Notice of In-Person Meeting

Standing Committee on Rules of Practice and Procedure
March 20, 2026 Open Meeting, 9:30 a.m.
Instructions for Members of the Public

The March 20, 2026, 9:30 a.m. open meeting of the Standing Committee on Rules of Practice and Procedure will be held in-person at the Maryland Judicial Center, Rooms 132-133, 187 Harry S. Truman Parkway, Annapolis, MD 21401. Members of the public may attend.

If you have a comment related to a posted agenda item, you may e-mail it to rules@mdcourts.gov at least 24 hours prior to the beginning of the meeting. Your comment will be distributed to the members of the Rules Committee prior to the meeting.

Agenda and Proposed Rules Changes

- The meeting agenda and proposed Rules changes are attached to this Notice. During the meeting, copies of any updated materials will be available.

The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.

AGENDA FOR
RULES COMMITTEE MEETING

March 20, 2026 (Friday)
9:30 a.m.
Maryland Judicial Center
Rooms 132-133
187 Harry S. Truman Parkway
Annapolis, MD 21401

Item 1 Consideration of proposed amendments to **Rule 4-213.1** (Appointment, Appearance, or Waiver of Attorney at Initial Appearance) — Mr. Marcus

Item 2 Consideration of proposed amendments to: — Mr. Wells

Rule 1-201 (Rules of Construction)
Rule 6-104 (Rules of Construction)

Proposed conforming amendments related to "include"/ "includes"/"including" to:
Rule 1-332 (Reasonable Accommodations for Persons with Disabilities)
Rule 4-214 (Defense Counsel)
Rule 4-252 (Motions in Circuit Court)
Rule 4-266 (Subpoenas – Generally)
Rule 9-112 (Court Records)
Rule 17-601 (Definitions; Applicability)
Rule 18-423 (Proceedings before Board; Review by Commission)
Rule 19-741 (Order of Disbarment or Suspension; Order Accepting Resignation)

Proposed conforming amendments related to "State" to:
Rule 2-651 (Ancillary Relief in Aid of Enforcement)
Rule 7-401 (General Provisions)
Rule 9-205.3 (Custody and Visitation-Related Assessments)
Rule 19-604 (Powers and Duties of Trustees; Treasurer)

Item 3 Consideration of proposed amendments to: Mr. Wells

Rule 1-202 (Definitions)
Rule 4-312 (Jury Selection)
Rule 4-341 (Sentencing – Presentence Investigation and Report)
Rule 10-108 (Orders)
Rule 15-1103 (Initiation of Proceeding to Contest Isolation or Quarantine)
Rule 16-502 (In District Court)
Rule 16-504 (Electronic Recording of Circuit Court Proceedings)
Rule 16-504.1 (Public Access to Electronic Recording of Circuit Court Proceedings)
Rule 16-904 (General Policy)
Rule 16-911 (Required Denial of Inspection – In General)
Rule 16-914 (Case Records - Required Denial of Inspection - Certain Categories)
Rule 16-916 (Case Records - Procedures for Compliance)
Rule 18-407 (Confidentiality)
Rule 18-427 (Reprimand)
Rule 19-104 (Subpoena Power)
Rule 19-105 (Confidentiality)
Rule 19-707 (Confidentiality)
Rule 19-716 (Conditional Diversion Agreement)
Rule 20-201 (Requirements for Electronic Filing)

Proposed conforming amendments to:
Rule 16-103 (Chief Judge of the Appellate Court)
Rule 16-601 (Definitions)

Item 4 Consideration of proposed amendments to: Mr. Wells

Rule 1-311 (Signing of Pleadings and other Papers)

Item 5 Consideration of proposed amendments to: Judge Bryant

Rule 1-321 (Service of Pleadings and Papers other than Original Pleadings)
Rule 2-613 (Default Judgment)

Item 6 Consideration of proposed amendments to: Judge Bryant

Rule 2-124 (Process – Persons to Be Served)
Rule 3-124 (Process – Persons to Be Served)

Proposed conforming amendments to:
Rule 2-321 (Time for Filing Answer)
Rule 3-307 (Notice of Intention to Defend)

Item 7 Consideration of proposed "housekeeping" amendments to **Rule 5-601** (General Rule of Competency) Reporter

Information Item 1: Update on Committee on Equal Justice Rules Review Subcommittee's Recommendations Regarding Topics Referred to the Process, Parties, and Pleading Subcommittee.

Information Item 2: Update on Committee on Equal Justice Rules Review Subcommittee's Recommendations Regarding Topics Referred to the Criminal Rules Subcommittee.

AGENDA ITEM 1

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-213.1 by updating subsection (b)(1) to conform to current practice, as follows:

Rule 4-213.1. APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT INITIAL APPEARANCE

…

(b) Appointment of Attorneys for Initial Appearance Before Commissioner

(1) Appointment

~~After consultation with the State and local bar associations and the Public Defender, the District Administrative Judges shall develop~~ The Chief Judge of the District Court, or the Chief Judge's designee, shall establish and maintain lists of attorneys willing to accept appointment to represent indigent defendants at initial appearances in the District Court before District Court commissioners ~~in the district~~ on either a pro bono basis or at ~~fees equivalent to those paid by the Public Defender to panel attorneys~~ rates established by the Chief Judge. Attorneys shall be appointed from the lists ~~as needed~~ for specific proceedings or ~~to be available for~~ scheduled blocks of time, as directed by the Chief Judge, or the Chief Judge's designee, and may be on-call, appear remotely, or appear in-person for the entirety or part of the scheduled block.

(2) Processing of Invoices

Invoices for fees due to court-appointed attorneys shall be processed in accordance with procedures adopted by the State Court Administrator.

…

REPORTER'S NOTE

The Rules Committee received a request for amendments to Rule 4-213.1 from Chief Judge John Morrissey. Chief Judge Morrissey noted that the current version of the Rule predates the implementation of the Appointed Attorney program. Proposed amendments to subsection (b)(1) update the Rule to conform to the current practice in the District Court.

The proposed changes in Rule 4-213.1 (b)(1) provide that the lists of attorneys willing to accept appointment to represent indigent defendants at initial appearances before District Court commissioners are established by the Chief Judge or the Chief Judge's designee, not by the District Administrative Judges. Centrally managing the lists of attorneys provides flexibility to staff the program across the State, eliminates concerns that Districts would compete to staff shifts, and assists with record-keeping.

The current Rule provides for compensation of the participating attorneys at the same rate paid to panel attorneys by the Office of the Public Defender. Any change to the rate paid to panel attorneys, however, is not within the discretion of the Judiciary and could result in unfunded budget items. Proposed amendments to subsection (b)(1) provide that the rates for attorneys appointed pursuant to the subsection are established by the Chief Judge, decoupling the compensation rate from the panel attorney compensation rate and allowing the Judiciary to properly budget for any future increases.

Additionally, advancements in technology permit changes to attorney scheduling pursuant to Rule 4-213.1 (b)(1). The availability of remote proceedings allows expanded hours and coverage, without incurring new costs. Under the proposed amended Rule, an attorney may be appointed for a specific proceeding or the attorney may be on-call, appear remotely, or appear in-person during a scheduled block of time, as directed by the Chief Judge of the Chief Judge's designee.

AGENDA ITEM 2

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 200 – CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-201 by adding new section (g) pertaining to non-exhaustive lists, by adding new section (h) pertaining to use of the word State, and by making stylistic changes, as follows:

Rule 1-201. RULES OF CONSTRUCTION

(a) General

These ~~rules~~ Rules shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay. When a ~~rule~~ Rule, by the word "shall" or otherwise, mandates or prohibits conduct, the consequences of noncompliance are those prescribed by these ~~rules~~ Rules or by statute. If no consequences are prescribed, the court may compel compliance with the ~~rule~~ Rule or may determine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the ~~rule~~ Rule.

(b) Jurisdiction and Venue Unaffected

These ~~rules~~ Rules shall not be construed to extend or limit the jurisdiction of any court or, except as expressly provided, the venue of actions.

(c) Effect on Common Law and Statutory Provisions

Neither these ~~rules~~ Rules nor omissions from these ~~rules~~ Rules supersede common law or statute unless inconsistent with these ~~rules~~ Rules.

(d) Singular and Plural—Gender

Words in the singular include the plural and words in any gender include all genders except as necessary implication requires.

(e) Headings, References, and Notes Not Rules

Headings, subheadings, cross references, committee notes, source references, and annotations are not part of these ~~rules~~ Rules.

(f) Statute of Limitations

The term "statute of limitations" includes a statute of repose, except as necessary implication requires.

(g) Non-Exhaustive Lists – Include; Including

"Including" shall be construed to mean "including but not limited to." Where "include," "includes," or "including" precedes a list, which may be a list of examples, the list is presumed to be non-exhaustive.

Cross reference: See *Hackley v. State*, 389 Md. 387 (2005) and Code, General Provisions Article, §1-110 pertaining to statutory interpretation of "includes" and "including."

(h) State

The word "State," when capitalized and used as a noun or adjective, means the State of Maryland.

Source: This Rule is derived as follows:
Section (a) is in part consistent with the 1966 version of Fed. R. Civ. P. 1 and is derived from former Rule 701. The last two sentences are new.
Section (b) is derived from former Rule 1 h and i.

Section (c) is derived from former Rules 1 g and 701.
Section (d) is derived from former Rule 2 c.
Section (e) is derived from former Rule 2 b.
Section (f) is new.
Section (g) is new.
Section (h) is new.

REPORTER'S NOTE

At its June 3, 2025 open meeting on the Two Hundred and Twenty Fourth Report, the Supreme Court discussed whether "include" followed by a list in a Rule could be interpreted as setting forth an exhaustive list. The Court was considering whether to use the phrase "include, but not limited to" in one of the proposals contained in the Report.

The Court was informed that, in general, the Committee avoids using "but not limited to" following "include(s)" or "including," and that using "but not limited to" in one instance could suggest that instances of "include(s)" or "including" *without* "but not limited to" have a different meaning. The presumption is that "include," when followed by a list, always introduces a non-exhaustive list. Members of the Court suggested that, if this is a broad rule of construction applicable across the Rules, it should be incorporated into Rule 1-201.

Proposed new section (g) sets forth this Rule of construction and addresses all variants that appear in the Rules, whether it is "include," "includes," or "including."

In addition, the Rules use "State" with a capital "S" when referring to the State of Maryland. To ensure clarity, this concept is recommended for addition to Rule 1-201 as new section (h).

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 6-104 by adding new section (f) pertaining to non-exhaustive lists, by adding new section (g) pertaining to use of the work State, and by making stylistic changes, as follows:

Rule 6-104. RULES OF CONSTRUCTION

(a) General

These ~~rules~~ Rules shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay. When a ~~rules~~ Rules, by the word "shall" or otherwise, mandates or prohibits conduct, the consequences of noncompliance are those prescribed by these ~~rules~~ Rules or by statute. If no consequences are prescribed, the court may compel compliance with the ~~rule~~ Rule or may determine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the ~~rule~~ Rule.

(b) Jurisdiction and Venue Unaffected

These ~~rules~~ Rules shall not be construed to extend or limit the jurisdiction of the court or, except as expressly provided, the venue of actions.

(c) Effect on Common Law and Statutory Provisions

Neither these ~~rules~~ Rules nor omissions from these rules supersede common law or statute unless inconsistent with these ~~rules~~ Rules.

(d) Singular and Plural—Gender

Words in the singular include the plural and words in any gender include all genders except as necessary implication requires.

(e) Headings, References, and Notes Not Rules

Headings, subheadings, cross references, committee notes, source references, and annotations are not part of these ~~rules~~ Rules.

(f) Non-Exhaustive Lists

"Including" means "including but not limited to." Where "include," "includes," or "including" precedes a list, which may be a list of examples, the list is presumed to be non-exhaustive.

(g) State

The word "State," when capitalized and used as a noun or adjective, refers to the State of Maryland.

REPORTER'S NOTE

Proposed amendments to Rule 6-104 are proposed in light of the new Rules of Construction pertaining to the use of "include" or "including" before a non-exhaustive list and the use of "State," when capitalized. See the Reporter's note to Rule 1-201.

The Rules in Title 1 do not apply to matters in the Orphans' Courts (see Rule 1-101 (a)). Because variations of "include" are used to introduce non-exhaustive lists in the Rules in Title 6 (e.g. "If proper venue is determined to be

in another county, the proceedings, including any will, petition, or other paper filed, shall be transferred to the proper court." (Rule 6-111 (c)), a parallel rule of construction is proposed in Rule 6-104.

Also, the Rules use "State" with a capital "S" when referring to the State of Maryland. "State" is used in this manner in Title 6, so a parallel rule of construction is proposed in Rule 6-104 as well.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-332 (b) by deleting "for example" from subsection (b)(3), as follows:

Rule 1-332. REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

. . .

(b) Definitions

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

(1) ADA

"ADA" means the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*

(2) Person with a Disability

"Person with a disability" means an individual with a disability who meets the essential eligibility requirements for the receipt of services or the participation in court services, programs, or activities, with or without reasonable modifications to policies, practices, or procedures, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services.

Cross reference: See 42 U.S.C. § 12131.

(3) Reasonable Accommodation

"Reasonable accommodation" means a measure necessary to provide a person with a disability the opportunity to access a court service, program, or activity in a manner consistent with State and federal law. A reasonable accommodation may include~~, for example~~:

(A) a reasonable modification in policy, practice, or procedure;

(B) a reasonable modification to a deadline or time limit that Rule 1-204 permits to be modified but that does not alter a statutory deadline or a statute of limitations;

(C) remote participation by a party or witness in accordance with Title 21 of these Rules;

(D) an auxiliary aid or service other than a personal device, including equipment, that is made available without charge; and

Committee note: An auxiliary aid or service may include a qualified interpreter or other effective method of making aurally delivered materials available to an individual who is deaf or hard of hearing; a qualified reader, taped text, or another effective method of making visually delivered materials available to an individual who is blind or has low vision; acquisition or modification of equipment or devices; and other similar services and actions. See 42 U.S.C. § 12103, 28 C.F.R. § 35.104, and 28 C.F.R. § 35.160.

(E) recognition of a supported decision-making arrangement entered pursuant to Code, Estates and Trusts Article, Title 18.

(4) Victim

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

REPORTER'S NOTE

The proposed amendment to Rule 1-332 is proposed in light of the new Rule of Construction pertaining to the use of "include" or "including" before a non-exhaustive list. See the Reporter's note to Rule 1-201.

Because "include" is now presumed to introduce a non-exhaustive list, "for example" is recommended for deletion in Rule 1-332 (b)(3).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-214 by deleting "but not limited to" from section (b), as follows:

Rule 4-214. DEFENSE COUNSEL

. . .

(b) Extent of Duty of Appointed Counsel

When counsel is appointed by the Public Defender or by the court, representation extends to all stages in the proceedings, including ~~but not limited to~~ custody, interrogations, preliminary hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal. The Public Defender may relieve appointed counsel and substitute new counsel for the defendant without order of court by giving notice of the substitution to the clerk of the court. Representation by the Public Defender's office may not be withdrawn until the appearance of that office has been stricken pursuant to section (d) of this Rule. The representation of appointed counsel does not extend to the filing of subsequent discretionary proceedings including petition for writ of certiorari, petition to expunge records, and petition for post conviction relief.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 4-214 is proposed in light of the new Rule of Construction pertaining to the use of "include" or "including" before a non-exhaustive list. See the Reporter's note to Rule 1-201.

Because "including" is now presumed to introduce a non-exhaustive list, "but not limited to" is recommended for deletion in Rule 4-214 (b).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-252 by deleting "but are not limited to" from the Committee note at the end of the Rule, as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

. . .

(h) Effect of Determination of Certain Motions

. . .

