

THE SUPREME COURT STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms
132-133 of the Maryland Judicial Center, 187 Harry S. Truman
Parkway, Annapolis, Maryland on Friday, February 9, 2024.

Members present:

Hon. Alan M. Wilner, Chair
Hon. Douglas R.M. Nazarian, Vice
Chair

Hon. Tiffany Anderson
Hon. Vicki Ballou-Watts
James M. Brault, Esq.
Hon. Pamela J. Brown
Hon. Yvette M. Bryant
Hon. Catherine Chen
Julia Doyle, Esq.
Monica Garcia Harms, Esq.
Arthur J. Horne, Jr., Esq.

Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Stephen S. McCloskey, Esq.
Judy Rupp, State Court
Administrator
Scott D. Shellenberger, Esq.
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Brian L. Zavin, Esq.
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter
Meredith Drummond, Esq., Assistant Reporter

Ksenia Boitsova, Program Administrator, Court Interpreter
Program
H. Scott Curtis, Esq., Asst. Attorney General, Workers'
Compensation Commission
Hon. John Morrissey, Chief Judge, District Court of Maryland
Stacy Smith, Civil and Criminal Case Administrator, Circuit
Court for Anne Arundel County
Brittany West, Esq., Legal Content Analyst, Access to Justice

The Chair convened the meeting. He said that the minutes from the November 17, 2023 meeting were circulated for review. He called for any amendments or discussion on the minutes. Hearing none, he called for a motion to approve the minutes. A motion to approve the minutes was made, seconded , and approved by majority vote.

The Reporter advised that the meeting was being recorded for the purposes of assisting with the preparation of meeting minutes and speaking will be treated as consent to being recorded.

Agenda Item 1. Consideration of proposed Rules changes recommended by the General Provisions Subcommittee

Mr. Wells presented Rule 1-301, Form of Court Papers, for consideration.

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

AMEND Rule 1-301 by altering certain provisions in section (c) pertaining to margins, as follows:

Rule 1-301. FORM OF COURT PAPERS

...

(c) Size of Papers – Backers Prohibited

Except as otherwise provided, any paper filed shall be 8 ½ inches wide and 11 inches in length, shall have a ~~top margin and left hand margin of not less than 1 ½ inches~~ margin of not less than one inch at the top and bottom and on each side, and shall be without a back or cover.

...

Rule 1-301 was accompanied by the following Reporter's note:

Proposed amendments to Rule 1-301 update the margin requirements for papers filed with the court. A practitioner contacted the Committee regarding this provision in 2023 and pointed out that in MDEC jurisdictions, bound paper files are no longer utilized, negating the need for extra space in the top and left margins. With MDEC scheduled to launch in Baltimore City in May, the General Provisions Subcommittee recommends updating this provision to require a margin of at least one inch on all sides of a paper.

Mr. Wells informed the Committee that the proposed amendments to Rule 1-301 update the margin requirements. He explained that the extra space required at the top and left margins are not necessary in MDEC jurisdictions where the court does not maintain bound paper files. He noted that Baltimore City, the last jurisdiction not using MDEC, is scheduled to move to electronic filing in May. There being no motion to amend or reject the proposed amendment to Rule 1-301, it was approved as presented.

Agenda Item 2. Consideration of proposed amendments to Rule 4-251 (Motions in District Court) and Rule 4-252 (Motions in Circuit Court)

The Chair presented Rule 4-251, Motions in District Court, and Rule 4-252, Motions in Circuit Court, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 – CRIMINAL CAUSES
CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-251 by adding new subsection (b)(4) pertaining to a motion seeking relief under Code, Criminal Law Article, § 1-402; by adding a cross reference following new subsection (b)(4); and by renumbering current subsection (b)(4) as (b)(5), as follows:

Rule 4-251. MOTIONS IN DISTRICT COURT

. . .

(b) When Made; Determination

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

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

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

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court. See also *Davis v. State*, 474 Md. 439 (2021) for discussion of the statutory factors in Code, Criminal Procedure Article, § 4-202(d) governing transfer of jurisdiction to the juvenile court.

(4) Child Victim of Trafficking – Court Determination

A motion seeking relief under Code, Criminal Law Article, § 1-402 may be raised at any time prior to entry of judgment. The court shall follow the procedure set forth in Rule 11-420.2 except that (A) “petition” as used in Rule 11-420.2 shall be construed to refer to a “charging document” and (B) “disposition” as used in Rule 11-420.2 shall be construed to refer to a “judgment.”

Cross reference: See Code, Courts Article, § 3-8A-17.13.

~~(4)~~(5) Other motions, including a motion under Code, Courts Article, § 10-923, may be determined at any appropriate time.

...

Rule 4-251 was accompanied by the following Reporter’s
note:

Proposed amendments to Rules 4-251 and 4-252 implement Chapter 686/687, 2023 Laws of Maryland (SB 292/HB 297). The legislation generally prohibits a minor from being criminally prosecuted or the subject of a delinquency petition for certain offenses if the alleged act was committed as a direct result of the child being a victim of sex trafficking or human trafficking. This “safe harbor” legislation creates new Code, Courts Article, § 3-8A-17.13 and places certain duties on the court, including requiring a stay of proceedings, referral for services, and a determination by the court as to whether the child was a victim of trafficking and the child’s actions were a direct result of being trafficked.

The Rules Committee previously recommended the creation of new Rule 11-420.2 to implement this legislation. However, part of the legislation also created new Code, Criminal Law Article, § 1-402, which states, “a minor may not be criminally prosecuted or proceeded against under Title 3, Subtitle 8A” for certain enumerated offenses (emphasis added). Committee staff consulted with advocates involved in the legislation who confirmed that the legislature contemplated motions made pursuant to the statute in Title 4 proceedings in addition to juvenile court proceedings.

Proposed amendments to Rules 4-251 and 4-252 add to the District Court and circuit court motions Rules a provision for a motion under the statute and refer the parties and the court to the procedures in Rule 11-420.2 for handling that motion. The amendments state that when following the Title 11 Rule, the court should make appropriate terminology adjustments (“petition” in Title 11 should be read as “charging document” in a Title 4 motions hearing, etc). A cross reference to the delinquency subtitle in the Courts Article follows the new subsection in each Title 4 Rule.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-252 by adding creating new subsection (d)(1) comprised of the first sentence from section (d); by adding new subsection (d)(2) pertaining to a motion seeking relief under Code, Criminal Law Article, § 1-402; by adding a cross reference following new subsection (d)(2); and by creating new subsection (d)(3) comprised of the second sentence from section (d), as follows:

RULE 4-252. MOTIONS IN CIRCUIT COURT

..

(d) Other Motions

(1) Defect in Charging Document

A motion asserting failure of the charging document to show jurisdiction in the court or to charge an offense may be raised and determined at any time.

(2) Child Victim of Trafficking – Court Determination

A motion seeking relief under Code, Criminal Law Article, § 1-402 may be raised at any time prior to entry of judgment. The court shall follow the procedure set forth in Rule 11-420.2 except that (A) “petition” as used in Rule 11-420.2 shall be construed to refer to a “charging document” and (B) “disposition” as used in Rule 11-420.2 shall be construed to refer to a “judgment.”

Cross reference: See Code, Courts Article, § 3-8A-17.13.

(3) Any Other Motion

Any other defense, objection, or request capable of determination before trial without trial of the general issue, shall be raised by motion filed at any time before trial.

...

Rule 4-252 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 4-251.

The Chair informed the Committee that the proposed amendments to Rules 4-251 and 4-252 were not considered by the Criminal Rules Subcommittee. They implement a 2023 statute related to child victims of trafficking. He noted that the Committee previously approved new Rule 11-420.2, which governs a request for relief pursuant to the 2023 statute in juvenile court. The Committee was made aware that similar provisions were necessary in the criminal motions Rules as well. He said that proposed new Rule 11-420.2 is included in the materials as background.

Judge Bryant said that she had a style amendment which could be construed as substantive. She suggested that "except that" be deleted from the new language and Rule 4-251 (b) (4) (A) and (B) become separate sentences setting forth the terminology adjustments to be made when applying Rule 11-420.2 to a Title 4 action. She moved to make the amendments. The motion was seconded and by consensus approved by the Committee. The Reporter noted that the same amendments will be made in Rule 4-252.

The Chair called for a motion to approve the proposed changes to Rules 4-251 and 4-252, as amended. A motion was made, seconded, and approved by majority vote.

Agenda Item 3. Consideration of proposed amendments to Rule 7-206 (Record-Generally) and Rule 16-914 (Case Records-Required Denial of Inspection-Certain Categories)

The Chair presented Rule 7-206, Record-Generally, and Rule 16-914, Case Records-Required Denial of Inspection-Certain Categories, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 7 – APPELLATE AND OTHER JUDICIAL
REVIEW IN CIRCUIT COURT
CHAPTER 200 – JUDICIAL REVIEW OF
ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-206 by adding new section (f) pertaining to restricted information in the record of an administrative agency proceeding, by re-lettering current section (f) as section (g), and by adding to new section (g) a requirement to shield certain records, as follows:

Rule 7-206. RECORD – GENERALLY

(a) Applicability

This Rule does not apply to judicial review of a decision of the Workers' Compensation Commission, except as otherwise provided by Rule 7-206.1.

(b) Contents; Expense of Transcript

The record shall include the transcript of testimony and all exhibits and other papers filed in the agency proceeding, except those papers the parties agree or the court directs may be omitted by written stipulation or order included in the record. If the testimony has been recorded but not transcribed before the filing of the petition for judicial review, the

first petitioner, if required by the agency and unless otherwise ordered by the court or provided by law, shall pay the expense of transcription, which shall be taxed as costs and may be apportioned as provided in Rule 2-603. A petitioner who pays the cost of transcription shall file with the agency a certification of costs, and the agency shall include the certification in the record.

(c) Statement in Lieu of Record

If the parties agree that the questions presented by the action for judicial review can be determined without an examination of the entire record, they may sign and, upon approval by the agency, file a statement showing how the questions arose and were decided and setting forth only those facts or allegations that are essential to a decision of the questions. The parties are strongly encouraged to agree to such a statement. The statement, any exhibits to it, the agency's order of which review is sought, and any opinion of the agency shall constitute the record in the action for judicial review.

(d) Time for Transmitting

Except as otherwise provided by this Rule, the agency shall transmit to the clerk of the circuit court the original or a certified copy of the record of its proceedings within 60 days after the agency receives the first petition for judicial review.

(e) Shortening or Extending the Time

Upon motion by the agency or any party, the court may shorten or extend the time for transmittal of the record. The court may extend the time for no more than an additional 60 days. The action shall be dismissed if the record has not been transmitted within the time prescribed unless the court finds that the inability to transmit the record was caused by the act or omission of the agency, a stenographer, or a person other than the moving party.

(f) Restricted Information

The record shall be accompanied by an Administrative Agency Restricted Information Statement completed on a form approved by the State

Court Administrator. The completed Statement shall indicate whether any part of the record contains restricted information as defined by Rule 20-101 (s). The Statement shall be subject to public inspection.

~~(f)~~(g) Duty of Clerk

Upon the filing of the record, the clerk shall notify the parties of the date that the record was filed. If the Statement filed pursuant to section (f) of this Rule indicates that the record contains restricted information, the clerk shall shield the record from public inspection. Otherwise, the record shall be subject to public inspection.

Committee note: Code, Article 2B, § 175(e)(3) provides that the decision of a local liquor board shall be affirmed, modified, or reversed by the court within 90 days after the record has been filed, unless the time is “extended by the court for good cause.”

Source: This Rule is in part derived from former Rule B7 and in part new.

Rule 7-206 was accompanied by the following Reporter’s
note:

Proposed amendments to Rule 7-206 were prompted by a request for clarification by the Assistant Attorney General for the Workers’ Compensation Commission. Title 7, Chapter 200 governs judicial review of administrative agency proceedings, including the Commission. Rule 7-206 sets forth the procedure for preparing and filing the record of proceedings before the agency (Rule 7-206.1 (b) adopts the bulk of those provisions for the record of the Commission).

The Commission’s attorney contacted the Committee because a clerk’s office refused to accept the record of proceedings before the Commission filed pursuant to Rule 7-206 because it contained unredacted personal identifier information in violation of Rule 1-332.1. A review of Rule 1-332.1 and Title 7, Chapter 200 indicates that the record of an administrative agency proceeding can be construed as

being excused from the requirements of Rule 1-332.1 (subsection (c)(2) of that Rule exempts the record of an administrative agency proceeding).

The General Court Administration Subcommittee was informed that these records are largely filed in paper form and frequently contain information such as Social Security Numbers, medical records, and financial information which is typically excluded from public versions of court records. The Workers' Compensation Commission contends that it is impractical for the Commission to review every record of proceedings before the Commission to redact or shield information that should not be publicly accessible. The Subcommittee was also informed of an instance where a record of proceedings before the Criminal Injury Compensation Board containing sensitive medical information was submitted in paper form to a clerk's office with no motion to restrict access.

Proposed amendments to Rule 7-206 create new section (f) requiring the record to be accompanied by a form to be devised by the State Court Administrator (the "Administrative Agency Restricted Information Statement"). The form must indicate whether any portion of the record contains restricted information as defined by Rule 20-101 (s) ("Restricted information" means information that, by Rule or other law, is not subject to public inspection or is prohibited from being included in a court record absent a court order"). The form itself is subject to public inspection. This provision is modeled after Rule 20-201.1 (a)(1), which applies in MDEC actions. Current section (f) is re-lettered as section (g).

Proposed amendments to re-lettered section (g) instruct the clerk to shield the record from public inspection if the Statement indicates that the record contains restricted information.

MARYLAND RULES OF PROCEDURE
TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS
DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-914 by adding new section (r) and by adding a cross reference following new section (r), 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:

...

(q) A petition for authorization for minor to marry action filed pursuant to Rule 15-1501.

(r) In an action under Title 7, Chapter 200 of these Rules, the record of an administrative agency proceeding where the Administrative Agency Restricted Information Statement indicates that the record contains restricted information as defined by Rule 20-101 (s).

Cross reference: See Rules 7-206 and 7-206.1 pertaining to the record of an administrative agency proceeding filed in an action for judicial review of an administrative agency decision. For procedures to request an administrative agency to provide access to public portions of the agency's record of an administrative agency proceeding, see Code, General Provisions Article, Title 4 (Public Information Act).

Source: This Rule is derived in part from former Rule 16-907 (2019), and is in part new.

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

Proposed amendments to Rule 16-914 exempt from public inspection the record of an administrative

agency proceeding filed pursuant to Rule 7-206 in certain circumstances. See the Reporter's note to Rule 7-206 for more information.

Proposed new section (r) states that if the Administrative Agency Restricted Information Statement required by proposed amendments to Rule 7-206 indicates that the record contains restricted information, the custodian shall deny inspection of the record.

A cross reference is added following the new section to the Rules governing filing the record of an administrative agency proceeding as well as the Public Information Act ("the PIA"). The PIA and various Code of Maryland Regulations ("COMAR") provisions govern public access to records held by administrative agencies. If a record filed pursuant to Rule 7-206 contains restricted information and is shielded by the court, a member of the public may request access to portions of the record via the PIA, at which time the agency should follow its procedures for compliance, including redaction of non-public information.

The Chair explained that proposed amendments to Rules 7-206 and 16-914 address confidential information in the record of an administrative agency proceeding when the record is filed with the circuit court in an action for judicial review. He said that the proposed solution is to add new section (f) to Rule 7-206 requiring the agency to file a Restricted Information Statement indicating whether there is information that, by Rule or law, is not supposed to be publicly available.

Mr. Laws commented that he is concerned when courts begin to shield documents in court records. He suggested that it was overkill to shield the entire record of what occurred in the

agency proceeding when the non-public information in the record could be limited to a few account numbers. He pointed out that Rules 20-201, 20-201.1, and 16-916 generally put the onus on the filer to redact restricted information from a public filing and questioned why the Workers' Compensation Commission should not be subject to those requirements.

Ms. Lindsey responded that the records subject to Rule 7-206 can contain a significant amount of confidential information. She provided the example of a Criminal Injury Compensation Board case which contained details of the victim's assault, medical information, and tax returns. She noted that not all agency records are like this, but in some case types, almost the entire record is full of this information. Ms. Rupp commented that the Commission is unable to redact information from its records as it is not a "filer" in the MDEC action.

