

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms 132-133 of the Maryland Judicial Center, 187 Harry S. Truman Parkway, Annapolis, Maryland on Friday, February 7, 2020.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Julia Doyle Bernhardt, Esq.
Hon. Yvette M. Bryant
Hon. John P. Davey
Mary Anne Day, Esq.
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Alvin I. Frederick, Esq.
Pamela Q. Harris, State Court
Administrator

Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Stephen S. McCloskey, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Hon. Paula A. Price
Hon. Dorothy J. Wilson
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Ryan Abbott, Courthouse News Service
Heather Cobun, Esq., Daily Record
David J. Dix, Esq., Law Clerk to Hon. Yvette M. Bryant
Hon. Matthew Fader, Chief Judge, Court of Special Appeals
Katherine B. Hager, Clerk of Court, Circuit Court for Queen Anne's County
Benjamin A. Harris, Esq., Office of the Attorney General, Criminal Appeals Division
P. Gregory Hilton, Esq., Clerk of Court, Court of Special Appeals
Kendra Randall Jolivet, Esq., Executive Secretary, Commission on Judicial Disabilities
Nadine Maeser, Public Information Officer, Government Relations and Public Affairs
Hon. John P. Morrissey, Chief Judge, District Court of Maryland

Theresa Nudell, Program Manager, Strategy & Research, Judicial Information Systems
Lisa Preston, Manager, Business Analysis, Judicial Information Systems
Matthew G. Smith, Esq., Public Policy Analyst, Access to Justice
Lonni K. Summers, Esq., Senior Program Manager, Access to Justice
Gillian Tonkin, Esq., Staff Attorney, District Court Chief Clerk's Office
Brian Zavin, Esq., Deputy Chief Attorney, Office of the Public Defender, Appellate Division

The Chair convened the meeting. Ms. Haines reminded Committee members about expense and mileage reimbursement forms. She also asked that they respond to email invitations to meetings to help determine if the Committee will have a quorum and what topics should be on the agenda.

Agenda Item 1. Reconsideration of proposed amendments to Rule 16-908 [renumbered Rule 16-915], Case Records - Required Denial of Inspection - Specific Information.

The Chair presented Rule 16-908 [renumbered Rule 16-915], (Case Records - Required Denial of Inspection - Specific Information), for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO JUDICIAL RECORDS

DIVISION 2. LIMITATIONS ON ACCESS

AMEND Rule 16-908, as follows:

Rule 16-915. CASE RECORDS - REQUIRED DENIAL
OF INSPECTION - SPECIFIC INFORMATION

Except as otherwise provided by law, the Rules in this Chapter, or court order, a custodian shall deny inspection of a case record or a part of a case record that would reveal:

(a) The name, address, telephone number, e-mail address, or place of employment of an individual who reports the abuse of a vulnerable adult pursuant to Code, Family Law Article, § 14-302.

(b) Except as provided in Code, General Provisions Article, § 4-331, the home address, telephone number, and private e-mail address of an employee of the State or a political subdivision of the State.

(c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or petition filed under Rule 16-934.

(d) Any part of the Social Security or federal tax identification number of an individual.

(e) A trade secret, confidential commercial information, confidential financial information, or confidential geological or geophysical information.

~~(e)~~ (f) Information about a person who has received a copy of a case record containing information prohibited by Rule 1-322.1.

~~(f)~~(g) The address, telephone number, and e-mail address of a payee contained in a Consent by the payee filed pursuant to Rule 15-1302 (c) (1) (F).

Cross reference: See Rule 16-934 (h) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions.

Source: This Rule is derived from former Rule 16-908 (2019).

Rule 16-915 was accompanied by the following Reporter's note:

REPORTER'S NOTE

Amendments to Rule 16-908 [renumbered Rule 16-915] have been approved by the Rules Committee as part of the Committee's proposed revisions to the Rules in Title 16, Chapter 900. An additional amendment to the Rule adds trade secrets, confidential commercial information, confidential financial information, and confidential geological or geographic information to the list of types of information that are not subject to public inspection. The proposed addition tracks language from Code, General Provisions Article, §4-335.

The Chair explained that the proposed amendment restores the confidentiality of trade secrets which was omitted from an earlier draft of the Rules already considered and approved by the Committee. He explained that a motion is required to adopt

the amendment and a motion was made and seconded to approve the amendment. Ms. Lindsey asked how a clerk will know what information constitutes a trade secret. The Chair responded that clerks will not be required to identify that information but will have notice of it. Ms. Lindsey suggested that the Rule include a Committee note to emphasize that filers need to be aware that the clerk will not know if information is a trade secret. The Chair said that it is in the Title 16 Rules that a filing must notify the clerk of any confidential or restricted information. Judge Bryant suggested that a cross reference be added to the Rule. The Chair replied that a cross reference to the Title 16 Rules in the Title 20 Rule has been noted and will be added.

By consensus, the Committee approved the Rule as amended.

Agenda Item 2. Consideration of proposed new Rule 20-201.1, Restricted Information; amendments to Rules 20-101, Definitions, 20-201, Requirements for Electronic Filing, 20-203, Review by Clerk, Striking of Submission, Deficiency Notice, Correction, Enforcement; and conforming amendment to Rule 20-106, When Electronic Filing Required, Exceptions.

The Chair presented new Rule 20-201.1 (Restricted Information); amendments to Rules 20-101 (Definitions), 20-201 (Requirements for Electronic Filing), 20-203 (Review by Clerk; Striking of Submission; Deficiency Notice; Correction;

Enforcement); and conforming amendment to Rule 20-106 (When Electronic Filing Required; Exceptions) for consideration.

MARYLAND RULES

TITLE 20 - ELECTRONIC FILING AND CASE
MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

Add new Rule 20-201.1, as follows:

RULE 20-201.1. RESTRICTED INFORMATION

(a) Statement in Submission; Notice
Regarding Restricted Information

(1) Requirement

Each submission filed pursuant to Rule 20-201 shall (1) state **prominently on the first page** whether it contains restricted information. **If the submission contains restricted information, it shall be accompanied by a completed Notice Regarding Restricted Information on a form approved by the State Court Administrator. The completed Notice shall be subject to public inspection.**

(2) Failure to File Notice Regarding
Restricted Information

If the filer fails to file a completed Notice of Restricted Information as required, the clerk shall reject the submission without prejudice to refile the submission accompanied by the Notice. The clerk shall enter on the docket that a submission was received but was rejected for non-compliance with Rule 20-201.1 (a).

(b) Submission Not Subject to Public
Inspection

If the submission, as a whole, is not subject to public inspection by Rule, **other law, or court order**, the filer shall cite the grounds for such an assertion in the Notice.

(c) Submission Containing Restricted Information

If a filer believes that a submission contains both restricted information that is not subject to public inspection and information that is subject to public inspection, and that the restricted information is necessary to be included in the submission, the filer shall (1) file both an unredacted version of the submission, noting prominently **in the title of the version** that the version is **"unredacted - to be shielded,"** and a redacted version of the submission that excludes the restricted information, noting prominently **in the title of the version** that the version is **"redacted,"** and (2) state in the Notice the grounds for the assertion that some information is restricted information and for including the restricted information in the submission.