(3) Transfer of Jurisdiction to Juvenile Court

If the court grants a motion to transfer jurisdiction of an action to the juvenile court, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code, Courts Article, § 3-8A-15. Until a juvenile petition is filed, the charging document shall have the effect of a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of the defendant in detention or shelter care.

Cross reference: Code, Criminal Procedure Article, § 4-202.

Committee note: Subsections (a)(1) and (2) include~~, but are not limited to~~ allegations of improper selection and organization of the grand jury, disqualification of an individual grand juror, unauthorized presence of persons in the grand jury room, and other irregularities in the grand jury proceedings. Section (a) does not include such matters as former jeopardy, former conviction, acquittal, statute of limitations, immunity, and the failure of the charging document to state an offense.

Source: This Rule is derived from former Rule 736.

REPORTER'S NOTE

The proposed amendment to Rule 4-252 is proposed in light of the new Rule of Construction pertaining to the use of "include" or "including" before a non-exhaustive list. See the Reporter's note to Rule 1-201.

Because "include" is now presumed to introduce a non-exhaustive list, "but are not limited to" is recommended for deletion in the Committee note at the end of Rule 4-252.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-266 by adding "or more" to the stem language of section (c) and by adding "or modified" to subsection (c)(1), as follows:

Rule 4-266. SUBPOENAS – GENERALLY

. . .

(c) Protective Order

Upon motion of a party, a person named in the subpoena, or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance the court, for good cause shown, may enter an order which justice requires to protect the party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one <u>or more</u> of the following:

(1) That the subpoena be quashed <u>or modified</u>;

(2) That the subpoena be complied with only at some designated time or place other than that stated in the subpoena, or before a judge, or before some other designated officer;

(3) That certain matters not be inquired into or that the scope of examination or inspection be limited to certain matters;

(4) That the examination or inspection be held with no one present except parties to the action and their counsel;

(5) That the transcript of any examination or matters produced or copies, after being sealed, not be opened or the contents be made public only by order of court; or

(6) That a trade secret or other confidential research development or commercial information not be disclosed or be disclosed only in a designated way.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 4-266 is proposed in light of the new Rule of Construction pertaining to the use of "include" or "including" before a non-exhaustive list. See the Reporter's note to Rule 1-201.

In reviewing the use of "include" in the Rules, Rule 4-266 (c) was identified and compared to the civil subpoena Rules, 2-510 and 3-510, which have substantially similar provisions. Rule 4-266 did not provide that a protective order could include one "or more" of the listed options, implying that the court could only implement one option in a protective order. Rule 4-266 also did not provide that one option was for the subpoena to be quashed or "modified."

After review, it was recommended that Rule 4-266 be amended to conform with Rules 2-510 and 3-510.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-112 by replacing "includes" with "means" in section (a), as follows:

Rule 9-112. COURT RECORDS

(a) Party

For purposes of this Rule, "party" ~~includes~~ means (1) a petitioner, (2) the prospective adoptee, (3) in a Private Agency Guardianship or Private Agency Adoption, the agency, and (4) in a Public Agency Adoption after TPR or Public Agency Adoption without Prior TPR, the local department to which the prospective adoptee is committed.

Committee note: Unless the prospective adoptee's parent is also a petitioner, the parent is not a party to a proceeding under this Chapter except as provided by Code, Family Law Article, § 5-301 in a Public Agency Adoption without Prior TPR.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 9-112 is proposed in light of the new Rule of Construction pertaining to the use of "include" or "including" before a non-exhaustive list. See the Reporter's note to Rule 1-201.

Rule 9-112 (a) uses “includes” prior to a list of people who are considered parties in an adoption for the purpose of accessing court records. This list was intended to be limited to the listed people and, therefore, exhaustive. Due to the new Rule of Construction, Rule 9-112 (a) is recommended to be amended to change “includes” to “means.”

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

AMEND Rule 17-601 by replacing "includes" with "means" in section (a), as follows:

Rule 17-601. DEFINITIONS; APPLICABILITY

(a) Definitions

In this Chapter:

(1) to the extent relevant, the definitions in Rule 17-102 shall apply, except that "ADR" ~~includes~~ means only mediation and settlement-conferencing; and

(2) "Chief Judge" means the Chief Judge of the orphans' court for the county in which the court is located, except that, in Harford, Howard, and Montgomery Counties, "Chief Judge" means the County Administrative Judge.

Committee note: Rule 17-102 (a) and (d) include within the definition of "ADR" arbitration and neutral fact-finding. The Committee believes that it is inappropriate for the court to order parties to resort to those forms of ADR, especially if the results of such a referral are intended to be binding. Such a referral may constitute an improper delegation of the statutory duties and responsibilities of the orphans' courts and registers of wills with respect to the administration of estates. Accordingly, ADR referrals are limited to mediation and settlement-conferencing.

(b) Applicability

The Rules in this Chapter apply only to actions and matters pending in an orphans' court that has an alternative dispute resolution program.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 17-601 is proposed in light of the new Rule of Construction pertaining to the use of "include" or "including" before a non-exhaustive list. See the Reporter's note to Rule 1-201.

Rule 17-601 (a) uses "includes" in a definition for ADR. This list was intended to be limited to the listed ADR types and, therefore, exhaustive. Due to the new Rule of Construction, Rule 17-601 (a) is recommended to be amended to change "includes" to "means."

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 3 – ADMINISTRATIVE PROCEDURE

AMEND Rule 18-423 by replacing "include" with "contain" in the phrase "shall include one of the following recommendations" in subsection (d)(1)(A), as follows:

Rule 18-423. PROCEEDINGS BEFORE BOARD; REVIEW BY COMMISSION

. . .

(d) Board's Report to Commission

(1) Contents

(A) After considering Investigative Counsel's report and recommendation, the Board shall submit a report to the Commission. The Board shall include in its report the recommendation made to the Board by Investigative Counsel. Subject to subsection (d)(2) of this Rule, the report shall ~~include~~ <u>contain</u> one of the following recommendations:

(i) dismissal of any complaint, without a letter of cautionary advice pursuant to Rule 18-425 (a) and termination of any investigation;

(ii) dismissal of any complaint, with a letter of cautionary advice pursuant to Rules 18-425 (b) or 18-436;

(iii) a conditional diversion agreement pursuant to Rules 18-426 or 18-436;

(iv) a reprimand pursuant to Rules 18-427 or 18-436;

(v) retirement of the judge pursuant to Rule 18-428; or

(vi) upon a determination of probable cause that the judge has a disability or impairment or has committed sanctionable conduct, the filing of charges pursuant to Rule 18- 431.

(B) The information transmitted by the Board to the Commission shall be limited to a proffer of evidence that the Board has determined would likely be admitted at a plenary hearing before the Commission. The Chair of the Board may consult with the Chair of the Commission in determining the information to be transmitted to the Commission.

(2) Time for Submission of Report

(A) Generally

Unless the time is extended by the Chair of the Commission for good cause, the Board shall submit the report within 45 days after the date the Board received Investigative Counsel's report and recommendation.

(B) Extension

Upon a written request by the Chair of the Board, the Chair of the Commission may grant a reasonable extension of time for submission of the report. An order extending the time shall be in writing and shall articulate the nature of the good cause.

(C) Failure to Submit Timely Report

If the Board fails to submit a report within the time allowed, the Chair of the Commission shall direct Investigative Counsel to create and submit a report that conforms to the requirements of subsections (d)(1) and (2) of this Rule, subject to Rule 18-422 (b)(2), and refer the matter to the Commission, which may proceed, using the report as submitted by Investigative Counsel in accordance with this provision.

(D) Copy to Investigative Counsel and Judge

Upon receiving the report and recommendation, the Commission promptly shall transmit a copy of it, including any appendices or memoranda attached to it, to Investigative Counsel and to the judge.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 18-423 is proposed in light of the new Rule of Construction pertaining to the use of "include" or "including" before a non-exhaustive list. See the Reporter's note to Rule 1-201.

Rule 18-423 (d)(1)(A) uses "include" prior to a list of recommendations that the Judicial Inquiry Board may make to the Commission on Judicial Disabilities. The language of the Rule implies that the Board is directed to make one recommendation from the listed options. Due to the new Rule of Construction, Rule 18-423 (d)(1)(A) is recommended to be amended to change "include" to "contain."

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

DISPOSITIONS BY SUPREME COURT

AMEND Rule 19-741 by deleting "but not limited to" from subsection (c)(3)(B), as follows:

Rule 19-741. ORDER OF DISBARMENT OR SUSPENSION; ORDER ACCEPTING RESIGNATION

. . .

(c) Affirmative Duties of Attorney

Unless the Court orders otherwise, an attorney who has been disbarred or suspended shall take the following actions:

(1) Requirements to be Completed Within 15 Days

(A) conclude all client matters that can be concluded within that period;

(B) supply to Bar Counsel or an attorney designated by Bar Counsel pursuant to section (e) of this Rule (i) the names, addresses, and telephone numbers of all of the attorney's current clients and (ii) identify, by client name, tribunal, and docket reference, all client matters pending in any court or other tribunal or agency; and

(C) mail a letter giving notice of the order and of the effective date of the attorney's disbarment or suspension to (i) all of the attorney's current clients,

(ii) counsel for each party and any self-represented party in all pending actions, proceedings, negotiations, or transactions, and (iii) each attorney with whom the attorney is associated in the practice of law.

Committee note: An attorney's current clients include persons who have hired the attorney on retainer. A person may be a current client even if the attorney was not actively performing any legal work for that person on the date of disbarment or suspension.

(2) Requirements to be Completed Promptly and Within 30 Days

As soon as practicable but within 30 days after the effective date of the order, the attorney shall:

(A) take or cause to be taken, without charging any additional fee, any action immediately necessary to protect the interests of current clients which, as a practical matter, cannot otherwise be protected;

Committee note: The intent of subsection (c)(2)(A) of this Rule is to assure that existing clients are not unduly harmed by the attorney's immediate disbarment or suspension by requiring the attorney, during a brief grace period and without any additional fee, to deal with urgent matters necessary to protect the clients' interests, such things as requesting a postponement of closely impending hearings or trials or filing a paper in a pending case which, if not done prior to the client's practical ability to obtain another attorney, would result in significant harm to the client. See *Attorney Grievance v. Maignan*, 402 Md. 39 (2007). This is intended as a very narrow and time-limited exception to the prohibition against practicing law. Because the need for such action arises solely from the attorney's disbarment or suspension, the Rule prohibits the charging of a fee for those services.

(B) inform current clients, in writing, that the client may obtain another attorney, and that it may be necessary for the client to obtain another attorney depending upon the status of the client's case or legal matter.

(C) deliver to clients with pending matters all papers and other property to which the clients are entitled or notify the clients and any co-counsel of a suitable time and place to obtain the papers and property and call attention to any urgent need to obtain them;

(D) notify the disciplinary authority in each jurisdiction in which the attorney is admitted to practice of the disciplinary sanction imposed by the Supreme Court; and

(E) unless the attorney is suspended for a fixed period of time not exceeding one year, request the publisher of each telephone directory or law listing to remove each listing or reference that suggests that the attorney is eligible to practice law; request the attorney's name be removed from the law firm's website and letterhead; and remove any reference that the attorney is eligible to practice law from any website or social networking profile, regardless of whether the website or profile is that of the attorney individually or of a law firm or other group or entity.

(3) Requirements to be Completed Within 30 Days

Within 30 days after the effective date of the order, the attorney shall:

(A) withdraw from all client matters;

(B) in all cases in which the attorney is then acting, or thereafter attempts to act, in any specified fiduciary capacity, including~~, but not limited to,~~ power of attorney, personal representative, trustee, administrator, guardian, receiver or conservator, promptly notify in writing all (1) co-fiduciaries, (2) beneficiaries,

and (3) courts out of which the matter arose, of the attorney's disbarment, suspension, or transfer to disability inactive status. Such notice shall clearly state the name of the matter, any caption and docket number, and, if applicable, the name and date of death or current residence of the decedent, settlor, individual or entity with respect to whose assets the attorney is acting as a fiduciary; and

(C) file with Bar Counsel an affidavit that states or is accompanied by:

(i) the manner and extent to which the attorney has complied with the order and this Rule;

(ii) all actions taken by the attorney pursuant to subsection (c)(2)(A) and (B) of this Rule;

(iii) the names of all State and Federal jurisdictions in which and administrative agencies before which the attorney has been admitted to practice;

(iv) the residence and other addresses of the attorney to which future communications may be directed;

(v) the name and address of each insurer that provided malpractice insurance coverage to the attorney during the past five years, the policy number of each policy, and the inclusive dates of coverage;

(vi) a copy of each letter sent pursuant to subsection (c)(2)(B) of this Rule; and

(vii) a copy of each notice sent pursuant to subsection (c)(3)(B) of this Rule.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 19-741 is proposed in light of the new Rule of Construction pertaining to the use of "include" or "including" before a non-exhaustive list. See the Reporter's note to Rule 1-201.

Because "including" is now presumed to introduce a non-exhaustive list, "but not limited to" is recommended for deletion in Rule 19-741 (c)(3)(B).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-651 by capitalizing "State" in section (e), as follows:

Rule 2-651. ANCILLARY RELIEF IN AID OF ENFORCEMENT

Upon motion and proof of service, a court in which a judgment has been entered or recorded may order such relief regarding property subject to enforcement of the judgment as may be deemed necessary and appropriate to aid enforcement of the judgment pursuant to these rules, including an order (a) to any person enjoining the destruction, alteration, transfer, removal, conveyance, assignment, or other disposition of such property, (b) to any person enjoining the negotiation, transfer, assignment, or other disposition of a document representing an interest in such property, (c) to any person directing the disclosure to the sheriff of the whereabouts of such property, (d) to any person directing that any such property which has been removed from the jurisdiction, concealed, or made inaccessible for the purpose of avoiding levy be delivered to the sheriff or made available for levy, (e) to any person directing the surrender to the sheriff of such property located in the ~~state~~ State, and (f) to the sheriff of any county where such property is located directing the sheriff to take physical possession of and sequester such property. The motion shall be served on the person against whom the order is sought in the manner provided

by Chapter 100 of this Title for service of process to obtain personal jurisdiction and if that person is not the judgment debtor, a copy of the motion shall be mailed to the judgment debtor's last known address.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 2-651 is proposed in light of the new Rule of Construction pertaining to the use of "State" with a capital "S" to refer to the State of Maryland. See the Reporter's note to Rule 1-201.

To implement the new Rule of Construction, "State" is capitalized in Rule 2-651 (e) to refer to the State of Maryland.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 400 – ADMINISTRATIVE MANDAMUS

AMEND Rule 7-401 by capitalizing "State" in section (a), as follows:

Rule 7-401. GENERAL PROVISIONS

(a) Applicability

The rules in this Chapter govern actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.

Committee note: A writ of mandamus is an appropriate remedy for review of a quasi-judicial order or action of an administrative agency only when no other right of appeal is provided by ~~state~~ State or local law. See *Heaps v. Cobb*, 185 Md. 372 (1945). Ordinarily, administrative finality is required, but see *Prince George's County v. Blumberg*, 288 Md. 275 (1980) and *Holiday Spas v. Montgomery County*, 315 Md. 390 (1989).

. . .

REPORTER'S NOTE

The proposed amendment to Rule 7-401 is proposed in light of the new Rule of Construction pertaining to the use of "State" with a capital "S" to refer to the State of Maryland. See the Reporter's note to Rule 1-201.

To implement the new Rule of Construction, "State" is capitalized in Rule 7-401 (a) to refer to the State of Maryland.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205.3 by replacing "State" with "state" in subsection (d)(1), as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

. . .

