SUPREME COURT STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms 237-238 of the Maryland Judicial Center, 187 Harry S. Truman Parkway, Annapolis, Maryland on Friday, November 21, 2025.

Members present:

Hon. Yvette M. Bryant, Chair
Hon. Douglas R.M. Nazarian, Vice Chair

Hon. Tiffany H. Anderson
James M. Brault, Esq.
Jamar R. Brown, Esq.
Hon. Catherine Chen
Hon. Yolanda L. Curtin
Julia Doyle, Esq.
Richrd Gibson, Jr., Esq.
Monica Garcia Harms, Esq.
Arthur J. Horne, Jr., Esq.
Hon. Karen R. Ketterman
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Stephen S. McCloskey, Esq.
Kathleen H. Meredith, Esq.
Judy Rupp, State Court Administrator
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Brian L. Zavin, Esq.

In attendance:

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

Benjamin Harris, Esq., Maryland Office of the Attorney General
Laure Ruth, Esq., Maryland Network Against Domestic Violence
Matt Hill, Esq., Public Justice Center
Dan Rosenberg, Esq., Eviction Prevention Clinic, UM Carey School of Law
Emily Reed, Esq., Maryland Legal Aid
Stacy Smith, Court Program Manager, Anne Arundel County Circuit Court
Ian Round, Maryland Daily Record
Dylan Ritter

Connie Kratovil-Lavelle, Esq., MSBA
Katherine Gillespie, Esq., Maryland Legal Aid
John Sharifi, Esq., Maryland Office of the Public Defender
Brendan Madden, Esq.
Phillip Robinson, Esq.
Jen Pauliukonis, Johns Hopkins Center for Gun Violence Solutions
Shaoli Sarkar, Esq., MSBA
Hon. Cathleen M. Vitale, Anne Arundel County Circuit Court

The Chair convened the meeting. The Reporter advised that the meeting would be recorded for the purpose of assisting with the preparation of meeting minutes and that speaking will be treated as consent to being recorded.

Agenda Item 1. Consideration of proposed amendments to Rule 3-325 (Jury Trial).

Judge Wilson presented Rule 3-325, Jury Trial, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 300 – PLEADINGS AND MOTIONS

AMEND Rule 3-325 by adding a reference to Title 6 of the Real Property Article of the Maryland Code to subsection (a)(2), by making stylistic changes to section (c), and by adding new subsection (c)(2), as follows:

RULE 3-325. JURY TRIAL

(a) Demand – Time for Filing

(1) By Plaintiff

A plaintiff whose claim is within the exclusive jurisdiction of the District Court may elect a trial by jury of any action triable of right by a jury by filing with the complaint a separate written demand therefor.

(2) By Defendant

A defendant, counter-defendant, cross-defendant, or third-party defendant may elect a trial by jury of any action triable of right by a jury by filing a separate written demand therefor within ten days after the time for filing a notice of intention to defend or, if applicable, the time provided in Code, Real Property Article, § 8-601, et. seq.

(b) Waiver

The failure of a party to file the demand as provided in section (a) of this Rule constitutes a waiver of trial by jury of the action for all purposes, including trial on appeal.

(c) Transmittal of Record to Circuit Court

(1) Transmittal of Record

When a timely demand for jury trial is filed, the clerk shall transmit the record to the circuit court within 15 days. At any time before the record is transmitted pursuant to this section, the District Court may determine, on motion or on its own initiative, that the demand for jury trial was not timely filed or that the action is not triable of right by a jury.

(2) Effect of Transfer; Discovery

An action that is transferred from the District Court to a circuit court for trial is deemed to have originated in the circuit court. Discovery in an action transferred pursuant to this Rule is governed by the Rules in Title 3, Chapter 400, or Rule 3-711, as applicable, and not by the Rules in Title 2, Chapter 400.

Cross reference: Code, Courts Article, § 4-402 (e)(2), Code, Courts Article, § 6-404.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 343 b and c.
Section (b) is derived from former M.D.R. 343 a.
Section (c) is derived in part from former M.D.R. 343 d and e, and in part from Code, Courts Article, § 6-404.

Rule 3-325 was accompanied by the following Reporter's note:

The General Assembly recently passed the Real Property – Wrongful Detainer – Time of Hearing and Service of Process law as Chapter 188, 2025 Laws of Maryland (HB 560 / SB 46). The law specifies, among other things, that a hearing in an action covered by Chapter 188 must take place within 10 business days after the complaint is filed. Because of this expedited hearing provision, it is possible that a defendant in an action brought under Chapter 188 may be required to file a request for a jury trial prior to the time in which a notice of intention to defend would be due under subsection (a)(2) of this Rule.

As a result, the Property and District Court Subcommittees propose revising subsection (a)(2) of Rule 3-235 to clarify that a request for a jury trial must be filed within the time when a notice of intention to defend is due or earlier, if required by Code, Real Property Article, § 8-601, et seq.

The District Court Subcommittee proposes revisions to section (c) of this Rule. In some circumstances involving housing project leases, when the amount in controversy is sufficient, defendants in landlord/tenant actions have filed requests for jury trials pursuant to the federal model for lease valuation adopted in Maryland in Kirk v. Hilltop Apartments, 225 Md. App. 34 (2015). As a result, a question has arisen as to how landlord/tenant cases should be handled once they are in a circuit court, specifically whether they should be entitled to Title 2, Chapter 400 discovery, Title 3, Chapter 400 discovery, or no discovery at all pursuant to Rule 3-711.

Code, Courts Article, § 6-404 (Venue of

Transferred Case) states that "… a case transferred from the District Court to a circuit court ***for trial*** shall be deemed to have originated in the circuit court …" (emphasis added). The statute is silent on the issue of discovery, but it does indicate that a case is "deemed to have originated in the circuit court." The language "for trial" in the statute is significant, especially if afforded a literal interpretation. If the case is transferred only for trial, then discovery, which occurs during the pre-trial phase of litigation, should be governed by District Court standards. Rule 3-711 specifically exempts landlord/tenant actions from Title 3, Chapter 400 pretrial discovery. There is no case law that addresses the issue of discovery in landlord/tenant actions transferred to a circuit court for trial. Since the provisions of § 6-404 of the Courts Article are silent as to discovery, and Rule 3-711 has indicated that landlord/tenant actions are not eligible for any pretrial discovery, it is reasonable to determine that pre-trial discovery should not be permitted in a landlord/tenant action transferred to a circuit court for trial.

To clarify this understanding, new subsection (c)(2) is proposed. This subsection is based on Code, Courts Article, §6-404, with a provision added to clarify that a party in an action transferred to a circuit court is entitled to the same discovery in circuit court that the party is permitted to obtain in the District Court.

Stylistic changes to section (c) are also proposed.

Judge Wilson informed the Committee that there are two proposed amendments to Rule 3-325. The first is recommended by both the Property Subcommittee and District Court Subcommittee in light of Chapter 188, 2025 Laws of Maryland (SB 46). The law requires the court to schedule a hearing within ten days of the

filing of a complaint for wrongful detainer if certain requirements are met. The expedited hearing requirement means that a defendant wishing to request a jury trial based on the amount in controversy must do so prior to the date when a notice of intention to defend would be due. Judge Wilson explained that the proposed amendment to subsection (a)(2) adds a reference to the Real Property Article, which may require an earlier jury trial demand.

Judge Wilson next informed the Committee that the second amendment to Rule 3-325 is recommended by the District Court Subcommittee in response to a request for clarification from a circuit court judge regarding public housing cases transferred from the District Court on a jury trial prayer. Anne Arundel County Circuit Judge Cathleen M. Vitale raised the issue of what discovery procedures should apply to the case once it is in circuit court. In the District Court, Rule 3-711 (a) states that the District Court discovery Rules do not apply in certain landlord-tenant actions. Judge Vitale's question was whether the parties are entitled to circuit court discovery if the action is transferred for a jury trial.

Judge Wilson said that the District Court Subcommittee recommended an amendment to Rule 3-325 clarifying that discovery in an action transferred from the District Court to the circuit court is governed by the applicable District Court Rules. She

noted that the Committee received several comments on this proposal. The Chair invited the commenters who signed up to speak to address the Committee.

Matt Hill, an attorney with the Public Justice Center, said that his organization opposes the proposed amendment. He informed the Committee that the circuit court Rules of pretrial procedure, including discovery, have always applied to actions transferred to the circuit court and suggested that the proposed change would "upend the established practice." He noted that residents of public housing who can exercise their right to a jury trial are more likely to be non-white and that this change will have a disparate impact on that population. He also pointed out that the proposed amendment allows the plaintiff to control discovery in the proceeding: if a plaintiff filed a complaint in circuit court from the start, circuit court discovery would apply; if the plaintiff filed in the District Court and it is removed to circuit court on a jury trial prayer by the defendant, District Court discovery would apply.

Mr. Hill also contended that the proposed change conflicts with Code, Courts Article, § 6-404, which states that "a case transferred from the District Court to a circuit court for trial shall be deemed to have originated in the circuit court." He said that the plain language of the statute is clear on this point: once the case is transferred for trial, it proceeds as if

it originated in circuit court. Mr. Hill informed the Committee that many of the public housing cases that end up in circuit court settle without going to trial, in part due to access to circuit court discovery. Without discovery, the defendant would have to "fly blind" in a jury trial.

Judge Curtin said that she does not see a high volume of jury trial prayers in public housing landlord-tenant cases in her jurisdiction and asked whether they were more common elsewhere. Mr. Hill said that Maryland Legal Aid could speak to that point. Judge Wilson commented that she has never seen one of these cases removed to circuit court on a jury trial prayer.

Ms. Meredith asked whether the application of circuit court discovery in these cases, which Mr. Hill called an "established practice," is uniform across the state. Mr. Hill replied that he has never seen a landlord contend that the circuit court discovery Rules would not apply.

Mr. Brown asked whether there are other circumstances where a case is transferred to the circuit court from the District Court and the District Court Rules still apply. He remarked that it would be helpful for the Committee to have a more complete analysis of this issue. The Chair said that there are certain cases where the parties plan to submit on medical records with a cap on the value of the case. The parties utilize the District Court discovery procedures in those cases.

Judge Chen commented that she believes that, for example, an automobile tort case transferred to circuit court on a jury trial prayer receives circuit court discovery.

Mr. Brault said that a defendant in a District Court action will often pray a jury trial solely to obtain circuit court discovery. He said that the proposed amendment, which would apply across the board to cases removed to circuit court, would be a significant change. He added that there is a risk involved for the defendant who removes a case to circuit court because the plaintiff can amend the complaint and add damages, but the expanded discovery can assist the defense.

Ms. Doyle asked what the policy reasons were behind this proposal. Judge Wilson said that the Subcommittee was attempting to address the limited issue of the public housing cases where Maryland courts have held that defendants may use the lease valuation model adopted in *Kirk v. Hilltop Apartments*, 225 Md.App. 34 (2015) to pray a jury trial based on the amount in controversy. Judge Ketterman asked for more information about the consistency of the treatment of these cases among jurisdictions.

The Chair invited further public comment. Emily Reed and Katherine Gillespie, of Maryland Legal Aid, addressed the Committee. Ms. Reed said that she handles public housing landlord-tenant cases in the District Court, many of which

involve tenants who are people of color, single mothers, and the elderly. She informed the Committee that, out of approximately 250 cases in two years, she has prayed a jury trial on behalf of her client five times. She said that she is concerned about the amendment to Rule 3-325 because of the potential impact on already vulnerable citizens. She said that the flexible discovery tools of circuit court assist with litigation where rent calculations are complicated and there may be counterclaims and third-party claims. She added that the five cases where her client prayed a jury trial all settled because of discovery and circuit court alternative dispute resolution services. She echoed Mr. Hill's point that the proposed amendment would permit plaintiffs to file in circuit court and obtain discovery but deprive a defendant of that same discovery if the case originated in the District Court.

