Notice of In-Person Meeting

Standing Committee on Rules of Practice and Procedure
June 25, 2026 Open Meeting, 9:30 a.m.
Instructions for Members of the Public

The June 25, 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 237-238, 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

June 25, 2026 (Thursday)
9:30 a.m.
Maryland Judicial Center
Rooms 237-238
187 Harry S. Truman Parkway
Annapolis, MD 21401

Item 1 Reconsideration of proposed amendments to: Judge Nazarian

Rule 1-202 (Definitions)
Rule 16-903 (Definitions)

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

Additional proposed conforming amendments to:

Rule 2-403 (Protective Orders)
Rule 4-243 (Plea Agreements)
Rule 4-261 (Depositions)
Rule 4-266 (Subpoenas – Generally)
Rule 4-312 (Jury Selection)
Rule 4-341 (Sentencing – Presentence Investigation and Report)
Rule 8-125 (Appeals from Courts Exercising Criminal Jurisdiction – Confidentiality)
Rule 8-504 (Contents of Brief)
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)

Item 2	Consideration of proposed amendments to **Rule 16-104** (Circuit Court – Circuit Administrative Judge)	Judge Nazarian
Item 3	Consideration of proposed amendments to **Rule 20-106** (When Electronic Filing Required; Exceptions)	Judge Nazarian
Item 4	Consideration of proposed amendments to **Rule 20-109** (Access to Electronic Records in an Action) Proposed conforming amendments to **Rule 16-905** (Copies)	Judge Nazarian
Item 5	Consideration of proposed amendments to **Rule 8-303** (Petition for Writ of Certiorari - Procedure)	Judge Nazarian
Item 6	Consideration of proposed amendments to **Rule 19-503** (Reporting Pro Bono Legal Service)	Mr. Marcus
Item 7	Consideration of proposed amendments to: **Rule 19-409** (Interest on Funds) **Rule 19-703** (Bar Counsel)	Mr. Marcus
Item 8	Consideration of proposed amendments to **Rule 19-305.3 (5.3)** (Responsibilities Regarding Non-Attorney Assistants)	Mr. Marcus
Item 9	Consideration of proposed amendments to: **Rule 19-301.1 (1.1)** (Competence) **Rule 19-301.6 (1.6)** (Confidentiality of Information) **Rule 19-303.3 (3.3)** (Candor Toward Tribunal)	Mr. Marcus
Item 10	Consideration of proposed amendments to **Rule 19-301.15 (1.15)** (Safekeeping Property)	Mr. Marcus
Item 11	Consideration of proposed “housekeeping” amendments to: **Rule 9-101** (Applicability; Definitions) **Rule 19-606** (Enforcement of Obligations)	Reporter

AGENDA ITEM 1

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 restrict access to a judicial record, as defined in Rule 16-903, to persons authorized by written order of the court and to authorized Judiciary personnel as required to perform official duties.

~~(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).

~~(cc)~~(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, as defined in Rule 16-903, 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.

At its March 20, 2026 meeting, the Rules Committee considered the issue and decided to recommend that “seal” 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.”

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.

At the suggestion of staff, both definitions were amended to add reference to the definition of "judicial record" from Rule 16-903. See the Reporter's note to Rule 16-903.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 16-903 by deleting "documentary" in section (j) and by updating a statutory reference in subsection (j)(2), as follows:

Rule 16-903. DEFINITIONS

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

. . .

(d) Case Record

(1) Except as otherwise provided in this Rule, "case record" means:

(A) all or any portion of a paper, document, exhibit, order, notice, docket entry, or other record, whether in paper, electronic, or other form, that is made, entered, filed with, or maintained by the clerk of a court in connection with an action or proceeding; and

(B) a miscellaneous record filed with the clerk of the court pursuant to law that is not a notice record.

(2) "Case record" does not include a document or information described in subsection (b)(3) of this Rule.

. . .

(j) Judicial Record

"Judicial record" means a record that is the original or copy of any ~~documentary~~ material that:

(1) is made or received by, and is in the possession of, a judicial agency, judicial personnel, or a special judicial unit, in connection with the transaction of judicial business;

(2) is in any form, including the forms listed in Code, General Provisions Article, ~~§ 4-101(j)(1)(ii)~~ § 4-101(k)(1)(ii), and

(3) includes:

(A) an administrative record;

(B) a license record;

(C) a case record;

(D) a notice record; or

(E) a special judicial unit record.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 16-903 clarify the definition of a "judicial record." During discussion of proposed definitions in Rule 1-202 for "seal" and "shield," the Rules Committee asked whether "judicial record," defined as "a record that is the original or copy of any *documentary* material," includes audio and video recordings. This apparently limiting language presented a problem when applying the definitions of "seal" and "shield" to digital media evidence,

e.g. body camera footage, which may form part of the record of a case, and to recordings of proceedings created pursuant to Title 16, Chapter 500.

Staff reviewed Rule 16-903 in more detail and determined that a judicial record is intended to include recordings. “Judicial record” encompasses the broadest understanding of the type of record which may be in the possession of the Judiciary. It includes administrative, license, case, notice, and special judicial unit records which are “in any form,” including those listed in a section of the Maryland Public Information Act (“PIA,” Code, General Provisions Article, Title 4). Subsection (j)(2) contains an outdated citation to this section of the PIA, which is corrected. The correct subsection of the PIA lists various forms that a public record can take, including “film or microfilm,” “a recording,” and “a tape.” The PIA contains the same stem language as Rule 16-903 (j), referring to “the original or copy of any documentary material.”

“Documentary” is not defined in the PIA or the Rules. It is generally defined to mean “being or consisting of documents” (Merriam-Webster) or “in the form of documents” (Cambridge Dictionary). Though it is used in the PIA definition of “public record,” the subsequent use of “in any form” and explicit listing of non-documents supports that “documentary” was not meant to limit public records to documents. To alleviate confusion, “documentary” is proposed to be deleted from Rule 16-903 (j).

Additionally, Rule 16-903 (d) defines “case record” – a subset of “judicial record” – to mean “all or any portion of a paper, document, exhibit, order, notice, docket entry, or other record, whether in paper, electronic, or other form, that is made, entered, filed with, or maintained by the clerk of a court in connection with an action or proceeding.”

Read together, the provisions of Rule 16-903 and Code, General Provisions Article, § 4-101(k)(1)(ii) do not exclude non-document exhibits, including recordings, or Title 16, Chapter 500 recordings from the definition of “judicial record.”

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

Rule 16-601 (1-202 conforming)
GCA SC approved 5/7/26
For 6/25/26 RC

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).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 – DISCOVERY

AMEND Rule 2-403 by adding “or shielded” to subsection (a)(7), as follows:

Rule 2-403. PROTECTIVE ORDERS

(a) Motion

On motion of a party, a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, and for good cause shown, the court may enter any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had, (2) that the discovery not be had until other designated discovery has been completed, a pretrial conference has taken place, or some other event or proceeding has occurred, (3) that the discovery may be had only on specified terms and conditions, including an allocation of the expenses or a designation of the time or place, (4) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery, (5) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters, (6) that discovery be conducted with no one present except persons designated by the court, (7) that a deposition, after being sealed

or shielded, be opened only by order of the court, (8) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way, (9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(b) Order

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

Source: This Rule is derived as follows:
Section (a) is derived from the 1980 version of Fed. R. Civ. P. 26 (c) and the 1980 version of Fed. R. Civ. P. 33 (b) and from former Rule 406 a.
Section (b) is derived from the 1980 version of Fed. R. Civ. P. 26 (c).

REPORTER'S NOTE

Proposed amendments to Rule 2-403 are proposed in light of the proposed new definitions for "seal" and "shield" in Rule 1-202, which distinguish the terms by proving that sealed records are restricted from even the parties and shielded records are accessible by the parties but restricted from the public. Rule 2-403 is amended to refer to the court's ability to shield a certain discovery in response to a subpoena.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-243 by adding "or shielded" to section (d), as follows:

Rule 4-243. PLEA AGREEMENTS

. . .

(d) Record of Proceedings

All proceedings pursuant to this Rule, including the defendant's pleading, advice by the court, and inquiry into the voluntariness of the plea or a plea agreement shall be on the record. If the parties stipulate to the court that disclosure of the plea agreement or any of its terms would cause a substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, or unnecessary annoyance or embarrassment, the court may order that the record be sealed <u>or shielded</u> subject to terms it deems appropriate.

Source: This Rule is derived from former Rule 733 and M.D.R. 733.

REPORTER'S NOTE

Proposed amendments to Rule 4-243 are proposed in light of the proposed new definitions for "seal" and "shield" in Rule 1-202, which distinguish the terms by proving that sealed records are restricted from even the parties and shielded records are accessible by the parties but restricted from the public. Rule 4-243 permits the court to seal the record of a plea or plea agreement. The General Court Administration Subcommittee was

informed that there may be situations where the record of a plea is shielded from the public but accessible by the parties. To accommodate this practice, a reference to a shielded record of a plea is added to Rule 4-243 (d).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-261 by adding "or shielded" to subsection (f)(5), as follows:

Rule 4-261. DEPOSITIONS

. . .

(f) Protective Order

On motion of a party or of the witness and for good cause shown, the court may enter any order that justice requires to protect the party or witness from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the deposition not be taken;

(2) That the deposition be taken only at some designated time or place, or before a judge or some other designated officer;

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

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

(5) That the deposition, after being sealed <u>or shielded</u>, be opened only by order of the 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

Proposed amendments to Rule 4-261 are proposed in light of the proposed new definitions for "seal" and "shield" in Rule 1-202, which distinguish the terms by proving that sealed records are restricted from even the parties and shielded records are accessible by the parties but restricted from the public. Rule 4-266 is amended to refer to the court's ability to shield a certain discovery in response to a subpoena.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-266 by adding “or shielded” to subsection (c)(5), 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 of the following:

(1) That the subpoena be quashed;

(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 <u>or shielded</u>, 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.

. . .

<u>REPORTER'S NOTE</u>

Proposed amendments to Rule 4-266 are proposed in light of the proposed new definitions for "seal" and "shield" in Rule 1-202, which distinguish the terms by proving that sealed records are restricted from even the parties and shielded records are accessible by the parties but restricted from the public. Rule 4-266 is amended to refer to the court's ability to shield a certain discovery in response to a subpoena.

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 and shall be shielded from public inspection 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).

Rule 4-341
General Provisions SC approved
GCA SC approved
For 6/25/26 RC

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

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 8-125 by deleting the tagline to subsection (b)(3) and replacing it with "Shielding of Unredacted Document" and by altering provisions in subsection (b)(3) referring to filings containing confidential information, as follows:

Rule 8-125. APPEALS FROM COURTS EXERCISING CRIMINAL JURISDICTION – CONFIDENTIALITY

(a) Scope

This Rule applies to an appeal from a criminal prosecution or conviction in which the victim of the alleged crime:

(1) was a minor child at the time of the crime; or

(2) is the victim of a crime that would require the defendant, if convicted, to register as a sex offender.

Cross reference: See Code, Criminal Procedure Article, §§ 11-701 – 11-704.2.

(b) Confidentiality

(1) Name of Victim

The name of an individual covered by section (a) of this Rule, other than the individual's initials, shall not be used in any opinion, oral argument, brief,

record extract, petition, appendix, or other document pertaining to the appeal that is generally available to the public.

(2) Other Identifying Information

Other information from which an individual covered by subsection (a) of this Rule might readily be identified, including the individual's street address, phone number, e-mail address, or the names (other than initials) of related individuals other than a defendant in the criminal prosecution, shall not be used in any opinion, oral argument, brief, record extract, petition, appendix, or other document pertaining to the appeal that is generally available to the public.