(d) Qualifications of Custody Evaluator

(1) Education and Licensing

(A) Required Education and Licensure

A custody evaluator shall be:

(i) a physician licensed in any ~~State~~ state who is board-certified in psychiatry or has completed a psychiatry residency accredited by the Accreditation Council for Graduate Medical Education or a successor to that Council;

(ii) a Maryland-licensed psychologist or a psychologist with an equivalent level of licensure in any other state;

(iii) a Maryland-licensed clinical marriage and family therapist or a clinical marriage and family therapist with an equivalent level of licensure in any other state;

(iv) a Maryland-licensed certified social worker-clinical or a clinical social worker with an equivalent level of licensure in any other state;

(v) (a) a Maryland-licensed graduate or master social worker with at least two years of experience in (1) one or more of the areas listed in subsection (d)(2)(B) of this Rule, (2) conducting custody evaluations, or (3) any combination of subsections (d)(1)(A)(v)(a)(1) and (d)(1)(A)(v)(a)(2), or (b) a graduate or master social worker with an equivalent level of licensure and experience in any other state; or

(vi) a Maryland-licensed clinical professional counselor or a clinical professional counselor with an equivalent level of licensure in any other state.

(B) Continuing Education and Licensure Requirements

A custody evaluator shall comply with all conditions necessary to maintain professional licensure, including completing all mandatory continuing education requirements.

REPORTER'S NOTE

The proposed amendment to Rule 9-205.3 is proposed in light of the new Rule of Construction pertaining to the use of "State" with a capital "S" to refer to the State of Maryland. See the Reporter's note to Rule 1-201.

To implement the new Rule of Construction, "State" is replaced with "state" in Rule 9-205.3 (d)(1)(A)(i) to refer to any state, not only Maryland.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

AMEND Rule 19-604 by capitalizing "State" in subsection (a)(13), as follows:

Rule 19-604. POWERS AND DUTIES OF TRUSTEES; TREASURER

(a) Trustees

The trustees have the following powers and duties:

(1) To elect, from among their membership, a chair, a treasurer, and such other officers as they deem necessary or appropriate.

(2) To receive, hold, manage, and distribute, pursuant to the Rules in this Chapter, the funds raised hereunder, and any other monies that may be received by the Fund through voluntary contributions or otherwise.

Committee note: The power of the trustees under subsection (a)(2) of this Rule to receive and distribute funds received through "voluntary contributions or otherwise" does not include receiving or distributing abandoned attorney trust funds, except for the distribution of funds required by Rule 19-414.

(3) To authorize payment of claims in accordance with the Rules in this Chapter.

(4) To adopt regulations for the administration of the Fund and the procedures for the presentation, consideration, recognition, rejection and payment of claims, and to adopt procedures for conducting business. A copy of the regulations shall be filed with the Clerk of the Supreme Court, who shall

mail a copy of them to the clerk of the circuit court for each county and to all Registers of Wills. The regulations shall be posted on the Judiciary website.

(5) To enforce claims for restitution arising by subrogation, assignment, or otherwise.

(6) To deposit funds in any bank or other savings institution (A) that is chartered and whose financial activities are regulated under federal or Maryland law, and (B) whose deposits are insured by an instrumentality of the federal government.

(7) To invest funds not needed for current use in such investments as they deem appropriate, consistent with an investment policy specified in regulations adopted by the trustees and approved by the Supreme Court.

(8) To employ and compensate consultants, agents, attorneys, and employees.

(9) To delegate the power to perform routine acts which may be necessary or desirable for the operation of the Fund, including the power to authorize disbursements for routine operating expenses of the Fund, but authorization for payments of claims shall be made only as provided in Rule 19-609.

(10) To sue or be sued in the name of the Fund without joining any or all individual trustees.

(11) To comply with the requirements of Rules 19-704 (e), 19-705 (c), 19-708 (a), and 19-723 and all other applicable laws.

(12) To designate an employee to perform the duties set forth in Rules 19-708 (a) and 19-723 and notify Bar Counsel of that designation.

(13) To file with the Supreme Court an annual report of the management and operation of the Fund and to arrange for an annual audit of the accounts of the Fund by ~~state~~ State or private auditors. The cost of the audit shall be paid by the Fund if no other source of funds is available.

(14) To file additional reports and arrange for additional audits as the Supreme Court or the Chief Justice of that Court may order.

(15) To perform all other acts authorized by these Rules or necessary or proper for the fulfillment of the purposes of the Fund and its efficient administration.

(b) Treasurer

The treasurer shall:

(1) maintain the Fund in a separate account;

(2) disburse monies from the Fund only upon the action of the trustees pursuant to these Rules;

(3) file annually with the trustees a bond for the proper execution of the duties of the office of treasurer of the Fund in an amount established by the trustees and with one or more sureties approved by the trustees; and

(4) comply with the requirements of Rule 19-705 (b).

Source: This Rule is derived from former Rule 16-811.4 (2016).

REPORTER'S NOTE

The proposed amendment to Rule 19-604 is proposed in light of the new Rule of Construction pertaining to the use of "State" with a capital "S" to refer to the State of Maryland. See the Reporter's note to Rule 1-201.

To implement the new Rule of Construction, "State" is capitalized in Rule 19-604 (a)(13) to refer to the State of Maryland.

AGENDA ITEM 3

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 200 – CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 by adding new subsection (bb) defining "seal"; by re-lettering current subsections (bb) and (cc) as (cc) and (dd), respectively; by adding new subsection (ee) defining "shield"; by re-lettering current subsections (dd) through (gg) as (ff) through (ii), respectfully; by updating an internal reference in the cross reference following re-lettered subsection (cc); and by making stylistic changes, as follows:

Rule 1-202. DEFINITIONS

In these ~~rules~~ Rules the following definitions apply except as expressly otherwise provided or as necessary implication requires:

. . .

(aa) Return

"Return" means a report of action taken to serve or effectuate process.

(bb) Seal

"Seal" means to prohibit access to a judicial record by anyone except upon order of the court.

~~(bb)~~(cc) Senior Judge; Senior Justice

"Senior Judge" means: (1) in Rules 16-103 and 16-601, an incumbent judge with the longest continuous period of incumbency on the court on which

the judge serves, and (2) in all other Rules, an individual who (A) once served as a judge on the District Court, a circuit court, or an appellate court of this State, (B) retired from that office voluntarily or by operation of law by reason of age, and (C) has been approved for recall to sit as a judge pursuant to Md. Constitution, Art. IV, § 3A and Code, Courts Article, 1-302. "Senior Justice" means a Senior Judge who has been designated to sit on the Supreme Court of Maryland in a case or other judicial matter pending before that Court.

Cross reference: For a use of the term "senior judge" consistent with the definition in Rule ~~1-202 (aa)(1)~~ 1-202 (cc)(1), see Md. Constitution, Art. IV, § 18 (b)(5).

~~(ee)~~(dd) Sheriff

"Sheriff" means the sheriff or a deputy sheriff of the county in which the proceedings are taken, any elisor appointed to perform the duties of the sheriff, and, with respect to the District Court, any court constable.

(ee) Shield

"Shield" means to render a judicial record or a specified portion of a judicial record unavailable for public inspection in accordance with a Rule or other law or by order of a court.

Committee note: Shielded case records are accessible by parties and attorneys of record unless restricted by statute, by Rule, or as otherwise ordered by the court.

Cross reference: See Title 16, Chapter 900 for Rules governing public access to judicial records.

. . .

~~(dd)~~(ff) Subpoena

. . .

~~(ee)~~(gg) Summons

. . .

~~(ff)~~(hh) Warrant; Arrest Warrant; Bench Warrant; Search Warrant

. . .

~~(gg)~~(ii) Writ

. . .

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 5 a.
Section (b) is derived from former Rule 5 c.
Section (c) is new.
Section (d) is derived from former Rule 5 aa.
Section (e) is derived from former Rule 5 e.
Section (f) is derived from former Rule 5 f.
Section (g) is derived from former Rule 5 g.
Section (h) is derived from former Rule 5 h.
Section (i) is new.
Section (j) is new.
Section (k) is derived from former Rule 5 m.
Section (l) is new.
Section (m) is new.
Section (n) is derived from former Rule 5 r.
Section (o) is derived from former Rule 5 n.
Section (p) is derived from former Rule 5 o.
Section (q) is new.
Section (r) is new.
Section (s) is new.
Section (t) is derived from the last sentence of former Rule 5 v.
Section (u) is new.
Section (v) is derived from former Rule 5 q.
Section (w) is new and adopts the concept of federal practice set forth in the 1963 version of Fed. R. Civ. P. 7 (a).
Section (x) is derived from former Rule 5 w.
Section (y) is derived from former Rule 5 y.
Section (z) is derived from former Rule 5 z.
Section (aa) is new.

Section (bb) is new.
Section ~~(bb)~~(cc) is new.
Section ~~(cc)~~(dd) is derived from former Rule 5 cc.
Section (ee) is new.
Section ~~(dd)~~(ff) is derived from former Rule 5 ee.
Section ~~(ee)~~(gg) is new.
Section ~~(ff)~~(hh) is derived in part from former Rule 702 h and M.D.R. 702 m and is in part new.
Section ~~(gg)~~(ii) is derived from former Rule 5 ff.

REPORTER'S NOTE

Proposed amendments to Rule 1-202 add two new definitions impacting access to judicial records: "seal" and "shield."

In December 2023, Rules Committee staff submitted to the General Court Administration Subcommittee the question of whether terms impacting party and public access to court records, such as "shield" and "seal," should be defined in Rule 1-202. Although the two terms are distinct, they sometimes are used interchangeably by the public – and even by attorneys and judges – when referring to restrictions on access to court records. The memorandum to the Subcommittee was accompanied by a compilation of excerpts showing where the terms appeared in the Rules at the time. The issue was referred to the Major Projects Committee, which, in turn, referred the matter to the Judicial Council's Judicial Transparency and Access Workgroup. Rules Committee staff aided that workgroup at the request of its chair.

The Judicial Transparency and Access Workgroup issued its report on December 5, 2024. One of its recommendations was to review the use of the terms "shield," "seal," and "confidential" in the Maryland Rules for 1) possible definitions and 2) consistent usage. In 2025, the Major Projects Committee formed a "Workgroup on Shielding, Sealing, and Confidentiality of Court Records within the Maryland Rules" ("the MPC Workgroup") to review the Rules, recommend possible definitions, and identify any inconsistent use of terminology.

Rules Committee staff served on the MPC Workgroup and assisted with compiling terms for review, determining which terms were appropriate for definition, drafting proposed definitions, and reviewing the Rules for conforming amendments. The MPC Workgroup issued its report to the Major Projects Committee, which approved it for referral to the Rules Committee.

The 2026 Report of the MPC Workgroup on Shielding, Sealing, and Confidentiality of Court Records within the Maryland Rules recommended:

1) Defining the terms "shield" and "seal" in Rule 1-202. "Confidential" is not recommended for definition because its use is broader and its meaning is context-dependent.

2) Making clarifying amendments throughout the Rules to conform with the proposed definitions.

The MPC Workgroup proposed that "seal" should mean "to restrict access to a judicial record to persons authorized by written order of the court and to authorized Judiciary personnel as required to perform official duties." This definition is in line with document security types used in MDEC, where sealed documents are accessible only by a judge "to determine whether access should be allowed or other articulable reason that requires access" and by designated staff for the purpose of managing records designated as sealed.

This proposed definition is more expansive than the historic understanding of the word "seal." To seal a court record has meant to place the document(s) in a sealed envelope "fastened up in any manner so as to be closed against inspection of the contents," SEALED, Black's Law Dictionary (4th Edition, 1968). Rules Committee staff proposed an alternate definition where "seal" would mean "to enter a court order that prohibits access to a judicial record by anyone except upon further order of the court." The MPC Workgroup chose not to recommend this definition.

The General Provisions Subcommittee considered both proposed definitions for "seal." The Subcommittee elected to recommend the more restrictive definition of seal, with stylistic changes, to the Rules Committee.

In contrast with the extremely restricted access to sealed records, "shield" is proposed to mean to "render a judicial record or a specified portion of a judicial record unavailable for public inspection in accordance with a Rule or other law or by order of a court." A Committee note following the definition clarifies that shielded case records are accessible by parties and attorneys to a case unless otherwise restricted by statute, Rule, or court order. A cross reference to the Access Rules in Title 16, Chapter 900 is included after the definition.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-312 by updating language in the Committee note following section (d), as follows:

Rule 4-312. JURY SELECTION

. . .

(d) Nondisclosure of Names and City or Town of Residence.

. . .

(4) Modification of Order

The court may modify the order to restrict or allow disclosure of juror information at any time.

Committee note: Restrictions on the disclosure of the names and city or town of residence of jurors should be reserved for those cases raising special and legitimate concerns of jury safety, tampering, or undue harassment. See *United States v. Deitz*, 577 F.3d 672 (6th Cir. 2009); *United States v. Quinones*, 511 F.3d 289 (2nd Cir. 2007). When dealing with the issues of juror security or tampering, courts have considered a mix of five factors in deciding whether disclosure of such information may be ~~shielded~~ restricted: (1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment. See *United States v. Ochoa-Vasquez*, 428 F.3d 1015 (11th Cir. 2005); *United States v. Ross*, 33 F.3d 1507 (11th Cir. 1994). Although the possibility of a lengthy incarceration is a factor for the court to consider the court should not ~~shield that~~ restrict disclosure of information on that basis alone. In particularly high profile cases where strong public opinion

about a pending case is evident, the prospect of undue harassment, not necessarily involving juror security or any deliberate attempt at tampering, may also be of concern.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 4-312 are proposed in light of the proposed new definition for "shield" in Rule 1-202, which states that shielding refers to restricting public access to information and records. The Committee note following Rule 4-312 (d)(4) governs restrictions on disclosure of information to the defendant in a criminal proceeding, not information solely shielded from the public. The proposed amendment removes references to "shielded" information and refers instead to restrictions on disclosure of information.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-341 by clarifying that a presentence report is shielded from public inspection, as follows:

Rule 4-341. SENTENCING – PRESENTENCE INVESTIGATION AND REPORT

Before imposing a sentence, the court in accordance with Code, Correctional Services Article, § 6-112 (c) and Code, Criminal Procedure Article, § 11-727 shall, and in other cases may, order a presentence investigation and report. A copy of the report, including any recommendation to the court, shall be mailed or otherwise delivered to the defendant or counsel and to the State's Attorney in sufficient time before sentencing to afford a reasonable opportunity for the parties to investigate the information in the report. Except for any portion of a presentence report that is admitted into evidence, the report, including any recommendation to the court, is ~~not a public record and shall be kept~~ confidential <u>and shall be shielded from public inspection</u> as provided in Code, Correctional Services Article, § 6-112.

Cross reference: As to mandatory presentence investigations, see *Sucik v. State*, 344 Md. 611 (1997). As to victim impact statements in presentence reports, see *Ware v. State*, 348 Md. 19 (1997). As to the confidentiality and availability of presentence reports, see *Haynes v. State*, 19 Md. App. 428 (1973).

Source: This Rule is derived from former Rule 771 and M.D.R. 771.

REPORTER'S NOTE

The proposed amendment to Rule 4-341 is proposed in light of the proposed new definition for "shield" in Rule 1-202, which states that shielding refers to restricting public access to information and records. Rule 4-341 identifies the presentence report as "not a public record" that is confidential. The proposed amendment clarifies that these records are "confidential and shall be shielded from public inspection."

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-108, as follows:

Rule 10-108. ORDERS

(a) Order Appointing Guardian

. . .

(2) Confidential Information

Information in the order or in papers filed by the guardian that is subject to being shielded pursuant to the Rules in Title 16, Chapter 900 shall ~~remain~~ be kept confidential, but, in its order, the court may permit the guardian to disclose that information when necessary to the administration of the guardianship, subject to a requirement that the information not be further disclosed without the consent of the guardian or the court.

