

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee virtually held
via Zoom for Government on Friday, November 20, 2020.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.	Victor H. Laws, III, Esq.
Hon. Vicki Ballou-Watts	Dawne D. Lindsey, Clerk
Julia Doyle Bernhardt, Esq.	Bruce L. Marcus, Esq.
Hon. Pamela J. Brown	Donna Ellen McBride, Esq.
Stan Derwin Brown, Esq.	Stephen S. McCloskey, Esq.
Hon. Yvette M. Bryant	Hon. Douglas R. M. Nazarian
Sen. Robert G. Cassilly	Hon. Paula A. Price
Hon. John P. Davey	Scott D. Shellenberger, Esq.
Mary Anne Day, Esq.	Gregory K. Wells, Esq.
Del. Kathleen Dumais	Hon. Dorothy J. Wilson
Alvin I. Frederick, Esq.	Thurman W. Zollicoffer, Esq.
Pamela Q. Harris, State Court Administrator	

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter
Meredith E. Drummond, Esq., Assistant Reporter
Philip Andrews, Esq., Kramon & Graham, P.A.
Hon. Kendra Ausby
Derek Bayne, Esq., Staff Attorney, Commission on Judicial
Disabilities
Tanya Bernstein, Esq., Director, Commission on Judicial
Disabilities
Alexa Bertinelli, Esq., Civil Justice, Inc.
Cori Coates, JIS, Business Systems Analyst
Tara Cuffia, Circuit Court for Anne Arundel County
Thomas Dolina, Esq.
Tamara Sanders Dowd, Esq., Staff Attorney, Commission on
Judicial Disabilities

Nancy Harris, JIS, Sr. Technical Business Analyst
Scott Hartinger, Esq.
Amber Herrmann, Deputy Director, District Court Administrative
Services
Kendra Randall Jolivet, Esq., Executive Secretary, Commission on
Judicial Disabilities
Jose Jay Knight, Esq., Court of Special Appeals ADR Programs
Lydia Lawless, Esq., Bar Counsel, Attorney Grievance Commission
Lisa Mannisi, Esq., Circuit Court for Anne Arundel County
Richard Montgomery, Program Director, MSBA
Hon. John P. Morrissey, Chief Judge, District Court of Maryland
Ryan Mowery, Esq.
Suzanne Pelz, Esq., Maryland Judiciary, Senior Government
Relations & Public Affairs Officer
Hon. Michael Reed
Scott Stevens, Esq.
Gillian Tonkin, Esq., Staff Attorney, District Court of Maryland

The Chair convened the meeting. Ms. Haines said that the 206th Report is being prepared. She noted that there are technical issues implementing the change to Rule 20-109 to allow mediators to obtain remote access to Maryland Electronic Courts. The proposed amendment to Rule 20-109 is on hold and will not be included in the 206th Report.

Agenda Item 1. Consideration of proposed Rules changes recommended by the Attorneys and Judges Subcommittee: Amendments to Rules 18-402, Definitions; 18-404, Service of Documents; 18-407, Confidentiality; 18-425, Dismissal of Complaint; 18-437, Proceedings in Court of Appeals; and 19-801, Nature and Functions of Attorney Information System (AIS).

Mr. Frederick presented Rules 18-402 (Definitions), 18-404 (Service of Documents), 18-407 (Confidentiality), 18-425 (Dismissal of Complaint), 18-437 (Proceedings in Court of

Appeals), and 19-801 (Nature and Functions of Attorney Information System (AIS)) for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 18 - JUDGES AND JUDICIAL APPOINTEES
CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE
DIVISION 1. GENERAL PROVISIONS

AMEND Rule 18-402 by providing that the "address of record" of a judge who is an attorney is the address the judge has designated as the judge's preferred address in Attorney Information System (AIS) and by adding a Committee note and cross reference following section (a), as follows:

RULE 18-402. DEFINITIONS

The following definitions apply in this Chapter except as otherwise expressly provided or as necessary implication requires:

(a) Address of Record

"Address of record" means ~~a judge's~~
(1) if a judge is an attorney, the address that the judge has designated as the judge's preferred address in the Attorney Information System (AIS), and (2) if the judge is not an attorney, the judge's current home address or another address designated in writing by the judge.