(3) ~~Information Filed Under Seal~~ Shielding of Unredacted Documents

~~Information~~ If a party or the court files an unredacted document containing information that is required to be kept confidential by this Rule, ~~may be included in a document that is filed under seal, provided that~~ the filer shall submit both an unredacted copy of the document, which shall be shielded from public inspection, and a redacted copy of the document omitting the confidential information ~~is filed at the same time~~.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 8-125 are proposed in light of the proposed new definitions for "seal" and "shield" in Rule 1-202, which distinguish the terms by proving that sealed records are restricted from even

the parties and shielded records are accessible by the parties but restricted from the public.

Rule 8-125 (b) discusses information deemed confidential in an appeal from a criminal prosecution or conviction involving a minor victim. Certain information about the victim is not permitted to be included in appellate filings and, pursuant to subsection (b)(3), a document containing the unredacted information is required to be filed "under seal." Legislative history of Rule 8-125, adopted in 2022 in the 209th Rules Order, shows that the intent was to render this information inaccessible by the public. Rule 8-125 (b)(3) is rewritten to require an unredacted document be (1) shielded and (2) accompanied by a redacted version. A conforming amendment is made in Rule 8-504 (b).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-504 by changing references to “filed under seal” to “shielded” in subsection (b)(2), as follows:

Rule 8-504. CONTENTS OF BRIEF

. . .

(b) Appendix

(1) Generally

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

(2) Appeals in Juvenile and Criminal Prosecution or Conviction Cases

In an appeal from an order relating to a child entered by a court exercising juvenile jurisdiction or an appendix required to be ~~filed under seal~~ shielded ~~as defined in~~ pursuant to Rule 8-125 ~~(b)(2)~~, each appendix shall be

filed as a separate volume and, unless otherwise ordered by the court, shall be ~~filed under seal~~ shielded from public inspection.

Cross reference: See Rules 8-121, 8-122, 8-123, and 8-124.

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

. . .

REPORTER'S NOTE

Proposed amendments to Rule 8-504 are proposed to conform to changes made to Rule 8-125. Amendments to that Rule change references to confidential information filed under seal to instead make those records shielded. See the Reporter's note to Rule 8-125.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-108 by making a stylistic change in subsection (a)(2), 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).

. . .

Rule 10-108
General Provisions SC approved
GCA SC approved
For 6/25/26 RC

REPORTER'S NOTE

Proposed amendments to Rule 10-108 were recommended by the Major Projects Committee's Workgroup on Shielding, Sealing, and Confidentiality of Court Records within the Maryland Rules. A stakeholder requested that "remain confidential" be changed to "be kept confidential" to more clearly state the duty of an individual who has access to shielded information or papers in a guardianship proceeding.

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~~ <u>16-941</u>. The right of a party to proceed anonymously is discussed in *Doe v. Shady Grove Hosp.*, 89 Md. App. 351, 360-66 (1991).

. . .

Rule 15-1103
General Provisions SC approved
GCA SC approved
For 6/25/26 RC

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); and by deleting "placed under seal or otherwise" and "by order of court" in subsection (g)(3)(H)(i), 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 recommended 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.

At the March 20, 2026 meeting, the Rules Committee considered adding references to "sealing" recordings or portions of recordings, which is not expressly contemplated by the current Rules. The question was referred to the General Court Administration Subcommittee for further consideration. After discussion, the Subcommittee recommended retaining the existing system for recordings, which refers only to information that "the court finds should and lawfully may be shielded from public access and inspection." The Rules acknowledge that otherwise protected information may become part of the public record at a hearing or trial (see, e.g., Rule 16-904 (c), which provides that exhibits generally are subject to inspection, "notwithstanding that the record otherwise would not have been subject to inspection under the Rules in this Chapter"). Information put on the record during a proceeding should generally be available to the parties, even if shielded from the public. To the extent that a court determines that information captured by a recording pursuant to Rule 16-502 or Rule 16-504 should be redacted from a copy of a recording provided to a party – as contemplated by the proposed definition of "seal" – a Committee note is proposed to caution the court that shielding a portion of a recording does not restrict access by a party unless otherwise ordered.

Rule 16-503 (g)(3)(H), which applies to the official transcript of a proceeding which includes portions of the audio recording which were shielded from the public, required the unredacted transcript filed with the court to be "placed under seal or otherwise shielded by order of court." After consideration, the General Court Administration Subcommittee recommended deleting references to "sealing" these transcripts as unnecessary.

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); and by deleting “placed under seal or otherwise” and “by order of court” in subsection (h)(1)(H)(i), 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~~ <u>shielded</u> pursuant to section (g) of this Rule or redacted pursuant to Rule 16-504.1. The log shall specify whether the ~~safeguarding~~ <u>protection</u> 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~~ <u>Shielding</u> 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~~ <u>protections</u> be placed on that portion of the recording. The court shall direct that appropriate ~~safeguards~~ <u>protections</u> 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 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 term “safeguard” is replaced 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.

At the March 20, 2026 meeting, the Rules Committee considered adding references to “sealing” recordings or portions of recordings, which is not expressly contemplated by the current Rules. The question was referred to the General Court Administration Subcommittee for further consideration. After discussion, the Subcommittee recommended retaining the existing system for recordings, which refers only to information that “the court finds should and lawfully may be shielded from public access and inspection.” The Rules acknowledge that otherwise protected information may become part of the public record at a hearing or trial (see, e.g., Rule 16-904 (c), which provides that exhibits generally are subject to inspection, “notwithstanding that the record otherwise would not have been subject to inspection under the Rules in this Chapter”). Information put on the record during a proceeding should generally be available to the parties, even if shielded from the public. To the extent that a court determines that information captured by a recording pursuant to Rule 16-502 or Rule 16-504 should be redacted from a copy of a recording provided to a party – as contemplated by the proposed definition of “seal” – a Committee note is proposed to caution the court that shielding a portion of a recording does not restrict access by a party unless otherwise ordered.

Rule 16-503 (h)(1)(H), which applies to the official transcript of a proceeding which includes portions of the audio recording which were shielded from the public, required the unredacted transcript filed with the court to be “placed under seal or otherwise shielded by order of court.” After consideration, the General Court Administration Subcommittee recommended deleting references to “sealing” these transcripts as unnecessary.

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.

(b) Criminal Proceedings – Redaction from Disseminated Copy of Audio Recording

(1) Motion; Findings; Order

Regardless of whether a request for a copy of a recording of a criminal proceeding has been made pursuant to subsection (a)(1) of this Rule, on motion of a party or other interested person or on its own initiative, the court may order that a specified portion of a criminal proceeding be redacted from a copy of an audio recording subject to dissemination pursuant to subsection (a)(1) of this Rule if, by written order or on the record, the court makes a finding by clear and convincing evidence that (A) a compelling reason under the particular circumstances exists for the redaction and (B) no substantial harm will result from the redaction. The court shall specify the portion of the proceeding that is

to be redacted, when the redaction requirement will expire, if ever, and the reason for the redaction, which may include:

(i) the impact of the dissemination of the audio recording on the right of the defendant or the State to a fair trial if the redaction is not made;

(ii) the age, mental condition, or medical condition of a witness whose testimony is sought to be redacted;

(iii) the intimate nature of the testimony sought to be redacted;

(iv) the likelihood of harm to a party, victim, or witness if the redaction is not made; or

(v) other good cause.

(2) Least Restrictive Means

An order to redact a portion of a criminal proceeding from copies of the audio proceeding issued pursuant to subsection (b)(1) of this Rule shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected.

Committee note: The duration of the redaction requirement may be for a specified time, such as until entry of judgment or other disposition in the case, or for an indefinite period.

(3) Procedure

The clerk or other designee of the court shall create a log listing the recording references for the beginning and end of the portions of the recording as to which an order of redaction has been entered pursuant to subsection (b)(1) of this Rule. Unless the court orders otherwise, the testimony shall be

redacted from all copies of the audio recording of the proceeding disseminated pursuant to subsection (a)(1) of this Rule, but shall not be redacted from the recording that a person may listen to or listen to and view pursuant to subsection (a)(2) of this Rule.

(4) Reconsideration

If, on motion of a party or other interested person, the court makes a finding that there has been a material change in circumstances and finds that the requirements of subsection (b)(1) of this Rule no longer are satisfied, the court shall modify or rescind an order issued under that subsection.

(c) Duty of Custodian

The custodian of a recording shall assure that (1) the copy of a recording disseminated pursuant to subsection (a)(1) of this Rule and (2) a recording listened to or listened to and viewed pursuant to subsection (a)(2) of this Rule comply with Rule 16-504 (g) and section (b) of this Rule, as applicable. Delivery of a copy of a recording or the ability to listen to or listen to and view the recording may be delayed for a period reasonably necessary to accomplish the required safeguarding or redaction.

Source: This Rule is derived in part from former sections (h) and (i) of Rule 16-504 (2023) and is in part new..

<u>REPORTER'S NOTE</u>

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.

RULE 16-914

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 sealed or 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)~~ 16-904 (c) 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~~ <u>shielded</u>, except in conformance with the order; or

. . .

<u>REPORTER'S NOTE</u>

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.

Rule 18-407
Attorneys & Judges SC approved
General Provisions SC approved
GCA SC approved
For 6/25/26 RC

. . .

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."

Rule 18-427
Attorneys & Judges SC approved
General Provisions SC approved
GCA SC approved
For 6/25/26 RC

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 all 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.

. . .

Rule 19-104
Attorneys & Judges SC approved
General Provisions SC approved
GCA SC approved
For 6/25/26 RC

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.

Rule 20-201
General Provisions SC approved
GCA SC approved
For 6/25/26 RC

. . .

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.

AGENDA ITEM 2

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 100 – COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-104 by adding a reference to Rule 4-344 (d) to subsection (c)(2), as follows:

Rule 16-104. CIRCUIT COURT – CIRCUIT ADMINISTRATIVE JUDGE

(a) Designation

The Chief Justice of the Supreme Court shall designate, from among the incumbent judges in each judicial circuit, a Circuit Administrative Judge for each judicial circuit, to serve in that capacity at the pleasure of the Chief Justice. The Circuit Administrative Judge shall serve also as the County Administrative Judge of the circuit court for the county within which the judge resides.

(b) Duties

Subject to the provisions of this Chapter and to the direction of the Chief Justice of the Supreme Court, the Circuit Administrative Judge is generally responsible for the overall administration of the circuit courts within the judicial circuit, and for matters that may affect more than one of those courts. In carrying out those responsibilities, the Circuit Administrative Judge:

(1) may perform, on a temporary basis, any of the duties of a County Administrative Judge for a circuit court within the judicial circuit in the

absence of the County Administrative Judge or acting County Administrative Judge for that court;

(2) after consulting with the County Administrative Judges in the circuit, may direct the assignment of magistrates appointed on a circuit-wide basis among the courts within the circuit as judicial business requires; and

(3) shall convene a meeting of all of the circuit court judges within the judicial circuit at least once every six months. The meeting may be conducted in person or by video, telephonic, or other electronic means.

(c) Delegation of Authority

(1) Designation of Acting Circuit Administrative Judge

A Circuit Administrative Judge may designate another County Administrative Judge in the same circuit to serve as Acting Circuit Administrative Judge during the temporary absence of the Circuit Administrative Judge.

(2) Delegation of Certain Duties

A Circuit Administrative Judge may delegate to another County Administrative Judge in the same circuit, with that County Administrative Judge's agreement, some or all of the responsibilities of the Circuit Administrative Judge under Rules 2-327 (d), 2-551 (a), 4-344 (d), and 4-352.

Source: This Rule is derived in part from former Rule 16-101 c (2016) and is in part new.

REPORTER'S NOTE

The Conference of Circuit Judges proposes adding a reference to Rule 4-344 (d) to subsection (c)(2) of this Rule.