Cross reference: See Rule 20-203 (e), requiring the unredacted version to be shielded.

(d) Request for Court Seal

If the filer desires that a submission that otherwise would be accessible to the public be placed under a court seal, the filer shall (1) state that the submission is to be under seal, (2) include a file name that includes the word **"sealed,"** (3) state clearly the legal basis justifying the sealing of the submission, and (4) state whether there is already in effect a court order to seal the submission and, if so, identify that order. If there is no such order, the filer shall include a

motion and proposed order to seal the submission.

Cross reference: See Rule 20-203 (f) for the consequence of a failure to attach a motion and proposed order.

(e) Publication of Form of Notice

The Notice Regarding Restricted Information form approved by the State Court Administrator shall be published on the Judiciary's website and in the MDEC policies and procedures manual.

Committee Note: A submission containing restricted information is e-filed by means of selecting "confidential" in the MDEC system. The accompanying Notice Regarding Restricted Information is e-filed by the means of selecting "public" in the MDEC system. For detailed information regarding e-filing, see the MDEC policies and procedures manual adopted pursuant to Rule 20-103 and posted on the Judiciary website.

Source: This Rule is new.

MARYLAND RULES

TITLE 20 - ELECTRONIC FILING AND CASE
MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

Amend Rule 20-101, as follows:

RULE 20-101. DEFINITIONS

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

(a) Appellate Court

"Appellate court" means the Court of Appeals or the Court of Special Appeals, whichever the context requires.

(b) Business Day

"Business day" means a day that the clerk's office is open for the transaction of business. For the purpose of the Rules in this Title, a "business day" begins at 12:00.00 a.m. and ends at 11:59.59 p.m.

(c) Clerk

"Clerk" means the Clerk of the Court of Appeals, the Court of Special Appeals, or a circuit court, an administrative clerk of the District Court, and authorized assistant clerks in those offices.

(d) Concluded

An action is "concluded" when

(1) final judgment has been entered in the action;

(2) there are no motions, other requests for relief, or charges pending; and

(3) the time for appeal has expired or, if an appeal or an application for leave to appeal was filed, all appellate proceedings have ended.

Committee note: This definition applies only to the Rules in Title 20 and is not to be confused with the term "closed" that is used for other administrative purposes.

(e) Filer

"Filer" means a person who is accessing the MDEC system for the purpose of filing a submission and includes each person whose signature appears on the submission for that purpose.

Committee note: The internal processing of documents filed by registered users, on the one hand, and those transmitted by judges, judicial appointees, clerks, and judicial personnel, on the other, is different. The latter are entered directly into the MDEC electronic case management system, whereas the former are subject to clerk review under Rule 20-203. For purposes of these Rules, however, the term "filer" encompasses both groups.

(f) Hand-Signed or Handwritten Signature

"Hand-signed or handwritten signature" means the signer's original genuine signature on a paper document.

(g) Hyperlink

"Hyperlink" means an electronic link embedded in an electronic document that enables a reader to view the linked document.

(h) Judge

"Judge" means a judge of the Court of Appeals, Court of Special Appeals, a circuit court, or the District Court of Maryland and includes a senior judge when designated to sit in one of those courts.

(i) Judicial Appointee

"Judicial appointee" means a judicial appointee, as defined in Rule 18-200.3.

(j) Judicial Personnel

"Judicial personnel" means an employee of the Maryland Judiciary, even if paid by a

county, who is employed in a category approved for access to the MDEC system by the State Court Administrator;

(k) MDEC or MDEC System

"MDEC" or "MDEC system" means the system of electronic filing and case management established by the Court of Appeals.

Committee note: "MDEC" is an acronym for Maryland Electronic Courts. The MDEC system has two components. (1) The electronic filing system permits users to file submissions electronically through a primary electronic service provider (PESP) subject to clerk review under Rule 20-203. The PESP transmits registered users' submissions directly into the MDEC electronic filing system and collects, accounts for, and transmits any fees payable for the submission. The PESP also accepts submissions from approved secondary electronic service providers (SESP) that filers may use as an intermediary. (2) The second component--the electronic case management system--accepts submissions filed through the PESP, maintains the official electronic record in an MDEC county, and performs other case management functions.

(l) MDEC Action

"MDEC action" means an action to which this Title is made applicable by Rule 20-102.

(m) MDEC County

"MDEC County" means a county in which, pursuant to an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, MDEC has been implemented.

(n) MDEC Start Date

"MDEC Start Date" means the date specified in an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website from and after which a county first becomes an MDEC County.

(o) MDEC System Outage

(1) For registered users other than judges, judicial appointees, clerks, and judicial personnel, "MDEC system outage" means the inability of the primary electronic service provider (PESP) to receive submissions by means of the MDEC electronic filing system.

(2) For judges, judicial appointees, clerks, and judicial personnel, "MDEC system outage" means the inability of the MDEC electronic filing system or the MDEC electronic case management system to receive electronic submissions.

(p) Redact

"Redact" means to exclude information from a document accessible to the public.

(q) Registered User

"Registered user" means an individual authorized to use the MDEC system by the State Court Administrator pursuant to Rule 20-104.

(r) Restricted Information

"Restricted information means information ~~(1) prohibited by Rule or other law from being included in a court record,~~ ~~(2) required by Rule or other law to be redacted from a court record,~~ ~~(3) placed under seal by a court order,~~ or ~~(4) otherwise required to be excluded from the court record by court order.~~ that, by Rule or other law, is not subject to public inspection or is prohibited from being

included in a court record absent a court order.

~~Cross references. See Rule 1-322.1 (Exclusion of Personal Identifier Information in Court Filings) and the Rules in Title 16, Chapter 900 (Access to Judicial Records).~~

Committee note: There are several Rules and statutes that (1) make certain categories of records inaccessible to the public except by court order or (2) preclude certain information from being included in judicial records that otherwise are accessible to the public. See generally the Rules in Title 16, Chapter 900 and Rule 1-322.1. Filers of submissions under MDEC need to be aware of those provisions and alert the clerk to whether a document, or a part of a document, included in a submission is that kind of document or contains that kind of information. See Rules 20-201 (h), 20-201.1, and 20-203 (d), (e), and (f). Failure to comply with the requirements in those Rules may result in rejection or striking of the submission.

(s) Scan

“Scan” means to convert printed text or images to an electronic format compatible with MDEC.

(t) Signature

Unless otherwise specified, “signature” means the signer's typewritten name accompanied by a visual image of the signer's handwritten signature or by the symbol /s/.

Cross reference: Rule 20-107.

(u) Submission

“Submission” means a pleading or other document filed in an action. “Submission”

does not include an item offered or admitted into evidence in open court.

Cross reference: See Rule 20-402.

(v) Tangible Item

"Tangible item" means an item that is not required to be filed electronically. A tangible item by itself is not a submission; it may either accompany a submission or be offered in open court.

Cross reference: See Rule 20-106 (c) (2) for items not required to be filed electronically.

