 500 – APPEALS FROM ORPHANS' COURT TO THE CIRCUIT COURT

AMEND Rule 7-501 by updating references to the Appellate Court and adding a reference to Howard County to the Committee note, as follows:

Rule 7-501. APPLICABILITY

The rules in this Chapter govern appeals to a circuit court from a judgment or order of an orphans' court.

Committee note: In Harford County, Howard County, and Montgomery County, direct appeal to the ~~Court of Special Appeals~~ Appellate Court is the only method of appellate review of a judgment of the Orphans' Court. See Code, Courts Article, § 12-502. In all other jurisdictions, the appellant has the option of a direct appeal to the ~~Court of Special Appeals~~ Appellate Court or an appeal to the circuit court for the county.

Source: This Rule is new.

REPORTER'S NOTE

Amendments to Rule 7-501 are prompted by Chapter 539, 2022 Laws of Maryland (HB 868). See the Reporter's note to Rule 6-463 for further details.

A proposed amendment to the Committee note in Rule 7-501 adds Howard County to the list of counties where a direct appeal to the Appellate Court is the only method of appellate review for a judgment of the Orphans' Court.

In addition, references to the Court of Special Appeals are updated to reflect the court's new name, the Appellate Court.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

AMEND Rule 17-601 by adding a reference to Howard County in subsection (a)(2), as follows:

Rule 17-601. DEFINITIONS; APPLICABILITY

(a) Definitions

In this Chapter:

(1) to the extent relevant, the definitions in Rule 17-102 shall apply, except that "ADR" includes only mediation and settlement-conferencing; and

(2) "Chief Judge" means the Chief Judge of the orphans' court for the county in which the court is located, except that, in Harford, Howard, and Montgomery Counties, "Chief Judge" means the County Administrative Judge.

Committee note: Rule 17-102 (a) and (d) include within the definition of "ADR" arbitration and neutral fact-finding. The Committee believes that it is inappropriate for the court to order parties to resort to those forms of ADR, especially if the results of such a referral are intended to be binding. Such a referral may constitute an improper delegation of the statutory duties and responsibilities of the orphans' courts and registers of wills with respect to the administration of estates. Accordingly, ADR referrals are limited to mediation and settlement-conferencing.

(b) Applicability

The Rules in this Chapter apply only to actions and matters pending in an orphans' court that has an alternative dispute resolution program.

Source: This Rule is new.

REPORTER'S NOTE

Amendments to Rule 17-601 are prompted by Chapter 539, 2022 Laws of Maryland (HB 868). See the Reporter's note to Rule 6-463 for further details.

Subsection (a)(2) defines the term "Chief Judge" in Title 17, Chapter 600. The definition clarifies that "Chief Judge" means the Chief Judge of the orphans' court for the county in which the court is located, except in Harford County and Montgomery County, where, consistent with the different composition of the Orphans' Court, the term refers to the County Administrative Judge. Because the Orphans' Court for Howard County is now composed of judges of the circuit court, Howard County is added to the exception contained in the definition.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-322 by adding to the list of items in section (a) that may be filed directly by electronic transmission, by replacing "Court of Appeals" with "Supreme Court," and by making stylistic changes, as follows:

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

(a) Generally

The filing of pleadings, papers, and other items with the court shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the item the date the judge accepted it for filing and forthwith transmit the item to the office of the clerk. On the same day that an item is received in a clerk's office, the clerk shall note on it the date it was received and enter on the docket that date and any date noted on the item by a judge. The item shall be deemed filed on the earliest of (1) the filing date noted by a judge on the item, (2) the date noted by the clerk on the item, or (3) the date established under section (d) of this Rule. No item may be filed directly by electronic transmission, except (1) pursuant

to an electronic filing system approved under Rule 16-203, (2) as permitted by Rule 14-209.1, (3) as provided in section (b) of this Rule, (4) as permitted by Code, Family Law Article, § 4-505.1, or ~~(4)~~(5) pursuant to Title 20 of these Rules.

(b) Electronic Transmission of Mandates of the ~~U.S.~~ Supreme Court of the United States

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

(c) Photocopies; Facsimile Copies

A photocopy or facsimile copy of a pleading or paper, once filed with the court, shall be treated as an original for all court purposes. The attorney or party filing the copy shall retain the original from which the filed copy was made for production to the court upon the request of the court or any party.

