

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee virtually held
via Zoom for Government on Friday, February 12, 2021.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.	Victor H. Laws, III, Esq.
Julia Doyle Bernhardt, Esq.	Dawne D. Lindsey, Clerk
Hon. Pamela J. Brown	Bruce L. Marcus, Esq.
Stan Derwin Brown, Esq.	Donna Ellen McBride, Esq.
Hon. Yvette M. Bryant	Stephen S. McCloskey, Esq.
Hon. John P. Davey	Hon. Douglas R. M. Nazarian
Mary Anne Day, Esq.	Gregory K. Wells, Esq.
Alvin I. Frederick, Esq.	Hon. Dorothy J. Wilson
Pamela Q. Harris, State Court Administrator	Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter
Stephen Bergman, Esq., Office of the Public Defender
Allan J. Gibber, Esq.
Lou Gieszl, Assistant State Court Administrator - Programs
Nancy Harris, Analyst, Case Mgmt. Systems, JIS
Janet Hartge, Esq., Office of the Attorney General
Richard Hoffman, Esq.
Lisae Jordan, Esq., MD Coalition Against Sexual Assault
Pauline Mandel, Esq., Director, MD Crime Victims' Resource
Center
Hon. John P. Morrissey, Chief Judge, District Court of Maryland
Sarah Parks, Court Operations Specialist
Margaret Phipps, Register of Wills, Calvert County
Deborah St. Jean, Esq.
Victor Stone, Esq., MD Crime Victims' Resource Center
Nena Villamar, Esq., Office of the Public Defender
Mr. Scott Webber
Mark Weisner, Esq., Office of the Attorney General

Magistrate Erica Wolfe
Kurt Wolfgang, Esq., MD Crime Victims' Resource Center

The Chair convened the meeting. He said that the 206th Report was approved by the Court of Appeals except for Rule 14-305 (Sale of Property Under Levy), which was remanded to the Rules Committee. Rule 4-325 (Instructions to the Jury) was tentatively approved but required one change which will be transmitted to the Court in the coming days.

Agenda Item 1. Reconsideration of proposed New Rule 10-801 (Notice Upon Death of Settlor).

Mr. Laws presented Rule 10-801, Notice Upon Death of Settlor, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 800 - REVOCABLE TRUSTS

ADD New Rule 10-801, as follows:

RULE 10-801. NOTICE UPON DEATH OF SETTLOR

(a) Notice to Personal Representative

If a proceeding other than for a small estate under Code, Estates and Trusts Article Title 5, Subtitle 6 is commenced to administer the estate of the decedent-settlor of a trust that was revocable at the time of death, the trustee of the trust shall notify the personal representative of the existence of

the trust and the identity of each trustee within ~~60~~ **30** days after the date the trustee acquires knowledge of the ~~decedent's death~~ **opening of the estate**.

Cross reference: See Code, Estates and Trusts Article, § 14.5-508(b)(1) for the effect of a claim filed in an estate proceeding on trust property. See Rule 6-413 for the right of a trustee to intervene before a claim is allowed in the estate proceeding.

(b) Notice to Surviving Spouse

If the decedent-settlor is survived by a spouse, the trustee shall notify the surviving spouse of the existence of the trust, the identity of each trustee, and of the surviving spouse's right to request a copy of the trust instrument within 60 days of after the date the trustee acquires knowledge of the decedent's death.

Cross reference: For the duties of a trustee in connection with the calculation and payment of the elective share, see Code, Estates and Trusts Article, § 3-409.

Rule 10-801 was accompanied by the following

Reporter's note.

Proposed new Title 10, Chapter 800 is intended to implement Chapter 100, 2015 Laws of Maryland (HB 666), which was brought to the Committee's attention as a potential area requiring clarification, and Chapter 435, 2019 Laws of Maryland (HB 99), which changes the elective share law to an augmented estate format.

HB 666 extended protections to the trustee, trust property, and beneficiaries of a trust that was revocable at the death of the decedent-settlor if a claim is not presented within certain statutory deadlines. If an estate proceeding other than a small estate is commenced, the creditor must present the claim within the required time to preserve a claim against any revocable trust property. If no estate or a small estate proceeding is commenced, the trustee may obtain protection by publishing his or her own notice to creditors, which is outlined in proposed new Rule 10-802.

Section (a) requires notice to the personal representative, if one exists, of the existence of a trust. Practitioners noted that the personal representative has no way to know about revocable trusts of the decedent unless the personal representative also serves as the trustee or some other circumstance brings it to the attention of the personal representative. Similarly, a trustee who is not otherwise involved in the estate proceeding has no definitive way to be alerted to claims filed in the estate, which the personal representative may act to allow or disallow, impacting the trust.

Proposed new Rule 10-801 provides a mechanism for the trustee to alert the personal representative of the existence of the trust. The Rules Committee previously approved a draft of this Rule which required notice "within 60 days after the date the trustee acquires knowledge of the decedent's death." Subsequently, a concern was raised about whether this requirement is adequate to ensure a personal representative receives the notice if, for example, there is a delay in the opening of an estate. The current draft amends the time requirement to "within 30 days after the date the trustee acquires knowledge of the opening of the estate."

A cross reference to Code, Estates and Trusts Article, § 14-508(b)(1) and Rule 6-413 follows section (a).

Section (b) requires notice to the surviving spouse, if one exists, as mandated by the new elective share law.