Committee note: All judges of the Court of Appeals, the Court of Special Appeals, the circuit courts, and the District Court are attorneys. Some judges of the Orphans' Courts are not attorneys.

Cross reference: For the obligation of a judge who is an attorney to register with AIS and keep the registration information current, See Rule 19-802. See Rule 18-407 (a) (1) concerning confidentiality of a judge's home address.

. . .

Rule 18-402 was accompanied by the following Reporter's note:

The proposed amendment to the definition of "Address of Record" in Rule 18-402 provides that if a judge is an attorney, the judge's "address of record" is the address that the judge has designated as the judge's preferred address in the Attorney Information System (AIS). If the judge is not an attorney, the current provisions of Rule 18-402 (a) remain applicable.

A Committee note distinguishes the courts in which all judges are required to be attorneys from the Orphans' Courts in which some judges are not attorneys.

A cross reference to Rule 19-802, which requires registration with AIS and keeping the registration information current, also is proposed.

MARYLAND RULES OF PROCEDURE
TITLE 18 - JUDGES AND JUDICIAL APPOINTEES
CHAPTER 400 - JUDICIAL DISABILITIES AND
DISCIPLINE
DIVISION 1. GENERAL PROVISIONS

AMEND Rule 18-404 by adding lettered sections, by allowing a judge to specify an address where charges are to be served, by allowing charges to be served on the judge's attorney under certain circumstances, by specifying that service is complete upon mailing, by requiring charges to be sent to the judge via electronic mail contemporaneously where possible, by requiring subsequent documents to be served via first-class mail under certain

circumstances, and by making stylistic changes, as follows:

RULE 18-404. SERVICE OF DOCUMENTS

(a) Charges

(1) Where Served

Charges filed against a judge shall be served on the judge at the address requested by the judge or at the judge's address of record by certified mail, restricted delivery, and by first class mail., except if the judge is represented by an attorney who has agreed to accept service, service shall be on the judge's attorney at the attorney's business address.

(2) Method of Service

Charges shall be served by certified mail, restricted delivery, and by first-class mail. Service shall be complete upon mailing in accordance with Rule 1-321 (b). If an electronic mail address has been furnished by the judge, charges shall be contemporaneously transmitted electronically.

(b) Other Documents

Unless otherwise directed by a Rule in this Chapter or agreed to in writing between the serving party and the party to be served, all other documents to be served on the judge, Investigative Counsel, the Board, or the Commission shall be served electronically at an address furnished by each of them to the other. If an electronic mail address is not furnished or is otherwise unavailable, all other documents shall be served by first-class mail at the last known address of the judge or the judge's attorney, Investigative Counsel, the Board, or the Commission.

Cross reference: See Rule 18-422 (a) (4).

Source: This Rule is new.

Rule 18-404 was accompanied by the following Reporter's note:

Proposed amendments to Rule 18-404 modify the service requirements at the request of the Commission on Judicial Disabilities. The Rule currently requires that charges be served on the judge at the judge's address of record. The amendments provide two additional options, allowing the Commission to serve charges on the judge at an address specified by the judge or, if the judge is represented by an attorney who has agreed to accept service, on the judge's attorney.

New subsection (a)(2) contains the methods of service from the current version of the Rule. Proposed amendments specify that service of the charges is complete upon mailing and require that charges be contemporaneously sent via electronic mail, if the judge has provided an email address.

New section (b) contains the current provisions for subsequent documents served in the proceeding. The Rule is amended to add that documents shall be served by first-class mail if an email address is not available.

MARYLAND RULES OF PROCEDURE
TITLE 18 - JUDGES AND JUDICIAL APPOINTEES
CHAPTER 400 - JUDICIAL DISABILITIES AND
DISCIPLINE
DIVISION 1. GENERAL PROVISIONS

AMEND Rule 18-407 by adding new subsection (b)(4)(C) permitting disclosure of information to Bar Counsel in certain

circumstances and making stylistic changes, as follows:

RULE 18-407. CONFIDENTIALITY

(a) Generally

Except as otherwise expressly provided by these Rules, proceedings and information relating to a complaint or charges shall be open to the public or confidential and not open to the public, as follows:

(1) Judge's Address and Identifying Information

The judge's current home address and personal identifying information not otherwise public shall remain confidential at all stages of proceedings under these Rules. Any other address of record shall be open to the public if the charges and proceedings are open to the public.

