

The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.

AGENDA FOR
RULES COMMITTEE MEETING

June 21, 2018
(Thursday)

Judiciary Education and Conference Center
Rooms UL4 & 5
2011 Commerce Park Drive
Annapolis, Maryland
9:30 a.m.

- | | | |
|---------|---|---------------|
| Item 1. | Consideration of proposed amendments to Rule 4-347 (Proceedings for Revocation of Probation) | Mr. Marcus |
| Item 2. | Consideration of proposed amendments to Rule 1-202 (Definitions) and Rule 4-102 (Definitions) | Mr. Marcus |
| Item 3. | Consideration of proposed amendments to Rule 1-322 (Filings of Pleadings, Papers and Other Items) | Mr. Marcus |
| Item 4. | Reconsideration of proposed amendments to:

Rule 4-346 (Probation)
Rule 4-351 (Commitment Record)
Rule 11-115 (Disposition Hearing) | Mr. Marcus |
| Item 5. | Consideration of proposed amendments to Rule 19-305.5 (Unauthorized Practice of Law; Multi-Jurisdictional Practice of Law) | Mr. Frederick |
| Item 6. | Consideration of proposed amendments to Rule 19-217 (Legal Assistance by Law Students) | Mr. Frederick |

- Item 7. Consideration of proposed amendments to Rule 20-103 (Administration of MDEC) and Rule 20-203 (Review by Clerk; Striking of Submission; Deficiency Notice; Correction; Enforcement) Judge Wilner
- Item 8. Consideration of proposed amendments to Rule 1-333 (Court Interpreters) and Appendix: Court Interpreter Inquiry Questions Judge Wilner
- Item 9. Consideration of proposed new Rules: Judge Wilner
- Rule 16-807 (Appointment, Compensation, Duties of Magistrates)
- Rule 16-808 (Appointment, Compensation, Duties of Examiners)
- Rule 16-809 (Appointment, Compensation, Duties of Auditors)
- And proposed amendments to:
- Rule 2-541 (Magistrates)
- Rule 2-542 (Examiners)
- Rule 2-543 (Auditors)
- Rule 9-208 (Referral of Matters to Standing Magistrates)
- Item 10. Consideration of proposed amendments to Rule 16-208 (Cell Phones; Other Electronic Devices; Cameras) Judge Wilner

Information Items:

Memorandum regarding Counterclaims Filed in Mortgage Foreclosure Proceedings

Memorandum regarding Rule Addressing a Declaration of a Non-Monetary Trust

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-347 by revising section (c) to clarify the circumstances under which a defendant arrested on a violation of probation warrant is presented to a judicial officer of the District Court, a judge of the Circuit Court, or the judge who issued the warrant and to provide a time limit for conducting pretrial release hearings; and adding a Committee Note regarding technical violations, as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

(a) How initiated

Proceedings for revocation of probation shall be initiated by an order directing the issuance of a summons or warrant. The order may be issued by the court on its own initiative or on a verified petition of the State's Attorney or the Division of Parole and Probation. The petition, or order if issued on the court's initiative, shall state each condition of probation that the defendant is charged with having violated, and the nature of the violation.

...

(c) Release pending revocation hearing

(1) Unless the judge who issues the warrant (A) sets conditions of release, ~~or~~ (B) expressly denies ~~bail~~ pretrial release, or (C) directs that the defendant be presented only to that judge, a defendant arrested upon a warrant shall be taken before a judicial officer of the District Court or before a judge of the circuit court without unnecessary delay ~~or, if the warrant so specifies, before a judge of the District Court or circuit court~~ for the purpose of determining the defendant's eligibility for release.

(2) If the judge who issues the warrant expressly denies pretrial release, sets conditions of release that the defendant is unable to meet, or directs that the defendant be presented before that judge, the defendant shall be taken before that judge, or, in the absence of that judge, before another judge of the court designated by the administrative judge, within five business days following the defendant's arrest for consideration or reconsideration of the defendant's eligibility for release.

Committee Note: Particularly where the only alleged violations are technical ones under Code, Criminal Procedure Article, §§ 6-223 and 6-224, care must be taken that a defendant is not detained unnecessarily while awaiting a revocation hearing. Although the 15, 30, and 45-day penalties provided for in those sections are not binding on the court, they are presumptively appropriate and should not be circumvented by having the defendant remain in pre-hearing detention for a longer period.

REPORTER'S NOTE

The proposed amendments to Rule 4-347 address concerns brought to the Committee's attention regarding the length of pre-hearing detention faced by some defendants arrested on a violation of probation warrant. The problem seems particularly acute when (1) the only alleged violation is a "technical violation" under the Justice Reinvestment Act, or (2) the judge who issued or ordered the issuance of the warrant denies pre-hearing release in the warrant or directs that the defendant, upon arrest, be presented only to that judge, and does not schedule a prompt VOP hearing.

Section (c) is amended to provide that, (1) if the issuing judge, in the warrant, denies pretrial release, sets conditions of pre-hearing release that the defendant is unable to meet, or directs that the defendant be presented only to that judge, the defendant must be presented to that judge, or, in the absence of that judge, another judge designated by the administrative judge, within five business days following the defendant's arrest for consideration or reconsideration of eligibility for pre-hearing release.

A Committee Note is added explaining the reason for expedition when the only alleged violations are "technical" ones under JRA. The reason for requiring a release hearing before the judge who already denied pretrial release or set conditions that the defendant is unable to meet, after considering only the petition, is to give the defendant an opportunity to provide information or argument that may convince the judge to reconsider that decision. That opportunity is routinely provided to arrested defendants presented to a judicial officer as a matter of due process.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 by adding a definition of "Warrant" and by including in the definition subsections that differentiate "arrest warrants," "bench warrants," and "search warrants" from one another, and by adding a Committee note and cross reference following section (dd), as follows:

. . .

(dd) Warrant; Arrest Warrant; Bench Warrant; Search Warrant

(1) "Warrant" means an arrest warrant, a bench warrant, or a search warrant.

(2) "Arrest warrant" means a written order that (A) in the District Court is signed by a judicial officer; (B) in a circuit court is signed by (i) a judge or (ii) the clerk of the court upon an order by a judge that is in writing or otherwise of record, is docketed, and expressly directs the clerk to issue the warrant; and (C) commands a peace officer to arrest the person named in the warrant.

(3) "Bench warrant" means an arrest warrant that (A) is signed by (i) a judge or (ii) the clerk of the court upon an

order by a judge that is in writing or otherwise of record, is docketed, and directs the clerk to issue the warrant, and (B) commands a peace officer to arrest the person named in the warrant. A bench warrant normally is issued to enforce a subpoena or other order to appear in court or at a place directed by the court.

(4) "Search warrant" means a written order signed by a judge pursuant to Code, Criminal Procedure Article, § 1-203 that commands a peace officer to search for and seize property described in the warrant.

Committee note: A clerk of the court may sign an arrest warrant or bench warrant upon an order to "issue" the warrant, provided the order conforms to this section.

Cross reference: See Wilson v. State, 345 Md. 437, 450 (1997); Nnoli v. Nnoli, 389 Md. 315, 323, n.1 (2005).

~~(dd)~~ (ee) Writ

"Writ" means a written order issued by a court and addressed to a sheriff or other person whose action the court desires to command to require performance of a specified act or to give authority to have the act done.

Source: This Rule is derived as follows:

. . .
Section (dd) is derived in part from former Rule 702 h and M.D.R. 702 m and is in part new.

Section (ee) is derived from former Rule 5 ff.

REPORTER'S NOTE

Amendments to Rule 1-202 are proposed in light of recommended changes to Rule 4-212.

Confusion arose over the practice of judges ordering certain warrants to "issue" and the question of whether and when a clerk may sign a warrant so issued. The existing definition of "warrant" in Rule 4-102 appears to limit to a judicial officer the power to sign a warrant. The definition of "judicial officer" in the same Rule includes "a judge or District Court commissioner."

In practice, several courts report an efficiency consideration in permitting a judge to order the issuance of an arrest or bench warrant but allowing a clerk to sign the order. Recommended amendments include provisions for such orders to be made in writing or otherwise of record, and docketed, allowing interested parties to identify the authority under which a warrant is issued.

Differentiation among "arrest warrant," "bench warrant," and "search warrant" is made because of the different authorities under which those warrants may issue and the different purposes they serve.

A Committee note follows section (d)(d) to clarify that a judge ordering an arrest or bench warrant to issue need not also order a clerk to sign the warrant. The preference and practice of a judge or a court will frequently be known to a clerk; a judge wishing to personally sign a warrant may have the warrant returned to the judge when it has been prepared by the clerk.

In addition, a cross reference is added following the Committee note, which refers to case law on the distinction among warrant types and terminology.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 100 - GENERAL

AMEND Rule 4-102 by deleting section (n), as follows:

. . .

~~(n) Warrant~~

~~"Warrant" means a written order by a judicial officer commanding a peace officer to arrest the person named in it or to search for and seize property as described in it.~~

Source: This Rule is derived as follows:

. . .
~~Section (n) is derived from former Rule 702 h and M.D.R. 702 m.~~

REPORTER'S NOTE

Section (n) of Rule 4-102 is proposed to be deleted, with the definition of "warrant" contained in it transferred, with amendments, to Rule 1-202.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-322 to permit a self-represented party confined in a certain facility to file certain pleadings and papers by a specified method under certain circumstances, to add provisions pertaining to proof of the date of filing by the specified method, to add a form Certificate of Filing by the specified method, and to add a Committee note, 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 ~~earlier~~ earliest of (1) the filing date noted by a judge on the item ~~or~~ (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, or (4) pursuant to Title 20 of these Rules.

(b) Electronic Transmission of Mandates of the U.S. Supreme Court

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 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

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, 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. For purposes of processing, a 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, _____, certify that (1) I am
(name)
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 _____ at approximately _____
(date)

_____ I personally [] deposited the attached
(time)
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

Rule 1-322 is proposed to be amended by adding a new section (d) pertaining to the date of filing of pleadings or papers by self-represented individuals who are confined in a correctional or other detention facility pursuant to a court order and who do not have direct access to the U.S. Postal service or a permitted method of electronically filing pleadings or papers in court. These amendments are proposed, in part, in response to Hackney v. State, No. 53, Sept. Term, 2017, 2018 WL 2126467 (Md. May 9, 2018), in which the Court of Appeals adopted the prison mailbox rule.

Subsection (d)(1) limits the application of section (d) to self-represented individuals confined in a facility who do not have direct access to U.S. Postal Service or a permitted method of electronically filings pleadings or papers. Subsection (d)(1) also limits the application of section (d) to certain specified filings.