Mr. Laws explained that proposed Rule 10-801 was previously approved but a technical amendment was made later. He said that the Rule provides a mechanism for an estate to know about the existence of a trust and vice versa. The amendment changes the time for a trustee to provide notice from 60 days from knowledge

of the settlor's death to 30 days from knowledge of the opening of the estate.

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

Agenda Item 2. Consideration of proposed amendments to Rule 1-326 (Proceedings Regarding Victims and Victims' Representatives) and Rule 20-109 (Access to Electronic Records in MDEC Actions).

The Chair presented Rule 1-326, Proceedings Regarding Victims and Victims' Representatives, and Rule 20-109, Access to Electronic Records in MDEC Actions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-326 by adding a new section (d) pertaining to access to case records and by making stylistic changes, as follows:

RULE 1-326. PROCEEDINGS REGARDING VICTIMS AND VICTIMS' REPRESENTATIVES

(a) Entry of Appearance

An attorney may enter an appearance on behalf of a victim or a victim's representative in a proceeding under Title 4, Title 8, or Title 11 of these Rules for the purpose of representing the rights of the victim or victim's representative.

(b) Service of Pleadings and Papers

A party shall serve, pursuant to Rule 1-321 on ~~counsel~~ the attorney for a victim or a victim's

representative, copies of all pleadings or papers that relate to: (1) the right of the victim or victim's representative to be informed regarding the criminal or juvenile delinquency case, (2) the right of the victim or victim's representative to be present and heard at any hearing, or (3) restitution. Any additional pleadings and papers shall be served only if the court directs.

(c) Duties of Clerk

The clerk shall (1) send to ~~counsel~~ the attorney for a victim or victim's representative a copy of any court order relating to the rights of the victim referred to in section (b) of this Rule and (2) notify ~~counsel~~ the attorney for a victim or a victim's representative of any hearing that may affect the rights of the victim or victim's representative.

(d) Access to Case Records

An attorney who has entered an appearance in an action for a victim or victim's representative shall have access to all case records in the action that are not sealed, shielded under the Rules in Title 16, Chapter 900 of these Rules, or subject to a protective order.

Committee note: This Rule does not abrogate any obligation to provide certain notices to victims and victims' representatives required by statute or by other Rule.

Cross reference: See Maryland Declaration of Rights, Article 47; Rule 18-102.6 (a); and Rule 18-202.6 (a). For definitions of "victim" and "victim's representative," see Code, Courts Article, § 3-8A-01 and Code, Criminal Procedure Article, Title 11.

Source: This Rule is new.

Rule 1-326 was accompanied by the following

Reporter's note.

Proposed to be added to Rule 1-326 is new section (d), which provides to an attorney who has entered an appearance for a victim or victim's representative in an action access to all case records in the action, other than case records that are sealed, shielded under the Rules in Title 16, Chapter 900, or subject to protective order. The attorney's access provided by this Rule includes remote access in an MDEC action. See the proposed amendments to Rule 20-109 (b).

Amendments to sections (b) and (c) of Rule 1-326 are stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-109 by adding the phrase "for a party" to section (b) and by adding a second sentence to section (b) to provide for certain access by an attorney for a victim or victim's representative, as follows:

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

(a) Generally

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

(b) Parties and Attorneys of Record

Subject to any protective order issued by the court or other law, parties to and attorneys of record for a party in an MDEC action shall have full access, including remote access, to all case records in that action. An attorney for a victim or victim's representative shall have access, including remote access, to case records as provided in Rule 1-326 (d).

. . .

Source: This Rule is new.

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

In Rule 20-109, the addition of the phrase, "for a party," is intended to clarify the first sentence of section (b).

A second sentence is proposed to be added to section (b) to state that an attorney for a victim or victim's representative has access, including remote access, to case records as provided in Rule 1-326 (d).

The Chair said that proposed amendments to Rules 1-326 and 20-109 pertain to an entry of appearance by an attorney on behalf of a victim in a proceeding. Victims have the right to notice of proceedings, the right to appear, the right to make an impact statement at sentencing or disposition, and the right to request restitution, when authorized. He explained that there is some confusion among clerks about what the attorney for a victim is authorized to access in the file. He noted that the victim is a participant in the proceeding but not a party.

The Chair said that proposed new section (d) to Rule 1-326 permits an attorney to have access to all records that are not sealed, shielded, or subject to a protective order. Proposed amendments to section (b) of Rule 20-109 state that the attorney for a victim has the right to electronic access of records as provided in Rule 1-326 (d).

The Chair said that the proposed amendments did not originate in a subcommittee and will require a motion to adopt. Ms. McBride moved to adopt the Rules as presented.

Mr. Kurt Wolfgang thanked the Chair and Chief Judge Morrissey on behalf of the Maryland Crime Victims' Resource Center for their attention to this issue, which has been a concern for the organization. Ms. Lisae Jordan said that the Maryland Coalition Against Sexual Assault also wished to thank the Committee for acting quickly.

Mr. Webber expressed concern about the difficulty for non-attorneys to access the electronic filing process. Individuals are required to file a notarized paper document. Chief Judge Morrissey explained that attorneys are registered with the Attorney Information System and have unique identifiers, while non-attorneys are not easily identifiable by email address without the paper filing step to avoid mistakes or fraud in granting access to electronic records. He said that the process is onerous but necessary from a security standpoint.

The Committee approved the Rules by majority vote.

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