COURT OF APPEALS STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held via Zoom for Government on Friday, April 22, 2022.

Members present:

Hon. Alan M. Wilner, Chair

Hon. Vicki Ballou-Watts
Julia Doyle Bernhardt, Esq.
Hon. Pamila J. Brown
Del. Luke Clippinger
Hon. John P. Davey
Mary Ann Day, Esq.
Alvin I. Frederick, Esq.
Irwin R. Kramer, Esq.
Pamela Q. Harris, Court Administrator
Arthur J. Horne, Esq.
Irwin R. Kramer, Esq.
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Stephen S. McCloskey, Esq.
Hon. Douglas R.M. Nazarian
Hon. Paula A. Price
Scott D. Shellenberger, Esq.
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson

In attendance:

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

Derek Bayne, Esq., Asst. Investigative Counsel, Commission on Judicial Disabilities
Tanya Bernstein, Esq., Asst. Investigative Counsel, Commission on Judicial Disabilities
Lee Blinder, Executive Director & Founder, Trans Maryland
Raina Brubaker, Esq.
Greg Hilton, Esq., Clerk, Court of Special Appeals
Diana Hsu, Senior Analyst, Maryland Hospital Association
Kendra Jolivet, Esq., Executive Counsel, Commission on Judicial Disabilities
Rashmi Khatiwada, Esq.
Linda Lamone, Esq., Chair, Attorney Grievance Commission
Lydia Lawless, Esq., Bar Counsel, Attorney Grievance Commission
Marianne Lee, Executive Counsel & Director, Attorney Grievance

Commission
Lisa Mannisi, Esq., Civil and Criminal Case Administrator, Anne Arundel County Circuit Court
Kathleen Meredith, Esq.
Hon. John Morrissey, Chief Judge, District Court
Pamela Ortiz, Esq., Director, Access to Justice
Sarah Parks, Court Business Services, JIS
Tim Prudente, Enterprise Reporter, The Baltimore Banner
Hon. Michael Reed, Court of Special Appeals
Erin Risch, Esq., Deputy Bar Counsel, Attorney Grievance Commission
Tom Stahl, Esq., MSBA
Gillian Tonkin, Esq., District Court

The Chair convened the meeting. He acknowledged the retirement of Chief Judge Joseph M. Getty and Judge Robert N. McDonald from the Court of Appeals and thanked them for their service to the citizens of Maryland. He welcomed new Chief Judge Matthew J. Fader as well as Judge Angela M. Eaves, a former Rules Committee member, to the Court of Appeals.

The Chair informed the Committee that he recently began reviewing legislation that passed the General Assembly in the 2022 session and identified two companion bills, House Bill 459 and Senate Bill 691, which contain amendments to the portions of the Code governing juvenile delinquency proceedings. He noted that the new Title 11 Rules for juvenile proceedings went into effect at the beginning of the year and will now require changes to conform to the statutes. He added that the law goes into effect on June 1, 2022 and that Rules Committee staff have already started working to draft necessary amendments. He noted

that some additional legislation will be referred to the relevant subcommittees.

The Reporter advised that the meeting was being recorded and speaking will be treated as consent to being recorded. She also said that minutes of Rules Committee meetings from March 2021, January 2022, February 2022, and March 2022 were sent to the Committee for approval prior to the meeting. A motion to approve the minutes was made, seconded, and approved by majority vote.

Agenda Item 1. Consideration of proposed amendments to Rule 19-726 (Discovery) and Rule 2-412 (Deposition – Notice).

Mr. Frederick presented Rule 19-726, Discovery, 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 19-726 by lettering the preamble before current section (a) as new section (a), by deleting certain language

from new subsection (a)(1) and replacing it with a provision pertaining to the applicability of the Rules in Title 2, Chapter 400 to disciplinary and remedial actions; by adding a provision to new subsection (a)(1) pertaining to orders entered pursuant to Rule 2-402 (b)(1); by adding a Committee note following subsection (a)(1); by adding new subsection (a)(2), which identifies the parties for the purposes of this Rule; by adding new subsection (a)(3) pertaining to the obligation of the parties to respond to each other's discovery requests; by adding a Committee note following subsection (a)(3) pertaining to the oath or affirmation to be used by Bar Counsel when answering interrogatories; by adding new subsection (a)(4) pertaining to the continuing obligation of the parties to supplement information disclosed under this Rule; by adding new subsection (a)(5) pertaining to consequences for a party's failure to disclose under this Rule; by re-lettering current section (a) as section (b) and revising the tagline; by replacing the word "inspection" in section (b) with the word "disclosure"; by re-lettering current section (b) as section (c); by changing the reference to section (a) in section (c) to section (b); by re-lettering current subsection (c)(1) as section (d) and revising the timing of disclosure of witnesses by Bar Counsel and the attorney; by deleting current subsection (c)(2); by deleting current subsection (d)(1); by re-lettering current subsection (d)(2) as subsection (e)(1); by adding new subsection (e)(2) pertaining to medical or psychological examinations; by deleting current subsection (e)(1); by re-lettering current subsection (e)(2) as section (f) and revising the tagline; by replacing the words "may not be" with "is not" in new subsection (f)(1); by adding a Committee note pertaining to depositions of individual members of the office of Bar Counsel,

individual members of the Attorney Grievance Commission, and others; by adding a Committee note following new subsection (f)(2); by deleting current section (f); and by adding a provision to section (g) pertaining to the authority of the presiding circuit court judge appointed by Rule 19-722, as follows:

Rule 19-726. DISCOVERY

(a) Generally

(1) ~~After~~ Except as otherwise provided in this Rule, discovery after a Petition for Disciplinary or Remedial Action has been filed~~, discovery~~ is ~~permitted as follows~~ governed by the relevant Rules in Title 2, Chapter 400, subject to any scheduling order entered pursuant to Rule 19-722 and any order entered pursuant to Rule 2-402 (b)(1) tailoring discovery to the facts and circumstances of the particular action.

Committee note: The Rules in Title 2, Chapter 400 deal with discovery in civil cases. Rule 19-722 (a) requires a judge designated by the Court of Appeals to conduct hearings in an action for disciplinary or remedial action and, within 15 days after an answer to the petition is due and after consultation with Bar Counsel and the attorney, to enter a scheduling order setting dates for the completion of discovery and other events. Rule 2-402 (b)(1) permits the designated judge, after consultation with the parties, to limit or modify certain aspects of the discovery Rules.

~~(a) Discovery from Bar Counsel~~

(2) For purposes of this Rule, the parties are Bar Counsel and the attorney against whom charges have been filed.

(3) Bar Counsel and the attorney have the obligation to respond to the other's discovery requests addressed to them.

Committee note: Answers to interrogatories executed by Bar Counsel shall include an oath or affirmation on knowledge, information, and belief, as generally set forth in Rule 1-304. The affiant's recitation also may include an explanation of the affiant's role in the preparation and signing of the answers to interrogatories and the extent of the affiant's personal knowledge of the information provided.

(4) Bar Counsel and the attorney have a continuing duty to supplement information required to be disclosed under this Rule.

(5) The judge appointed pursuant to Rule 19-722 shall preclude a party from calling a witness, other than a rebuttal witness, or otherwise presenting evidence upon a finding, after the opportunity for a hearing if one is requested, that (1) the witness or evidence was subject to disclosure under this Rule, (2) the party, without substantial justification, failed to disclose the witness or evidence in a timely manner, and (3) failure was prejudicial to the other party.

(b) Disclosure by Bar Counsel upon Written Request

After an Answer has been filed pursuant to Rule 19-724 and within 30 days after a written request from the attorney, Bar Counsel shall (1) provide the attorney with a copy of all material and information accumulated during the investigation and statements as defined in Rule 2-402 (f), (2) provide summaries or reports of all oral statements for which contemporaneously recorded substantially verbatim recitals do not exist, and (3) certify to the attorney in writing that, except for material that constitutes attorney work product or that is subject to a lawful privilege or protective

order issued by the circuit court, the material disclosed constitutes the complete record of Bar Counsel as of the date of ~~inspection~~ disclosure.

~~(b)~~(c) Exculpatory Information

Whether as part of the disclosure pursuant to section ~~(a)~~(b) of this Rule or otherwise, no later than 30 days following the filing of an Answer, Bar Counsel shall disclose to the attorney all statements and other evidence of which Bar Counsel is aware that (1) directly negate any allegation in the Petition, (2) would be admissible to impeach a witness intended to be called by Bar Counsel, or (3) would be admissible to mitigate any sanction.