Subsection (d)(2) provides that the date of filing by self-represented individuals who are covered under subsections (d)(1) shall be deemed to be the date the individual deposited the pleading or paper into a designated receptacle or delivered the pleading or paper to an authorized employee of the facility, with proper postage affixed and in a mailable form.

Subsection (d)(3) provides that the date of filing may be proved by a date stamp affixed by the facility to the pleading, paper, or envelope containing the pleading or paper, or a Certificate of Filing that the court finds to be credible. The Certificate of Filing must be attached to the pleading or paper.

Subsection (d)(4) provides that a Certificate of Filing must be substantially in the form provided in that subsection.

The Committee note following section (d) instructs that in the event of a dispute about the date of filing, a court may consider, in addition to the affidavit, the postmark, any internal date stamp applied by the facility, any written policy of the facility regarding outgoing mail from confined individuals, and other relevant evidence.

The Federal Rules and statutes and rules of several states address how to establish a filing date of a pleading or paper by a party who is confined in an institution, usually a jail or a prison, and does not have direct access to the U.S. mail. See,

e.g., Barbara J. Van Arsdale, Application of "Prisoner Mailbox Rule" by State Courts under State Statutory and Common Law, 29 A.L.R.6th 237 (2007); 2A Federal Procedure, L.Ed., § 3:609, Appeals by inmates confined in institutions (December 2016 Update).

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-346 by adding a new section (c) pertaining to the delivery of probation orders, judgments of restitution, and victim notifications to the Division of Parole and Probation, as follows:

Rule 4-346. PROBATION

(a) Manner of Imposing

When placing a defendant on probation, the court shall advise the defendant of the conditions and duration of probation and the possible consequences of a violation of any of the conditions. The court also shall file and furnish to the defendant a written order stating the conditions and duration of probation.

(b) Modification of Probation Order

During the period of probation, on motion of the defendant or of any person charged with supervising the defendant while on probation or on its own initiative, the court, after giving the defendant an opportunity to be heard, may modify, clarify, or terminate any condition of probation, change its duration, or impose additional conditions.

(c) Delivery or Transmittal to the Division of Parole and Probation

The clerk shall deliver or transmit a copy of any probation order, the details or a copy of any order or judgment of restitution, and the details or a copy of any request for victim notification to the Division of Parole and Probation.

Cross reference: For orders of probation or parole recommending that a defendant reside in or travel to another state as a condition of probation or parole, see the Interstate Compact for Adult Offender Supervision, Code, Correctional Services Article, §6-201 et seq. For evaluation as to the need for drug or alcohol treatment before probation is ordered in cases involving operating a motor vehicle or vessel while under the influence of or impaired by drugs or alcohol, see Code, Criminal Procedure Article, §6-220. For victim notification procedures, see Code, Criminal Procedure Article, §11-104 (f). For procedures concerning compliance with restitution judgments, see Code, Criminal Procedure Article, §11-607.

Source: This Rule is in part derived from former Rule 775 and M.D.R. 775 and in part new.

REPORTER'S NOTE

An attorney advised the Criminal Rules Subcommittee that at times, victim notification forms and orders of restitution are not reaching the individuals who need the information in order to provide notice to victims or to collect restitution, including the Division of Parole and Probation.

To address these issues, amendments to three Rules are proposed, including Rule 4-346. The proposed amendment to Rule 4-346 requires the clerk to transmit or deliver to the Division of Parole and Probation a copy of any probation order, any order or judgment of restitution, and any request for victim notification.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-351 by adding the language "or transmit" to section (a), by correcting a cross reference after subsection (a) (6), and by adding a new subsection (a) (7) pertaining to delivery to the custodial officer of any request for victim notification, as follows:

Rule 4-351. COMMITMENT RECORD

(a) Content

When a person is convicted of an offense and sentenced to imprisonment, the clerk shall deliver or transmit to the officer into whose custody the defendant has been placed a commitment record containing:

- (1) The name and date of birth of the defendant;
- (2) The docket reference of the action and the name of the sentencing judge;
- (3) The offense and each count for which the defendant was sentenced;
- (4) The sentence for each count, the date the sentence was imposed, the date from which the sentence runs, and any credit

allowed to the defendant by law;

(5) A statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the preceding term or to any other outstanding or unserved sentence; ~~and~~

(6) the details or a copy of any order or judgment of restitution; and

(7) the details or a copy of any request for victim notification.

Cross reference: See Code, Criminal Procedure Article, §6-216 (c) concerning Maryland Sentencing Guidelines Worksheets prepared by a court. See Code, Criminal Procedure Article, §11-104 ~~(f)~~ (g) for notification procedures for victims. See Code, Criminal Procedure Article, §11-607 for procedures concerning compliance with restitution judgments.

(b) Effect of Error

An omission or error in the commitment record or other failure to comply with this Rule does not invalidate imprisonment after conviction.

Source: This Rule is derived from former Rule 777 and M.D.R. 777.

REPORTER'S NOTE

An attorney advised the Criminal Rules Subcommittee that at times, victim notification forms and orders of restitution are not reaching the individuals who need the information in order to provide notice to victims or to collect restitution, including correctional officers and detention centers.

To address these issues, amendments to three Rules are proposed, including Rule 4-351. The proposed amendment to Rule 4-351 requires the clerk to transmit or deliver to the officer into whose custody a defendant has been placed the details or a copy of any request for victim notification.

In addition, the language "or transmit" is proposed to be added to section (a), and a citation in the cross reference following subsection (a)(6) has been updated.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

AMEND Rule 11-115 by adding a new section (e) requiring the delivery or transmittal of the details or a copy of any order or judgment of restitution and any request for victim notification to the custodial agency, as follows:

Rule 11-115. DISPOSITION HEARING

. . .

(e) Delivery or Transmittal of Documents to Custodial Agency

Along with any commitment or probation order, the clerk shall deliver or transmit the details or a copy of any order or judgment of restitution and any request for victim notification to the agency having custody of or supervision over the child.

Source: This Rule is former Rule 915.

REPORTER'S NOTE

An attorney advised the Criminal Rules Subcommittee that at times, victim notification forms and orders of restitution are not reaching the individuals who need the information in order to provide notice to victims or to collect restitution, including the agencies that have custody of or supervision over a child.

To address these issues, amendments to three Rules are proposed, including Rule 11-115. The proposed amendment to Rule 11-115 requires the clerk to deliver or transmit to the agency having custody of or supervision over a child the details or a copy of any order or judgment of restitution and any request for victim notification.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-305.5 by adding a new section (e) pertaining to foreign attorneys, as follows:

Rule 19-305.5. UNAUTHORIZED PRACTICE OF LAW; MULTI-JURISDICTIONAL PRACTICE OF LAW (5.5)

(a) An attorney shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) An attorney who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the attorney is admitted to practice law in this jurisdiction.

(c) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with an attorney who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the attorney, or a person the attorney is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within subsections (c) (2) or (c) (3) of this Rule and arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice.

(d) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the attorney's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the attorney is authorized to provide by federal law or other law of this jurisdiction.

(e) (1) In this section, "foreign attorney" means an attorney who (A) is not admitted to practice law in any United States jurisdiction, (B) is a member in good standing of a recognized legal profession in a country other than the United States and, as such, is authorized to practice law in that country, (C) is subject to effective regulation and discipline by a duly constituted professional body or a public authority of that country, and (D) has not been disbarred or suspended from the practice of law in any jurisdiction of the United States.

(2) A foreign attorney may not establish an office or other systematic and continuous presence in this State for the practice of law, or hold out to the public or otherwise represent that the attorney is admitted to practice law in this State. Any violation of this provision or any material misrepresentation regarding the requirements in subsection (e) (1) of this Rule by the foreign attorney will subject the foreign attorney to liability for the unauthorized practice of law.

(3) A foreign attorney, with respect to any matter, may
(A) act as a consultant to a Maryland attorney on the law and
practice in a country in which the foreign attorney is admitted
to practice, including principles of international law
recognized and enforced in that country and (B) in association
with a Maryland attorney who actively participates in the
matter, participate in discussions with a client of the Maryland
attorney or with other persons involved with the matter,
provided that the Maryland attorney shall remain fully
responsible to the client for all advice and other conduct by
the foreign attorney with respect to the matter.

Committee Note: This section is not intended to permit a foreign
attorney to be admitted *pro hac vice* in any proceeding, but it
does not preclude the foreign attorney (1) from being present
with a Maryland attorney at a judicial, administrative, or ADR
proceeding to provide consultative services to the Maryland
attorney during the proceeding, or (2) subject to Rule 5-702,
from testifying as an expert witness.

. . .

Model Rules Comparison: Rule 19-305.5 (5.5) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, except that section (e) is new.

REPORTER'S NOTE

In April 2015, Chief Judge Barbera of the Court of Appeals forwarded to the Rules Committee a Resolution of the Conference of Chief Justices endorsing certain proposals by the American Bar Association that would allow attorneys admitted to practice in foreign countries, but not in any U.S. State (i.e., foreign attorneys), to engage in the limited practice of law in U.S. States. She asked that the Committee study those proposals, some of which have since been amended by the ABA.

At present, Maryland does not permit a foreign attorney, who is not admitted in Maryland after successfully completing the Maryland Bar Examination or admitted in another State or U.S. jurisdiction, to practice law here.

Consideration of practice by foreign attorneys was deferred from action until a report by the International Law Committee (ILC) of the MSBA could be finalized. ILC produced its report in November 2016, which made two recommendations: that (1) Maryland should allow foreign attorneys to "gain 'foreign legal consultant' status," and (2) the specifics for accomplishing that "should be done through the Rules Committee (or other appropriate entity) with reference to the ABA Model Rule." The committee noted that foreign legal consultant rules implemented in other States require that the foreign attorney be a member in good standing of the legal profession in his/her home country and that they limit any U.S. practice to the subject matter and experience developed in his/her home country.

Members of the Attorneys and Judges Subcommittee who considered the matter expressed concern over how and by whom such an entrepreneurial operation could be regulated and the cost of establishing and maintaining a regulatory structure. A question was raised regarding how many individuals would be likely to apply and be accepted and whether the service they might perform is otherwise available. The Subcommittee took no final action but indicated a need to do some further investigation.

Since that time, the Subcommittee has learned, principally from ILC, that, except in a handful of States - New York, California, Texas, District of Columbia, and Florida - very few applications to become foreign legal consultants have been made and accepted, in many States none at all.