Scott Curtis, the Assistant Attorney General for the Workers' Compensation Commission, addressed the Committee. Mr. Curtis said that the Commission provides the complete record of proceedings before it to the circuit court but is not a party to the judicial review action, except in certain circumstances. He informed the Committee that proceedings before the Commission might involve a 10-minute hearing, but the underlying record may be packed with confidential medical and financial information.

Mr. Shellenberger asked Mr. Curtis if the public can request access to the agency's records from the agency directly. Mr. Curtis responded in the affirmative and stated that the Commission can review and redact a document as needed upon request. Assistant Reporter Cobun added that the Public Information Act and Code of Maryland Regulations ("COMAR") govern access to agency records. She explained that the Committee note added to Rule 16-914 is intended to direct people seeking information about the agency proceeding to request records directly from the agency. Mr. Curtis added that the Commission can provide the non-confidential portions of records on request. The Reporter pointed out that, at least in Workers' Compensation Commission cases, the judicial review proceeding is typically *de novo* and not on the record. Mr. Curtis agreed.

The Chair called for a motion. Mr. Laws said that he did not see support for a motion to require the administrative agencies to redact their records before filing. He said that he would make no motion but wanted to express his concerns. Mr. Laws then drew the Committee's attention to the Committee note at the end of Rule 7-206 which contains an outdated reference to Article 2B in the Code. The Reporter thanked Mr. Laws for pointing out the reference and said that it would be fixed.

There being no motion to amend or reject the proposed amendments to Rules 7-206 and 16-914, they were approved as

presented, subject to the correction in the Committee note in Rule 7-206.

Agenda Item 4. Consideration of proposed amendments to Rule 16-701 (Rules Committee)

The Chair presented Rule 16-701, Rules Committee, for consideration.

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

AMEND Rule 16-701 by adding the State Court Administrator to the membership of the Committee in section (b), as follows:

Rule 16-701. RULES COMMITTEE

...

(b) Membership

The Committee shall consist of one incumbent judge of the Appellate Court, three incumbent circuit court judges, three incumbent judges of the District Court, one member of the State Senate, one member of the House of Delegates, one clerk of a circuit court, the State Court Administrator, and such other individuals determined by the Supreme Court. All members shall be appointed by the Supreme Court.

...

(d) Terms

...

(2) Members with No Terms

(A) The Chair and the members appointed from the State Senate and the House of Delegates have no terms and serve at the pleasure of the Supreme Court.

(B) The State Court Administrator has no term.

...

Rule 16-701 was accompanied by the following Reporter's note:

The State Court Administrator is referenced as having no term in Rule 16-701 (d)(2)(B), but is not explicitly listed in the membership of the Committee in section (b). The proposed amendment to the Rule adds the State Court Administrator to the list of required members.

The Chair said that the proposed amendment to Rule 16-701 codifies the State Court Administrator as a member of the Rules Committee. There being no motion to amend or reject the proposed amendments to Rule 16-701, it was approved as presented.

Agenda Item 5. Consideration of proposed amendments to Rule 1-333 (Court Interpreters), Rule 16-502 (In District Court), and Rule 16-503 (In Circuit Court)

The Chair presented Rule 1-333, Court Interpreters; Rule 16-502, In District Court; and Rule 16-503, In Circuit Court, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-333 by adding new subsection (a)(1)(B)(ii); by adding new subsection (a)(2) and a Committee note pertaining to “Consecutive Interpretation”; by renumbering subsections (a)(2) through (a)(7) as (a)(3) through (a)(8), respectively; by renumbering subsection (a)(8) as (a)(10); by updating language in re-lettered subsection (a)(7)(A) and (B) governing requirements for a qualified interpreter; by adding new subsection (a)(9) and a Committee note pertaining to “Simultaneous Interpretation”; by altering the procedure for obtaining more than one interpreter in the same language in subsection (b)(4); and by making stylistic changes, 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:

(1) Certified Interpreter

“Certified Interpreter” means an interpreter who is certified by:

(A) the Maryland Administrative Office of the Courts;

(B) any member of the Council for Language Access Coordinators, provided that, if the interpreter was not approved by the Maryland member of the Council, the interpreter has (i) successfully completed the orientation program required by the Maryland member of the Council and (ii) signed an acknowledgement form that the interpreter will comply with the interpreter policies outlined in the Court

Interpreter Handbook, including the Maryland Code of Conduct for Court Interpreters;

Committee note: The Council for Language Access Coordinators is a unit of the National Center for State Courts.

(C) the Administrative Office of the United States Courts; or

(D) if the interpreter is a sign language interpreter, the Registry of Interpreters for the Deaf or the National Association of the Deaf.

(2) Consecutive Interpretation

“Consecutive interpretation” means interpretation that takes place immediately after a speaker pauses between segments of speech.

Committee note: Consecutive interpretation is used in a question-and-answer setting when the individual in need of interpretation plays an active role and must speak and respond. Consecutive interpreting is often used during examinations, interviews, and when an individual with limited English proficiency is addressed directly. Consecutive interpretation involves the interpreted rendering of small segments of speech where interpreters preserve every element of information contained in the source language.

(2)(3) Individual Who Needs an Interpreter

“Individual who needs an interpreter” means a party, attorney, witness, or victim who is deaf or unable adequately to understand or express himself or herself in spoken or written English and a juror or prospective juror who is deaf.

(3)(4) Interpreter

“Interpreter” means an adult who has the ability to render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written and without explanation.

(4)(5) Non-Registry Interpreter

“Non-registry interpreter” means an interpreter who has not completed the Maryland Judiciary's

orientation program and is not listed on the Court Interpreter Registry.

~~(5)~~(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 Justice of the Supreme Court to provide an interpreter for an individual who needs an interpreter.

~~(6)~~(7) Qualified Interpreter

“Qualified Interpreter” 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 an oath~~ application and a signed Acknowledgement Form that the interpreter will comply with the interpreter policies outlined in the Court Interpreter Handbook, including the Maryland Code of Conduct for Court Interpreters;

(B) has ~~successfully completed the Maryland Judiciary's orientation workshop on court interpreting~~ satisfied all the testing and training requirements established by the Court Interpreter Program; 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.

~~(7)~~(8) Registry

“Registry” means the Court Interpreter Registry, a listing of certified and qualified interpreters who have fulfilled the requirements necessary to receive assignments under the Maryland Court Interpreter Program.

(9) Simultaneous Interpretation

“Simultaneous interpretation” means interpretation that takes place as the speaker who is being interpreted is speaking.

Committee note: Simultaneous interpretation is often used during opening statements, closing arguments, arguments on motions and objections, sidebar conferences, jury instructions, and other speech when the individual with limited English proficiency is not addressed directly. An interpreter conducting simultaneous interpretation may utilize equipment to transmit the interpreted speech to a headset worn by the individual who requires the interpreter.

~~(8)~~(10) Victim

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

(b) Spoken Language Interpreters

(1) Applicability

This section applies to spoken language interpreters. It does not apply to sign language interpreters.

Cross reference: For the procedure to request a sign language interpreter, see Rule 1-332.

(2) Application for the Appointment of an Interpreter

An individual who needs an interpreter shall file an application for the appointment of an interpreter. To the extent practicable, the application shall be filed not later than 30 days before the proceeding for which the interpreter is requested on a form approved by the State Court Administrator and available from the clerk of the court and on the Judiciary website. If a timely and complete application is filed, the court shall appoint an interpreter free of charge in court proceedings in accordance with section (c) of this Rule.

(3) When Additional Application Not Required

(A) Party

If a party who is an individual who needs an interpreter includes on the application a request for an interpreter for all proceedings in the action, the court shall provide an interpreter for each proceeding

without requiring a separate application prior to each proceeding.

Committee note: A nonparty who may qualify as an individual who needs an interpreter must timely file an application for each proceeding for which an interpreter is requested.

(B) Continued or Postponed Proceedings

Subject to subsection (b)(5) of this Rule, if an individual who needs an interpreter filed a timely application and the proceeding for which the interpreter was requested is continued or postponed, the court shall provide an interpreter for the continued or postponed proceeding without requiring the individual to file an additional application.

(4) Where Timely Application Not Filed

If an application is filed, but not timely filed pursuant to subsection (b)(2) of this Rule, or an individual who may qualify as an individual who needs an interpreter appears at a proceeding without having filed an application, the court shall make a diligent effort to secure the appointment of an interpreter and may either appoint an interpreter pursuant to section (c) of this Rule or determine the need for an interpreter as follows:

(A) Examination on the Record

To determine whether an interpreter is needed, the court, on request or on its own initiative, shall examine a party, attorney, witness, or victim on the record. The court shall appoint an interpreter if the court determines that:

(i) the party does not understand English well enough to participate fully in the proceedings and to assist the party's attorney, or

(ii) the party, attorney, witness, or victim does not speak English well enough to readily understand or communicate the spoken English language.

(B) Scope of Examination

The court's examination of the party, witness, or victim should include questions relating to:

- (i) identification;
- (ii) active vocabulary in vernacular English; and
- (iii) the court proceedings.

Committee note: Examples of matters relating to identification are: name, address, birth date, age, and place of birth. Examples of questions that elicit active vocabulary in vernacular English are: How did you come to court today? What kind of work do you do? Where did you go to school? What was the highest grade you completed? What do you see in the courtroom? Examples of questions relating to the proceedings are: What do you understand this case to be about? What is the purpose of what we are doing here in court? What can you tell me about the rights of the parties to a court case? What are the responsibilities of a court witness? Questions should be phrased to avoid “yes or no” replies.

(5) Notice When Interpreter Is Not Needed

If an individual who needs an interpreter will not be present at a proceeding for which an interpreter had been requested, including a proceeding that had been continued or postponed, the individual, the individual's attorney, or the party or attorney who subpoenaed or otherwise requested the appearance of the individual shall notify the court as far in advance as practicable that an interpreter is not needed for that proceeding.

(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 a qualified interpreter. The court may appoint a non-registry interpreter only if 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-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 (c)(2)(B) of this Rule, 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 included as an Appendix to these Rules.

(3) Oath

(A) Generally

Before acting as an interpreter in a proceeding, an interpreter shall 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 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 will 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.

(4) Multiple Interpreters in the Same Language

~~At the request of a party or on its own initiative, the court may appoint~~ The court shall make a diligent effort to obtain more than one interpreter in the same language ~~to ensure the accuracy of the interpretation or to preserve confidentiality if:~~

(A) ~~the proceedings are~~ proceeding is expected to exceed ~~three~~ four hours;

(B) ~~the proceedings include~~ proceeding includes complex issues and terminology or other such challenges; or

(C) ~~an opposing party requires an interpreter in the same language~~ the court determines that more than one interpreter is necessary to ensure a fair and just proceeding.

Committee note: To ensure accurate interpretation, an interpreter should be granted reasonable rest periods at frequent intervals.

(d) Removal From Proceeding

A court interpreter may be removed from a proceeding by a judge or judicial appointee within the meaning of Rule 18-200.3 (a)(1), who shall then notify the Maryland Administrative Office of the Courts that the action was taken.

(e) Compensation of Court Interpreters

Compensation for interpreters shall be in accordance with a schedule adopted by the State Court Administrator consistent with Code, Criminal Procedure Article, §§ 1-202 and 3-103 and Code, Courts Article, § 9-114.

Committee note: Code, Courts Article, § 9-114 provides for the appointment of interpreters for certain parties and witnesses, generally. Code, Criminal Procedure Article, §§ 1-202 and 3-103 provide for the appointment of interpreters for certain defendants in

criminal proceedings and proceedings under Title 3 of that Article.

Source: This Rule is derived from former Rule 16-819 (2014).

Rule 1-333 was accompanied by the following Reporter's note:

Proposed amendments to Rule 1-333 reflect a series of requests for update and clarification made by the Maryland Judicial Council Court Access Committee.

The General Court Administration Subcommittee was informed that the requirements to be a "certified interpreter" as defined in subsection (a)(1) and a "qualified interpreter" as defined in subsection (a)(7) are being updated. Those updates include changes to the policies in the Court Interpreter Handbook, such as requiring interpreters working in languages that have available certification exams to pass the exam within a certain time. Because these changing requirements are all contained within the Handbook, the proposed amendments to subsections (a)(1) and (a)(7) require the interpreter to sign an acknowledgement form that the interpreter will comply with the Handbook, which includes the Code of Conduct for Court Interpreters.

The Court Access Committee also requested clarification in the Rules regarding when the interpreter's speech is required to be recorded as part of the court record. See the Reporter's notes to Rules 16-502 and 16-503 for additional information. Proposed amendments to Rule 1-333 include adding "consecutive interpretation" and "simultaneous interpretation" as defined terms. "Consecutive interpretation" is defined in new subsection (a)(2). A Committee note provides examples of when it may be used, such as examinations and interviews involving an individual with limited English proficiency (LEP). "Simultaneous interpretation" is defined in new subsection (a)(9). It is similarly followed by a

Committee note providing additional context. The terms defined in section (a) are re-numbered to accommodate the new subsections.

The Court Access Committee also seeks an update to the requirement for when more than one interpreter in the same language must be assigned. The current provisions of subsection (c)(4) of the Rule require the court to appoint more than one interpreter if a proceeding is expected to exceed three hours. A scheduling policy change, which went into effect in April 2023, now assigns interpreters for either a four-hour minimum (morning or afternoon session) or eight hour minimum (full day session). The interpreters report that they can provide services for a four-hour session without requiring a second interpreter. The Court Interpreter Program staff also reported to the Court Access Committee that due to use of interpreting equipment which can interpret for multiple parties simultaneously, it is not necessary for the court to assign multiple interpreters in the same language unless the proceeding will last more than four hours or the court determines it is necessary to ensure a fair and just proceeding. Rule 1-333 (c)(4) is updated to reflect these recommendations.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-502 by creating new subsection (a)(1), containing the language of current section (a); by adding new subsection (a)(2) pertaining to recording of court interpreters; by adding a cross reference to Rule 1-333 (a) following new subsection (a)(2); and by making stylistic changes, as follows:

Rule 16-502. IN DISTRICT COURT

(a) Proceedings to be Recorded

(1) Generally

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

Committee note: ~~Section (a)~~ Subsection (a)(1) of this Rule does not apply to ADR proceedings conducted pursuant to Title 17, Chapter 300 of these Rules.

(2) Court Interpreters

If a proceeding involves an individual who needs an interpreter, only consecutive interpretation shall be subject to subsection (a)(1) of this Rule. To the extent that simultaneous interpretation is captured by the audio recording device provided by the court, it is not part of the record of the proceeding.

Cross reference: For definitions of “individual who needs an interpreter,” “consecutive interpretation,” and “simultaneous interpretation,” see Rule 1-333 (a).

(b) Method of Recording

(1) Generally

Proceedings shall be recorded by an audio recording device provided by the court.

(2) As Authorized By Chief Judge

The Chief Judge of the District Court may authorize recording by additional means, including audio-video recording. Audio-video recording of a proceeding and access to an audio-video recording shall be in accordance with this Rule and Rules 16-503, 16-504, and 16-504.1.

(3) Official Recordings

Except for extended coverage of court proceedings permitted under Title 16, Chapter 600 of these Rules, only official recordings of judicial

proceedings in the District Court made in accordance with this Rule are permitted.

...

Rule 16-502 was accompanied by the following Reporter's note:

Proposed amendments to Rules 16-502 and 16-503 were requested by the Maryland Judicial Council Court Access Committee to clarify when an interpreter's speech is required to be recorded as part of the court record. See the Reporter's note to Rule 1-333.

The General Court Administration Subcommittee was informed that questions arose during a pilot program providing video remote interpretation (VRI) in the Circuit Court for Anne Arundel County. When VRI is used, the interpretation of what is being said in the courtroom – referred to as “simultaneous interpretation” – is only heard by the person with limited English proficiency (LEP) via a headset. The interpretation is not picked up by the court's recording equipment. However, when an interpreter is working in person, the simultaneous interpretation being provided to the person with LEP could be recorded, in whole or in part, and it is unclear if it should be part of the official record of the proceedings. When the person with LEP is addressing the court or engaged in any kind of back-and-forth with the court, the interpreter waits for a pause and stops to interpret what was said to the entire courtroom. This style is called “consecutive interpretation.”