(d) Filings by Self-Represented Individuals Confined in Certain Facilities

(1) Application of ~~section~~ Section

This section applies only to self-represented individuals who (A) are confined in a correctional or other detention facility pursuant to a court order in a criminal or juvenile delinquency case, (B) have no direct access to the U.S. Postal Service or the ability to file an electronic submission under the Rules in Title 20, and (C) seek relief from a criminal conviction or their confinement by filing (i) a motion for new trial, an appeal, an application for review of sentence by a panel, a motion for modification of sentence, a petition for certiorari in the ~~Court of Appeals~~ Supreme Court, an application for leave to appeal, a motion or petition for a writ of habeas corpus or coram nobis, a motion or petition for statutory post-conviction relief, or a petition for judicial review of the denial of an inmate grievance complaint, or (ii) a paper in connection with any of those matters.

(2) Generally

A pleading or paper filed under this section shall be deemed to have been filed on the date that the pleading or paper, in mailable form and with proper postage affixed, was deposited by the individual into a receptacle designated by the facility for outgoing mail or personally delivered to an employee of the facility authorized by the facility to collect such mail. The clerk shall record the date a filing was received by the clerk, docket the filing, and make a note for

the court of any discernable filing date as defined in subsection (d)(3).

(3) Proof of Date of Filing

The date of filing may be proved by (A) a date stamp affixed by the facility to the pleading, paper, or envelope containing the pleading or paper, or (B) a Certificate of Filing attached to or included with the pleading or paper, substantially in the form provided in subsection (d)(4) of this Rule that, in the event of a dispute, the court finds to be credible.

(4) Certificate of Filing

A Certificate of Filing shall be substantially in the following form:

CERTIFICATE OF FILING

I, _____ (name), certify that (1) I am involuntarily confined in _____ (name of facility); (2) I have no direct access to the U.S. Postal Service or to a permitted means of electronically filing the attached pleading or paper; (3) on _____ (date) at approximately _____ (time) I personally [ ] deposited the attached pleading or paper for mailing in a receptacle designated by the facility for outgoing mail or [ ] delivered it to an employee of the facility authorized by the facility to collect outgoing mail; and (4) the item was in mailable form and had the correct postage on it.

I solemnly affirm this ___ day of _____, 20 ___ under the penalty of perjury and upon personal knowledge that the foregoing statements are true.

_____

(Signature)

Committee note: This section recognizes that individuals who are confined in a correctional or detention facility usually have no direct access to the U.S. Postal Service and may be dependent on the facility to deliver outgoing mail to the Postal Service on behalf of the confined individual. The best the individual in that situation can do is to deposit the item in a mail collection receptacle provided by the facility or, if that be the practice of the facility, deliver it to an employee of the facility authorized by the facility to collect outgoing mail. The section also recognizes that the facility may not actually collect the mail on the day it is deposited and may not affix a date-stamp showing when the mail was collected. Proving the date that the item was actually deposited in the facility's mailbox may therefore be difficult, other than by an affidavit from the filer, which may not always be credible. In the event of any question or dispute, the court can consider, in addition to the affidavit and for such relevance it may have, the U.S.P.S post mark on the envelope, any internal date stamp applied by the facility, any written policy of the facility regarding outgoing mail from confined individuals that had been communicated to those individuals, and other relevant and reliable evidence.

Cross reference: See Rule 1-301 (d), requiring that court papers be legible and of permanent quality.

Source: This Rule is derived in part from the 1980 version of Fed. R. Civ. P. 5 (e) and Rule 102 1 d of the Rules of the United States District Court for the District of Maryland and is in part new.

REPORTER'S NOTE

Amendments to Rule 1-322 are proposed in light of Chapter 335, 2022 Laws of Maryland (SB 280). See the Reporter's note to Rule 9-303 for additional details.

Proposed amendments to section (a) expand the list of items that may be filed directly by electronic transmission to include items permitted by Code, Family Law Article, § 4-505.1.

A reference to the Court of Appeals is changed to the Supreme Court in section (d).

Stylistic changes are made in sections (a), (b), and (d).

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 300 – DOMESTIC VIOLENCE

AMEND Rule 9-303 by adding a cross reference after section (a), as follows:

Rule 9-303. PETITION

(a) Generally

Except as permitted by section (b) of this Rule, a petitioner may seek relief from abuse by filing with the District Court or a circuit court a petition that complies with the requirements of Code, Family Law Article, § 4-504.