~~(c)~~(d) Witnesses

~~(1) Fact Witnesses~~

No later than ~~15 days after the filing of an Answer~~ 45 days prior to the scheduled hearing, Bar Counsel shall provide to the attorney the names and addresses of all persons, other than a rebuttal witness, Bar Counsel intends to call at the hearing. No later than ~~35 days after the filing of an Answer~~ 30 days prior to the scheduled hearing, the attorney shall provide to Bar Counsel the names and addresses of all persons, other than a rebuttal witness, the attorney intends to call at the hearing.

~~(2) Expert Witnesses~~

~~The designation of expert witnesses is governed by Title 5, Chapter 700.~~

~~(d) Other Discovery from the Attorney~~

~~(1) Bar Counsel may serve interrogatories, requests for production of documents, electronically stored information and property, requests for admission of facts and genuineness of documents, and request for mental or physical evaluations of the attorney pursuant to Title 2, Chapter 400.~~

~~(2)~~(e) Waiver of Medical Privilege; Medical or Psychological Examination

(1) The assertion by an attorney of the existence of a mental or physical condition or an addiction, as a defense to or in mitigation of a charge of misconduct, or the non-existence of a mental or physical condition or an addiction, as a defense to a charge against the attorney constitutes a waiver of the attorney's medical privilege and permits Bar Counsel to obtain, by subpoena or other legitimate means, medical and psychological records of the attorney relevant to issues presented in the case.

(2) Medical or psychological examination of the attorney is governed by Rule 2-423.

~~(c) Depositions~~

~~(1) Except as provided in subsection (c)(2) of this Rule, depositions are governed by the Rules in Title 2, Chapter 400.~~

~~(2)~~(f) Depositions of the Attorney Grievance Commission

The Attorney Grievance Commission ~~may not be~~ is not subject to an organizational designee deposition, pursuant to Rule 2-412 (d), in an attorney disciplinary matter.

Committee note: Section (f) of this Rule does not preclude the deposition of other persons, including individual members of the Commission or of the Office of Bar Counsel, in accordance with Rules in Title 2, Chapter 400.

~~(f) Continuing Duty to Disclose~~

~~Bar Counsel and the attorney have a continuing duty to supplement promptly the information required to be disclosed under this Rule.~~

(g) Motions

All discovery motions are governed by Title 2, Chapter 400 and shall be determined by the judge appointed pursuant to Rule 19-722.

Source: This Rule is new in part and is derived, in part from former Rule 16-756 (2016).

Rule 19-726 was accompanied by the following Reporter's note:

Rule 19-726 is amended to more closely parallel discovery procedures set forth in Title 18, Chapter 400, Judicial Disabilities and Discipline.

Subsection (a)(1) restores the 2020 version of Rule 19-726, with the addition of the following language from Rule 18-433 (a): "Except as otherwise provided in this Rule" and "the relevant Rules in." Additionally, a reference to Rule 2-402 (b)(1) is added to implement a suggestion made by a judge of the Court of Appeals at the Court's March 30, 2022 open meeting discussion of revisions to this Rule, and a Committee note is added after the subsection.

Subsection (a)(2) is derived from the second sentence of Rule 18-433 (a)(5).

Subsection (a)(3) is derived from Rule 18-433 (a)(3). In light of discussion at the March 30, 2022 open meeting, a Committee note after subsection (a)(3) clarifies the form of oath or affirmation to be used by Bar Counsel when answering interrogatories.

Subsection (a)(4) carries forward current Rule 19-726 (f), which is derived from Rule 18-433 (a)(4).

Subsection (a)(5) is derived from the first sentence of Rule 18-433 (a)(5).

Section (b) carries forward the provisions of current Rule 19-726 (a), with a revised tagline and substitution of the word "disclosure" for the word "inspection" at the end of the section. Section (b) is based upon Rule 18-433 (b), with stylistic changes and the inclusion of timing provisions appropriate to attorney disciplinary proceedings.

Section (c) carries forward the provisions of current Rule 19-726 (b). Section (c) is based upon Rule 18-433 (c), with stylistic changes and with the timing of the required disclosure of exculpatory information set at "30 days following the filing of an Answer," rather than "no later than 30 days prior to the scheduled hearing," which is the timing of the disclosure of exculpatory information in judicial disability and disciplinary proceedings.

Section (d) carries forward the provisions of current Rule 19-726 (c)(1); however the timing provisions are revised to provide that Bar Counsel must disclose witnesses "no later than 45 days prior to the scheduled hearing," and the attorney must disclose witnesses "no later than 30 days prior to the scheduled hearing." The current Rule requires that the disclosures be made "no later than 15 days after the filing of an Answer" and "no later than 35 days after the filing of an Answer," respectively. The Subcommittee believes the revised timing is more workable, and Bar Counsel advises that the change is not likely to cause delay in the proceedings. Section (d) is based upon Rule 18-433 (d), with revised timing provisions appropriate to attorney disciplinary proceedings.

Subsection (e)(1) carries forward the provisions of current Rule 16-726 (d)(2). Subsection (e)(2) is based upon the final clause in current Rule 16-726 (d)(1). Comparable provisions applicable in judicial

disability and disciplinary proceedings are contained in Rule 18-441 (f)(1)(A) and (B).

Section (f) carries forward current Rule 19-726 (e)(2), with a stylistic change.

The Committee note following section (f) is new. It is added to clarify that depositions of individuals in the Office of Bar Counsel, individual members of the Attorney Grievance Commission, and other persons may be taken in accordance with the Rules in Title 2, Chapter 400.

Section (g) carries forward current Rule 19-726 (g), with the addition of clarifying language stating that discovery motions are determined by the judge appointed pursuant to Rule 19-722.

Subsections (c)(2), (d)(1), and (e)(1) of current Rule 19-726 are deleted as superfluous.

Mr. Frederick explained that the proposal presented to the Committee is the result of a request from the Court of Appeals after an open meeting to discuss Rule 19-726, which was amended last year. The Court made requests for amendments, which the Attorneys and Judges Subcommittee discussed at a meeting before referring the proposed drafts to the Committee. He noted that an unofficial transcript of the Court of Appeals open meeting, provided by Mr. Kramer, is included in the materials (Appendix 1).

Mr. Frederick said that section (a) is amended to expressly refer to Rule 2-402 (b)(1), based on the Court's discussion of the authority of the judge designated to conduct hearings in a

disciplinary matter to limit or modify certain aspects of the discovery Rules. Mr. Frederick went on to say that subsections (a)(2) through (a)(5) are intended to provide clarity for the litigants about the process of a disciplinary hearing before a judge. He said that the amendments to section (d), altering the time frame for providing information regarding witnesses, were suggested by a Subcommittee member and agreed to by Bar Counsel. He explained that the intention is to permit enough time for parties to appropriately present and defend the case.

Mr. Frederick said that the proposed Committee note following section (f) is intended to clarify that the Rule does not preclude certain depositions in accordance with Title 2, Chapter 400. He said that the Reporter's note accompanying the Rule appears to suggest that the Rule is an avenue for deposing opposing counsel, which was not the intent of the Subcommittee. The Reporter pointed out that a Reporter's note is not part of a Rule and is not carried forward once the Rule is adopted by the Court of Appeals. Mr. Frederick noted that the Subcommittee unanimously determined that an opposing attorney can be deposed only when permitted by existing law. He moved to amend the Committee note following section (f) to include, "subject to the substantive law with regard to taking the deposition of one's opposing counsel."

Ms. McBride commented that she also was concerned by the wording of the Committee note. She said that there is a great deal of case law on deposing opposing counsel, which speaks to the limited circumstances when it should be permitted. She explained that such depositions should be rare, and she suggested expanding Mr. Frederick's motion to include the specific circumstances when a deposition of opposing counsel is permissible. She moved to add "the person or the party intending to take the deposition must show that no other means exist to obtain the information other than to depose the attorney, that the information sought is relevant and not privileged, and that the information is crucial to the preparation of the case." Mr. Frederick accepted Ms. McBride's motion as a friendly amendment to his motion. He restated his motion as one to craft a Committee note to make it clear that a deposition of opposing counsel is subject to the substantive law of Maryland that permits that discovery under the circumstances listed by Ms. McBride. Mr. Marcus seconded the motion.