The General Court Administration Subcommittee was informed that the recommended policy is that simultaneous interpretation, which is done quickly and solely for the benefit of the LEP speaker to understand what is happening in the courtroom, should not be part of the official record. It was explained that the interpreter does not have the opportunity to ask the court for clarification in these

circumstances, and the rapidly provided interpretation is not as meticulous. Consecutive interpretation, however, should be recorded for the court record to ensure that the LEP speaker was interpreted and interpreted for accurately.

Rule 16-502 is amended to create new subsection (a)(1), containing the contents of current section (a). New subsection (a)(2) contains the exception which requires the recording of consecutive interpretation only and excludes simultaneous interpretation, to the extent it is captured by the court's recording equipment, from the official record. A cross reference to Rule 1-333 (a) directs the reader to the definitions of "consecutive interpretation" and "simultaneous interpretation."

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-503 by adding new subsection (a)(3) pertaining to recording of court interpreters; by adding a cross reference to Rule 1-333 (a) following new subsection (a)(3); and by making stylistic changes, as follows:

Rule 16-503. IN CIRCUIT COURT

(a) Proceedings to be Recorded

(1) Proceedings in the Presence of Judge

All trials, hearings, testimony, and other judicial proceedings before a circuit court judge held either in a courtroom or by remote electronic means shall be recorded verbatim in their entirety by a person authorized by the court to do so, except that, unless otherwise ordered by the court, the person responsible for recording need not report or separately record an

audio or audio-video recording offered as evidence at a hearing or trial.

Committee note: An audio or audio-video recording offered at a hearing or trial must be marked for identification and made part of the record, so that it is available for future transcription. See Rules 2-516 (b)(1)(A) and 4-322 (c)(1)(A). Section (a) does not apply to ADR proceedings conducted pursuant to Rule 9-205 or Title 17 of these Rules.

(2) Proceedings Before Magistrate, Examiner, or Auditor

Proceedings before a magistrate, examiner, or auditor shall be recorded verbatim in their entirety, except that:

(A) the recording of proceedings before a magistrate may be waived in accordance with Rules 2-541 (d)(3) or 9-208 (c)(3);

(B) the recording of proceedings before an examiner may be waived in accordance with Rule 2-542 (d)(4); and

(C) the recording of proceedings before an auditor may be waived in accordance with Rule 2-543 (d)(3).

(3) Court Interpreters

If a proceeding involves an individual who needs an interpreter, only consecutive interpretation shall be subject to subsections (a)(1) and (a)(2) of this Rule. To the extent that simultaneous interpretation is captured by the audio recording device provided by the court, it is not part of the record of the proceeding.

Cross reference: For definitions of “individual who needs an interpreter,” “consecutive interpretation,” and “simultaneous interpretation,” see Rule 1-333 (a).

(b) Method of Recording

Proceedings may be recorded by any reliable method or combination of methods approved by the County Administrative Judge. If proceedings are recorded by a combination of methods, the County Administrative Judge shall determine which method shall be used to prepare a transcript.

(c) Official Recordings

Except for extended coverage of court proceedings permitted under Title 16, Chapter 600 of these Rules, only official recordings of judicial proceedings in a circuit court made in accordance with this Rule are permitted.

Source: This Rule is derived in part from former Rule 16-404 (2016). Section (c) is new.

Rule 16-503 was accompanied by the following Reporter's note:

Proposed amendments to Rules 16-502 and 16-503 were requested by the Maryland Judicial Council Court Access Committee to clarify when an interpreter's speech is required to be recorded as part of the court record. See the Reporter's note to Rules 1-333 and 16-502.

Rule 16-503 is amended to add new subsection (a)(3), requiring the recording of consecutive interpretation and excluding simultaneous interpretation, to the extent it is captured by the court's recording equipment, from the official record. A cross reference to Rule 1-333 (a) directs the reader to the definitions of "consecutive interpretation" and "simultaneous interpretation."

The Chair informed the Committee that the proposed amendments in Agenda Item 5 are related to court interpreters and are recommended by the General Court Administration Subcommittee.

Ksenia Boitsova, Program Administrator for the Court Interpreter Program, addressed the Committee. Ms. Boitsova expressed her thanks to the Committee for taking up the series

of requests for amendments made by the Court Access Committee pertaining to the Court Interpreter Program. She said that the proposed amendments generally address policies around the qualifications for and use of court interpreters for individuals with limited English proficiency ("LEP"). She said that several changes in Rule 1-333 would require a certified interpreter to sign an acknowledgement form stating that the interpreter will comply with the policies outlined in the Court Interpreter Handbook. Ms. Boistova explained that the policies, including testing requirements, are updated from time to time and the Court Interpreter Program wants to ensure that interpreters will agree to comply with the updates rather than being in the position of asking interpreters to sign new acknowledgement forms.

Ms. Boitsova directed the Committee's attention to the new definitions of "consecutive interpretation" and "simultaneous interpretation" added to Rule 1-333 (a). She explained that consecutive interpretation is used when the LEP individual plays an active role in the court proceeding and must speak and respond. During consecutive interpretation, the speakers pause and wait for the interpreter to interpret the speech in open court. Simultaneous interpretation, in contrast, is utilized to provide the LEP individual with a rapid interpretation of what is being said when the LEP individual does not have to interact

with the speaker. Simultaneous interpretation often utilizes technology to allow the interpreter to speak directly into the ear of the LEP individual. Ms. Boitsova informed the Committee that consecutive interpretation is recorded as part of the court record but simultaneous interpretation generally is not, unless it happens to be picked up by the court's recording equipment.

Ms. Boitsova explained that the Maryland Judiciary seeks to implement widespread use of Virtual Remote Interpretation ("VRI"). A question arose about whether simultaneous interpretation, which occurs on a separate Zoom channel that is not recorded, must be preserved as part of the record. The Court Access Committee determined that the simultaneous interpretation is solely for the benefit of the LEP individual and should not be part of the record. She noted that simultaneous interpretation is done quickly without the opportunity for the interpreter to ask clarifying questions or look up a word, while consecutive interpretation is more deliberate. She said that the proposed amendments to Rules 16-502 and 16-503 clarify that simultaneous interpretation is not required to be recorded.

Judge Chen asked whether the interpretation for a criminal defendant of the testimony of a complaining witness would be interpreted consecutively or simultaneously. She pointed out that the defendant's rights could be implicated by whether the

testimony is interpreted accurately. Ms. Boitsova responded that simultaneous interpretation is generally used during long speeches when the LEP individual is not required to respond, such as opening statements, conversations between the court and the attorneys, and jury instructions. Judge Chen responded that even when the LEP individual is purely listening, such as when the complaining witness is giving testimony, it is important for the individual to have an accurate interpretation. Additionally, if there is a critical error in the interpretation, there should be a record so that the error can be proven later.

Chief Judge Morrissey offered to provide additional context for the requested amendments. He explained that the VRI program was a pilot that was quite successful, and he would like to see it implemented statewide. He said that VRI saves costs while providing a vital service to the LEP individual. It also allows the courts to more efficiently connect interpreters in rare languages if the interpreter can be anywhere in the country and not required to come to court. Chief Judge Morrissey informed the Committee that simultaneous interpretation in the courtroom occasionally is picked up by the recording equipment, but that is not intentional and the interpretation is not fully recorded. He said that at least one judge in the pilot program asked about the policy on recording the simultaneous interpretation channel in VRI.

Mr. Zollicoffer commented that a poor interpretation of a detail could significantly impact the defendant's ability to assist in the defense, but there would be no record of it. Judge Brown said that the CourtSmart recording system is always running and could pick up the simultaneous interpretation.

Judge Chen remarked that in VRI, as it was explained, the simultaneous interpretation would not be captured at all. She asked if it would be possible to record it or clarify that the interpreter should switch to consecutive interpretation if there are issues about clarity or accuracy. She noted that opening statements and closing arguments are important, and the court should ensure that the LEP individual receives an accurate interpretation.

Judge Anderson said that during a trial, the interpreter has equipment to interpret for the LEP individual in-ear during the "long speech" portions of the proceeding described by Ms. Boitsova. She suggested that to require all speech to be interpreted consecutively instead would significantly slow down proceedings. She asked if there is an issue with inaccurate simultaneous interpretation impacting defendants and their ability to assist in their defense. Judge Wilson asked if the simultaneous interpretation channel in VRI could be recorded.

Ms. Boitsova said that simultaneous interpretation in VRI is not recorded and functions the same as it would in the

courtroom where the interpreter is trained to speak unobtrusively and not interfere with the court's recording. She said that to require consecutive interpretation for everything that happens in court would double the time for every proceeding using an interpreter. She added that making every interpretation part of the record would dramatically increase the stress on interpreters and could cause them to leave the program.

Judge Chen commented that in a criminal case, she will sometimes hear an interpretation in a language that she is familiar with and not necessarily agree with how the interpreter chose to interpret. She acknowledged that the courts have amazing interpreters doing a very difficult job, but she suggested that in a criminal case, a record of the interpretation should be preserved.

Mr. Shellenberger asked whether simultaneous or consecutive interpretation would be used for an LEP defendant when a witness is on the stand. Ms. Boitsova responded that, if the witness is testifying in English, the testimony would be interpreted simultaneously for the defendant. She said that witness testimony, which is more likely to have pauses between the questions and answers, is one of the easier situations for an interpreter to work simultaneously. She pointed out that some of the most challenging work for interpreters is long speeches,

such as opening statements and closing arguments and arguments on motions, which are packed with "legalese" not in common use in the non-English language. She said that if there are concerns with an interpretation, the parties and court can work something out in the moment, such as switching to consecutive interpretation. She said that this might happen in a rare language where the interpreter wants to be very careful and deliberate with the interpretation.

Chief Judge Morrissey told the Committee that the current business process is what is in the suggested amendments. He said that it will cause a considerable delay to a lot of cases if the policy were to shift to require consecutive interpretation for everything spoken in a case with an LEP individual. Assistant Reporter Cobun asked Chief Judge Morrissey and Ms. Boitsova if the proposal is in line with national standards for court interpreters. Both responded in the affirmative. Chief Judge Morrissey added that Maryland has a very high standard for court interpreters and it is not considered a best practice to record every kind of interpretation. Ms. Boitsova informed the Committee that the Court Access Committee looked at the policies in other states and only found one - Maine - that requires the recording of all interpretation. She commented that Maine appears to be struggling to make that policy work.

Mr. Zavín commented that he shares Judge Chen's concerns and is reluctant to codify an existing practice merely because it is how things have always been done. He said that the accuracy of an interpretation could be vitally important to a case, particularly where the LEP individual is unrepresented. Ms. Boitsova said that it is possible for the LEP individual to alert the court to problems and the interpreter can begin interpreting in consecutive mode. Judge Chen suggested that the Rules could be amended to alert the parties and the court of this option if there are concerns about the accuracy of the simultaneous interpretation. Judge Brown questioned whether such an amendment is necessary when it is already an option for the court. She informed the Committee that she has taken the step of asking an interpreter to begin working consecutively. Ms. Boitsova expressed that, in her experience, judges do know that they can ask an interpreter to switch to consecutive interpretation and often prefer to do so with an unrepresented litigant.

The Chair called for a motion. Mr. Zavín moved to add a Committee note to the Rules that captures Judge Chen's suggestion that the Rules advise the participants or judge that someone can ask that an interpreter switch to consecutive interpretation at any point in a proceeding where it becomes necessary or desirable. Assistant Reporter Cobun asked where

this Committee note should be placed. Mr. Laws commented that there are already Rules that state that the judge has the authority to manage the courtroom and administer a trial. Judge Chen suggested that the new language be added to the proposed Committee note following the definition of "simultaneous interpretation." She said that the note should suggest that any party, attorney, or the judge can ask an interpreter to switch to consecutive interpretation.

The Chair asked if this matter should be referred back to the General Court Administration Subcommittee. Chief Judge Morrissey asked that the amendments be approved now, if possible, to move this matter forward. He informed the Committee that there are contracts for VRI involved.

The Chair asked for a statement of the motion. Judge Nazarian said the motion is to add a statement to the Committee note following the definition of "simultaneous interpretation" in Rule 1-333 (a) that "simultaneous interpretation is not part of the record of the proceeding." He suggested that any additional language can be agreed upon in substance and fine-tuned by the Style Subcommittee. A motion to add the proposed language was made.

The Reporter asked whether the amendment is to permit the court to order that simultaneous interpretation be recorded under certain circumstances or to authorize the participants and

the court to switch to consecutive interpretation if it is determined that an interpretation should be recorded. The Committee concurred that the intent was to capture the latter concept in the Committee note. The motion was seconded. By consensus, the amendment to Rule 1-333 was approved.

There being no further motion to amend or reject the proposed Rules, Rule 1-333 was approved as amended and Rules 16-502 and 16-503 were approved as presented.

Agenda Item 6. Consideration of proposed amendments to Rule 1-325 (Waiver of Costs Due to Indigence—Generally)

The Chair presented Rule 1-325, Waiver of Costs Due to Indigence—Generally, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-325 by deleting the word “Prepaid” from the title of section (e); by adding new subsection (e)(1) applying to prepaid costs; by renumbering current subsections (e)(1), (e)(2), and (e)(3) as subsection (e)(1)(A), (e)(1)(B), and (e)(1)(C), respectively; by renumbering current subsections (e)(1)(A), (e)(1)(B), and (e)(1)(C) as subsections (e)(1)(A)(i), (e)(1)(A)(ii), and (e)(1)(A)(iii), respectively; by renumbering current subsections (e)(2)(A) and (e)(2)(B) as subsections (e)(1)(B)(i) and (e)(1)(B)(ii), respectively; by adding new subsection (e)(2) pertaining to a request

for waiver of open costs at the conclusion of an action; by adding language in subsection (f)(2)(A) pertaining to a party who did not previously request a waiver pursuant to new subsection (e)(2); and by adding language to subsection (f)(2)(B) pertaining to action by the court on a request for final waiver pursuant to new subsection (e)(2), as follows:

Rule 1-325. WAIVER OF COSTS DUE TO INDIGENCE
– GENERALLY

(a) Scope

This Rule applies only to (1) original civil actions in a circuit court or the District Court and (2) requests for relief that are civil in nature filed in a criminal action.

Committee note: Original civil actions in a circuit court include actions governed by the Rules in Title 7, Chapter 200, 300, and 400. Requests for relief that are civil in nature filed in a criminal action include petitions for expungement and requests to shield all or part of a record.

(b) Definition

In this Rule, “prepaid costs” means costs that, unless prepayment is waived pursuant to this Rule, must be paid prior to the clerk's docketing or accepting for docketing a pleading or paper or taking other requested action.

Committee note: “Prepaid costs” may include a fee to file an initial complaint or a motion to reopen a case, a fee for entry of the appearance of an attorney, and any prepaid compensation, fee, or expense of a magistrate or examiner. See Rules 1-501, 2-541, 2-542, 2-603, and 9-208.

(c) No Fee for Filing Request

No filing fee shall be charged for the filing of the request for waiver of prepaid costs pursuant to section (d) or (e) of this Rule.

(d) Waiver of Prepaid Costs by Clerk

On written request, the clerk shall waive the prepayment of prepaid costs, without the need for a court order, if:

(1) the party is an individual who is represented (A) by an attorney retained through a pro bono or legal services program on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided that an authorized agent of the program provides the clerk with a statement that (i) names the program, attorney, and party; (ii) states that the attorney is associated with the program and the party meets the financial eligibility criteria of the Corporation; and (iii) attests that the payment of filing fees is not subject to Code, Courts Article, § 5-1002 (the Prisoner Litigation Act), or (B) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

(2) except for an attorney employed or appointed by the Office of the Public Defender in a civil action in which that Office is required by statute to represent the party, the attorney certifies that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Committee note: The Public Defender represents indigent individuals in a number of civil actions. See Code, Criminal Procedure Article, § 16-204 (b).