Committee note: Disclosure of identifying information to financial institutions and health care providers, for example, may be necessary to further the purposes of the guardianship.

Cross reference: See Rule 16-914 (e) and (i) and Rule 16-915 (f).

. . .

REPORTER'S NOTE

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

AMEND Rule 15-1103 by updating a reference in the Committee note following section (a), as follows:

Rule 15-1103. INITIATION OF PROCEEDING TO CONTEST ISOLATION OR QUARANTINE

(a) Petition for Relief

An individual or group of individuals required to go to or remain in a place of isolation or quarantine by a directive of the Secretary issued pursuant to Code, Health--General Article, § 18-906 or Code, Public Safety Article, § 14-3A-05, may contest the isolation or quarantine by filing a petition for relief in the circuit court for the county in which the isolation or quarantine is occurring or, if that court is not available, in any other circuit court. The petition may be filed in paper form or electronically, including by facsimile transmission.

Committee note: Motions to seal or limit inspection of a case record are governed by Rule ~~16-918~~ 16-941. The right of a party to proceed anonymously is discussed in *Doe v. Shady Grove Hosp.*, 89 Md. App. 351, 360-66 (1991).

. . .

REPORTER'S NOTE

The proposed amendment to Rule 15-1103 corrects an out-of-date reference in the Committee note following section (a). The correct reference is to Rule 16-941.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-502 by changing "Safeguarding" to "Shielding" in the tagline of section (f); by adding a Committee note pertaining to shielded portions of a recording following section (f); by changing "safeguards" to "protections" in section (f); by changing "safeguarded" to "shielded" in section (f), subsection (g)(2), and throughout subsection (g)(3), as follows:

Rule 16-502. IN DISTRICT COURT

(a) Proceedings to be Recorded

(1) Generally

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

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

(2) Court Interpreters

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

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

(b) Method of Recording

(1) Generally

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

(2) As Authorized By Chief Judge

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

(3) Official Recordings

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

(c) Control of and Direct Access to Electronic Recordings

(1) Under Control of District Court

Electronic recordings made pursuant to this Rule shall be under the control of the District Court.

(2) Restricted Access or Possession

No person other than an authorized Court official or employee of the District Court may have direct access to or possession of an official electronic recording.

(d) Filing of Recordings

Subject to section (c) of this Rule, audio recordings and any other recording authorized by the Chief Judge of the District Court shall be maintained by the court in accordance with the standards specified in an administrative order of the Chief Justice of the Supreme Court.

Cross reference: See Rule 16-505 (a) providing for an administrative order of the Chief Justice of the Supreme Court.

(e) Court Reporters and Persons Responsible for Recording Court Proceedings

Regulations and standards adopted by the Chief Justice of the Supreme Court pursuant to Rule 16-505 (a) apply with respect to court reporters and persons responsible for recording court proceedings employed in or designated by the District Court.

(f) ~~Safeguarding~~ Shielding Confidential Portions of Proceedings

The court shall direct that appropriate ~~safeguards~~ protections be placed on a specified portion of the recording if the court, on motion or on its own initiative, finds by clear and convincing evidence (1) that a compelling reason exists under the particular circumstances to shield the information in that part

of the recording from public access and inspection and (2) that no substantial harm will result from the shielding. The clerk shall create a log in a form approved by the State Court Administrator listing the recording references for the beginning and end of the ~~safeguarded~~ shielded portions of the recording. The log shall be kept in the court file, and a copy of the log shall be kept with the recording.

Committee note: Shielding a portion of a recording from public access pursuant to section (f) of this Rule does not restrict access by a party or attorney for a party unless otherwise ordered by the court.

(g) Right to Obtain Copy of Audio Recording

(1) Generally

Except (A) for proceedings as to which Rule 16-914 (g) applies, (B) as otherwise provided in this Rule, or (C) as ordered by the court for good cause, the authorized custodian of an official audio recording shall make a copy of the audio recording available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

Committee note: Rule 16-914 (g) prohibits public access to transcripts and recordings of closed proceedings and proceedings in actions as to which all documentary case records are required to be shielded.

(2) Redacted Portions of Recording

Unless otherwise ordered by the District Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court directed be ~~safeguarded~~ shielded pursuant to section (f) of this Rule are redacted from any copy of a recording made for a person under subsection

(g)(1) of this Rule. Delivery of the copy may be delayed for a period reasonably required to accomplish the redaction.

(3) Exceptions

Upon written request by any of the following persons and subject to the conditions in this Rule, the custodian shall make available to the requesting person a copy of the audio recording of a proceeding as to which Rule 16-914 (g) applies or a proceeding from which ~~safeguarded~~ shielded portions have not been redacted:

(A) the Chief Justice of the Supreme Court;

(B) the Chief Judge of the District Court;

(C) the District Administrative Judge having supervisory authority over the court;

(D) the presiding judge in the case;

(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that (i) the transcript of unredacted ~~safeguarded~~ shielded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by

order of court and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted ~~safeguarded~~ shielded portions shall be prepared for or delivered to any person not listed in subsection (g)(3) of this Rule; and

(I) any other person authorized by the District Administrative Judge.

(4) Notice of Restricted Access

The custodian who provides a copy of a recording pursuant to subsection (g)(3) of this Rule shall mark or otherwise indicate whether the recording contains, in whole or in part, a proceeding as to which Rule 16-914 (g) applies or public access is limited pursuant to section (f) of this Rule. If the copy of the recording contains any such proceedings, the custodian shall specify each section of the recording as to which the restrictions set forth in subsection (g)(5) of this Rule are applicable.

(5) Restrictions on Use by Authorized Persons

(A) Generally

Except as provided in subsection (g)(5)(B) of this Rule or authorized by an order of court, a person who, under subsection (g)(3) of this Rule, receives a copy of an electronic recording as to which all or a portion is subject to Rule 16-914 (g) or as to which public access is limited pursuant to section (f) of this Rule, shall not (i) make or cause to be made any additional copy of the shielded portion of the recording or (ii) play the shielded portion of the recording for or give or electronically transmit the shielded portion of the recording to any person not entitled to it under subsection (g)(3) of this Rule.

(B) Exceptions

A person who receives a copy of an electronic recording under subsection (g)(3) of this Rule may: (i) play the recording, including any shielded or redacted portions, for a person who is a non-sequestered witness in the hearing, trial, or judicial proceeding that is the subject of the electronic recording, or (ii) play the recording for or give or electronically transmit the recording, including any shielded or redacted portions, to an agent, employee, or consultant of the authorized person for use in connection with that person's official business duties. Investigative Counsel of the Commission on Judicial Disabilities and Bar Counsel, if they receive a copy of an electronic recording under subsection (g)(3) of this Rule, may play the recording for or give or electronically transmit the recording, including any shielded or redacted portions, to others in connection with the duties of those offices. A person permitted to listen to or electronically receive the shielded or redacted portions of the recording is subject to the restrictions on use in subsection (g)(5) of this Rule.

(6) Violation of Restrictions on Use

A willful violation of subsection (g)(5) of this Rule may be punished as a contempt.

Source: This Rule is derived from former Rule 16-504 (2016).

REPORTER'S NOTE

Proposed amendments to Rule 16-502 are proposed in light of the proposed new definition for "shield" in Rule 1-202, which states that shielding refers to restricting public access to information and records.

Sections (f) and (g) of Rule 16-502 refer to "safeguarding" certain portions of a recording, which has the practical impact of "shielding" those portions. To ensure clarity, the General Provisions Subcommittee recommends replacing the term "safeguard" with "shield" throughout sections (f) and (g).

A Committee note following section (f) makes it clear that these "shielded portions" of a recording are available to a party or attorney for a party unless the court orders otherwise.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-504 by changing "safeguarded" to "shielded" in subsection (f)(1)(C), section (g), section (h), subsection (h)(2), and throughout subsection (h)(3); by changing "safeguarding" to "protection" in subsection (f)(1)(C); by changing "Safeguarding" to "Shielding" in the tagline of section (g); by changing "safeguards" to "protections" in section (g); by adding a Committee note pertaining to shielded portions of a recording following section (g), as follows:

Rule 16-504. ELECTRONIC RECORDING OF CIRCUIT COURT PROCEEDINGS

(a) Control of and Direct Access to Electronic Recordings

(1) Under Control of Court

Electronic recordings made pursuant to Rule 16-503 and this Rule are under the control of the court.

(2) Restricted Access or Possession

No person other than a duly authorized official or employee of the circuit court shall have direct access to or possession of an official electronic recording.

(b) Filing of Recordings

Audio and audio-video recordings shall be maintained by the court in accordance with standards specified in an administrative order of the Chief Justice of the Supreme Court.

(c) Court Reporters

Regulations and standards adopted by the Chief Justice of the Supreme Court under Rule 16-505 (a) apply with respect to court reporters employed in or designated by a circuit court.

(d) Presence of Court Reporters Not Necessary

Unless otherwise ordered by the court with the approval of the administrative judge, if circuit court proceedings are recorded by audio or audio-video recording, which that is otherwise is effectively monitored effectively, a court reporter need not be present in the courtroom.

(e) Identification Label

Whenever proceedings are recorded by electronic audio or audio-video means, the clerk or other designee of the court shall affix to each electronic audio or audio-video recording a label containing the following information:

(1) the name of the court;

(2) the docket reference of each proceeding included on the recording;

(3) the date on which each proceeding was recorded; and

(4) any other identifying letters, marks, or numbers necessary to identify each proceeding recorded.

(f) Information Required to be Kept

(1) Duty to Keep

The clerk or other designee of the court shall keep the following items:

(A) a proceeding log identifying (i) each proceeding recorded on an audio or audio-video recording, (ii) the time the proceeding commenced, (iii) the time of each recess, and (iv) the time the proceeding concluded;

(B) an exhibit list;

(C) a testimonial log listing (i) the recording references for the beginning and end of each witness's testimony and (ii) each portion of the audio or audio-video recording that has been ~~safeguarded~~ shielded pursuant to section (g) of this Rule or redacted pursuant to Rule 16-504.1. The log shall specify whether the ~~safeguarding~~ protection is a shielding pursuant to section (g) of this Rule or a redaction from a disseminated copy pursuant to Rule 16-504.1.

(2) Location of Exhibit List and Logs

The exhibit list shall be kept in the court file. The proceeding and testimonial logs shall be kept with the audio or audio-video recording.

(g) ~~Safeguarding~~ Shielding Confidential Portions of Proceeding

If a portion of a proceeding involves placing on the record matters that, on motion, the court finds should and lawfully may be shielded from public access and inspection the court shall direct that appropriate ~~safeguards~~ protections be placed on that portion of the recording. The court shall direct that appropriate ~~safeguards~~ protections be placed on a specified portion of the recording if the court, on motion or on its own initiative, finds by clear and convincing evidence

(1) that a compelling reason exists under the particular circumstances to shield the information in that part of the recording from public access and inspection and (2) that no substantial harm will result from the shielding. For audio and audio-video recordings, the clerk or other designee of the court shall create a log in a form approved by the State Court Administrator listing the recording references for the beginning and end of the ~~safeguarded~~ shielded portions of the recording.

Committee note: Shielding a portion of a recording from public access pursuant to section (g) of this Rule does not restrict access by a party or attorney for a party unless otherwise ordered by the court.

(h) Access to Recordings by Authorized Persons

(1) Permitted Access

Upon written request by any of the following persons and subject to the conditions in this Rule, the custodian shall make available to the requesting person a copy of the audio or, if available, the audio-video recording of a proceeding, including a recording of a proceeding as to which Rule 16-914 (g) applies and including each portion of the recording as to which public access is limited pursuant to section (g) of this Rule or Rule 16-504.1 (b):

(A) the Chief Justice of the Supreme Court;

(B) the County Administrative Judge;

(C) the Circuit Administrative Judge having supervisory authority over the court;

(D) the presiding judge in the case;

(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) with respect to audio recordings or the audio portion of an audio-video recording, unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that (i) the transcript of unredacted ~~safeguarded~~ shielded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted ~~safeguarded~~ shielded portions shall be prepared for or delivered to any person not listed in subsection (h)(1) of this Rule;

(I) any other person authorized by the County Administrative Judge; and

(J) with respect to audio-video recordings, the Supreme Court or the Appellate Court pursuant to Rule 8-415 (c).

Committee note: With leave of court and for good cause shown, where the video portion of a recording viewed pursuant to Rule 16-504.1 (a)(2) contains information of evidentiary value not available on a transcript or audio recording, nothing in this subsection would prohibit the video portion of a recording that is in the custody of the court from being introduced into evidence at a hearing, trial, or other judicial proceeding. This note does not pertain to the replaying of a video recording that has not been admitted into evidence during a party's closing argument in a judicial proceeding. As appropriate and necessary, the presiding judicial officer shall facilitate obtaining from the custodian access to that portion of the recording to be admitted into evidence. The recording itself shall remain in the custody of the official custodian and a copy shall be included in the record.

(2) Notice of Restricted Access

The custodian who provides a copy of a recording pursuant to subsection (h)(1) of this Rule shall mark or otherwise indicate whether the recording contains, in whole or in part, a proceeding as to which Rule 16-914 (g) applies or a proceeding as to which public access is limited pursuant to section (g) of this Rule or Rule 16-504.1 (b). If the copy of the recording contains any such proceedings, the custodian shall specify each section of the recording as to which the restrictions set forth in subsection (h)(3) of this Rule are applicable.

Committee note: Rule 16-914 (g) prohibits public access to transcripts and recordings of closed proceedings and proceedings in actions as to which all documentary case records are required to be shielded.

(3) Restrictions on Use by Authorized Persons

(A) Generally

Except as provided in subsection (h)(3)(B) of this Rule or authorized by an order of court, a person who, under section (h) of this Rule, receives a copy of an electronic recording as to which all or a portion is subject to Rule 16-914 (g) or as to which public access is limited pursuant to section (g) of this Rule or Rule 16-504.1 (b), shall not (i) make or cause to be made any additional copy of the shielded or redacted portion of the recording or (ii) play the shielded or redacted portion of the recording for or give or electronically transmit the shielded or redacted portion of the recording to any person not entitled to it under subsection (h)(1) of this Rule.

(B) Exceptions

A person who receives a copy of an electronic recording under section (h) of this Rule may: (i) play the recording, including any shielded or redacted portions, for a person who is a non-sequestered witness in the hearing, trial, or judicial proceeding that is the subject of the electronic recording, or (ii) play the recording for or give or electronically transmit the recording, including any shielded or redacted portions, to an agent, employee, or consultant of the authorized person for use in connection with that person's official business duties. Investigative Counsel of the Commission on Judicial Disabilities or Bar Counsel, if they receive a copy of an electronic recording under section (h) of this Rule, may play the recording for or give or electronically transmit the recording, including any shielded or redacted portions, to others in connection with the duties of those offices. A person permitted to listen to or electronically receive the shielded or redacted portions of the recording is subject to the restrictions on use in subsection (h)(3)(A) of this Rule.

(4) Violation of Restriction on Use

A willful violation of any restriction on use of an electronic recording set forth in section (h) of this Rule may be punished as a contempt.

Source: This Rule is derived from former Rules 16-404, 16-405, and 16-406 (2016) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 16-504 are proposed in light of the proposed new definition for "shield" in Rule 1-202, which states that shielding refers to restricting public access to information and records.

Section (g) of Rule 16-504 refer to "safeguarding" certain portions of a recording, which has the practical impact of "shielding" those portions. To ensure clarity, the General Provisions Subcommittee recommends replacing the term "safeguard" with "shield" throughout sections (f), (g), and (h).