The matter was brought before the Subcommittee for consideration again, and the Subcommittee proposes a new section (e) to Rule 19-305.5 that defines "foreign attorney"; forbids systematic and continuous presence in this State for the practice of law, or any representation to the public or otherwise that the attorney is admitted to practice law; and permits a foreign attorney to act as a consultant to a Maryland attorney on the law and practice in a country in which the foreign attorney is admitted to practice, as well as participate in discussions, in association with a Maryland attorney who actively participates in the matter, with a client of the

Maryland attorney or with other persons involved with the matter, with limitations. These proposals reflect the Subcommittee's review of the reports and recommendations it received from various sources, as well as the compelling interests embedded in the issue of practice by foreign attorneys in Maryland courts.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

AMEND Rule 19-217 by revising the definition of "supervising attorney" in subsection (a)(4), as follows:

Rule 19-217. 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 (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.

(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 (A) is under the direction of a faculty member of a law school, (B) is in compliance with the applicable American Bar Association standard for study outside the classroom, (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 (A) an attorney who is a member in good standing of the Bar of this State and whose service as a supervising attorney for the clinical program or externship is approved by the dean of the law school in which the law student is enrolled or by the dean's designee., or (B) an attorney who has been authorized to practice pursuant to Rule 19-215 and who certifies in writing to the Clerk of the Court of Appeals that the attorney has read and is familiar with the Maryland Rules of **[Civil Procedure, Criminal Causes, Evidence, and 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. The certification shall 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 effective date and expiration date, which shall be no later than one year after the effective date.

(2) Withdrawal or Suspension

The dean may withdraw the certification at any time by mailing a notice to that effect to the Clerk of the Court of Appeals. 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, 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 16 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-217 is proposed to be amended after consideration of a request from the University of Baltimore School of Law to modify the definition of "supervising attorney." UB requests the modification so that its clinical fellows who are members of another state's bar may supervise law students practicing under this Rule in one of the school's clinics.

Clinical programs at both UB and the University of Maryland Carey School of Law function as small legal service providers. At UB, the clinics serve over 200 low-income individuals and organizations each year. Both law schools employ a number of clinical fellows -- licensed attorneys who supervise student practice in the clinic.

Rule 19-217 provides that an attorney supervising clinical students must be a member of the Maryland bar in good standing. A clinical fellow who is a member of another state's bar must become a member of the Maryland bar before engaging in the supervision of students. This requirement entails a significant investment of time and financial resources; however, fellows' positions are contractually limited to no more than three years.

By contrast, out-of-state attorneys providing legal services who meet the requirements of Rule 19-215 are not required to become a member of the Maryland bar, though their authorization to practice may be limited to two years if they receive compensation for their services. UB states that its fellows engage in the same legal services work as these attorneys and its fellows receive similar supervision by members of the Maryland bar. In addition, many cases the clinics receive are referred by the same legal services organizations contemplated in Rule 19-215.

The Attorneys and Judges Subcommittee recommends modifying the definition of "supervising attorney" in subsection (a)(4) to include attorneys authorized to practice law under Rule 19-215, provided that those attorneys also certify to the Clerk of the Court of Appeals their familiarity with the Rules relevant to their practice. Attorneys must also be approved by the dean of their law school, or the dean's designee.

A cross reference to Rule 19-305.1, on the

responsibilities of a supervising attorney, is proposed to be added following the amended definition.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-103 by restyling subsection (b)(1) and adding additional language pertaining to submission deficiencies, and by adding a Committee note following section (b), as follows:

Rule 20-103. ADMINISTRATION OF MDEC

(a) General Authority of State Court Administrator

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

(b) Policies and Procedures

(1) Authority to Adopt

The State Court Administrator shall adopt policies and procedures that are ~~(A)~~ necessary or useful for the proper and efficient implementation of the MDEC System and ~~(B)~~ consistent with ~~(i)~~ the Rules in this Title, ~~(ii)~~ other provisions in the Maryland Rules that are not superseded by the Rules in this Title, and ~~(iii)~~ other applicable law. The policies and procedures may include:

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

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

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

(2) Publication of Policies and Procedures

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

Source: This Rule is new.

REPORTER'S NOTE

Rule 20-103 is proposed to be amended in order to conform it to recommended changes to Rule 20-203.

Subsection (b) (1) is restyled and new language is added. The new text specifies that the policies and procedures the State Court Administrator adopts may include examples of deficiencies that the Administrator has determined constitute a material violation of the Rules in Title 20 or an applicable policy or procedure, and justify the issuance of a deficiency notice.

A Committee note following section (b) is also suggested. The note clarifies that the list of deficiency examples is not exclusive or exhaustive. The list likewise does not preclude a judge from finding that a submission does not materially violate a Rule in Title 20 or an applicable policy or procedure. Clerks are, however, required to issue a deficiency notice when a submission is deficient in a manner listed by the State Court Administrator.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

AMEND Rule 20-203 by deleting reference to all Rules in subsection (a) (2) except Rule 20-201(g) and deleting the second sentence of that subsection, by deleting references to Rule 20-107(a) (1) from section (c), by clarifying procedures pertaining to certain non-compliant submissions, by extending the time to resolve a deficiency in a filing to 14 days, and by providing for the refund of certain fees only upon motion and order of the court, as follows:

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

(a) Time and Scope of Review

(1) Inapplicability of Section

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

(2) Review by Clerk

As soon as practicable, the clerk shall review a submission for compliance with Rule ~~20-106, 20-107 (a) (1), 20-201 (d), (g), and (1)~~ and the published policies and procedures for acceptance established by the State Court Administrator.

~~Until the submission is accepted by the clerk, it remains in the clerk's queue and shall not be docketed.~~

(b) Docketing

(1) Generally

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

(2) Submission Signed by Judge or Judicial Appointee

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

(3) Submission Generated by Clerk

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

(c) Striking of Certain Non-compliant Submissions

If, upon review pursuant to section (a) of this Rule, the clerk determines that a submission, other than a submission filed by a judge or, subject to Rule 20-201 (m), by a judicial appointee, fails to comply with the requirements of ~~Rule 20-107 (a)(1)~~ or Rule 20-201 (g), the clerk shall (1) make a docket entry that the submission was received, (2) strike the submission, ~~(2)~~ (3) notify the filer and all other parties of the striking and the reason for it, and ~~(3)~~ (4) enter on the docket that the submission ~~was received, that it~~ was stricken for non-compliance with the applicable ~~section~~ subsection of ~~Rule 20-107 (a)(1)~~ or Rule 20-201 (g), and that notice pursuant to this section was sent. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court. Any fee associated with the filing shall be refunded only on motion and order of the court.

(d) Deficiency Notice

(1) Issuance of Notice

If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20 or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer

with a copy to the other parties a deficiency notice describing the nature of the violation.

(2) Judicial Review; Striking of Submission

The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice. Unless (A) the judge issues such an order, or (B) the deficiency is otherwise resolved within ~~10~~ 14 days after the notice was sent, upon notification by the clerk, the court shall strike the submission.

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

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

(2) Shielding of Unredacted Version of Submission

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

submission. Upon the filing of a motion and any timely answer, the court shall enter an appropriate order.

(3) Shielding on Motion of Party

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

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-203 address the handling of certain non-compliant submissions.

Reference to Rules 20-106, 20-107 (a)(1), 20-201 (d), and 20-201(1), and the second sentence of subsection (a)(2), are deleted from the subsection to assure that non-compliant submissions are not rejected at the "File and Serve" level of MDEC processing. Rather, a non-compliant submission is transmitted out of "File and Serve" into the "Odyssey" portion of the MDEC system, where the clerk proceeds to handle it in accordance with other sections of the Rule, as applicable.

Section (c) is revised and restyled to delete references to Rule 20-107(a)(1) and to clarify the procedure for handling a submission that fails to comply with the requirements of Rule 20-201 (g). Deletion of the references to Rule 20-107(a)(1) means non-compliance with that subsection is no longer cause for striking a submission but rather is cause for a deficiency notice. The latter affords the filer an opportunity to correct the deficiency or deficiencies, making it less likely than a striking to impact litigation through issues such as an elapsed statute of limitations.

A new sentence is added at the end of section (c) to provide that any fee associated with a filing that is stricken pursuant to section (c) is refundable only on motion and order of the court.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-333 by deleting the language "eligible for certification" and adding the word "eligible" before the word "interpreter"; by substituting the word "non-registry" for the word "non-certified" and by deleting language referring to interpreters who are "certified" or "eligible for certification"; in subsection (a) (5), by adding language referring to an interpreter who has not completed the Maryland Judiciary's Orientation Program and is not listed on the Court Interpreter Registry; in subsection (a) (7), by adding a new definition of the term "registry"; in subsection (c) (1), by adding the language "Registry interpreter" and the word "not"; in subsection (c) (2) (A), by adding the language "except as provided in subsection (2) (B)," by changing the word "shall" to the word "may," and by adding language referring to the interpreter's skills and qualifications, to any potential conflicts or other ethical issues, and to the court permitting parties to participate in the inquiry; by adding a subsection (c) (2) (B) allowing the court to dispense with any inquiry if the interpreter is a court-employed staff interpreter; in the Committee note after subsection (c) (2) (B), by deleting the

reference to the inquiry questions promulgated by the Maryland Judicial Conference Advisory Committee on Interpreters and to publication of the inquiry questions in a certain Report and by adding the word "included"; by adding a tagline to subsection (c) (3) (A); in subsection (c) (3) (A), by deleting language referring to appointment by the court and to swearing or affirming under the penalty of perjury and substituting the language "take an oath"; in subsection (c) (3) (A), by deleting the reference to subscribing an oath; and by adding a new subsection (c) (3) (B) and a Committee note following it pertaining to court-employed staff interpreters, as follows:

Rule 1-333. COURT INTERPRETERS

(a) Definitions

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

. . .

(4) Eligible Interpreter ~~Eligible for Certification~~

"Eligible Interpreter ~~eligible for certification~~" means an interpreter who is not a certified interpreter but who:

(A) has submitted to the Maryland Administrative Office of

the Courts a completed Maryland State Judiciary Information Form for Spoken and Sign Language Court Interpreters and a statement swearing or affirming compliance with the Maryland Code of Conduct for Court Interpreters;

(B) has successfully completed the Maryland Judiciary's orientation workshop on court interpreting; and

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

(5) ~~Non-certified~~ Non-Registry Interpreters

~~"Non-certified Non-registry interpreter"~~ means an interpreter ~~other than a certified interpreter or an interpreter eligible for certification~~ who has not completed the Maryland Judiciary's Orientation Program and is not listed on the Court Interpreter Registry.

(6) Proceeding

"Proceeding" means (A) any trial, hearing, argument on appeal, or other matter held in open court in an action, and (B) an event not conducted in open court that is in connection with an action and is in a category of events for which the court is

required by Administrative Order of the Chief Judge of the Court of Appeals to provide an interpreter for an individual who needs an interpreter.