Cross reference: See Rule 1-311 (b) and Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

(e) Waiver of ~~Prepaid~~ Costs by Court

(1) Prepaid Costs

~~(1)(A)~~ Request for Waiver

An individual unable by reason of poverty to pay a prepaid cost and not subject to a waiver under section (d) of this Rule may file a request for an order waiving the prepayment of the prepaid cost. The request shall be accompanied by ~~(A)~~(i) the pleading or paper sought to be filed; ~~(B)~~(ii) an affidavit

substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices; and ~~(C)~~(iii) if the individual is represented by an attorney, the attorney's certification that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Cross reference: See Rule 1-311 (b) and Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

~~(2)~~(B) Review by Court; Factors to be Considered

The court shall review the papers presented and may require the individual to supplement or explain any of the matters set forth in the papers. In determining whether to grant a prepayment waiver, the court shall consider:

~~(A)~~(i) whether the individual has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year, which shall be posted on the Judiciary website; and

~~(B)~~(ii) any other factor that may be relevant to the individual's ability to pay the prepaid cost.

~~(3)~~(C) Order; Payment of Unwaived Prepaid Costs

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the pleading or paper sought to be filed does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. In its order, the court shall state the basis for granting or denying the request for waiver. If the court denies, in whole or in part, a request for the waiver of its prepaid costs, it shall permit the party, within 10 days, to pay the unwaived prepaid cost. If, within that time, the party pays the full amount of the unwaived prepaid costs, the pleading or paper shall be deemed to have been filed on the date the request for waiver was filed. If the unwaived prepaid costs are not paid in full within the time allowed, the pleading or paper shall be deemed to have been withdrawn.

(2) Request for Waiver of Open Costs at Conclusion of Action

A request under subsection (e)(1) of this Rule may include a request for final waiver of open costs at the conclusion of the action. The request shall indicate in the affidavit required by subsection (e)(1) of this Rule that the individual does not anticipate a material change in the information provided in the affidavit. The court shall consider the request at the conclusion of the action in accordance with section (f) of this Rule.

(f) Award of Costs at Conclusion of Action

(1) Generally

At the conclusion of an action, the court and the clerk shall allocate and award costs as required or permitted by law.

Cross reference: See Rules 2-603, 3-603, 7-116, and *Mattison v. Gelber*, 202 Md. App. 44 (2011).

(2) Waiver

(A) Request

At the conclusion of an action, a party who did not otherwise request a final waiver of open costs pursuant to subsection (e)(2) of this Rule may seek a final waiver of open costs, including any unpaid appearance fee, by filing a request for the waiver, together with (i) an affidavit substantially in the form prescribed by subsection (e)(1)(B) of this Rule, or (ii) if the party was granted a waiver of prepayment of prepaid costs by court order pursuant to section (e) of this Rule and remains unable to pay the costs, an affidavit that recites the existence of the prior waiver and the party's continued inability to pay by reason of poverty.

(B) Determination by Court

In an action under Title 9, Chapter 200 of these Rules or Title 10 of these Rules, the court shall grant a final waiver of open costs if the requirements of Rules 2-603(e) or 10-107(b), as applicable, are met. In all other civil matters, the court may grant a final waiver of open costs if the party against whom the costs are

assessed is unable to pay them by reason of poverty. The court may require a party who requested a final waiver of open costs pursuant to subsection (e)(2) to file the supplemental affidavit required by subsection (f)(2)(A)(ii) of this Rule.

Source: This Rule is new.

Rule 1-325 was accompanied by the following Reporter's note:

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter “the EJC Report”). One recommendation contained in the EJC Report was for the Rules Committee to consider allowing parties to seek a waiver of all current and future fees and costs at the outset of the case.

Rule 1-325 governs the waiver of costs due to indigence for original civil actions in District or circuit court and requests for relief in criminal actions that are civil in nature, such as petitions for expungement.

Section (d) governs the waiver of prepayment of costs by the clerk without court order. In general, prepayment of costs is appropriate where the party is represented by an attorney through the Maryland Legal Services Corporation, Maryland Legal Aid, or Office of the Public Defender or by an attorney who attests that the individual meets the income requirements of those programs. Any other individual who is unable to prepay costs due to indigence must seek a waiver by court order. At the conclusion of the proceeding, costs are allocated and awarded as required or permitted by law and subsection (f)(2) provides for a request for waiver of open costs.

Advocates, including the Court Access Committee, informed the General Court Administration Subcommittee that the requirement of a second request for waiver is unduly burdensome, particularly on unrepresented individuals. The Court Access Committee stated that indigent individuals who

receive a waiver of prepaid costs are surprised to receive a bill from the court when the case is over.

Proposed amendments to Rule 1-325 add new subsection (e)(2), permit an individual to request the court to consider the prepayment waiver request as a request for a final waiver of open costs at the conclusion of the action. The individual must attest that the individual does not anticipate a material change in the financial information provided in the prepayment waiver form. The court would be prompted to consider the waiver request at the conclusion of the action as a part of the assessment of costs. The court may ask the party to file a supplemental affidavit to reaffirm the party's indigence.

Subsection (f)(2)(A) is amended to clarify that it is applicable to a party who did not request the final waiver pursuant to new subsection (e)(2).

Subsection (f)(2)(B) is amended to permit the court to require a party who was granted a prepayment waiver to file the supplemental affidavit required by subsection (f)(2)(A)(ii).

The Chair informed the Committee that the proposed amendments to Rule 1-325 would permit an individual, pursuant to new subsection (e)(2), to ask the court to consider a prepayment waiver request based on indigence as a request for waiver of open costs at the conclusion of a case. There being no motion to amend or reject the proposed amendments to Rule 1-325, they were approved as presented.

Agenda Item 7. Consideration of proposed amendments to Rule 16-208 (Cell Phones; Other Electronic Devices; Cameras)

The Chair presented Rule 16-208, Cell Phones; Other Electronic Devices; Cameras, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 – COURT ADMINISTRATION
CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT
AND DISTRICT COURTS

AMEND Rule 16-208 by adding to subsection (b)(3)(A) a reference to matters scheduled to be heard on a court docket that day, as follows:

Rule 16-208. CELL PHONES; OTHER ELECTRONIC DEVICES; CAMERAS

. . .

(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 hallway 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

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.

(F) Security or Privacy Issues in a Particular Case

Upon a finding that the circumstances of a particular case raise special security or privacy issues that justify a restriction on the possession or use of electronic devices, the Local Administrative Judge or the presiding judge may enter an order limiting or prohibiting the possession of electronic devices in a courtroom or other designated areas of the court facility. The order shall provide for notice of the designated areas and for the collection of the devices and their return when the individual who possessed the device leaves the courtroom or other area. No liability shall accrue to the security personnel or any

other court official or employee for any loss or misplacement of or damage to the device.

(3) Reasonable and Lawful Use by Attorneys

(A) Generally

Subject to subsection (b)(2)(F) of this Rule, the attorneys in a proceeding currently being heard or scheduled to be heard on a court docket that day, their employees, and their agents are permitted the reasonable and lawful use of an electronic device in connection with the proceeding provided that:

- (i) the electronic device makes no audible sound;
- (ii) the electronic device is positioned so the screen is unseen by the trier of fact or any witness;
- (iii) the electronic device is not used to record any part of the proceeding; and
- (iv) the electronic device is not used to communicate with any other person during the proceeding without the express permission of the court.

(B) Denial of Use

A court may not deny reasonable and lawful use of an electronic device in a courtroom by an attorney, except upon a finding of good cause made on the record.

...

Rule 16-208 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-208 clarify and expand upon a provision added to the Rule in 2022 which allowed to attorneys in a proceeding and their employees or agents to make “reasonable and lawful use of an electronic device” in the courtroom, with certain caveats, at the trial table.

A practitioner informed the General Court Administration Subcommittee that attorneys

frequently need to make use of a laptop or other electronic device in the courtroom while waiting for a case to be called. Since the Rule change, the Subcommittee was informed that some judges view the Rule as permitting this use while others do not.

There are a number of reasons that an attorney may find it necessary or desirable to use a device prior to arrival at the trial table, including reviewing a client's file or preparing for a hearing in another courtroom. Prior to widespread electronic case filing and case management, this would have involved carrying paper files. The General Court Administration recommends an amendment to subsection (b)(3)(A) to state that reasonable and lawful use of electronic devices is permitted by attorneys in proceedings currently being heard or scheduled to be heard that day.

The Chair explained that a practitioner informed the Committee that some District Court judges and bailiffs view Rule 16-208, as recently amended, to permit the use of personal electronic devices by attorneys only at the trial table. The General Court Administration Subcommittee recommends a clarification to the Rule to allow attorneys to use their devices in the courtroom if they have cases being heard that day.

Judge Anderson commented that courtroom safety is an issue, particularly making sure photographs are not being taken in court. She expressed concern that if some individuals are allowed to use phones and computers while the general public is not, it will cause confusion for bailiffs and for individuals in

the gallery who do not understand why lawyers are subject to different policies. Judge Bryant said that attorneys have to keep up with their cases and using a laptop to review documents is the equivalent of looking through paper files. She added that lawyers are different than the general public because they are in the courtroom working. Mr. Shellenberger remarked that prosecutors walk into court with a laptop and work while waiting for a case to be called. He said that attorneys work electronically now.

Chief Judge Morrissey said that MDEC requires electronic filing and replaces paper files in almost every respect. He noted that attorneys are officers of the court and that it should not be hard for bailiffs to enforce the policy. Judge Ballou-Watts agreed that deputies and bailiffs charged with courtroom security will know who the attorneys are and can distinguish proper use of a device from improper use. Ms. Doyle commented that her office does not even maintain paper files anymore. She said that it would impair an attorney's ability to prepare for a hearing if the attorney cannot reference electronically stored documents without stepping outside of the courtroom. Mr. Zollicoffer asked if the court can make an announcement at the start of the docket regarding the permitted use of devices by attorneys. Chief Judge Morrissey responded that inconsistent enforcement is the problem. Judge Anderson

agreed that attorneys need to access their files but reiterated that she is concerned about the optics of some individuals in the courtroom being permitted to use a device and others being prohibited. Judge Bryant suggested that the signage in courthouses that prohibit the use of electronic devices could be modified to state that certain use by attorneys is permitted.

There being no motion to amend or reject the proposed amendment to Rule 16-208, it was approved as presented.

Agenda Item 8. Consideration of proposed Rules changes related to Contents of the Record/Digital Media recommended by the General Court Administration Subcommittee

The Chair informed the Committee that most of the Rules in Agenda Item 8 are Subcommittee approved. He said that he would present the Rules individually and permit the Committee to ask questions, if needed.

The Chair presented Rule 1-202, Definitions, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 1 – GENERAL PROVISIONS
CHAPTER 200 – CONSTRUCTION, INTERPRETATION,
DEFINITIONS

AMEND Rule 1-202 by adding new section (j) defining “digital media” and by re-lettering current sections (j) through (ff) as (k) through (gg), respectively, as follows:

Rule 1-202. DEFINITIONS

. . .

(j) Digital Media

“Digital media” means material in an audio, audiovisual, or video format that can be transmitted and stored electronically.

~~(j)~~(k) Guardian

. . .

~~(k)~~(l) Holiday

. . .

~~(l)~~(m) Individual

. . .

~~(m)~~(n) Individual Under Disability

. . .

~~(n)~~(o) Judge

. . .

~~(o)~~(p) Judgment

. . .

~~(p)~~(q) Levy

. . .

~~(q)~~(r) Money Judgment

. . .

~~(r)~~(s) Newspaper of General Circulation

. . .

~~(s)~~(t) Original Pleading

. . .

~~(t)~~(u) Paper
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~~(u)~~(v) Person
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~~(v)~~(w) Pleading
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~~(w)~~(x) Proceeding
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~~(x)~~(y) Process
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~~(y)~~(z) Property
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~~(z)~~(aa) Return
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~~(aa)~~(bb) Senior Judge; Senior Justice
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~~(bb)~~(cc) Sheriff
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~~(cc)~~(dd) Subpoena
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~~(dd)~~(ee) Summons
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~~(ee)~~(ff) Warrant; Arrest Warrant; Bench Warrant;
Search Warrant
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.
~~(ff)~~(gg) 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 (a) is derived from former Rule 5 a.
 Section (b) is derived from former Rule 5 c.
 Section (c) is new.
 Section (d) is derived from former Rule 5 aa.
 Section (e) is derived from former Rule 5 e.
 Section (f) is derived from former Rule 5 f.
 Section (g) is derived from former Rule 5 g.
 Section (h) is derived from former Rule 5 h.
 Section (i) is new.
Section (j) is new.
 Section ~~(j)~~(k) is derived from former Rule 5 m.
 Section ~~(k)~~(l) is new.
 Section ~~(l)~~(m) is new.
 Section ~~(m)~~(n) is derived from former Rule 5 r.
 Section ~~(n)~~(o) is derived from former Rule 5 n.
 Section ~~(o)~~(p) is derived from former Rule 5 o.
 Section ~~(p)~~(q) is new.
 Section ~~(q)~~(r) is new.
 Section ~~(r)~~(s) is new.
 Section ~~(s)~~(t) is derived from the last sentence of former Rule 5 v.
 Section ~~(t)~~(u) is new.
 Section ~~(u)~~(v) is derived from former Rule 5 q.
 Section ~~(v)~~(w) is new and adopts the concept of federal practice set forth in the 1963 version of Fed. R. Civ. P. 7 (a).
 Section ~~(w)~~(x) is derived from former Rule 5 w.
 Section ~~(x)~~(y) is derived from former Rule 5 y.
 Section ~~(y)~~(z) is derived from former Rule 5 z.
 Section ~~(z)~~(aa) is new.
 Section ~~(aa)~~(bb) is new.
 Section ~~(bb)~~(cc) is derived from former Rule 5 cc.
 Section ~~(cc)~~(dd) is derived from former Rule 5 ee.
 Section ~~(dd)~~(ee) is new.
 Section ~~(ee)~~(ff) is derived in part from former Rule 702 h and M.D.R. 702 m and is in part new.
 Section ~~(ff)~~(gg) is derived from former Rule 5 ff.

Rule 1-202 was accompanied by the following Reporter's
 note:

Proposed amendments to Rule 1-202 add new section (j) to define "digital media." The term is used

in a series of proposed amendments to refer to recordings that are transmitted and stored electronically. Current sections (j) through (ff) are re-lettered.

There being no motion to amend or reject the proposed amendments to Rule 1-202, they were approved as presented.

The Chair presented Rule 1-322, Filing of Pleadings, Papers, and Other Items, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-322 by adding new subsection (a)(6) pertaining to digital media, as follows:

Rule 1-322. FILING OF PLEADINGS, PAPERS, AND OTHER ITEMS

(a) Generally

The filing of pleadings, papers, and other items with the court shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the item the date the judge accepted it for filing and forthwith transmit the item to the office of the clerk. On the same day that an item is received in a clerk's office, the clerk shall note on it the date it was received and enter on the docket that date and any date noted on the item by a judge. The item shall be deemed filed on the earliest of (1) the filing date noted by a judge on the item, (2) the date noted by the clerk on the item, or (3) the date established under section (d) of this Rule. No item may be filed directly by electronic transmission, except (1) pursuant to an

electronic filing system approved under Rule 16-203, (2) as permitted by Rule 14-209.1, (3) as provided in section (b) of this Rule, (4) as permitted by Code, Family Law Article, § 4-505.1, ~~or~~ (5) pursuant to Title 20 of these Rules, or (6) digital media submitted using a digital storage platform approved by the State Court Administrator.

(b) Electronic Transmission of Mandates of the Supreme Court of the United States

A Maryland court shall accept a mandate of the Supreme Court of the United States transmitted by electronic means unless the court does not have the technology to receive it in the form transmitted, in which event the clerk shall promptly so inform the Clerk of the Supreme Court of the United States and request an alternative method of transmission. The clerk of the Maryland court may request reasonable verification of the authenticity of a mandate transmitted by electronic means.

...

Rule 1-322 was accompanied by the following Reporter's note:

The proposed amendment to Rule 1-322 implements proposed changes throughout the Rules which explicitly reference use of a digital storage platform for submission and maintenance of digital media items used as exhibits. See the Reporter's note to Rule 1-202 for additional information.

Rule 1-322 prohibits direct electronic transmission except as authorized. Proposed new subsection (a)(6) authorizes digital media, as defined by Rule 1-202, to be transmitted using a digital storage platform approved by the State Court Administrator.