The Chair asked Ms. Reed to provide the Committee with some background on how subsidized housing works. Ms. Reed explained that there are federal and State subsidy programs for housing. In some cases, entire buildings are constructed to operate as subsidized housing, and the builder receives tax credits in exchange for an agreement to only rent to low-income tenants. There are also some government-constructed and managed housing developments, referred to as "Section 8," which is less common now.

Ms. Reed said that there is significant required documentation to qualify for subsidized housing and to remain qualified. Different programs and properties have different requirements, sub-regulatory guidance, forms, and rules for terminating an individual from the program. There are considerations for mitigating circumstances, disability rights issues, and domestic violence survivors. She said that it would be difficult to present this kind of case to a jury without knowing the witnesses or having access to records in the possession of the landlord.

Ms. Gillespie commented that the proposed amendment impacts vulnerable residents in cases where the stakes are very high. She added that the change does not make the courts operate more efficiently and noted that the volume of cases that are transferred to circuit court for a jury trial is very low. She also said that Code, Courts Article, § 6-404 does not support the proposed change.

Mr. Laws said that he sees many of Ms. Reed and Ms. Gillespie's points but added that the District Court has exclusive jurisdiction over landlord-tenant matters. He asked for clarification on the argument that a plaintiff can bring a case in circuit court and take advantage of circuit court discovery but, under the proposed amendment, a defendant who removes a case to circuit court cannot. Ms. Reed said that the

double standard applies to defendants in subsidized housing cases who are being treated differently than other litigants. Mr. Laws clarified that Rule 3-711 only applies to defendants in landlord-tenant actions, which must be filed in the District Court. Ms. Reed replied that plaintiffs in different case types can make this choice.

The Chair invited Judge Vitale to address the Committee. Judge Vitale said that her court began seeing jury trial prayers in these cases, citing *Hilltop* as the authority for a jury demand. The circuit court judges were concerned that the cases arose under circumstances different from *Hilltop* and were unsure of how to proceed when the District Court transferred them. She said that at least one failure to pay rent action, which began in the District Court and then transferred to the circuit court, took one year to resolve.

Judge Vitale said that on the standard District Court form, the landlord asks for possession of the property and the amount of rent due; the tenant then uses the rent due as the amount in controversy to plead a jury trial. She emphasized that her circuit court is seeking clarity on what to do with these cases. She contended that certain tenants appear to be using a failure to pay rent action as an opportunity to sue the federal government in State court over a possible deficiency in a complicated document. She added that her request for

clarification was purely regarding how to proceed with these cases in circuit court.

Judge Vitale said that landlord-tenant actions are supposed to be handled expeditiously, which is not possible in these cases. One case was filed in the District Court in June 2024, the case was removed to circuit court, and the landlord requested that the court follow the Rules on expedited hearings to comply with the deadlines set forth in the statute. The first hearing on the case was in July 2024, motions were filed, and discovery did not commence until November 2024.

Judge Chen said that the courts and the legislature have concluded that some cases are complex enough that the parties should have the option of having them heard by a jury. She asked why these cases should be treated differently once they are docketed in circuit court. Judge Vitale said that the issue is that only cases subject to *Hilltop* are eligible for a jury trial in circuit court. She said that there are other landlord-tenant cases that may be complex or involve significant amounts in controversy; only those that qualify under *Hilltop* can be transferred to circuit court.

Dan Rosenberg, an instructor with the Eviction Prevention Clinic at the University of Maryland Francis King Carey School of Law, addressed the Committee. Mr. Rosenberg said that he was speaking in his individual capacity, not as a representative of

the clinic. He commented that the issues raised by Judge Vitale seem to be rooted in the fact that public housing cases transferred to circuit court are rare. He pointed out that Code, Real Property Article, § 8-118 addresses some of Judge Vitale's concerns by providing a remedy where the landlord believes that the tenant is deliberately not paying rent and delaying proceedings.

Mr. Rosenberg also said that he has had clients pray jury trials several times, usually in breach of lease or tenant holding over cases, not failure to pay rent cases. He said that without discovery, he is "flying blind" and cannot effectively litigate. When he has had a case with a jury trial prayer, the landlord has never objected to circuit court discovery once the case is transferred. He warned of significant negative outcomes for tenants if the Rule change goes forward.

Mr. Laws asked Mr. Rosenberg what the solution is for the issues raised by Judge Vitale. Mr. Rosenberg said that the cases are so infrequent, a more narrowly tailored solution should be considered, if anything.

Judge Wilson informed the Committee that the amendments to section (c) were approved by the Subcommittee, so it will take a motion to amend or reject them. She said that the Subcommittee members were already engaged in email discussions after reviewing the comments and acknowledged that the Subcommittee

did not have the benefit of the commenters' perspectives when the Rule was recommended. She suggested that the Committee permit the Subcommittee to consider the additional information.

Mr. Laws moved to approve the amendments to subsection (a)(2) to implement the 2025 legislation. The motion was seconded and approved by consensus.

Judge Chen moved to remand the proposed amendments to section (c) to the District Court Subcommittee for further consideration. The motion was seconded and approved by consensus.

Agenda Item 2. Consideration of a policy question regarding party access to Extreme Risk Protective Order (ERPO) filings.

Judge Wilson presented Rule 20-109, Access to Electronic Records in an Action, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109 by clarifying the parameters of access to case records by parties and attorneys of record in section (a) and by adding a Committee note pertaining to party access to case records following section (a), as follows:

RULE 20-109. ACCESS TO ELECTRONIC RECORDS IN AN ACTION

(a) Generally

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

(b) Parties and Attorneys of Record

Subject to any protective order issued by the court or other law, parties to an action and attorneys of record for a party in an action shall have full access to all case records in that action, including remote access to electronic case records and access to records marked confidential or shielded from public inspection. In an action where a corporation or business entity established under the law of any state or federal law is a party, the corporation or business entity may designate in writing a registered user who shall have remote access to all case records in the action but not be permitted to file in the action. An attorney for a victim or victim's representative shall have access to case records, including remote access to electronic case records, as provided in Rule 1-326 (d).

Committee note: The Rules in Title 16, Chapter 900 may restrict public access to certain case records. Access by a party or attorney of record in an action are not impacted by a restriction on public access. See Rule 16-901 (b). Where a law, such as Code, Public Safety Article, § 5-602, does not expressly permit access to case records by a party or attorney of record for a party, access is permitted unless the court enters an order to the contrary.

. . .

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

A circuit court clerk contacted the Committee with a question regarding the operation of Code, Public Safety Article, § 5-602, and Rule 20-109 (a). The

statute pertains to petitions for an Extreme Risk Protective Order ("ERPO") and states, "All court records relating to a petition for an extreme risk protective order made under this subtitle are confidential and the contents may not be divulged, by subpoena or otherwise, except by order of the court on good cause shown." The statute goes on to make several exceptions, including the respondent and counsel for the respondent, but does not mention the petitioner and attorney for the petitioner.

The clerk reported that the County Attorney sought party access to an ERPO case as counsel for the petitioner, a law enforcement agency. The attorney was informed by Judicial Information Systems ("JIS") that pursuant to this section of the statute, the petitioner and the petitioner's attorney are precluded from accessing the case records in an ERPO. The JIS response noted that the statute expressly exempts the respondent and respondent's counsel from the confidentiality provision but does not extend that exemption to the petitioner or the petitioner's attorney. Thus, although an attorney is required to file through MDEC, the attorney has no access to the attorney's own filings or to any other document filed in the action.

An ERPO was authorized by statute in 2018 and permits certain individuals to petition for a court order that temporarily requires the respondent to surrender any firearms or ammunition to law enforcement. The law permits a petition to be filed in the District Court or, when the Court is closed, a District Court Commissioner. An ERPO shares some characteristics with a protective order authorized by Code, Family Law Article, § 4-504 and was in part modeled after this process.

Rules Committee staff reviewed the available legislative history of Chapter 250, 2018 Laws of Maryland (House Bill 1302), including the bill file and archived recordings of committee hearings and floor sessions. The confidentiality provision was introduced by the Senate Judicial Proceedings Committee after the bill was passed by the House of Delegates and transmitted to the Senate. The House sponsor informed the Senate Judicial Proceedings Committee

that she would be suggesting an amendment applying "the same confidentiality protections that exist under the emergency evaluation statutes" to a petition for an ERPO.

Code, Health—General Article, § 10-630 governs confidentiality of emergency evaluation petitions and states, "All court records relating to a petition for an emergency evaluation made under this subtitle are confidential and the contents may not be divulged, by subpoena or otherwise, except by order of the court on good cause shown." Exceptions for both the petitioner and the emergency evaluee are included.

Although Code, Public Safety Article, § 5-602 does not explicitly extend its exception to the petitioner, the stated legislative intent was to model the provision after a section of the Code which does so. There is nothing in the legislative history file that indicates an intent for the confidentiality provisions of Code, Public Safety Article, § 5-602 to differ from the confidentiality provisions of Code, Health—General Article, § 10-630. Other Code sections addressing confidentiality of court records similarly exempt the parties from this restriction. Parties to an action and their attorneys generally are permitted access to all case records, including records that are confidential or shielded, unless there is a specific law or court order prohibiting that access. ERPO proceedings, like other protective order proceedings, move quickly and are not document-heavy cases.

A proposed amendment to Rule 20-109 clarifies that, subject to a protective order or other law expressly regulating access, parties to an action and attorneys of record in an action have full access, including electronic access, to all records, including those "marked confidential or shielded from public inspection."

The District Court Subcommittee considered the proposed amendment and the available legislative history of Code, Public Safety Article, § 5-602. The Subcommittee was not certain that the exclusion of the petitioner and the petitioner's attorney from access to ERPO records was a legislative oversight, although members acknowledged the possibility. The

> Subcommittee also was informed that the proposed amendment to the text of section (b) may not be sufficient to supersede the JIS interpretation of the statute because it does not explicitly state that it is doing so.
>
> The Subcommittee voted to advance the proposed amendments to Rule 20-109 to the Rules Committee for further discussion, with the addition of a Committee note clarifying that the Rule supersedes the JIS interpretation of the statute.
>
> The Subcommittee makes no recommendation regarding approval of the proposed amendment to section (b) or of the Committee note following section (b).

Judge Wilson informed the Committee that Agenda Item 2 involves a matter discussed by the District Court Subcommittee that did not result in a Subcommittee recommendation. The Subcommittee learned that a county attorney sought remote MDEC access to an extreme risk protective order ("ERPO") case as counsel for the petitioner, a law enforcement officer. The Major Projects Committee, which reviews such applications for access, denied the request due to the operating statute, Code, Public Safety Article, § 5-602.

Judge Wilson said that the statute makes all ERPO records "confidential," with certain exceptions for the respondent and counsel, law enforcement, etc. The petitioner and counsel for the petitioner are not among the excepted individuals. The result, Judge Wilson explained, is a situation where a party is deemed unable to access the party's own filing. She noted that

this contradicts the customary understanding that parties have access to their filings in a case as a matter of common practice and due process.

Judge Wilson said that the Subcommittee discussed whether this statutory provision could be interpreted differently or, failing that, explicitly superseded by Rule. The Subcommittee was concerned by the result of the statute but reluctant to contradict the intent of the legislature and asked for Rule 20-109 to be transmitted to the full Committee for discussion.