(2) Complaints; Investigations; Disposition Without Charges

Except as otherwise required by Rules 18-425, 18-426, and 18-427, all proceedings under Rules 18-421, 18-428, and 18-441 shall be confidential.

(3) Upon Resignation, Voluntary Retirement, Filing of a Response, or Expiration of the Time for Filing a Response

Charges alleging sanctionable conduct and all subsequent proceedings before the Commission on those charges shall be open to the public upon the first to occur of (A) the resignation or voluntary retirement of the judge, (B) the filing of a response by the judge to the charges, or (C) expiration of the time for filing a response. Charges alleging disability or impairment and all proceedings before the Commission on them shall be confidential.

(4) Work Product, Proceedings, and
Deliberations

Except to the extent admitted into evidence before the Commission, the following matters shall be confidential: (A) Investigative Counsel's work product and, subject to Rules 18-422 (b) (3) (A), 18-424 (d) (3) and 18-433 (c), reports prepared by Investigative Counsel not submitted to the Commission; (B) proceedings before the Board, including any peer review proceeding; (C) any materials reviewed by the Board during its proceedings that were not submitted to the Commission; (D) deliberations of the Board and Commission; and (E) records of the Board's and Commission's deliberations.

(5) Proceedings in the Court of Appeals

Unless otherwise ordered by the Court of Appeals, the record of Commission proceedings filed with that Court and any proceedings before that Court on charges of sanctionable conduct shall be open to the public. The record of Commission proceedings filed with that Court and any proceedings before that Court on charges of disability or impairment shall be confidential. An order of retirement by the Court shall be public.

(b) Permitted Release of Information by
Commission

(1) Written Waiver

The Commission may release confidential information upon receipt of a written waiver by the subject judge, except that those matters listed in subsection (a) (4) shall remain confidential notwithstanding a waiver by the judge.

(2) Explanatory Statement

The Commission may issue a brief explanatory statement necessary to correct any inaccurate or misleading information from any source about the Commission's process or procedures.

(3) To Chief Judge of Court of Appeals

(A) Upon request by the Chief Judge of the Court of Appeals, the Commission shall disclose to the Chief Judge:

(i) whether a complaint is pending against the judge who is the subject of the request; and

(ii) the disposition of each complaint that has been filed against the judge within the preceding five years.

(B) The Chief Judge may disclose this information to the incumbent judges of the Court of Appeals in connection with the exercise of any administrative matter over which the Court has jurisdiction. Each judge who receives information pursuant to subsection (b)(3) of this Rule shall maintain the applicable level of confidentiality of the information otherwise required by the Rules in this Chapter.

(4) Information Involving Criminal Activity, Health, ~~and~~ Safety, and Certain Ethical Concerns

The Commission may provide (A) information involving criminal activity, including information requested by subpoena from a grand jury, to applicable law enforcement and prosecuting officials, ~~and~~ (B) information regarding health and safety concerns to applicable health agencies and law enforcement officials, and to any individual who is the subject of or may be affected by any such health or safety concern, and (C) if the judge resigns or voluntarily retires prior to the disposition of the matter involving the subject judge,

information to Bar Counsel pertaining to conduct that may constitute a violation of the Maryland Attorneys' Rules of Professional Conduct that raises a substantial question as to the judge's honesty, trustworthiness, or fitness as an attorney in other respects.

(5) Finding of Disability or Impairment

The Commission may disclose any final disposition imposed against a judge related to charges of disability or impairment to the applicable administrative judge or Chief Judge of the disabled or impaired judge's court or, if the disabled or impaired judge is a recalled senior judge, to the Court of Appeals.

(6) Nominations; Appointments; Approvals

(A) Permitted Disclosures

Upon a written application made by a judicial nominating commission, a Bar Admission authority, the President of the United States, the Governor of a state, territory, district, or possession of the United States, or a committee of the General Assembly of Maryland or of the United States Senate which asserts that the applicant is considering the nomination, appointment, confirmation, or approval of a judge or former judge, the Commission shall disclose to the applicant:

(i) Information about any completed proceedings that did not result either in dismissal of the complaint or in a conditional diversion agreement that has been satisfied; and

(ii) Whether a complaint against the judge is pending.