The Chair asked if there was any further discussion on the motion to amend the Committee note following section (f). Mr. Kramer said that this issue was discussed and voted on at the Subcommittee. He said that the Subcommittee voted against creating a separate standard for deposition of Bar Counsel or her staff. He explained that the discovery Rules govern motions

for a protective order or to quash. There is case law on these depositions, he said, and no Rule has been codified to deal with the issue. The Chair asked Ms. Lawless if she had any comment. She responded that she supported Ms. McBride's language as reflecting existing law regarding depositions of opposing counsel. Ms. McBride remarked that the Committee note as written seems to imply an "open season" on depositions of Bar Counsel and Attorney Grievance Commission members. Judge Nazarian suggested deleting the Committee note altogether to avoid that suggestion. The Chair called for any further comment on Mr. Frederick's motion as amended by Ms. McBride. Mr. Kramer expressed his belief that it is important to understand that the Court of Appeals referred Rule 19-726 to the Committee because of a case in which Bar Counsel has taken the position that the Rule means that Bar Counsel is not subject to traditional discovery requests, including depositions. He said that the legislative history of the Rule does not support that interpretation and the Court of Appeals stayed a pending case to deal with the issue. The Chair called for a vote on Mr. Frederick's motion to amend the Committee note following section (f), as amended by Ms. McBride. The motion carried, by a vote of 15-4.

The Chair called for further comment on Rule 19-726. Mr. Kramer said that, in light of the proposed amendments to Rule 2-

412, which is next on the agenda, he wished to speak to the concept of a ban on the deposition of an organizational designee of the Attorney Grievance Commission. He explained that the proposal would treat the Commission differently from every other State agency, including the Commission on Judicial Disabilities. He said that the motion that was just approved does not modify the general Rule for all depositions, which could apply to all opposing counsel in all matters. The amendment specifically applies to the attorney disciplinary Rules. The Chair said that the motion to amend the Committee note following section (f) passed, and he asked if Mr. Kramer had a new motion. Mr. Kramer moved to delete Rule 19-726 (f). The motion was not seconded. There being no further motion to amend or reject the proposed amendments to Rule 19-726, the Rule was approved as amended.

Mr. Frederick presented Rule 2-412, Deposition – Notice, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE — CIRCUIT COURT

CHAPTER 400 – DISCOVERY

Amend Rule 2-412 (d) by making a stylistic change to the tagline and by adding a sentence stating that the section does not apply to a deposition sought of the Attorney Grievance Commission in an action

under the Rules in Title 19, Chapter 700, as follows:

RULE 2-412. DEPOSITION – NOTICE

. . .

(d) Designation of Person to Testify ~~for~~ on Behalf of an Organization

A party may in a notice and subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, managing agents, or other persons who will testify on its behalf regarding the matters described and may set forth the matters on which each person designated will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This section does not apply to a deposition sought of the Attorney Grievance Commission in an action under the Rules in Title 19, Chapter 700.

. . .

Rule 2-412 was accompanied by the following Reporter's note:

Rule 2-412 (d) is proposed to be amended to conform to Rule 19-726 (f)(1), which provides that the Attorney Grievance Commission is not subject to an organizational designee deposition in an attorney disciplinary matter. Additionally, a stylistic change is made to the tagline.

Mr. Frederick said that the proposed amendments to Rule 2-412 are related to the amendments to Rule 19-726. He explained that section (d) is amended to expressly state that it does not apply to a deposition of a member of the Attorney Grievance Commission in an action under the Rules in Title 19, Chapter 700. Mr. Kramer commented that he opposes the amendment, for the reasons he previously stated. He moved to delete the proposed new language. The motion was not seconded.

There being no further motion to amend or reject Rule 2-412, it was approved as amended.

Agenda Item 2. Consideration of a policy issue pertaining to Rule 19-305.5 (5.5) (Unauthorized Practice of Law; Multi-Jurisdictional Practice of Law).

Mr. Frederick said that the second item asks the Committee to consider and provide guidance to the Attorneys and Judges Subcommittee on policy matters raised by the Court of Appeals in *Attorney Grievance Commission v. Jackson*, 477 Md. 174 (2022). In that case, the Court suggested that the Rules Committee consider whether the existing Rule governing unauthorized practice of law, Rule 19-305.5, is antiquated and whether Maryland should follow a nationwide trend to modify the portions of the Rule dealing with physical presence in the State. Mr. Frederick referred the Committee to the memorandum prepared by

Assistant Reporter Meredith Drummond for a summary of the issues (Appendix 2). He said that the last page of the memorandum sets forth the questions posed to the Committee: 1) should Rule 19-305.5 (b)(1) be amended and, if so, how, and 2) should an additional exception be added to Rule 19-305.5 (d) to address attorneys practicing the law of another state while physically present in Maryland. Mr. Frederick noted that, especially in light of the shifts that took place during the COVID-19 pandemic, working remotely is more common and a person's physical location is less important. He pointed out that other states are taking the position that as long as a lawyer present in a state is not practicing that state's law and makes that clear to the public, the lawyer's presence in the jurisdiction practicing another state's law is not a violation of the unauthorized practice Rule.

Mr. Laws commented that he considers the primary problem with unauthorized practice of law to be companies like LegalZoom that create Maryland wills and other documents. He suggested deleting Rule 19-305.5 (b)(1) and leaving the prohibitions against misrepresenting or "holding oneself out" as practicing Maryland law. He noted that large firms have attorneys licensed in different states, and they make it clear which states the attorneys are licensed in. He supported the Arizona Rules approach, which prohibits an attorney not admitted to practice

in Arizona from engaging in the practice of the law of the state or representing that the attorney is admitted to practice in Arizona. Mr. Kramer commented that, especially recently, the legal profession should be more concerned with what an attorney is doing than where they are. He explained that there is a trend toward amending a number of unauthorized practice of law Rules to enhance access to justice in light of technology and the realities of the world. Judge Brown commented that states have taken steps following natural disasters to authorize attorneys to run practices from out of state. She added that younger lawyers often prefer maintaining remote practices. Mr. Wells commented that he would like to see Rule 19-305.5 (b)(1) amended and an exception added to section (d). He expressed support for the Arizona or New Hampshire approach. The Chair said that the issue can be referred to the Attorneys and Judges Subcommittee for further discussion. Mr. Frederick moved to refer Rule 19-305.5 to the Subcommittee to modernize sections (b) and (d) in line with the growing trend in certain states. The motion was seconded and approved by consensus.

Agenda Item 3. Reconsideration of proposed amendments to Rule 15-901 (Action for Change of Name) and proposed new Rule 15-902 (Action for Judicial Declaration of Gender Identity).

The Chair presented proposed amendments to Rule 15-901, Action for Change of Name, and proposed new Rule 15-902, Action for Judicial Declaration of Gender Identity, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 900 – NAME - CHANGE OF; JUDICIAL DECLARATION OF GENDER IDENTITY

AMEND Rule 15-901 by amending the Chapter title, by revising the applicability section of the Rule, by deleting language pertaining to venue from section (b); by adding new subsections (b)(1) and (b)(2) pertaining to venue for petitions by an adult and on behalf of a minor, respectively; by adding new subsection (c)(1)(B) pertaining to venue; by re-lettering the subsequent subsections in subsection (c)(1); by altering subsection (c)(1)(G) pertaining to consent to the name change of a minor; by adding a Committee note pertaining to petitions on behalf of minors; by altering a cross reference following subsection (c)(1); by adding new subsection (c)(2)(B) pertaining to written consents to the name change of a minor; by moving current section (e) to new section (d); by re-captioning section (d) to pertain to notice to parents, guardians, and custodians who do not consent to a petition on behalf of a minor; by adding new subsection (d)(1) pertaining to notice generally; by adding new subsection (d)(2) pertaining to notice in a language other than English; by adding new subsection (d)(3) pertaining to documents to be served; by deleting certain provisions in current

section (d) so that service must comply with Rule 2-121; by deleting current subsection (e)(2) pertaining to publication; by re-lettering current section (f) as section (e) pertaining to an objection to a petition; by adding language to section (e) pertaining to failure by a parent, guardian, or custodian to object to a petition on behalf of a minor; by adding a Committee note following new section (e) regarding the right to object to a petition by an adult; by re-lettering current section (g) as section (f) pertaining to action by the court and hearings; by creating new subsection (f)(1) with language from current section (g) pertaining to court action on a petition by an adult; by adding a Committee note following subsection (f)(1) regarding the 30-day delay before the court may enter an order on a petition for a name change for an adult; by adding new subsection (f)(2) pertaining to court action and hearing requirements for a petition on behalf of a minor; and by making stylistic changes, as follows:

Rule 15-901. ACTION FOR CHANGE OF NAME

(a) Applicability

This Rule applies to actions for change of name other than in connection with an adoption, ~~or~~ divorce, or declaration of gender identity.

(b) Venue

~~An action for change of name shall be brought in the county where the person whose name is sought to be changed resides.~~

(1) Change of Name of an Adult

An action for change of name of an adult shall be brought in the county where the adult resides, carries on a regular business, is employed, habitually engages in a vocation, or was born.