The Chair commented that she communicated with Del. Luke Clippinger regarding this discussion, and he said that he did not have a concern with an attorney being permitted to access the records in an ERPO case. He was less comfortable with stating that petitioners should have access.

Chief Judge Morrissey informed the Committee that he believes that the amendments to section (a) are an accurate statement of the law and that he broadly supports the clarification. However, he said that the proposed amendments would not change his interpretation of the ERPO statute as prohibiting access to the case records by the petitioner and petitioner's attorney. He said that the legislature is very reluctant to reopen the ERPO law, also referred to as the "red flag law," because it was so contentious when it was passed in 2018.

Chief Judge Morrisey explained that documents and cases have security types associated with them that guide who is permitted to access them. He said that if this Rule change were to be adopted by the Supreme Court, it would be reviewed by the Major Projects Committee, and he would still believe that the statute prohibits access by the petitioner. He pointed out that, in the scenario discussed in the Reporter's note, the county attorney can ask the law enforcement officer for a copy of the petition that was filed. Law enforcement is permitted access to the filings by the statute.

Assistant Reporter Cobun commented that the Supreme Court can supersede a statutory provision by Rule. She asked Chief Judge Morrissey whether it was his belief that the drafted amendments do not do so. He replied that it would be up to the Major Projects Committee to determine whether the proposed amendments mean that ERPO petitioners and attorneys can obtain party access to the records. He added that he tries to be respectful of the role of the legislature. For whatever reason, perhaps by mistake, the legislature does not permit petitioners and their attorneys to access ERPO filings.

Ms. Doyle asked Chief Judge Morrissey whether the amendment, if adopted by the Supreme Court, would not be followed. Chief Judge Morrissey said that, if the statute prohibits access by a petitioner, the petitioner will not get

the records. Ms. Doyle followed up by inquiring whether the Rule would need to expressly state that a petitioner in an ERPO case can access case records for his position to change. Chief Judge Morrissey answered in the affirmative, acknowledging that a Rule adopted by the Supreme Court has the force of law. Ms. Cobun pointed out that staff was attempting to clarify the broad policy that parties can access all unsealed records in their own cases without calling out that the Rule was superseding a statutory provision.

Ms. Meredith asked why the proposed amendments were not recommended by the Subcommittee. Judge Wilson replied that the Subcommittee felt that there was not enough information regarding legislative intent, and there was a reluctance to overrule a statute. She reiterated that the Subcommittee members were of two minds: due process generally permits the party filing a petition to see what was filed, but the wording of the statute appears to contradict this. Judge Ketterman asked whether the legislature can be presumed to have intended to prevent petitioners and their attorneys from seeing the case records. She also observed that the statute permits the court to enter an order granting access to an individual not specifically exempted; an attorney could make this request.

Judge Wilson noted that ERPO actions are generally not document-heavy. Usually, the only document is the petition.

However, she said that she did have a case in Baltimore County where the respondent filed an answer and supporting documents disputing the allegations made in the petition regarding his mental health. Judge Ketterman asked whether that filing was served on the petitioner. Judge Wilson responded that it was. Ms. Cobun pointed out that the documents will have been served, but an attorney for the petitioner would be unable to view them in MDEC. Chief Judge Morrissey said that he would prefer for petitioners' attorneys to have access to these filings, recognizing that it makes sense.

Judge Curtin asked whether there is any other case type where one or both parties are prohibited from viewing any case records. Chief Judge Morrissey said that there are circumstances, such as an unserved warrant, where the defendant and counsel cannot access the warrant. He said that there is legislation that makes certain records confidential with exceptions.

Mr. Brown asked whether there was any way to ascertain the intent of the legislature. The Chair said that Ms. Cobun could speak to that issue. Ms. Cobun said that she reviewed legislative history materials and recordings of committee hearings and floor sessions. At one point, when there was no confidentiality provision in the bill, one of its sponsors stated that she intended to introduce an amendment that would

provide the same protections as the protections in emergency evaluation cases. That statute, Code, Health—General Article, § 10-630, permits access by the petitioner and respondent. Mr. Brown responded that it seems like the lack of a similar exception for petitioners in ERPO cases was a legislative oversight, which the Committee can correct. Chief Judge Morrissey replied that the draft before the Committee does not expressly contradict the statute. He also expressed concern about unintended consequences if there are other records that parties should not be accessing that would be inadvertently opened to them by the proposed wording.

Judge Curtin said that she is also concerned about unintended consequences and suggested that the amendments may be too broad. Judge Wilson said that, in light of these concerns and the discussion, the Committee may wish to remand Rule 20-109 to the Subcommittee for further consideration.

The Reporter commented that she is not sure what more the Subcommittee could do. She explained that the amendments to section (b) provide a statement of existing law that, subject to any protective order or other law, parties have access to their case records. Other than moving the last sentence of the draft Committee note into the body of the Rule to address ERPO situations, she questioned whether there is any additional language that could be drafted. Mr. Gibson echoed Judge

Curtin's concern that the language is too broad and could have unintended consequences.

Mr. Wells said that, considering the lack of recommendation from the Subcommittee and lack of clarity on legislative intent, the reference to the ERPO statute should be deleted from the Committee note and Reporter's note. He moved to approve Rule 20-109 with the deletion of the last sentence of the Committee note. The motion was seconded and approved by consensus.

Agenda Item 3. Consideration of proposed amendments to Rule 3-421 (Interrogatories to Parties).

Judge Anderson presented Rule 3-421, Interrogatories to Parties, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 400 – DISCOVERY

AMEND Rule 3-421 by adding a provision to section (b) related to the ability of the court to alter the time to serve interrogatories and by making stylistic changes, as follows:

Rule 3-421. INTERROGATORIES TO PARTIES

(a) Scope

Unless otherwise limited by order of the court in accordance with this Rule, the scope of discovery by interrogatories is as follows:

(1) Generally

A party may obtain discovery regarding any matter, not privileged, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter, if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery or that the information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. An interrogatory otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact.

(2) Insurance Agreements

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subsection, an application for insurance shall not be treated as part of an insurance agreement.

(3) Request for Documents by Interrogatory

A party by interrogatory may request the party upon whom the interrogatory is served to attach to the response or submit for inspection the original or an exact copy of the following:

(A) any written instrument upon which a claim or defense is founded;

(B) a statement concerning the action or its subject matter previously made by the party seeking discovery, whether a written statement signed or otherwise

adopted or approved by that party, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement made by that party and contemporaneously recorded; and

(C) any written report, whether acquired or developed in anticipation of litigation or for trial, made by an expert whom the responding party expects to call as an expert witness at trial. If the responding party fails to furnish a written report requested pursuant to this subsection, the court, upon motion of the discovering party, may enter any order that justice requires, including an order refusing to admit the testimony of the expert.

(b) Availability; Number; Time for Filing

Any party may serve written interrogatories directed to any other party. Unless the court orders otherwise, a party may serve only one set of not more than 15 interrogatories to be answered by the same party. Interrogatories, however grouped, combined or arranged and even though subsidiary or incidental to or dependent upon other interrogatories, shall be counted separately. Each form interrogatory contained in the Appendix to these Rules shall count as a single interrogatory. ~~The~~ Unless otherwise ordered by the court, (1) the plaintiff may serve interrogatories no later than ten days after the date on which the clerk mails the notice required by Rule 3-307 (d)~~. The~~ and (2) the defendant may serve interrogatories no later than ten days after the time for filing a notice of intention to defend.

(c) Protective Order

On motion of a party filed within five days after service of interrogatories upon that party, and for good cause shown, the court may enter any order that justice requires to protect the party from annoyance, embarrassment, oppression, or undue burden or expense.

(d) Response

The party to whom the interrogatories are directed shall serve a response within 15 days after service of the interrogatories or within five days after

the date on which that party's notice of intention to defend is required, whichever is later. The response shall answer each interrogatory separately and fully in writing under oath, or shall state fully the grounds for refusal to answer any interrogatory. The response shall set forth each interrogatory followed by its answer. An answer shall include all information available to the party directly or through agents, representatives, or attorneys. The response shall be signed by the party making it.

(e) Option to Produce Business Records

When (1) the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of those business records or a compilation, abstract, or summary of them, and (2) the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, and (3) the party upon whom the interrogatory has been served has not already derived or ascertained the information requested, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(f) Supplementation of Response

A party who has responded to interrogatories and who obtains further material information before trial shall supplement the response promptly.

(g) Motion for Order Compelling Discovery

Within five days after service of the response, the discovering party may file a motion for an order compelling discovery. The motion shall set forth the interrogatory, any answer or objection, and the reasons why discovery should be compelled. Promptly

after the time for a response has expired, the court shall decide the motion.

(h) Sanctions for Failure to Respond

When a party to whom interrogatories are directed fails to serve a response after proper service of the interrogatories, the discovering party, upon reasonable notice to other parties, may move for sanctions. The court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including an order refusing to allow the failing party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matters in evidence, or an order striking out pleadings or parts thereof, staying further proceedings until the discovery is provided, dismissing the action or any part thereof, or entering a judgment by default against the failing party if the court is satisfied that it has personal jurisdiction over that party.

Cross reference: Rule 1-341.

(i) Use of Answers

Answers served by a party to interrogatories may be used by any other party at the trial or a hearing to the extent permitted by the rules of evidence. If only part of an answer is offered in evidence by a party, an adverse party may require the offering party to introduce at that time any other part that in fairness ought to be considered with the part offered.

Cross reference: Rule 1-204.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 417 e.
Section (b) is derived from former M.D.R. 417 a.
Section (c) is derived from former M.D.R. 417 f.
Section (d) is derived from former M.D.R. 417 b.
Section (e) is derived from former M.D.R. 417 e 4.
Section (f) is new.
Section (g) is derived from former M.D.R. 417 c.
Section (h) is derived from former M.D.R. 417 d.
Section (i) is derived from former M.D.R. 417 g.

Rule 3-421 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 of the recommendations within the EJC Report concerned civil discovery in the District Court.
>
> Current Rule 3-421 addresses discovery procedures for civil actions in the District Court. Section (b) sets forth the time for serving interrogatories:
>
> > The plaintiff may serve interrogatories no later than ten days after the date on which the clerk mails the notice required by Rule 3-307 (d) [promptly when the defendant files a notice of intention to defend]. The defendant may serve interrogatories no later than ten days after the time for filing a notice of intention to defend.
>
> The EJC Report highlighted the concern of an attorney that "the existence of two different deadlines for filing discovery was unfair to debtors in consumer debt actions because they often were unrepresented." However, since a defendant typically has 15 days to file a notice of intention to defend pursuant to Rule 3-307, the defendant often has 25 days after being served with the complaint to serve interrogatories. The plaintiff's time to serve interrogatories is ten days, beginning when the clerk mails notice that a notice of intention to defend was filed. As noted in the EJC Report, the two parties have roughly the same timeframe for submitting interrogatory requests.
>
> The EJC Report further stated, "It is unclear why two different triggering events would lead to [unfairness to debtors], but if the problem is that defendants have insufficient time to file their own discovery requests, the rule could be amended to extend the 10-day deadline to some longer period." Accordingly, the EJC Report did not propose altering the varying discovery deadlines, instead recommending that, "The Rules Committee should

consider whether defendants have enough time to file discovery requests under Rule 3-421."