Committee note: Examples of tangible items include an item of physical evidence, an oversize document, and a document that cannot be legibly scanned or would otherwise be incomprehensible if converted to electronic form.

(w) Trial Court

"Trial court" means the District Court of Maryland and a circuit court, even when the circuit court is acting in an appellate capacity.

Committee note: "Trial court" does not include an orphans' court, even when, as in Harford and Montgomery Counties, a judge of the circuit court is sitting as a judge of the orphans' court.

Source: This Rule is new.

MARYLAND RULES

TITLE 20 - ELECTRONIC FILING AND CASE
MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

Amend Rule 20-201, as follows:

RULE 20-201. REQUIREMENTS FOR ELECTRONIC FILING

(a) Scope

Subject to section (l) of this Rule, sections (b), (c), and (e) of this Rule apply to all filers. Sections (d), (f), (g), (h), (j), (k), and (l), ~~and (m)~~ of this Rule do not apply to judges, judicial appointees, clerks, and judicial personnel.

(b) Authorization to File

A person may not file a submission in an MDEC action unless authorized by law to do so.

(c) Policies of State Court Administrator

A filer shall comply with all published policies and procedures adopted by the State Court Administrator pursuant to Rule 20-103.

(d) Signature

If, under Rule 1-311, the signature of the filer is required, the submission shall be signed in accordance with Rule 20-107.

(e) Multiple Submissions Filed Together

All submissions related to a particular MDEC action that are filed together at one time shall be included in a single electronic folder, sometimes referred to as an envelope.

Committee note: As an example, an answer to a complaint, a counter-claim, a cross-claim, and a motion for summary judgment, all filed at the same time in the same action, must be

filed as separate pleadings or papers but in a single electronic folder.

(f) Service Contact Information

A registered user who files a submission and who will be entitled to electronic service of subsequent submissions in the action shall include in the submission accurate information as to the e-mail address where such electronic service may be made upon the registered user. If the submission is the registered user's initial submission in an action, or if a change in the e-mail address is made, the filer also shall provide service contact information by using the "Actions" drop-down box that is part of the MDEC submission process.

Committee note: If the "Actions" drop-down box is not used to provide service contact information when an initial submission is filed in an action, the default e-mail address for subsequent notifications and service of other parties' submission in the action will be the e-mail address that the filer used when transmitting the initial submission in the action.

(g) Certificate of Service

(1) Generally

Other than an original pleading that is served by original process, each submission that is required to be served pursuant to Rule 20-205 (d) shall contain a certificate of service signed by the filer.

(2) Non-Electronic Service

If service is not to be made electronically on one or more persons entitled to service, service on such persons shall be made in accordance with the applicable procedures established by other Titles of the Maryland Rules, and the submission shall include a certificate of

service that complies with Rule 1-323 as to those persons and states that all other persons, if any, entitled to service were served by the MDEC system.

(3) Electronic Service

If service is made electronically by the MDEC system on all persons entitled to service, the certificate shall so state.

(h) Restricted information

~~(1) Generally~~

~~Except as provided in subsection (h)(2) of this Rule 20-201.1, a submission filed by a filer shall not contain any restricted information.~~

~~(2) Where restricted information is necessary to be included, the filer shall (A) state the reason and a legal basis for including the restricted information, and (B) file both an unredacted version of the document, noting prominently in the caption that the document is unredacted, and a redacted version of the document that excludes the restricted information, noting prominently in the caption that the document is redacted.~~

(i) Electronic File Names

The electronic file name for each submission shall relate to the title of the submission. If a submission relates to another submission, the file name and the title of the submission shall make reference to the submission to which it relates. **If all or part of a submission is to be sealed or shielded pursuant to Rule 20-201.1, the electronic file name shall so indicate.**

~~(j) Sealed Submissions. If the filer desires the submission to be under court seal, the submission shall (1) state prominently in the caption that the document~~

~~is to be under seal, (2) have a file name that includes the word "sealed," and (3) state whether there is already in effect a court order to seal the document and, if so, identify that order. If there is no such order, the submission shall include a motion and proposed order to seal the document, and the clerk temporarily shall seal the submission pending the court's action on the motion.~~

~~(k)~~ (j) Proposed Orders

A proposed order to be signed by a judge or judicial appointee shall be (1) in an electronic text format specified by the State Court Administrator and (2) filed as a separate document identified as relating to the motion or other request for court action to which the order pertains. The file name of the proposed order shall indicate that it is a proposed order.

Committee note: As originally adopted, section ~~(k)~~ (j) of this Rule required that a proposed order be submitted in "an editable text form." Because at the time of initial implementation, the MDEC system could only accept pdf documents, amendments to section (j) [formerly lettered (k)] were made in 2015 to give the State Court Administrator the flexibility to specify the electronic format of the proposed order. The filer should consult the MDEC policies and procedures posted on the Judiciary website for any changes to the required format.

~~(l)~~ (k) Fee

(1) Generally

A submission shall be accompanied, in a manner allowed by the published policies and procedures adopted by the State Court Administrator, by any fee required to be paid in connection with the filing.

(2) Waiver--Civil Action

(A) A filer in a civil action who (i) desires to file electronically a submission that requires a prepaid fee, (ii) has not previously obtained and had docketed a waiver of prepayment of the fee, and (iii) seeks a waiver of such prepayment, shall file a request for a waiver pursuant to Rule 1-325 or Rule 1-325.1, as applicable.

(B) The request shall be accompanied by (i) the documents required by Rule 1-325 or Rule 1-325.1, as applicable, (ii) the submission for which a waiver of the prepaid fee is requested, and (iii) if applicable, a proposed order granting the request.

(C) No fee shall be charged for the filing of the waiver request.

(D) The clerk shall docket the request for waiver. If the clerk waives prepayment of the prepaid fee pursuant to Rule 1-325 (d) or the applicable provision of Rule 1-325.1, the clerk also shall docket the attached submission. If prepayment is not waived by the clerk, the clerk and the court shall proceed in accordance with Rule 1-325 (e) or Rule 1-325.1 (c), as applicable.

(3) Waiver--Criminal Action

A fee waiver in a criminal action is governed by Rule 7-103 (c) (2), 8-201 (b) (2), or 8-303 (a) (2), as applicable.

~~(m)~~ (1) Filings by Certain Judicial Officers and Employees

(1) District Court Commissioners

(A) Filings in District Court

In accordance with policies and procedures approved by the Chief Judge of the District Court and the State Court Administrator, District Court commissioners shall file electronically with the District Court reports of pretrial release

proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-216, 4-216.1, 4-217, 4-267, or 4-347. Those filings shall be entered directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a District Court clerk.

Committee note: The intent of the last sentence of subsection ~~(m)(1)(A)~~ (1)(1)(A), as well as subsections ~~(m)(1)(B)~~ (1)(1)(B) and ~~(m)(2)~~ (1)(2), is to provide the same obligation to review and correct post-filing docket entries that the clerk has with respect to filings under Rule 20-203 (b)(1).