Cross reference: For permitted electronic filing of petitions and remote electronic participation by video conferencing from certain locations, see Code, Family Law Article, § 4-505.1.

(b) Exception

When neither the office of the clerk of the circuit court nor the Office of the District Court Clerk is open for business, the petition may be filed with a commissioner of the District Court.

Source: This Rule is new.

REPORTER'S NOTE

Amendments to Rule 9-303 are proposed in light of Chapter 335, 2022 Laws of Maryland (SB 280). Chapter 335 added § 4-505.1 to the Family Law Article of the Code. The new statute authorizes the electronic filing of a petition for a temporary protective order from certain centers, programs, and hospitals. The statute further provides that a hearing on the petition shall be held by video conferencing.

A proposed cross reference after section (a) of Rule 9-303 notes that Code, Family Law Article, § 4-505.1 addresses permitted electronic filing of petitions and remote electronic participation by video conferencing from certain locations when a petition for a protective order is filed.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-203 by amending the title of the Rule, by adding new subsection (a)(3) pertaining to rejection, by adding new subsection (a)(3)(A) pertaining to noncompliance with Rule 20-201.1, by adding new subsection (a)(3)(B) containing current provisions regarding use of an incorrect case number, by requiring that a refiled submission under subsection (a)(3)(B) be filed within a certain time, by adding new subsection (d)(2) pertaining to correction of deficiencies, by adding "Order to" to the caption of section (f), by adding to subsection (f)(3) a requirement that the filer be notified of the rejection, by requiring a refiled submission under subsection (f)(3) to be filed within a certain time, and by making stylistic changes, as follows:

Rule 20-203. REVIEW BY CLERK; STRIKING OF SUBMISSION; DEFICIENCY NOTICE; CORRECTION; ~~ENFORCEMENT~~ REQUEST FOR COURT ORDER TO SEAL

(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 (l), 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.

(3) Rejection

(A) Non-compliance with Rule 20-201.1

If the clerk determines that the filer failed to file both an unredacted and a redacted version of a submission when required under Rule 20-201.1, the clerk shall reject the submission and promptly notify the filer. The clerk shall enter on the docket that a submission was received but was rejected for non-compliance with Rule 20-201.1. A refiled submission shall not relate back to the filing of the rejected submission.

(B) Incorrect Case Number

If the clerk determines that the filer has used an incorrect case number for the submission, and the error is not readily susceptible to correction pursuant to subsection (b)(1) of this Rule, the clerk shall reject the submission and promptly notify the filer. Unless otherwise ordered by the court for good cause shown, a ~~refiled~~ submission refiled within 14 days

after the notice was sent shall relate back to the filing of the rejected submission.

(b) Docketing

(1) Generally

The clerk ~~shall~~ promptly shall 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 (l), 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 parties that have entered an appearance or 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 parties that have entered an appearance or have been served, a deficiency notice describing the nature of

the violation unless the deficiency is cured prior to the sending of the notice. The notice shall inform the parties that the time to file any responsive submission shall run from the date that the corrected submission is filed.

(2) Correction

A submission filed in response to a deficiency notice shall make no other amendments, modifications, or changes to the submission except to correct the deficiency. If the filer timely corrects a deficiency, the clerk shall relate the new submission to the filing of the deficient submission. The record shall always reflect the date that each filing is submitted to the court.

~~(2)~~(3) 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 20-201.1 (c), 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 16-934.

(f) Request for Court Order to Seal

(1) Existing Order

If a filer requests that a document included in a submission be placed under court seal pursuant to Rule 20-201.1 and identifies an existing order permitting the document to be sealed, the court shall seal the document.

(2) No Existing Order; Attached Motion

If there is no existing order, but there is an attached motion and proposed order, the clerk shall docket the motion and

proposed order, which shall be open to public inspection, but shield the document that is the subject of the motion and proposed order pending a ruling on the motion.

(3) No Existing Order; No Attached Motion and Proposed Order

If there is no existing order and no attached motion and proposed order, the clerk shall reject the submission without prejudice to refile it with an attached motion and proposed order and promptly notify the filer. The clerk shall enter on the docket that a submission was received with a request that it be sealed and was rejected for non-compliance with Rule 20-201.1 (d). Unless otherwise ordered by the court for good cause shown, a ~~refiled~~ submission refiled within 14 days after the notice was sent shall relate back to the filing of the rejected submission.