Committee note: A reprimand issued by the Commission is disclosed under subsection (b) (6) (A) (i). An unsatisfied conditional

diversion agreement is disclosed under subsection (b) (6) (A) (ii) as a pending complaint against the judge.

(B) Restrictions

Unless the judge waives the restrictions set forth in this subsection, when the Commission furnishes information to an applicant under this section, the Commission shall furnish only one copy of the material, which shall be furnished under seal. As a condition to receiving the material, the applicant shall agree that (i) the applicant will not copy the material or permit it to be copied; (ii) when inspection of the material has been completed, the applicant will seal and return the material to the Commission; and (iii) the applicant will not disclose the contents of the material or any information contained in it to anyone other than another member of the applicant.

(C) Copy to Judge

The Commission shall send the judge a copy of all documents disclosed under this subsection.

Cross reference: For the powers of the Commission in an investigation or proceeding under Md. Const., Art. IV, § 4B, see Code, Courts Article, §§ 13-401 through 13-403.

(c) Statistical or Annual Report

The Commission may include in a publicly available statistical or annual report the number of complaints received, investigations undertaken, and dispositions made within each category of disposition during a fiscal or calendar year, provided that, if a disposition has not been made public, the identity of the judge involved is not disclosed or readily discernible.

Source: This Rule is in part derived from former Rule 18-409 (2018) and is in part new.

Rule 18-407 was accompanied by the following Reporter's note:

Proposed amendments to Rule 18-407 allow the Commission on Judicial Disabilities to provide information to Bar Counsel about a judge who resigns or retires prior to the resolution of a pending matter. The information must be related to conduct that may constitute a violation of the Maryland Attorneys' Rules of Professional Conduct and call into question the former judge's "honesty, trustworthiness, or fitness as an attorney." The language is borrowed from section (a) of Rule 19-308.3 (Reporting Professional Misconduct).

MARYLAND RULES OF PROCEDURE
TITLE 18 - JUDGES AND JUDICIAL APPOINTEES
CHAPTER 400 - JUDICIAL DISABILITIES AND
DISCIPLINE
DIVISION 4. DISPOSITION OTHER THAN FILING
OF CHARGES

AMEND Rule 18-425 by subjecting notice to the judge under section (a) to the exception in Rule 18-422 (a)(4)(F), as follows:

RULE 18-425. DISMISSAL OF COMPLAINT

(a) Without Letter of Cautionary Advice

If, after an investigation by Investigative Counsel, the Commission concludes that the evidence fails to show that the judge has a disability or impairment or has committed sanctionable conduct, it shall dismiss the complaint without a letter of cautionary advice and notify the complainant, ~~the judge,~~ the

Board, and, subject to Rule 18-422 (a) (4) (F), the judge. If the Commission is unable to make that conclusion based on a recommendation by Investigative Counsel pursuant to Rule 18-422 (b) (3), it shall refer the matter to the Board for its review under Rule 18-423.

(b) With Letter of Cautionary Advice

(1) When Appropriate

If the Commission determines that any sanctionable conduct that may have been committed by the judge will be sufficiently addressed by the issuance of a letter of cautionary advice, the Commission may accompany a dismissal with such a letter.

Committee note: A letter of cautionary advice may be appropriate where the judge's conduct was (1) inappropriate and perhaps marginally sanctionable or (2) if sanctionable, was not particularly serious, was not intended to be harmful, was not repetitious, may have been the product of a momentary lapse in judgment or the judge being unaware that the conduct was not appropriate, and does not justify discipline. The letter is intended to be remedial in nature, so that the judge will be careful not to repeat that or similar conduct.

(2) Notice to Judge; Response

The Commission shall notify the judge of a proposed dismissal with cautionary advice. Within 15 days after the sending of that notice, the judge may file a written response, which, before issuing the dismissal and letter, the Commission shall consider.

(3) Confidentiality

The existence and contents of the letter are private and confidential, except

that the Commission and Investigative Counsel shall retain a copy of it and any response by the judge and may consider them if relevant in any subsequent proceeding against the judge. The Commission shall notify the complainant that the complaint was brought to the judge's attention and that no public action against the judge was taken.

(4) Not a Form of Discipline

A letter of cautionary advice is not a reprimand and does not constitute a form of discipline.