(B) Filings in Circuit Court

Subject to approval by the Chief Judge of the Court of Appeals, the State Court Administrator may adopt policies and procedures permitting District Court Commissioners to file electronically with a circuit court reports of pretrial release proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-216, 4-216.1, 4-217, 4-267, or 4-347. The policies and procedures shall permit District Court Commissioners to enter those filings directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a circuit court clerk.

(2) Circuit Court Employees

In addition to authorized employees of the clerk's office and with the approval of the county administrative judge, the clerk of a circuit court may authorize other employees of the circuit court to enter filings directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a circuit court clerk.

Committee note: In some counties, there are circuit court employees who are not employees in the clerk's office but who perform duties that, in other counties, are performed by employees in the clerk's office. Those employees are at-will employees who serve at the pleasure of the court or the county administrative judge. The intent of subsection ~~(m)(2)~~ (1)(2) is to permit the clerk, with the approval of the county administrative judge, to authorize those employees to enter filings directly into the MDEC system as part of the performance of their official duties, subject to post-filing review by the clerk. It is not the intent that this authority apply to judges' secretaries, law clerks, or administrative assistants. Rule 20-108 (b) authorizes judges and judicial appointees in MDEC counties to delegate to law clerks, secretaries, and administrative assistants authority to file submissions on behalf of the judge or judicial appointee. That delegated authority is a ministerial one, to act on behalf of and for the convenience of the judge or judicial appointee and not an authority covered by subsection ~~(m)(2)~~ (1)(2).

Source: This Rule is new.

MARYLAND RULES

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

Amend Rule 20-203, as follows:

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

(a) Time and Scope of Review

(1) Inapplicability of Section

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

(2) Review by Clerk

As soon as practicable, the clerk shall review a submission for compliance with Rule 20-201 (g) and the published policies and procedures for acceptance established by the State Court Administrator. If the clerk determines that the filer has used an incorrect case number for the submission, and the error is not readily susceptible to correction pursuant to subsection (b) (1) of this Rule, the clerk shall reject the submission and promptly notify the filer.

(b) Docketing

(1) Generally

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

(2) Submission Signed by Judge or
Judicial Appointee

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

(3) Submission Generated by Clerk

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

(c) Striking of Certain Non-compliant
Submissions

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

(d) Deficiency Notice

(1) Issuance of Notice

If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20 or an applicable published

policy or procedure established by the State Court Administrator, the clerk shall send to the filer with a copy to the parties that have entered an appearance or have been served a deficiency notice describing the nature of the violation unless the deficiency is cured prior to the sending of the notice.

(2) Judicial Review; Striking of Submission

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

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

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

(2) Shielding of Unredacted Version of Submission

If, pursuant to Rule ~~20-201(h)(2)~~ 20-201.1 (c), a filer has filed electronically a redacted and an unredacted submission, the clerk shall docket both submissions and shield the unredacted submission from public access. Any party and any person who is the subject of the restricted information contained in the unredacted submission may file a motion to strike the unredacted submission. Upon the

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

(3) Shielding on Motion of Party

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

(f) Request for Court Seal

(1) Existing Order

If a filer requests that a document included in a transmission be placed under court seal pursuant to Rule 20-201.1 and identifies an existing order permitting the document to be sealed, the court shall seal the document.

(2) No Existing Order; Attached Motion

If there is no existing order but there is an attached motion and proposed order, the clerk shall docket the motion and proposed order but shield those documents pending a ruling on the motion.

(3) No Existing Order; No Attached Motion and Proposed Order

If there is no existing order and no attached motion and proposed order, the clerk shall reject the submission without prejudice to refile it with an attached motion and proposed order. The clerk shall enter on the docket that a submission was received with a request that it be sealed and was rejected for non-compliance with Rule 20-201.1 (d). **Unless otherwise ordered by the court for good cause shown,** a refiled submission shall **[not]** relate back to the filing of the rejected submission.

Committee note: The clerk will reject the submission under subsection (f)(3) of this Rule because (1) the filer does not want the

document to be accessible to the public and (2) there is nothing to present to a judge and no basis for placing the document under seal. The docket entry showing that a document was received and rejected is for transparency purposes.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 8 - ELECTRONIC FILING AND CASE
MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-106, as follows:

Rule 20-106. WHEN ELECTRONIC FILING
REQUIRED; EXCEPTIONS

. . .

(d) Paper Submissions

(1) Compliance With MDEC Rules

A paper submission shall comply with Rule 20-201 (h) and ~~(i)~~(k). If applicable, a paper submission also shall comply with Rule ~~20-201-(j)~~ 20-201.1.

(2) Review by Clerk; Scanning

(A) Except as provided in subsection (d) (2) (B) of this Rule, upon receipt of a submission in paper form, the clerk shall

review the submission for the presence of a signature and for compliance with Rule 20-107 (a)(1), ~~and~~ Rule 20-201 (g), ~~and (1)(k)~~, and Rule 20-201.1. If the submission is in compliance, the clerk shall scan it into the MDEC system, verify that the electronic version of the submission is legible, and docket the submission. If the submission is not in compliance, the clerk shall decline to scan it and promptly notify the filer in person or by first-class mail that the submission was rejected and the reason for the rejection.

Committee note: The clerk's pre-scanning review is a ministerial function, limited to ascertaining whether any required fee has been paid (Rule 20-201 ~~(1)(k)~~); ~~and~~ the presence of the filer's signature; a certificate of service if one is required (Rule 20-201 (g)); and whether a Notice Regarding Restricted Information is present, if required (Rule 20-201.1 (a)).

(B) Upon receipt of a submission in paper form that is required by the Rules in this Title to be filed electronically, the clerk shall (i) decline to scan the submission, (ii) notify the filer electronically, if possible, or otherwise by first-class mail, that the submission was rejected because it was required to be filed electronically, and (iii) enter on the docket that the submission was received and that it was not entered into the MDEC system because of non-compliance with Rule 20-106. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

Committee note: Subsection (d)(2)(B) of this Rule is necessary to enforce the electronic filing requirement of Rule 20-106. It is intended to be used only when it is clear that the filer is a registered user who is required to file submissions electronically and that none of the

exceptions in sections (b) or (c) of this Rule appear to be applicable.

(3) Destruction of Paper Submission

Subject to subsections (d)(4) and (e)(2) of this Rule, the clerk may destroy a paper submission after scanning it and verifying the legibility of the electronic version of it.

(4) Optional Return of Paper Document

The State Court Administrator may approve procedures for identifying and, where feasible, returning paper documents that must be preserved in their original form.

(5) Public Notice

The State Court Administrator shall provide public notice alerting the public to the procedure set forth in subsections (d)(2), (3), and (4) of this Rule.

Committee note: If submissions properly filed in paper form are to be destroyed by the clerk following their being scanned into MDEC, the public must be given reasonable notice of that policy. Notice may be given in a variety of ways, including on the Judiciary website, on on-line and pre-printed forms prepared by the Judiciary, on summonses or other notices issued by the clerks, and by postings in the clerks' offices.

. . .

Source: This Rule is new.