(7) Registry

"Registry" means the Court Interpreter Registry, a listing of certified or eligible interpreters who have qualified for assignments under the Maryland Court Interpreter Program.

~~(7)~~ (8) Victim

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

. . .

(c) Selection and Appointment of Interpreters

(1) Certified Interpreter Required; Exceptions

When the court determines that an interpreter is needed, the court shall make a diligent effort to obtain the services of a certified interpreter. If a certified interpreter is not available, the court shall make a diligent effort to obtain the services of an eligible interpreter ~~eligible for certification~~. The court may appoint a ~~non-certified~~ non-Registry interpreter only if ~~neither a certified interpreter nor an interpreter eligible for certification~~ a Registry interpreter is not available. An individual related by blood or marriage to a party or to the individual who needs an interpreter may not act

as an interpreter.

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

(2) Inquiry of Prospective Interpreter

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

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

Committee note: The court should use the Court Interpreter Inquiry Questions ~~promulgated by the Maryland Judicial Conference Advisory Committee on Interpreters and published, together with suggested responses, in the October 20, 1998 Report of the Advisory Committee.~~ The questions and suggested responses are reprinted included as an Appendix to these Rules.

(3) Oath

(A) Generally

~~Upon appointment by the court and before~~ Before acting as an interpreter in ~~the~~ a proceeding, ~~the~~ an interpreter shall ~~swear or affirm under the penalties of perjury~~ take an oath to

interpret accurately, completely, and impartially and to refrain from knowingly disclosing confidential or privileged information obtained while serving in the proceeding. If the interpreter is to serve in a grand jury proceeding, the interpreter also shall take ~~and subscribe~~ an oath that the interpreter will keep secret all matters and things occurring before the grand jury.

(B) Court-employed Staff Interpreters

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

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

REPORTER'S NOTE

The Court Access and Community Relations Committee of the Maryland Judicial Council reviewed Rule 1-333 to evaluate whether additional changes are necessary to address whether and when a trial court is to administer an oath to court interpreters. This matter was discussed by the Language Access Subcommittee and the full Court Access and Community Relations Committee. The Committee recommends that the court continue to administer the interpreter's oath at the commencement of court proceedings but provides an exception for staff interpreters who will record an oath with the Maryland Administrative Office of

the Courts. The Committee's recommended changes are shown in the revised version of Rule 1-333.

In previous versions of Rule 1-333, two kinds of interpreters were referred to - "certified interpreters" and "interpreters eligible for certification." The Court Access and Community Relations Committee has removed the designation of "interpreter eligible for certification" and replaced it with the term "eligible interpreter." The important designations are "certified interpreters," "eligible interpreters," "non-Registry interpreters," and "Registry interpreters." These are defined in section (a). Eligible interpreters are not certified, but they have submitted to the Administrative Office of the Courts an information form and have completed the Judiciary's orientation workshop on court interpreting. They also do not have certain criminal charges pending against them. The Court Access and Community Relations Committee has added the term "Registry," which is the Court Interpreter Registry consisting of certified or eligible interpreters who have qualified for assignments under the Maryland Court Interpreter Program. These interpreters went through the appropriate training. In place of the term "non-certified interpreter," the Committee has substituted the term "non-Registry interpreter." Non-Registry interpreters are usually obtained from other agencies.

In subsection (c)(2), the Court Access and Community Relations Committee added language providing that the court may dispense with any inquiry regarding an interpreter's skills and qualifications if the interpreter is a court-employed staff interpreter. This will streamline the inquiry process. In the Committee note after subsection (c)(2), the Committee directed the court to use the Court Interpreter Inquiry Questions that are included in an Appendix to the Rules.

The General Court Administration Subcommittee approved the proposed changes to Rule 1-333.

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APPENDIX: COURT INTERPRETER INQUIRY QUESTIONS

DELETE the current Appendix: Court Interpreter Inquiry Questions and add the new Appendix: Court Interpreter Inquiry Questions, as follows:

Court Interpreters Inquiry Questions

All spoken and sign language interpreters appointed by the court may be asked the following questions at the beginning of the hearing:

- (a) State your full name.
- (b) Are you listed on the Maryland Court Interpreter Registry?
- (c) Do you have any potential conflicts of interest in this case?
- (d) Did you have an opportunity to speak with the person for whom interpreter services are to be provided before the hearing today to make sure you understand each other?
- (e) Do you anticipate any difficulties in communicating with that person?

Interpreters who are listed on the Maryland Court Interpreter Registry, regardless of whether they are eligible or certified, have been trained and qualified for service, and need not be voir dired other than to establish their status on the Registry. The following questions may be used when an interpreter who is not listed on the Registry has been assigned to serve in a court proceeding. This may include interpreters provided through an approved agency. Agency interpreters may not have received training on interpreting in a legal setting. The court may also want to voir dire interpreters who are listed on the Registry if the court is concerned about the interpreter's skills or ability or has a concern about ethical issues.

These questions are intended to elicit from a prospective interpreter, whether sign or spoken, the information that the Court needs to determine whether an individual is a competent court interpreter and whether the individual is the appropriate interpreter for the particular case.

- (1) Where are you employed currently?

(The Court needs to determine whether there is any potential conflict due to full- or part-time employment of an interpreter or assignments as an independent contractor.)

- (2) How long have you known [sign/spoken] language?

(Research indicates that it takes between 6 to 10 years of language study before an individual has the language skills necessary to learn the interpreting process in his or her second language.)

- (3) Where did you learn [sign/spoken language]?

(A mix of formal and informal language training is an asset. For a second language, 6 to 10 years' use should be expected.)

- (4) Can you communicate fluently in [sign/spoken language]?
- (5) What is your educational background?
- (Formal education may vary dramatically among interpreters, depending on their cultural heritage, but the Court should realize the complexity of interpreting. For this reason, the Court is urged not to accept an interpreter on the basis of a voir dire examination unless the interpreter has at least a high school education or its cultural equivalent.)*
- (6) What formal interpreter training have you undertaken?
- (7) Are you certified? By whom? What is your certification called? (For ASL interpreters, ask whether they are certified by the Registry of Interpreters for the Deaf (RID) or by the National Association of the Deaf (NAD)).
- (8) Have you spent time in a country where the spoken language is used?
- (9) Are you active in any professional organization?
- (10) How many times have you interpreted in court and in what kinds of situations?
- (11) What process would you use to inform the Court of an error in your interpretation?
- (12) Do you have, in a state or federal court of record, a pending criminal charge or criminal conviction on a charge punishable by a fine of more than \$500 or imprisonment for

more than 6 months for which you have not been pardoned or
for which the charge or conviction has not been expunged?

REPORTER'S NOTE

Currently reprinted as an Appendix in the Rules of Procedure are Interpreter Voir Dire questions, together with explanations of responses to those questions, that were in the October 20, 1998 Report of the Maryland Judicial Conference Advisory Committee on Interpreters and were adapted from the 1981 Legal Interpreting Workshop of the William Mitchell School of Law (St. Paul, Minnesota). After the authors revised them in 1986, the Maryland Judicial Conference's Task Force on Interpreters revised them further in 1994. In May 1997, the Subcommittee on Court Interpreter Fees, Qualification Standards, and Usage, which was a part of the Advisory Committee on Interpreters, revised the Interpreter Voir Dire Questions.

In March 2018, the Court Access and Community Relations Committee of the Judicial Council submitted a substantially streamlined revision of the Court Interpreter Inquiry Questions, which the General Court Administration Subcommittee approved. If the revised Questions are approved by the Rules Committee and adopted by the Court of Appeals, they will be placed in an Appendix to the Rules.

Court Interp. Inquiry Questions

Appendix: Court Interpreter Inquiry Questions

DELETE the current Appendix: Court Interpreter Inquiry Questions and add the new Appendix: Court Interpreter Inquiry Questions, as follows:

~~Following is an excerpt from the October 20, 1998 Report of the Maryland Judicial Conference Advisory Committee on Interpreters.~~

Court Interpreters Voir Dire Inquiry Questions

All spoken and sign language interpreters appointed by the court may be asked the following questions at the beginning of the hearing:

(a) State your full name.

(b) Are you listed on the Maryland Court Interpreter Registry?

(c) Do you have any potential conflicts of interest in this case?

(d) Did you have an opportunity to speak with the person for whom interpreter services are to be provided before the hearing today to make sure you understand each other?

(e) Do you anticipate any difficulties in communicating with that person?

Interpreters who are listed on the Maryland Court

Interpreter Registry, regardless of whether they are eligible or certified, have been trained and qualified for service, and need not be voir dired other than to establish their status on the Registry. The following questions may be used when an interpreter who is not listed on the Registry has been assigned to serve in a court proceeding. This may include interpreters provided through an approved agency. Agency interpreters may not have received training on interpreting in a legal setting. The court may also want to voir dire interpreters who are listed on the Registry if the court is concerned about the interpreter's skills or ability or has a concern about ethical issues.

These questions are intended to elicit from a prospective interpreter, whether sign or spoken, the information that the Court needs to determine whether an individual is a competent court interpreter and whether the individual is the appropriate interpreter for the particular case. ~~A few questions are appropriate only to a sign or a spoken language interpreter. In~~

~~the event that the interpreter is considered "certified" in Maryland, the voir dire need not be as extensive.~~

- ~~—(1) State your full name and address.~~
- ~~—(2) Where are you employed currently?~~
- ~~—(3) How long have you known [sign/spoken language]?~~
- ~~—(4) Where did you learn [sign/spoken language]?~~
- ~~—(5) Can you communicate fluently in [sign/spoken language]?~~
- ~~—(6) What is your educational background?~~
- ~~—(7) What formal interpreter training have you undertaken?~~
- ~~—(8) What formal legal interpreter training have you undertaken?~~
- ~~—(9) What knowledge and skill areas did you study?~~
- ~~—(10) Have you attended the Maryland Judiciary's Orientation Workshop for Court Interpreters?~~
- ~~—(11) Are you certified? By whom? What is your certification called?~~
- ~~—(12) Please explain the certification process?~~

~~Questions 13 through 19 need not be asked if the interpreter is "certified" for purposes of Maryland courts.~~

- ~~—(13) Have you spent time in a country where your spoken language is used?~~
- ~~—(14) Are you active in any professional organization?~~
- ~~—(15) What do "RID" and "NAJIT" mean?~~

~~(16) How many times have you interpreted in court and in what kinds of situations have you interpreted?~~

~~(17) Have you met _____ (the person for whom interpreter services are to be provided)?~~