Committee note: The clerk will reject the submission under subsection (f)(3) of this Rule because (1) the filer does not want the document to be accessible to the public and (2) there is nothing to present to a judge and no basis for placing the document under seal. The docket entry showing that a document was received and rejected is for transparency purposes.

Source: This Rule is new.

REPORTER'S NOTE

The Major Projects Committee referred to the Rules Committee the issue of file dates for submissions that correct a deficiency. Clerks inquired as to the accurate filing date when an MDEC filer receives a deficiency notice then submits a corrected filing within the prescribed time. The Quick

Reference Guide for clerks states that the court will "change the file date back to the original docket date of the deficient filing" but the Rules do not include this provision. The timely filing of a corrected submission in response to a deficiency notice should relate back to the original filing date as a matter of law, but the operative Rule – Rule 20-203 – does not explicitly state this. In addition, a practitioner contacted the Committee in early June with a requested amendment to Rule 20-203 (d) which is discussed below.

Proposed new subsection (a)(3) captures the two instances where a clerk will reject a pleading outright: noncompliance with Rule 20-201.1 (Restricted Information) or an incorrect case number. If the filing does not comply with Rule 20-201.1, a corrected filing does not relate back to the original filing. This policy is stated in Rule 20-201.1, as amended in 2022. If the filing uses an incorrect case number, a refiled submission does relate back, according to current Rule 20-203 (a)(2). The statement that a refiled submission that corrects the case number relates back was added to the Rule in 2020 and is the only place in the Rule that explicitly references relation back. Proposed new subsection (a)(3)(B) proposes a potential time limit for the filer to refile the submission with the correct case number.

The remaining proposed amendments address the deficiency process. Subsection (d)(1) is amended to state that a deficiency notice sent by the clerk shall inform the parties that the deadline to file any response to the deficient filing will begin to run when the deficiency is corrected. New subsection (d)(2) clarifies the limits and effect of curing a deficiency. A practitioner reported that an opposing party, in response to a deficiency notice in a case, filed a corrected submission that also added substance to the filing. He requested an amendment to limit changes in refiled submissions to those necessary to cure the deficiency. The first sentence of proposed new subsection (d)(2) addresses this concern. The second sentence states that the clerk shall relate a filing curing a deficiency to the deficient submission, however the record must always reflect the date a submission was actually filed even if it relates back to the filing of an earlier submission.

Proposed amendments to subsection (f)(3) clarify that notice of a rejection under that subsection must be sent to the filer and the refiled submission must be submitted within 14 days of the notice to relate back.

Stylistic changes are made in subsections (b)(1) and (d)(1), as well as in section (f).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-647 by adding a case citation to the cross reference, as follows:

Rule 2-647. ENFORCEMENT OF JUDGMENT AWARDING POSSESSION

Upon the written request of the holder of a judgment awarding possession of property, the clerk shall issue a writ directing the sheriff to place that party in possession of the property. The request shall be accompanied by instructions to the sheriff specifying (a) the judgment, (b) the property and its location, and (c) the party to whom the judgment awards possession. The clerk shall transmit the writ and the instructions to the sheriff. When a judgment awards possession of property or the payment of its value, in the alternative, the instructions shall also specify the value of the property, and the writ shall direct the sheriff to levy upon real or personal property of the judgment debtor to satisfy the judgment if the specified property cannot be found. When the judgment awards possession of real property located partly in the county where the judgment is entered and partly in an adjoining county, the sheriff may execute the writ as to all of the property.

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

Source: This Rule is new.

REPORTER'S NOTE

In order to reflect this Court's recent clarification of the authority of the sheriffs throughout the State to enact and follow "mover" and "weather" policies as set forth in *Thornton Mellon, LLC v. Frederick County Sheriff*, 479 Md. 474 (2022), a citation to this appellate opinion is proposed to be added to the cross reference following Rule 2-647.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 800 – HEARSAY

AMEND Rule 5-802 by adding a cross reference, as follows:

Rule 5-802. HEARSAY RULE

Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible.

Cross reference: For an example of a statute permitting the admission of hearsay, see Code, Criminal Procedure Article, § 11-304 concerning the admissibility of an out-of-court statement by a child victim or witness under certain circumstances.