Chief Judge Morrissey informed the Committee that part of his responsibility is overseeing the implementation of the Maryland Electronic Courts (MDEC) project in the state. He explained that recent newspaper articles raised an issue with the confidential filing part of the MDEC system. He said that when people raise issues, the business process is evaluated to make sure things are working as they should. The newspaper articles raised important points about the use of the confidential filing selection by attorneys and how a member of the public can learn why a document is not available to be viewed at a public kiosk.

Chief Judge Morrissey noted that the Judiciary presumes that all records are public unless made otherwise by statute or by rule and cited the Case Search system as an example of the Judiciary's commitment to public access. Documents in certain kinds of cases, such as juvenile cases, are not open to the public. Some kinds of documents in cases that otherwise are open, such as tax returns, are not open to public inspection. In certain documents that are open to the public, restricted information in those documents, such as a Social Security number, are redacted. Documents or entire case files can also be sealed by court order.

Chief Judge Morrissey said that a bill in the General Assembly would require a motion to seal in all situations, but

he explained that the bill is not necessary because statutes and rules already require these cases, documents, and information to be shielded from public inspection. He explained that the Subcommittee attempted to address the issues raised by removing the confidential filing selection in MDEC and instead requiring a form to explain why a file or document is not subject to public inspection. Committee members were provided with a draft of the form, which Chief Judge Morrissey said is not finalized. Under the proposed Rule, an attorney must file the form if the attorney believes that a case record, document, or part of a document should be kept from public inspection. The form must indicate why – under what authority – the filing is not open to public inspection.

The group drafting the form is attempting to compile all statutes that would require or justify a case or document being unavailable to the public. He noted that the form will be public, which addresses the issue of how an individual can learn why he or she cannot view a document at the courthouse. Chief Judge Morrissey said that attorneys may not read the Rules thoroughly or the Rules were unclear and people did not understand what they were supposed to do with respect to confidential filings. He explained that the new Rule will fix that problem and called it a reasonable approach to make sure the Rules are followed. He added that MDEC cannot be compared

to PACER, the federal electronic filing system, and the federal courts do not deal with a lot of the case types that state courts see, such as divorces and adoptions. He said that the Court remains committed to making sure the system runs correctly and he encouraged anyone with issues to let his office know.

The Chair confirmed that the purpose of the Rule changes is to clarify and fix any perceived or actual ambiguities. He thanked the media for alerting the Committee to the issues and said that electronic filing provides more transparency than paper records but also creates unexpected issues. He noted that MDEC is complex and evolving. The amendments before the Committee were the result of meetings between the Rules Committee, the Major Projects Committee, Judicial Information Systems ("JIS") personnel, clerks, Administrative Office of the Courts personnel, and the Attorney General's Office. The changes will allow JIS to delete the confidentiality button on the MDEC screen and provide an alternative way for filers to alert the clerk that all or part of a document is not subject to public inspection because of the type of case or type of document, or because the filer wishes it to be sealed. The Rules also tell the clerk's office what to do if a filer violates the form requirement. Rule 20-101 (r) redefines restricted information, at the suggestion of the Attorney

General's Office, and a Committee note attempts to explain what restricted information is.

Ms. Lindsey asked for clarification about what the clerk's office will see when documents are filed. She pointed out that Rule 20-201.1 says that submissions "shall ... state prominently on the first page whether it contains restricted information." The Chair said that the clerk will only be alerted to a filing that is not public and suggested that "whether" be changed to "if." Ms. Bernhardt agreed that the Rule should say "if." Ms. Haines suggested rephrasing the Rule to read, "If a document contains restricted information, each submission...."

The Chair confirmed that the intent of the Rule is to alert the clerk only if a filing is not open to the public. A clerk knows that documents filed in juvenile cases, adoptions, and guardianships are not subject to public inspection. The State Court Administrator can identify those actions and update its policies and procedures. The form will require the filer to check boxes indicating what is confidential, whether it is the entire document or only a portion, and why. If the form is not included, the clerk does not have to make a legal decision about confidentiality. The form is open to public inspection.

Mr. Shellenberger said that the first item on the form, an arrest warrant, is confidential, but he asked who will fill out the form since warrants are usually issued by Commissioners. He

pointed out that some cases begin with a summons, which is public, then convert to an arrest warrant when the defendant fails to appear in court. The Chair responded that such issues are why the form is still a work in progress. The law currently shields warrants that have not been served. He noted that the form is not part of the Rules but is being developed.

The Chair explained that under Rule 16-913, which will be renumbered as 16-916 under unrelated Rule changes, the filer already had a duty to inform the clerk in writing about confidential information in a document. That Rule also provides and will continue to provide that the clerk is not bound by the filer's statement about confidentiality but is entitled to rely on that statement and not be held liable if the clerk allows public inspection of a document. If a clerk happens to notice unredacted confidential information, such as a Social Security number, the clerk can redact it or send the filing back, but is not required to go through each filing. The proposed Rule changes take the Title 16 obligation and include it in the MDEC Rules.

The Chair said that sections (b), (c), and (d) clarify what the filer must do depending on the circumstances. If the entire document is not subject to public inspection, the filer must state that fact and the basis for it on the notice. If part of a document is confidential, the filer must file a redacted

version and an unredacted version and label them. If the filer wants the document sealed, the filer must either identify an existing court order that seals the document or include a motion and proposed order to seal it.

By consensus, the Committee approved Rule 20-201.1 as amended.

The Chair said that Rule 20-203 explains what happens once the clerk has the filing. He said that there are two amendments. Subsection (a)(2) instructs the clerk to review the submission for compliance and to reject it if it contains an incorrect case number, unless the error can be easily corrected. Ms. Lindsey commented that this could be done as a local custom but said that it gives clerks significant leeway to reject a filing or correct it. The Chair responded that the option to correct a filing was in Title 16 before MDEC existed. In smaller counties and rural counties, the clerks would call lawyers and inform them of a mistake in the case number but clerk's offices in larger subdivisions did not have the ability to do so all the time. He explained that the language was put in the Rule to allow clerks to make the correction if they wanted to, but it is not required. Ms. Lindsey said that the language leaves a lot of room for interpretation by clerks. She also commented that she is concerned about what clerks should do with new cases filed in the wrong jurisdiction. The Chair noted

that it is a venue issue for the defendant to raise if a case is filed in the wrong county, which is different than an incorrect case number on an existing file. Ms. Lindsey said that filers have mistakenly submitted Anne Arundel County cases in Allegany County on the last day to file before the statute of limitations runs. She asked if her office is supposed to reject that filing, which would bar the plaintiff from filing it in the correct jurisdiction. The Chair said he sees that situation as a separate issue from an incorrect case number where an open file exists. Judge Wilson said that the proposed Rule allows a clerk to recognize that a filing has been made with the wrong case number and either correct it if the clerk is able or reject it. Judge Bryant said that the Court of Special Appeals held in *Cave v. Elliott*, 190 Md. App. 65 (2007) that the clerk has no authority to reject a pleading due to an incorrect caption. Ms. Harris commented that the appellate courts routinely correct filings with the wrong term number.