Source: This Rule is derived in part from former Rule 18-406 (a) (2018) and is in part new.

Rule 18-425 was accompanied by the following Reporter's note:

A proposed amendment to Rule 18-425 clarifies that a judge who has not requested notice of the opening of a file pursuant to Rule 18-422 (a) (4) (F) is not notified of the dismissal of a complaint without a letter of cautionary advice. The Commission on Judicial Disabilities suggested the amendment to ensure that only judges who were notified that a file was opened receive notice that a complaint has been dismissed.

MARYLAND RULES OF PROCEDURE
TITLE 18 - JUDGES AND JUDICIAL APPOINTEES
CHAPTER 400 - JUDICIAL DISABILITIES AND
DISCIPLINE
DIVISION 6. FILING OF CHARGES; PROCEEDINGS
BEFORE COMMISSION

AMEND Rule 18-437 by altering the time the Commission has to file a response to exceptions, as follows:

RULE 18-437. PROCEEDINGS IN COURT OF APPEALS

. . .

(c) Response

The Commission shall file a response within ~~15~~ 30 days after service of the exceptions in accordance with Rule 20-405. The Commission shall be represented in the Court of Appeals by its Executive Secretary or such other attorney as the Commission may appoint. A copy of the response shall be served on the judge in accordance with Rules 1-321 and 1-323.

. . .

Source: This Rule is derived in part from former Rule 18-408 (2018) and is in part new.

Rule 18-437 was accompanied by the following Reporter's note:

A proposed amendment to Rule 18-437 extends from 15 to 30 days the time for the Commission on Judicial Disabilities to respond to exceptions. The Commission requested the change because 15 days is a relatively short turnaround time and can be complicated by delayed service.

MARYLAND RULES OF PROCEDURE
TITLE 19 - ATTORNEYS
CHAPTER 800 - ATTORNEY INFORMATION SYSTEM

AMEND Rule 19-801 to include additional persons in the definition of "constituent agency" in section (a), as follows:

RULE 19-801. NATURE AND FUNCTIONS OF ATTORNEY INFORMATION SYSTEM (AIS)

(a) Definitions

In the Rules in this Chapter, "AIS" means the Attorney Information System, and "constituent agency" means the Court of Appeals, the Client Protection Fund, the Attorney Grievance Commission, Bar Counsel, the Commission on Judicial Disabilities, Investigative Counsel, the State Board of Law Examiners, and the Administrative Office of the Courts.

(b) Generally

(1) AIS is an electronic database maintained by the Judicial Information Systems, a unit within the Administrative Office of the Courts, that (A) centralizes certain information regarding attorneys collected by the constituent agencies pursuant to other Rules or statutes, and (B) provides a single portal for attorneys to update required information, communicate with the constituent agencies on matters regarding their status, file certain mandated reports, and pay certain mandated fees.

(2) AIS is intended to make communications with the constituent agencies and compliance with obligations imposed on attorneys, judges, and magistrates easier and more efficient.

(c) Notices, Invoices, and Communications pursuant to Rules 19-409, 19-503, 19-605, and 19-606

Except as provided in subsection (c) (2) of this Rule:

(1) All notices, invoices, and other communications required to be sent to attorneys pursuant to Rules 19-409 (IOLTA), 19-503 (Pro Bono), 19-605 (Client Protection Fund), and 19-606 (Client Protection Fund) may be sent electronically.

(2) One initial notice of the requirements of this Rule and Rule 19-802 may be given by publication or in paper form.

(d) Availability of Attorney Information

Subject to confidentiality requirements imposed by the Maryland Rules or by statute, attorney information in the AIS database is available to the constituent agencies. The State Court Administrator shall develop and promulgate protocols necessary to assure that information that has been collected by a constituent agency and that, by law, is confidential, is not improperly shared with any other constituent agency not otherwise entitled to have access to it.

Source: This Rule is new.

Rule 19-801 was accompanied by the following Reporter's note:

Rule 19-801 describes the nature and functions of the Attorney Information System ("AIS"). With certain exceptions, all attorneys admitted to the Maryland bar or otherwise practicing law in Maryland must register with AIS and, pursuant to Rule 19-802 (e), are required to keep their information current. Information provided to AIS includes current contact information such as physical mail and electronic mail addresses.