(2) Change of Name of a Minor

An action for change of name of a minor shall be brought by an adult petitioner on behalf of the minor in the county where the minor resides or where a parent, guardian, or custodian of the minor resides.

(c) Petition

(1) Contents

~~The~~ An action for change of name shall be commenced by filing a petition captioned "In the Matter of ..." [stating the name of the ~~person~~ individual whose name is sought to be changed] "for change of name to ..." [stating the change of name desired]. The petition shall be under oath and shall contain ~~at least~~ the following information:

(A) the name, address, and date and place of birth of the ~~person~~ individual whose name is sought to be changed;

(B) a statement as to why venue is appropriate;

~~(B)~~ (C) whether the ~~person~~ individual whose name is sought to be changed has ever been known by any other name and, if so, the name or names and the circumstances under which they were used;

~~(C)~~ (D) the change of name desired;

~~(D)~~ (E) all reasons for the requested change;

~~(E)~~ (F) a certification that the petitioner is not requesting the name change for any illegal or fraudulent purpose;

~~(F)~~ (G) if the ~~person~~ individual whose name is sought to be changed is a minor, (i) a statement explaining why the petitioner believes that the name change is in the best interest of the minor; (ii) ~~the names and addresses of that person's parents~~ the name and address of each parent and any guardian

or custodian of the minor; (iii) whether each of those persons consents to the name change; (iv) whether the petitioner has reason to believe that any parent, guardian, or custodian is unfamiliar with the English language and, if so, the language the petitioner reasonably believes the individual can understand; (v) if the minor is at least ten years old, whether the minor consents to the name change; and (vi) if the minor is younger than ten years old, whether the minor objects to the name change; and

Committee note: A petition filed on behalf of a minor may contain confidential information pertaining to the minor. The petitioner may request that the court seal or otherwise limit inspection of a case record as provided in Rule 16-934.

~~(G)~~ (H) whether the ~~person~~ individual whose name is sought to be changed has ever registered or been required to register as a sexual offender and, if so, ~~the~~ each full ~~name(s)~~ name, ~~(~~including ~~suffixes)~~ any suffix, under which the ~~person~~ individual was registered and the state where the registration requirement originated.

Cross reference: See Code, Criminal Procedure Article, § 11-705, which requires a registered sexual offender whose name has been changed by order of court to send written notice of the change to ~~the Department of Public Safety and Correctional Services~~ each law enforcement unit where the registrant resides or habitually lives within ~~seven~~ three days after the order is entered.

(2) Documents to Be Attached to Petition

The petitioner shall attach to the petition:

(A) a copy of a birth certificate or other documentary evidence from which the court can find that the current name of the person whose name is sought to be changed is as alleged; and~~.~~

(B) if the individual whose name is sought to be changed is a minor, (i) the written consent of each parent, guardian, and custodian of the minor or an explanation why the consent is not attached, and (ii) the written consent of the minor, if the minor is at least ten years old.

~~(c) Notice~~

~~(1) Issued by Clerk~~

(d) Minors – Notice to Nonconsenting Parent, Guardian, or Custodian

(1) Generally

Upon the filing of ~~the~~ a petition for change of name of a minor, if the written consent of each parent, guardian, and custodian of the minor was not filed pursuant to subsection (c)(2)(B) of this Rule, the clerk shall sign and issue a ~~notice~~ Notice **in a form approved by the State Court Administrator** that **(A)** includes the caption of the action, **(B)** describes the substance of the petition and the relief sought, and **(C)** states ~~the latest date by which an objection to the petition may be filed.~~ that any objection to the name change shall be filed no later than 30 days after service of the petition.

(2) Notice or Advisement in Language Other Than English

If the petition states that a nonconsenting parent, guardian, or custodian may be unfamiliar with the English language, the clerk **also** shall **either** issue the Notice in the language indicated in the petition **or, if the Notice is not available in the indicated language, attach a Standard Multilingual Advisement Form approved by the State Court Administrator to the Notice that was issued in English.**

(3) Documents to Be Served

A copy of the following documents shall be served upon each nonconsenting

parent, guardian, or custodian in the manner provided by Rule 2-121:

(A) the Notice,

(B) the petition,

(C) each attachment to the petition, and

(D) if the petition indicates that the individual to be served is unfamiliar with the English language, either the Notice in the indicated language or a Standard Multilingual Advisement Form attached to the Notice.

~~(2) Publication~~

~~Unless the court on motion of the petitioner orders otherwise, the notice shall be published one time in a newspaper of general circulation in the county in which the action was pending at least fifteen days before the date specified in the notice for filing an objection to the petition. The petitioner shall thereafter file a certificate of publication.~~

~~(d) Service of Petition - When Required~~

~~If the person whose name is sought to be changed is a minor, a copy of the petition, any attachments, and the notice issued pursuant to section (c) of this Rule shall be served upon that person's parents and any guardian or custodian in the manner provided by Rule 2-121. When proof is made by affidavit that good faith efforts to serve a parent, guardian, or custodian pursuant to Rule 2-121 (a) have not succeeded and that Rule 2-121 (b) is inapplicable or that service pursuant to that Rule is impracticable, the court may order that service may be made by (1) the publication required by subsection (c)(2) of this Rule and (2) or mailing a copy of the petition, any attachments, and notice by first class mail to the last known address~~

~~of the parent, guardian, or custodian to be served.~~

~~(f)~~(e) Objection to Petition

Any person may file an objection to the petition. The objection ~~shall be filed within the time specified in the notice and~~ shall be supported by an affidavit ~~which~~ that sets forth the reasons for the objection. The affidavit shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The objection and affidavit shall be served upon the petitioner in accordance with Rule 1-321. The petitioner may file a response within 15 days after being served with the objection and affidavit. A parent, guardian, or custodian of a minor who does not file an objection within 30 days after being served in accordance with section (d) of this Rule shall be deemed to have consented to the name change of the minor. ~~A person desiring a hearing shall so request in the objection or response under the heading "Request for Hearing."~~

Committee note: Nothing in this Rule is intended to abrogate the right of a person who learns of a requested name change to object to the name change where there is personal knowledge of an illegal or fraudulent purpose or harm to the rights of others.

~~(g)~~(f) Action by Court; Hearing

(1) Name Change of Adult

~~After the time for filing objections and responses has expired, the~~ The court may hold a hearing or may rule on ~~the~~ a petition to change the name of an adult without a hearing and shall enter an appropriate order, except that the court shall not deny the petition without a hearing ~~if one was requested by the petitioner~~. The court may

not enter an order earlier than 30 days after the petition was filed.

Committee note: Although there is no publication or other required notice of a requested name change of an adult, if a person learns of a requested name change, the 30-day delay in the entry of an order after the petition is filed affords a period of time within which an objection could be filed.

(2) Name Change of Minor

The court may hold a hearing or may rule on a petition to change the name of a minor without a hearing and enter an appropriate order if (A) the written consent of the minor, if required, has been filed, and (B) each parent, guardian, and custodian (i) has filed a written consent pursuant to subsection (c)(2)(B) of this Rule, or (ii) having been served pursuant to section (d) of this Rule, did not timely file an objection. In all other cases in which a name change of a minor is requested, the court shall hold a hearing and enter an appropriate order no earlier than 30 days after all nonconsenting parents, guardians, or custodians have been served in accordance with section (d) of this Rule.

Source: This Rule is derived in part from former Rules BH70 through BH75 and is in part new.

Rule 15-901 was accompanied by the following Reporter's note:

Proposed changes to Rule 15-901 were transmitted to the Court of Appeals by the 209th Report of the Rules Committee. At the open meeting on that Report, a concern was raised about potentially sensitive information relating to minors that might be included in a petition on behalf of a minor. For example, subsection (c)(1)(G) requires

statements about the petitioner's belief that the name change is in the best interest of the minor and the minor's own support or opposition to the name change. These statements could be pro forma but could contain details that are more private. The Court remanded Rule 15-901 to the Rules Committee to consider whether any of the information pertaining to minors should be subject to shielding or redaction. No current Rules would specifically shield any of this information from public inspection.

To address the Court's concern, a proposed Committee note following subsection (c)(1)(G) has been drafted. The Committee note informs a petitioner that there may be confidential information in a petition on behalf of a minor and directs the filer to Rule 16-934 (Case Records – Court Order Denying or Permitting Inspection Not Otherwise Authorized by Rule) to request that the court limit inspection of this information. By permitting a request to limit inspection, the proposal gives the petitioner flexibility to ask for the court to exercise its authority without putting a redaction burden on the petitioner when one may not be necessary.

Proposed amendments previously approved by the Rules Committee conform the Rule to a recent statutory change and address recommendations by the Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Work Group. The title of the Chapter is amended to include actions for judicial declaration of gender identity, which are addressed in proposed new Rule 15-902.