The Discovery Subcommittee addressed the recommendation of the EJC Report and determined that the anecdotal evidence from the EJC Report's listening session did not merit changes to the timeframe for interrogatories at this time. The Subcommittee considered that, although using the same triggering event for the time for both sides to serve interrogatories may appear more straightforward, the current staggered deadlines reflect the different information available to each party at different times of the action. The plaintiff, for example, may not know what information is needed in discovery until there is a notice of intention to defend filed indicating that the defendant disputes the claim. The defendant, in contrast, is aware of the plaintiff's allegations when the complaint is served.

The Subcommittee also noted that if there are concerns about having sufficient time to serve interrogatories, discovery deadlines can be extended by court order in a particular case. Rule 3-421, however, does not directly address the filing of a motion to extend the discovery deadline. Section (b) acknowledges the ability of the court to permit more than the typical number of interrogatories: "Unless the court orders otherwise, a party may serve only one set of not more than 15 interrogatories to be answered by the same party." However, the remaining provisions of section (b) setting forth the timeframe to serve interrogatories do not include a statement that the court may order different deadlines.

Accordingly, a proposed amendment to Rule 3-421 (b) addresses some of the concern discussed in the EJC Report by adding language to section (b) highlighting the court's authority to alter the deadline for a party to serve interrogatories. Stylistic changes are also proposed in the section.

Judge Anderson informed the Committee that the Discovery Subcommittee discussed a recommendation to change the timing of

interrogatories in the District Court, which was made in the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("EJC Report"). She said that the Subcommittee declined to make the recommended change but did suggest an amendment in section (b) to emphasize the court's authority to extend the deadline for interrogatories. She said that there are also stylistic changes proposed in the Rule.

There being no motion to amend or reject the proposed amendments to Rule 3-421, they were approved as presented.

Agenda Item 4. Consideration of proposed amendments to Rule 2-422 (Discovery of Documents, Electronically Stored Information, and Property).

Judge Anderson presented Rule 2-422, Discovery of Documents, Electronically Stored Information, and Property, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-422 by adding language to section (c), as follows:

Rule 2-422. DISCOVERY OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND PROPERTY – FROM PARTY

(a) Scope

Any party may serve one or more requests to any other party (1) as to items that are in the possession, custody, or control of the party upon whom the request is served, to produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test or sample designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 2-402 (a); or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

Cross reference: For inspection of property of a nonparty in an action pending in this State and for discovery under the Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(b) Request

A request shall set forth the items to be inspected, either by individual item or by category; describe each item and category with reasonable particularity; and specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form in which electronically stored information is to be produced.

(c) Response

The party to whom a request is directed shall serve a written response within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required,

whichever is later. ~~The~~ As to each item or category requested to be inspected, the response shall set forth the request and shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If a refusal relates to the form in which electronically stored information is requested to be produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

Cross reference: See Rule 2-402 (b)(1) for a list of factors used by the court to determine the reasonableness of discovery requests and (b)(2) concerning the assessment of the costs of discovery.

(d) Production

(1) A party who produces documents or electronically stored information for inspection shall (A) produce the documents or information as they are kept in the usual course of business or organize and label them to correspond with the categories in the request, and (B) produce electronically stored information in the form specified in the request or, if the request does not specify a form, in the form in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same electronically stored information in more than one form.

Committee note: Onsite inspection of electronically stored information should be the exception, not the rule, because litigation usually relates to the informational content of the data held on a computer system, not to the operation of the system itself. In most cases, there is no justification for direct inspection of an opposing party's computer system. See *In re Ford Motor Co.*, 345 F.3d 1315 (11th Cir. 2003) (vacating order allowing plaintiff direct access to defendant's databases).

To justify onsite inspection of a computer system and

the programs used, a party should demonstrate a substantial need to discover the information and the lack of a reasonable alternative. The inspection procedure should be documented by agreement or in a court order and should be narrowly restricted to protect confidential information and system integrity and to avoid giving the discovering party access to data unrelated to the litigation. The data subject to inspection should be dealt with in a way that preserves the producing party's rights, as, for example, through the use of neutral court-appointed consultants. *See, generally*, The Sedona Conference, *The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production* (2d ed. 2007), Comment 6. c.

Source: This Rule is derived from former Rule 419 and the 1980 and 2006 versions of Fed. R. Civ. P. 34.

Rule 2-422 was accompanied by the following Reporter's note:

A practitioner suggested that the Rules Committee consider an amendment to Rule 2-422 (c) to make the format for discovery responses consistent across the Rules.

Rules 2-421 and 2-424, concerning interrogatories and requests for admission, require that responses set forth each interrogatory or request before stating the response. For example, Rule 2-421 (b) provides, "The response shall set forth each interrogatory followed by its answer." Rule 2-424 states, similarly, "As to each matter of which an admission is requested, the response shall set forth each request for admission and shall specify an objection, or shall admit or deny the matter, or shall set forth in detail the reason why the respondent cannot truthfully admit or deny it."

Rule 2-422, addressing requests for documents, does not contain the same formatting requirement found in Rules 2-421 and 2-424. Although attorneys may repeat the request in the response, it does not appear to be a mandatory practice.

A proposed amendment to Rule 2-422 adds language to section (c) requiring that each response set forth the request before stating the required information.

Judge Anderson explained that a practitioner identified an inconsistency between Rule 2-422 and Rules 2-421 and 2-424 pertaining to the format of discovery responses. The proposed amendments to Rule 2-422 make the formatting requirements of answers to interrogatories and responses to requests for admissions applicable to responses for requests for documents.

There being no motion to amend or reject the proposed amendments to Rule 2-422, they were approved as presented.

Agenda Item 5. Reconsideration of proposed amendments to Rule 4-345 (Sentencing – Revisory Power of Court).

The Chair presented Rule 4-345, Sentencing – Revisory Power of Court, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-345 by deleting certain language in subsection (e)(1) and adding language regarding the court's revisory power to enter a disposition of probation before judgment, by expanding the current cross reference and Committee note after subsection (e)(1), by adding new subsection (e)(2) addressing the

duration of the court's revisory power, by adding new subsection (e)(3) requiring the filing of a Request for Hearing and Determination, by renumbering current subsection (e)(2) as (e)(4), by moving section (f) and making current subsection (e)(3) new subsection (f)(1), by making new subsection (f)(2) with the language of current section (f), and by updating an internal reference in subsection (f)(2), as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Cross reference: See *State v. Brown*, 464 Md. 237 (2019), concerning an evident mistake in the announcement of a sentence.

(d) Desertion and Non-Support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

(e) Modification Upon Motion

(1) Generally

Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal

has been filed, the court has revisory power over the sentence ~~except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not~~, including the ability to enter a disposition of probation before judgment, for the period of time stated in subsection (e)(2) of this Rule. The revisory power does not include the ability to increase the sentence.

Cross reference: See Rule 7-112 (b) regarding a de novo appeal from a judgment of the District Court. See Code, Criminal Procedure Article, § 6-220(f) for restrictions on a court's authority to enter probation before judgment.

Committee note: The revisory power to enter a disposition of probation before judgment applies in any action in which probation before judgment would have been a lawful disposition at the original sentencing. Except as provided in Code, Health-General Article, § 8-505, the court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health-General Article, § 8-507.

(2) Duration of Revisory Power

In ruling on a motion filed pursuant to subsection (e)(1) of this Rule, the court may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant, except that the court, for good cause shown, may extend the five-year period by an additional 60 days.

(3) Request for Hearing and Determination of Motion

Subsection (e)(3) of this Rule applies to motions filed on or after [effective date of amendment]. No later than six months before the expiration of five years from the date the sentence originally was imposed on the defendant, if the motion has not been ruled upon, the defendant shall file a "Request for Hearing and

Determination" of the motion. Upon receipt of the request, the court shall review the request and the motion and shall either (a) deny the motion without a hearing or (b) proceed in accordance with section (f) of this Rule. Except for good cause shown, a failure to timely file a Request for Hearing and Determination of the motion may be deemed a withdrawal of the motion.

~~(2)~~(4) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(f) Open Court Hearing

~~(3)~~(1) Inquiry by Court

Before considering a motion under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, § 11-403(e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

~~(f) Open Court Hearing~~

(2) Conduct of Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each

victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present at the hearing. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in subsection ~~(e)(2)~~(e)(4) of this Rule have been satisfied. If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Cross reference: See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto. See Code, Criminal Procedure Article, § 10-105.3 regarding an application for resentencing by a person incarcerated after a conviction of possession of cannabis under Code, Criminal Law Article, § 5-601.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

Rule 4-345 was accompanied by the following Reporter's note:

At May 2025 Rules Committee meeting, the Criminal Rules Subcommittee recommended several amendments to Rule 4-345 to conform the provisions of the Rule to current practice and to address issues recently raised in an appellate decision.

The amendments approved by the Criminal Rules Subcommittee were presented to the Rules Committee at the May 2025 meeting. Concerns were raised about whether the amendments sufficiently address the underlying issue of ensuring that motions are heard within the five-year deadline. The Committee also questioned the number of these motions currently pending that must be addressed before the five-year deadline. It was noted that the Subcommittee may want to consider a uniform process for the processing of these motions by the courts, such as certain notifications to defendants. Overall, Rule 4-345 was remanded to the Subcommittee for further discussion.

The Criminal Rules Subcommittee reconsidered the proposed amendments to Rule 4-345 at an August 2025 meeting. In regard to the question about how many Rule 4-345 motions are pending throughout the State, staff reached out to Research & Analysis to determine whether there is a feasible search of court data to determine the number of motions for modification currently pending in the District Court and circuit courts throughout the State. Although certain searches may be conducted for relevant filing codes, review of the returned data found that different filings codes may have been utilized in different jurisdiction when a Rule 4-345 motion was filed. Docket entries indicating the final disposition of such a motion also varied throughout cases. As a result, a feasible search with reliable results could not be created.

The Subcommittee discussed the Committee's concern regarding whether the amendments sufficiently ensure that Rule 4-345 motions are heard within the five-year deadline. Subcommittee members noted that defendants are advised of their rights after sentencing. A new advice of rights form could make clear that a motion for modification under this Rule is a two-step process, explaining that the defendant must seek a hearing on a Rule 4-345 motion within five years. Because changes to most forms are outside the purview of the Rules Committee, the matter may be referred to the Forms Subcommittee if the proposed amendments proceed.

The Subcommittee discussed also that proposed new subsection (e)(3) uses "shall" to indicate that, upon receipt of a request for hearing, the court must either deny the motion or schedule a hearing. Because the court is required to act pursuant to the subsection, an emphasis on this language may alleviate the concerns of the Rules Committee about whether the proposed amendments ensure that Rule 4-345 motions are timely decided.

Therefore, after consideration of the questions raised at the Rules Committee meeting, the Criminal Rules Subcommittee recommends the amendments to Rule 4-345 as proposed at the May 2025 Rules Committee meeting.

Proposed amendments to subsection (e)(1) delete and add certain language. The provision that the court may not revise a sentence after five years from the date the sentence was imposed is deleted from subsection (e)(1) and moved to new subsection (e)(2). New language in subsection (e)(1) highlights that revisory power includes the court's ability to enter a disposition of probation before judgment ("PBJ"). Despite courts historically demonstrating their ability to enter PBJs when considering a motion to revise under Rule 4-345, the current language of the Rule does not clearly confer this authority. Accordingly, this new language ensures that the current practice is permitted within the language of the Rule.

The cross reference after subsection (e)(1) is proposed to be updated. Additional language is added to clarify the current reference to Rule 7-112 (b). A new reference to Code, Criminal Procedure Article, § 6-220(f) is added, pointing to restrictions on probation before judgment.