Assistant Reporter Cobun informed the Committee that Rule 1-322 was not Subcommittee-approved. It authorizes the use of a digital storage platform to transmit digital media items. A motion to approve the proposed amendments was made, seconded, and approved by consensus.

The Chair presented Rule 2-516, Exhibits and Recordings, for consideration.

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

AMEND Rule 2-516 by adding new subsection (a)(1) consisting of current section (a); by adding “by the clerk” to the first sentence of new subsection (a)(1); by deleting “and, unless the court orders otherwise, shall remain in the custody of the clerk” from new subsection (a)(1); by adding a Committee note following new subsection (a)(1) pertaining to pre-marked exhibits; by adding new subsection (a)(2) pertaining to custody of exhibits; by adding a Committee note following new subsection (a)(2) pertaining to custody of exhibits returned to parties; by expanding the cross reference following section (a); by deleting the provision regarding a copy for future transcription in subsection (b)(1)(A); by adding a Committee note following subsection (b)(1)(A) pertaining to the method of providing a copy of a recording to the court; by adding “or in a format” to subsection (b)(1)(C); by adding a cross reference to Rules 8-413 (a)(4) and 20-402 (a)(2) following section (b); and by making stylistic changes, as follows:

Rule 2-516. EXHIBITS AND RECORDINGS

(a) Generally

(1) Formation of Record

All exhibits marked for identification by the clerk, whether or not offered in evidence and, if offered, whether or not admitted, shall form part of the record, ~~and, unless the court orders otherwise, shall remain in the custody of the clerk.~~ With leave of court, a party may substitute a photograph or copy for any exhibit.

Committee note: Exhibits that are pre-marked by a party or pre-filed at the direction of the court do not constitute part of the record prior to being marked or offered as provided in subsection (a)(1) of this Rule.

(2) Custody of Exhibits

Unless the court orders otherwise, all exhibits shall remain in the custody of the clerk. If the court orders that the custodian of an exhibit be someone other than the clerk, the court shall: (A) state the identity of the custodian on the record; (B) instruct the custodian, until relieved of the responsibility by law or by court order, (i) to secure the exhibit until final determination of the action, including all appellate proceedings, and (ii) to retain the exhibit as required by Rule 16-405 and any statutory retention provisions; and (C) instruct the clerk to make a docket entry identifying the court-ordered custodian of the exhibit.

Committee note: The requirements of subsection (a)(2) of this Rule also apply to exhibits returned to the parties at the conclusion of a proceeding.

Cross reference: See Rule 16-405 regarding filing and removal of papers and exhibits.

(b) Audio, Audiovisual, or ~~Visual~~ Video Recordings

(1) Recording

A party who offers or uses an audio, audiovisual, or ~~visual~~ video recording at a hearing or trial shall:

(A) ensure that the recording is marked for identification and made part of the record and that an additional copy is provided to the court, ~~so that it is available for future transcription;~~

Committee note: A party may provide the court with a copy of a recording in a physical media format or in a digital media format using a digital storage platform approved by the State Court Administrator.

(B) if only a portion of the recording is offered or used, ensure that a description that identifies the portion offered or used is made part of the record; and

(C) if the recording is not on a medium or in a format in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record, and upon request present it to an appellate court in a format designated by the court.

Cross reference: See Rule 8-413 (a)(4) and 20-402 (a)(2) regarding inclusion of audio, audiovisual, and video recordings, including any digital media, in the record on appeal.

(2) Transcript of Recording

A party who offers or uses a transcript of the recording at a hearing or trial shall ensure that the transcript is made part of the record ~~and provide an additional copy to the court.~~

Cross reference: For a schedule of retention and disposal of court records, see Rule 16-205.

Source: This Rule is derived in part from former Rule 635 b and is in part new.

Rule 2-516 was accompanied by the following Reporter's
note:

Proposed amendments to Rule 2-516 alter certain provisions governing the custody of exhibits. Parallel amendments are proposed in the relevant portions of Rule 4-322.

Proposed new subsection (a)(1) contains the provisions of current section (a), with amendments. Subsection (a)(1) clarifies that exhibits marked for identification "by the clerk" constitute part of the record. A Committee note further clarifies that

exhibits that are pre-marked or pre-filed are not yet part of the record.

Proposed new subsection (a)(2) pertains to custody of exhibits. Although the Rules are structured to make the clerk the default custodian of exhibits, the Rules Committee was informed that in many jurisdictions it is common for exhibits to be returned to parties at the conclusion of trial. This practice is permitted under the current Rules because the court may order an alternate custodian who is not the clerk, but there is no procedure for issuing and documenting that order. It appears that in some jurisdictions, there is no formal documentation pertaining to exhibits that are returned to the parties.

The provisions in subsection (a)(2) create a procedure for appointing a custodian of an exhibit other than the clerk, including a statement on the record, instructions to secure and retain the exhibit as required by law, and making a docket entry of the identity of the custodian. A Committee note following subsection (a)(2) clarifies that the requirements of that subsection apply when exhibits are returned to the parties at the conclusion of a proceeding. The cross reference following the section is expanded to provide context.

Proposed amendments to section (b) change “visual” to “video” in the section title and subsection (b)(1). The reference to future transcription is deleted from subsection (b)(1)(A). The Committee has been informed that recordings rarely are transcribed later, but as custodian of the record, the court should be provided with a copy of a recording used in court. Subsection (b)(1)(C) is amended to require the recording to be provided to the court in a medium or format in common use by the general public. A cross reference to the relevant provisions in Rules 8-413 and 20-402 is added after subsection (b)(1).

There being no motion to amend or reject the proposed amendments to Rule 2-516, they were approved as presented.

The Chair presented Rule 3-516, Exhibits, for consideration.

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

AMEND Rule 3-516 by creating new section (a) containing the current language of the Rule pertaining to exhibits generally, by deleting “and, unless the court orders otherwise, shall remain in the custody of the clerk” from section (a), by adding new section (b) pertaining to custody of exhibits in an action where an appeal would be tried de novo, by adding a cross reference following new section (b), by adding new section (c) pertaining to custody of exhibits if an appeal would be heard on the record, and by making stylistic changes, as follows:

(a) Generally

All exhibits marked for identification by the clerk, whether or not offered in evidence and, if offered, whether or not admitted, shall form part of the record. ~~and, unless the court orders otherwise, shall remain in the custody of the clerk.~~ With leave of court, a party may substitute a photograph or copy for any exhibit.

Committee note: Exhibits that are pre-marked by a party or pre-filed at the direction of the court do not constitute part of the record prior to being marked or offered as provided in section (a) of this Rule.

(b) If Appeal is De Novo

In an action where an appeal would be tried de novo, exhibits shall be returned to the parties at the conclusion of the proceeding unless the court orders otherwise.

Cross reference: See Rule 7-102 (a) concerning appeals heard de novo.

(c) If Appeal is on the Record

In an action where an appeal would be heard on the record made in the District Court, unless the court orders otherwise, exhibits shall remain in the custody of the District Court clerk.

Source: This Rule is derived from former Rule 635 b.

Rule 3-516 was accompanied by the following Reporter's note:

Proposed amendments to Rule 3-516 alter certain provisions governing the custody of exhibits.

Proposed new section (a) contains the current provisions of the current Rule, with amendments. New section (a) clarifies that exhibits marked for identification "by the clerk" constitute part of the record. A Committee note further clarifies that exhibits that are pre-marked or pre-filed are not yet part of the record. Language pertaining to custody of exhibits is deleted from the section.

Proposed new sections (b) and (c) address custody of exhibits and differentiate between appeals that are heard de novo and appeals heard on the record. Proposed section (b) clarifies that, unless the court orders otherwise, exhibits are to be returned to the parties if an appeal would be tried de novo. A cross reference to Rule 7-102 (a), which lists the circumstances where an appeal is heard de novo, follows section (b).

Proposed new section (c) states that the clerk is the custodian of exhibits if an appeal would be heard on the record.

There being no motion to amend or reject the proposed amendments to Rule 3-516, they were approved as presented.

The Chair presented Rule 4-322, Exhibits, Computer-Generated Evidence, and Recordings, for consideration.

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

AMEND Rule 4-322 by adding new subsection (a)(1) consisting of current section (a); by adding “by the clerk” to the first sentence of new subsection (a)(1); by deleting “and, unless the court orders otherwise, shall remain in the custody of the clerk” from new subsection (a)(1); by adding a Committee note following new subsection (a)(1) pertaining to pre-marked exhibits; by adding new subsection (a)(2) pertaining to custody of exhibits; by adding a Committee note following new subsection (a)(2) pertaining to custody of exhibits returned to parties; by expanding the cross reference following section (a); by deleting the provision regarding a copy for future transcription in subsection (c)(1)(A); by adding a Committee note following subsection (c)(1)(A) pertaining to the method of providing a copy of a recording to the court; by adding “or in a format” to subsection (c)(1)(C); by adding a cross reference to Rules 8-413 (a)(4) and 20-402 (a)(2) following section (c); and by making stylistic changes, as follows:

Rule 4-322. EXHIBITS, COMPUTER-GENERATED EVIDENCE, AND RECORDINGS

(a) Generally

(1) Formation of Record

All exhibits marked for identification by the clerk, whether or not offered in evidence and, if offered, whether or not admitted, shall form part of the record ~~and, unless the court orders otherwise, shall remain in the custody of the clerk.~~ With leave of court,

a party may substitute a photograph or copy for any exhibit.

Committee note: Exhibits that are pre-marked by a party or pre-filed at the direction of the court do not constitute part of the record prior to being marked or offered as provided in subsection (a)(1) of this Rule.

(2) Custody of Exhibits – Generally

Unless the court orders otherwise and except as provided in subsection (a)(3) of this Rule, all exhibits shall remain in the custody of the clerk. If the court orders that the custodian of an exhibit be someone other than the clerk, the court shall: (A) state the identity of the custodian on the record; (B) instruct the custodian, until relieved of the responsibility by law or by court order, (i) to secure the exhibit until final determination of the action, including all appellate proceedings, and (ii) to retain the exhibit as required by Rule 16-405 and any statutory retention provisions; and (C) instruct the clerk to make a docket entry identifying the court-ordered custodian of the exhibit.

Committee note: The requirements of subsection (a)(2) of this Rule also apply to exhibits returned to the parties at the conclusion of a proceeding, including any exhibits returned to the State’s Attorney or law enforcement. Additionally, statutes may govern retention of certain evidence by the State. See, e.g., Code, Criminal Procedure Article, § 8-201, requiring the State to preserve scientific identification evidence.

Cross reference: See Rule 16-405 regarding filing and removal of papers and exhibits.

(3) District Court – Appeal Heard De Novo

In an action in District Court where an appeal would be tried de novo, exhibits shall be returned to the parties at the conclusion of the proceeding unless the court orders otherwise.

Cross reference: See Rule 7-102 (a) concerning appeals heard de novo.

(b) Preservation of Computer-Generated Evidence

A party who offers or uses computer-generated evidence at any proceeding shall preserve the

computer-generated evidence, furnish it to the clerk in a manner suitable for transmittal as a part of the record on appeal, and present the computer-generated evidence to an appellate court if the court so requests.

Cross reference: For the definition of “computer-generated evidence,” see Rule 2-504.3.

Committee note: This section requires the proponent of computer-generated evidence to reduce the computer-generated evidence to a medium that allows review on appeal. The medium used will depend upon the nature of the computer-generated evidence and the technology available for preservation of that computer-generated evidence. No special arrangements are needed for preservation of computer-generated evidence that is presented on paper or through spoken words. Ordinarily, the use of technology that is in common use by the general public at the time of the hearing or trial will suffice for preservation of other computer-generated evidence. However, when the computer-generated evidence involves the creation of a three-dimensional image or is perceived through a sense other than sight or hearing, the proponent of the computer-generated evidence must make other arrangements for preservation of the computer-generated evidence and any subsequent presentation of it that may be required by an appellate court.

(c) Audio, Audiovisual, or ~~Visual~~ Video Recordings

(1) Recording

A party who offers or uses an audio, audiovisual, or ~~visual~~ video recording at a hearing or trial shall:

(A) ensure that the recording is marked for identification and made part of the record and that an additional copy is provided to the court, ~~so that it is available for future transcription;~~

Committee note: A party may provide the court with a copy of a recording in a physical media format or in a digital media format using a digital storage platform approved by the State Court Administrator.

(B) if only a portion of the recording is offered or used, ensure that a description that identifies the portion offered or used is made part of the record; and

(C) if the recording is not on a medium or in a format in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record, and upon request present it to an appellate court in a format designated by the court.

Cross reference: See Rule 8-413 (a)(4) and 20-402 (a)(2) regarding inclusion of audio, audiovisual, and video recordings, including any digital media, in the record on appeal.

(2) Transcript of Recording

A party who offers or uses a transcript of the recording at a hearing or trial shall ensure that the transcript is made part of the record ~~and provide an additional copy to the court.~~

Cross reference: For a schedule of retention and disposal of court records, see Rule 16-205.

Rule 4-322 was accompanied by the following Reporter's note:

Proposed amendments to Rule 4-322 alter certain provisions governing the custody of exhibits. Parallel amendments are proposed in the relevant portions of Rule 2-516. See the Reporter's note to that Rule.

Proposed new subsection (a)(1) pertains to formation of the record. The subsection contains the provisions in current section (a), with stylistic changes.

Proposed new subsection (a)(2) pertains to custody of exhibits. It creates a procedure for appointing a custodian of an exhibit other than the clerk, including a statement on the record, instructions to secure and retain the exhibit as required by law, and making a docket entry of the identity of the custodian. A Committee note following subsection (a)(2) clarifies that the requirements of that subsection apply when exhibits are returned to the parties or law enforcement personnel at the conclusion of a proceeding.

A new Committee note following subsection (a)(1) references statutes governing retention of certain evidence by the State. It is derived from a Committee note in Rule 16-405. The cross reference following the section is expanded to provide context.

Section (c) is amended to change “visual” to “video” in the section title and subsection (c)(1). The reference to future transcription is deleted from subsection (c)(1)(A). The Committee has been informed that recordings rarely are transcribed later, but as custodian of the record, the court should be provided with a copy of a recording used in court. Subsection (c)(1)(C) is amended to require the recording to be provided to the court in a medium or format in common use by the general public. A cross reference to the relevant provisions in Rules 8-413 and 20-402 is added after subsection (c)(1).

There being no motion to amend or reject the proposed amendments to Rule 4-322, they were approved as presented.

The Chair presented Rule 20-301, Content of Official Record, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 20 – ELECTRONIC FILING AND CASE
MANAGEMENT
CHAPTER 300 – OFFICIAL RECORD

AMEND Rule 20-301 by adding new subsection (a)(4) pertaining to exhibits that are recordings and by re-lettering current subsections (a)(4) through (a)(6) as (a)(5) through (a)(7), respectively, as follows:

Rule 20-301. CONTENT OF OFFICIAL RECORD

(a) Generally

The official record of an MDEC action consists of:

(1) the electronic version of all submissions filed electronically or filed in paper form and scanned into the MDEC system;

(2) all other submissions and tangible items filed in the action that exist only in non-electronic form;

(3) the electronic version of all documents offered or admitted into evidence or for inclusion in the record at any judicial proceeding, pursuant to Rule 20-106 (e);

(4) all audio, audiovisual, or video recording exhibits, including digital media, that are made part of the record pursuant to Rules 2-516, 3-516, or 4-322;

~~(4)~~(5) all tangible items offered or admitted into evidence that could not be filed electronically or scanned into the MDEC system;

~~(5)~~(6) a transcript of all court recordings of proceedings in the MDEC action; and

~~(6)~~(7) all other documents or items that, for good cause, the court orders be part of the record.

(b) Hyperlinks

A hyperlink embedded in a submission is not a part of the official record unless it is linked to another document that is a part of the official record.

Source: This Rule is new.

Rule 20-301 was accompanied by the following Reporter's note:

Proposed amendments to Rule 20-301 add new subsection (a)(4), which incorporates into the official record of an MDEC action recordings that are made part of the court's record.