Source: This Rule is derived from F.R.Ev. 802.

REPORTER'S NOTE

Rule 5-802 states the general inadmissibility of hearsay, but notes that other Rules, constitutional provisions, or statutes may permit admission of the statements. Recent amendments to Code, Criminal Procedure Article, § 11-304 highlighted a statutory example. § 11-304 addressed the admissibility of the out-of-court-statements of child victims in certain juvenile and criminal proceedings. Chapters 161/162, 2021 Laws of Maryland (HB 284/SB 20) expand the applicability of § 11-304 to additional proceedings and to the statements of child witnesses.

A proposed cross reference to be added to Rule 5-802 cites to Code, Criminal Procedure Article, § 11-304 as an example of a statute permitting the admission of hearsay.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-340 by updating a statutory reference in subsection (b)(2), as follows:

Rule 4-340. PROCEDURES REQUIRED AFTER SENTENCING IN DRUG CRIME CASES

(a) Applicability

This Rule applies to a defendant convicted of a drug crime, as defined in Code, Criminal Law Article, § 5-810, committed on or after January 1, 1991. Title 5 of these rules does not apply to the determinations required to be made by the court under this Rule.

(b) Definitions

As used in this Rule:

(1) "conviction" includes probation on stay of entry of judgment pursuant to Code, Criminal Procedure Article, § 6-220; and

(2) "license" means a State-issued license as defined in ~~Code, Article 41, § 1-501~~ Code, State Government Article, § 10-1401.

. . .

REPORTER'S NOTE

The Rules Committee was informed that statutory changes have made the reference contained in Rule 4-340 (b)(2) obsolete. Code, Article 41, § 1-501 was repealed by Chapter 106, 2014 Laws of Maryland (HB 999). The definition of "license" previously in Code, Article 41, § 1-501(c) moved to Code, State Government Article, § 10-1401(c), with some stylistic changes. Proposed amendments to Rule 4-340 update the Code reference in subsection (b)(2).

MARYLAND RULES OF PROCEDURE

TITLE 12 – PROPERTY ACTIONS

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 12-102 to correct the Committee Note following section (b), as follows:

Rule 12-102. LIS PENDENS

. . .

(b) Creation--Constructive Notice

In an action to which the doctrine of lis pendens applies, the filing in the land records of a county in which real property that is the subject of the action is located of either (1) a certified copy of the complaint giving rise to the lis pendens or (2) a Notice of Lis Pendens, substantially in the form approved by the State Court Administrator and posted on the Judiciary website, is constructive notice of the pending action as to the subject real property located in that county.

Committee Note: The amendments to Rule 12-102 (b) adopted by the Court of Appeals by Rules Order dated ~~[xx/xx/2022~~ 02/09/2022, effective ~~yy/yy/2022]~~ 04/01/2022, changed the procedure for providing notice of a lis pendens by requiring that either a notice substantially in the form approved by the State Court Administrator or a certified copy of the complaint giving rise to the lis pendens be recorded in the land records of each county in which the affected real property is located. Prior to these amendments, notice of a lis pendens was effected either by the filing of the complaint in the county in which the affected real property was located, or, if the property was located in another county, by filing a certified copy of the

complaint or a notice with the clerk in that county. Since the amendments are prospective, practitioners and title searchers should continue to review filings of a complaint for notice of lis pendens as to actions filed before ~~[yy/yy/2022]~~ 04/01/2022 using the procedure that was followed before ~~[yy/yy/2022]~~ 04/01/2022.

. . .

Reporter's Note

The proposed amendments to Rule 12-102 correct the Committee note following section (b) by inserting the appropriate dates.