Section (a), Applicability, is amended in light of proposed new Rule 15-902.

Section (b) is amended to strike the current language related to venue and add new subsections (b)(1) and (b)(2). Subsection (b)(1) governs venue for a petition by an adult. It is derived in part

from Code, Courts Article, § 6-201. The Committee was advised that certain circumstances may exist where an individual born in Maryland but now living in another state or country may need to seek a name change in Maryland. In response, the Committee recommends allowing an adult to file a petition under Rule 15-901 in the county where the adult was born. Subsection (b)(2) governs venue for a petition on behalf of a minor. It is derived from Code, Courts Article, §6-202 (5), which applies to certain family law actions related to a child.

Section (c) is amended to add additional required information in a petition. New subsection (c)(1)(B) requires a statement regarding venue in light of the provision permitting a petition to be filed in the county where the adult petitioner was born. The remaining subsections in (c)(1) are re-lettered. Subsection (c)(1)(G) requires a petition on behalf of a minor to state why the petitioner believes their name change is in the minor's best interest and whether parents, guardians, and custodians of the minor consent to the name change. Subsection (c)(1)(G) also requires a statement if the petitioner has reason to believe that a parent, guardian, or custodian may be unfamiliar with the English language. This information is used when the clerk generates the Notice in section (d). If the minor is at least ten years old, the consent of the minor is also required. If the minor is younger, the requirement is that the minor does not object to the name change. This language is derived from the adoption statutes, including Code, Family Law Article, §§ 5-338, 5-3A-35, and 5-3B-20. The Committee note following subsection (c)(1)(G) refers to a petition to limit public inspection of potentially sensitive information pertaining to a minor, as discussed above. The cross reference following subsection (c)(1) is amended to conform with current law. Subsection (c)(2)

is amended to add subsection (c)(2)(B), which requires the consents mentioned in subsection (c)(1)(G) to be attached to the petition. Subsection (c)(1)(H) is amended to require a petitioner who has ever registered as a sex offender to include the state where that registration requirement originated.

Sections (d) and (e) are reversed. New section (d) applies only to Notice to nonconsenting parents, guardians, and custodians of a minor. New subsection (d)(1) generally requires the clerk to issue a Notice to inform the parent, guardian, or custodian of the filing of the action and the right to object. Subsection (d)(2) provides for issuance of the Notice in a language other than English, if it is available, when the petition indicates that the recipient may be unfamiliar with English. If the Notice is not available in the language indicated, the clerk should attach an approved Standard Multilingual Advisement. The Access to Justice Department of the Administrative Office of the Courts informed the Committee that as part of its compliance with new Rule 11-112 regarding translated documents in Juvenile proceedings, the department is working to develop a standard advisement containing multiple languages informing the recipient of translation and interpreter options. The advisement has not been drafted and the department has not determined how many languages can and should be included. Subsection (d)(3) lists the documents required to be served in the manner provided in Rule 2-121.

Section (e), applicable to the name change of an adult or a minor, states that any person may file an objection to the petition. The bolded language requires the clerk to issue the notice in English and in a second language where the petition indicated that a parent, guardian, or custodian entitled to notice may lack

familiarity with the English language. The Access to Justice Department of the Administrative Office of the Courts has advised that generic court forms and notices are translated but case-specific orders and documents are not. If the notice under section (d) is standardized, it can be translated into five priority languages and additional languages as needed. A Committee note following the section states that a person with knowledge of any fraud, illegal purpose, or harm to the rights of others may object. A parent, guardian, or custodian of a minor who fails to file an objection within 30 days of service is deemed to have consented to the name change of the minor.

Former subsection (e)(2), publication, is deleted. Code, Courts Article, § 3-2201 requires the court to waive the publication requirement on motion by the petitioner. The Work Group informed the Subcommittee that after consultation with the Maryland State Police and a representative for various credit reporting agencies, it was determined that publication is an antiquated method of providing notice and is not used by those entities to track name changes. An increasing number of states have eliminated the publication requirement without any substitute notice method, including New York (by statute) and New Jersey (by court rule) in 2020. Other states that do not require publication sometimes require specific notice to interested persons, such as creditors and law enforcement, require additional documentation, such as a background check. The Subcommittee discussed the necessity of public notice for an adult name change and what, if any, standing another individual may have to object. Currently, there will be a public record of the name change through court records, although no notice will occur if the petitioner requests publication waiver, as is now permitted by law. Unless the file is shielded or sealed due to safety concerns or other good cause, the name change action

can be located in court records, including Maryland Judiciary Case Search.

Section (f) governs action by the court on a petition. New subsection (f)(1) pertains to the name change of an adult. It permits the court to hold a hearing or rule without a hearing and enter an appropriate order. The court may not deny a petition without a hearing and may not enter an order earlier than 30 days after the petition is filed. A Committee note explains that the 30-day waiting period is to permit a person who learns of the name change to object, if there is cause.

New subsection (f)(2) applies to petitions on behalf of a minor. After the notices issued pursuant to section (d) have been served, the court may hold a hearing or rule without a hearing and enter an appropriate order so long as the minor consents to the name change, if required, and the required consents have been filed or a nonconsenting parent, guardian, or custodian has been served and has not timely objected. Where a parent, guardian, or custodian objects, the court must hold a hearing. The hearing cannot be held earlier than 30 days after all nonconsenting parents, guardians, and custodians have been served.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 900 – NAME - CHANGE OF<u>; JUDICIAL DECLARATION OF GENDER IDENTITY</u>

ADD new Rule 15-902, as follows:

RULE 15-902. ACTION FOR JUDICIAL DECLARATION OF GENDER IDENTITY

(a) Applicability

This Rule applies to actions for judicial declaration of gender identity, with or without a name change.

Committee note: Under certain circumstances, a judicial declaration of gender identity may be necessary to change an individual's gender designation on a birth certificate or to affirm the individual's gender identity in legal, administrative, and other contexts.

Cross reference: See Rule 16-914 (p) concerning inspection of a case record in an action filed under this Rule. For a change of name without a judicial declaration of gender identity, see Rule 15-901.

(b) Venue

(1) Declaration of Gender Identity of an Adult

An action for judicial declaration of gender identity shall be brought in the county where the adult resides, carries on a regular business, is employed, habitually engages in a vocation, or was born.

(2) Declaration of Gender Identity of a Minor

An action for judicial declaration of gender identity of a minor shall be brought by an adult petitioner on behalf of the minor in the county where the minor resides or where a parent, guardian, or custodian of the minor resides, or where the minor was born.

(c) Petition

(1) Contents

An action for judicial declaration of gender identity shall be commenced by

filing a petition captioned "In the Matter of ..." [stating the name of the individual for whom the declaration is sought] "for judicial declaration of gender identity as..." [stating the gender designation desired]. The petition shall be under oath and shall contain the following information:

(A) the name, address, and date and place of birth of the individual for whom the relief requested is sought;

(B) a statement as to why venue is appropriate;

(C) the gender identity declaration desired;

(D) all reasons for the relief requested;

(E) a certification that the petitioner is not requesting the relief for any illegal or fraudulent purpose; and

(F) if the individual for whom the declaration is sought is a minor, (i) a statement explaining why the petitioner believes that the relief requested is in the best interest of the minor; (ii) the name and address of each parent and any guardian or custodian of the minor; (iii) whether each of those individuals consents to the relief requested; (iv) whether the petitioner has reason to believe that any parent, guardian, or custodian is unfamiliar with the English language and, if so, the language the petitioner reasonably believes the individual can understand; (v) if the minor is at least ten years old, whether the minor consents to the relief requested; and (vi) if the minor is younger than 10 years old, whether the minor objects to the relief requested.

(2) Change of Name

If the petitioner also requests a name change, the petition shall include the following information:

(A) whether the individual whose name is sought to be changed has ever been known by any other name and, if so, the name or names and the circumstances under which they were used;

(B) the change of name desired; and

(C) whether the individual whose name is sought to be changed has ever registered or been required to register as a sexual offender and, if so, each full name, including any suffix, under which the individual was registered and the state where the registration requirement originated.

Cross reference: See Code, Criminal Procedure Article, §11-705, which requires a registered sexual offender whose name has been changed by order of court to send written notice of the change to each law enforcement unit where the registrant resides or habitually lives within three days after the order is entered.

(3) Documents to Be Attached to the Petition

The petitioner shall attach to the petition:

(A) if the individual for whom relief is sought is a minor, (i) the written consents of each parent, guardian, or custodian of the minor or an explanation why the consent is not attached, and (ii) the written consent of the minor, if the minor is at least 10 years old;

(B) any documentation in support of the requested declaration of gender identity; and

(C) if the petitioner requests a name change, a copy of a birth certificate or other documentary evidence from which the court can find that the current name of the person whose name is sought to be changed is as alleged.