AGENDA ITEM 3

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106 by adding “Generally” to the tagline of subsection (a)(3), by adding to subsection (a)(3)(A) clarifying language and an exception pertaining to certain self-represented litigants, by adding new subsection (a)(4) pertaining to non-attorneys initiating summary ejectment actions, by adding a cross reference following new subsection (a)(4), and by re-numbering current subsection (a)(4) as (a)(5), as follows:

Rule 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

(a) Filers – Generally

(1) Attorneys

Except as otherwise provided in section (b) of this Rule, an attorney who enters an appearance in an action shall file electronically the attorney's entry of appearance and all subsequent submissions in the action.

(2) Judges, Judicial Appointees, Clerks, and Judicial Personnel

Except as otherwise provided in section (b) of this Rule, judges, judicial appointees, clerks, and judicial personnel, shall file electronically all submissions in an action.

(3) Self-represented Litigants <u>– Generally</u>

(A) ~~A~~ Except as provided in subsection (a)(4) of this Rule, a self-represented litigant who is a registered user may elect to file an initial pleading or paper electronically or in paper form.

(B) Subject to section (b) of this Rule, a self-represented litigant in an action who is a registered user and who files an initial pleading or paper electronically shall file electronically all subsequent submissions in the action in that court.

(C) A self-represented litigant who files an initial pleading or paper in paper form shall file in paper form all subsequent submissions in the action in that court and shall not be considered a registered user under this Title in that action.

Committee note: A self-represented litigant must choose a filing method and continue to file in the same manner throughout the action in that court. Nothing in this Rule is intended to preclude a self-represented litigant from selecting a different filing method in the action on appeal.

(D) For good cause shown, the administrative judge having direct administrative supervision over the court in which an action is pending may permit a self-represented litigant to change how the litigant files in the action.

(E) A self-represented litigant in an action who is not a registered user may not file submissions electronically.

(4) Non-attorneys Initiating Summary Ejectment Actions

A self-represented landlord and a non-attorney representing a landlord who initiates an action for summary ejectment pursuant to Code, Real Property Article, § 8-401, shall (A) become a registered user pursuant to Rule 20-104

and (B) file electronically all submissions in the action.

Cross reference: See Code, Business Occupations and Professions Article, § 10-206(b) for the authority of a non-attorney to represent a landlord in certain proceedings.

~~(4)~~(5) Other Persons

Except as otherwise provided in the Rules in this Title, a registered user who is required or permitted to file a submission in an action shall file the submission electronically. A person who is not a registered user shall file a submission in paper form.

Committee note: Examples of persons included under subsection (a)(4) of this Rule are government agencies or other persons who are not parties to the action but are required or permitted by law or court order to file a record, report, or other submission with the court in the action and a person filing a motion to intervene in an action.

(b) Exceptions

(1) MDEC System Outage

Registered users, judges, judicial appointees, clerks, and judicial personnel are excused from the requirement of filing submissions electronically during an MDEC system outage in accordance with Rule 20-501.

(2) Other Unexpected Event

If an unexpected event other than an MDEC system outage prevents a registered user, judge, judicial appointee, clerk, or judicial personnel from filing submissions electronically, the registered user, judge, judicial appointee, clerk, or judicial personnel may file submissions in paper form until the ability to file electronically is restored. With each submission filed in paper form, a

registered user shall submit to the clerk an affidavit describing the event that prevents the registered user from filing the submission electronically and when, to the registered user's best knowledge, information, and belief, the ability to file electronically will be restored.

Committee note: This subsection is intended to apply to events such as an unexpected loss of power, a computer failure, or other unexpected event that prevents the filer from using the equipment necessary to effect an electronic filing.

(3) Other Good Cause

For other good cause shown, the administrative judge having direct administrative supervision over the court in which an action is pending may permit a registered user, on a temporary basis, to file submissions in paper form. Satisfactory proof that, due to circumstances beyond the registered user's control, the registered user is temporarily unable to file submissions electronically shall constitute good cause.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 20-106 are requested by the Major Projects Committee ("the MPC") of the Judicial Council. At its April 27, 2026 meeting, the MPC discussed implementation of electronic filing of failure to pay rent cases pursuant to Code, Real Property Article, § 8-401. E-filing of these cases was piloted in Baltimore County pursuant to an April 27, 2022 Administrative Order, and the option to e-file has since been rolled out statewide. According to data provided to the MPC, in March 2026, there were 1,093 actions filed in paper, almost 4 percent of the 27,397 total filings. The

MPC expressed a desire to mandate that all landlords e-file failure to pay rent actions.

Pursuant to the 2022 Administrative Order, once the viability of the project is determined, the Chief Judge of the District Court may "implement mandatory electronic filing for failure to pay rent cases in MDEC jurisdictions" in phases. The order states that it "shall be rescinded upon the completion" of these phases. A 2024 Administrative Order on the Administration and Expansion of Maryland Electronic Courts Statewide provides that landlord/tenant failure to pay rent actions "may, but are not required to, utilize MDEC."

Summary ejectment actions may be electronically initiated using a "Landlord Tenant (LLT) Portal," with subsequent filings made using the Odyssey File and Serve Portal. Although failure to pay rent actions are initiated through a different portal, they are MDEC actions governed by Title 20.

Rule 20-106 currently requires electronic filing by attorneys, judges and other judiciary personnel, and self-represented litigants who register to use MDEC. Pursuant to the 227th Report Rules Order, effective July 1, 2026, subsection (a)(3) of the Rule is amended to permit a self-represented litigant who is a registered user to initiate an action in either paper or electronic form. The litigant must continue using the same filing method throughout the action unless otherwise ordered by the court.

The General Court Administration Subcommittee was informed that since e-filing was made available to landlords, there has been mass adoption of it, with approximately 90% of summary ejectment cases having been filed electronically. The remaining 10% of cases, however, necessitate the maintenance of a business process and resources which are solely in place to enable paper filing of summary ejectment actions. District Court facilities maintain a "register" for landlord/tenant filings to process the complaint form, take the fee, set a court date, etc. The Subcommittee was informed that, after consideration and discussion with the Maryland Multi-Housing Association and District Court staff, MPC recommends that paper filing for summary ejectment be eliminated entirely and all actions be required to be filed electronically.

The Subcommittee discussed the potential negative impact on “mom and pop” landlords – who are not frequent or high-volume filers – if they are required to register for and use MDEC. The Subcommittee was informed that clerks are strongly in favor of moving to electronic filing exclusively and believe that any reluctant users can receive assistance and instruction to navigate the system.

Rules Committee staff later asked MPC leadership whether it is possible to provide an exception for good cause to allow for a summary ejectment action to still be filed in paper, but was informed that there is no way to merge the eviction business process with the general civil complaint process. Once the summary ejectment “register” is eliminated, the MPC contends that it will not be possible to process a paper-filed eviction action.

To effectuate the proposed change to mandate that a landlord file electronically a summary ejectment action, the Subcommittee recommends an amendment to the Rule to (1) require a landlord who is either self-represented or represented by a non-attorney pursuant to Code, Business Occupations and Professions Article, § 10-206(b) to become a registered user of MDEC and (2) file electronically all submissions in a summary ejectment action.

Subsection (a)(3) is amended to add an exception to the general Rule governing self-represented litigants who are registered users and to add the phrase “an initial pleading or paper,” which is a clarifying amendment.

New subsection (a)(4) sets forth the exception and requirements for non-attorneys who initiate a summary ejectment action. Current subsection (a)(4) is renumbered as (a)(5).

AGENDA ITEM 4

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109 by adding new section (g) pertaining to remote access to case records by members of the Maryland Bar; by adding a cross reference following the new section; by re-lettering current sections (g) through (j) as (h) through (k), respectively; and by making stylistic changes, as follows:

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

(a) Generally

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

(b) Parties and Attorneys of Record

Subject to any protective order issued by the court or other law, parties to and attorneys of record for a party in an action shall have full access to all case records in that action, including *(1) records marked confidential or shielded from public inspection and (2)* remote access to electronic case records. In an action where a corporation or business entity established under the law of any state or federal law is a party, the corporation or business entity may designate in writing a registered user who shall have remote access to all case records in the action but not be permitted to file in the action. An attorney for a victim or victim's representative shall have access to case records, including remote

access to electronic case records, as provided in Rule 1-326 (d).

Committee note: The Rules in Title 16, Chapter 900 may restrict public access to certain case records; those Rules do not impact access by a party or attorney of record in an action. See Rule 16-901 (b).

(c) Judges and Judicial Appointees

Judges and judicial appointees shall have full access, including remote access, to judicial records to the extent that such access is necessary to the performance of their official duties. The Chief Justice of the Supreme Court, by Administrative Order, may further define the scope of remote access by judges and judicial appointees.

(d) Clerks and Judicial Personnel

Clerks and judicial personnel shall have full access from their respective work stations to judicial records to the extent such access is necessary to the performance of their official duties. The State Court Administrator, by written directive, may further define the scope of such access by clerks and judicial personnel.

(e) Judiciary Contractors

The State Court Administrator, by written directive, may allow appropriate access for Judiciary contractors from their respective work stations to judicial records to the extent that such access is necessary to the performance of their official duties. Before access under this section is granted to a contractor, the contractor shall sign a non-disclosure agreement on a form approved by the Chief Justice of the Supreme Court.

(f) Court-Designated ADR Practitioners

(1) Definition

In this section, "ADR practitioner" means an individual who conducts ADR under the Rules in Title 17, and includes a mediator designated pursuant to Rule 9-205.

(2) Access to Case Records

During the period of designation of a court-designated ADR practitioner in an action, and subject to any protective order issued by the court or other law, the ADR practitioner shall have full access, including remote access, to all case records in that action. In an action in the circuit court, the ADR practitioner shall file a notice of the designation with the clerk and, promptly upon completion of all services rendered pursuant to the designation, a notice that the designation is terminated. If not terminated earlier, the designation shall end when the case is closed.

Committee note: The special access provided by section (f) of this Rule may be needed to assist the ADR practitioner in rendering the services anticipated by the designation but should end when no further services are anticipated.

(g) Members of the Maryland Bar

For purposes of the practice of law, an active member of the Maryland Bar in good standing who is a registered user shall have remote access to all case records in MDEC that are not sealed or shielded.

Cross reference: For the definition of "case record," see Rule 16-903.

~~(g)~~(h) Public Access

(1) Access Through CaseSearch

Members of the public shall have free access to information posted on CaseSearch.

(2) Unshielded Documents

Subject to any protective order issued by the court, members of the public shall have free access to unshielded case records and unshielded parts of case records from computer terminals or kiosks that the courts make available for that purpose. Each court shall provide a reasonable number of terminals or kiosks for use by the public. The terminals or kiosks shall not permit the user to download, alter, or forward the information, but the user is entitled to a copy of or printout of a case record in accordance with Rule 16-905 (c) and (d).

Committee note: The intent of subsection ~~(g)(2)~~(h)(2) of this Rule is that members of the public be able to access unshielded electronic case records in any action from a computer terminal or kiosk in any courthouse of the State, regardless of where the action was filed or is pending.

~~(h)~~(i) Department of Juvenile Services

Subject to any protective order issued by the court, a registered user authorized by the Department of Juvenile Services to act on its behalf shall have full access, including remote access, to all case records in an action to the extent the access is (1) authorized by Code, Courts Article, § 3-8A-27 and (2) necessary to the performance of the individual's official duties on behalf of the Department.

~~(i)~~(j) Government Agencies and Officials

Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional information contained in case records to government agencies and officials (1) who are approved for such access by the Chief Justice of the Supreme Court, upon a recommendation by the State Court Administrator, and (2) when those agencies or officials seek such access solely in their official capacity, subject to such conditions regarding the dissemination of such information imposed by the Chief Justice.