~~(18) Were you able to establish communication?~~

~~(19) How could you determine that you were being understood and that communication was established?~~

~~(20) What language does the person use?~~

~~(21) How did you determine the language used?~~

~~(22) How long did it take you to determine the language used?~~

~~(23) In your opinion, is the deaf person American Sign Language-English bilingual?~~

~~Questions 24 through 30 need not be asked if the interpreter is "certified" for purposes of Maryland courts.~~

~~(24) Please explain the difference between interpreting and transliterating. Between interpreting and translation.~~

~~(25) Can you define "minimal language skills"?~~

~~(26) Is it possible to sign in American Sign Language at the same time you are speaking in English?~~

~~(27) Will the interpretation you provide today be verbatim?~~

~~(28) What process would you use to inform the Court of an error in your interpretation?~~

~~(29) Can you explain the difference between simultaneous and consecutive interpretation?~~

~~—(30) What issues significantly affect your interpreting in court?~~

~~—(31) Have you submitted to the Administrative Office of the Courts a completed information form, a statement swearing or affirming compliance with the Maryland Code of Conduct for Court Interpreters and a statement subscribing to the Interpreter's Oath?~~

~~—(32) Have you, in a state or federal court of record, a pending criminal charge or criminal conviction on a charge punishable by a fine of more than \$500 or imprisonment for more than 6 months and not pardoned or expunged?~~

~~—(33) Are you a potential witness in this case?~~

~~—(34) Do you have any other potential conflicts of interests that you have not yet mentioned to the Court?~~

~~—(35) Are you ready to take the oath for interpreters?~~

~~Explanation of Responses to Voir Dire Questions for Interpreters²~~

~~The following is an explanation or suggested responses to the voir dire questions used to determine the qualifications of interpreters working in Maryland courts. In some instances, the appropriateness of the response will depend on whether a sign or spoken language interpreter is being questioned.~~

~~(1) State your full name and address.~~

~~No explanation needed.~~

~~(2)(1) Where are you employed currently?~~

~~(The Court needs to determine whether there is any potential conflict due to full- or part-time employment of an interpreter or assignments as an independent contractor.) For example, some police forces employ bilingual officers who freelance as interpreters. The Court may need to evaluate whether a conflict arises from that employment in, e.g., a vehicle tort case.~~

~~Interpreters may be self employed, "freelance" interpreters, may work through interpreter service agencies, or do both. In certain localities, such as Frederick or Columbia, a number of certified interpreters work full-time at the schools for the deaf and freelance on a part-time basis.~~

~~(3)(2) How long have you known [sign/spoken] language?~~

~~(Research indicates that it takes between 6 to 10 years of language study before an individual has the language skills necessary to learn the interpreting process in his or her second language.) An interpreter may indicate that the signed or spoken language is his or her first language.~~

~~(4)(3) Where did you learn [sign/spoken language]?~~

~~The answer to this question reinforces the answer to question 3, indicating whether the language was learned in the home in which the interpreter was raised, in school, or in some combination of these or other settings. (A mix of formal and informal language~~

training is an asset. For a second language, 6 to 10 years' use should be expected.)

~~(5)~~ (4) *Can you communicate fluently in [sign/spoken language]?*

~~The answer to this question should be "yes".~~

~~On occasion, a deaf person will use a language other than American Sign Language (ASL) such as French Sign Language, and an interpreter may be available in that language. Thus, if the Court inquires about ASL specifically, the answer may be "No, I do not use American Sign Language; however, the individual for whom I am to interpret uses French Sign Language, which I do use."~~

~~(6)~~ (5) *What is your educational background?*

~~(Formal education may vary dramatically among interpreters, depending on their cultural heritage, but the Court should realize the complexity of interpreting. For this reason, the Court is urged not to accept an interpreter on the basis of a *voir dire* examination unless the interpreter has at least a high school education or its cultural equivalent.)~~

~~(7)~~ (6) *What formal interpreter training have you undertaken?*

~~The advent of formal postsecondary programs for interpreters is relatively recent, but the number of programs are growing in recognition that interpreter training differs from general, non-interpreting language training.~~

~~Such programs for sign language interpreting degree programs have been offered since the 1970's, usually at a 2-year associate of arts level. About 10, 4-year interpreting programs exist throughout the country and, within the vicinity of Maryland, 2 master's degree interpreting programs are available. Additionally or in the alternative, the interpreter may have less formal training such as completion of workshops through professional organizations.~~

~~An individual with no formal interpreter training should be questioned to document nonformal training.~~

~~(8) What formal legal interpreter training have you undertaken?~~

~~Resources for formal training in legal interpreting have not stabilized. Over the past 10 years, intensive programs have been offered through California State University/Northridge (6 weeks), Advancement Seminars Inc. (3 weeks), Haury Institute for Court Interpreting (3 weeks), and Montclair State University (3 weeks). Less intensive courses include those of the Gallaudet University School of Professional and Sign Language Studies Department (4 days), Potomac Chapter of the Registry of Interpreters for the Deaf (4 days), and the Bicultural Center formerly of Riverdale, Maryland (2 days).~~

~~(9) What knowledge and skill areas did you study?~~

~~Interpreters who have had legal training have studied the vocabulary of the law and the manner in which language is used in the courtroom. In addition, these interpreters have spent considerable time interpreting legal texts. The interpreter training programs for legal interpreting include course work on courtroom protocol and legal interpreting ethics. Interpreters also should have successfully participated in supervised fieldwork prior to completing the program. Each of these subject areas is extensive and a competent interpreter should be able to explain each thoroughly.~~

~~Sign language interpreters also study how deaf people use American Sign Language to discuss legal topics.~~

~~(10) Have you attended the Maryland Judiciary's Orientation Workshop for Court Interpreters?~~

~~The answer should be "yes", as this is required under the Administrative Order issued on October 18, 2012. This workshop includes components on legal terminology, ethics, and skills but is merely a 2-day overview and not an intensive course.~~

~~(11)(7) Are you certified? By whom? What is your certification called? †(For ASL interpreters, ask whether they are certified by the Registry of Interpreters for the Deaf (RID) or by the National Association of the Deaf (NAD)).~~

~~The answer to the first of these questions preferably is "yes", but the Court should be aware that "certified" often is used~~

~~loosely. Refer to the next answer for an explanation of the various types of certification credentials.~~

~~For a sign language interpreter, certification is offered throughout the United States by the Registry of Interpreters for the Deaf, Inc. (RID), which has several types of certificates. Additionally, the National Association of the Deaf (NAD), the Mid-Atlantic Quality Assurance Test developed by the Kansas Commission for the Hearing Impaired in cooperation with the Johnson County Community College, and some states also establish levels that some courts use in determining competency in sign language interpretation and that may denote an interpreter as "certified". As these categories are not in general use in this area at this time, however, the following discussion describes RID certification. As the RID certification process is in transition, you may wish to contact its FAX on Demand number (800-711-3691) for a document entitled "Explanation of Certificates".~~

~~After a lapse of almost 10 years, RID has renewed testing for skills and specialized knowledge of legal settings and terminology, as evidenced by a Specialist Certificate: Legal (SC:L). RID previously issued Specialist Certificate: Legal (SC:L) but discontinued doing so when the reliability of the testing procedures were questioned. Various training programs were instituted, leading to the Provisional Specialist~~

~~Certificate: Legal (Prov. SC:L) for intensive training and testing, the Conditional Legal Interpreting Permit (CLIP) and Conditional Legal Interpreting Permit-Relay (CLIP-R) certificates for training followed by a supervision component. A revamped SC:L examination has been developed. SC:L Prov. and CLIP holders must take and pass the new examination to retain specialized certification in legal settings. CLIP-R certificates will remain valid until RID develops an appropriate examination. Other current RID certificates are: the Certificate of Interpretation (CI), which is indicative of a demonstrated ability to interpret between American Sign Language and spoken English, both in sign-to-voice and voice-to-sign; the Certificate of Transliteration (CT), which denotes a demonstrated ability to transliterate between an English-based sign language (traditionally, but inaccurately, termed Signed English, Pidgin Sign Language, Ameslan or otherwise) and spoken English, both in sign-to-voice and voice to sign; the combined Certificate of Interpretation and Certificate of Translation (CI and CT); the Oral Transliteration Certificate (OTC), which denotes a demonstrated ability to transliterate a spoken message from a hearing person to, and to understand and repeat the message and intent of the speech and mouth movements of, a deaf or hard of hearing person; the Certified Deaf Interpreter (CDI), which denotes testing of a deaf or hard of hearing person with~~

~~at least 1 year's work experience and 16 hours of training in interpreting; and the Certified Deaf Interpreter Provisional (CDI-P), which is awarded for partial completion of CDI testing. RID certificates that no longer are issued, but may remain valid so long as RID continuing education requirements are met, include: the Master Comprehensive Skills Certificate (MCSC), which denotes testing both of American Sign Language (ASL) and other varieties of sign language that do not conform to ASL grammar; the Comprehensive Skills Certificate (CSC), which denotes the same testing as the MCSC, at a lower level but comparable to the current, combined CI and CT; the Interpretation Certificate/Transliteration Certificate (IC/TC); the Interpretation Certificate (IC) and the Transliteration Certificate (TC), which were awarded to persons not scoring sufficiently high marks for the full CSC and, for holders who are deaf interpreters, is being replaced by the CDI and the CDI-P certificates; the Reverse Skills Certificate (RSC), which also was awarded to persons not scoring sufficiently high marks; the Oral Interpreting Certificate: Comprehensive (OIC:C), the Oral Interpreting Certificate: Spoken to Visible (OIC:S/V) and the Oral Interpreting Certificate: Visible to Spoken (OIC:V/S), being phased out by the OIC; and the Specialist Certificate: Performing Arts (SC:PA).~~

~~Due to the limitations on the availability of these tests for deaf interpreters and the unique need for these interpreters for some assignments, some deaf interpreters may have extensive experience without certification. However, this situation should change with renewed RID testing.~~

~~Similarly, for spoken language interpreters, a number of forms of recognition exist, which are informally or formally denoted as certification. For purposes of court interpretation, however, an interpreter should be listed in the Maryland Administrative Office of the Courts' Registry of Court Interpreters as certified, because Maryland certification standards require, in addition to passing an examination of the United States Administrative Office of the Courts or State Court Interpreter Certification Consortium, attendance at a Maryland orientation workshop and, if practicable, a background check.~~

~~(12) Please explain the certification process?~~

~~RID certification involves written testing of knowledge as to the ethics of interpreting, the history of interpreting, the culture of deaf people, the protocol of the interpreting process and the business of interpreting, followed by an interpretation skills evaluation, and/or transliteration evaluation. This process is not directed at interpretation in a legal setting, which is evaluated by written and practical test for the specialist certificate.~~