(d) Minors – Notice to Nonconsenting Parent, Guardian, or Custodian

(1) Generally

Upon the filing of a petition under this Rule on behalf of a minor, if the written consent of each parent, guardian, and custodian of the minor was not filed pursuant to subsection (c)(2)(B) of this Rule, the clerk shall sign and issue a Notice in a form approved by the State Court Administrator that (A) includes the caption of the action, (B) describes the substance of the petition and the relief sought, and (C) states that any objection to the relief requested shall be filed no later than 30 days after service of the petition.

(2) Notice or Advisement in Language Other Than English

If the petition states that a nonconsenting parent, guardian, or custodian may be unfamiliar with the English language, the clerk also shall either issue the Notice in the language indicated in the petition or, if the Notice is not available in the indicated language, attach a Standard Multilingual Advisement Form approved by the State Court Administrator to the Notice that was issued in English.

(3) Documents to Be Served

A copy of the following documents shall be served upon each nonconsenting parent, guardian, or custodian in the manner provided by Rule 2-121:

(A) the Notice,

(B) the petition,

(C) each attachment to the petition, and

(D) if the petition indicates that the individual to be served is unfamiliar with the English language, either the Notice in the indicated language or a Standard

Multilingual Advisement Form attached to the Notice.

(4) Objection to Petition

A parent, guardian, or custodian of a minor who does not consent to the relief requested may file an objection no later than 30 days after being served in accordance with subsection (d)(1) of this Rule. The objection shall be supported by an affidavit that sets forth the reasons for the objection. The affidavit shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The objection and affidavit shall be served upon the petitioner in accordance with Rule 1-321. The petitioner may file a response within 15 days after being served with the objection and affidavit. A parent, guardian, or custodian of a minor who does not file an objection within 30 days after being served in accordance with subsection (d)(1) of this Rule shall be deemed to have consented to the relief requested.

(e) Action by Court; Hearing

(1) Petition Filed by an Adult

The court may hold a hearing or may grant the relief requested without a hearing and shall enter an appropriate order, except that the court may not deny any of the relief requested without a hearing.

(2) Petition Filed on Behalf of a Minor

The court may hold a hearing or may grant the relief requested on a petition filed on behalf of a minor without a hearing and enter an appropriate order if (A) the written consent of the minor, if required, has been filed, and (B) each parent, guardian, and custodian (i) has filed a written consent pursuant to subsection (c)(3)(A) of this Rule, or (ii) having been

served pursuant to subsection (d)(1) of this Rule, did not timely file an objection. In all other cases, the court shall hold a hearing no earlier than 30 days after all nonconsenting parents, guardians, or custodians have been served in accordance with subsection (d)(1) of this Rule and enter an appropriate order. To aid the court in evaluating the best interests of the minor, the court may order further proceedings, which may include a specific issue evaluation using the procedure set forth in Rule 9-205.3. The court may not deny any of the relief requested without a hearing.

Committee note: Not all individuals identify as cisgender or transgender or on a binary of male or female. See *In re K.L.*, 252 Md.App. 148 (2021), citing *Grimm v. Gloucester County School Board*, 972 F. 3d 586 (4th Cir. 2020).

Cross reference: See *In re K.L.*, 252 Md.App. 148 (2021); *In re Heilig*, 372 Md. 692 (2003); Code, Health General Article, §4-211; and Code, Transportation Article, §12-305.

Source: This Rule is new.

Rule 15-902 was accompanied by the following Reporter's note:

Proposed new Rule 15-902 is recommended by the Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Work Group. Maryland courts may, under their equitable power, issue a declaration of gender identity for an individual (see *In re Heilig*, 372 Md. 692 (2003) and *In re K.L.*, 252 Md.App. 148 (2021)). Petitions by transgender and gender nonconforming individuals are filed and ruled on, but there is no standard process and no Rule

governing access to court records relating to the petitions.

Proposed new Rule 15-902 applies to actions seeking a judicial declaration of gender identity, with or without a name change. The Rules Committee recommends permitting a name change in conjunction with a judicial declaration of gender identity to allow a petitioner seeking both to file one action and pay one filing fee. A Committee note following section (a) explains the purposes of a judicial declaration of gender identity. A cross reference to Rule 16-914 (p), pertaining to inspection of a case record in an action under this Rule, and to Rule 15-901, pertaining to a change of name without a judicial declaration of gender identity, also follows section (a).

Section (b) governs venue. It is largely modeled after Rule 15-901 (b), as that Rule is proposed to be amended. See the Reporter's note to Rule 15-901. The only provision that is different from its counterpart in Rule 15-901 is subsection (b)(2), which permits filing in the jurisdiction where a minor was born. The Committee was informed that the provision is proposed for cases involving minors living outside of Maryland who cannot access a judicial declaration of gender identity in their home states.

Section (c) is also largely modeled after Rule 15-901, as proposed to be amended. Subsection (c)(1) contains provisions from Rule 15-901 that apply to both a name change and a judicial declaration of gender identity, as well as a statement about the gender identity declaration that is desired. Subsection (c)(2) contains additional required information if the petitioner is also seeking a change of name. Subsection (c)(3)(A) is borrowed from Rule 15-901 regarding attachments to a petition on behalf of a minor. Subsection (c)(3)(B)

requires the petitioner to attach "any other documentation in support of the requested gender identity." The LGBTQ+ Family Law Work Group recommended against requiring any specific documentation from a petitioner, but case law and administrative statutes cited at the end of the Rule direct a petitioner to possible documents that may be provided to assist the court. Subsection (c)(3)(C) addresses the documents required to be attached when the petitioner also requests a name change.

Section (d) is modeled after Rule 15-901 (d) and (e). Subsection (d)(4) permits an objection only by a nonconsenting parent, guardian, or custodian of a minor. Because actions under Rule 15-902 are shielded from public view, and due to the personal nature of the requested relief, only the parents, guardians, and custodians of the minors will receive notice of the action and have standing to object.

Section (e) is modeled after Rule 15-901 (f). Subsection (e)(2), pertaining to a minor, adds a provision for the court to order further proceedings, which may include a specific issue evaluation, to aid in determining the best interests of a minor. To address concerns that a parent may file a petition for judicial declaration of gender identity on behalf of a minor who is apathetic or unsure about gender identity, particularly for a minor under the age of 10 who must only "not object," a provision was added permitting the court to order further investigation to determine the minor's feelings on the issue and assist the court in determining if the declaration is in the minor's best interest.

The Chair informed the Committee that both Rules were approved at the March meeting, but the Committee was concerned

about a side issue regarding notice to parents and guardians who may have limited English proficiency. He explained that an action under Rule 15-901 or Rule 15-902 could adversely affect the individual's relationship with the child who is the subject of the petition. The Chair said that the Rules Committee and Access to Justice Department of the Administrative Office of the Courts are trying to address the issue, but there are practical difficulties with expanding translation of court-generated documents beyond the five priority languages for translation (Spanish, French, Russian, Chinese, and Korean). The Chair added that, in light of decisions made during the March 2022 meeting of the Committee, the bolded language in section (d) of Rule 15-901 would require the issuance of the Notice in English and in the target language that the respondent is thought to understand, if the Notice is available in that language. If the translated Notice is not available, the court would attach a Multilingual Advisement to the Notice. The advisement would inform the respondent that an action was filed and the general nature of the action, and direct the individual to interpreter services.

Ms. Ortiz, Director of the Access to Justice Department, said that the Department provides and manages the court interpreter program but does not offer translation services, which are provided by an outside vendor. On demand translation

of case-specific documents is not available through the Department. The Multilingual Advisement is an appropriate option that is in line with the services the courts are currently able to provide. Ms. Ortiz stated that the advisement can be drafted once, then translated into a number of languages. The Reporter noted that, in discussions prior to the meeting, Ms. Ortiz had suggested deleting the word "standard" from the phrase "Standard Multilingual Advisement" in both Rules. The Chair called for a motion. Ms. Harris moved to delete "standard" in section (d) of Rules 15-901 and 15-902 and that the Rules be approved as revised. The motion was seconded and approved by consensus. There being no further motion to amend or reject Rules 15-901 and 15-902, they were approved as amended.

Agenda Item 4. Consideration of "housekeeping" amendments to Rule 1-102 (Circuit and Local Rules) and 4-217 (Circuit and Local Rules) and the deletion of Rule 16-805 (Appointment of Bail Bond Commissioner – Licensing and Regulation of Persons Authorized to Write Bonds).