A Committee note following section (g) makes it clear that these "shielded portions" of a recording are available to a party or attorney for a party unless the court orders otherwise.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-504.1 by changing "safeguarded" to "shielded" in section (a), as follows:

Rule 16-504.1. PUBLIC ACCESS TO ELECTRONIC RECORDING OF CIRCUIT COURT PROCEEDINGS

(a) Generally

Except for proceedings as to which Rule 16-914 (g) applies, portions of proceedings ~~safeguarded~~ shielded pursuant to Rule 16-504 (g), and portions of proceedings as to which the court has entered an order under section (b) of this Rule, the authorized custodian of an audio recording or audio-video recording made pursuant to Rule 16-504 shall:

(1) make a copy of the audio recording or, if practicable, the audio portion of an audio-video recording available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy; and

Committee note: Portions of a criminal proceeding redacted from a disseminated copy pursuant to section (b) of this Rule may be listened to pursuant to subsection (a)(2) of this Rule.

(2) upon written request from a person, permit the person to listen to the audio recording or, if available, listen to and view the audio-video recording at

a time and place designated by the court, under the supervision of the custodian or other designated court official or employee. A person listening to or listening to and viewing the recording may not make a copy of it or have in the person's possession any device that, by itself or in combination with any other device, can make a copy. The custodian or other designated court official or employee shall take reasonable steps to enforce this prohibition.

Committee note: If space is limited and there are multiple requests, the custodian may require several persons to listen to or listen to and view the recording at the same time or accommodate the requests in the order they were received.

Cross reference: See Rule 16-914 (g) pertaining to public access to transcripts and recordings of closed proceedings or proceedings in an action as to which all documentary case records are required to be shielded.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 16-504.1 are proposed in light of the proposed new definition for "shield" in Rule 1-202, which states that shielding refers to restricting public access to information and records. Rule 16-504 (g) is proposed to be amended to change "safeguarded" to "shielded" to refer to portions of a recording which are restricted from public access. A conforming amendment is recommended in Rule 16-504.1 (a).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 16-904 by adding "sealed or" to the Committee note following section (c), as follows:

Rule 16-904. GENERAL POLICY

. . .

(c) Exhibit Pertaining to Motion or Marked for Identification

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

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

Committee note: Section (c) is based on the general principle that the public has a right to know the evidence upon which a court acts in making decisions, except to the extent that a superior need to protect privacy, safety, or security recognized by law permits particular evidence, or the evidence in particular cases, to be <u>sealed or</u> shielded. See Rule 16-941 authorizing a court to permit inspection of a case record that is not otherwise subject to inspection or to deny inspection of a case record that otherwise would be subject to inspection.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 16-904 is proposed in light of the proposed new definitions for "seal" and "shield" in Rule 1-202. The amendment to the Committee note following section (c) clarifies that exhibits may be sealed or shielded.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-911 by relocating the Committee note at the end of the Rule to follow subsection (a)(5), with amendments, as follows:

Rule 16-911. REQUIRED DENIAL OF INSPECTION—IN GENERAL

(a) When Inspection Would be Contrary to Federal Law, Certain Maryland Law, Maryland Rules, or Court Order

A custodian shall deny inspection of a judicial record or any part of a judicial record if inspection would be contrary to:

(1) the Constitution of the United States, a Federal statute, or a Federal regulation adopted under a Federal statute and that has the force of law;

(2) the Maryland Constitution;

(3) a provision of the PIA that is made applicable to judicial records by the Rules in this Chapter;

(4) a Rule adopted by the Supreme Court; or

(5) an order entered by the court having custody of the judicial record or by any higher court having jurisdiction over

(A) the judicial record,

(B) the custodian of the judicial record, or

(C) the person seeking inspection of the judicial record.

Committee note: A judicial record under seal or subject to an order precluding or limiting disclosure, may not be disclosed except in conformance with the court's order. The authority to seal a judicial record must be exercised in conformance with the general policy of these Rules and with supervening standards enunciated in decisions of the Supreme Court of the United States and the Supreme Court of Maryland. See *Baltimore Sun Co. v. Colbert*, 323 Md. 290 (1991).

. . .

(f) Security of Judicial Facilities, Equipment, Operations, Personnel; Protected Individuals and Information

A custodian shall deny inspection of:

(1) a continuity of operations plan;

(2) judicial records or parts of judicial records that consist of or describe policies, procedures, directives, or designs pertaining to the security or safety of judicial facilities, equipment, operations, or personnel, or of the members of the public while in or in proximity to judicial facilities or equipment; and

(3) judicial records or parts of judicial records created or maintained by the Office of Information Privacy in relation to Code, Courts Article, Title 3, Subtitles 23 and 24.

Cross reference: For an example of a statute enacted by the General Assembly other than the PIA that restricts inspection of a case record, see Code, Criminal Procedure Article, Title 10, Subtitle 3.

~~Committee note: Subsection (a)(5) of this Rule allows a court to seal a record or otherwise preclude its disclosure. So long as a judicial record is under seal or subject to an order precluding or limiting disclosure, it may not be disclosed except in conformance with the court's order. The authority to seal a judicial~~

~~record must be exercised in conformance with the general policy of these Rules and with supervening standards enunciated in decisions of the Supreme Court of the United States and the Supreme Court of Maryland. See *Baltimore Sun Co. v. Colbert*, 323 Md. 290 (1991).~~

Source: This Rule is derived from former Rule 16-906 (2019).

REPORTER'S NOTE

The proposed amendment to Rule 16-911 is a clarifying one to relocate the Committee note at the end of the Rule, which expands on subsection (a)(5), to follow that subsection. There are also clarifying amendments to the Committee note, most significantly the deletion of the first sentence, which stated that the Rule is what gave the court authority to seal or shield a record; the court has inherent authority to do this.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-914 by adding "sealed or" to section (c), by updating a reference in subsection (f)(6), and by changing "not subject to inspection" to "shielded" in subsection (k)(1), as follows:

Rule 16-914. CASE RECORDS – REQUIRED DENIAL OF INSPECTION – CERTAIN CATEGORIES

. . .

(c) Case records <u>sealed or</u> shielded pursuant to Code, Courts Article, § 3-1510 (peace orders), Code, Family Law Article, § 4-512 (domestic violence protective orders), or Code, Public Safety Article, § 5-602(c) (extreme risk protective orders).

. . .

(f) The following case records in criminal actions or proceedings:

(1) A case record that has been ordered expunged pursuant to Rule 4-508.

. . .

(6) Subject to Rules ~~16-902 (c)~~ <u>16-904 (c)</u> and 4-341, a presentence investigation report prepared pursuant to Code, Correctional Services Article, § 6-112.

. . .

(k) A case record that:

(1) a court has ordered sealed or ~~not subject to inspection~~ shielded, except in conformance with the order; or

. . .

REPORTER'S NOTE

Proposed amendments to Rule 16-914 are proposed in light of the proposed new definitions for "seal" and "shield" in Rule 1-202.

Section (c) is amended to refer to case records "sealed or shielded" pursuant to certain statutes.

Subsection (f)(6) is amended to correct an outdated reference; the correct reference is to Rule 16-904 (c).

Subsection (k)(1) is amended for clarity to refer to records "ordered sealed or shielded" by court order.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-916 by clarifying the responsibilities of a person filing a record containing confidential information in subsection (a)(1) and by expanding the cross reference following subsection (a)(3), as follows:

Rule 16-916. CASE RECORDS – PROCEDURES FOR COMPLIANCE

(a) Duty of Person Filing Record

(1) A person who files or authorizes the filing of a case record shall inform the custodian, in writing, (A) whether, in the person's judgment, the case record, any part of the case record, or any information contained in the case record is confidential and ~~not subject to~~ should be shielded from inspection under the Rules in this Chapter and (B) the basis for the person's assertion.

(2) The custodian is not bound by the person's determination that a case record, any part of a case record, or information contained in a case record is not subject to inspection and shall permit inspection of a case record unless, in the custodian's independent judgment, subject to review as provided in Rule 16-932, the case record is not subject to inspection.

(3) Notwithstanding subsection (a)(2) or (b)(2) of this Rule, a custodian may rely on a person's failure to advise that a case record, part of a case record, or

information contained in a case record is not subject to inspection, and, in default of such advice, the custodian is not liable for permitting inspection of the case record, part of the case record, or information, even if the case record, part of the case record, or information in the case record is not subject to inspection under the Rules in this Chapter.

Cross reference: See Rule 1-322.1 pertaining to exclusion of personal identifier information in court filings, ~~and~~ Rule 20-201 pertaining to requirements for electronic filing, and Rule 20-201.1 pertaining to a notice of restricted information in an electronic filing.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 16-916 clarify certain provisions pertaining to documents filed with the court which contain confidential information.

Subsection (a)(1) is amended to refer to information that should be shielded from inspection and to require the filer to state the basis for an assertion that a record or part of the record is subject to shielding.

The cross reference following subsection (a)(3) is expanded to provide more guidance to the reader of other Rules governing confidential information in court records.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 18-407 by clarifying the procedure for disclosing certain confidential documents in subsection (b)(6), as follows:

Rule 18-407. CONFIDENTIALITY

. . .

(b) Permitted Release of Information by Commission

. . .

(6) Nominations; Appointments; Approvals

(A) Permitted Disclosures

Upon a written application made by a judicial nominating commission, a Bar Admission authority, the President of the United States, the Governor of a state, territory, district, or possession of the United States, or a committee of the General Assembly of Maryland or of the United States Senate which asserts that the applicant is considering the nomination, appointment, confirmation, or approval of a judge or former judge, the Commission shall disclose to the applicant:

(i) Information about any completed proceedings that did not result either in dismissal of the complaint or in a conditional diversion agreement that has been satisfied; and

(ii) Whether a complaint against the judge is pending.

Committee note: A reprimand issued by the Commission is disclosed under subsection (b)(6)(A)(i). An unsatisfied conditional diversion agreement is disclosed under subsection (b)(6)(A)(ii) as a pending complaint against the judge.

(B) Restrictions

Unless the judge waives the restrictions set forth in this subsection, when the Commission furnishes information to an applicant under this section, the Commission shall furnish only one paper copy of the material, which shall be furnished ~~under seal.~~ in a sealed envelope marked "confidential." As a condition to receiving the material, the applicant shall agree that (i) the applicant will not copy the material or permit it to be copied; (ii) when inspection of the material has been completed, the applicant will ~~seal and~~ return the material to the Commission in a sealed envelope; and (iii) the applicant will not disclose the contents of the material or any information contained in it to anyone other than another member of the applicant.

(C) Copy to Judge

The Commission shall send the judge a copy of all documents disclosed under this subsection.

Cross reference: For the powers of the Commission in an investigation or proceeding under Md. Const., Art. IV, § 4B, see Code, Courts Article, §§ 13-401 through 13-403.

. . .

Source: This Rule is in part derived from former Rule 18-409 (2018) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 18-407 are recommended to clarify the procedure for the permitted disclosure of certain confidential information on written request to an enumerated list of individuals or groups who are considering the nomination, appointment, confirmation, or approval of a judge or former judge.

The proposed amendments subsection (b)(6) make it clear that, unless the judge waives these restrictions, disclosure pursuant to subsection (b)(6) must be accomplished with paper records in a physically sealed envelope.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 4 – DISPOSITION OTHER THAN FILING OF CHARGES

AMEND Rule 18-427 by clarifying the confidentiality of proceedings and records in subsection (b)(4), as follows:

Rule 18-427. REPRIMAND

(a) When Appropriate

The Commission may issue a reprimand to the judge if, after an investigation by Investigative Counsel and an opportunity for a hearing:

(1) the Commission concludes that the judge has committed sanctionable conduct that justifies some form of discipline;

(2) the Commission further concludes that the sanctionable conduct was not so serious, offensive, or repetitious as to justify the filing of charges and that a reprimand is an appropriate disposition under the circumstances.

(b) Procedure

(1) If, after investigation, the Board or Investigative Counsel recommends a reprimand, Investigative Counsel shall serve notice of that recommendation on the judge.

(2) Within 30 days after service of the notice, the judge shall serve notice on Investigative Counsel that the judge (A) will not oppose that disposition, (B) will not contest the facts underlying the recommendation but requests a hearing before the Commission on whether a reprimand is a proper disposition, or (C) will contest the facts underlying the recommendation.

(3) If the judge agrees to proceed in accordance with subsection (b)(2)(A) or fails to make a timely response, the Commission may issue the reprimand.

(4) If the judge agrees to proceed in accordance with subsection (b)(2)(B) the matter shall be transmitted to the Board and the Commission pursuant to Rule 18-423. Proceedings before the Commission shall be confidential and on the record but, if the Commission issues the reprimand, ~~those proceedings and~~ the reprimand shall be confidential and not subject to disclosure, except as allowed by Rule 18-407 (b).

(5) If the judge elects to contest the underlying facts, the matter shall be transmitted to the Board pursuant to Rule 18-423, but proceedings before the Commission and any disposition by the Commission shall be public.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 18-427 clarify the confidentiality requirements in proceedings where the judge "will not contest the facts

underlying the recommendation but requests a hearing before the Commission on whether a reprimand is a proper disposition."

Subsection (b)(4) states that where a judge who does not contest the facts but disputes the reprimand, the matter is transmitted to the Judicial Inquiry Board and the Commission. The subsection then stipulates that, "Proceedings before the Commission shall be *on the record* but, if the Commission issues the reprimand, those proceedings and the reprimand *shall be confidential and the reprimand shall be confidential and not subject to disclosure*, except as allowed by Rule 18-407 (b)." (emphasis added).

The language of this subsection raised several questions: Should <u>all</u> subsection (b)(2)(B) proceedings before the Commission always be confidential (subject to Rule 18-407 (b) disclosures)? Is there ever a scenario where the proceedings would not be confidential? Why are the proceedings on the record when a reprimand is generally not subject to review?

The Attorneys and Judges Subcommittee recommended amending Rule 18-427 (b)(4) to clarify that proceedings before the Commission are "confidential and on the record."

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

AMEND Rule 19-104 to delete "sealed and" from subsection (a)(1), as follows:

Rule 19-104. SUBPOENA POWER

(a) Subpoena

(1) Issuance

In any proceeding before the Board or a Character Committee pursuant to Rule 19-204 or Rule 19-216, the Board or Committee, on its own initiative or the motion of an applicant, may cause a subpoena to be issued by a clerk pursuant to Rule 2-510. The subpoena shall issue from the Circuit Court for Anne Arundel County if incident to Board proceedings or from the circuit court in the county in which the Character Committee proceeding is pending. The proceedings shall be docketed in the issuing court and shall be ~~sealed and~~ shielded from public inspection.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 19-104 is proposed in light of the proposed new definitions for "seal" and "shield" in Rule 1-202. Rule 19-104 states that proceedings on a subpoena issued at the request of the State Board of Law Examiners ("SBLE") or a Character Committee are "sealed and shielded from public inspection." These terms are now defined to mean different levels of security; SBLE recommended "shielded" as the appropriate term.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

AMEND Rule 19-105 by changing "shielding" to "redaction" in the Committee note following subsection (b)(1), as follows:

Rule 19-105. CONFIDENTIALITY

(a) Proceedings Before Accommodations Review Committee, Character Committee, or Board

Except as provided in sections (b), (c), and (d) of this Rule, the proceedings before the Accommodations Review Committee and its panels, a Character Committee, and the Board, including related papers, evidence, and information, are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

(b) Right of Applicant

(1) Right to Attend Hearings and Inspect Papers

An applicant has the right to attend all hearings before a panel of the Accommodations Review Committee, a Character Committee, the Board, and the Court pertaining to the application. Except as provided in subsection (b)(2) of this Rule, and subject to any protective order issued by a circuit court for

good cause on motion by the Board, an applicant has the right to be informed of and inspect all papers, evidence, and information received or considered by the panel, Committee, or the Board pertaining to the applicant.