Committee note: Where a law, such as Code, Family Law Article, § 12-202(b), requires the court to send or transmit certain court records to a government agency, such a requirement may be satisfied, with the written consent of the agency, by providing access to the court records pursuant to this section.

~~(j)~~(k) CASA Program.

(1) Definition

In this section, "CASA program" means a Court-Appointed Special Advocate Program created pursuant to Code, Courts Article, § 3-830.

Committee note: CASA programs provide trained volunteers (1) to provide background information to the Juvenile Courts to aid them in making decisions in the child's best interest, and (2) to ensure that children who are the subject of proceedings within the jurisdiction of the court are provided appropriate case planning and services. See Code, Courts Article, §§ 3-830 and 3-8A-32. CASA programs are county-based. They are created in a county with the support of the Juvenile Court for that county. The overall CASA program is administered by the Administrative Office of the Courts, which may adopt rules governing the operation of the program, including supervision of the volunteers.

More than a dozen CASA programs have been created throughout the State, some of which serve the Juvenile Courts in more than one county. Upon an appointment to assist a child in a particular case, the director of the program assigns a volunteer attached to that program to provide that assistance. The confidentiality that applies to court records in juvenile cases does not prohibit review of a court record by a "Court-Appointed Special Advocate for the child"

in a proceeding involving that child. See Code, Courts Article, §§ 3-827(a)(2) and 3-8A-27(b)(2). The purpose of this section is to clarify how that access and ability to file reports may be accomplished through MDEC.

(2) Registered Users; Reports

Each CASA program shall inform the clerk of the circuit court for each county within its authorized service area in writing of the name of and contact information for not more than two staff persons who are registered users authorized by the program to have remote access and to file reports through MDEC on behalf of the program. Except as otherwise ordered by the court, only those registered users may file reports and have remote access to court records on behalf of the program. CASA program registered users must file reports through MDEC.

(3) Limitations; Access

The ability to file reports and have remote access to court records shall be limited to cases in which the CASA program or a volunteer on behalf of the program has been appointed by the court to provide service and is allowed only for the period during which service is being provided in that case pursuant to the order of appointment. Unless otherwise ordered by the court, access shall include notices of hearings and all other records not under seal.

(4) Control of Records

The registered user with remote access (A) shall keep exclusive control over the records obtained and (B) may not permit such records to be shared with or copied for anyone other than (i) an authorized volunteer designated by

the CASA program to provide service to the child pursuant to the order of appointment and (ii) CASA program staff authorized to supervise the volunteer. Any order expunging the court records in a case in which the CASA program participated shall include the expungement of records in that case obtained and maintained by the program.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-109 are recommended by the General Court Administration Subcommittee to implement a possible phased approach to expanded remote access to electronic court records. The Rules Committee was recently contacted by the Maryland Criminal Defense Attorneys' Association ("MCDAA") to request an amendment to Rule 20-109 to permit attorneys who are not the attorney of record to have remote access to public case records. After consideration, the General Court Administration Subcommittee recommends (1) an amendment to permit remote access to MDEC records by attorneys for the purpose of the practice of law and (2) that a public meeting be scheduled to hear from stakeholders regarding expanding access further.

Proposed new section (g) permits an active member of the Maryland Bar who is a registered MDEC user to access remotely all case records in MDEC that are not sealed or shielded. The Subcommittee opted to limit use by attorneys to the practice of law, recognizing that there are other reasons a member of the Maryland Bar may want this access (for example, an attorney who is not engaged in the practice of law may be working as a journalist or writing a book). A cross reference to the definition of "case record" follows the new subsection. Current subsections (g) through (k) are relettered.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 16-905, as follows:

Rule 16-905. COPIES

. . .

(c) Uncertified Copy

Copies or printouts in paper form that are obtained from a terminal or kiosk located in a courthouse are uncertified.

Committee note: In an action available through MDEC, members of the public are entitled to an uncertified copy of unshielded case records and unshielded parts of case records in any courthouse of the State regardless of where the action was filed or is pending. See Rule 20-109 ~~(g)(2)~~(h)(2).

. . .

REPORTER'S NOTE

The proposed amendment to Rule 16-905 is amended in light of the proposed amendment to Rule 20-109. Subsection (g)(2) in that Rule is re-lettered as subsection (h)(2).

AGENDA ITEM 5

MARYLAND RULES OF PROCEDURE

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

CHAPTER 300 – OBTAINING REVIEW IN THE SUPREME COURT

AMEND Rule 8-303 by adding a provision to section (c) pertaining to replies to answers to petitions and cross-petitions, by deleting subsection (e)(2)(A), by adding a provision to subsection (e)(2) pertaining to cross-petitions and answers to petitions, by deleting subsection (e)(2)(B), by adding new section (f) permitting replies to answers and specifying the word limits of such replies, and by making stylistic changes, as follows:

Rule 8-303. PETITION FOR WRIT OF CERTIORARI – PROCEDURE

(a) Filing

A petition or cross-petition for a writ of certiorari shall be filed with the Clerk of the Supreme Court. The petition or cross-petition shall be accompanied by the filing fee prescribed pursuant to Code, Courts Article, § 7-102 unless:

(1) if the petition or cross-petition is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1;

(2) if the petition or cross-petition is in a criminal action, the fee has been waived by an order of court or the petitioner is represented by the Public Defender's Office; or

(3) the petitioner either attests in writing or is determined by the court to be (A) not represented by an attorney, and (B) by court order, confined in a correctional or detention facility or a facility governed by Code, Health--General Article, Title 10.

Committee note: An individual who is unrepresented and confined by court order in a correctional or detention facility or a mental health facility is presumed to be unable to prepay the fee for filing a petition or cross-petition for certiorari or other extraordinary relief. Nothing in this Rule prohibits the Supreme Court from later ordering the petitioner to pay the fee if the petitioner is not indigent or assessing costs at the conclusion of the proceedings.

Cross reference: Rule 1-325.

(b) Petition; Cross-Petition

(1) Contents

The petition or cross-petition shall present accurately, briefly, and clearly whatever is essential to a ready and adequate understanding of the points requiring consideration. Except with the permission of the Supreme Court, a petition or cross-petition, including a cross-petition that answers a petition, shall not exceed 3,900 words. A petition and cross-petition shall contain the following information:

(A) A reference to the action in the lower court by name and docket number;

(B) A statement whether the case has been decided by the Appellate Court;

(C) If the case is then pending in the Appellate Court, a statement whether briefs have been filed in that Court or the date briefs are due, if known;

(D) A statement whether the judgment of the circuit court has adjudicated all claims in the action in their entirety, and the rights and liabilities of all parties to the action;

(E) The date of the judgment sought to be reviewed and the date of any mandate of the Appellate Court;

(F) The questions presented for review;

(G) A particularized statement of why review of those issues by the Supreme Court is desirable and in the public interest;

(H) A reference to pertinent constitutional provisions, statutes, ordinances, or regulations;

(I) A concise statement of the facts material to the consideration of the questions presented; and

(J) A concise argument in support of the petition or cross-petition.

(2) Documents

A copy of each of the following documents shall be submitted with the petition or cross-petition at the time it is filed:

(A) The docket entry evidencing the judgment of the circuit court;

(B) Any opinion of the circuit court;

(C) Any written order issued under Rule 2-602 (b);

(D) If the case has not been decided by the Appellate Court, all briefs that have been filed in the Appellate Court; and

(E) Any opinion of the Appellate Court.

(3) Where Documents Unavailable

If a document required by subsection (b)(2) of this Rule is unavailable, the petitioner shall state the reason for the unavailability. If a document required to be submitted with the petition or cross-petition becomes available after the petition or cross-petition is filed but before it has been acted upon, the petitioner shall file it as a supplement to the petition or cross-petition as soon as it becomes available.

(4) Previously Served Documents

Copies of any brief or opinion previously served upon or furnished to another party need not be served upon that party.

(c) Informal Petitions, Cross-Petitions, ~~and Answer~~ Answers, and Replies

A self-represented party may file an informal petition for writ of certiorari, cross-petition for writ of certiorari, or answer to a petition or cross-petition for writ of certiorari. Subject to section (f) of this Rule, a self-represented litigant also may file a reply to an answer to a petition or cross-petition for writ of certiorari. An informal petition for writ of certiorari, cross-petition for certiorari, or answer to a petition for writ of certiorari is not subject to the requirements of Rule 8-112 and shall not exceed 15 pages in length. An informal petition for writ of certiorari or cross-petition for writ of certiorari shall contain the information required in subsection (b)(1) of this Rule, but need not be accompanied by the documents required in subsection (b)(2) of this Rule unless otherwise ordered by the Supreme Court. The Supreme Court may

authorize the use of a form for filing an informal petition for writ of certiorari, cross-petition for writ of certiorari, or answer to a petition for writ of certiorari. Any such form shall be made available electronically on the Judiciary website, or in paper form in the office of the Clerk of the Supreme Court. Section (c) of this Rule does not limit the ability of the Clerk of the Supreme Court to accept a petition for writ of certiorari, cross-petition for writ of certiorari, or answer to a petition for writ of certiorari, that does not meet the requirements of this Rule.

(d) Sanction

Failure to comply with section (b) of this Rule is a sufficient reason for denying the petition or cross-petition.

(e) Answer

(1) Time to File

Within 15 days after service of the petition or cross-petition, any other party may file an original answer to the petition or cross-petition stating why the writ should be denied. If an amicus curiae brief is filed in support of the petition or cross-petition pursuant to Rule 8-511 (e), the deadline to answer is automatically extended to 15 days after service of the amicus curiae brief.

(2) Word Limit~~s~~

Except with the permission of the Supreme Court: ~~(A)~~ an answer to a petition <u>or answer to a cross-petition</u> shall not exceed 3,900 words.~~, and (B) a reply to a cross-petition shall not exceed 1,500 words.~~

(f) Reply

(1) Time to File

Within 15 days after service of an answer to a petition, a cross-petition that includes an answer to a petition, or an answer to a cross-petition, the petitioner or cross-petitioner may file a reply.

(2) Word Limit

Except with the permission of the Supreme Court, a reply filed pursuant to subsection (f)(1) of this Rule shall not exceed 1,500 words.

Committee note: a petitioner that receives a cross-petition that includes an answer to a petition may file an answer to the cross-petition pursuant to section (e) of this Rule and a reply to the answer to the petition pursuant to section (f) of this Rule.

~~(f)~~(g) Stay of Judgment of the Appellate Court or of a Circuit Court

Upon the filing of a petition for a writ of certiorari, or upon issuing a writ on its own motion, the Supreme Court may stay the issuance, enforcement, or execution of a mandate of the Appellate Court or the enforcement or execution of a judgment of a circuit court.

~~(g)~~(h) Disposition

On review of the petition or cross-petition and any answer, the Court, unless otherwise ordered, shall grant or deny the petition or cross-petition without the submission of briefs or the hearing of argument. The Court may not grant a petition or cross-petition with fewer than three affirmative votes. If the petition or cross-petition is granted, the Court shall:

(1) direct further proceedings in the Supreme Court;

(2) dismiss the appeal pursuant to Rule 8-602;

(3) affirm the judgment of the lower court;

(4) vacate or reverse the judgment of the lower court;

(5) modify the judgment of the lower court;

(6) remand the action to the lower court for further proceedings pursuant to Rule 8-604 (d); or

(7) an appropriate combination of the above.

~~(h)~~(i) Duty of Clerk

The Clerk of the Supreme Court shall send a copy of the order disposing of the petition or cross-petition to the clerk of the lower court. If the order directs issuance of a writ of certiorari, the Clerk shall issue the writ to the lower court.

Source: This Rule is derived from former Rule 811.