Recordings made part of the record pursuant to Rule 2-516, 3-516, or 4-322 may be on physical media, such as a hard drive, disc, or flash drive, but also may be submitted digitally using an approved platform. The current provisions of Rule 20-301 do

not incorporate a digital submission that is stored outside of MDEC into the official record in an MDEC action.

There being no motion to amend or reject the proposed amendments to Rule 20-301, they were approved as presented.

The Chair presented Rule 7-109, Record-Contents and Form, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 7 – APPELLATE AND OTHER JUDICIAL
REVIEW IN CIRCUIT COURT
CHAPTER 100 – APPEALS FROM THE DISTRICT
COURT TO THE CIRCUIT COURT

AMEND Rule 7-109 by adding new subsection (a)(4) governing the contents of the record on an appeal heard on the record made in the District Court; by adding a Committee note following new subsection (a)(4) pertaining to use of a digital storage platform; by creating new section (b) containing existing language from current section (a); by re-lettering sections (b) through (e) as sections (c) through (f), respectively; by deleting language in new section (c) encouraging parties to agree to a statement of the case; and by making stylistic changes, as follows:

RULE 7-109. RECORD – CONTENTS AND FORM

(a) Contents of Record

The record on appeal shall include:

- (1) a certified copy of the docket entries in the District Court;
- (2) a transcript, if required by Rule 7-113;

(3) all original papers filed in the action in the District Court except a supersedeas bond or alternative security and those other items that the parties stipulate may be omitted-; and

(4) in an appeal heard on the record made in the District Court pursuant to Rule 7-102 (b), copies or photographs of physical exhibits made part of the record pursuant to Rule 3-516 or Rule 4-322 and the original of any audio, audiovisual, or video recording made part of the record pursuant to Rule 3-516 or Rule 4-322.

Committee note: Exhibits that are audio, video, or audiovisual recordings may be stored and accessed using a digital storage platform approved by the State Court Administrator. Absent any dispute as to the authenticity or accuracy of the file, the file stored on the approved digital storage platform is considered the original for the purposes of this Rule.

(b) Formation of Record; Original Papers

The clerk of the District Court shall append a certificate clearly identifying the papers included in the record. The District Court may order that the original papers in the action be kept in the District Court pending the appeal, in which case the clerk of the District Court shall transmit only a certified copy of the original papers.

~~(b)~~(c) Statement of Case in Lieu of Entire Record

If the parties agree that the questions presented by an appeal can be determined without an examination of the entire record or a trial de novo, as the case may be, they may sign and, upon approval by the District Court, file with the clerk of the District Court a statement showing how the questions arose and were decided, and setting forth only those facts or allegations that are essential to a decision of the questions. ~~The parties are strongly encouraged to agree to such a statement.~~ The statement, the judgment from which the appeal is taken, and any opinion of the District Court shall constitute the record on appeal. The circuit court may, ~~however,~~ direct the District Court clerk to transmit all or part of

the balance of the record in the District Court as a supplement to the record on appeal.

~~(e)~~(d) Duties of District Court Clerk

The clerk shall prepare and attach to the beginning of the record a certified copy of the docket entries in the District Court. The original papers shall be fastened together in one or more file jackets and numbered consecutively, except that the pages of a transcript of testimony need not be renumbered. The clerk shall also prepare and transmit with the record a statement of the costs of preparing and certifying the record, the costs taxed against each party prior to the transmission of the record, and the costs of all transcripts and of copies, if any, of the transcripts for each of the parties. The clerk shall serve a copy of the docket entries on each party.

~~(d)~~(e) Correction of Record

On motion or on its own initiative, the circuit court may order that an error or omission in the record be corrected.

~~(e)~~(f) Return of Record to District Court Pending Appeal

Upon a determination that the record needs to be returned to the District Court because of a proceeding pending in that court, the circuit court may order that the record be so returned, subject to the conditions stated in the order.

Source: This Rule is derived from former Rules 1326 and 1327.

Rule 7-109 was accompanied by the following Reporter's note:

Proposed amendments to Rule 7-109 update and clarify certain provisions pertaining to the contents and form of the record in an appeal on the record made in the District Court.

Section (a) is proposed to be reformatted so that its subsections are in a list. This structure is modeled

after Rule 8-413 (a). New subsection (a)(4) pertains to an appeal heard on the record made in the District Court. It requires the District Court to include exhibits made part of the record in the record on appeal. A Committee note following the subsection states that recording exhibits may be stored and accessed using a digital storage platform. The remainder of current section (a) is placed in new section (b).

The remaining proposed amendments are primarily stylistic. Current sections (b) through (e) are re-lettered as (c) through (f), respectively. A statement in re-lettered section (c) that encourages parties to agree to a statement of the case is proposed for deletion.

There being no motion to amend or reject the proposed amendments to Rule 7-109, they were approved as presented.

The Chair presented Rule 8-413, Record-Contents and Form, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 8 – APPELLATE REVIEW IN THE SUPREME
COURT AND THE APPELLATE COURT
CHAPTER 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-413 by adding new subsection (a)(3) pertaining to inclusion of copies or photographs of exhibits in the record on appeal; by adding new subsection (a)(4) pertaining to the inclusion of the original of any recording in the record on appeal; by adding a Committee note following new subsection (a)(4) referencing use of a digital storage platform and the requirement that a recording in a format not in common use be provided to the clerk in a suitable format; by renumbering current subsection (a)(3) as subsection (a)(5); by relocating a provision pertaining

to inclusion of the record of proceedings before the Appellate Court to new subsection (a)(6); by creating new section (b) pertaining to formation of the record and disputes; by adding new subsection (b)(1) pertaining to the certificate by the clerk of the lower court; by requiring that a certificate under subsection (b)(1) identify tangible exhibits and their custodians; by adding a cross reference to Rules 2-516, 3-516, and 4-322 regarding custody of exhibits after subsection (b)(1); by adding subsection (b)(2) pertaining to original papers and exhibits; by requiring in subsection (b)(2) that original exhibits be retained pursuant to Rule 16-405 or as otherwise ordered by the court; by requiring in subsection (b)(2) that the clerk locate and transmit exhibits to the appellate court upon request; by creating new subsection (b)(3) pertaining to disputes and modification of the record using existing language from the Rule; by re-lettering sections (b) and (c) as sections (c) and (d), respectively; by separating the re-lettered sections into subsections; by deleting from new subsection (c)(1) a provision encouraging parties to agree to a statement of the case; and by making stylistic changes, as follows:

Rule 8-413. RECORD – CONTENTS AND FORM

(a) Contents of Record

The record on appeal shall include:

(1) a certified copy of the docket entries in the lower court;

(2) the transcript required by Rule 8-411, ~~and~~;

(3) copies or photographs of any physical exhibits made part of the record pursuant to Rules 2-516, 3-516, or 4-322;

(4) the original of any audio, audiovisual, or video recording made part of the record pursuant to Rules 2-516, 3-516, or 4-322;

Committee note: Exhibits that are audio, audiovisual, or video recordings may be stored and accessed using a digital storage platform approved by the State Court Administrator. Absent any dispute as to the

authenticity or accuracy of the file, the file stored on the approved digital storage platform is considered the original for the purposes of this Rule.

A party who offers or uses an audio, audiovisual, or video recording in a format not in common use by the general public is required to provide the recording to the clerk in a medium and format suitable for transmittal as part of the record. See Rule 2-516 (b) and Rule 4-322 (c) pertaining to the use of a recording at a hearing or trial.

~~(3)~~(5) all original papers filed in the action in the lower court except a supersedeas bond or alternative security and those other items that the parties stipulate may be omitted-; and

(6) when the Supreme Court reviews an action pending in or decided by the Appellate Court, the record of any proceedings in the Appellate Court.

(b) Formation of Record; Disputes

(1) Certificate

The clerk of the lower court shall append a certificate clearly identifying:

(A) the papers included in the record, including any copy or photograph substituted for an exhibit;

(B) any tangible exhibits not included for transmission and the custodian of each exhibit; and

(C) any digital media included in the record and instructions for access by the appellate court.

Cross reference: See Rules 2-516, 3-516, and 4-322 regarding custody of exhibits.

(2) Original Papers and Exhibits

The lower court may order that the original papers in the action be kept in the lower court pending the appeal, in which case the clerk of the lower court shall transmit only a certified copy of the original papers. Original exhibits shall be retained pursuant to Rule 16-405 or as otherwise ordered by the court. The clerk of the lower court shall transmit an original exhibit to the appellate court upon request by the appellate court.

(3) Disputes; Correction and Modification

The lower court, by order, shall resolve any dispute whether the record accurately discloses what occurred in the lower court, and shall cause the record to conform to its decision. The lower court ~~shall~~ also shall correct or modify the record if directed by an appellate court pursuant to Rule 8-414 (b)(2). ~~When the Supreme Court reviews an action pending in or decided by the Appellate Court, the record shall also include the record of any proceedings in the Appellate Court.~~

~~(b)~~(c) Statement of Case in Lieu of Entire Record

(1) Generally

If the parties agree that the questions presented by an appeal can be determined without an examination of all the pleadings and evidence, they may sign and, upon approval by the lower court, file a statement showing how the questions arose and were decided, and setting forth only those facts or allegations that are essential to a decision of the questions. ~~The parties are strongly encouraged to agree to such a statement.~~ The statement, the judgment from which the appeal is taken, and any opinion of the lower court shall constitute the record on appeal. The appellant shall reproduce the statement in the appellant's brief, either in lieu of the statement of facts or as an appendix to the brief.

(2) Supplement

The appellate court may, ~~however,~~ direct the lower court clerk to transmit all or part of the balance of the record in the lower court as a supplement to the record on appeal. ~~The appellant shall reproduce the statement in the appellant's brief, either in lieu of the statement of facts or as an appendix to the brief.~~

~~(e)~~(d) Duties of Lower Court Clerk

(1) Attachments

The clerk shall prepare and attach to the beginning of the record a cover page, a complete table of contents, and the certified copy of the docket entries in the lower court. The original papers shall be

fastened together in one or more binders and numbered consecutively, except that the pages of a transcript of testimony need not be renumbered.

(2) Statement of Cost

The clerk shall ~~also~~ prepare and transmit with the record a statement of the cost of preparing and certifying the record, the costs taxed against each party prior to the transmission of the record, and the cost of all transcripts and of copies, if any, of the transcripts for each of the parties.

(3) Service on Parties

The clerk shall serve a copy of the docket entries on each party.

Cross reference: See Code, Criminal Procedure Article, § 11-104(f)(2) for victim notification procedures.

Source: This Rule is derived in part from former Rule 1026 and Rule 826 and is in part new.

Rule 8-413 was accompanied by the following Reporter's note:

Proposed amendments to Rule 8-413 alter certain provisions pertaining to the record on appeal. Discussions with the Maryland Office of the Public Defender, prosecutors, and clerks identified a range of concerns with the operation of current Rule 8-413 and Rules 2-516, 3-516, and 4-322, which govern the record of proceedings at the trial court level.

Proposed amendments to Rule 8-413 and Rules 2-516, 3-516, and 4-322, attempt to update and standardize exhibit practices across the state while retaining flexibility for individual jurisdictions. See the Reporter's notes to those Rules.

The Committee also proposes certain modifications to accommodate the use of digital storage platforms outside of MDEC (e.g. ShareFile) in

judicial proceedings. See the Reporter's note to Rule 20-301.

Amendments to section (a) of Rule 8-413 add new subsection (a)(3) requiring copies or photographs of any physical exhibits that are made part of the trial record to be part of the record on appeal. New subsection (a)(4) addresses recordings specifically by requiring that the original recording be included in the record on appeal.

A Committee note following subsection (a)(4) refers to exhibits that may be stored on a digital storage platform outside of MDEC. The note states that exhibits may be stored and accessed this way and, absent a dispute about the uploaded files' authenticity or accuracy, are to be considered the originals. The Committee note also calls attention to the requirements in Rules 2-516 and 4-322 that a recording used in court that is not in a format used by the general public be furnished for the appellate record in a common format.

Current subsection (a)(3) is renumbered as subsection (a)(5). New subsection (a)(6) contains a provision moved from elsewhere in the Rule pertaining to the record of appellate proceedings when the Supreme Court reviews an action pending or decided by the Appellate Court.

Proposed new section (b) contains existing provisions from current section (a) with additional provisions intended to integrate the amendments to Rules 2-516, 3-516, and 4-322 regarding custody of exhibits and contents of the record.

Proposed new subsection (b)(1) requires that the certificate appended to the record by the clerk identify the papers and copies or photographs of exhibits as well as the custodian of tangible exhibits not included in the record for transmission. A cross reference following the subsection refers to the trial court Rules governing custody of exhibits.

Proposed new subsection (b)(2) governs the retention of original papers and exhibits. In addition to existing provisions pertaining to original papers in the action, a new provision requires original exhibits to

be retained as required by Rule 16-405 or as otherwise ordered by the court. The clerk of the lower court must transmit an original exhibit to the appellate court upon request.

Proposed new subsection (b)(3) contains existing provisions related to disputes and correction and modification of the record. The last sentence is deleted and moved to new subsection (a)(6).

Current section (b) is re-lettered as section (c), with subsections added. Proposed new subsection (c)(1) contains existing provisions regarding a statement of the case in lieu of the entire record. A sentence encouraging use of this mechanism is deleted. The Rules Committee was informed that a statement of the case on appeal rarely is used but may be appropriate in some matters and should remain available as an option. The last sentence from current section (b) pertaining to a reproduction of the statement in the appellant's brief is relocated from the end of the section to the end of new subsection (c)(1). New subsection (c)(2) contains existing provisions related to supplementing the statement of the case.

Current section (c) is re-lettered as section (d), with subsections added to separate the provisions. New subsection (d)(1) deals with attachments to the record. Subsection (d)(2) governs the statement of cost. Subsection (d)(3) governs service on the parties.

There being no motion to amend or reject the proposed amendments to Rule 8-413, they were approved as presented.

The Chair presented Rule 20-402, Transmittal of Record, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 20 – ELECTRONIC FILING AND CASE
MANAGEMENT
CHAPTER 300 – OFFICIAL RECORD

AMEND Rule 20-402 by clarifying the tagline of subsection (a)(2)(B) and by changing “audio-video” to “audiovisual” in subsection (a)(2)(B), as follows:

Rule 20-402. TRANSMITTAL OF RECORD

(a) Certification and Transmittal

(1) Certification

Upon the filing of a notice of appeal, application for leave to appeal, or notice that the Supreme Court has issued a writ of certiorari directed to a lower court, the clerk of the trial court shall comply with the requirements of Title 8 of the Maryland Rules and prepare a certification of the record.

(2) Transmittal of the Record to the Appellate Court

(A) Transmittal through MDEC

For purposes of Rule 8-412, the record is deemed transmitted to the appellate court when the lower court docket and transmits to the appellate court through the MDEC system a certified copy of the docket entries (“Case Summary”), together with a statement of the cost of preparing and certifying the record, the costs assessed against each party prior to the transmission of the record, and the cost of all transcripts and of copies, if any, of the transcripts for each of the parties.

(B) Transmittal of ~~Non-Electronic~~ Parts of the Record Not in Electronic Format in the MDEC System

The clerk shall (i) transmit to the appellate court as required under the Rules in Title 8 any part of the record that is not in electronic format in the MDEC system, including audio, ~~audio-video~~ audiovisual, or video recordings offered or used at a hearing or trial that have not been scanned into the MDEC system, and (ii) enter on the docket a notice (a) that the non-electronic part was so transmitted and (b) that, from and after the date of the notice, the entire record so certified is in the custody of the appellate court.

Cross reference: See Rules 8-412 and 8-413.

(b) Custody of Trial Court Submissions

Upon the docketing and transmittal provided for in subsection (a)(2) of this Rule, the record of all submissions filed on or prior to the date of the notice shall be deemed to be in the custody of the appellate court. Except as otherwise ordered by the appellate court, submissions filed in the trial court after the date of the notice shall not be part of the appellate record but shall be within the custody and jurisdiction of the trial court.

Committee note: Under MDEC, the electronic part of the record is not physically transmitted to the appellate court. It remains where it is but, upon entry of the notice referred to in sections (a) and (b), (1) it is regarded as within the custody of the appellate court, and (2) the judges, clerks, and other authorized employees of the appellate court have full remote electronic access to it. See section (d) of this Rule.