Rule 19-801 provides that attorney information in AIS is available to constituent agencies, subject to certain confidentiality requirements. Section (a) currently states that constituent agencies include the Court of Appeals, the Client Protection Fund, the State Board of Law Examiners, and the Administrative Office of the Courts. Other persons in the Judiciary, however, also require current contact

information for attorneys in order to complete their duties. Accordingly, proposed amendments to section (a) expand the list of constituent agencies to include the Attorney Grievance Commission, Bar Counsel, the Commission on Judicial Disabilities, and Investigative Counsel.

Mr. Frederick said that the proposed amendments to Rule 18-402 did not come out of the Subcommittee and therefore require a motion to be approved. He explained that the amendments require a judge who is an attorney to maintain an address of record in the Attorney Information System. That would apply to all Maryland judges except those Orphans' Court judges who are not attorneys. A motion was made and seconded. The Rule was approved as presented by majority vote.

Mr. Frederick said that the remaining proposed amendments were recommended by the Attorneys and Judges Subcommittee. Rule 18-404 allows service of process in Commission on Judicial Disabilities matters on the judge's lawyer, if the lawyer has agreed to accept service. Judge Reed noted that the Commission was concerned that it would not have access to a judge's email address. The Chair responded that a proposed amendment to Rule 19-801 provides the Commission and Investigative Counsel access to the Attorney Information System where that information will

be stored. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick said that Rule 18-407 authorizes the Commission on Judicial Disabilities to provide certain information to Bar Counsel and the Attorney Grievance Commission if a judge resigns or voluntarily retires before disposition in a judicial ethics matter. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick said that Rule 18-425 is amended to be consistent with the notice provisions in Rule 18-422. He explained that if a judge did not opt to be notified of complaints against him or her, Rule 18-425 does not require the Commission on Judicial Disabilities to notify the judge when a complaint is dismissed without a letter of cautionary advice. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick said that Rule 18-437 gives Investigative Counsel 30 days to respond to the judge's exceptions in proceedings before the Court of Appeals. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Frederick said that proposed amendments to Rule 19-801, which allows certain agencies to access the Attorney Information

System, add the Attorney Grievance Commission, Bar Counsel, the Commission on Judicial Disabilities, and Investigative Counsel to the definition of "constituent agency." There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 2. Consideration of proposed amendments to Rule 3-513, Testimony Taken by Telephone.

Judge Wilson presented Rule 3-513 (Testimony Taken by Telephone) for consideration.

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

AMEND Rule 3-513 to delete subsection (c) (6), as follows:

RULE 3-513. TESTIMONY TAKEN BY TELEPHONE

(a) When Testimony Taken by Telephone Allowed; Applicability

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

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

(b) Time for Filing Motion

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

(c) Contents of Motion

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

(1) address and telephone number for the witness;

(2) the subject matter of the witness's expected testimony;

(3) the reasons why testimony taken by telephone should be allowed, including any circumstances listed in section (d) of this Rule;

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

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

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

(d) Good Cause

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

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

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

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

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

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

(e) When Testimony Taken by Telephone Is Prohibited

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

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

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

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

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

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

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

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

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

(f) Use of Deposition

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

(g) Costs

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

Source: This Rule is new.

Rule 3-513 was accompanied by the following Reporter's note:

Section (c) of Rule 3-513 sets forth the content requirements of a motion to allow the testimony of a witness to be taken by phone. Subsection (c)(6), requiring the motion to include whether transmission of the witness's testimony will be from a wired handset, a wireless handset connected to the landline, or a speaker phone, does not reflect the realities of modern technology and telephone usage. The proposed amendments to Rule 3-513 delete subsection (c)(6).

Judge Wilson said that Rule 3-513 was amended by a Rules Order on June 17, 2020 to remove the definition of a "telephone," which was defined as a landline telephone and

excluded cell phones. She explained that the proposed amendment to subsection (c)(6) removes the requirement that a motion to take testimony of a witness by telephone provide details about the method of transmission. Judge Wilson pointed out that due to technological advances, these considerations are no longer relevant to the court's determination to grant or deny a motion under this Rule. The District Court Subcommittee opted to remove subsection (c)(6). There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 3. Consideration of proposed amendments to Rules 16-109, Maryland Judicial Conference; 16-702, Conference of Circuit Judges; and 16-914, Case Records - Required Denial of Inspection - Certain Categories.