REPORTER'S NOTE

A member of the Rules Committee raised a concern with the concept of a "reply to a cross-petition" as it is used in subsection (b)(1) of Rule 8-303. This Rule does not contain a reference to the concept of a "reply" anywhere else. This leaves it open to interpretation whether it is permissible to file a reply to an answer in the petition for certiorari procedures.

After considering this issue, the Appellate Subcommittee approved revising Rule 8-303 to clarify that it is permissible to file a reply in response to an answer.

To accomplish this, revisions are proposed to section (c) to explicitly add replies as pleadings.

In addition, subsection (e)(2) is proposed to be re-styled and revised to clarify that an answer and an answer to a cross-petition have the same word limits. Subsection (e)(2)(B) is proposed to be deleted and moved to new section (f).

Finally, proposed new section (f) provides for the time in which to file a reply to an answer or cross petition and specifies the word limit that applies to a reply.

Stylistic changes are also proposed.

AGENDA ITEM 6

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

AMEND Rule 19-503 by adding a provision to section (e) permitting an attorney to waive confidentiality to participate in the pro bono honor roll, as follows:

Rule 19-503. REPORTING PRO BONO LEGAL SERVICE

(a) Definitions

In this Rule, (1) "AIS" means the Attorney Information System, (2) "AOC" means the Administrative Office of the Courts, and (3) "fiscal year" means the 12-month period commencing on July 1 and ending the following June 30.

(b) Required as a Condition of Practice

As a condition precedent to the practice of law, each attorney admitted to practice in Maryland, by September 10 of each year and in accordance with this Rule, shall file electronically, through AIS, a Pro Bono Legal Service Report. On or before July 10 of each year, AOC shall send electronically to each attorney registered with AIS a Pro Bono Legal Service Report approved by the State Court Administrator. The first notice to be sent under this Rule shall be emailed to attorneys on or before July 10, 2019 and shall require attorneys to report information with respect to pro bono legal service during the period January 1, 2018 through June 30, 2019. This report shall be filed

electronically on or before September 10, 2019. Thereafter, the Report shall include information with respect to pro bono legal service during the preceding fiscal year.

Committee note: The purpose of pro bono legal service reporting is to document the pro bono legal service performed by attorneys in Maryland and determine the effectiveness of the Local Pro Bono Action Plans, the State Pro Bono Action Plan, the Rules in this Chapter, and Rule 19-306.1 (6.1) of the Maryland Attorneys' Rules of Professional Conduct.

(c) Enforcement

(1) Notice of Default

As soon as practicable after February 10 of each year, AOC shall electronically notify each defaulting attorney of the attorney's failure to file the Pro Bono Legal Service Report for the preceding fiscal year. The notice shall (A) state that the attorney has not filed the Report, and (B) state that continued failure to file the Report may result in the entry of an order by the Supreme Court prohibiting the attorney from practicing law in Maryland.

(2) Additional Discretionary Notice of Default

In addition to the electronic notice, AOC may give additional notice in other ways to defaulting attorneys.

(3) List of Defaulting Attorneys

As soon as practicable after February 10 of each year but no later than March 10, AOC shall:

(A) prepare, certify, and transmit to the Supreme Court a list that includes the name and, unless the attorney has elected to keep the address confidential,

the address of each attorney engaged in the practice of law who has failed to file the Pro Bono Legal Service Report for the preceding reporting period;

(B) include with the list a proposed Decertification Order stating the name and, unless the attorney has elected to keep the address confidential, the address of each attorney who has failed to file the Pro Bono Legal Service Report; and

(C) at the request of the Court, furnish additional information from its records or give further notice to the defaulting attorneys.

(4) Decertification Order

If satisfied that AOC has given the required notice to the attorneys named in the proposed Decertification Order, the Supreme Court shall enter a Decertification Order prohibiting each of them from practicing law in Maryland until such time as a Recertification Order applicable to a listed attorney is entered pursuant to subsection (c)(6) of this Rule. If the Court concludes that an attorney was not given the required notice, it shall delete that attorney's name from the proposed Order.

(5) Transmittal of Decertification Order

AOC shall transmit a copy of the Decertification Order to each attorney named in the Order.

(6) Recertification; Reinstatement

(A) Notice to Supreme Court

If a decertified attorney thereafter files the outstanding Pro Bono Legal

Service Report, AOC shall inform the Supreme Court and request the Court to enter an order that recertifies the attorney and terminates the decertification.

(B) Confirmation of Recertification

Upon entry of that order, AOC promptly shall transmit confirmation to the attorney. After an attorney is recertified, the fact that the attorney had been decertified need not be disclosed by the attorney in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(7) Duty of Clerk of Supreme Court

Upon entry of each Decertification Order and each Recertification Order entered pursuant to this Rule, the Clerk of the Supreme Court shall comply with Rule 19-761.

(d) Certain Information Furnished to the Standing Committee on Pro Bono Legal Service

AOC promptly shall submit to the Standing Committee on Pro Bono Legal Service a compilation of non-identifying information and data from the Pro Bono Legal Service Reports.

(e) Confidentiality

Pro Bono Legal Service Reports are confidential and are not subject to inspection or disclosure under Code, General Provisions Article, § 4-301. Neither AIS nor AOC shall release those Reports to any person, except as provided in this Rule, ~~or~~ upon order of the Supreme Court, or as authorized in

writing by an attorney for the attorney's participation in a pro bono participation recognition program. Non-identifying information and data contained in an attorney's Pro Bono Legal Service Report are not confidential.

Source: This Rule is derived from former Rule 16-903 (2016).

REPORTER'S NOTE

The Supreme Court's Standing Committee on Pro Bono Legal Service (the "Pro Bono Committee") seeks to institute a Pro Bono Honor Roll to provide recognition to attorneys that achieve significant milestones in pro bono practice each year. Participation in the program is completely voluntary. Attorneys will be able choose to opt in to the program during the annual pro bono reporting currently required by this Rule.

The Attorneys and Judges Subcommittee proposes amending section (e) of this Rule to permit JIS to share pro bono reporting information submitted by practicing attorneys that choose to participate in the Pro Bono Honor Roll program with the Pro Bono Committee.

AGENDA ITEM 7

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 400 – ATTORNEY TRUST ACCOUNTS

AMEND Rule 19-409 by creating new subsection (f)(2) regarding Bar Counsel's access to information to IOLTA Compliance Reports and by making related stylistic changes to section (f), as follows:

Rule 19-409. INTEREST ON FUNDS

(a) Definitions

In this Rule, (1) "AIS" means the Attorney Information System created in Rule 19-801 and (2) "AOC" means the Administrative Office of the Courts.

(b) Generally

Any interest paid on funds deposited in an attorney trust account, after deducting service charges and fees of the financial institution, shall be credited and belong to the client or third person whose funds are on deposit during the period the interest is earned, except to the extent that interest is paid to the Maryland Legal Services Corporation Fund as authorized by law. The attorney or law firm shall have no right or claim to the interest.

Cross reference: See Rule 19-411 (b)(1)(D) providing that certain fees may not be deducted from interest that otherwise would be payable to the Maryland Legal Services Corporation Fund.

(c) Duty to Report IOLTA Participation

(1) Required as a Condition of Practice

As a condition of continuing to practice law in Maryland, each attorney admitted to practice in Maryland shall report in accordance with this Rule information concerning all IOLTA accounts.

(2) IOLTA Compliance Report

On or before July 10 of each year, the State Court Administrator shall send electronically to each attorney in active status a notice requiring the attorney to complete through AIS an IOLTA Compliance Report on or before September 10 of that year. The report shall be in a form approved by the State Court Administrator in consultation with the Maryland Legal Services Corporation. The report shall require, at a minimum, the disclosure of the name, address, location, and account number of each IOLTA account maintained by the attorney as of July 10 of each year.

(3) Shared Law Firm IOLTA Accounts

If all IOLTA eligible trust funds of all attorneys in a law firm are deposited in shared law firm IOLTA accounts, the firm shall designate an attorney to be its "IOLTA Reporting Attorney." The IOLTA Reporting Attorney shall report on all law firm IOLTA accounts by submitting one report listing the specific account information for the firm with the IOLTA Reporting Attorney's signature. Each attorney at the law firm other than the firm's IOLTA Reporting Attorney shall submit a report that includes the attorney's name, law firm address and phone number, and the name of the IOLTA Reporting Attorney. The report of an attorney other than the firm's IOLTA Reporting Attorney need not include account information for a shared law firm IOLTA account.

(4) Filing Report Through AIS

On or before September 10 of each year, each attorney in active status shall file electronically through AIS a completed IOLTA Compliance Report with AOC.

(d) Enforcement

(1) Notice of Default

As soon as practicable after February 10 of each year, the State Court Administrator shall send electronically a Notice of Default to each attorney who has failed to file the IOLTA Compliance Report. The Notice of Default shall (A) be on a form approved by the State Court Administrator, (B) state that the attorney has not filed the IOLTA Compliance Report, and (C) state that failure to cure the default will result in the entry of an order by the Supreme Court administratively suspending the attorney from the practice of law in Maryland.

(2) List of Defaulting Attorneys

As soon as practicable after February 10 of each year but no later than March 10, the State Court Administrator shall:

(A) transmit to the Supreme Court a list that includes the name and AIS number of each attorney engaged in the practice of law who has failed to file the IOLTA Compliance Report for the preceding reporting period; and

(B) at the request of the Court, furnish additional information from its records or give further notice to the defaulting attorneys.

(3) Administrative Suspension Order

If satisfied that the State Court Administrator has given the Notice of Default to the attorneys named on the list, the Supreme Court shall enter an Administrative Suspension Order prohibiting each attorney in default from practicing law in Maryland. The Clerk of the Supreme Court shall (A) send electronically a copy of the Order to each administratively suspended attorney named in the order, (B) comply with Rule 19-761, and (C) post the Order on the Judiciary website.

(4) Effect of Order

An attorney who has been sent a copy of the Administrative Suspension Order and who has not been restored to good standing may not practice law in Maryland and shall comply with the requirements of Rule 19-741 (b) and (c). In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against an attorney who practices law in violation of an Administrative Suspension Order.

(5) Termination of Order

(A) Notice to Supreme Court

If, after an administrative suspension under this Rule, an attorney files the outstanding IOLTA Compliance Report and the attorney is in compliance with the requirements of Rules 19-503 and 19-605, the State Court Administrator shall inform the Supreme Court that the attorney is no longer in default and request the Court to enter an order terminating the attorney's administrative suspension.

(B) Duty of Court

Upon receipt of the notice and request provided for in subsection (d)(5)(A) of this Rule and payment of any fee for reinstatement, the Supreme Court shall enter an order terminating the administrative suspension of the attorney and the Clerk of the Court shall (A) send electronically a copy of the Reinstatement Order to each attorney who has been restored to good standing, (B) comply with Rule 19-761, and (C) post the Order on the Judiciary website.

(C) Disclosure of Administrative Suspension

After an attorney's administrative suspension for failure to file an IOLTA Compliance Report has been terminated, the attorney need not disclose the administrative suspension in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(e) Confidentiality

Except as provided in section (f) of this Rule, IOLTA Compliance Reports are confidential and are not subject to inspection or disclosure under Code, General Provisions Article, § 4-301 or Title 16, Chapter 900 of these Rules. Neither AIS nor AOC shall release those Reports to any person, except as provided in this Rule or upon order of the Supreme Court. Non-identifying information and data contained in an attorney's IOLTA Compliance Report are not confidential.

(f) Information Furnished to ~~the Maryland Legal Services Corporation~~ Certain Entities

(1) Maryland Legal Services Corporation

AOC promptly shall submit to the Maryland Legal Services Corporation all information from the IOLTA Compliance Reports.