The Committee note following subsection (e)(1) is also expanded. A new sentence is added noting that the revisory power to enter a disposition of probation before judgment applies in actions where probation before judgment would have been a lawful disposition at the original sentence. A reference to Code, Health-General Article, § 8-505 is also added to the current language of the Committee note. The current language does not account for the 2018 amendments to the Health-General Article of the Code limiting the eligibility of a defendant convicted of a crime of violence for evaluations and treatment pursuant to § 8-507. The proposed amendment acknowledges this exception to the court's ability to commit a defendant to treatment for drug or alcohol dependency.

New subsections (e)(2) and (e)(3) are proposed to address situations similar to that found in *State v. Thomas*, 488 Md. 456 (2024). In *Thomas*, the defendant filed a timely motion to modify his sentence and repeatedly requested a hearing before the deadline for ruling. However, the motion was neither denied nor granted during the five-year period. The Supreme Court of Maryland held that a trial court lacked jurisdiction to modify a sentence more than five years

after entry of the sentence, even if a timely motion to modify was filed.

In addition to the majority opinion in *Thomas*, one concurring opinion, one concurring and dissenting opinion, and one dissenting opinion were filed. In the concurring and dissenting opinion, Justice Eaves noted that Rules changes may address concerns about the type of uncorrectable error demonstrated by *Thomas*:

> This pitfall requires correction either by the General Assembly or this Court in its rulemaking capacity based on recommendations from the Standing Committee on Rules of Practice and Procedure. Such a correction could be as simple as requiring that a defendant need only request a hearing within five years for the court to have jurisdiction. If the defendant complies, then the sentencing court retains jurisdiction until a definitive ruling is made. Any revision, of course, also could address finality concerns and instruct the sentencing judge to use reasonable efforts to schedule a hearing within five years from the date the defendant originally was sentenced, but otherwise make clear that an inability to do so, for whatever reason, does not deprive the court of jurisdiction. *Id.* at 518.

Proposed new subsection (e)(2) of Rule 4-345 reiterates the five-year limitation currently included in subsection (e)(1). However, the new language provides that the period may be extended by 60 days for good cause shown. This 60-day extension intends to address situations, such as seen in *Thomas*, where logistic or administrative hurdles make holding a hearing and ruling on the motion within the five-year period impracticable.

New subsection (e)(3) requires a Request for Hearing and Determination of Motion to be filed no later than six months before the expiration of the five-year period, alerting the court of the approaching deadline to rule on the motion. A failure to file such a request may be treated as a withdrawal of the motion, except for good cause shown. To ensure that this amendment to the Rule does not impact the rights of defendants with pending motions to revise, the new

language states that the subsection applies only to motions filed on or after the effective date of the Rule.

The remaining amendments to Rule 4-345 are stylistic. Current subsection (e)(2) is renumbered as subsection (e)(4). Upon review, it was determined that current subsection (e)(3) concerns an inquiry by the court at an open court hearing on a motion pursuant to Rule 4-345. Accordingly, the subsection is moved to section (f), becoming new subsection (f)(1). Current section (f) is relabeled as subsection (f)(2) and an appropriate tagline is added. Finally, an internal reference in new subsection (f)(2) is updated to reflect the structural changes to the Rule.

The Chair informed the Committee that Rule 4-345 was discussed previously in May and the Committee asked for additional information and consideration. She said that the updated Reporter's note explains the full history of the proposed changes. The amendments to subsection (e)(1) bring the Rule in line with the current practice regarding entering a disposition of probation before judgment.

The Chair explained that new subsections (e)(2) and (e)(3) are proposed in response to *State v. Thomas*, 488 Md. 456 (2024). In that case, the Supreme Court held that a trial court loses jurisdiction to rule on a motion to modify a sentence, even if timely filed, if more than five years have elapsed since the sentence was imposed. The defendant in *Thomas* diligently followed up on his motion in the time leading up to the expiration of the five-year period, but for whatever reason, the judge did not issue a ruling. She said that the Supreme Court

concluded that by not ruling on the motion within five years, the sentencing judge was, in effect, denying the motion.

The Chair reminded the Committee that, in May, the Committee considered proposed changes to attempt to encourage judges to timely rule on these motions. The amendments permit the court to extend the time to rule for an additional 60 days, for good cause shown. The Rule would also require the defendant to request a hearing and determination on the motion at least six months before the end of the five-year period. Failure to request the hearing may be deemed a withdrawal of the motion. During the discussion of the proposed amendments, the Committee expressed concern about whether the changes would help to avoid another situation like the one that arose in *Thomas*.

The Chair said that the Committee wished to learn whether Rule 4-345 motions could be identified and tracked to proactively remind judges of the need to make a determination. She informed the Committee that there is no standard way that the motions are captioned (e.g., a *pro se* defendant writes a letter to the sentencing judge that the judge treats as a Rule 4-345 motion), and the current case management technology does not offer a tracking solution. There is no way to quantify how many of these motions are currently pending. The Chair acknowledged the difficulties of incarcerated defendants, but said that a defendant who does nothing to prompt the judge after

the initial motion is filed may be seen to be "sleeping on" the right to have a ruling issued.

The Chair said that after discussion, the Criminal Rules Subcommittee re-referred Rule 4-345 to the Committee for continued consideration, without further changes. She said that she has concerns regarding the last sentence of new subsection (e)(3), which allows the court to consider the motion withdrawn if the defendant does not timely request a hearing and determination pursuant to the Rule. She said that, as she reviewed the Rule, she was not comfortable with that provision. She suggested, instead, that the failure to make the request more than six months in advance be treated as a waiver of the right to request a hearing. She said that the current proposal seems unfair and, in effect, shortens the five-year window to four and a half years.

Mr. Zavin said that he opposes the proposed amendments as insufficient to prevent a recurrence of the situation in *Thomas*. He pointed to Justice Eaves's concurring and dissenting opinion, which argued that so long as the defendant has timely requested a ruling, the court should retain jurisdiction. He said that there is nothing in the amendments that compels the judge to issue a ruling; even if the judge extends the time for 60 days, the judge could still not rule on the motion. He added that, with no order, there is nothing for the defendant to appeal. A

defendant in this position has no recourse.

Mr. Zavin commented that the amendments, in some ways, make the system worse because of the provision highlighted by the Chair that imposes an obligation on an incarcerated defendant four years and six months from the date of sentencing. He suggested that the last sentence of subsection (e)(3) be stricken. He pointed out that the defendant will no longer be represented by the attorney who filed the motion, and this proposal would require the defendant to request a hearing and determination. He said that he appreciates the Chair's suggestion to change subsection (e)(3) so that failing to request a hearing cannot be construed as a withdrawal of the motion.

The Reporter commented that the reason the Supreme Court imposed the five-year limit in Rule 4-345 was because judges were holding motions to modify *sub curia* for years, depriving the defendant and any victims of finality. Judges would sometimes modify a sentence more than a decade after it was imposed, and victims and victims' representatives were not being properly notified. The legislature expressed frustration with the practice and the Court adopted the five-year restriction to avoid the legislature imposing its own solution.

Judge Curtin said that she agreed with Mr. Zavin's concern regarding the "withdrawal" language. She asked whether this

puts any additional obligation on defense counsel. The Chair replied that it can be unclear who counsel of record was at any given time because some attorneys do not properly enter and remove their appearances. Regardless of what happens during the life of the case, the appearance of counsel is stricken as a matter of law 30 days after the case concludes.

The Chair said that there are other situations where individuals cannot "sleep on their rights" and must act within a certain period to preserve those rights. She said that the requirement of requesting a hearing at least six months before the time to rule expires was intended to be a triggering event to prompt the defendant to act while the court still has time to set in a hearing. Judge Curtin asked what the purpose was for the 60-day extension. The Chair replied that it allows for the defendant or an attorney to contact the court because five years has passed. It also allows the judge to realize that the motion is still pending. Judge Anderson pointed out that the 60-day cushion after the end of the five years also allows the court to act on a late-filed request for determination.

The Chair commented that, in her jurisdiction, she has one "collateral" day each month to deal with violations of probation, juvenile "second look" matters, and other post-trial matters. She said that she can only have so many of those cases on that day; she has had people request an immediate hearing and

she cannot accommodate them. If there is a 60-day cushion, however, she has the flexibility to set the matter in for a hearing.

Judge Nazarian said that the problem with these motions is that they must be filed within 90 days after the imposition of the sentence, but the court does not want to rule immediately; the judge wants to see how the defendant behaves while incarcerated and what progress is made toward rehabilitation. He said that he agrees with Mr. Zavin that Justice Eaves's opinion seems to strike the right balance between the purpose of the five-year limitation and not punishing a defendant who did not sleep on his rights. Unfortunately, the majority did not agree with Justice Eaves. He expressed curiosity about how the majority might feel about being provided the option of adopting a Rule change that incorporates Justice Eaves's suggestions.

The Chair said that most trial judges felt bad when the *Thomas* decision was issued because the defendant did everything right to try to obtain a ruling on his motion. She also noted that prosecutors would sometimes agree to a hearing on a timely-filed motion after the five-year period had run, prior to the *Thomas* decision. She explained that the tension over whether the five-year period was procedural or jurisdictional has always been present, but judges do not want to see the defendant harmed. The Supreme Court has now made it clear that the five-

year period is jurisdictional. She expressed doubt that the Committee will change any minds if it recommends modifying the Rule to align with Justice Eaves's concurring and dissenting opinion.

Mr. Zavin asked what would happen to a defendant who did not file a request more than six months in advance if the provision is removed that would allow the court to consider that a withdrawal of the motion. The Chair replied that the defendant may not get a hearing. She said that she tends to hold one in these cases unless she knows there is no way that she will be persuaded to modify the defendant's sentence. She said that the six-month requirement does not hurt and may prompt some defendants and courts to act on the motion.

Mr. Zavin said it is infrequent that a court fails to rule on a motion where there has been a request. He said that he would prefer no change to the Rule rather than the proposed amendments.

The Reporter suggested that the request for a hearing and determination be permissive, not mandatory, in subsection (e)(3). The Chair moved to strike the last sentence of subsection (e)(3) and change "shall" to "may" in the phrase "the defendant shall file" in subsection (e)(3). The motion was seconded and approved by consensus.

Mr. Zavin moved to reject proposed new subsections (e)(2)

and (e)(3). Ms. Meredith seconded the motion. The motion failed with two votes in favor.

The Chair called for a motion to approve Rule 4-345 as amended. A motion was made, seconded, and approved by majority vote.

Assistant Reporter Cobun pointed out a stylistic change necessary in subsection (e)(3): the lowercase (a) and (b) need to be capitalized within the subsection. By consensus, the Committee approved that amendment.

Judge Nazarian suggested that alternative versions of subsections (e)(2) and (e)(3) be drafted that track the policy set forth in Justice Eaves's opinion. The Chair invited Judge Nazarian to draft the proposed alternative during the lunch break so that the Committee could review the language. Mr. Zavin remarked that the Court will have the opportunity to propose such a change on its own initiative when it takes up this Rule. Judge Nazarian replied that the Court is unlikely to want to consider drafting a provision "on the fly" under those circumstances and suggested that presenting the justices with an alternate proposal is the best way to allow them to consider it.

Following the lunch break, Judge Nazarian presented proposed alternate language to Rule 4-345, as follows:

(e) Modification Upon Motion

. . .

(2) Duration of Revisory Power

In ruling on a motion filed pursuant to subsection (e)(1) of this Rule, the court may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant~~, except that the court, for good cause shown, may extend the five year period by an additional 60 days~~.

(3) (Tagline)

If the defendant filed a timely motion pursuant to subsection (e)(1) of this Rule and has requested a hearing within five years from the date the sentence originally was imposed on the defendant, the court retains jurisdiction until it makes a definitive ruling on that motion.