The Chair said that section (f) outlines the process when the filer has requested an order sealing the filing. This amendment addresses one of the issues raised by the newspapers about the *Capital Gazette* shooting case. The filer must tell the clerk there is an existing order sealing the filing or include a motion to seal. The clerk can reject the submission if it does not comply with the Rule and the submission can be

refiled. The Chair said that the Committee needs to determine if a refiled submission should relate back to the original filing. Ms. Bernhardt asked if there are other provisions in the Rules that allow a filing to relate back. Chief Judge Morrissey said that a filing with a deficiency relates back to the original filing. Ms. Bernhardt said that the same should be true for filings under Rule 20-203. Ms. Haines suggested that the Rule read, "Unless otherwise ordered by the court for good cause shown, a refiled submission shall relate back."

By consensus, the Committee approved Rule 20-203 as amended.

The Chair explained that the remaining amendments to Rules 20-106 and 20-201 are conforming amendments which were not presented to a subcommittee. He requested a motion and a motion was made and seconded to approve the amendment.

By consensus, the Committee approved proposed Rules 20-206 and 20-201 as presented.

Agenda Item 3. Consideration of proposed amendments to appellate rules to streamline appeals in the Court of Special Appeals: Rules 8-411, Transcript; 8-431, Motions; 8-502, Filing of Briefs; 8-504, Contents of Brief; 8-521, Assignment of Cases; and 8-523, Consideration on Brief.

Judge Nazarian presented Rules 8-411 (Transcript), 8-431 (Motions), 8-502 (Filing of Briefs), 8-504 (Contents of Brief),

8-521 (Assignment of Cases), and 8-523 (Consideration on Brief) for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-411, to correct a typo in subsection (a)(2) as follows:

Rule 8-411. TRANSCRIPT

(a) Ordering of Transcript

Unless a copy of the transcript is already on file, the appellant shall order in writing from the court reporter a transcript containing:

(1) a transcription of (A) all the testimony or (B) that part of the testimony that the parties agree, by written stipulation filed with the clerk of the lower court, is necessary for the appeal or (C) that part of the testimony ordered by the Court pursuant to Rule 8-206 (c) or directed by the lower court in an order;

(2) a transcription of any proceeding relevant to the appeal that was recorded pursuant to Rule ~~16-502~~ 16-503 (b); and

(3) if relevant to the appeal and in the absence of a written stipulation by all parties to the contents of the recording, a transcription of any audio or audiovisual recording or portion thereof offered or used at a hearing or trial.

(b) Time for Ordering

Unless otherwise ordered by the court, the appellant shall order the transcript within the applicable time specified in this section:

(1) in a civil action subject to Rule 8-207 (a), the time prescribed by Rule 8-207 (a) (3);

(2) in all other civil actions subject to Rule 8-205 (a), ten days after the date of an order entered pursuant to Rule 8-206 (c);

(3) within ten days after the granting of a petition for writ of certiorari under Code, Courts Article, § 12-305; or

(4) in all other actions, ten days after the date the first notice of appeal is filed.

Cross reference: Rule 8-207 (a).

(c) Filing and Service

The appellant shall (1) file a copy of the written order to the court reporter with the clerk of the lower court for inclusion in the record, (2) cause the original transcript to be filed promptly by the court reporter with the clerk of the lower court for inclusion in the record, and (3) promptly serve a copy on the appellee.

Source: This Rule is derived from former Rule 1026 a 2 and Rule 826 a 2(b).

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-431, as follows:

Rule 8-431. MOTIONS

(a) Generally

An application to the Court for an order shall be by motion. The motion shall state briefly and clearly the facts upon which it is based, whether the filing party has sought the consent of the other parties to the appeal, and if the position of the other parties to the appeal regarding the relief sought in have agreed not to oppose the motion, it shall so state. The motion shall be accompanied by a proposed order.

(b) Request for Extension of Time in the Court of Special Appeals

In addition to the requirements set forth in section (a) of this Rule, a motion filed in the Court of Special Appeals for an extension of time that requests a due date more than 30 days after the original due date for a brief must identify good cause for the extension request. Absent urgent and previously unforeseeable circumstances, any such motion must be filed at least five days before the applicable due date.

~~(b)~~ (c) Response

Except as provided in Rule 8-605(a), any party may file a response to the motion. Unless a different time is fixed by order of the Court, the response shall be filed within five days after service of the motion.

~~(e)~~ (d) Affidavit

A motion or a response to a motion that is based on facts not contained in the record or papers on file in or in the custody and jurisdiction of the appellate court in the proceeding shall be supported by affidavit and accompanied by any papers on which it is based.

Cross reference: See Rule 20-402 concerning the transmittal of the record under MDEC.

~~(d)~~ (e) Statement of Grounds and Authorities

A motion and any response shall state with particularity the grounds and the authorities in support of each ground.

~~(e)~~ (f) Filing; Copies

The original of a motion and any response shall be filed with the Clerk. It shall be accompanied by (1) seven copies when filed in the Court of Appeals and (2) four copies when filed in the Court of Special Appeals, except as otherwise provided in these rules.

~~(f)~~ (g) Emergency Order

In an emergency, the Court may rule on a party's motion before expiration of the time for a response. The party requesting emergency relief shall file the certification required by Rule 1-351.

~~(g)~~ (h) Hearing

Except as otherwise provided in these rules, a motion may be acted on without a hearing or may be set for hearing at the time and place and on the notice the Court prescribes.

Source: This Rule is derived from former Rules 1055 and 855.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF
APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND
ARGUMENT

AMEND Rule 8-502, as follows:

Rule 8-502. FILING OF BRIEFS

(a) Duty to File; Time

Unless otherwise ordered by the
appellate court:

(1) Appellant's Brief

No later than the date specified in
the notice sent by the appellate clerk
pursuant to Rule 8-412(c), an appellant
other than a cross-appellant shall file a
brief conforming to the requirements of Rule
8-503.

(2) Appellee's Brief

Within 30 days after the filing of
the appellant's brief, the appellee shall
file a brief conforming to the requirements
of Rule 8-503.

(3) Appellant's Reply Brief

The appellant may file a reply brief
not later than the earlier of 20 days after
the filing of the appellee's brief or ten
days before the date of scheduled argument.

Cross reference: The meaning of subsection
(a)(3) is in accordance with *Heit v.*
Stansbury, 199 Md. App. 155 (2011).

(4) Cross-Appellant's Brief

An appellee who is also a cross-appellant shall include in the brief filed pursuant to subsection (2) of this section the issues and arguments on the cross-appeal as well as the response to the brief of the appellant, and shall not file a separate cross-appellant's brief.

(5) Cross-Appellee's Brief

Within 30 days after the filing of that brief, the appellant/cross-appellee shall file a brief in response to the issues and argument raised on the cross-appeal and shall include any reply to the appellee's response that the appellant wishes to file.

(6) Cross-Appellant's Reply Brief

The appellee/cross-appellant may file a reply to the cross-appellee's response within 20 days after the filing of the cross-appellee's brief, but in any event not later than ten days before the date of scheduled argument.

(7) Multiple Appellants or Appellees

In an appeal involving more than one appellant or appellee, including actions consolidated for purposes of the appeal, any number of appellants or appellees may join in a single brief.