Cross reference: See Code, Business Occupations and Professions Article, § 10-303.

(2) Bar Counsel

Upon written request of Bar Counsel pursuant to Rule 19-703 (b)(3), AOC shall provide the requested information from an IOLTA Compliance Report to Bar Counsel.

Source: This Rule is derived from former Rule 16-608 (2016).

REPORTER'S NOTE

Amendments to Rules 19-409 and 19-703 are proposed to address Bar Counsel's access to information contained in IOLTA Compliance Reports. Pursuant to current Rule 19-409, the information from IOLTA Compliance Reports may only be disclosed by the Administrative Office of the Courts ("AOC") to the Maryland Legal Services Corporation. Bar Counsel has requested that the Rules Committee consider amendments that permit Bar Counsel, with prior approval of the Commission, to request and receive information from IOLTA Compliance Reports to eliminate the need for Bar Counsel to use the subpoena process.

Pursuant to Rule 19-411, Bar Counsel already receives certain information about attorney trusts accounts. For example, Rule 19-411 (b)(1)(C) provides that an agreement with a financial institution to accept deposit of funds into an attorney trust account must include a procedure for reports to Bar Counsel when there is an overdraft in the account, or an instrument drawn on the account is dishonored for insufficient funds.

Rule 19-409, however, does not currently permit disclosure to Bar Counsel of the information that the attorney reported about the accounts in the attorney's IOLTA Compliance Report. As a result, despite receiving notice that an overdraft has occurred, Bar Counsel does not have sufficient details to determine the appropriate financial institution to subpoena for account information.

Proposed amendments to section (f) of Rule 19-409 create new subsections (f)(1) and (f)(2) to highlight the two entities that may receive information from the otherwise confidential IOLTA Compliance Reports. Subsection (f)(1) consists of the current language of section (f).

New subsection (f)(2) adds new language permitting Bar Counsel to submit a written request for information contained in IOLTA Compliance Reports. This information would enable Bar Counsel to determine the financial institution where the attorney has an IOLTA account to continue any related investigation.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

GENERAL PROVISIONS

AMEND Rule 19-703 by adding new subsection (b)(3) and renumbering subsequent subsections, as follows:

Rule 19-703. BAR COUNSEL

(a) Appointment

Subject to approval by the Supreme Court, the Commission shall appoint an attorney as Bar Counsel. Before appointing Bar Counsel, the Commission shall notify bar associations and the general public of the vacancy and consider any recommendations that are timely submitted. Bar Counsel shall serve at the pleasure of the Commission and shall receive the compensation set forth in the budget of the Commission.

(b) Powers and Duties

Subject to the supervision and approval, if required, of the Commission, Bar Counsel has the powers and duties to:

(1) investigate professional misconduct or incapacity on the part of an attorney;

(2) issue subpoenas as provided by Rule 19-712;

(3) upon approval of the Chair of the Commission, request information as provided by Rule 19-409 from IOLTA Compliance Reports pertaining to an account overdraft, a dishonored instrument, or an investigation;

~~(3)~~(4) enter into and implement Conditional Diversion Agreements, issue notices, recommend letters of cautionary advice or letters of admonition, and propose reprimands;

~~(4)~~(5) file statements of charges, participate in proceedings before Peer Review Panels, and prosecute all disciplinary and remedial proceedings;

~~(5)~~(6) file and prosecute petitions for disciplinary and remedial actions in the name of the Commission;

~~(6)~~(7) monitor and enforce compliance with all disciplinary and remedial orders of the Supreme Court;

~~(7)~~(8) investigate petitions for reinstatement and applications for resignation from the practice of law and represent the Commission in those proceedings;

~~(8)~~(9) initiate, intervene in, and prosecute actions to enjoin the unauthorized practice of law;

~~(9)~~(10) employ attorneys, investigators, and staff personnel as authorized by the Commission at the compensation set forth in the Commission's budget;

~~(10)~~(11) discharge any employee;

~~(11)~~(12) maintain dockets and records of all papers filed in disciplinary or remedial proceedings;

~~(12)~~(13) make reports to the Commission;

~~(13)~~(14) consult with the State and local bar associations, public and private support groups, and other appropriate persons in an effort to identify programs or services that can (A) serve as a resource to assist attorneys who may come before Bar Counsel, the Commission, or the Supreme Court, and (B) be considered when recommending or determining an appropriate disposition of complaints or charges against those attorneys. Those resources may include (A) treatment for emotional distress, mental disorders or disability, or dependence on alcohol, drugs, or other intoxicants, (B) assistance in law office management, including mentoring, accounting, bookkeeping, financial, and other professional assistance relevant to the handling of client or third-party funds, calendaring events and time deadlines, and other professional or business requirements related to the practice of law, and (C) monitoring services when required by Bar Counsel, the Commission, or the Supreme Court; and

Committee note: Subsection (b)(13) of this Rule does not require Bar Counsel or the Commission to create or fund any of these programs or services or to require or recommend their use in any particular case. The Rules Committee is advised that programs and services of this kind do exist or can be created. The Committee believes that identifying those that are reliable and available may permit a more effective disposition in particular cases by Bar Counsel, the Commission, and the Supreme Court.

~~(14)~~(15) perform other duties prescribed by the Commission, this Chapter, and the Rules in Title 19, Chapter 400 (Attorney Trust Accounts).

Source: This Rule is derived in part from former Rule 16-712 (2016) and is in part new.

REPORTER'S NOTE

Amendments to Rules 19-409 and 19-703 are proposed to address Bar Counsel's access to information contained in IOLTA Compliance Reports. See the Reporter's note to Rule 19-409 for further details.

A proposed amendment to Rule 19-703 adds new subsection (b)(3), stating that Bar Counsel has the authority to, as provided by Rule 19-409, request information from IOLTA Compliance Reports pertaining to an overdraft in an account, a dishonored instrument, or an investigation. Due to the confidential nature of IOLTA Compliance Reports, Bar Counsel must obtain approval from the Chair of the Commission before requesting the information.

The remaining subsections are renumbered to account for the new language.

AGENDA ITEM 8

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

LAW FIRMS AND ASSOCIATIONS

AMEND Rule 19-305.3 by replacing "assistants" with "assistance" in the title; by renumbering current Comment [2] as Comment [1]; by adding and deleting certain language from renumbered Comment [1]; by renumbering current Comments [1] and [3] as Comments [3] and [2], respectively; and by adding new Comments [4] and [5], as follows:

Rule 19-305.3. RESPONSIBILITIES REGARDING NON-ATTORNEY ~~ASSISTANTS~~ <u>ASSISTANCE</u> (5.3)

With respect to a non-attorney employed or retained by or associated with an attorney:

(a) a partner, and an attorney who individually or together with other attorneys possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the attorney;

(b) an attorney having direct supervisory authority over the non-attorney shall make reasonable efforts to ensure that the person's conduct is compatible

with the professional obligations of the attorney;

(c) an attorney shall be responsible for conduct of such a person that would be a violation of the Maryland Attorneys' Rules of Professional Conduct if engaged in by an attorney if:

(1) the attorney orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the attorney is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; and

(d) an attorney who employs or retains the services of a non-attorney who (1) was formerly admitted to the practice of law in any jurisdiction and (2) has been and remains disbarred, suspended, or placed on inactive status because of incapacity shall comply with the following requirements:

(A) all law-related activities of the formerly admitted attorney shall be (i) performed from an office that is staffed on a full-time basis by a supervising attorney and (ii) conducted under the direct supervision of the supervising attorney, who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this Rule.

(B) the attorney shall take reasonable steps to ensure that the formerly admitted attorney does not:

(i) claim to be an attorney;

(ii) render legal consultation or advice to a client or prospective client;

(iii) appear on behalf of or represent a client in any judicial, administrative, legislative, or alternative dispute resolution proceeding;

(iv) appear on behalf of or represent a client at a deposition or in any other discovery matter;

(v) negotiate or transact any matter on behalf of a client with third parties;

(vi) receive funds from or on behalf of a client or disburse funds to or on behalf of a client; or

(vii) perform any law-related activity for (a) a law firm or attorney with whom the formerly admitted attorney was associated when the acts that resulted in the disbarment or suspension occurred or (b) any client who was previously represented by the formerly admitted attorney.

(C) the attorney, the supervising attorney, and the formerly admitted attorney shall file jointly with Bar Counsel (i) a notice of employment identifying the supervising attorney and the formerly admitted attorney and listing each jurisdiction in which the formerly admitted attorney has been disbarred, suspended, or placed on inactive status because of incapacity; and (ii) a copy of an executed written agreement between the attorney, the supervising attorney, and the formerly admitted attorney that sets forth the duties of the formerly admitted attorney and includes an undertaking to comply with requests by Bar Counsel for proof of compliance with the terms of the agreement and this Rule. As to a formerly admitted attorney employed as of July 1, 2006, the notice and agreement shall be filed no later than September 1, 2006. As to a formerly admitted attorney hired after July 1,

2006, the notice and agreement shall be filed within 30 days after commencement of the employment. Immediately upon the termination of the employment of the formerly admitted attorney, the attorney and the supervising attorney shall file with Bar Counsel a notice of the termination.

COMMENT

~~[2]~~ [1] Section (a) of this Rule requires attorneys with managerial authority within a law firm to make reasonable efforts to ~~establish internal policies and procedures designed to provide~~ ensure that the firm has in effect measures giving reasonable assurance that non-attorneys in the firm ~~will~~ and non-attorneys outside the firm who work on firm matters act in a way compatible with the ~~Maryland Attorneys' Rules of Professional Conduct~~ professional obligations of the attorney. See Comment [1] to Rule 19-305.1 (5.1). Section (b) of this Rule applies to attorneys who have supervisory authority over the work of ~~a non-attorney~~ such non-attorneys within or outside the firm. Section (c) of this Rule specifies the circumstances in which an attorney is responsible for the conduct of ~~a non-attorney~~ such non-attorneys within or outside the firm that would be a violation of the Maryland Attorneys' Rules of Professional Conduct if engaged in by an attorney.

~~[3]~~ [2] Section (d) of this Rule addresses formerly admitted attorneys engaging in law-related activities and does not establish a standard for what constitutes the unauthorized practice of law.

~~[1]~~ [3] Attorneys generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the attorney in rendition of the attorney's professional services. An attorney must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising non-attorneys should take account of the fact that they do not have legal training and are not subject to professional discipline.

[4] An attorney may use non-attorneys outside the firm to assist the attorney in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using

such services outside the firm, an attorney must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the attorney's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the non-attorney; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 19-301.1, 19-301.2, 19-301.4, 19-301.6, 19-305.4 (a), and 19-305.5 (a). When retaining or directing a non-attorney outside the firm, an attorney should communicate directions appropriate under the circumstances to give reasonable assurance that the non-attorney's conduct is compatible with the professional obligations of the attorney.

[5] Where the client directs the selection of a particular non-attorney service provider outside the firm, the attorney ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the attorney. See Rule 19-301.2. When making such an allocation in a matter pending before a tribunal, attorneys and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Model Rules Comparison: The language of Rule 19-305.3 (a) through (c) (5.3) is substantially similar to the language of the Ethics 2000 and the Commission on Ethics 20/20 Amendments to the ABA Model Rules of Professional Conduct. Section (d) of this Rule and Comment ~~[3]~~ [2] are in part derived from Rule 217 (j) of the Pennsylvania Rules of Disciplinary Enforcement and in part new.

REPORTER'S NOTE

Chief Justice Fader recently noted to the Rules Committee that Rule 19-305.3 differs from the American Bar Association ("ABA") Model Rule 5.3 and requested that the Rules Committee consider whether similar or other changes to the Maryland Rule would be beneficial.