~~(13)~~ (8) *Have you spent time in a country where the spoken language is used?*

~~This question is intended to elicit information about time that afforded intensive exposure to, and use of, the spoken language.~~

~~(10)~~ (9) *Are you active in any professional organization?*

~~The answer to this question should be "yes". See question 15.~~

~~(15)~~ *What do "RID" and "NAJIT" mean?*

~~"RID" is the acronym for The Registry of Interpreters for the Deaf, Inc., a professional membership organization formed in 1964, and certifying sign language interpreters.~~

~~"NAJIT" is the National Association of Judiciary Interpreters and Translators.~~

~~(16)~~ (10) *How many times have you interpreted in court and in what kinds of situations? have you interpreted?*

~~While usage of interpreters in court seems to be growing for every language, it still will be a rarity to encounter an interpreter with hundred hours of court interpreting experience even in the most frequently used languages. Furthermore, experience may run the gamut of court proceedings and is not a guarantee of quality skills. Consequently, the Court needs to elicit whether an interpreter has professional experience and evaluate that experience in light of the interpreter's education and testing and the particular court assignment.~~

~~(17) Have you met _____ (the person for whom interpreter services are to be provided)?~~

~~The answer should be "yes", for two reasons.~~

~~First, an interpreter needs to establish his or her ability to communicate with the person and to identify any potential communication barriers deriving from the person's unique language patterns.~~

~~Second, the Code of Conduct for Court Interpreters requires an interpreter to disclose prior contact with the person, in order to have the Court determine whether there is or may appear to be a conflict of interest. The deaf community and various linguistic groups, and their respective pools of interpreters, can be very limited in number, and meeting with the person may remind the interpreter of an earlier contact.~~

~~(18) Were you able to establish communication?~~

~~The answer should be "yes", or the interpreter cannot fulfill the function of the job.~~

~~For example, a deaf person who uses an idiosyncratic variation of sign language may require that a deaf and hearing interpreter be used as a team. Deaf people with limited English or American Sign Language skills often benefit from this type of arrangement.~~

~~Communication must not only be established but maintained, and the interpreter should bring to the attention of the Court any~~

~~difficulty in communicating that subsequently arises, as soon as the difficulty becomes apparent to the interpreter. Furthermore, the interpreter should suggest that the Court check on a continuous basis with the individual for whom interpreter services are being provided, to monitor whether communication is maintained.~~

~~(19) How could you determine that you were being understood and that communication was established?~~

~~During the initial meeting between an interpreter and an individual with limited English proficiency, the interpreter should ask open-ended questions about neutral topics unrelated to the case, such as the individual's life, current events, or the community, to determine whether the interpreter and individual understand one another. "Yes" or "no" questions do not suffice. A perceived problem should be explored by asking the individual to rephrase his or her questions. If the individual answers appropriately, the interpreter is assured that communication has been established.~~

~~(20) What language does the person use?~~

~~The Court needs to establish on the record which language or combination of the 5,000 plus extant languages is being used. For example, a deaf person may be monolingual American Sign Language, monolingual-English, monolingual-other signed language, or bilingual American Sign Language and English. Most~~

~~deaf persons are somewhat bilingual by virtue of the fact that they live in an English speaking environment; however, most are not equally fluent in both languages. The majority of deaf Americans are described accurately as "American Sign Language dominant bilingual."~~

~~(21) How did you determine the language used?~~

~~The answer of a sign language interpreter should discuss the linguistic features that would indicate whether the person uses American Sign Language (ASL). For example, an ASL user would use a subject-object-verb or object-subject-verb sentence structure; time and tense markers would be at or near the beginning of the utterances; adverbs and other grammar would take place on the face and not in separate signs; complex features, such as sentence structure that incorporates topic-comment eyebrow markers, would be used; rhetorical question eyebrow markers would be employed; relative clause eyebrow and head-tilt markers would be used; verbs would incorporate pronouns; and pronouns would be performed by eye-gaze and not by signs.~~

~~(22) How long did it take you to determine the language used?~~

~~The answer will vary. If no communication difficulties arise, a reasonable time allows the interpreter and individual for whom interpreter services are to be provided to become comfortable communicating. It can, however, take a considerable amount of~~

~~time, so that the interpreter and individual should be allowed to decide, within limits, the amount of time they need.~~

~~The crucial point is to allow enough time for the interpreter and individual, as well as the Court and attorneys, to feel comfortable that communication is effective.~~

~~(23) In your opinion, is the **deaf** person American Sign Language-English bilingual?~~

~~The answer will vary, depending on the deaf person. The question is intended to determine the interpreter's grasp of bilingualism.~~

~~(24) Please explain the difference between interpreting and transliterating. Between interpreting and translation.~~

~~Interpretation involves working between two formal languages—transmitting a message from a source language into an appropriate equivalent message in a target language.~~

~~Interpreting requires rearrangement of the syntax of both languages in order to convey the message faithfully.~~

~~Transliterating involves changing the form of a single language.~~

~~Thus, an interpreter might listen to spoken English or watch a variation of sign language that approximates English and convey the message in either a signed or spoken form. Transliterating~~

~~does not necessarily involve fluency in American Sign Language.~~

~~Approximately 30% of deaf Americans can be accommodated satisfactorily with a transliteration.~~

~~Translation involves transmitting a message from written form to written form between languages.~~

~~Sight translation is a hybrid of interpretation and translation, whereby an interpreter translates a written document into a spoken or signed rendition.~~

~~(25) Can you define "minimal language skills"?~~

~~"Minimal language skills" refers to an absence of, or limitation on, language skills due to limited education and/or minimal exposure to a community of language users. By virtue of isolation, an individual may lack fluency in a formal language system such as American Sign Language. If the Court encounters such an individual, a linguistic evaluation should be performed to determine the best method of interpretation for that individual.~~

~~(26) Is it possible to sign in American Sign Language at the same time you are speaking in English?~~

~~No. American Sign Language and English differ significantly in syntax, making it no more possible to use American Sign Language and speak English at the same time than to use two spoken languages simultaneously.~~

~~The question derives from the common experience of people who do in fact sign and speak at the same time in what is called "simultaneous communication", a practice of speaking English while attempting to sign in a language that approximates~~

~~English. As 70% of deaf Americans use American Sign Language and simultaneous communication supposedly is a form of English, most deaf persons cannot rely on simultaneous communication as an effective means of courtroom interpretation.~~

~~(27) Will the interpretation you provide today be verbatim?~~

~~The answer should be "no". Some interpreters will answer "yes" and assume that the Court's intention is to determine whether, as required by the Code of Conduct for Court Interpreters, they will interpret the message accurately while retaining the nuances of the language. However, the assumption may not be clear to counsel or other persons interested in the role of the interpreter.~~

~~Verbatim means "word for word", which is impossible in interpreting since it would necessitate a disregard for grammar and other features unique to a language. The interpreter's task is to convey the source message in the target language appropriately. A proper interpretation will retain the mood, tone, nuances, and meaning of the speaker to the extent that the target language has an appropriate equivalent.~~

~~(28) (11) What process would you use to inform the Court of an error in your interpretation?~~

~~An interpreter has an ethical duty to inform the Court of an error of substance made in interpretation, and the interpreter should construe "substance" broadly. On the other hand, an~~

~~interpreter should not continually interrupt the proceedings to refine the interpretation. Furthermore, the Court should be notified as soon as possible with the least disruption of the proceedings.~~

~~If the interpreter realizes an error while still interpreting, the proper manner to inform the Court is to speak in the third person and state something like, "The interpreter erred in conveying the last question, may Counsel please repeat?" or "The interpreter has erred in interpreting the last response, the correct interpretation is ...". Otherwise, the interpreter should apprise the Court by note, during the next break or in some other, unobtrusive manner.~~

~~A second interpreter who realizes an error may apprise the first interpreter. Should the first interpreter refuse to correct a substantive error, the second interpreter has an ethical obligation to do so.~~

~~(29) Can you explain the difference between simultaneous and consecutive interpretation?~~

~~Simultaneous interpretation occurs when continuous spoken text is interpreted while the speaker or signer convey their message. Notwithstanding the word "simultaneous", the interpreter may allow a lag time of up to two or three sentences, in order to comprehend the message to be interpreted. The Nuremberg trials were the first notable example of the use of simultaneous~~

~~interpretation in court and involved the entire proceedings, but now simultaneous interpretation is used most often during opening and closing statements, jury instructions or other relatively uninterrupted segments of spoken text. As explained below, it should not be used during questioning of a witness. In consecutive interpreting, an interpreter listens or watches an entire message before beginning to convey the interpretation. Accordingly, consecutive interpreting can be more accurate, by obviating the need to guess at the entire message and allowing time to refine the interpretation after the pressure of continued spoken or signed text is removed. Accordingly, it should always be used during examination of a witness.~~

~~(30) What issues significantly affect your interpreting in court?~~

~~Interpreters may view these issues as too numerous to list, but among the obstacles are: the interpreter's lack of familiarity with legal terminology, process, protocol, and ethics specifically relating to court interpretation; the Court's, counsels' or parties' lack of understanding of the role of the interpreter; positioning in the room; and the speed of the spoken text.~~

~~(31) Have you submitted to the Administrative Office of the Courts a completed information form, a statement swearing or affirming compliance with the Maryland Code of Conduct~~

~~for Court Interpreters and a statement subscribing to the Interpreter's Oath?~~

~~The answer to this question should be "yes" as to the information form, as this is required under the Administrative Order dated October 18, 2012. The remaining documents will be required should the Subcommittee report be adopted.~~

~~(32) (12) Do you Have you, in a state or federal court of record, a pending criminal charge or criminal conviction on a charge punishable by a fine of more than \$500 or imprisonment for more than 6 months and for which you have not been pardoned or for which the charge or conviction has not been expunged?~~

~~The answer should be "no". This is the standard for juror qualification, although Courts Article § 8-204 as to disclosures by prospective jurors contains an exclusion for traffic offenses.~~

~~(33) Are you a potential witness in this case?~~

~~The answer should be "no".~~

~~(34) Do you have any other potential conflicts of interests that you have not yet mentioned to the Court?~~

~~In addition to conflicts that may stem from the interpreter's employment or a prior relationship with the individual for whom he or she would be interpreting, the interpreter may raise~~

~~issues of financial interest in the proceedings or other actual or potential conflicts.~~

~~(35) Are you ready to take the oath for interpreters?~~

~~This question presents the prospective interpreter with a final opportunity to raise with the Court any points of concern about undertaking the role of court interpreter in this particular case, and the Court should note any hesitancy that may indicate unresolved issues that could disrupt the proceedings if the interpreter later must be replaced.~~

CREDITS

[Adopted Oct. 31, 2002, eff. Jan. 1, 2003. Amended March 2, 2015, eff. July 1, 2015.]