(8) Court of Special Appeals Review of Discharge for Unconstitutionality of Law

No briefs need be filed in a review by the Court of Special Appeals under Code, Courts Article, § 3-706.

(9) Informal Briefing in the Court of Special Appeals

The Chief Judge of the Court of Special Appeals may designate certain

appeals or categories of appeals in which one or more parties who are not represented by an attorney may use informal briefing pursuant to this Rule. The Chief Judge shall provide procedures and forms for informal briefing in an administrative order that shall be available in hard copy and posted on the Judiciary website. Any case designated for informal briefing shall not be subject to the requirements of Rules 8-501 through 8-504, except to the extent those Rules are incorporated into the informal briefing procedures set forth in the administrative order.

Committee note: Informal briefing in the Court is intended to provide meaningful review of issues raised by self-represented parties without requiring compliance with the technical requirements of Rules 8-501 through 8-504. Informal briefing does not preclude the Court from dismissing an appeal pursuant to Rule 8-602 for any reason except for failure to comply with Rules made inapplicable by this Rule

(b) Extension of Time.

(1) In the Court of Appeals

In the Court of Appeals, ¶the time for filing a brief may be extended by ~~(1)~~ (A) joint stipulation of counsel filed with the clerk so long as the appellant's brief and the appellee's brief are filed at least 30 days, and any reply brief is filed at least ten days, before the scheduled argument, or ~~(2)~~ (B) order of the appellate court entered on its own initiative or on motion filed pursuant to Rule 1-204 and Rule 8-431.

(2) In the Court of Special Appeals

In the Court of Special Appeals, the time for filing a brief may be extended by joint stipulation or by order of the court.

(A) Joint Stipulation

By joint stipulation filed with the clerk, the parties may extend the time for filing (i) a principal brief by up to 30 days, or (ii) a reply brief provided that the reply brief is filed at least ten days prior to argument or the date of submission on the brief.

(B) Order of the Court

The court, on its own initiative or on motion filed pursuant to Rule 1-204 and Rule 8-431, may extend the time for filing a brief.

(c) Filing and Service. In an appeal to the Court of Special Appeals, 15 copies of each brief and 10 copies of each record extract shall be filed, unless otherwise ordered by the court. Incarcerated or institutionalized parties who are self-represented shall file nine copies of each brief and nine copies of each record extract. In the Court of Appeals, 20 copies of each brief and record extract shall be filed, unless otherwise ordered by the court. Two copies of each brief and record extract shall be served on each party pursuant to Rule 1-321.

(d) Default. If an appellant fails to file a brief within the time prescribed by this Rule, the appeal may be dismissed pursuant to Rule 8-602 (c) (5). An appellee who fails to file a brief within the time prescribed by this Rule may not present argument except with permission of the Court.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF
APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND
ARGUMENT

AMEND Rule 8-504, as follows:

Rule 8-504. CONTENTS OF BRIEF

(a) Contents

A brief shall comply with the requirements of Rule 8-112 and include the following items in the order listed:

(1) A table of contents and a table of citations of cases, constitutional provisions, statutes, ordinances, rules, and regulations, with cases alphabetically arranged. When a reported Maryland case is cited, the citation shall include a reference to the official Report.

Cross reference: Citation of unreported opinions is governed by Rule 1-104.

(2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court, except that the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief.

(3) A statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

(4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract supporting the assertions. If pursuant to these rules or by leave of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record.

Cross reference: Rule 8-111 (b).

(5) A concise statement of the applicable standard of review for each issue, which may appear in the discussion of the issue or under a separate heading placed before the argument.

(6) Argument in support of the party's position on each issue.

(7) A short conclusion stating the precise relief sought.

(8) In the Court of Special Appeals, a statement as to whether the party filing the brief requests oral argument.

~~(8)~~(9) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.

~~(9)~~(10) If the brief is prepared with proportionally spaced type, the font used and the type size in points shall be stated on the last page.

Cross reference: For requirements concerning the form of a brief, see Rule 8-112.

(b) Appendix

(1) Generally

Unless the material is included in the record extract pursuant to Rule 8-501, the appellant shall reproduce, as an appendix to the brief, the pertinent part of every ruling, opinion, or jury instruction of each lower court that deals with points raised by the appellant on appeal. If the appellee believes that the part reproduced by the appellant is inadequate, the appellee shall reproduce, as an appendix to the appellee's brief, any additional part of the instructions or opinion believed necessary by the appellee.

(2) Appeals in Juvenile and Termination of Parental Rights Cases

In an appeal from an order relating to a child entered by a court exercising juvenile jurisdiction or from an order in a proceeding involving termination of parental rights, each appendix shall be filed as a separate volume and, unless otherwise ordered by the court, shall be filed under seal.

Committee note: Rule 8-501 (j) allows a party to include in an appendix to a brief any material that inadvertently was omitted from the record extract.

(c) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows: Section (a) is derived from former Rules 831 c and d and 1031 c 1 through 5 and d 1

through 5, with the exception of subsection (a) (6) which is derived from FRAP 28 (a) (5). Section (b) is derived from former Rule 1031 c 6 and d 6. Section (c) is derived from former Rules 831 g and 1031 f.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-521, as follows:

Rule 8-521. ASSIGNMENT OF CASES

(a) Regular Order

(1) In the Court of Appeals

Unless advanced or postponed pursuant to this Rule, cases ordinarily will be assigned for successive sessions of the Court on the basis of their numerical order as they appear on the court docket, but the cases assigned for any session may be assigned for argument at that session without regard to their numerical order. Upon request of the Clerk, a party shall furnish an estimate of the time required for that party's argument. Argument shall be held on the day scheduled, unless postponed pursuant to this Rule.

(2) In the Court of Special Appeals

Unless advanced or postponed pursuant to this Rule, cases will be assigned to successive sessions of the Court

after the record is complete and the appellee's brief has been filed or, if no appellee's brief has been filed, after the time for filing the appellee's brief has expired.

(b) Advancement or Postponement of Case

A case may be advanced or postponed on motion of a party or on the Court's own initiative. Argument will not be postponed because of the absence of an attorney or a self-represented party on either side unless the absence is caused by sickness or other sufficient cause. Unless briefs have already been filed, an order advancing argument shall fix the times for filing briefs.

Cross reference: see Rule 16-804 for the priority of courts in resolving conflicting case assignments.

Source: This Rule is derived from former Rules 1045 and 845.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-523, as follows:

Rule 8-523. CONSIDERATION ON BRIEF

(a) Submission on Brief by Party

(1) In Court of Special Appeals

In the Court of Special Appeals, a party to a case the Court has scheduled for argument may submit an appeal for consideration on brief by informing the Clerk and the other parties filing a notice with the Clerk at least ten business days prior to argument. Before filing a notice submitting on brief, a party shall attempt to ascertain whether any other parties to the appeal will also submit on brief and state the position of those other parties in the notice. The Court may require oral argument from either side or both sides, notwithstanding the submission on brief.

(2) In Court of Appeals

In the Court of Appeals a party may not submit an appeal for consideration on brief except with permission of the Court. A request to submit on brief shall be made in writing at least 15 days before argument.