EXHIBIT 4

Jurisdiction	Over the past 5 years, approximately how many conditional admissions are recommended each year? How many per year have been approved/admitted with conditions	What is the average length of the monitoring period?	On average, what is the frequency with which the conditionally admitted attorney is "checked on" during the period of conditional admission?	Who is responsible for the monitoring?	What are the costs of monitoring?	Who pays these costs?	What percentage of conditionally admitted attorneys are ultimately NOT fully admitted to the bar?	Of the attorneys who successfully completed the period of conditional admission and became fully admitted, how many had subsequent disciplinary issues?	If an applicant is conditionally admitted, is the conditional nature of the admission public or confidential?	Have any states adopted the practice of conditional admission and then subsequently abandoned it? If so when and why?
CT	Avg 4 per year	3 years	Quarterly	Bar Counsel	Drug screening, if ordered	Applicant	NA - conditionally admitted attorneys are fully admitted but with conditions; so non-compliance would be dealt with through the full attorney discipline process.	Very few	Confidential	NA
ID	2 to 3 per year	2 years	Monthly	Associate Director of State Bar (admissions administrator)	Staff time; urinalysis	Admittee pays for testing; not for staff time	3 total since 2011	about 3 since 2011	Confidential; Court may order it to be public but has only done so once in 11 years and only a portion of the order was public	NA
IL	1 or 2	2 years, occasionally 1 year	Quarterly	ARDC (disciplinary counsel)	Unknown	Applicant	Unknown	Unknown; ask ARDC	Confidential	NA
LA	The Committee recommended as follows: 2016 -9; 2017-5; 2018-12; 2019-8; 2020-7. The court granted conditional admission as follows: 2016-22; 2017-14; 2018-17; 2019-6; 2020-9 (Note: some of the court's decisions may be overflow from the previous year AND sometimes the court will use its discretion to conditionally admit when the Committee had not recommended (i.e. the Committee may deny but the court may conditionally admit)	2 to 5 years for substance abuse; 1-3 years for debt	Substance abuse - monthly; debt - quarterly	Disciplinary counsel	Substance abuse - admitted pays for monitoring cost plus $50 admin fee to LAP program; debt - no monitoring costs	Admittee	Unknown	Unknown	Confidential	NA
ME	1x in last 5 years	3 years	continuous	Board of Overseers and Maine Assistance Program	Drug screening & other costs	Applicant	0% to date	Unknown	Confidential	NA
ND	1-2 per year	2 to 3 years	Quarterly	Admissions Director/Supreme Court Clerk's Office	Nothing additional unless fees are involved with monitoring	Conditional admittee bears cost of alcohol/drug testing	0% over the last 11 years (all fully admitted)	Unaware of any over past 11 years	Confidential	NA
NM	5-7	fomerly 2 years; now 3 years	Quarterly	BBE staff	BBE staff time; applicant pays hard costs such as alcohol/drug testing	BBE pays its staff time; applicant pays hard costs such as alcohol/drug testing	1 individual in past 6 years	Unknown	"Very" confidential	NA
SD	"It depends"	2-5 years	Quarterly	BBE Secretary	Part of BBE Duties	BBE	Most are admited "small percentage not admitted	Unknown	Confidential	NA

EXHIBIT 4

Jurisdiction	Over the past 5 years, approximately how many conditional admissions are recommended each year? How many per year have been approved/admitted with conditions	What is the average length of the monitoring period?	On average, what is the frequency with which the conditionally admitted attorney is "checked on" during the period of conditional admission?	Who is responsible for the monitoring?	What are the costs of monitoring?	Who pays these costs?	What percentage of conditionally admitted attorneys are ultimately NOT fully admitted to the bar?	Of the attorneys who successfully completed the period of conditional admission and became fully admitted, how many had subsequent disciplinary issues?	If an applicant is conditionally admitted, is the conditional nature of the admission public or confidential?	Have any states adopted the practice of conditional admission and then subsequently abandoned it? If so when and why?
WI	about 4 per year	2-3 years		WisLAP	Drug screening & other costs	Applicant	"Few, vast majority are fully admitted"	Very few	Confidential	NA
WV	About 5	2 years	Monthly meetings with a Supervising Attorney, random drug/urine testing through JLAP if required.	The applicant, with overseeing by Bar Admissions Administrator to make sure quarterly reports from Supervising Attorneys (and JLAP if required) are submitted timely.	$0, unless an evaluation is required, in which case the applicant pays for that.	Applicant	Less than 0.5% since we began conditional admissions in 2001	7 of approx. 55	Confidential, except for the Orders entered 1) Conditionally admitting the applicant, and 2) removing conditions at the end of the conditional period	NA
WY	4 total since 2015	1 to 2 years; rules allow up to 5 years	There maybe credit reports run every 90 days if it is a debt issue but it is up to the attorney to advise of any changes during the monitoring period	Admissions Director and Bar Counsel	Nothing additional unless fees are involved with monitoring	This can be assigned to the attorney or the Bar	It has only happened once out of the four.	None	Confidential	NA