Judge Nazarian said that the alternate proposal would delete the proposed amendment pertaining to the 60-day extension for good cause and instead state that, if the defendant files a timely motion to modify and requests a hearing within five years, the court retains jurisdiction "until it makes a definitive ruling." Mr. Zavin asked what would qualify as a "definitive ruling." Judge Nazarian replied that this is the language used by Justice Eaves. Ms. Meredith suggested "grants or denies." Judge Nazarian agreed.

The Chair said that subsections (e)(2) and (e)(3) appear to be in conflict. The first subsection says that the court may not revise a sentence after the expiration of five years from the date it was imposed; the second then sets forth a scenario where that is not true. Ms. Doyle suggested that subsection

(e)(2) begin with "except as provided in subsection (e)(3)."

Mr. Laws asked whether a defendant who files a motion and does not request a hearing would be excluded from this proposed amendment. Judge Nazarian answered in the affirmative. Mr. Laws inquired as to whether the hearing request is critical. Judge Nazarian said that it was a component of Justice Eaves's opinion that the defendant has timely filed a motion and requested a hearing.

Judge Nazarian said that this proposal would be transmitted as an alternative to the language already approved by the Committee. It provides the Court with the opportunity to consider the policy set forth by Justice Eaves. The Chair asked for "that motion" to be changed to "the motion" at the end of subsection (e)(3).

The Reporter asked how this proposal differs from the understanding of the Rule prior to the *Thomas* decision. The Chair replied that it states that the court retains jurisdiction to rule on a motion under limited circumstances. Ms. Meredith said that this is how Rule 4-345 was understood before *Thomas*.

The Chair called for a motion to send the alternate language to the Supreme Court in addition to the previously approved version. A motion was made, seconded, and approved by consensus.

Agenda Item 6. Consideration of proposed amendments to Rule 5-615 (Exclusion of Witnesses).

Mr. Zavin presented Rule 5-615, Exclusion of Witnesses, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 600 – WITNESSES

AMEND Rule 5-615 by adding new language in subsection (b)(2) concerning the applicability to the State in a criminal action and by adding a Committee note after subsection (b)(2), as follows:

Rule 5-615. EXCLUSION OF WITNESSES

(a) In General

Except as provided in sections (b) and (c) of this Rule, upon the request of a party made before testimony begins, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. When necessary for proper protection of the defendant in a criminal action, an identification witness may be excluded before the defendant appears in open court. The court may order the exclusion of a witness on its own initiative or upon the request of a party at any time. The court may continue the exclusion of a witness following the testimony of that witness if a party represents that the witness is likely to be recalled to give further testimony.

Cross reference: For circumstances when the exclusion of a witness may be inappropriate, see *Tharp v. State*, 362 Md. 77 (2000).

(b) Witnesses Not to Be Excluded

A court shall not exclude pursuant to this Rule:

(1) a party who is a natural person,

(2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, except that in a criminal action the State may not be so represented,

Committee note: Nothing in subsection (b)(2) of this Rule is intended to exclude an individual who otherwise qualifies to be present under subsections (b)(3), (b)(4), or (b)(5) of this Rule.

(3) an expert who is to render an opinion based on testimony given at the trial,

(4) a person whose presence is shown by a party to be essential to the presentation of the party's cause, such as an expert necessary to advise and assist counsel, or

(5) a victim of a crime or a delinquent act, including any representative of such a deceased or disabled victim, to the extent required by statute.

Cross reference: Code, Courts Article, § 3-8A-13; Criminal Procedure Article, § 11-102 and § 11-302; Rule 4-231.

...

Rule 5-615 was accompanied by the following Reporter's note:

By letter dated May 2, 2025, Chief Justice Fader asked the Rules Committee to consider whether amendments to Rule 5-615, specifically to subsection (b)(2), are needed. The Chief Justice noted that the issue arose during consideration of *Cromartie v. State*, 490 Md. 297 (2025), in which "the parties disputed whether the trial court has erred in permitting the State to designate a law enforcement officer as its party representative pursuant to Rule 5-615 (b)(2)."

In *Cromartie*, the defendant was convicted of second-degree assault and other offenses after a jury trial. At the beginning of trial, the defendant invoked Rule 5-615 to exclude witnesses from the courtroom.

The State designated the primary detective investigating the incident, also a witness, as the State's representative. *Cromartie*, 490 Md. at 301. The defendant appealed his conviction, arguing in part that the detective should not have been exempted from witness sequestration and should not have been permitted to remain at counsel table during the trial.

The Supreme Court ultimately determined that it did not need to resolve the question of whether Rule 5-615 allows the State to designate a detective who will testify as a witness as a representative who is not subject to exclusion from the courtroom because any error was harmless beyond a reasonable doubt.

The Chief Justice noted in his May 2, 2025 letter that several questions were raised in the case on appeal, including "(1) whether the exception [in Rule 5-615 (b)(2)] applies to the State in a criminal prosecution; (2) if so, whether a local law enforcement officer is an 'officer or employee' of the State for purposes of the exception; and (3) whether the exception is discretionary or mandatory." The Rules Committee was asked to consider these questions and what, if any, amendments should be recommended to Rule 5-615.

The topic was referred to the Criminal Rules Subcommittee for consideration. The Subcommittee considered the arguments of both the State and the Office of the Public Defender from the *Cromartie* case, which included a review of the Rule's history. The Subcommittee also reviewed the results of staff's research regarding the practice in other states. While most states have a rule regarding witness exclusion similar to Maryland Rule 5-615 and Federal Rule 615, the application of the exceptions, specifically in regard to the State in criminal cases, is most often determined in case law.

Amendments are proposed to subsection (b)(2) of Rule 5-615. New language clarifies that, although the State is not a natural person, it is not entitled to exclude from sequestration an officer or employee designated as its representative by its attorney in criminal cases. A Committee note following subsection (b)(2) highlights that, even though the State in a

> criminal action may not designate a representative to remain in the courtroom under subsection (b)(2), an individual may be otherwise qualified to be present pursuant to subsections (b)(3), (b)(4), or (b)(5).

Mr. Zavin said that the Court requested that the Committee review Rule 5-615 following the Supreme Court opinion in *Cromartie v. State*, 490 Md. 297 (2025). At issue in the case was the application of subsection (b)(2), which prohibits the court from excluding from the courtroom a witness who is "an officer or employee of a party that is not a natural person designated as a representative by its attorney." He explained that, in *Cromartie*, the designee was a law enforcement officer who sat at the trial table to assist the prosecutor with the case over the objection of the defendant. The Court held that, even if it was error to allow the officer to sit at counsel table, it was harmless error. In a footnote, the Court stated that the parties "raised policy considerations that are best addressed in the Court's rulemaking capacity" (see *Cromartie* at fn. 1). Following the issuance of the opinion, the Court formally requested by letter that the Committee take up this issue.

Mr. Zavin said that the Criminal Rules Subcommittee considered the matter and had the benefit of the parties' briefs in *Cromartie,* as well as a memorandum prepared by Assistant

Reporter Drummond. The materials reflected that at least 20 states and the federal rules permit a law enforcement officer to remain in the courtroom as a designee of the state pursuant to statute, court rules, or case law. Several states permit the officer to remain if the officer's presence is essential. He explained that the proposed amendment is to subsection (b)(2), which prohibits the State in a criminal action from being represented by an officer or employee pursuant to that subsection. He noted that nothing prohibits an officer from remaining in the courtroom based on another exception listed in section (b). He said that, in a lengthy and complicated case, the investigating detective may be argued to be "essential" to the State under subsection (b)(4).

Mr. Laws said that he is concerned with the choice of the word "represented." He said that it is his understanding that the intention is to prohibit the State from designating a witness as a representative, but the wording of the proposed amendment suggests that the State cannot have any representative participate in the prosecution. Mr. Laws said that he would suggest adjusting the language to better align with the policy goal of the Subcommittee. Mr. Zavin replied that the Rule only applies to witnesses; to the extent the State wishes to designate a representative who will not also give testimony, this Rule would not preclude that. He acknowledged the need for

the State to have a representative in certain cases.

Judge Chen commented that it is not very common to see a detective at the trial table. She added that, if the detective hears the testimony of the other witnesses, she understands the concern that the detective can then be called as a witness and "bat cleanup" for the prosecution by smoothing over any issues in the State's case. She acknowledged that this can give an unfair advantage to the State.

Judge Curtin asked whether the defendant could do the same thing and have a representative at the trial table who may later give testimony. Mr. Zavin pointed out that the defendant is a "natural person" while the State is not; only the State could designate a representative and be subject to this exception to the general Rule regarding exclusion of witnesses.

Mr. Gibson commented that he opposes the proposed amendment. He said that, in 21 years as a prosecutor, he has never used the (b)(2) exception. He said that it is probably uncommon in Maryland but pointed out that federal prosecutors frequently have a case agent assisting them at trial. He said that the volume of information to be sifted through at trial has never been higher, and he could understand how it might be helpful to have a law enforcement officer to help organize the presentation of the case. He added that, to Judge Chen's point about "batting cleanup," if that officer later testifies, the

officer can be cross-examined regarding whether the testimony has been influenced by hearing the other witnesses.

Judge Chen asked Mr. Gibson whether the exception in subsection (b)(4), which allows for "a person whose presence is shown by a party to be essential to the presentation of the party's cause," would apply to a law enforcement officer assisting with a complex case. Mr. Gibson replied that he is reluctant to put the court in the position of determining how the State should manage its case. The Chair said that she disagrees with Mr. Gibson's characterization: the court is deciding whether a witness may be present at the trial table and hear testimony. Judge Nazarian added that subsection (b)(4) places the burden on the State to prove that the presence of the individual is "essential," rather than permitting it as a matter of course pursuant to subsection (b)(2).

Mr. Laws asked whether the proposed amendments to subsection (b)(2) prevent the State from having any representative at the trial table or just from having that individual also be a witness in the case. The Chair suggested that subsection (b)(2) be amended to state, "except that in a criminal action the State may not designate such a representative." By consensus, the Committee approved the amendment.

Ms. Doyle commented that subsections (b)(2) and (b)(4) may

be in conflict if the State shows that the presence of a law enforcement officer is necessary to presenting the State's case. Judge Chen replied that the Committee note clarifies that the prohibition against the State having a "representative" does not exclude an individual who qualifies under one of the other exceptions in section (b). Ms. Cobun pointed out that a "necessary" individual pursuant to subsection (b)(4) is not a "representative" pursuant to subsection (b)(2); the individual is one of the other types of permitted individuals. Ms. Meredith said that she believes that the State is still being "represented," and subsection (b)(2) should contain some kind of exception for the situation covered by subsection (b)(4). The Chair asked whether Ms. Meredith was suggesting that some language from the Committee note be moved into subsection (b)(2); Ms. Meredith replied in the affirmative.

Judge Curtin suggested that subsection (b)(2) could state, "except that in a criminal case, the State may not designate such a witness as a representative unless subsection (b)(4) applies," or something to that effect. Ms. Cobun reiterated her point that that an "essential" person under subsection (b)(4) is not the same as a "representative" under subsection (b)(2). The Chair suggested that subsection (b)(2) read, "the State may not designate such a representative; however, the State may present evidence that the individual qualifies" under another exception.

Mr. Wells suggested, "the State may not designate such a representative pursuant to this subsection."