Committee note: The intent of this subsection, with the exceptions noted in subsection (b)(2) of this Rule, is to permit inspection by the applicant of all information received or considered by a Character Committee, the Accommodations Review Committee, or the Board. There may be information, however, such as identifying information regarding a victim that is not germane to any issue before those entities and that should not be revealed. ~~Shielding~~ Redaction of such information would have to be approved by a court.

(2) Exclusions

Subsection (b)(1) of this Rule does not apply to (A) papers or evidence received, considered, or prepared by NCBE, a Character Committee, or the Board if the Committee or Board, without a hearing, recommends the applicant's admission; (B) personal memoranda, notes, and work product of members or staff of NCBE, a Character Committee, or the Board; (C) correspondence between or among members or staff of NCBE, a Character Committee, or the Board; or (D) an applicant's bar examination grades and answers, except as authorized in Rule 19-209.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 19-105 is proposed in light of the proposed new definition for "shield" in Rule 1-202, which states that shielding refers to restricting public access to information and records. The proposed Rule 1-202 definition of "shield" does not restrict access by a "party" to a proceeding. In context, "shielding" is not the appropriate term to use in the

Committee note following subsection (b)(1) when information is being withheld from a party. The proposed amendment changes "shielding" to "redaction."

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

GENERAL PROVISIONS

AMEND Rule 19-707 by clarifying in subsections (a)(1) and (b) that confidential proceedings are "shielded from public inspection," as follows:

Rule 19-707. CONFIDENTIALITY

(a) Peer Review Proceedings

(1) Generally

All records and proceedings of a Peer Review Panel, including all communications, whether written or oral, and all non-criminal conduct, made or occurring at a meeting of a Peer Review Panel, are confidential and ~~not open to public disclosure or~~ shielded from public inspection. Except as otherwise expressly permitted in this Rule, individuals present at the meeting of the Panel shall maintain that confidentiality and may not disclose or be compelled to disclose such communications or conduct in any judicial, administrative, or other proceeding.

(2) Privilege

Communications and conduct that are confidential under this Rule are privileged and are not subject to discovery, but information that is otherwise

admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use or occurrence at a peer review meeting.

(b) Other Confidential Material

Except as otherwise provided in this Rule, the following records and proceedings are confidential and ~~not open to~~ shielded from public inspection and may not be disclosed by Bar Counsel, the staff and investigators of the Office of Bar Counsel, any member of the Commission, the staff of the Commission, any member of the Peer Review Committee, any attorney involved in the proceeding, or, in any civil action or proceeding, by the complainant or an attorney for or agent of the complainant:

(1) the records of an investigation by Bar Counsel, including the existence and content of any complaint or response, until Bar Counsel files a petition for disciplinary or remedial action pursuant to Rule 19-721;

(2) information that is the subject of a protective order;

(3) the contents of a prior private reprimand or Bar Counsel reprimand pursuant to the Attorney Disciplinary Rules in effect prior to July 1, 2001, but the fact that a private or Bar Counsel reprimand was issued and the facts underlying the reprimand may be disclosed to a Peer Review Panel, a circuit court, and the Supreme Court in a proceeding against the attorney alleging similar misconduct;

Committee note: Disclosure under subsection (b)(3) of this Rule is not dependent upon a finding of relevance under Rule 19-720 (c)(1).

(4) the contents of a prior warning issued by the Commission pursuant to the Attorney Disciplinary Rules in effect prior to October 1, 2021, but the fact that a warning was issued and the facts underlying the warning may be disclosed to a Peer Review Panel, a circuit court, and the Supreme Court in a subsequent proceeding against the attorney when relevant to a complaint alleging similar conduct by the attorney;

(5) the contents of a letter of admonition issued by the Commission as provided in Rule 19-714;

(6) the contents of a letter of cautionary advice issued by the Commission as provided in Rule 19-714;

(7) the contents of a Conditional Diversion Agreement as provided in Rule 19-716 (j)(2), except that Bar Counsel may disclose to the complainant, when applicable, the fact that, upon successful completion of the Conditional Diversion Agreement, the Commission will issue a reprimand to the attorney as provided in Rule 19-716 (c)(3)(A)(ix);

(8) the records and proceedings of the Commission on matters that are confidential under this Rule;

(9) a motion filed pursuant to Rule 19-712 (f) or (h) and records and proceedings on that motion;

(10) a Petition for Disciplinary or Remedial Action based solely on the alleged incapacity of an attorney and records and proceedings, other than the final order in proceedings in the Supreme Court, on that petition; and

(11) a petition for an audit of an attorney's accounts filed pursuant to Rule 19-731 and records and proceedings, other than proceedings in the Supreme Court, on that petition.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 19-707 are proposed in light of the proposed new definition for "shield" in Rule 1-202, which states that shielding refers to restricting public access to information and records. Rule 19-707 contains two references to records and proceedings as "not open to" public disclosure or inspection.

For clarity, Rule 19-707 (a)(1) and (b) are amended to refer to these records as "confidential and shielded from public inspection."

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

ADMINISTRATIVE PROCEEDINGS

AMEND Rule 19-716, as follows:

Rule 19-716. CONDITIONAL DIVERSION AGREEMENT

. . .

(j) Confidentiality.

. . .

(2) Contents of Agreement

(A) Except as provided in subsections (j)(2)(B), (C), and (D) of this Rule, the contents of a Conditional Diversion Agreement are confidential and ~~may not be disclosed~~ shielded from public inspection.

. . .

Source: This Rule is derived from former Rule 16-736 (2016).

REPORTER'S NOTE

Proposed amendments to Rule 19-716 are proposed in light of the proposed new definition for "shield" in Rule 1-202, which states that shielding refers to restricting public access to information and records. Rule 19-716 contains refers to the contents of a Conditional Diversion Agreement as "confidential" and states that they "may not be disclosed."

For clarity, Rule 19-716 (j)(2)(A) is amended to refer to these records as "confidential and shielded from public inspection."

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-201 by adding a cross reference following section (i), as follows:

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

. . .

(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.

<u>Cross reference: See Rule 1-202 for definitions of "seal" and "shield."</u>

(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.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 20-201 adds a cross reference to the proposed new definitions of "seal" and "shield" in Rule 1-202. Section (i) requires that an electronic file name reflect whether the record is sealed or shielded. The cross reference is recommended to direct the reader to the definitions of those terms.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 100 – COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-103 by updating the cross reference at the end of the Rule, as follows:

Rule 16-103. CHIEF JUDGE OF THE APPELLATE COURT

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

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

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

REPORTER'S NOTE

The proposed amendment to Rule 16-103 is a conforming one in light of re-lettering in Rule 1-202. Subsection (bb)(1) is now (cc)(1).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 600 – EXTENDED COVERAGE OF COURT PROCEEDINGS

AMEND Rule 16-601 by updating the cross reference following section (e), as follows:

Rule 16-601. DEFINITIONS

. . .

(e) Presiding Judge

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

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

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

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

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

REPORTER'S NOTE

The proposed amendment to Rule 16-601 is a conforming one in light of re-lettering in Rule 1-202. Subsection (bb)(1) is now (cc)(1).

AGENDA ITEM 4

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-311 by adding language to section (b) pertaining to an attorney's obligation to confirm the existence and authenticity of cited legal authorities and by making stylistic changes, as follows:

Rule 1-311. SIGNING OF PLEADINGS AND OTHER PAPERS

(a) Requirement

Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party. Every pleading or paper filed shall contain (1) the signer's address, telephone number, facsimile number, if any, and e-mail address, if any, and (2) if the pleading or paper is signed by an attorney pursuant to Rule 20-107, the attorney's identifying Attorney Number registered with the Attorney Information System.

Committee note: The requirement that a pleading contain a facsimile number, if any, and e-mail address, if any, does not alter the filing or service rules or time periods triggered by the entry of a judgment. *See Blundon v. Taylor*, 364 Md. 1 (2001).

(b) Effect of Signature

The signature of an attorney on a pleading or paper constitutes a certification that the attorney has read the pleading or paper and has confirmed the existence and authenticity of each legal authority cited; that to the best of the attorney's knowledge, information, and belief there is good ground to support ~~it~~ the pleading or paper; and that ~~it~~ the pleading or paper is not interposed for improper purpose or delay.

(c) Sanctions

If a pleading or paper is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading or paper had not been filed. For a ~~wilful~~ willful violation of this Rule, an attorney is subject to appropriate disciplinary action.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 302 a, 301 f, and the 1937 version of Fed. R. Civ. P. 11.
Section (b) is derived from former Rule 302 b and the 1937 version of Fed. R. Civ. P. 11.
Section (c) is derived from the 1937 version of Fed. R. Civ. P. 11.

REPORTER'S NOTE

The use of Artificial Intelligence ("AI") in the legal profession has been a growing topic of interest in jurisdictions across the country. In *Mezu v. Mezu*, 267 Md. App. 354 (2025), the Appellate Court considered an appeal in a divorce proceeding, stating:

> We report this case… to address a problem that is recurring in courts around the country, i.e., the use of AI to draft briefs or other pleadings,

> resulting in incorrect, inaccurate, or fictitious case citations. Mother's brief in this case is replete with citation irregularities. *Id.* at 364-65.

The Appellate Court noted concerns with several of the citations in one of the party's briefs, including cases that do not exist or do not support the propositions for which they are cited. The Appellate Court explained, "The failure to use AI responsibly in legal research raises ethical issues and can result in sanctions when used improperly. It is unquestionably improper for an attorney to submit a brief with fake cases generated by AI." *Id.* at 367.

Pursuant to Rule 1-311, an attorney is required to sign all pleadings and papers. Section (b) of Rule 1-311 provides, "The signature of an attorney on a pleading or paper constitutes a certification that the attorney has read the pleading or paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay." In *Mezu*, the Appellate Court explained:

> Implicit in the requirement that an attorney certify there is good ground to support the contentions raised is that the attorney has read the primary cases on which the attorney relies for the argument submitted. Indeed, as one court said in interpreting Federal Rule of Civil Procedure 11(b)(2), the federal rule analogous to Rule 1-311, "[a]t the very least, the duties imposed by Rule 11 require that attorneys read, *and thereby confirm the existence and validity of*, the legal authorities on which they rely." *Id.* at 368-69.

In *Mezu*, the Appellate Court referred the case to the Attorney Grievance Commission for appropriate action concerning the attorney's conduct. In evaluating and determining the appropriate sanction, the Appellate Court also considered cases from other states that permit monetary sanctions. *See id.* at 372. The topic was referred to the Rules Committee by a footnote: "The General Assembly and the Rules Committee may want to address whether a more specific statute or rule permitting this Court to award sanctions in cases such as the present case is warranted." *Id.* at n.7.

As noted in *Mezu*, current Rule 1-311 requires an attorney to sign all filings and establishes the effect of an attorney's signature. A pleading that is "signed with the intent to defeat the purpose of [the] Rule," may be stricken. However, if the violation of the Rule is willful, "an attorney is subject to appropriate disciplinary action."

The General Provisions Subcommittee reviewed the *Mezu* opinion and considered the issues raised by the Appellate Court. The current Rules allow referral to Bar Counsel upon a violation of Rule 1-311. Although Rule 1-311

does not provide for monetary sanctions, Rule 1-341 (b) states, "In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it." Rule 1-341, however, requires a "motion by an adverse party." The General Provisions Subcommittee was not inclined to amend Rules 1-311 or 1-341 to permit additional monetary sanctions.

The Subcommittee does, however, recommend an amendment to Rule 1-311 to make explicit what already is implicit in the Rule: an attorney has the obligation to confirm the existence and authenticity of any cases cited in a filing.

Accordingly, a proposed amendment to section (b) of Rule 1-311 adds language providing that an attorney's signature represents that the attorney has confirmed "the existence and authenticity of each legal authority cited." The proposed language highlights the attorney's obligation to ensure that no false case citations are used in any filings.

Stylistic changes also are proposed in section (b), and one additional stylistic change is proposed in section (c).

AGENDA ITEM 5

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-321 by adding a Committee note after section (c), as follows:

Rule 1-321. SERVICE OF PLEADINGS AND PAPERS OTHER THAN ORIGINAL PLEADINGS

(a) Generally

Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or

usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

(b) Service After Entry of Limited Appearance

Every document required to be served upon a party's attorney that is to be served after entry of a limited appearance also shall be served upon the party and, unless the attorney's appearance has been stricken pursuant to Rules 2-132 or 3-132, upon the limited appearance attorney.

(c) Party in Default—Exceptions

No pleading or other paper after the original pleading need be served on a party in default for failure to appear except:

(1) a pleading asserting a new or additional claim for relief against the party shall be served in accordance with the rules for service of original process; and

(2) a request for entry of judgment arising out of an order of default under Rule 2-613 shall be served in accordance with section (a) of this Rule.

Committee note: A request for entry of an order of default is not required to be served by the requesting party on a party in default for failure to appear. See Rule 2-613 (b).

(d) Requests to Clerk—Exception

A request directed to the clerk for the issuance of process or any writ need not be served on any party.

(e) Proceedings to Modify Judgment in a Civil Action

If a motion, petition, or other paper that initiates proceedings to modify a judgment in a civil action is filed more than 30 days after entry of the

judgment, it shall be served, together with a summons issued pursuant to Rule 2-114 or 3-114, as applicable, in accordance with the rules for service of an original pleading.

Cross reference: For the time for filing a response to an original pleading, see Rules 2-321 and 3-307.

Committee note: A certificate of service under Rule 1-323 is not required when a motion, petition, or paper is treated as an original pleading pursuant to section (e) of this Rule.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 306 a 1 and c and the 1980 version of Fed. R. Civ. P. 5 (a).
Section (b) is new.
Section (c) is derived from former Rule 306 b and the 1980 version of Fed. R. Civ. P. 5 (a).
Section (d) is new.
Section (e) is new.

REPORTER'S NOTE

Proposed amendments to Rule 1-321 clarify that a request for order of default is not required to be served by the requesting party on the party in default. The Rules Committee was contacted by a practitioner whose request for order of default pursuant to Rule 2-613 (b) was rejected by a clerk for lack of service on the defendant. The practitioner contends that, pursuant to Rule 1-321 (c), he is not required to serve the request for order of default on the defendant.

Rule 1-321 generally requires service of "every pleading and other paper filed after the original pleading," with some exceptions. Pursuant to section (c), "No pleading or other paper *after the original pleading* need be served on a party in default for failure to appear except… a *request for entry of judgment arising out of an order of default* under Rule 2-613 shall be served in accordance with section (a) of this Rule" (emphasis added). The plain language of Rule 1-321 (c) suggests that the only subsequent document required to be served on a party in default for failure to appear, other than one with a new

claim for relief, is the request for *entry of judgment* not the request for an *order of default*, which must precede the judgment.

Rule 1-323 requires proof of service for "any pleading or other paper *requiring service*" (emphasis added). The relevant provisions in Title 20 for MDEC filings similarly are rooted in pleadings or papers "required to be served" (Rule 20-201 (g)) and registered users "entitled to service " (Rule 20-205 (d)).

Prior to the 1984 revision, a judge could enter a default judgment when a defendant failed to plead. *Franklin Credit Mgmt. Corp. v. Nefflen*, 436 Md. 300, 312-13 (2013). This judgment served as a determination of liability and a final judgment from which an appeal could be taken even if no damages had been determined. *Id.* This order was subject to a motion for the court to set aside the judgment within 30 days. *Id.* After entry of judgment, the plaintiff could ask the court to conduct an "inquisition" to determine damages, and the defendant could separately appeal the damages assessed. *Id.*

The Committee recommended amending the default judgment process in the early 1980s and ultimately recommended the process outlined in Rule 2-613. *Id.* at 315. A Reporter's note accompanying a draft of the Rule explained the intention to create a "two-stage process for default judgments" involving a determination that the defendant is in default, followed by notice and an opportunity to move to vacate, then a request for "actual entry of the judgment." Minutes of the Standing Committee on Rules of Practice and Procedure, November 21, 1981, at 14–15. The intent of the proposed Rule was to avoid having courts conduct an inquiry into damages when the defendant can still seek to have the judgment vacated and to create only one final judgment from which an appeal can arise. Id. and Letter from Albert D. Brault to the Hon. Perry G. Bowen (May 23, 1983) (on file with Rules Committee). To further explain this, the Committee would later recommend clarifying that an entry of judgment pursuant to Rule 2-613 (f) "includes a determination as to liability and all relief sought." Minutes of the Standing Committee on Rules of Practice and Procedure, June 16/17, 1989, at 47.