(b) Directed by Court of Special Appeals

(1) When Directed

In the Court of Special Appeals, if all the judges of the panel to which an appeal has been assigned conclude, after the filing of the appellant's brief, that oral argument would not be of assistance to the Court because of the nature of the questions raised, the Court shall direct that the appeal be considered on brief without oral argument. The Clerk shall promptly mail notice to all parties that the Court has directed consideration of the appeal on brief.

(2) Request for Oral Argument

If pursuant to subsection (1) of this section the Court directs that an appeal be considered on brief without oral argument, any party may file a request for oral argument. The request shall be filed within ten days after the later of (A) the

date the Clerk mails the notice required by subsection (1) of this section or (B) the date the appellee's brief is filed. If the Court grants the request for oral argument, the appeal shall be assigned for argument pursuant to Rule 8-521. Unless the Court specifies otherwise in its order granting the request, oral argument shall be as provided in Rule 8-522.

Source: This Rule is derived from former Rules 846 d, 1047, and 1038.

Judge Nazarian explained that the proposed amendments make changes to the appellate rules. In Rule 8-411 (a) (2), there is a typo referring to the wrong Rule, which the amendment corrects. The remaining amendments adopt an informal briefing process to allow *pro se* litigants to avoid having their cases held up because of failures to comply with formalities. Under the proposed Rules, unrepresented appellants in certain categories of cases can submit their briefs and extract equivalents through an online form with straightforward questions about what they are appealing, issues, facts, and the law. The appellee then has the option to respond with an informal brief or a formal brief. The other reform contained in the proposed Rules is meant to shorten the amount of time between filing a notice of appeal and the resolution of the appeal in the Court of Special Appeals. Currently, when a case comes in, it is screened and then assigned to a month and a briefing schedule is issued but is not tied to the argument

schedule. The Rule changes allow the court to schedule arguments after the parties complete briefing. The notice of appeal is filed, a briefing schedule is issued, and once briefing is completed, the case is scheduled for the next available slot for argument or submission on brief. The parties can request one automatic 30-day extension, but otherwise good cause must be shown to obtain an extension. Judge Nazarian explained that the new process should allow for appeals to be heard sooner and allow the court to fill in gaps in its argument schedule with cases that are ripe for submission. The Rule requires attorneys to state their request for oral argument in their filing.

Mr. Marcus asked if there is a timetable for how the court will address resolution of matters with no request to go to oral argument. Judge Nazarian said that all cases will end up being scheduled at the completion of briefing. He noted that a case could resolve faster if it is submitted on brief because once briefing is finished, it can be put on the schedule. He said that there are going to be scheduling issues in the transition period as these Rules are implemented.

Mr. Laws commented that the Rules governing informal briefing refer to procedures and forms that are not finalized. He asked if the Committee can have any sense of what those procedures and forms might look like. Judge Nazarian said that

he has the Subcommittee's drafts and the input of Access to Justice representatives within the Judiciary. The general plan is an online form to ask a series of questions about the appeal and capture the information already required by the Rules but in plain language. The filer can also upload documents. *Pro se* litigants are not required to use the informal briefing process, but if they opt to use the formal process, they must comply with the Rules. The Court also has the option to decide that a case requires a regular, full brief and order the parties to conduct formal briefing. Judge Nazarian noted that family law and foreclosure cases are the most likely case types to be implicated by the Rule changes.

The Chair asked whether formal briefing would be required of a *pro se* appellee if the appellant files a formal brief, and what happens in a cross appeal. Mr. Hilton said that the process allows the Court to address those circumstances. Chief Judge Fader said that the Court will learn and adjust as the process rolls out. He said that the idea is to make sure that the system works better for *pro se* litigants and for the courts. He explained that incarcerated individuals also have problems complying with formal requirements, such as producing 15 copies of the record extract. This process should make it easier for *pro se* litigants to present their issues and for judges to understand their cases. The Court may roll out the process in

only one category of cases at first to get a sense of how it works. Judge Nazarian added that there are cases where one party is following the formal briefing Rules and the opposing party is not, and the Court must decide whether to give the non-complying party more chances at the expense of the party that is complying.

Judge Nazarian said that Rule 8-431 (a) is being amended to require a party asking the Court for an order to state whether that party sought the consent of the other parties and those parties' positions. Section (b) deals with a request for extension of time under the new scheduling process. Motions for an extension of time more than 30 days beyond the original due date must identify good cause. Mr. Hilton questioned why section (b) was part of Rule 8-431 and Judge Nazarian responded that it was previously Rule 8-502 (b) in connection with the Rules for an extension of time to file. Chief Judge Fader pointed out that the proposed amendments create a situation where one Rule provides for requesting an extension beyond 30 days for good cause and another Rule allows for a stipulated extension of 30 days or fewer. Judge Nazarian said that Rule 8-431 (b) can be moved back to Rule 8-502.

Judge Nazarian said that Rule 8-502 includes a new subsection creating the informal briefing process. It gives the Chief Judge of the Court of Special Appeals the authority to

designate appeals or categories of appeals in which one or more unrepresented parties can use the informal briefing process. There is no form in the Rules, which allows the process to change and adapt. The Rule states that cases designated for informal briefing shall not be subject to the requirements of Rules 8-501 through 8-504 except to the extent that those Rules are incorporated into the informal briefing procedures. Section (b) distinguishes between the Court of Appeals and the Court of Special Appeals, because the scheduling changes are only for Court of Special Appeals cases. Subsection (b)(1) refers specifically to the Court of Appeals and subsection (b)(2) refers to the Court of Special Appeals and allows for an extension by stipulation or by order for the filing of a brief.

Judge Nazarian said that Rule 8-504 adds subsection (a)(8), which requires briefs in the Court of Special Appeals to state whether the brief requests oral argument. The Chair asked if the requirement may trigger more requests for oral argument. Judge Nazarian responded that it might cause more parties to request argument. He said that Mr. Hilton currently has a matrix of general case categories and default scheduling practices. He said that he believes represented defendants in criminal cases and represented parties in civil cases are scheduled for oral argument by default. He explained that sometimes a case will be assigned for argument for months only

for attorneys to call the day before argument to submit on brief.

Judge Nazarian said that Rule 8-521 differentiates between the appellate courts because the assignment process is changing for the Court of Special Appeals. Subsection (2) specifies that cases will be assigned after the record has been completed and the appellee's brief has been filed or the time for filing has expired. Rule 8-523 allows a party to a case scheduled for oral argument to file a motion at least 10 business days prior to the argument date if that party would like to submit on brief and indicate if the other parties will agree. He explained that this process will help eliminate situations where one party wants to submit on brief and the other party wants to argue. Chief Judge Fader said that the changes do not preclude the court from hearing arguments from a party that wants to appear for oral argument while the other party submits on brief. Mr. Laws questioned whether 10 business days was the appropriate time period to require parties to alert the court that they would like to submit on brief. Judge Nazarian said that the current Rules require 10 days' notice for submitting on brief but the Chair said that he believes that refers to calendar days. Judge Nazarian said that the Rule can provide for 10 calendar days and remove the word "business."

By consensus, the Committee approved the Rules as amended.

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