Benjamin Harris, an Assistant Attorney General, addressed the Committee. He explained that the exception in subsection (b)(2) is helpful in very complex investigations. He said that he is concerned with relying on subsection (b)(4) because the law enforcement officer may not be an "expert" pursuant to subsection (b)(4) and might not "fit" the exception. The Chair asked whether Mr. Harrison's concerns would be allayed if subsection (b)(4) was amended to add "or other individual." Mr. Harrison replied that such an amendment would be helpful.

Mr. Gibson commented that "essential" will be interpreted differently by different courts. He added that the court may not appreciate how necessary the individual is and could deal a significant blow to the State's case if the individual is not allowed to sit at the trial table. The Chair replied that Mr. Gibson is describing the discretion that judges use in running their courtrooms. She pointed out that it is the State's responsibility to explain the necessity of the individual to the State's presentation of evidence. She added that "essential" is not a nebulous or difficult concept for judges to parse.

Mr. Zavin commented that that case law on this issue has not involved complex cases where the State sought to have a law enforcement officer at the trial table. In *Cromartie*, there

were only two witnesses, one of whom was the lead investigator, designated by the State pursuant to subsection (b)(2).

John Sharifi, an Assistant Public Defender who argued the *Cromartie* case on appeal, addressed the Committee and echoed Mr. Zavin's remark: *Cromartie* was an assault case with two witnesses, not complex litigation. He said that he supports the Rule as it has been amended during the discussion and that he believes the other exceptions in section (b) are sufficient for cases where a witness's presence at the trial table is truly necessary. As amended, the Rule generally would prohibit the State from designating a representative who also is a witness, but would permit the State to request an exception to sequestration when the individual is truly essential.

Mr. Harris agreed with the Chair's suggestion that subsection (b)(4) add a reference to an individual other than an expert who is "necessary to advise and assist counsel." The Chair proposed adding "or other individual" after "such as an expert" in subsection (b)(4). By consensus, the Committee agreed to amend subsection (b)(4) to read "such as an expert or other individual necessary."

The Chair called for a motion to approve Rule 5-615 as amended. The motion was seconded and approved by majority vote with one vote against and one abstention.

Agenda Item 7. Consideration of proposed amendments to Rule 4-507 (Hearing), Rule 4-211 (Filing of Charging Document), Rule 4-231 (Presence of Defendant), and Rule 4-203 (Charging Document – Joinder of Offenses and Defendants).

Mr. Zavin presented Rule 4-507, Hearing, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGMENT OF RECORDS

AMEND Rule 4-507 by expanding the cross reference after section (b), as follows:

Rule 4-507. HEARING

(a) On Application

In the case of an application for expungement, a hearing shall be held not later than 45 days after the filing of the application.

Cross reference: Code, Criminal Procedure Article, § 10-103(f).

(b) On Petition

In the case of a petition for expungement, a hearing shall be held only if the State's Attorney or law enforcement agency objects to the petition by way of timely answer.

Cross reference: See Code, Criminal Procedure Article, §§ 10-105(e) and 10-110(f) regarding hearings on petitions for expungement, including factors for the court to consider in determining whether a person is entitled to expungement.

Source: This Rule is derived from former Rule EX6.

Rule 4-507 was accompanied by the following Reporter's

note:

> Chapter 95, 2025 Laws of Maryland (SB 432) impacts expungement statutes in the Criminal Procedure Article by altering some terminology and adding new provisions. The bill adds new subsection (e)(5) to Code, Criminal Procedure Article, § 10-105 requiring the court, when ruling on a petition for expungement, to consider a petitioner's success at probation, parole, or mandatory supervision and whether the person has paid or does not have the ability to pay monetary restitution as ordered by the court. Similar language is added to Code, Criminal Procedure Article, § 10-110(f)(2) setting forth the required considerations.
>
> Current Rule 4-507 addresses hearings on expungement applications and petitions. The Rule does not include the factors to be considered by the court, but a cross reference after section (b) points to the statutory provisions regarding hearings on petition for expungements pursuant to Code, Criminal Procedure Article, § 10-105.
>
> A proposed amendment to Rule 4-507 expands the cross reference by adding a reference to the hearing provisions in Code, Criminal Procedure Article, § 10-110 and noting that the cited statutes include factors for the court to consider when determining if a petitioner is eligible for expungement.

Mr. Zavin said that Rule 4-507 is amended in response to a piece of legislation from the 2025 session. Chapter 95, 2024 Laws of Maryland (SB 432) added a new subsection to the expungement statute requiring the court to consider certain factors in ruling on a petition for expungement. The amendment adds to the existing cross reference.

There being no motion to amend or reject the proposed amendment to Rule 4-507, it was approved as presented.

Mr. Zavin presented Rule 4-211, Filing of Charging Document, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-211 by updating the cross reference after section (b), as follows:

Rule 4-211. FILING OF CHARGING DOCUMENT

(a) Citation

The original of a citation shall be filed in District Court promptly after its issuance and service. Electronic data documenting the citation uploaded to the District Court by or on behalf of the peace officer who issued the citation shall be regarded as an original of the citation.

(b) Statement of Charges

(1) Before Any Arrest

Except as otherwise provided by statute, a judicial officer may file a statement of charges in the District Court against a defendant who has not been arrested for that offense upon written application containing an affidavit showing probable cause that the defendant committed the offense charged. If not executed by a peace officer, the affidavit shall be made and signed before a judicial officer.

(2) After Arrest

When a defendant has been arrested without a warrant, unless an information is filed in the District Court, the officer who has custody of the defendant shall (A) forthwith cause a statement of charges to be filed against the defendant in the District Court and (B) at the same time or as soon thereafter as is practicable file an affidavit containing facts showing

probable cause that the defendant committed the offense charged.

Cross reference: See Code, Courts Article, § 2-608 for special requirements concerning an application for a statement of charges against a law enforcement officer, an educator, an adult protective services worker, a child welfare caseworker, or a person within the definition of "emergency services personnel" in that section for an offense allegedly committed in the course of executing the person's duties.

(c) Information

A State's Attorney may file an information as permitted by Rule 4-201.

Committee note: Nothing in section (b) of this Rule precludes the filing of an information in the District Court by a State's Attorney at any time, whether in lieu of the filing of a statement of charges or as an additional or superseding charging document after a statement of charges has been filed.

(d) Indictment

The circuit court shall file an indictment returned by a grand jury.

Source: This Rule is derived as follows:
Section (a) is derived from the last clause of M.D.R. 720 i.
Section (b) is derived from M.D.R. 720 a and b.
Section (c) is new.
Section (d) is new.

Rule 4-211 was accompanied by the following Reporter's note:

Current Code, Courts Article, § 2-608 addresses special requirements for an application for a statement of charges against law enforcement officers, emergency services personnel, or educators. Chapter 134, 2025 Laws of Maryland (HB 302) amends the statute by adding adult protective services workers and child welfare caseworkers to the list of people impacted by these special requirements.

A cross reference after section (b) in Rule 4-211 acknowledges the special requirements for an application for statement of charges pursuant to Code, Courts Article, § 2-608. A proposed amendment adds adult protective services workers and child welfare caseworkers to the list of people impacted by the requirements of § 2-608.

Mr. Zavin said that Rule 4-211 addresses the procedure for filing a charging document in criminal actions. Code, Courts Article, § 2-608 contains additional requirements when filing a charging document against specified individuals. The law was amended to add adult protective services workers and child welfare caseworkers. The proposed amendment to Rule 4-211 adds these individuals to the cross reference following section (b).

There being no motion to amend or reject the proposed amendment to Rule 4-211, it was approved as presented.

Mr. Zavin presented Rule 4-231, Presence of Defendant, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-231 by expanding the cross reference after section (b) and by making a stylistic change, as follows:

Rule 4-231. PRESENCE OF DEFENDANT

(a) When Presence Required

A defendant shall be present at all times when required by the court. A corporation may be present by counsel.

(b) Right to Be Present—Exceptions

A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law~~;~~ and (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248.

Cross reference: See Code, Criminal Procedure Article, § 11-303 concerning the testimony of a child victim by closed circuit television in certain circumstances.

(c) Waiver of Right to Be Present

The right to be present under section (b) of this Rule is waived by a defendant:

(1) who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; or

(2) who engages in conduct that justifies exclusion from the courtroom; or

(3) who, personally or through counsel, agrees to or acquiesces in being absent.

(d) Video Conferencing in District Court

In the District Court, if the Chief Judge of the District Court has approved the use of video conferencing in the county, a judicial officer may conduct an initial appearance under Rule 4-213 (a) or a review of the commissioner's pretrial release determination under Rule 4-216.2 with the defendant and the judicial officer at different locations, provided that:

(1) the defendant's right to counsel under Rules 4-213.1 and 4-216.2 is not infringed;

(2) the video conferencing procedure and technology are approved by the Chief Judge of the District Court for use in the county; and

(3) immediately after the proceeding, all documents that are not a part of the District Court file and that

would be a part of the file if the proceeding had been conducted face-to-face shall be electronically transmitted or hand-delivered to the District Court.

(e) Electronic Proceedings in Circuit Court

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

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

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

Rule 4-231 was accompanied by the following Reporter's note:

Current Code, Criminal Procedure Article, § 11-303 addresses the testimony of a child victim in certain child abuse cases. Chapters 150/151, 2025 Laws of Maryland (HB 293/SB 274) amend certain provisions of § 11-303 and add a new provision noting that, if a child victim testifies by closed circuit television, the testimony shall occur "within the courthouse in a setting that the court finds will reasonably mitigate the likelihood that the child victim will suffer emotional distress."

Upon review, the amendments to Code, Criminal Procedure Article, § 11-303 do not appear to necessitate any substantive Rules revisions. Although certain Rules reference § 11-303, the Rules do not

detail the process of a child victim's testimony. Rule 4-231, however, includes a cross reference to the statute setting forth specific exceptions to the right of a defendant to be present. A proposed amendment expands the cross reference after section (b) to more clearly explain the applicability of the statutory section.

A stylistic change is proposed in section (b) to correct punctuation and add "and" between subsections (b)(1) and (2).

Mr. Zavin said that the proposed amendments to Rule 4-231 expand an existing cross reference to the statute governing testimony of a child victim and make a stylistic amendment.

There being no motion to amend or reject the proposed amendments to Rule 4-231, the Rule was approved as presented.

Mr. Zavin presented Rule 4-203, Charging Document – Joinder of Offenses and Defendants, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-203 by adding a cross reference after section (a), as follows:

Rule 4-203. CHARGING DOCUMENT – JOINDER OF OFFENSES AND DEFENDANTS

(a) Multiple Offenses

Two or more offenses, whether felonies or misdemeanors or any combination thereof, may be charged in separate counts of the same charging document if the offenses charged are of the same or

similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

Cross reference: See Code, Criminal Law Article, § 7-103(f)(2) permitting joinder of multiple thefts under one scheme or a continuing course of conduct committed by the same defendant in multiple counties.

(b) Multiple Defendants--Separate Charging Documents

Regardless of whether two or more defendants are alleged to have participated in the same act or transaction or in the same series of acts or transactions, a charging document may not contain charges against more than one defendant.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 712 a and M.D.R. 712.

Section (b) is derived from former Rule 712 b.

Mr. Zavin said that Rule 4-203 is amended to address a new law concerning organized retail theft. A cross reference to the law is added after section (a) of the Rule.

There being no motion to amend or reject the proposed amendment to Rule 4-203, it was approved as presented.

Agenda Item 8. Consideration of proposed amendments to Rule 5-804 (Hearsay Exceptions; Declarant Unavailable).