In August 2012, the ABA amended Model Rule 5.3 pursuant to Resolution 105C. Although Maryland Rule 19-305.3 was adopted by Rules Order shortly after the amendment to the Model Rule, the Rules history does not indicate whether these amendments were brought to the Rules Committee for discussion.

As part of the Commission on Ethics 20/20, Resolution 105C aimed "to provide guidance regarding the ethical implications of retaining lawyers and

nonlawyers outside the firm to work on client matters (i.e. outsourcing)." Although the main topic of the Resolution was outsourcing, "[t]he Commission's proposals also reflect the view that the evolution of law practice and the continued rapid changes in and diversity of outsourcing arrangements make bright lines impossible to draw. Like many obligations described in the Model Rules, the proposals are intended to be rules of reason and are not intended to preclude consideration of broader legal concerns…"

In regard to ABA Model Rule 5.3, Resolution 105C proposed amending the title of the Rule and adding two new Comments. The Attorneys and Judges Subcommittee has considered ABA Model Rule 5.3 and recommends parallel updates to Rule 19-305.3 to address non-attorney vendors and their use of technology, including AI, to provide services.

An amendment is proposed to the title of Rule 19-305.3. The term "assistants" is replaced with "assistance." The "General Information Form" submitted with ABA Resolution 105C explained, "To reflect the increasingly important role of automated nonlawyer assistance, such as 'cloud computing' services, the title of the Rule will change from 'Responsibilities Regarding Nonlawyer Assistants' to 'Responsibilities Regarding Nonlawyer Assistance.'" While the Rule concerns the supervision of persons, the change reflects that non-attorneys may also use technological services while assisting attorneys.

Current Comment [2], offering an overview of the Rule, is proposed to be renumbered as Comment [1], mirroring the order of the Comments in ABA Model Rule 5.3. Proposed changes to the language in renumbered Comment [1] reflect that the Rule applies to the use of non-attorneys outside, as well as inside, a firm.

Proposed new Comment [4] addresses considerations when using services outside of a firm and mirrors Comment [3] of ABA Model Rule 5.3, with stylistic changes. As explained in ABA Resolution 105C, the proposed Comment "describes a lawyer's obligations when using nonlawyer services outside the firm… [and] identifies the factors that determine the extent of the lawyer's obligations in this regard. The Comment also references several other Model Rules that lawyers should consider when using nonlawyer services outside the firm." The new language also highlights the importance of communicating directions to a non-attorney to ensure that all conduct is compatible with the attorney's professional obligations.

Proposed new Comment [5] parallels Comment [4] of ABA Model Rule 5.3. The language addresses monitoring of non-attorneys outside a firm. ABA Resolution 105C provides:

> The word "monitoring" reflects a new ethical concept. The Commission concluded that it was needed because, when a nonlawyer outside the firm is performing services in connection with a matter, it may not be possible to "directly supervise" the nonlawyer. The word "monitoring" makes clear that there is nevertheless a need to remain aware of how nonlawyer services are being performing.

Overall, the proposed amendments to the title and Comments bring Rule 19-305.3 more closely in line with ABA Model Rule 5.3.

AGENDA ITEM 9

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

CLIENT-ATTORNEY RELATIONSHIP

AMEND Rule 19-301.1 by adding language to Comment [6] and by adding new Comment [7], as follows:

Rule 19-301.1. COMPETENCE (1.1)

An attorney shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

COMMENT

Legal knowledge and skill--[1] In determining whether an attorney employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the attorney's general experience, the attorney's training and experience in the field in question, the preparation and study the attorney is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, an attorney of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] An attorney need not necessarily have special training or prior experience to handle legal problems of a type with which the attorney is unfamiliar. A newly admitted attorney can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. An attorney can provide

adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of an attorney of established competence in the field in question.

[3] In an emergency an attorney may give advice or assistance in a matter in which the attorney does not have the skill ordinarily required where referral to or consultation or association with another attorney would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] An attorney may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to an attorney who is appointed as an attorney for an unrepresented person. See also Rule 19-306.2 (6.2).

Thoroughness and preparation--[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity. An agreement between the attorney and the client regarding the scope of the representation may limit the matters for which the attorney is responsible. See Rule 19-301.2 (c) (1.2).

Maintaining competence--[6] To maintain the requisite knowledge and skill, an attorney should keep abreast of changes in the law and its practice, <u>including the benefits and risks associated with relevant technology,</u> engage in continuing study and education and comply with all continuing legal education requirements to which the attorney is subject.

<u>[7] When using, directing the use of, or relying on technology, including artificial intelligence, a lawyer must independently review, verify, and exercise professional judgment regarding any output generated by the technology that is used in connection with representing a client. See Rule 19-305.3 (5.3).</u>

Model Rules Comparison: Rule 19-301.1 (1.1) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct.

REPORTER'S NOTE

The American Bar Association ("ABA") recently addressed the ethical implications of attorneys' use of generative artificial intelligence ("GAI") tools in Formal Opinion 512. The Opinion "identifies some ethical issues involving the use of GAI tools and offers general guidance for lawyers attempting to navigate this emerging landscape," noting that "[i]t is anticipated that [the ABA Standing Committee on Ethics and Professional Responsibility] and state and local bar association ethics committees will likely offer updated guidance on professional conduct issues relevant to specific GAI tools as they develop." Although it does not identify any necessary rules changes, Formal Opinion 512 addresses several Model Rules of Professional Responsibility ("ABA Model Rules") that are implicated using AI.

The Attorneys & Judges Subcommittee considered whether any amendments to the Maryland Attorneys' Rules of Professional Conduct are necessary or desirable to address the rising use of AI by attorneys. The Subcommittee determined that additions to the Comments of several Title 19 Rules would assist attorneys navigating new technology, particularly AI, in legal practice. Accordingly, amendments are proposed to Rules 19-301.1 (1.1), 19-301.6 (1.6), and 19-303.3 (3.3).

ABA Model Rule 1.1 requires that attorneys provide competent representation. This obligation also is contained in Maryland Rule 19-301.1, which is substantially similar to the Model Rule. However, in 2012, the ABA Commission on Ethics amended Comment [6] of Model Rule 1.1, recognizing the challenges associated with advances in and increased use of technology. Specifically, new language stated, "a lawyer should keep abreast of changes in the law and its practice*, including the benefits and risks associated with relevant technology…*" (emphasis added). In explaining the amendment to Model Rule 1.1, Resolution 105A provided:

> [T]he Commission concluded that competent lawyers must have some awareness of basic features of technology. To make this point, the Commission is recommending an amendment to Comment [6] of Model Rule 1.1 (Competence) that would emphasize that, in order to stay abreast of changes in the law and its practice, lawyers need to have a basic understanding of the benefits and risks of relevant technology.

At the time of this change in 2012, the Attorneys and Judges Subcommittee did not bring this proposed change forward to the Rules Committee. Adding language requiring lawyers to maintain knowledge of the benefits and risks associated with technology would reiterate the need for attorneys to be aware of developments in the use of AI, but may appear to place an ethical burden on attorneys whose practice does not require extensive

knowledge of technology. Overall, in light of the rising use of AI and the increased ethical risks associated with similar technology, the Subcommittee recommends adding language to Comment [6] of Rule 19-301.1 mirroring the addition in the Model Rule.

A new Comment [7] is also proposed to Rule 19-301.1. In California, the state's Supreme Court instructed the State Bar by letter dated August 22, 2025, "to consider whether the guiding principles provided in [the Bar's November 2023 'Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law'] should be incorporated into the comments for the California Rules of Professional Conduct" and "to consider incorporating… any additional guidance that may be warranted in light of recent or upcoming generative AI developments…" Accordingly, the State Bar prepared proposed amendments to California's Rules of Professional Conduct and sought public input on the changes. The deadline for public comments was on May 4, 2026 and, at this time, changes to California's rules have not been finalized.

The proposed changes to the California Rules of Professional Conduct include new Comments and revisions to current Comments. The Attorneys and Judges Subcommittee reviewed the proposed amendments from California and recommends incorporating new Comment [7] into the Maryland Rules, with slight modification.

Proposed Comment [7] sets forth an attorney's obligation to independently review and verify output generated when using, directing the use of, or relying on technology. A reference to Rule 19-305.3 (5.3) at the end of the Comment serves as a reminder of an attorney's obligation to supervise when using non-attorney assistance.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

CLIENT-ATTORNEY RELATIONSHIP

AMEND Rule 19-301.6 by adding language to Comment [20], as follows:

Rule 19-301.6. CONFIDENTIALITY OF INFORMATION (1.6)

(a) An attorney shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by section (b) of this Rule.

(b) An attorney may reveal information relating to the representation of a client to the extent the attorney reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the attorney's services;

(3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from

the client's commission of a crime or fraud in furtherance of which the client has used the attorney's services;

(4) to secure legal advice about the attorney's compliance with these Rules, a court order or other law;

(5) to establish a claim or defense on behalf of the attorney in a controversy between the attorney and the client, to establish a defense to a criminal charge, civil claim, or disciplinary complaint against the attorney based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the attorney's representation of the client; or

(6) to comply with these Rules, a court order or other law.

COMMENT

[1] This Rule governs the disclosure by an attorney of information relating to the representation of a client during the attorney's representation of the client. See Rule 19-301.18 (1.18) for the attorney's duties with respect to information provided to the attorney by a prospective client, Rule 19-301.9 (c)(2) (1.9) for the attorney's duty not to reveal information relating to the attorney's prior representation of a former client and Rules 19-301.8 (b) (1.8) and 19-301.9 (c)(1) (1.9) for the attorney's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-attorney relationship is that, in the absence of the client's informed consent, the attorney must not reveal information relating to the representation. See Rule 19-301.0 (g) (1.0) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-attorney relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the attorney even as to embarrassing or legally damaging subject matter. The attorney needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to attorneys in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, attorneys know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-attorney confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which an attorney may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-attorney confidentiality applies in situations other than those where evidence is sought from the attorney through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. An attorney may not disclose such information except as authorized or required by the Maryland Attorneys' Rules of Professional Conduct or other law. See also Scope.

[4] Section (a) of this Rule prohibits an attorney from revealing information relating to the representation of a client. This prohibition also applies to disclosures by an attorney that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. An attorney's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Implied Authority to Disclose--[5] Except to the extent that the client's instructions or special circumstances limit that authority, an attorney is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, an attorney may be impliedly authorized to admit a fact that cannot properly be disputed, or to make a disclosure that facilitates a satisfactory conclusion to a matter. Attorneys in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified attorneys.

Disclosure Adverse to Client--[6] Although the public interest is usually best served by a strict rule requiring attorneys to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Section (b) of this Rule, however, permits disclosure only to the extent the attorney reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the attorney should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the attorney reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits

access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the attorney to the fullest extent practicable.

[7] Section (b) of this Rule permits, but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in subsections (b)(1) through (b)(6) of this Rule. In exercising the discretion conferred by this Rule, the attorney may consider such factors as the nature of the attorney's relationship with the client and with those who might be injured by the client, the attorney's own involvement in the transaction and factors that may extenuate the conduct in question. An attorney's decision not to disclose as permitted by section (b) of this Rule does not violate this Rule. Disclosure may be required, however, by other Rules regardless of whether the disclosure is permitted by Rule 19-301.6 (1.6). See Rules 19-301.2 (d) (1.2), 19-303.3 (a)(4) (3.3), 19-304.1 (b) (4.1), 19-308.1 (8.1) and 19-308.3 (8.3). An attorney representing an organization may in some circumstances be permitted to disclose information regardless of whether the disclosure is permitted by Rule 19-301.6 (b) (1.6). See Rule 19-301.13 (c) (1.13).