The Chair presented Rules 16-109 (Maryland Judicial Conference), 16-702 (Conference of Circuit Judges), and 16-914 (Case Records - Required Denial of Inspection - Certain Categories) for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-109 by adding a provision pertaining to educational programs conducted during a meeting of the Judicial Conference and by adding a Committee note, as follows:

RULE 16-109. MARYLAND JUDICIAL CONFERENCE

(a) Existence; Membership; Chair;
Secretariat

There is a Maryland Judicial Conference which consists of the judges of the Court of Appeals, the Court of Special Appeals, the circuit courts, and the District Court. The Chief Judge of the Court of Appeals is the Chair of the Conference. The Administrative Office of the Courts is the secretariat for the Conference.

(b) Duties

The Judicial Conference may:

(1) consider the annual report of the Judicial Council and such other business as may be presented to the Conference,

(2) discuss new and proposed legislation, proposed and adopted changes to the Maryland Rules, emerging case law, and trends that may affect the Maryland courts, judges, or the broader legal and judicial community, and

(3) exchange ideas with respect to the improvement of the administration of justice in Maryland.

(c) Sessions

Unless otherwise ordered by the Chief Judge of the Court of Appeals, the Conference shall meet in general session periodically at the time and place designated by the Chief Judge. Each session of the Conference shall be for the number of days determined by the Chief Judge. Educational programs conducted during a meeting of the Judicial Conference shall be under the auspices of the Judiciary's educational unit created by Administrative Order.

Committee note: The current name of the Judiciary's educational unit is the Judicial College of Maryland.

Source: This Rule is derived in part from former Rule 16-802 (2016) and is in part new.

Rule 16-109 was accompanied by the following Reporter's note:

An amendment to Rule 16-109 pertaining to educational programs conducted during a meeting of the Judicial Conference is proposed at the request of the State Court Administrator.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 700 - MISCELLANEOUS JUDICIAL UNITS

AMEND Rule 16-702 by revising provisions pertaining to the appointment of an Executive Committee, as follows:

RULE 16-702. CONFERENCE OF CIRCUIT JUDGES

(a) Existence; Membership; Terms

There is a Conference of Circuit Judges. The Conference consists of the Circuit Administrative Judge of each judicial circuit and one additional circuit court judge from each judicial circuit elected by the incumbent circuit court judges in that circuit. The elected members shall serve for a term of two years. If a vacancy occurs because an elected member resigns from the Conference, leaves judicial office, or is appointed to another judicial office, the incumbent circuit court judges in that judge's judicial circuit shall elect a replacement member to serve for the balance of the unexpired term.

(b) Chair and Vice Chair

The Conference shall elect from its members a Chair and a Vice Chair. The

election shall be held every two years, but an interim election shall be held if necessary because an incumbent chair or vice chair ceases to be a member of the Conference.

(c) Meetings; Quorum

The Conference shall meet at least four times a year. A majority of the authorized members of the Conference shall constitute a quorum.

(d) Duties

(1) Administration Policies

The Conference shall work collaboratively and in consultation with the Judicial Council in developing recommendations affecting the administration of the circuit courts, including:

(A) programs and practices that will enhance the administration of justice in the circuit courts;

(B) the level of operational and judicial resources for the circuit courts to be included in the Judiciary budget;

(C) recommending, opposing, or commenting on legislation or Rules that may affect the circuit courts; and

(D) the compensation and benefits for circuit court judges.

(2) Consultants

With the approval of the Chief Judge of the Court of Appeals, the Conference may retain consultants in matters relating to the circuit courts.

(3) Consultation With Chief Judge of the Court of Appeals. The Conference may nominate to the Chief Judge of the Court of Appeals circuit court judges for membership

on committees and bodies of interest to the circuit courts.

(4) Majority Vote

The Conference and the Executive Committee of the Conference each shall carry out its duties pursuant to a majority vote of its authorized membership.