(c) Appellate Submissions During Pendency of Appeal

Subject to section (e) of this Rule and unless otherwise ordered by the appellate court, submissions filed with or by the appellate court during the pendency of the appeal after the date of the docketing and transmittal pursuant to subsection (a)(2) of this Rule shall be part of the appellate court record.

(d) Remote Access by Appellate Judges and Personnel

During the pendency of the appeal, the judges, law clerks, clerks, and staff attorneys of the appellate court shall have free remote access to the certified record.

(e) Procedure Upon Completion of Appeal

Upon completion of the appeal, the clerk of the appellate court shall add to the record certified by the clerk of the trial court any opinion, order, or mandate of the appellate court disposing of the appeal and a notice that, subject to the court's mandate and any further order of the appellate court, from and after the date of the notice, the record is returned to the custody of the trial court. For purposes of Rule 8-606

(d), the record is deemed transmitted to the lower court when the appellate court's mandate is transmitted to the lower court through the MDEC system.

Source: This Rule is new.

Rule 20-402 was accompanied by the following Reporter's note:

Proposed amendments to Rule 20-402 delete "non-electronic" from the tagline for subsection (a)(2)(B) and clarify that "non-electronic" refers to items not in the MDEC system. A related amendment to Rule 20-101 adds a definition for "electronic filing," which makes it clear that the term refers to items in electronic format in the MDEC system. A stylistic amendment in that subsection changes "audio-video" to "audiovisual."

There being no motion to amend or reject the proposed amendments to Rule 20-402, they were approved as presented.

The Chair presented Rule 16-904, General Policy, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 – COURT ADMINISTRATION
CHAPTER 900 – ACCESS TO JUDICIAL RECORDS
DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 16-904 by clarifying in section (c) that exhibits marked for identification by the clerk are subject to public inspection, by expanding the cross reference following section (c), and by expanding the Committee note following section (c), as follows:

RULE 16-904. GENERAL POLICY

(a) Presumption of Openness

Judicial records are presumed to be open to the public for inspection. Except as otherwise provided by the Rules in this Chapter or by other applicable law, the custodian of a judicial record shall permit a person to inspect a judicial record in accordance with Rules 16-922 through 16-924. Subject to the Rules in this Chapter, inspection of case records through the MDEC program is governed by Title 20 of the Maryland Rules.

Cross reference: See Rule 16-922, 16-923, 16-924, and 20-109.

(b) Protection of Records

To protect judicial records and prevent unnecessary interference with the official business and duties of the custodian and other judicial personnel, a clerk is not required to permit public inspection of a case record filed with the clerk for docketing in a judicial action or a notice record filed for recording and indexing until the document has been docketed or recorded and indexed.

(c) Exhibit Pertaining to Motion or Marked for Identification

Unless a judicial proceeding is not open to the public or the court expressly orders otherwise and except for identifying information shielded pursuant to law, a case record that consists of an exhibit (1) submitted in support of or in opposition to a motion or (2) marked for identification by the clerk at a ~~trial or~~ hearing or trial or offered in evidence, whether or not admitted, is subject to inspection, notwithstanding that the record otherwise would not have been subject to inspection under the Rules in this Chapter.

Cross reference: See ~~Rule~~ Rules 2-516, 3-516, and 4-322 concerning exhibits.

Committee note: Section (c) is based on the general principle that the public has a right to know the evidence upon which a court acts in making decisions,

except to the extent that a superior need to protect privacy, safety, or security recognized by law permits particular evidence, or the evidence in particular cases, to be shielded. See Rule 16-934 authorizing a court to permit inspection of a case record that is not otherwise subject to inspection or to deny inspection of a case record that otherwise would be subject to inspection.

...

Rule 16-904 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-904 clarify that an exhibit must be marked for identification by the clerk to be subject to public inspection. The clarification is intended to distinguish items marked and used at trial from items pre-filed or pre-marked by the parties, which are not part of the record of the case unless they are subsequently marked by the clerk at a hearing or trial.

The cross reference following section (c) is expanded to refer to all Rules governing exhibits and contents of the record at trial. The Committee note following section (c) also is expanded to refer parties and their attorneys to Rule 16-934, which authorizes the court to make case-by-case determinations regarding public access to filings which are otherwise deemed public or non-public by Rule or by law. Concerns were expressed that filers may not be aware that exhibits are presumed to be public unless otherwise ordered. The reference to Rule 16-934 alerts filers to the mechanism to seek to limit public inspection of an exhibit.

There being no motion to amend or reject the proposed amendments to Rule 16-904, they were approved as presented.

The Chair presented Rule 16-905, Copies, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 – COURT ADMINISTRATION
CHAPTER 900 – ACCESS TO JUDICIAL RECORDS
DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 16-905 by adding a Committee note following section (c); by adding new section (d) pertaining to access to digital media case records; by adding a cross reference following new section (d); by re-lettering sections (d) and (e) as (e) and (f), respectively; and by making stylistic changes, as follows:

Rule 16-905. COPIES

(a) Entitlement

Except as otherwise provided by the Rules in this Chapter or by other law, a person entitled to inspect a judicial record is entitled to have a copy or printout of the record. The copy or printout may be in paper form or, subject to Rules 16-917 and 16-918 and the Rules in Title 20, in electronic form. A judge's signature may be redacted or otherwise withheld on a copy.

(b) Certified Copy

To the extent practicable and unless the court determines otherwise for good cause, a certified copy of a judicial record filed with the clerk shall be made by any authorized clerk of the court in which the case was filed or to which it was transferred.

Committee note: The court may direct the custodian not to certify a copy of a case record upon a determination that the certified copy may be used for an improper purpose.

(c) Uncertified Copy

Copies or printouts in paper form that are obtained from a terminal or kiosk located in a courthouse are uncertified.

Committee note: In an MDEC action, members of the public are entitled to an uncertified copy of unshielded case records and unshielded parts of case records in any courthouse of the State regardless of where the action was filed or is pending. See Rule 20-109 (g)(2).

(d) Digital Media

If a case record consists of digital media, a copy of the record shall consist of a document containing instructions for accessing the digital media.

Cross reference: See Rule 1-202 for the definition of digital media.

~~(d)~~(e) Metadata

(1) Definition

(A) In this Rule, “metadata” means information generally not visible when an electronic document is printed that describes the history, tracking, or management of the electronic document, including information about data in the electronic document that describes how, when, or by whom the data was collected, created, accessed, or modified and how the data is formatted.

(B) Metadata does not include (i) a spreadsheet formula, (ii) a database field, (iii) an externally or internally linked file, or (iv) a reference to an external file or a hyperlink.

(2) Removal

A custodian may remove metadata from an electronic document before providing the electronic document to an applicant by using a software program or function or converting the electronic document into a different format.

~~(e)~~(f) Conditions

The custodian may set a reasonable time schedule to make copies or printouts and may charge a reasonable fee for the copy or printout.

Source: This Rule is derived in part from former Rule 16-904 (2019) and in part from Code, General Provisions Article, § 4-205.

Rule 16-905 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-905 clarify certain provisions pertaining to copies of case records.

A proposed Committee note following section (c) states that the public may obtain an uncertified copy of a public case record in an MDEC action from any courthouse, regardless of where the action was filed. Committee staff was informed that a member of the public was informed by a clerk's office that the clerk could not print the MDEC records of another county. This is incorrect as applied to uncertified copies.

Proposed new section (d) sets forth the method of providing a "copy" of a case record that is digital media. Such records are submitted using an approved digital storage platform and not in a physical format. The General Court Administration Subcommittee was informed that the proposed business process for public access to copies of digital media is a printout generated with instructions for access.

A cross reference to the definition of "digital media" is added following new section (d).

Sections (d) and (e) are re-lettered as (e) and (f), respectively.

There being no motion to amend or reject the proposed amendments to Rule 16-905, they were approved as presented.

The Chair presented Rule 16-918, Access to Electronic Records, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-918 by adding new section (d) pertaining to access to digital media, by adding a Committee note following new section (d), by updating a reference to Rule 20-101 in subsection (b)(1), and by making stylistic changes, as follows:

Rule 16-918. ACCESS TO ELECTRONIC RECORDS

(a) In General

Subject to the other Rules in this Title and in Title 20 and other applicable law, a judicial record that is kept in electronic form is open to inspection to the same extent that the record would be open to inspection in paper form.

(b) Denial of Access

(1) Restricted Information

A custodian shall take reasonable steps to prevent access to restricted information, as defined in Rule 20-101 ~~(s)~~(t), that the custodian is on notice is included in an electronic judicial record.

(2) Certain Identifying Information

(A) In General

Except as provided in subsection (b)(2)(B) of this Rule, a custodian shall prevent remote access to the name, address, telephone number, date of birth, e-mail address, and place of employment of a victim or nonparty witness in:

(i) a criminal action,

(ii) a juvenile delinquency action under Code, Courts Article, Title 3, Subtitle 8A,

(iii) an action under Code, Family Law Article, Title 4, Subtitle 5 (domestic violence), or

(iv) an action under Code, Courts Article, Title 3, Subtitle 15 (peace order).

(B) Exceptions

(i) Unless shielded by a protective order, the name, office address, office telephone number and office e-mail address, if any, relating to law enforcement officers, other public officials or employees acting in their official capacity, and expert witnesses, may be remotely accessible.

(ii) Subsection (b)(2) of this Rule does not apply to briefs, appendices, petitions for writ of certiorari, motions, and oppositions filed in the Supreme Court or the Appellate Court.

(C) Notice to Custodian

A person who places in a judicial record identifying information relating to a witness shall give the custodian written or electronic notice that such information is included in the record, where in the record that information is contained, and whether that information is not subject to remote access under this Rule, Rule 1-322.1, Rule 20-201, or other applicable law. Except as federal law may otherwise provide, in the absence of such notice a custodian is not liable for allowing remote access to the information.

(c) Availability of Computer Terminals

Clerks shall make available at convenient places in the courthouses computer terminals or kiosks that the public may use to access judicial records and parts of judicial records that are open to inspection, including judicial records as to which remote access is otherwise prohibited. To the extent authorized by administrative order of the Chief Justice of the Supreme Court, computer terminals or kiosks may be made available at other facilities for that purpose.

Cross reference: Rule 20-109.

Committee note: Although use of a courthouse computer terminal or kiosk is free of charge, the cost of obtaining a copy of the records is governed by Rule 16-905.

(d) Access to Digital Media

Unless otherwise ordered by the court, digital media shall be viewable upon request at a terminal or kiosk located in a courthouse.

Committee note: Accessing digital media may involve playing a sound recording. The court should make appropriate accommodations to avoid disruptions to staff and patrons, including providing headphones at the terminal or kiosk.

Source: This Rule is derived from former Rule 16-910 (2019) and is in part new.

Rule 16-918 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-918 set forth the procedure for providing public access to digital media. Rule 1-202 is amended to define digital media as audio, audiovisual, and video material that can be transmitted and stored electronically. Digital media may be submitted to the court using an approved digital storage platform.

The General Court Administration Subcommittee was informed that the public should be able to access digital media using the storage platform at a terminal or kiosk at the courthouse, similar to the provisions of section (c) of the Rule. At this time, however, the Judiciary is not equipped to facilitate access to digital media on demand at a terminal or kiosk. The State Court Administrator requested that access be provided "upon request" to allow the court to facilitate access. A Committee note suggests that a court may need to make accommodations for playing sound recordings.

A conforming amendment to subsection (b)(1) updates a reference to 20-101.

Judge Bryant said she had a comment on Rule 16-918. She suggested that in the Committee note following new section (d),

“the court” should be changed to “the clerk.” She said that the clerk is the more appropriate entity to make accommodations for the viewing of digital media. She moved to make the change. The motion was seconded and approved by consensus.

There being no motion to further amend or reject Rule 16-918, it was approved as amended.

The Chair presented Rule 20-101, Definitions, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 20 – ELECTRONIC FILING AND CASE
MANAGEMENT
CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-101 by adding new section (f);
by adding a cross reference following new section (f);
and by re-lettering sections (f) through (x) as (g)
through (y), respectively, as follows:

Rule 20-101. DEFINITIONS

...

(f) Electronic Filing

“Electronic filing” means a filing capable of being entered into the MDEC system in accordance with the Rules in this Title. “Electronic filing” does not include digital media submitted and maintained on a digital storage platform approved by the State Court Administrator.

Cross reference: See Rule 20-106 (c) regarding submissions that are entered into the MDEC system.

~~(f)~~(g) Filer

. . .
(~~g~~)(h) Hand-Signed or Handwritten Signature
. . .
(~~h~~)(i) Hyperlink
. . .
(~~i~~)(j) Judge
. . .
(~~j~~)(k) Judicial Appointee
. . .
(~~k~~)(l) Judicial Personnel
. . .
(~~l~~)(m) MDEC or MDEC System
. . .
(~~m~~)(n) MDEC Action
. . .
(~~n~~)(o) MDEC County
. . .
(~~o~~)(p) MDEC Start Date
. . .
(~~p~~)(q) MDEC System Outage
. . .
(~~q~~)(r) Redact
. . .
(~~r~~)(s) Registered User
. . .
(~~s~~)(t) Restricted Information
. . .
(~~t~~)(u) Scan
. . .

~~(u)~~(v) Signature

...

~~(v)~~(w) Submission

...

~~(w)~~(x) Tangible Item

...

~~(x)~~(y) Trial Court

...

Source: This Rule is new.

Rule 20-101 was accompanied by the following Reporter's
note:

Proposed amendments to Rule 20-101 clarify that the term "electronic filing" as used throughout Title 20 refers to a filing that is capable of being entered into the MDEC system.

This term is in contrast with proposed new definition in Rule 1-202 for the term "digital media," which are items submitted by electronic means but not currently capable of being submitted through or maintained by the MDEC system. See the Reporter's notes to Rules 1-202, 2-516, 3-516, 4-322, 7-109, 8-413, 16-905, 16-918, 20-106, 20-109, 20-301, and 20-402.

The definition of "electronic filing" proposed in Rule 20-101 makes clear that it refers only to MDEC filings, not digital media.

There being no motion to amend or reject the proposed amendments to Rule 20-101, they were approved as presented.

The Chair presented Rule 20-106, When Electronic Filing Required; Exceptions, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 20 – ELECTRONIC FILING AND CASE
MANAGEMENT
CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106 by adding new subsection (e)(3), as follows:

RULE 20-106. WHEN ELECTRONIC FILING
REQUIRED; EXCEPTIONS

. . .

(e) Exhibits and Other Documents Offered in Open Court

(1) Exhibits

(A) Generally

Unless otherwise approved by the court, a document offered into evidence as an exhibit in open court shall be offered in paper form. The document shall be appropriately marked.

Committee note: In a document-laden action, if practicable, the court and the parties are encouraged to agree to electronically prefiling documents to be offered into evidence, instead of offering them in paper form. Prefiling merely facilitates the offering of the document and does not constitute, of itself, an admission of the documents.

(B) Scanning and Return of Document

As soon as practicable, the clerk shall scan the document into the MDEC system and return the document to the party who offered it at the conclusion of the proceeding, unless the court orders otherwise. If immediate scanning is not feasible, the clerk shall scan the document as soon as practicable and notify the person who offered it when and where the document may be retrieved.

(2) Documents Other than Exhibits

(A) Generally

Except as otherwise provided in subsection (e)(2)(B) of this Rule, if a document in paper form is offered in open court for inclusion in the record, but not as an exhibit, the court shall accept the document, and the clerk shall follow the procedure set forth in subsection (e)(1)(B) of this Rule.

Committee note: Examples of documents other than exhibits offered for inclusion in the record are written motions made in open court, proposed voir dire questions, proposed jury instructions, communications from a jury, and special verdict sheets.

(B) Certain Submissions by Registered Users

If a registered user offers a submission that requires prepayment of a fee, or an entry of appearance, whether or not a fee is required, in open court for inclusion in the record, but is not as an exhibit, the court may accept the submission conditionally, subject to it being electronically filed by the registered user. In criminal proceedings, the submission shall be filed by the end of the day that the submission was offered in court. In all proceedings other than criminal, the submission shall be filed no later than the end of the next business day after the submission was offered in court. If the registered user fails to file by the applicable deadline, the court may strike the submission.