The Deputy Reporter presented Rules 1-102, Circuit and Local Rules; 4-217, Circuit and Local Rules; and 16-805 Appointment of Bail Bond Commissioner – Licensing and Regulation of Persons Authorized to Write Bonds, for consideration.

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-102 by deleting the provisions pertaining to the appointment of bail bond commissioners and licensing and regulation of bail bondsmen, and by making stylistic changes, as follows:

RULE 1-102. CIRCUIT AND LOCAL RULES

Unless inconsistent with these rules, circuit and local rules regulating (1) court libraries, (2) memorial proceedings, (3) auditors, and (4) compensation of trustees in judicial sales, ~~and (5) appointment of bail bond commissioners and licensing and regulation of bail bondsmen,~~ are not repealed. No circuit and local rules, other than ones regulating the matters and subjects listed in this Rule, shall be adopted.

Source: This Rule is derived from former Rule 1 f.

Rule 1-102 was accompanied by the following Reporter's note:

As evidenced by an Administrative Order entered March 28, 2022, the judges of the Seventh Judicial Circuit of Maryland voted to rescind the use of: (1) Local Rules 714 and 714A; and (2) a Bail Bond Commissioner.

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEEDURES

AMEND Rule 4-217 by deleting subsection (b)(3); by deleting the cross reference following subsection (b)(3); by re-numbering the definitions contained in subsections (b)(4) through (b)(7) as subsections (b)(3) through (b)(6), respectively; by deleting the cross reference following subsection (d)(3)(C); and by deleting the provision relating to a bail bond commissioner and the reference to Rule 16-805 from subsection (i)(5)(C); as follows:

RULE 4-217. CIRCUIT AND LOCAL RULES

(a) Applicability of Rule

This Rule applies to all bail bonds taken pursuant to Rule 4-216, 4-216.1, 4-216.2, or 4-216.3, and to bonds taken pursuant to Rules 4-267, 4-348, and 4-349 to the extent consistent with those rules.

(b) Definitions

As used in this Rule, the following words have the following meanings:

(1) Bail Bond

"Bail bond" means a written obligation of a defendant, with or without a surety or collateral security, conditioned on the appearance of the defendant as required and providing for the payment of a penalty sum according to its terms.

(2) Bail Bondsman

"Bail bondsman" means an authorized agent of a surety insurer.

~~(3) Bail Bond Commissioner.~~

~~"Bail bond commissioner" means any person appointed to administer rules adopted pursuant to Maryland Rule 16-805.~~

~~Cross reference: Code, Criminal Procedure Article, § 5-203.~~

~~(4)~~(3) Clerk

"Clerk" means the clerk of the court and any deputy or administrative clerk.

~~(5)~~(4) Collateral Security

"Collateral security" means any property deposited, pledged, or encumbered to secure the performance of a bail bond.

~~(6)~~(5) Surety.

"Surety" means a person other than the defendant who, by executing a bail bond, guarantees the appearance of the defendant, and includes an uncompensated or accommodation surety.

~~(7)~~(6) Surety Insurer

"Surety insurer" means any person in the business of becoming, either directly or through an authorized agent, a surety on a bail bond for compensation.

(c) Authorization to Take Bail Bond

Any clerk, District Court commissioner, or other person authorized by law may take a bail bond. The person who takes a bail bond shall deliver it to the court in which the charges are pending, together with all money or other collateral security deposited or pledged and all documents pertaining to the bail bond.

Cross reference: Code, Criminal Procedure Article, §§ 5-204 and 5-205. See Code, Insurance Article, § 10-309, which requires a signed affidavit of surety by the defendant or the insurer that shall be provided to the court if payment of premiums charged for bail bonds is in installments.

(d) Qualification of Surety

(1) In General

The Chief Clerk of the District Court shall maintain a list containing: (A) the names of all surety insurers who are in default, and have been for a period of 60 days or more, in the payment of any bail bond forfeited in any court in the State, (B) the names of all bail bondsmen authorized to write bail bonds in this State, and (C) the limit for any one bond specified in the bail bondsman's general power of attorney on file with the Chief Clerk of the District Court. The clerk of each circuit court and the Chief Clerk of the District Court shall notify the Insurance Commissioner of the name of each surety insurer who has failed to resolve or satisfy bond forfeitures for a period of 60 days or more. The clerk of each circuit court also shall send a copy of the list to the Chief Clerk of the District Court.

Cross reference: For penalties imposed on surety insurers in default, see Code, Insurance Article, § 21-103(a).

(2) Surety Insurer

No bail bond shall be accepted if the surety on the bond is on the current list maintained by the Chief Clerk of the District Court of those in default. No bail bond executed by a surety insurer directly may be accepted unless accompanied by an affidavit reciting that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: For the obligation of the District Court Clerk or a circuit court clerk to notify the Insurance Commissioner concerning a surety insurer who fails to resolve or satisfy bond forfeitures, see Code, Insurance Article, § 21-103(b).

(3) Bail Bondsman

No bail bond executed by a bail bondsman may be accepted unless the bondsman's name appears on the most recent list maintained by the Chief Clerk of the District Court, the bail bond is within the limit specified in the bondsman's general power of attorney as shown on the list or in a special power of attorney filed with the bond, and the bail bond is accompanied by an affidavit reciting that the bail bondsman:

(A) is duly licensed in the jurisdiction in which the charges are pending, if that jurisdiction licenses bail bondsmen;

(B) is authorized to engage the surety insurer as surety on the bail bond pursuant to a valid general or special power of attorney; and

(C) holds a valid license as an insurance broker or agent in this State, and that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

~~Cross reference: Code, Criminal Procedure Article, § 5-203 and Rule 16-805 (Appointment of Bail Bond Commissioner—Licensing and Regulation of Persons Authorized to Write Bonds)~~.

(e) Collateral Security

(1) Authorized Collateral

A defendant or surety required to give collateral security may satisfy the requirement by:

(A) depositing with the person who takes the bond the required amount in cash or certified check, or pledging intangible property approved by the court; or

Cross reference: See Code, Criminal Procedure Article, §§ 5-203 and 5-205, permitting certain persons to post a cash bail or cash bond when an order specifies

that the bail or bond may be posted only by the defendant.

(B) encumbering one or more parcels of real estate situated in the State of Maryland, owned by the defendant or surety in fee simple absolute, or as chattel real subject to ground rent. No bail bond to be secured by real estate may be taken unless (i) a Declaration of Trust of a specified parcel of real estate, in the form set forth at the end of this Title as Form 4-217.1, is executed before the person who takes the bond and is filed with the bond, or (ii) the bond is secured by a Deed of Trust to the State or its agent and the defendant or surety furnishes a verified list of all encumbrances on each parcel of real estate subject to the Deed of Trust in the form required for listing encumbrances in a Declaration of Trust.

(2) Value

Collateral security shall be accepted only if the person who takes the bail bond is satisfied that it is worth the required amount.

(3) Additional or Different Collateral Security

Upon a finding that the collateral security originally deposited, pledged, or encumbered is insufficient to ensure collection of the penalty sum of the bond, the court, on motion by the State or on its own initiative and after notice and opportunity for hearing, may require additional or different collateral security.

(f) Condition of Bail Bond

The condition of any bail bond taken pursuant to this Rule shall be that the defendant personally appear as required in any court in which the charges are pending, or in which a charging document may be filed based on the same acts or transactions, or to which the action may be transferred,

removed, or if from the District Court, appealed, and that the bail bond shall continue in effect until discharged pursuant to section (j) of this Rule.

(g) Form and Contents of Bond--Execution

Every pretrial bail bond taken shall be in the form of the bail bond set forth at the end of this Title as Form 4-217.2, and, except as provided in Code, Criminal Procedure Article, § 5-214, shall be executed and acknowledged by the defendant and any surety before the person who takes the bond.

(h) Voluntary Surrender of the Defendant by Surety

A surety on a bail bond who has custody of a defendant may procure the discharge of the bail bond at any time before forfeiture by:

(1) delivery of a copy of the bond and the amount of any premium or fee received for the bond to the court in which the charges are pending or to a commissioner in the county in which the charges are pending who shall thereupon issue an order committing the defendant to the custodian of the jail or detention center; and

(2) delivery of the defendant and the commitment order to the custodian of the jail or detention center, who shall thereupon issue a receipt for the defendant to the surety.

Unless released on a new bond, the defendant shall be taken forthwith before a judge of the court in which the charges are pending.

On motion of the surety or any person who paid the premium or fee, and after notice and opportunity to be heard, the court may by order award to the surety an allowance for expenses in locating and surrendering the defendant, and refund the balance to the person who paid it.