The Rule 1-321 (c) exception to the requirement to serve all pleadings and papers applies to "a party in default for failure to appear." In 1994, the Committee debated clarifying this provision to apply to "a party against whom an order of default has been entered" pursuant to various Rules. Minutes of the Standing Committee on Rules of Practice and Procedure, May 13, 1994, at 20. According to the Reporter's note accompanying Rule 1-321 at the May 1994 meeting, the proposal was to address "a perceived ambiguity" in the Rule pertaining to when a party is deemed to be "a party in default." Id. At 21. The amendment would, in essence, define "a party in default" to be a party whom the court has found to be in default; this would have required service of the

request for an order of default on a party who has not filed a responsive pleading.

After considerable discussion, there was support for moving forward with an amendment which would require service of all pleadings and papers until entry of a judgment of default. Minutes of the Standing Committee on Rules of Practice and Procedure, May 13, 1994, at 31. The Committee referred the matter to the Style Subcommittee and Process, Parties, and Pleading Subcommittee. Id. at 31-32. The proposed changes were never revisited by the Committee.

In 2014 and 2015, the Committee again considered what service should be required in a default judgment situation. This time, the proposed amendment to Rule 1-321 (b) (now (c)) provided that pleadings and papers did not have to serve a party in default except for "a request for entry of judgment arising out of an order of default under Rule 2-613," that shall be served in accordance with Rule 1-321 (a). Minutes of the Standing Committee on Rules of Practice and Procedure, September 18, 2014, at 128. The reasoning for the proposed amendment was that even after an order of default has been entered as to liability, the defendant is still entitled to participate in proceedings as to damages or other relief. Id. at 129, citing *Banegura v. Taylor*, 312 Md. 609 (1988) and *Greer v. Inman*, 79 Md. App. 350 (1989).

The proposed amendment generated significant discussion by the Committee. Some members proposed that the exception for parties in default should only apply to a party against whom an order of default has been entered. See Minutes of the Standing Committee on Rules of Practice and Procedure, September 18, 2014, at 135-37. The Rule was remanded to the General Provisions Subcommittee for further consideration. Id. at 139. The Subcommittee reconsidered the proposal and recommended the same amendment the following year. Minutes of the Standing Committee on Rules of Practice and Procedure, September 10, 2015, at 16-17. The amendment was approved as presented with no significant debate. Id. at 19. The new subsection was recommended to the Court in the 188th Report and adopted in a Rules Order dated December 7, 2015.

The Rules Committee has considered when a defendant should be considered "a party in default" for the purposes of discontinuing service several times since the adoption of the 1984 Rules. During the Committee's discussion, the policy that a defendant is not deemed "a party in default" until the court enters an order of default has been considered, but never recommended to the Supreme Court. The most recent substantive amendment to Rule 1-321 made it clear that the request for entry of judgment pursuant to Rule 2-613 (f) must be served in accordance with Rule 1-321 (a).

Because Rule 1-321 (c) excuses service of any pleading or paper "after the original pleading," Rule 2-613 (b) requires the filing of a paper "after the original pleading" in the form of a request for order of default, and Rule 1-321 (c)(2) only requires service of the later request for entry of judgment arising out of an order of default, the Rules can be understood to mean that there is no requirement to serve the request for order of default. The defendant against whom the order of default is entered will be notified promptly of the order by the clerk as required by Rule 2-613 (c). The notice will instruct the defendant of the opportunity to move to vacate the order within 30 days of its entry pursuant to Rule 2-613 (d).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE—CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-613 by adding a provision pertaining to service to section (b), as follows:

Rule 2-613. DEFAULT JUDGMENT

(a) Parties to Whom Applicable

In this Rule, the term "plaintiff" includes counter-plaintiffs, cross-plaintiffs, and third-party plaintiffs, and the term "defendant" includes counter-defendants, cross-defendants, and third-party defendants.

(b) Order of Default

If the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default. The request shall state the last known address of the defendant<u>, but the plaintiff need not serve the defendant with the request</u>.

(c) Notice

Promptly upon entry of an order of default, the clerk shall issue a notice informing the defendant that the order of default has been entered and that the defendant may move to vacate the order within 30 days after its entry. The notice shall be mailed to the defendant at the address stated in the request and

to the defendant's attorney of record, if any. The court may provide for additional notice to the defendant.

(d) Motion by Defendant

The defendant may move to vacate the order of default within 30 days after its entry. The motion shall state the reasons for the failure to plead and the legal and factual basis for the defense to the claim.

(e) Disposition of Motion

If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead, the court shall vacate the order.

(f) Entry of Judgment

If a motion was not filed under section (d) of this Rule or was filed and denied, the court, upon request, may enter a judgment by default that includes a determination as to the liability and all relief sought, if it is satisfied (1) that it has jurisdiction to enter the judgment and (2) that the notice required by section (c) of this Rule was mailed. If, in order to enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court, may rely on affidavits, conduct hearings, or order references as appropriate and, if requested, shall preserve to the plaintiff the right to trial by jury.

Cross reference: For the requirement that a request for entry of judgment under section (f) of this Rule be served on the defendant, see Rule 1-321 (b)(2).

(g) Finality

A default judgment entered in compliance with this Rule is not subject to the revisory power under Rule 2-535 (a) except as to the relief granted.

Cross reference: Section 3931 of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 et seq., imposes specific requirements that must be fulfilled before a default judgment may be entered.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is new.
Section (c) is new.
Section (d) is new.
Section (e) is new.
Section (f) is new. The second sentence is derived from the last sentence of the 1937 version of Fed. R. Civ. P. 55(b)(2).
Section (g) is new.

REPORTER'S NOTE

Proposed amendments to Rule 2-613 clarify that a request for order of default is not required to be served by the requesting party on the party in default. See the Reporter's note to Rule 1-321.

Proposed amendments to Rule 2-613 (b) state that the request for order of default need not be served on the defendant by the plaintiff. Pursuant to section (c), the defendant will be notified of the entry of order of default by the clerk and must be served with the request for entry of judgment (section (f)).

AGENDA ITEM 6

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-124 by adding new section (i) pertaining to service on a limited worker cooperative association and by re-lettering current sections (i) through (o) as (j) through (p), respectively, as follows:

Rule 2-124. PROCESS – PERSONS TO BE SERVED

(a) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

Committee note: Examples of statutes permitting or requiring service on a person include the Maryland Tort Claims Act, Code, State Government Article, § 12-108 (a) (service of a complaint is sufficient only when made upon the Treasurer of the State); Code, Insurance Article, § 4-107 (service on certain insurance companies is effected by serving the Insurance Commissioner); Code, Business Regulation Article, § 4-402 (service on a non-resident "athlete agent" is effected by serving the Secretary of Labor, Licensing, and Regulation); Code, Business Regulation Article, § 6-202 (service on certain nonresident charitable organizations is effected by serving the Secretary of State); and Code, Courts Article, § 3-405 (notice to the Attorney General is required immediately after a declaratory judgment action is filed alleging that a statute, municipal or county ordinance, or franchise is unconstitutional).

(b) Individual

Service is made upon an individual by serving the individual or an agent authorized by appointment or by law to receive service of process for the individual.

(c) Individual Under Disability

Service is made upon an individual under disability by serving the individual and, in addition, by serving the parent, guardian, or other person having care or custody of the person or estate of the individual under disability.

(d) Corporation

Service is made upon a corporation, incorporated association, or joint stock company by serving its resident agent, president, secretary, or treasurer. If the corporation, incorporated association, or joint stock company has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

(e) General Partnership

Service made upon a general partnership sued in its group name in an action pursuant to Code, Courts Article, § 6-406 by serving any general partner.

(f) Limited Partnership

Service is made upon a limited partnership by serving its resident agent. If the limited partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any general partner or other person expressly or impliedly authorized to receive service of process.

(g) Limited Liability Partnership

Service is made upon a limited liability partnership by serving its resident agent. If the limited liability partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any other person expressly or impliedly authorized to receive service of process.

(h) Limited Liability Company

Service is made upon a limited liability company by serving its resident agent. If the limited liability company has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

(i) Limited Worker Cooperative Association

Service is made upon a limited worker cooperative association by serving its resident agent. If the limited worker cooperative association has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

~~(i)~~(j) Unincorporated Association

Service is made upon an unincorporated association sued in its group name pursuant to Code, Courts Article, § 6-406 by serving any officer or member of its governing board. If there are no officers or if the association has no governing board, service may be made upon any member of the association.

~~(j)~~(k) State of Maryland

Service is made upon the State of Maryland by serving the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Supreme Court. In any action attacking the validity of an order of an officer or agency of this State not made a party, the officer or agency shall also be served.

~~(k)~~(l) Officer or Agency of the State of Maryland

Service is made on an officer or agency of the State of Maryland by serving (1) the resident agent designated by the officer or agency, or (2) the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Supreme Court. If service is made on the Attorney General or a designee of the Attorney General and the officer or agency is not ordinarily represented by the Attorney General, the Attorney General or designee promptly shall forward the process and papers to the appropriate officer or agency.

Committee note: This section does not purport to create a tort duty by directing the Attorney General to forward process and papers. See *Erie Ins. Co. v. Chops*, 322 Md. 79 (1991). Nor does this section obviate the need for personal service in accordance with section (b) of this Rule on an officer sued in the officer's individual capacity.

Cross reference: See Code, State Government Article, § 6-109, which requires that a State agency not represented by the Attorney General file with the State Department of Assessments and Taxation a designation of its resident agent.

~~(l)~~(m) Local Entity

Service is made on a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of the State by serving the resident agent designated by the local entity. If the local entity has no resident agent or if a good faith effort to serve the resident agent has failed, service may be made by serving the chief executive or presiding officer or, if none, by serving any member of the governing body.

Cross reference: See Code, Local Government Article, § 1-1301 concerning a local entity's designation of a resident agent by filing with the State Department of Assessments and Taxation.

~~(m)~~(n) United States

Service is made upon the United States by serving the United States Attorney for the District of Maryland or an individual designated by the United States Attorney in a writing filed with the clerk of the court and by serving the Attorney General of the United States at Washington, District of Columbia. In any action attacking the validity of an order of an officer or agency of the United States not made a party, the officer or agency shall also be served.

~~(n)~~(o) Officer or Agency of the United States

Service is made upon an officer or agency of the United States, including a government corporation, by serving the United States and by serving the officer or agency.

~~(o)~~(p) Substituted Service Upon State Department of Assessments and Taxation

Service may be made upon a corporation, limited partnership, limited liability partnership, limited liability company, or other entity required by statute of this State to have a resident agent by serving two copies of the summons, complaint, and all other papers filed with it, together with the requisite fee, upon the State Department of Assessments and Taxation if (i) the entity has no resident agent; (ii) the resident agent is dead or is no longer at the address for service of process maintained with the State Department of Assessments and Taxation; or (iii) two good faith attempts on separate days to serve the resident agent have failed.

Committee note: If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is derived as follows:
Section (a) is new and replaces former Rules 105 c and 106 f.
Section (b) is derived from former Rule 104 b 1 (i) and (ii).
Section (c) is derived from former Rule 119.
Section (d) is derived from former Rule 106 b.
Section (e) is new.
Section (f) is new.
Section (g) is new.
Section (h) is new.
Section (i) is new.
Section (j) is new.
Section (k) is new.
Section (l) is new.
Section (m) is new.
Section ~~(m)~~(n) is derived from former Rule 108 a.
Section ~~(n)~~(o) derived from former Rule 108 b.
Section ~~(o)~~(p) is new, but is derived in part from former section (c) and former Rule 106 e 1 and 2.

REPORTER'S NOTE

Proposed amendments to Rule 2-124 implement Chapters 198/199, 2025 Laws of Maryland (HB 15/SB144). The law creates a new business entity, a limited worker cooperative association ("LWCA"), and establishes in Code, Corporations and Associations Article, §1-401 how the entity is to be served. Service on an LWCA is accomplished by serving the resident agent.

Proposed new section (i) adds a provision for service of an LCWA and is derived from sections (f), (g), and (h), which govern service on a limited partnership, limited liability partnership, and limited liability company, respectively. Current sections (i) through (o) are relettered as (j) through (p).

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-124 by adding new section (i) pertaining to service on a limited worker cooperative association and by re-lettering current sections (i) through (o) as (j) through (p), respectively, as follows:

Rule 3-124. PROCESS – PERSONS TO BE SERVED

(a) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

Committee note: Examples of statutes permitting or requiring service on a person include the Maryland Tort Claims Act, Code, State Government Article, § 12-108 (a) (service of a complaint is sufficient only when made upon the Treasurer of the State); Code, Insurance Article, § 4-107 (service on certain insurance companies is effected by serving the Insurance Commissioner); Code, Business Regulation Article, § 4-402 (service on a non-resident "athlete agent" is effected by serving the Secretary of Labor, Licensing, and Regulation); Code, Business Regulation Article, § 6-202 (service on certain nonresident charitable organizations is effected by serving the Secretary of State); and Code, Courts Article, § 3-405 (notice to the Attorney General is required immediately after a declaratory judgment action is filed alleging that a statute, municipal or county ordinance, or franchise is unconstitutional).

(b) Individual

Service is made upon an individual by serving the individual or an agent authorized by appointment or by law to receive service of process for the individual.

(c) Individual Under Disability

Service is made upon an individual under disability by serving the individual and, in addition, by serving the parent, guardian, or other person having care or custody of the person or estate of the individual under disability.

(d) Corporation

Service is made upon a corporation, incorporated association, or joint stock company by serving its resident agent, president, secretary, or treasurer. If the corporation, incorporated association, or joint stock company has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

(e) General Partnership

Service made upon a general partnership sued in its group name in an action pursuant to Code, Courts Article, § 6-406 by serving any general partner.

(f) Limited Partnership

Service is made upon a limited partnership by serving its resident agent. If the limited partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any general partner or other person expressly or impliedly authorized to receive service of process.

(g) Limited Liability Partnership

Service is made upon a limited liability partnership by serving its resident agent. If the limited liability partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any other person expressly or impliedly authorized to receive service of process.

(h) Limited Liability Company

Service is made upon a limited liability company by serving its resident agent. If the limited liability company has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

(i) Limited Worker Cooperative Association

Service is made upon a limited worker cooperative association by serving its resident agent. If the limited worker cooperative association has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

~~(i)~~(j) Unincorporated Association

Service is made upon an unincorporated association sued in its group name pursuant to Code, Courts Article, § 6-406 by serving any officer or member of its governing board. If there are no officers or if the association has no governing board, service may be made upon any member of the association.

~~(j)~~(k) State of Maryland

Service is made upon the State of Maryland by serving the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Supreme Court. In any action attacking the validity of an order of an officer or agency of this State not made a party, the officer or agency shall also be served.

~~(k)~~(l) Officer or Agency of the State of Maryland

Service is made on an officer or agency of the State of Maryland by serving (1) the resident agent designated by the officer or agency, or (2) the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Supreme Court. If service is made on the Attorney General or a designee of the Attorney General and the officer or agency is not ordinarily represented by the Attorney General, the Attorney General or designee promptly shall forward the process and papers to the appropriate officer or agency.