(3) Digital Media

Digital media offered in open court and included in the record pursuant to Rule 2-516, 3-516, or 4-322 shall be (A) submitted using a digital storage platform approved by the State Court Administrator and (B) referenced in the MDEC system by docket entry.

...

Rule 20-106 was accompanied by the following Reporter's
note:

A proposed amendment to Rule 20-106 sets forth the procedure for submitting to the court digital media that is used in open court and made part of the court record. See the Reporter's notes to Rules 2-516, 3-516, and 4-322.

There being no motion to amend or reject the proposed amendments to Rule 20-106, it was approved as presented.

The Chair presented Rule 20-109, Access to Electronic Records in MDEC Actions, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 20 – ELECTRONIC FILING AND CASE
MANAGEMENT
CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109 by correcting a reference to a Title 16 Rule in subsection (g)(2), as follows:

RULE 20-109. ACCESS TO ELECTRONIC RECORDS
IN MDEC ACTIONS

(a) Generally

Except as otherwise provided in this Rule, access to judicial records in an MDEC action is governed by the Rules in Title 16, Chapter 900.

. . .

(g) Public Access

(1) Access Through CaseSearch

Members of the public shall have free access to information posted on CaseSearch.

(2) Unshielded Documents

Subject to any protective order issued by the court, members of the public shall have free access to unshielded case records and unshielded parts of case records from computer terminals or kiosks that the courts make available for that purpose. Each court shall provide a reasonable number of terminals or kiosks for use by the public. The terminals or kiosks shall not permit the user to download, alter, or forward the information, but the user is entitled to a copy of or printout of a case record in accordance with ~~Rule 16-904 (e)~~ Rule 16-905 (c) and (d).

Committee note: The intent of subsection (g)(2) of this Rule is that members of the public be able to access unshielded electronic case records in any MDEC action from a computer terminal or kiosk in any courthouse of the State, regardless of where the action was filed or is pending.

...

Rule 20-109 was accompanied by the following Reporter's note:

Proposed amendments to Rule 20-109 update an internal reference to the Title 16, Chapter 900 Rule governing copies.

There being no motion to amend or reject the proposed amendments to Rule 20-109, they were approved as presented.

The Chair presented conforming amendments related to Rule 1-202, Definitions, to: Rule 2-131, Appearance; Rule 2-221, Interpleaders; Rule 3-131, Appearance; Rule 3-221, Interpleader; Rule 9-202, Pleading; Rule 13-101, Definitions; Rule 16-103, Chief Judge of the Appellate Court; and Rule 16-601, Definitions, for consideration.

The Chair also presented conforming amendments related to Rule 20-101, Definitions, to: Rule 1-101, Applicability; Rule 1-324, Notification of Orders, Rules, and Court Proceedings; Rule 2-551, In Banc Review; Rule 7-206.1, Record-Judicial Review of Workers' Compensation Commission; and Rule 20-107, MDEC Signatures, for consideration.

Assistant Reporter Cobun informed the Committee that the remaining materials in Agenda Item 8 are conforming amendments necessitated by the re-lettering in Rules 1-202 (Appendix 1) and 20-101 (Appendix 2). She said that the amendments were not considered by the Subcommittee and require a motion to approve. A motion to approve the conforming amendments was made, seconded, and approved by consensus.

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

APPENDIX 1

RULE 2-131

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE—CIRCUIT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 by updating a reference to Rule 1-202 in the cross reference following section (d), as follows:

Rule 2-131. APPEARANCE

. . .

(d) Effect

The entry of an appearance is not a waiver of the right to assert any defense in accordance with these rules. Special appearances are abolished.

Cross reference: Rules 1-311, 1-312, 1-313; Rules 19-214, 19-215, and 19-216 of the Rules Governing Admission to the Bar. See also Rule 1-202 ~~(u)~~(v) for the definition of “person”.

Source: This Rule is in part derived from former Rule 124 and in part new.

REPORTER’S NOTE

A proposed conforming amendment to Rule 2-131 updates a reference to a section of Rule 1-202. The proposed addition of new section (j) to Rule 1-202 requires re-lettering of subsequent sections.

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APPENDIX 1

RULE 2-221

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE—CIRCUIT COURT

CHAPTER 200 – PARTIES

AMEND Rule 2-221 by updating a reference to Rule 1-202 in the cross reference following section (a), as follows:

Rule 2-221. INTERPLEADER

(a) Interpleader Action

An action for interpleader or in the nature of interpleader may be brought against two or more adverse claimants who claim or may claim to be entitled to property. The claims of the several defendants or the title on which their claims depend need not have a common origin or be identical but may be adverse to and independent of each other. The plaintiff may deny liability in whole or in part to any or all of the defendants. A defendant may likewise obtain interpleader by way of counterclaim or cross-claim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted by Rule 2-212. The complaint for interpleader shall specify the nature and value of the property and may be accompanied by payment or tender into court of the property. The complaint may request, and the court may grant prior to entry of the order of interpleader pursuant to section (b) of this Rule, appropriate ancillary relief, including ex parte or preliminary injunctive relief.

Rule 2-221
Conforming amendment for approval
For 2/9/24 R.C.

APPENDIX 1

RULE 2-221

Cross reference: For the definition of property, see Rule 1-202 ~~(y)~~(z).

. . .

REPORTER'S NOTE

A proposed conforming amendment to Rule 2-221 updates a reference to a section of Rule 1-202. See the Reporter's note to Rule 2-131.

APPENDIX 1

RULE 3-131

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE—DISTRICT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-131 by updating a reference to Rule 1-202 in the cross reference following section (d), as follows:

Rule 3-131. APPEARANCE

. . .

(d) Effect

The entry of an appearance is not a waiver of the right to assert any defense in accordance with these rules. Special appearances are abolished.

Cross reference: Rules 1-311, 1-312, 1-313; Rules 19-214 and 19-215 of the Rules Governing Admission to the Bar. See also Rule 1-202 ~~(u)~~(v) for the definition of “person”, and Code, Business Occupations and Professions Article, § 10-206 (b)(1), (2), and (4) for certain exceptions applicable in the District Court.

Source: This Rule is in part derived from former Rule 124 and in part new.

REPORTER’S NOTE

A proposed conforming amendment to Rule 3-131 updates a reference to a section of Rule 1-202. See the Reporter’s note to Rule 2-131.

APPENDIX 1

RULE 3-221

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE—DISTRICT COURT

CHAPTER 200 – PARTIES

AMEND Rule 3-221 by updating a reference to Rule 1-202 in the cross reference following section (a), as follows:

Rule 3-221. INTERPLEADER

(a) Interpleader Action

An action for interpleader or in the nature of interpleader may be brought against two or more adverse claimants who claim or may claim to be entitled to property. The claims of the several defendants or the title on which their claims depend need not have a common origin or be identical but may be adverse to and independent of each other. The plaintiff may deny liability in whole or in part to any or all of the defendants. A defendant may likewise obtain interpleader by way of counterclaim or cross-claim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted by Rule 3-212. The complaint for interpleader shall specify the nature and value of the property and may be accompanied by payment or tender into court of the property. The complaint may request, and the court may grant prior to entry of the order of interpleader pursuant to section (b) of this Rule, appropriate ancillary relief, including ex parte or preliminary injunctive relief.

Rule 3-221
Conforming amendment for approval
For 2/9/24 R.C.

APPENDIX 1

RULE 3-221

Cross reference: For the definition of property, see Rule 1-202 ~~(y)~~(z).

. . .

REPORTER'S NOTE

A proposed conforming amendment to Rule 3-221 updates a reference to a section of Rule 1-202. See the Reporter's note to Rule 2-131.

APPENDIX 1

RULE 9-202

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-202 by updating a reference to Rule 1-202 in the cross reference following section (a), as follows:

Rule 9-202. PLEADING

(a) Signing – Telephone Number - E-mail Address

A party shall personally sign each pleading filed by that party and, if the party is not represented by an attorney, shall state in the pleading a telephone number at which the party may be reached during ordinary business hours and an e-mail address, if any, through which the party may be contacted.

Cross reference: See Rule 1-202 ~~(v)~~(w).

. . .

REPORTER'S NOTE

A proposed conforming amendment to Rule 9-202 updates a reference to a section of Rule 1-202. See the Reporter's note to Rule 2-131.

APPENDIX 1

RULE 13-101

MARYLAND RULES OF PROCEDURE

TITLE 13 – RECEIVERS AND ASSIGNEES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 13-101 by updating a reference to Rule 1-202 in section (i) and subsection (j)(2), as follows:

Rule 13-101. DEFINITIONS

. . .

(i) Person

“Person” has the meaning set forth in Rule 1-202 ~~(u)~~(v) and includes an individual, an estate, a business, a nonprofit entity, a public corporation, a governmental unit, an instrumentality, and any other legal entity.

Cross reference: See Code, Commercial Law Article, § 24-101(n).

(j) Property

(1) For proceedings under Code, Commercial Law Article, Title 24:

(A) “Property” means all of a person's right, title, and interest, both legal and equitable, in real and personal property, tangible and intangible, wherever located and however acquired.

(B) “Property” includes proceeds, products, offspring, rent, and profits of or from the property.

(C) “Property” does not include:

APPENDIX 1

RULE 13-101

(i) any power that the owner may exercise solely for the benefit of another person; or

(ii) property impressed with a trust, except to the extent that the owner has a residual interest.

Cross reference: See Code, Commercial Law Article, § 24-101(p).

(2) For all other proceedings, “property” has the meaning set forth in Rule 1-202 ~~(y)~~(z).

. . .

REPORTER’S NOTE

A proposed conforming amendment to Rule 13-101 updates references to sections of Rule 1-202. See the Reporter’s note to Rule 2-131.

APPENDIX 1

RULE 16-103

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 100 – COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-103 by updating a reference to Rule 1-202 in the cross reference, as follows:

Rule 16-103. CHIEF JUDGE OF THE APPELLATE COURT

Subject to the provisions of this Chapter, other applicable law, and the direction of the Chief Justice of the Supreme Court, the Chief Judge of the Appellate Court is responsible for the administration of the Appellate Court and, with respect to that court and to the extent applicable, has the authority of a County Administrative Judge. In the absence of the Chief Judge of the Appellate Court, the provisions of this Rule shall be applicable to the senior judge present in the Appellate Court.

Cross reference: For the definition of a “senior judge” as used in this Rule, see Rule 1-202 ~~(aa)(1)~~(bb)(1).

Source: This Rule is derived from former Rule 16-101 b (2016).

REPORTER’S NOTE

A proposed conforming amendment to Rule 16-103 updates a reference to a section of Rule 1-202. See the Reporter’s note to Rule 2-131.

Rule 16-103
Conforming amendment for approval
For 2/9/24 R.C.

APPENDIX 1

RULE 16-601

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 600 – EXTENDED COVERAGE OF COURT PROCEEDINGS

AMEND Rule 16-601 by updating a reference to Rule 1-202 in the cross reference following section (e), as follows:

Rule 16-601. DEFINITIONS

• • •
(e) Presiding Judge

(1) “Presiding judge” means a judge designated to preside over a proceeding which is, or is intended to be, the subject of extended coverage.

(2) Where action by a presiding judge is required by the Rules in this Chapter, and no judge has been designated to preside over the proceeding, “presiding judge” means the Local Administrative Judge.

(3) In an appellate court, “presiding judge” means the Chief Justice or Chief Judge of that court or the senior justice or judge of a panel of which the Chief Justice or Chief Judge is not a member.

Cross reference: For the definition of a “senior judge” as used in this Rule, see Rule 1-202 ~~(aa)(1)~~(bb)(1).

Source: This Rule is derived from former Rule 16-109 a (2016.)

APPENDIX 1

RULE 16-601

REPORTER'S NOTE

A proposed conforming amendment to Rule 16-601 updates a reference to a section of Rule 1-202. See the Reporter's note to Rule 2-131.

APPENDIX 2

RULE 1-101

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-101 by updating in section (t) references to sections of Rule 20-101, as follows:

Rule 1-101. APPLICABILITY

. . .

(t) Title 20

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

. . .

Rule 1-101
Rule 20-101 conforming amendment for approval
For 2/9/24 R.C.

APPENDIX 2

RULE 1-101

REPORTER'S NOTE

Proposed amendments to Rule 1-101 are conforming ones in light of proposed amendments to Rule 20-101. The proposed addition of new section (f) to Rule 20-101 requires re-lettering of subsequent sections. References to the re-lettered sections are updated in Rule 1-101 (t).

.

APPENDIX 2

RULE 1-324

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-324 by updating in section (b) a reference to a section of Rule 20-101, as follows:

Rule 1-324. NOTIFICATION OF ORDERS, RULINGS, AND COURT PROCEEDINGS

. . .

(b) Notification When Attorney Has Entered Limited Appearance

If, in an action that is not an MDEC action as defined in Rule 20-101 ~~(m)~~(n), an attorney has entered a limited appearance for a party pursuant to Rule 2-131 or Rule 3-131 and the automated operating system of the clerk's office does not permit the sending of notifications to both the party and the attorney, the clerk shall send all notifications required by section (a) of this Rule to the attorney as if the attorney had entered a general appearance. The clerk shall inform the attorney that, until the limited appearance is terminated, all notifications in the action will be sent to the attorney and that it is the attorney's responsibility to forward to the client notifications pertaining to matters not within the scope of the limited appearance. The attorney promptly shall forward to the client all such notifications, including any received after termination of the limited appearance.

Rule 1-324
Conforming amendment for approval
For 2/9/24 R.C.

. . .

REPORTER'S NOTE

A proposed conforming amendment to Rule 1-324 updates a reference to a section of Rule 20-101. See the Reporter's note to Rule 1-101.

APPENDIX 2

RULE 2-551

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE—CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-551 by updating a reference to Rule 20-101 in section (c),
as follows:

Rule 2-551. IN BANC REVIEW

. . .

(c) Memoranda

Within 30 days after the filing of the notice for in banc review the party seeking review shall file a memorandum stating concisely the questions presented, any facts necessary to decide them, and supporting argument.

Within 15 days thereafter, an opposing party who wishes to dispute the questions, facts, or arguments presented shall file a memorandum stating the alternative questions presented, any additional or different facts, and supporting argument. Any person filing a memorandum under this section who is not required to file electronically under MDEC shall file four copies of the memorandum in paper form.

Cross reference: See Rule 20-101 ~~(f)~~(m) for the definition of MDEC.

. . .

APPENDIX 2

RULE 2-551

REPORTER'S NOTE

A proposed conforming amendment to Rule 2-551 updates a reference to a section of Rule 20-101. See the Reporter's note to Rule 1-101.

APPENDIX 2

RULE 7-206.1

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 200 – JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY

DECISIONS

AMEND Rule 7-206.1 by updating a reference to Rule 20-101 in section (d), as follows:

Rule 7-206.1. RECORD--JUDICIAL REVIEW OF DECISION OF THE WORKERS' COMPENSATION COMMISSION

. . .

(d) Electronic Transmission

If the Commission is required by section (b) of this Rule or by order of court to transmit all or part of the record to the court, the Commission may file electronically if the court to which the record is transmitted is the circuit court for an “MDEC county” as defined in Rule 20-101 ~~(n)~~(o).

Cross reference: See Code, Labor and Employment Article, § 9-739.

Source: This Rule is new.

REPORTER'S NOTE

A proposed conforming amendment to Rule 7-206.1 updates a reference to a section of Rule 20-101. See the Reporter's note to Rule 1-101.

Rule 7-206.1
Conforming amendment for approval
For 2/9/24 R.C.

APPENDIX 2

RULE 20-107

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-107 by updating a reference to Rule 20-101 in the cross reference following section (a), as follows:

Rule 20-107. MDEC SIGNATURES

(a) Signature by Filer; Additional Information Below Signature

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

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

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

Cross reference: For the definition of “signature” applicable to MDEC submissions, see Rule 20-101 ~~(u)~~(v).

...

REPORTER’S NOTE

A proposed conforming amendment to Rule 20-107 updates a reference to a section of Rule 20-101. See the Reporter’s note to Rule 1-101.

Rule 20-107
Conforming amendment for approval
For 2/9/24 R.C.