(i) Forfeiture of Bond

(1) On Defendant's Failure to Appear--Issuance of Warrant

If a defendant fails to appear as required, the court shall order forfeiture of the bail bond and issuance of a warrant for the defendant's arrest and may set a new bond in the action. The clerk shall promptly notify any surety on the defendant's original bond, and the State's Attorney, of the forfeiture of that bond and the issuance of the warrant.

Cross reference: Code, Criminal Procedure Article, § 5-211.

(2) On Defendant's Posting a Bond After Issuance of Warrant

If a new bond is set under subsection (i)(1) of this Rule and the defendant posts the bond:

(A) a judicial officer shall mark the warrant satisfied; and

(B) the court shall reschedule the hearing or trial.

(3) Striking Out Forfeiture for Cause

If the defendant or surety can show reasonable grounds for the defendant's failure to appear, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or in part; and (B) set aside any judgment entered thereon pursuant to subsection (5)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (4) of this section.

Cross reference: Code, Criminal Procedure Article, § 5-208(b)(1) and (2) and Allegany Mut. Cas. Co. v. State, 234 Md. 278, 199 A.2d 201 (1964).

(4) Satisfaction of Forfeiture

Within 90 days from the date the defendant fails to appear, which time the court may extend to 180 days upon good cause shown, a surety shall satisfy any order of forfeiture, either by producing the defendant in court or by paying the penalty sum of the bond. If the defendant is produced within such time by the State, the court shall require the surety to pay the expenses of the State in producing the defendant and shall treat the order of forfeiture satisfied with respect to the remainder of the penalty sum.

(5) Enforcement of Forfeiture

If an order of forfeiture has not been stricken or satisfied within 90 days after the defendant's failure to appear, or within 180 days if the time has been extended, the clerk shall forthwith:

(A) enter the order of forfeiture as a judgment in favor of the governmental entity that is entitled by statute to receive the forfeiture and against the defendant and surety, if any, for the amount of the penalty sum of the bail bond, with interest from the date of forfeiture and costs including any costs of recording, less any amount that may have been deposited as collateral security; ~~and~~

(B) cause the judgment to be recorded and indexed among the civil judgment records of the circuit court of the county; and

(C) prepare, attest, and deliver or forward ~~to any bail bond commissioner appointed pursuant to Rule 16-805,~~ to the State's Attorney, to the Chief Clerk of the District Court, and to the surety, if any, a true copy of the docket entries in the cause, showing the entry and recording of the judgment against the defendant and surety, if any.

Enforcement of the judgment shall be by the State's Attorney in accordance with those

provisions of the rules relating to the enforcement of judgments.

(6) Subsequent Appearance of Defendant

When the defendant is produced in court after the period allowed under subsection (4) of this section, the surety may apply for the refund of any penalty sum paid in satisfaction of the forfeiture less any expenses permitted by law. The court shall strike out a forfeiture of bail or collateral and deduct only the actual expense incurred for the defendant's arrest, apprehension, or surrender provided that the surety paid the forfeiture of bail or collateral during the period allowed for the return of the defendant under subsection (4) of this section.

(7) Where Defendant Incarcerated Outside This State

(A) If, within the period allowed under subsection (4) of this section, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State and that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, the court shall strike out the forfeiture and shall return the bond or collateral security to the surety.

(B) If, after the expiration of the period allowed under subsection (4) of this section, but within 10 years from the date the bond or collateral was posted, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State, that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, and that the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with Code, Criminal Procedure Article, § 5-208(c), subject to subsection (C) of this section, the court shall strike

out the forfeiture and refund the forfeited bail bond or collateral to the surety provided that the surety paid the forfeiture of bail or collateral within the time limits established under subsection (4) of this section.

(C) On motion of the surety, the court may refund a forfeited bail bond or collateral that was not paid within the time limits established under subsection (4) of this section if the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

(j) Discharge of Bond--Refund of Collateral Security

(1) Discharge

The bail bond shall be discharged when:

(A) all charges to which the bail bond applies have been stetted, unless the bond has been forfeited and 10 years have elapsed since the bond or other security was posted; or

(B) all charges to which the bail bond applies have been disposed of by a nolle prosequi, dismissal, acquittal, or probation before judgment; or

(C) the defendant has been sentenced in the District Court and no timely appeal has been taken, or in the circuit court exercising original jurisdiction, or on appeal or transfer from the District Court; or

(D) the court has revoked the bail bond pursuant to Rule 4-216.3 or the defendant has been convicted and denied bail pending sentencing; or

(E) the defendant has been surrendered by the surety pursuant to section (h) of this Rule.

Cross reference: See Code, Criminal Procedure Article, § 5-208(d) relating to discharge of a bail bond when the charges are stetted. See also Rule 4-349 pursuant to which the District Court judge may deny release on bond pending appeal or may impose different or greater conditions for release after conviction than were imposed for the pretrial release of the defendant pursuant to Rule 4-216, 4-216.1, 4-216.2, or 4-216.3.

(2) Refund of Collateral Security--Release of Lien

Upon the discharge of a bail bond and surrender of the receipt, the clerk shall return any collateral security to the person who deposited or pledged it and shall release any Declaration of Trust that was taken.

Source: This Rule is derived from former Rule 722 and M.D.R. 722.

Rule 4-217 was accompanied by the following Reporter's note:

As evidenced by an Administrative Order entered March 28, 2022, the judges of the Seventh Judicial Circuit of Maryland voted to rescind the use of: 1) Local Rules 714 and 714A; and 2) a Bail Bond Commissioner.

Because the Seventh Judicial Circuit is the only Judicial Circuit in Maryland to make use of a Bail Bond Commissioner and Local Rules pertaining to bail bonds, the actions commemorated in the Administrative Order have rendered Rule 16-805 surplus. As a result, Rule 16-805 is proposed to be deleted.

The following conforming amendments are proposed to Rule 4-217 as a result of the proposed deletion of Rule 16-805. Subsection (b)(3), which contains the definition "Bail Bond Commissioner" is deleted. The cross

reference following this subsection is also deleted. The definitions contained in subsections (b)(4) through (b)(7) are renumbered as subsections (b)(3) through (b)(6), respectively. The cross reference following subsection (d)(3)(C) is deleted. The provision relating to a bail bond commissioner and the reference to Rule 16-805 is proposed to be deleted from subsection (i)(5)(C).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 800 – MISCELLANEOUS COURT ADMINISTRATION MATTERS

DELETE Rule 16-805, as follows:

~~RULE 16-805. APPOINTMENT OF BAIL BOND COMMISSIONER – LICENSING AND REGULATION OF PERSONS AUTHORIZED TO WRITE BONDS~~

~~A majority of the judges of the circuit courts in any appellate judicial circuit may appoint a bail bond commissioner, license persons authorized to write bail bonds within the appellate judicial circuit, and regulate acceptance of bail bonds written by those licensees. Each bail bond commissioner appointed pursuant to this Rule shall prepare, maintain, and periodically distribute to all District Court commissioners and clerks within the jurisdiction of the appellate judicial circuit for posting in their respective offices, to the State Court Administrator, and to the Chief Clerk of the District Court, an alphabetical list of licensees~~

~~within the appellate judicial circuit, showing each licensee's name, business address and telephone number, and any limit on the amount of any one bond, and the aggregate limit on all bonds, each licensee is authorized to write.~~

~~Source: This Rule is derived from former Rule 16-817 (2016).~~

Rule 16-805 was accompanied by the following Reporter's note:

> As evidenced by an Administrative Order entered on March 28, 2022, the judges of the Seventh Judicial Circuit of Maryland voted to rescind the use of: (1) Local Rules 714 and 714A; and (2) a Bail Bond Commissioner.
>
> The actions commemorated in the Administrative Order have rendered Rule 16-805 surplus, and, as a result, Rule 16-805 is proposed to be deleted in its entirety.

The Deputy Reporter explained that Rule 1-102 is proposed to be amended in light of an administrative order from the 7th Judicial Circuit (Appendix 3) – the last jurisdiction using a bail bond commissioner – which now has eliminated the position. A motion to amend Rule 1-102 was made and seconded. By consensus, Rule 1-102 was approved as presented.

The Deputy Reporter said that the amendment to Rule 4-217 is a conforming amendment in light of removal of the bail bond commissioner language in Rule 1-102. A motion to amend Rule 4-

217 was made and seconded. By consensus, Rule 4-217 was approved as presented.

The Deputy Reported concluded that Rule 16-805 is proposed to be deleted in its entirety. He said that the Rule pertains to bail bond commissioners and is no longer necessary. A motion to delete Rule 16-805 was made and seconded. By consensus, the removal of Rule 16-805 was approved.

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