REPORTER'S NOTE

Currently reprinted as an Appendix in the Rules of Procedure are Interpreter Voir Dire questions, together with explanations of responses to those questions, that were in the October 20, 1998 Report of the Maryland Judicial Conference Advisory Committee on Interpreters and were adapted from the 1981 Legal Interpreting Workshop of the William Mitchell School of Law (St. Paul, Minnesota). After the authors revised them in 1986, the Maryland Judicial Conference's Task Force on Interpreters revised them further in 1994. In May 1997, the Subcommittee on Court Interpreter Fees, Qualification Standards, and Usage, which was a part of the Advisory Committee on Interpreters, revised the Interpreter Voir Dire Questions.

In March 2018, the Court Access and Community Relations Committee of the Judicial Council submitted a substantially streamlined revision of the Court Interpreter Inquiry Questions, which the General Court Administration Subcommittee approved. If the revised Questions are approved by the Rules Court Interp. Inquiry Questions - Gen. Ct. Admin. Subcom. approved 05/11/18 – For R.C. 06/21/18

Committee and adopted by the Court of Appeals, they will be placed in an Appendix to the Rules.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-807, as follows:

Rule 16-807. APPOINTMENT, COMPENSATION, DUTIES OF MAGISTRATES

(a) Standing Magistrates

(1) Application of Section

Section (a) of this Rule applies to standing magistrates identified as such by the State Court Administrator.

Cross reference: See Code, Courts Article, §2-501(e)(2), directing that the Administrative Office of the Courts shall identify the standing circuit court magistrates.

(2) Appointment; Compensation

A majority of the judges of the circuit court of a county may appoint full-time and part-time standing magistrates, provided that there is included in the State budget for the Judicial Branch an appropriation of an amount necessary to pay the salary and benefits of each magistrate. The salary and benefits of a standing magistrate may not be assessed as costs against a party to an action.

Cross reference: See Code, Courts Article, §2-501(e)(1) and (5), requiring that a standing circuit court magistrate hired on or after July 1, 2002, be a State employee and that the salary and benefits of the magistrate be included in the State budget. Magistrates who were in office at the time were given the option to remain as county employees, and some did so.

(3) Duties; Procedures

The duties of a standing magistrate and the procedures relating to matters referred to a standing magistrate shall be as set forth in the Maryland Rules or by other State law.

Cross reference: See Rules 2-541 and 11-111.

Committee note: Magistrates have authority only over matters properly referred to them by the court. Their function is to conduct a hearing (unless one is waived), take evidence, and, based on the evidence, file a report with the court containing proposed findings of fact, conclusions of law, and a recommended disposition of the matter referred.

(b) Special Magistrates

(1) Appointment; Compensation

The circuit court of a county may appoint a special magistrate for a particular action, except proceedings on matters referable to a standing magistrate under Rule 9-208 or Rule 11-111. Unless the compensation of a special magistrate is paid with public funds, the court (A) shall prescribe the compensation of the special magistrate, (B) may tax the compensation as costs, and (C) may assess the costs among the parties.

Cross reference: See Code, Courts Article, § 2-102(b)(4) and (c) and § 2-501(b).

(2) Duties

The order of appointment of a special magistrate shall specify the powers and duties of the magistrate and may contain

special directions. Those powers, duties, and directions shall be consistent with the traditional function of magistrates.

Cross reference: See Committee note to subsection (a)(3) of this Rule.

(c) Officer of the Court; Tenure

A magistrate is an officer of the court in which the referred action is pending and serves at the pleasure of the court.

(d) Transcript

The costs of any transcript required to be prepared in connection with the referral of a matter to a magistrate may be included in the costs of the action and assessed among the parties as the court may direct.

REPORTER'S NOTE

New Rules 16-807, 16-808, and 16-809 are proposed. They include provisions relating to the appointment and compensation of magistrates, examiners, and auditors that have been transferred, with amendments, from Rules 2-541, 2-542, and 2-543, in part because the provisions relate to court administration. In addition, many magistrates handle not just domestic or general civil cases but juvenile cases as well.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-808, as follows:

Rule 16-808. APPOINTMENT, COMPENSATION, DUTIES OF EXAMINERS

(a) Standing Examiners

(1) Appointment; Compensation

A majority of the judges of the circuit court of a county may appoint [full-time and part-time] standing examiners. The compensation of an examiner who is an employee of the court shall be as determined in the appropriate budget and may not be assessed as costs against a party to an action. Otherwise, the court shall prescribe the compensation, fees, and costs of the examiner and may assess them among the parties.

Cross reference: See Code, Courts Article, §2-501 (b) (1) requiring that each employee of a circuit court, including examiners, is entitled to compensation "as provided in the appropriate budget."

(2) Duties

The duties of a standing examiner shall be as set forth in the Maryland Rules or by other State law.

Cross reference: See Rule 2-542.

Committee note: Examiners have authority only over matters properly referred to them by the court. Their function is solely to take testimony and report that testimony to the court. Unlike magistrates, they do not make proposed findings of fact

or conclusions of law and do not recommend a disposition of the matter referred. See *Nnoli v. Nnoli*, 101 Md. App. 243, 261, n.5 (1994)

(b) Special Examiners

(1) Appointment; Compensation

The circuit court of a county may appoint a special examiner to take testimony in a particular action. Unless the compensation of a special examiner is paid with public funds, the court (A) shall prescribe the compensation of the special examiner, (B) may tax the compensation as costs, and (C) may assess the costs among the parties.

(2) Powers and Duties

The order of appointment of a special examiner shall specify the powers and duties of the special examiner and may contain special directions. Those powers, duties, and directions shall be consistent with and limited to the traditional role of examiners.

Cross reference: See the Committee note to subsection (a)(2) of this Rule.

(c) Officer of the Court; Tenure

An examiner is an officer of the court in which the referred action is pending and serves at the pleasure of the court.

(d) Transcript

The cost of any transcript required to be prepared in

connection with the referral of a matter to an examiner may be included in the costs of the action and assessed among the parties as the court may direct.

REPORTER'S NOTE

See Reporter's Note to Rule 16-807.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-809, as follows:

Rule 16-809. APPOINTMENT, COMPENSATION, DUTIES OF AUDITORS

(a) Standing Auditors

(1) Appointment; Compensation

A majority of the judges of the circuit court of a county may appoint standing auditors. The compensation of an auditor who is an employee of the court shall be as determined in the appropriate budget and may not be assessed as costs against a party to the action. Otherwise, subject to Code, Courts Article, § 2-102 (b) (1), the court shall prescribe the compensation, fees, and costs of the auditor and may assess them among the parties.

Cross references: Code, Courts Article, § 2-501(b) (1) provides that each employee of a circuit court, including auditors, is entitled to compensation as provided in the appropriate budget.

(2) Duties

The duties of a standing auditor and the procedures relating to matters referred to a standing auditor shall be as set forth in the Maryland Rules or by other State law.

Cross reference: See Rules 2-543, 13-502, 14-305.

Committee note: Auditors have been described as "the calculator

and accountant of the court, and when any calculations or statements are required, all the pleadings, exhibits and proofs are referred to him [or her], so that he [or she] be enabled to investigate and put the whole matter in proper order, for the action of the court." *German Luth. Church v. Heise*, 44 Md. 453, 64-65 (1876).

Cross reference: Section 2-102 (b) provides that a special auditor is entitled to reasonable compensation as set by the court but not less than \$15 for stating an account and that the fee may be taxed as costs or paid by the county.

(b) Special Auditor

(1) Appointment; Compensation

The circuit court of a county may appoint a special auditor for a particular action. Unless the special auditor is paid with public funds, the court shall prescribe the compensation, fees, and costs of the auditor and assess them against the parties.

(2) Powers and Duties

The order of appointment may specify or limit the powers of a special auditor and may contain special directions. Those powers shall be consistent with the traditional role of auditors.

Cross reference: See the Committee Note to subsection (a)(2) of this Rule.

(c) Officer of the Court; Tenure

An auditor is an officer of the court in which the referred action is pending and serves at the pleasure of the court.

(d) Transcript

The cost of any transcript required to be prepared in connection with the referral of a matter to an auditor may be included in the costs of the action and assessed among the parties as the court may direct.

REPORTER'S NOTE

See Reporter's Note to Rule 16-807.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 500 - TRIAL

AMEND Rule 2-541 to delete provisions relating to the appointment, compensation, fees, and costs of magistrates that have been transferred to Rule 16-807, as follows:

Rule 2-541. MAGISTRATES

(a) Appointment - Compensation

~~(1) Standing Magistrate~~

~~A majority of the judges of the circuit court of a county may appoint a full time or part time standing magistrate and shall prescribe the compensation, fees, and costs of the magistrate.~~

~~(2) Special Magistrate~~

~~The court may appoint a special magistrate for a particular action and shall prescribe the compensation, fees, and costs of the special magistrate and assess them among the parties. The order of appointment may specify or limit the powers of a special magistrate and may contain special directions.~~

~~(3) Officer of the Court~~

~~A magistrate serves at the pleasure of the appointing court and is an officer of the court in which the referred matter is pending.~~

The appointment and compensation of standing and special magistrates shall be governed by Rule 16-807.

. . .

~~(i) Costs~~

~~Payment of the compensation, fees, and costs of a magistrate, to the extent not covered by State or county funds, may be compelled by order of court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the court may direct.~~

REPORTER'S NOTE

The provisions relating to the appointment and compensation of magistrates have been transferred, with amendments, to Rule 16-807, in part because they relate to court administration and in part because many of the magistrates handle not just domestic or general civil cases but juvenile cases as well.

Provisions relating to the appointment and compensation of examiners and auditors currently in Rules 2-542 and 2-543 are transferred to Rules 16-808 and 16-809, respectively.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 500 - TRIAL

AMEND Rule 2-542 to delete provisions relating to the appointment, compensation, fees, and costs of examiners that have been transferred to Rule 16-808; to prohibit referral to an examiner of a matter referable to a standing magistrate under Rule 9-208; and to make stylistic changes as follows:

Rule 2-542. EXAMINERS

(a) Appointment - Compensation

~~(1) Standing Examiner~~

~~A majority of the judges of the circuit court of a county may appoint a standing examiner and shall prescribe the compensation, fees, and costs of the examiner.~~

~~(2) Special Examiner~~

~~The court may appoint a special examiner for a particular action and shall prescribe the compensation, fees, and costs of the special examiner and assess them among the parties. The order of appointment may specify or limit the powers of a special examiner and may contain special directions.~~

~~(3) Officer of the Court~~

~~An examiner serves at the pleasure of the appointing court and is an officer of the court in which the referred matter is pending.~~

The appointment and compensation of examiners shall be governed by Rule 16-808.