(2) Foreign Judgment

At the time a foreign judgment as defined in Code, Courts Article, § 11-801 is filed, the judgment creditor shall file an affidavit in compliance with Code, Courts Article, § 11-803(a). Upon receipt of the affidavit, the clerk shall mail to the judgment debtor the notice required by Code, Courts Article, § 11-803(b) and make a docket entry notation of the mailing.

Cross reference: For enforcement of foreign judgments, see Code, Courts Article, §§ 11-801 through 11-807. For provisions governing the stay of enforcement of a judgment, see Rule 2-632.

~~(l)~~(m) Local Entity

Service is made on a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of the State by serving the resident agent designated by the local entity. If the local entity has no resident agent or if a good faith effort to serve the resident agent has failed, service may be made by serving the chief executive or presiding officer or, if there is no chief executive or presiding officer, by serving any member of the governing body.

Cross reference: See Code, Local Government Article, § 1-1301 concerning a local entity's designation of a resident agent by filing with the State Department of Assessments and Taxation.

~~(m)~~(n) United States

Service is made upon the United States by serving the United States Attorney for the District of Maryland or an individual designated by the United States Attorney in a writing filed with the clerk of the court and by serving the Attorney General of the United States at Washington, District of Columbia. In any action attacking the validity of an order of an officer or agency of the United States not made a party, the officer or agency shall also be served.

~~(n)~~(o) Officer or Agency of the United States

Service is made upon an officer or agency of the United States, including a government corporation, by serving the United States and by serving the officer or agency.

~~(o)~~(p) Substituted Service Upon State Department of Assessments and Taxation

Service may be made upon a corporation, limited partnership, limited liability partnership, limited liability company, or other entity required by statute of this State to have a resident agent by serving two copies of the summons, complaint, and all other papers filed with it, together with the requisite fee, upon the State Department of Assessments and Taxation if (i) the entity has no resident agent; (ii) the resident agent is dead or is no longer at the address for service of process maintained with the State Department of Assessments and Taxation; or (iii) two good faith attempts on separate days to serve the resident agent have failed.

Committee note: If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is derived as follows:
Section (a) is new and replaces former M.D.R. 106 f.
Section (b) is derived from former M.D.R. 104 b 1 (i) and (ii).
Section (c) is derived from former M.D.R. 119.
Section (d) is derived from former M.D.R. 106 b.
Section (e) is new.
Section (f) is new.
Section (g) is new.
Section (h) is new.
Section (i) is new.
Section (j) is new.

Section (k) is new.
Section (l) is new.
Section (m) is new.
Section ~~(m)~~(n) is derived from former Rule 108 a.
Section ~~(n)~~(o) derived from former Rule 108 b.
Section ~~(o)~~(p) is new, but is derived in part from former section (c) and former M.D.R. 106 e 1 and 2.

REPORTER'S NOTE

Proposed amendments to Rule 2-124 implement Chapters 198/199, 2025 Laws of Maryland (HB 15/SB144). See the Reporter's note to Rule 2-124.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 300 – PLEADINGS AND MOTIONS

AMEND Rule 2-321 by updating a reference in subsection (b)(4), as follows:

Rule 2-321. TIME FOR FILING ANSWER

. . .

(b) Exceptions

(1) A defendant who is served with an original pleading outside of the State but within the United States shall file an answer within 60 days after being served.

(2) A defendant who is served with an original pleading by publication or posting, pursuant to Rule 2-122, shall file an answer within the time specified in the notice.

(3) A person who is required by statute of this State to have a resident agent and who is served with an original pleading by service upon the State Department of Assessments and Taxation, the Insurance Commissioner, or some other agency of the State authorized by statute to receive process shall file an answer within 60 days after being served.

(4) The United States or an officer or agency of the United States served with an original pleading pursuant to Rule 2-124 ~~(m) or (n)~~ (n) or (o) shall file an answer within 60 days after being served.

(5) A defendant who is served with an original pleading outside of the United States shall file an answer within 90 days after being served.

(6) If rules for special proceedings, or statutes of this State or of the United States, provide for a different time to answer, the answer shall be filed as provided by those rules or statutes.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-321 is a conforming one in light of re-lettering in Rule 2-124. Sections (m) and (n) are not (n) and (o).

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 300 – PLEADINGS AND MOTIONS

AMEND Rule 3-307 by updating a reference in subsection (b)(2)(C), as follows:

Rule 3-307. NOTICE OF INTENTION TO DEFEND

. . .

(b) Time for Filing

(1) Generally

Except as provided by subsection (b)(2) of this Rule, the notice shall be filed within 15 days after service of the complaint, counterclaim, cross-claim, or third-party claim.

(2) Exceptions

A defendant shall file the notice within 60 days after being served if the defendant is:

(A) served outside of the State;

(B) a person who is required by statute of this State to have a resident agent and who is served by service upon the State Department of Assessments and Taxation, the Insurance Commissioner, or some other agency of the State authorized by statute to receive process; or

(C) the United States or an officer or agency of the United States served pursuant to Rule 3-124 ~~(m) or (n)~~ (n) or (o).

REPORTER'S NOTE

The proposed amendment to Rule 3-307 is a conforming one in light of re-lettering in Rule 3-124. Sections (m) and (n) are not (n) and (o).

AGENDA ITEM 7

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 – WITNESSES

Rule 5-601. GENERAL RULE OF COMPETENCY

Except as otherwise provided by law, every person is competent to be a witness.

Committee note: Under this Rule, a witness is not generally incompetent by virtue of status. A court could find, however, that because of insufficient memory, intelligence, or ability to express oneself, or inability to appreciate the need to tell the truth, a particular witness is not competent to testify as to certain matters. See Rules 5-401 through 5-403, and 5-603.

Cross reference: Code, Courts Article, §§ ~~9-104~~ 9-105 and 9-116.

Source: This Rule is derived from F.R.Ev. 601.

REPORTER'S NOTE

The proposed amendment to Rule 5-601 implements Chapters 145/146, 2025 Laws of Maryland (HB 241/SB 142) and updates an out-of-date reference. The law alters the definition of "spouse" in Code, Courts Article, § 9-105 to include a former spouse for the purposes of competency to testify to confidential communications occurring during the marriage. In reviewing Rule 5-601 for possible amendments, it was discovered that the cross reference at the end of the Rule contains a reference to a repealed statute (Code, Courts Article, § 9-104). The proposed amendment replaces the repealed statute with Code, Courts Article, § 9-105, which impacts competency.

INFORMATION ITEM 1

THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. YVETTE M. BRYANT, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
SANDRA F. HAINES, Reporter
COLBY L. SCHMIDT, Deputy Reporter
HEATHER COBUN, Assistant Reporter
MEREDITH A. DRUMMOND, Assistant Reporter

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MEMORANDUM

TO : Members of the Rules Committee

FROM : Heather Cobun, Esq., Assistant Reporter

DATE : March 10, 2026

RE : Update on Committee on Equal Justice Rules Review Subcommittee's Recommendation Regarding Topics Referred to the Process, Parties, and Pleading Subcommittee

In September 2023, the Process, Parties, and Pleading Subcommittee reviewed a series of recommendations impacting service of process contained in the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("the EJC Report"). The Subcommittee expressed interest in (1) further study of allowing electronic service as a more effective option for substitute service than posting and publication, as currently contemplated by the Rules, and (2) possible changes to pleading requirements to inform a defendant in a debt collection action of the identity of the original creditor.

I. Electronic Service

The Supreme Court has since adopted new Rule 9-202.1 (Child Support Modification). The Rule went into effect on October 1, 2025. The Rule contains a more robust alternative service section than Rule 2-121 (c) (see attached Rules Order version of Rule 9-202.1). In particular, the Rule authorizes the court, on request, to enter an order "permitting the moving party to send a copy of the summons and the motion to the non-moving party by electronic means, including email, text message, or social media."

The Forms Subcommittee, a subgroup of the Judicial Council Court Operations Committee, developed a new form for requesting alternative service pursuant to Rule 9-202.1 (CC-DR-133) and updated the general circuit court motion for alternate service (CC-DR-070). The prior version of CC-DR-070 asked the affiant to describe service efforts and why service has not been made, and it concluded with a request

for the court to "order service by posting, or in the alternative by publication, or by any other means of notice that the court may deem appropriate."

During the development of the new alternative service form for child support modification cases, Rules Committee staff suggested that the form provide the affiant with a place to suggest service methods to the court, including the electronic service methods outlined in the new Rule. The Forms Subcommittee agreed, and included in the general alternate service form provisions from the new child support modification alternative service form. Both forms were made available in October 2025.

Rules Committee staff made a preliminary study of civil domestic cases involving child support where alternative service was requested since October 1, 2025 and identified dozens of cases where the filer requested service via email, text, or social media, and found that courts often grant those requests. The limited data set suggests that, when prompted to suggest alternative methods of service, *pro se* litigants are identifying electronic methods, and courts are comfortable ordering such methods, provided sufficient efforts to achieve traditional service have been shown.

The Process, Parties, and Pleading Subcommittee has instructed staff to continue monitoring alternative service requests and orders in civil cases, with particular attention to any matters that involve default judgments after alternative service, to assess whether there are any significant problems arising from alternative service via electronic means. The Subcommittee will continue to assess electronic service options.

No Rule change is currently recommended.

II. Original Creditor in Case Caption

The EJC Report identified an issue in lawsuits to collect a debt where "individual defendants may not recognize the name of the party suing them and may fail to take the lawsuit seriously" due to consumer debt having been sold or assigned. The Report recommended that the Rules Committee "consider amending Rules 2-201 and 3-301 to require that the caption in a suit to collect on a debt reflect the name of the original creditor in addition to the name of any entity that may have purchased the debt."

Rules 2-201 and 3-301 are identical and, in part, provide that, "Every action shall be prosecuted in the name of the real party in interest, except that an…assignee for the benefit of creditors, or a person authorized by statute or rule may bring an action without joining the persons for whom the action is brought."

The "real party in interest" Rule is "a rule of standing" to ensure that "[the] plaintiff's interest in a lawsuit [is] concrete and [differs] in character and kind from an interest shared by all members of the public." Paul V. Niemeyer & Linda M. Shuett,

Maryland Rules Commentary (6th ed. 2024) at 268, citing *Paula v. Mayor*, 253 Md. App. 566 (2022). The EJC Report suggestion is targeted at notice of a pertinent fact to the debtor (where the debt originated), not the standing of the creditor to sue. Therefore, amending Rules 2-201 and 3-201 is inappropriate.

To the extent that the circumstances stated in the EJC Report occur in cases involving assigned consumer debt, the Subcommittee recommends that the Forms Subcommittee consider an amendment to the form complaint for assigned consumer debt to prompt the creditor to provide the name of the original creditor prominently on page one of the form (Rule 3-306 (d)(3)(A) requires a complaint to collect assigned consumer debt to include "a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor." This information is on page three of the form.).

No Rule change is currently recommended.

INFORMATION ITEM 2

THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. YVETTE M. BRYANT, Chair
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair
SANDRA F. HAINES, Reporter
COLBY L. SCHMIDT, Deputy Reporter
HEATHER COBUN, Assistant Reporter
MEREDITH A. DRUMMOND, Assistant Reporter

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MEMORANDUM

TO : Members of the Rules Committee

FROM : Meredith Drummond, Esq., Assistant Reporter

DATE : March 10, 2025

SUBJECT : Information Item: Update on Committee on Equal Justice Rules Review Subcommittee's Recommendations Referred to the Criminal Rules Subcommittee

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Equal Justice Committee Rules Review Subcommittee ("the EJC Report"). The Rules Review Subcommittee was tasked with identifying instances in the Rules that "reflect, perpetuate, or fail to correct systemic biases." The Rules Review Subcommittee, along with interested individuals and justice partners, worked diligently to complete a detailed report that provided the basis for numerous improvements to various Rules that, ultimately, were adopted by the Supreme Court.

Recommendations contained in the EJC Report were forwarded to various subcommittees of the Rules Committee for preliminary review, discussion, and possible action. The Criminal Rules Subcommittee discussed many recommendations of the EJC Report over the course of several meetings. In January 2026, the Criminal Rules Subcommittee completed its review of topics related to the Rules governing criminal proceedings.

The Subcommittee's consideration of several topics from the EJC Report resulted in a recommendation of "no action," as detailed below. The relevant excerpts from the EJC Report are attached for reference. Please note that any topic may be brought back before the Committee at a later date, particularly if new information is received.

- Rule 4-242 (Pleas) and Rule 4-243 (Plea Agreements)

The EJC Report recommended that the Rules Committee consider: (1) extending the deadline for "newly discovered evidence" in Rule 4-242 to a year; (2) including a list of required plea advice elements in Rules 4-242 and 4-243, similar to Fed. R. Crim. P. 11; and (3) modifying Rule 4-243 to allow for the existence of a written plea agreement and for that written agreement to be incorporated into the record.

The Criminal Rules Subcommittee reviewed these recommendations at meetings in October 2023 and January 2026. The Subcommittee declined to recommend any changes regarding the deadline for "newly discovered evidence" in Rule 4-242, citing the importance of finality and the existence of other mechanisms to address evidentiary issues. The Subcommittee also discussed at length the possibility of adding a litany of plea elements to the Rules, as well as whether use of a form would provide a better alternative. The Subcommittee concluded that it had not been presented with empirical data demonstrating a need for change, and continued education of attorneys and judges would best address the concerns raised in the EJC Report. In regard to written plea agreements, the Subcommittee noted that the Rule does not preclude the use of written plea agreements, and concluded that no amendment is needed at this time.

- Rule 4-312 (Jury Selection)

The EJC Report recommended that the Rules Committee collaborate with the Jury Use and Management Subcommittee to consider adopting Rules pursuant to statute to have a broader jury pool and determine best practices for fair and diverse jury pools.

The Criminal Rules Subcommittee discussed the two recommendations regarding jury selection at a January 2026 meeting. The Subcommittee noted that jury plans, which set forth the sources for jury pools in each county, already are submitted to the Supreme Court for review and approval, and any revisions to a plan must be approved by the Supreme Court. In addition, the Subcommittee observed that the Jury Use and Management Subcommittee of the Judicial Council is the entity tasked with updating the Judiciary's Jury Manual, and the Jury Manual is not part of the Rules. Accordingly, the Criminal Rules Subcommittee took no action concerning these EJC Report recommendations.

- Rules 4-331 (Motion for New Trial; Revisory Power) and 4-342 (Sentencing – Procedure)

The EJC Report recommended that the Rules Committee consider extending the time to file a motion for a new trial, allowing defendants additional time in cases where sentencing is delayed.

The Subcommittee considered this topic at a meeting in April 2024 and found an inability to craft a Rules change that did not generate additional procedural problems. The Subcommittee decided to take no action on the topic, but noted that criminal Rules changes may be reconsidered if potential Rules changes pertaining to the topic arise in the context of civil proceedings.

- Rule 4-353 (Costs)

The EJC Report recommended that the Rules Committee consider whether costs should be waived for defendants who qualify for representation by the Office of the Public Defender.

The Criminal Rules Subcommittee considered this recommendation at meetings in October 2024 and January 2026. The Subcommittee noted that current provisions in the Rules already allow for the waiver of costs and that several of the costs directly benefit services for victims. Accordingly, the Subcommittee determined that amendments to the Rules concerning costs are not recommended at this time.

- Discovery in Postconviction

The EJC Report recommended that the Rules Committee consider adding a Rule for postconviction petitioners to seek court approval for specific, limited discovery when there is a *prima facie* valid claim that the evidence exists.

The Criminal Rules Subcommittee considered this topic at meetings in April 2024 and August 2025. The Subcommittee noted possible concerns about file retention schedules and attorney obligations. After discussion, the Subcommittee decided to take no action on the topic at this time.