Mr. Brault presented Rule 5-804, Hearsay Exceptions; Declarant Unavailable, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 – HEARSAY

AMEND Rule 5-804 by adding to the cross reference following subsection (b)(3), as follows:

Rule 5-804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

(a) Definition of Unavailability

"Unavailability as a witness" includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) Refuses to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

(3) Testifies to a lack of memory of the subject matter of the declarant's statement;

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subsection (b)(2), (3), or (4) of this Rule, the declarant's attendance or testimony) by process or other reasonable means.

A statement will not qualify under section (b) of this Rule if the unavailability is due to the procurement or wrongdoing of the proponent of the statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony

Testimony given as a witness in any action or proceeding or in a deposition taken in compliance with law in the course of any action or proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death

In a prosecution for an offense based upon an unlawful homicide, attempted homicide, or assault with intent to commit a homicide or in any civil action, a statement made by a declarant, while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death.

(3) Statement Against Interest

A statement which was at the time of its making so contrary to the declarant's pecuniary or proprietary interest, so tended to subject the declarant to civil or criminal liability, or so tended to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Cross reference: See Code, Courts Article, § 10-920, distinguishing expressions of regret or apology by health care providers from admissions of liability or fault and *State v. Smith*, 487 Md. 635 (2024) concerning a trial court's duty to parse each statement in a narrative and exclude those that do not inculpate the declarant.

(4) Statement of Personal or Family History

(A) A statement concerning the declarant's own birth; adoption; marriage; divorce; legitimacy; ancestry; relationship by blood, adoption, or marriage; or other similar fact of personal or family history, even

though the declarant had no means of acquiring personal knowledge of the matter stated.

(B) A statement concerning the death of, or any of the facts listed in subsection (4)(A) about another person, if the declarant was related to the other person by blood, adoption, or marriage or was so intimately associated with the other person's family as to be likely to have accurate information concerning the matter declared.

(5) Witness Unavailable Because of Party's Wrongdoing

(A) Civil Actions

In civil actions in which a witness is unavailable because of a party's wrongdoing, a statement that (i) was (a) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (b) reduced to writing and was signed by the declarant; or (c) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement, and (ii) is offered against a party who has engaged in, directed, or conspired to commit wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness, provided however the statement may not be admitted unless, as soon as practicable after the proponent of the statement learns that the declarant will be unavailable, the proponent makes known to the adverse party the intention to offer the statement and the particulars of it.

Committee note: A “party” referred to in subsection (b)(5)(A) also includes an agent of the government.

(B) Criminal Causes

In criminal causes in which a witness is unavailable because of a party's wrongdoing, admission of the witness's statement under this exception is governed by Code, Courts Article, § 10-901.

Committee note: Subsection (b)(5) of this Rule does not affect the law of spoliation, “guilty knowledge,” or unexplained failure to produce a witness to whom one

has superior access. See *Washington v. State*, 293 Md. 465, 468 n. 1 (1982); *Breeding v. State*, 220 Md. 193, 197 (1959); *Shpak v. Schertle*, 97 Md. App. 207, 222-27 (1993); *Meyer v. McDonnell*, 40 Md. App. 524, 533, (1978), rev'd on other grounds, 301 Md. 426 (1984); *Larsen v. Romeo*, 254 Md. 220, 228 (1969); *Hoverter v. Director of Patuxent Inst.*, 231 Md. 608, 609 (1963); and *DiLeo v. Nugent*, 88 Md. App. 59, 69-72 (1991). The hearsay exception set forth in subsection (b)(5)(B) is not available in criminal causes other than those listed in Code, Courts Article, § 10-901 (a).

Cross reference: For the residual hearsay exception applicable regardless of the availability of the declarant, see Rule 5-803 (b)(24).

Source: This Rule is derived from F.R.Ev. 804.

Rule 5-804 was accompanied by the following Reporter's note:

The Evidence Subcommittee proposes adding a reference to *State v. Smith*, 487 Md. 635 (2024) to the cross reference following subsection (b)(3) to emphasize a trial court's duty to parse each statement in a narrative and exclude the statements that do not inculpate the declarant.

Mr. Brault informed the Committee that *State v. Smith*, 487 Md. 635 (2024) discussed the responsibility of the trial court to parse each statement by an unavailable declarant and determine whether the exception applies. The Evidence Subcommittee recommends an addition to the cross reference following Rule 5-804 (b)(3). He said that the *State v. Smith* opinion is lengthy and goes through the history of the admissibility of statements by unavailable declarants. In the

case, the State sought to use a 55-minute interview of an individual who was unavailable to testify at trial. Mr. Brault explained that some of the statements in the interview were self-inculpatory, but others only implicated the defendant. He said that the opinion provides a roadmap for the trial court to follow in similar situations.

Mr. Gibson commented that it is important to have sufficient context around a statement to ensure that the fact-finder can understand it. He pointed out that some statements can have multiple interpretations "in a vacuum," and he hopes that the court allows sufficient context.

There being no motion to amend or reject the proposed amendment to Rule 5-804, it was approved as presented.

Agenda Item 9. Consideration of proposed amendments to Rule 19-728 (Post-Hearing Proceedings).

Judge Nazarian presented Rule 19-728, Post-Hearing Proceedings, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-728 by removing the provision concerning paper copies from section (d), as follows:

RULE 19-728. POST-HEARING PROCEEDINGS

(a) Notice of the Filing of the Record

Upon receiving the record, the Clerk of the Supreme Court shall notify the parties that the record has been filed.

(b) Exceptions; Recommendations; Statement of Costs

Within 30 days after service of the notice required by section (a) of this Rule, each party may file (1) exceptions to the findings and conclusions of the hearing judge, (2) recommendations concerning the appropriate disposition under Rule 19-740 (c), and (3) a statement of costs to which the party may be entitled under Rule 19-709.

(c) Response

Within 15 days after service of exceptions, recommendations, or a statement of costs, the adverse party may file a response.

(d) Form

~~The parties shall file eight copies of any~~ Any exceptions, recommendations, and responses~~. The copies~~ shall conform to the requirements of Rule 8-112.

(e) Proceedings in Supreme Court

Review in and disposition by the Supreme Court are governed by Rule 19-740.

Source: This Rule is derived from former Rule 16-758 (2016).

Rule 19-728 was accompanied by the following Reporter's note:

In the wake of the Judiciary's migration to

MDEC, the Attorneys and Judges Subcommittee, at the request of the Clerk of the Supreme Court, proposes revising section (d) of this Rule to eliminate the requirement to file eight paper copies.

Judge Nazarian said that the proposed amendment to Rule 19-728 eliminates the requirement to file paper copies of exceptions and responses in attorney discipline matters and instead refers to the requirements of Rule 8-112. He informed the Committee that this was requested by the Clerk of the Supreme Court to conform with current practice.

There being no motion to amend or reject the proposed amendments to Rule 19-728, the Rule was approved as presented.

Agenda Item 10. Consideration of proposed new Rule 19-803 (Name Change).

Judge Nazarian presented Rule 19-803, Name Change, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 800 – ATTORNEY INFORMATION SYSTEM

ADD new Rule 19-803, as follows:

RULE 19-803. NAME CHANGE

(a) Request to Change an Attorney's Name in AIS

A request to change an attorney's name in AIS shall be made in writing and filed with the Clerk of the Supreme Court. The request shall state:

(1) the attorney's present name reflected in AIS;

(2) the attorney's proposed name change;

(3) the attorney's AIS number; and

(4) if wanted, a request for a new bar certificate.

(b) Required supporting documentation

The attorney's name change request shall be accompanied by an original or certified copy of at least one of the following documents:

(1) a marriage certificate;

(2) a divorce decree that includes an order restoring the attorney to a former name;

(3) a court order changing the attorney's name;

(4) a certificate of citizenship; or

(5) a certificate of naturalization.

(c) Clerk's Duties on Receipt of Request

(1) Upon receipt of a request for name change, the Clerk shall review the request and, if the request complies with this Rule, change the attorney's name in AIS.

(2) The Clerk shall keep a record of the attorney's former names and each request for name change.

(3) If the request is approved and the attorney requests a new bar certificate, the Clerk, subject to payment of any applicable fee charged by the Clerk, shall send the new certificate to the attorney's address on record in AIS.

(d) Action on Non-compliant Request

If the Clerk determines that the request for name change is not in compliance with this Rule, the Clerk shall:

(1) Request that the attorney supplement the request with additional information or documents

supporting the request; or

(2) Refer the request, supporting documentation, and any supplementary documentation to the Chief Justice or designee for a determination of the request.

Source: This Rule is new.

Rule 19-803 was accompanied by the following Reporter's note:

The Attorneys and Judges Subcommittee proposes new Rule 19-803, which provides procedures an attorney may follow to request a change to the attorney's name in AIS. The documentation sufficient to effectuate a name change in AIS is similar to the requirements necessary for an individual to obtain a name change with the MVA.

Section (a) specifies the contents of a request to change an attorney's name in AIS.

Section (b) requires that at least one of the listed supporting documents must be submitted with a name change request.

Section (c) establishes the Clerk of the Supreme Court's responsibilities after a name change request is received.

Section (d) specifies the actions the Clerk is to take if a non-compliant request is received. The Clerk must either request additional documentation or refer the request to the Chief Justice of the Supreme Court or the Chief Justice's designee for a determination of the request.

Judge Nazarian said that new Rule 19-803 was suggested by the Clerk of the Supreme Court to establish procedures for an attorney to change the attorney's name in the Attorney Information System.

There being no motion to amend or reject proposed new Rule

19-803, the Rule was approved as presented.

Agenda Item 11. Consideration of proposed "Housekeeping" amendments to Rule 8-501 (Record Extract).

The Reporter presented Rule 8-501, Record Extract, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE SUPREME COURT AND APPELLATE COURT

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 by correcting a reference to Rule 8-412 in section (l) as follows:

Rule 8-501. RECORD EXTRACT

. . .

(l) Deferred Record Extract; Special Provisions Regarding Filing of Briefs

(1) If the parties so agree in a written stipulation filed with the Clerk or if the appellate court so orders on motion or on its own initiative, the preparation and filing of the record extract may be deferred in accordance with this section. The provisions of section (d) of this Rule apply to a deferred record extract, except that the designations referred to therein shall be made by each party at the time that party serves the page-proof copies of its brief.

(2) If a deferred record extract authorized by this section is employed, the appellant, within 30 days after the filing of the notice required by Rule 8-412 ~~(a)~~(c), shall file one page-proof copy of the brief and

> shall serve one copy on each party. Within 30 days after the filing of the page-proof copy of the appellant's brief, the appellee shall file one page-proof copy of the brief and shall serve one copy on the appellant. The page-proof copies shall contain appropriate references to the pages of the parts of the record involved. The parties are not required to file paper copies of page-proof briefs if they are represented by counsel or are registered users of MDEC.
>
> Committee note: Attorneys and other registered users are required to file briefs and other papers with the court electronically.
>
> . . .

Rule 8-501 was accompanied by the following Reporter's note:

> A housekeeping amendment is proposed to subsection (l)(2) of this Rule to correct the reference to section of (a) of Rule 8-412 to section (c).

The Reporter said that there is a proposed "housekeeping" amendment to Rule 8-501 to correct a reference to Rule 8-412 in subsection (l)(2). A motion to approve the proposed amendment was made, seconded, and approved by consensus.

The Chair called the Committee's attention to the information item concerning Rule 2-422 in the materials. She invited Assistant Reporter Drummond to explain the item. Ms. Drummond said that the Rule was remanded by the Supreme Court and discussed further by the Discovery Subcommittee. The Subcommittee concluded that there are sufficient mechanisms in the Rules to address discovery abuses and recommends no further

action at this time.

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