(b) Referral by Order

On motion of any party or on its own initiative, the court may refer to an examiner, for the purpose of taking of evidence, issues in proceedings held in execution of judgment pursuant to Rule 2-633 and in uncontested proceedings not other than proceedings triable of right before a jury or referable to a standing magistrate under Rule 9-208 and proceedings held in aid of execution of judgment pursuant to Rule 2-633. The order of reference may prescribe the manner in which the examination is to be conducted and may set time limits for the completion of the taking of evidence and the submission of the record of the examination.

. . .

~~(i) Costs~~

~~Payment of the compensation, fees, and costs of an examiner, to the extent not covered by State or county funds, may be compelled by order of court. The costs of the transcript may be included in the costs of the action and assessed among the parties as the court may direct.~~

REPORTER'S NOTE

See Reporter's Note to Rule 2-541.

Section (b) is restyled and a provision is added prohibiting referral of any matter that is referable to a standing magistrate under Rule 9-208.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 500 - TRIAL

AMEND Rule 2-543 to delete provisions relating to the appointment, compensation, fees, and costs of auditors that have been transferred to Rule 16-809, as follows:

Rule 2-543. AUDITORS

(a) Appointment - Compensation

~~(1) Standing Auditor~~

~~A majority of the judges of the circuit court of a county may appoint a standing auditor and shall prescribe the compensation, fees, and costs of the auditor.~~

~~(2) Special Auditor~~

~~The court may appoint a special auditor for a particular action and shall prescribe the compensation, fees, and costs of the special auditor and assess them among the parties. The order of appointment may specify or limit the powers of a special auditor and may contain special directions.~~

~~(3) Officer of the Court~~

~~An auditor serves at the pleasure of the appointing court and is an officer of the court in which the referred matter is pending.~~

The appointment and compensation of auditors shall be governed by Rule 16-809.

. . .

~~(i) Costs~~

~~Payment of the compensation, fees, and costs of an auditor may be compelled by order of court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the court may direct.~~

REPORTER'S NOTE

See Reporter's Note to Rule 2-541.

MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT,
AND CHILD CUSTODY

AMEND Rule 9-208 by adding the word "standing" to subsection (a) (1), by adding language to subsection (a) (1) to clarify that the court may direct that a matter be heard by a judge, by correcting an internal reference in the Committee note following subsection (a) (1) and adding clarifying language to the Committee note, by deleting section (j) and the Committee note following section (j), as follows:

Rule 9-208. REFERRAL OF MATTERS TO STANDING MAGISTRATES

(a) Referral

(1) As of Course

If a court has a full-time or part-time standing magistrate for domestic relations matters and a hearing has been requested or is required by law, the following matters arising under this Chapter shall be referred to the standing magistrate as of course, unless, in a specific case, the court directs ~~otherwise in a specific case~~ that the matter be heard by a judge:

(A) uncontested divorce, annulment, or alimony;

(B) alimony pendente lite;

(C) child support pendente lite;

(D) support of dependents;

(E) preliminary or pendente lite possession or use of the family home or family-use personal property;

(F) subject to Rule 9-205, pendente lite custody of or visitation with children or modification of an existing order or judgment as to custody or visitation;

(G) subject to Rule 9-205 as to child access disputes, constructive civil contempt by reason of noncompliance with an order or judgment relating to custody of or visitation with a minor child, the payment of alimony or support, or the possession or use of the family home or family-use personal property, following service of a show cause order upon the person alleged to be in contempt;

(H) modification of an existing order or judgment as to the payment of alimony or support or as to the possession or use of the family home or family-use personal property;

(I) counsel fees and assessment of court costs in any matter referred to a magistrate under this Rule;

(J) stay of an earnings withholding order; and

(K) such other matters arising under this Chapter and set forth in the court's case management plan filed pursuant to Rule

16-302 (b).

Cross reference: See Rule 16-807.

Committee note: Examples of matters that a court may include in its case management plan for referral to a magistrate under subsection ~~(a)(1)(J)~~ (a)(1)(K) of this Rule include scheduling conferences, settlement conferences, uncontested matters in addition to the uncontested matters listed in subsection (a)(1)(A) of this Rule, and the application of methods of alternative dispute resolution.

(2) By Order on Agreement of the Parties

By agreement of the parties, any other matter or issue arising under this Chapter may be referred to the magistrate by order of the court.

. . .

~~(j) Costs~~

~~The court, by order, may assess among the parties the compensation, fees, and costs of the magistrate and of any transcript.~~

~~Committee note: Compensation of a magistrate paid by the State or a county is not assessed as costs.~~

Cross reference: See, Code, Family Law Article, §10-131, prescribing certain timelimits when a stay of an earnings withholding order is requested.

Source: This Rule is derived in part from Rule 2-541 and former Rule S74A and is in part new.

REPORTER'S NOTE

Proposed amendments to subsection (a)(1) of Rule 9-208 clarify that a matter ordinarily referable to a standing magistrate may, in a specific case, be heard by a judge. The Rule does not authorize referral to a special magistrate, as new

Rule 16-807(b)(1) expressly prohibits the appointment of a special magistrate for such matters.

The delineation between standing magistrates and special magistrates reflects respective funding sources: the salary and benefits of a standing magistrate are paid by the Judiciary through the State and may not be assessed as costs against a party to an action; compensation of a special magistrate may be taxed as costs and may be assessed against the parties. Thus, parties might be assessed costs if a matter is referred to a special magistrate, but parties could not be assessed costs if the same matter is instead referred to a standing magistrate.

Proposed amendments also correct and clarify the Committee note following subsection (a)(1) by changing an internal reference from "subsection (a)(1)(J)" to "subsection (a)(1)(K)" and adding the word "uncontested" to the description of matters listed in subsection (a)(1)(A).

The amendments also delete section (j) and the Committee note following section (j). Provisions pertaining to the assessment among the parties of the compensation, fees, and costs of a standing magistrate are deleted in their entirety. The substance of the other deletions is transferred to new Rule 16-807.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS - CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-208(b)(2)(D) to add language clarifying that electronic devices may not be brought into a jury deliberation room after deliberations have begun, as follows:

...

(b) Possession and Use of Electronic Devices

(1) Generally

Subject to inspection by court security personnel and the restrictions and prohibitions set forth in section (b) of this Rule, a person may (A) bring an electronic device into a court facility and (B) use the electronic device for the purpose of sending and receiving phone calls and electronic messages and for any other lawful purpose not otherwise prohibited.

(2) Restrictions and Prohibitions

(A) Rule 5-615 Order

An electronic device may not be used to facilitate or achieve a violation of an order entered pursuant to Rule 5-615

(d).

(B) Photographs and Video

Except as permitted in accordance with this Rule, Rules 16-502, 16-503, 16-504, or 16-603, or as expressly permitted by the Local Administrative Judge, a person may not (i) take or record a photograph, video, or other visual image in a court facility, or (ii) transmit a photograph, video, or other visual image from or within a court facility.

Committee note: The prohibition set forth in subsection (b)(2)(B) of this Rule includes still photography and moving visual images. It is anticipated that permission will be granted for the taking of photographs at ceremonial functions.

(C) Interference with Court Proceedings or Work

An electronic device shall not be used in a manner that interferes with court proceedings or the work of court personnel.

Committee note: An example of a use prohibited by subsection (b)(2)(C) of this Rule is a loud conversation on a cell phone near a court employee's work station or in a hall way near the door to a courtroom.

(D) Jury Deliberation Room

An electronic device may not be brought into a jury deliberation room after deliberations have begun.

(E) Courtroom

(i) Except with the express permission of the presiding judge or as otherwise permitted by this Rule, Rules 16-502, 16-503, 16-504, or 16-603, all electronic devices inside a courtroom shall remain off and no electronic device may be used

to receive, transmit, or record sound, visual images, data, or other information.

...

REPORTER'S NOTE

A circuit court judge suggested that Rule 16-208 (b) (2) (D) be clarified. The subsection could be read to mean that anyone in a room used for jury deliberations may not have an electronic device, even if the jury is not deliberating. The General Court Administration Subcommittee proposes adding language to subsection (b) (2) (D) stating that electronic devices may not be brought into a jury deliberation room after deliberations have begun.

MEMORANDUM

TO : Members of the Property Subcommittee
FROM : Sherie B. Libber, Assistant Reporter
DATE : June 13, 2018
SUBJECT : Counterclaims Filed in Mortgage
Foreclosure Proceedings

The Rules Committee had considered the issue of whether counterclaims can be filed in mortgage foreclosure proceedings. The issue is unclear. Two Court of Appeals cases have allowed it, but an unreported Court of Special Appeals decision held that there can be no third-party practice in a foreclosure proceeding. Code, Real Property Article, § 7-105.1 (m) (3) seems to allow the filing of a counterclaim. The Property Subcommittee had considered the suggestion that cross references to the two Court of Appeals cases, *Higgins v. Barns*, 310 Md. 532 (1987) and *Fairfax Savings, F.S.B. v. Kris Jen Ltd. Partnership*, 338 Md. 1 (1995), and to the statute be added to the cross reference after subsection (a) (1) of Rule 14-211. They also considered the suggestion that language taken from Rule 2-602, Judgments Not Disposing of Entire Action, be added to Rule 14-305 to ensure that the filing of a counterclaim does not necessarily delay a decision in a foreclosure proceeding. The Subcommittee concluded that this matter should be addressed by the legislature first since it involves due process issues and that no change to the Rules should be made at this time.

SBL:cmp

MEMORANDUM

TO : Members of the Property Subcommittee
FROM : Sherie B. Libber, Assistant Reporter
DATE : June 13, 2018
SUBJECT : Rules Addressing a Declaration of a Non-Monetary Trust

The Rules Committee had sent back to the Property Subcommittee a matter that had been discussed at the September, 2016 Committee meeting. It pertained to the feasibility of having a rule addressing a declaration of a non-monetary trust procedure similar to the one in California. This procedure applies when there is a default on a mortgage. A trustee who was named in the deed of trust and is a third party who would conduct the non-judicial foreclosure trustee sale, but is not alleged to have committed any wrongful acts, is allowed to file the declaration to avoid participation in the lawsuit, liability for damages, and attorneys' fees. This is statutory in California. The Subcommittee discussed this and decided this is a matter for the Maryland legislature to address and should not be addressed in a rule.

SBL:cmp