(e) Executive Committee

~~(1) Existence; Membership~~

~~There is an Executive Committee of the Conference. It consists of the Conference Chair and Vice Chair and the other members designated by the Conference.~~

~~(2) Authority~~

(1) Appointment; Authority

~~The Executive Committee may act with~~
The Conference may appoint an Executive Committee, which shall have the full
authority of the Conference to act when the Conference is not in session. The actions of the Executive Committee shall be reported fully to the Conference at its next meeting.

~~(3)~~ (2) Quorum

A majority of the authorized membership of the Executive Committee shall constitute a quorum.

~~(4)~~ (3) Convening the Executive Committee

The Executive Committee shall convene at the call of the Conference Chair. In the absence of the Chair, the Vice Chair may convene the Executive Committee.

(f) Conference Staff

The Administrative Office of the Courts shall serve as staff to the Conference and its Executive Committee.

Source: This Rule is derived from former Rule 16-108 (2016).

Rule 16-702 was accompanied by the following Reporter's note:

An amendment to Rule 16-702 pertaining to the appointment of an Executive Committee of the Conference of Circuit Judges is proposed at the request of the State Court Administrator.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 900 - ACCESS TO JUDICIAL RECORDS
DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-914 to correct a parenthetical reference to a subtitle of the Criminal Procedure Article, as follows:

RULE 16-914. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

...

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

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

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

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

(B) Executed search warrants and all papers attached thereto filed pursuant to

Rule 4-601, except as authorized by a judge under that Rule.

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

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

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

(4) Unless entered into evidence at a hearing or trial or otherwise ordered by the court, a case record pertaining to (i) a pen register or trace device applied for or ordered pursuant to Rule 4-601.1, (ii) an emergency order applied for or entered pursuant to Rule 4-602, (iii) the interception of wire or oral communications applied for or ordered pursuant to Rule 4-611, or (v) an order for electronic device location information applied for or entered pursuant to Rule 4-612.

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

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

(7) Except as otherwise provided by law, a case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, § 15-108, (C) the State

Prosecutor pursuant to Code, Criminal Procedure Article, § 14-110, or (D) the Attorney General when acting pursuant to Article V, § 3 of the Maryland Constitution or other law or a federal law enforcement agency.

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

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

(8) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3 (~~Incompetency and Criminal Responsibility~~ Criminal Records-Shielding).

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

...

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

Proposed amendments to Rule 16-914
correct a parenthetical in subsection (f)(8)
to provide a more accurate description of
Code, Criminal Procedure Article, Title 10,
Subtitle 3.

The Chair said that Rule 16-109 is amended at the request of the Administrative Office of the Courts to clarify that educational programs conducted during a meeting of the Judicial Conference are not open to the public. He explained that Rule 16-702 is amended at the request of the State Court Administrator to permit the Conference of Circuit Judges to appoint an Executive Committee if it wishes to do so. The Chair called for a motion to approve Rules 16-109 and 16-702, which did not come out of a Subcommittee. A motion was made and seconded. The Rule was approved as presented by majority vote.

The Chair said that Rule 16-914 is a housekeeping amendment to correct a parenthetical reference to a subtitle of the Criminal Procedure Article. The Chair called for a motion to approve Rule 16-914. A motion was made and seconded. The Rule was approved as presented by majority vote.

Additional Agenda Item. Consideration of proposed amendments to Rule 4-211, Filing of Charging Document.

The Chair said that Chief Judge Morrissey raised a concern about Rule 4-211 (a) for the Committee to consider shortly before the meeting. Chief Judge Morrissey explained that there is an electronic citation system for traffic cases which transmits data to the District Court every night. He said that he was informed that a defendant noted an appeal of a traffic citation and argued that an electronic record of a citation transmitted to the District Court did not constitute an original under Rule 4-211 (a) (See Appendix C). He pointed out that electronic records will only become more common and requested that the Rule be amended to state that the original citation includes the electronic version.

The Chair said that the specifics of the proposal can be worked out in the Style Subcommittee, but suggested section (a) be amended to add, "An electronic version of a citation issued by a law enforcement officer shall be regarded as an original." Chief Judge Morrissey confirmed that the Chair's suggestion would address the issue. The Chair requested a motion. A motion was made and seconded. Mr. Laws asked how a citizen is served when an electronic citation is issued. Chief Judge Morrissey explained that the individual receiving the citation is given a print-out citation in paper form. The Rule was approved by majority vote.

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