[8] Subsection (b)(1) of this Rule recognizes the overriding value of life and physical integrity and permits disclosure reasonably believed necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the attorney fails to take action necessary to eliminate the threat. Thus, an attorney who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease, and the attorney reasonably believes disclosure is necessary to eliminate the threat or reduce the number of victims.

[9] Subsection (b)(2) of this Rule is a limited exception to the rule of confidentiality that permits the attorney to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or a fraud, as defined in Rule 19-301.0 (f) (1.0), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the attorney's services. Such a serious abuse of the client-attorney relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although subsection (b)(2) of this Rule does not require the attorney to reveal the client's misconduct, the attorney may not counsel or assist the client in conduct the attorney knows is criminal or fraudulent. See Rule 19-301.2 (d) (1.2). See also Rule 19-301.16 (1.16) with respect to the attorney's obligation

or right to withdraw from the representation of the client in such circumstances. Where the client is an organization, the attorney should consult Rule 19-301.13 (b) (1.13).

[10] Subsection (b)(3) of this Rule addresses the situation in which the attorney does not learn of a client's criminal or fraudulent act in furtherance of which the attorney's services were used until after the act has occurred. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the attorney may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Subsection (b)(3) of this Rule does not apply when a person who has committed a crime or fraud thereafter employs an attorney for representation concerning that offense.

[11] An attorney's confidentiality obligations do not preclude an attorney from securing confidential legal advice about the attorney's personal responsibility to comply with these Rules, a court order or other law. In most situations, disclosing information to secure such advice will be impliedly authorized for the attorney to carry out the representation. Even when the disclosure is not impliedly authorized, subsection (b)(4) of this Rule permits such disclosure because of the importance of an attorney's compliance with the law.

Withdrawal--[12] If the attorney knows that the attorney's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the attorney must withdraw, as stated in Rule 19-301.16 (a)(1) (1.16). After withdrawal the attorney is required to refrain from making disclosure of the client's confidences, except as otherwise provided in Rule 19-301.6 (1.6) or in other Rules.

[13] If the attorney knows that despite the withdrawal the client is continuing in conduct that is criminal or fraudulent, and is making use of the fact that the attorney was involved in the matter, the attorney may have to take positive steps to avoid being held to have assisted the conduct. See Rules 19-301.2 (d) (1.2) and 19-304.1 (b) (4.1). In other situations not involving such assistance, the attorney has discretion to make disclosure of otherwise confidential information only in accordance with Rules 19-301.6 (1.6) and 19-301.13 (c) (1.13). Neither this Rule nor Rule 19-301.8 (b) (1.8) nor Rule 19-301.16 (d) (1.16) prevents the attorney from giving notice of the fact of withdrawal, and the attorney may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Dispute Concerning Attorney's Conduct--[14] Where a legal claim or disciplinary charge alleges complicity of the attorney in a client's conduct or other misconduct of the attorney involving representation of the client, the attorney may respond to the extent the attorney reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the attorney against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the attorney and client acting together. The attorney's right to respond arises when an assertion of such complicity has been made. Subsection (b)(5) of this Rule does not require the attorney to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[15] An attorney entitled to a fee is permitted by subsection (b)(5) of this Rule to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

Disclosures Otherwise Required or Authorized--[16] As noted in Comment 7, Rules 19-303.3 (b) (3.3) and 19-304.1 (b) (4.1) require disclosure in some circumstances regardless of whether the disclosure is permitted by Rule 19-301.6 (1.6). Circumstances may be such that disclosure is required under other Rules, for example, Rule 19-301.2 (d) (1.2), in order to avoid assisting a client to perpetrate a crime or fraud.

[17] Other law may require that an attorney disclose information about a client. Whether such a law supersedes Rule 19-301.6 (1.6) is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the attorney must discuss the matter with the client to the extent required by Rule 19-301.4 (1.4). If, however, the other law supersedes this Rule and requires disclosure, subsection (b)(6) of this Rule permits the attorney to make such disclosures as are necessary to comply with the law.

[18] An attorney may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the attorney should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event

of an adverse ruling, the attorney must consult with the client about the possibility of appeal to the extent required by Rule 19-301.4 (1.4). Unless review is sought, however, subsection (b)(6) of this Rule permits the attorney to comply with the court's order.

Acting Competently to Preserve Confidentiality--[19] An attorney must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the attorney or other persons who are participating in the representation of the client or who are subject to the attorney's supervision. See Rules 19-301.1 (1.1), 19-305.1 (5.1) and 19-305.3 (5.3).

[20] When transmitting a communication that includes information relating to the representation of a client, the attorney must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. <u>This duty applies not only to the transmission of information by non-technological means but also to the transmission of information through the use of technology such as email, a document sharing platform or portal, or an artificial intelligence tool.</u> This duty, however, does not require that the attorney use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the attorney's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the attorney to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client--[21] The duty of confidentiality continues after the client-attorney relationship has terminated. See Rule 19-301.9 (c)(2) (1.9). See Rule 19-301.9 (c)(1) (1.9) for the prohibition against using such information to the disadvantage of the former client.

Model Rules Comparison: Rule 19-301.6 (1.6) retains elements of former Rule 1.6 language, incorporates some changes from the Ethics 2000 Amendments to the ABA Model Rules, and incorporates further revisions.

<u>REPORTER'S NOTE</u>

The Attorneys & Judges Subcommittee recently considered whether amendments to the Maryland Attorneys' Rules of Professional Conduct are necessary or desirable to address the rising use of Artificial Intelligence ("AI") by attorneys. For additional background information, see the Reporter's note to Rule 19-301.1 (1.1).

ABA Formal Opinion 512 references several Model Rules that should be considered by attorneys when using AI. In regards to maintaining confidentiality, ABA Formal Opinion 512 cites, among other rules, Model Rule 1.6, providing, "A lawyer using [generative artificial intelligence] must be cognizant of the duty under Model Rule 1.6 to keep confidential all information relating to the representation of a client, regardless of its source, unless the client gives informed consent, disclosure is impliedly authorized to carry out the representation, or disclosure is permitted by an exception."

The Attorneys and Judges Subcommittee determined that additional language in a Comment may further highlight the importance of taking reasonable precautions when transmitting information. Accordingly, proposed new language in Comment [20] of Rule 19-301.6 adds a sentence noting that the duty to take reasonable precautions applies to transmissions of information by both technological and non-technological means. The new language provides examples of technology that may be used for transmissions, including email, document sharing platforms or portals, and artificial intelligence tools.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

ADVOCATE

AMEND Rule 19-303.3 by adding new Comment [3] and renumbering subsequent Comments, as follows:

Rule 19-303.3. CANDOR TOWARD TRIBUNAL (3.3)

(a) An attorney shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the attorney;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the attorney to be directly adverse to the position of the client and not disclosed by an opposing attorney; or

(4) offer evidence that the attorney knows to be false. If an attorney has offered material evidence and comes to know of its falsity, the attorney shall take reasonable remedial measures.

(b) The duties stated in section (a) of this Rule continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 19-301.6 (1.6).

(c) An attorney may refuse to offer evidence that the attorney reasonably believes is false.

(d) In an ex parte proceeding, an attorney shall inform the tribunal of all material facts known to the attorney which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(e) Notwithstanding sections (a) through (d) of this Rule, an attorney for an accused in a criminal case need not disclose that the accused intends to testify falsely or has testified falsely if the attorney reasonably believes that the disclosure would jeopardize any constitutional right of the accused.

COMMENT

[1] This Rule governs the conduct of an attorney who is representing a client in the proceedings of a tribunal. See Rule 19-301.0 (p) (1.0) for the definition of "tribunal." It also applies when the attorney is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, subsection (a)(4) of this Rule requires an attorney to take reasonable remedial measures if the attorney comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth special duties of attorneys as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. An attorney acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although an attorney in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the attorney must not allow the tribunal to be misled by false statements of law or fact or evidence that the attorney knows to be false.

Representations by an Attorney--[3] Attorneys have a duty to review analyses and citations to authority and correct errors, including misstatements of law and misleading arguments, before submitting materials to a court. An attorney's duty of candor towards the tribunal includes the obligation to take reasonable measures to verify the accuracy and existence of cited authorities, including ensuring that the cited authority is not fabricated, misstated, or taken out of context, before submission to a tribunal, including any cited authorities generated or assisted by artificial intelligence or other technological tools.

[4] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the attorney. Compare Rule 19-303.1 (3.1). However, an assertion purporting to be on the attorney's own knowledge, as in an affidavit by the attorney or in a statement in open court, may properly be made only when the attorney knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 19-301.2 (d) (1.2) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 19-301.2 (d) (1.2), see the Comment to that Rule. See also the Comment to Rule 19-308.4 (b) (8.4).

Misleading Legal Argument--~~[4]~~[5] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. An attorney is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in subsection (a)(3) of this Rule, an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

False Evidence--~~[5]~~[6] When evidence that an attorney knows to be false is provided by a person who is not the client, the attorney must refuse to offer it regardless of the client's wishes.

~~[6]~~[7] When false evidence is offered by the client, however, a conflict may arise between the attorney's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the attorney should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false

character should immediately be disclosed. If the persuasion is ineffective, the attorney must take reasonable remedial measures.

~~[7]~~[8] Except in the defense of a criminal accused, the rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the attorney cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 19-301.2 (d) (1.2). Furthermore, unless it is clearly understood that the attorney will act upon the duty to disclose the existence of false evidence, the client can simply reject the attorney's advice to reveal the false evidence and insist that the attorney keep silent. Thus the client could in effect coerce the attorney into being a party to fraud on the court.

Perjury by a Criminal Defendant--~~[8]~~[9] Whether an advocate for a criminally accused has the same duty of disclosure has been intensely debated. While it is agreed that the attorney should seek to persuade the client to refrain from perjurious testimony, there has been dispute concerning the attorney's duty when that persuasion fails. If the confrontation with the client occurs before trial, the attorney ordinarily can withdraw. Withdrawal before trial may not be possible, however, either because trial is imminent, or because the confrontation with the client does not take place until the trial itself, or because no other attorney is available.

~~[9]~~[10] The most difficult situation, therefore, arises in a criminal case where the accused insists on testifying when the attorney knows that the testimony is perjurious. The attorney's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if the attorney does not exercise control over the proof, the attorney participates, although in a merely passive way, in deception of the court.

~~[10]~~[11] Three resolutions of this dilemma have been proposed. One is to permit the accused to testify by a narrative without guidance through the attorney's questioning. This compromises both contending principles; it exempts the attorney from the duty to disclose false evidence but subjects the client to an implicit disclosure of information imparted to the attorney. Another suggested resolution, of relatively recent origin, is that the advocate be entirely excused from the duty to reveal perjury if the perjury is that of the client. This is a coherent solution but makes the advocate a knowing instrument of perjury.

~~[11]~~[12] The other resolution of the dilemma is that the attorney must reveal the client's perjury if necessary to rectify the situation. A criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with an attorney. However, an accused should not have a right to assistance of an attorney in committing perjury. Furthermore, an advocate has an obligation, not only in professional ethics but under the law as well, to avoid implication in the commission of perjury or other falsification of evidence. See Rule 19-301.2 (d) (1.2).

Remedial Measures--~~[12]~~[13] If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially. If that fails, the advocate should seek to withdraw if that will remedy the situation. If withdrawal will not remedy the situation or is impossible, the advocate should make disclosure to the court. It is for the court then to determine what should be done--making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing. If the false testimony was that of the client, the client may controvert the attorney's version of their communication when the attorney discloses the situation to the court. If there is an issue whether the client has committed perjury, the attorney cannot represent the client in resolution of the issue, and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to an attorney and as such a waiver of the right to further representation.

Constitutional Requirements--~~[13]~~[14] The general rule--that an advocate must disclose the existence of perjury with respect to a material fact, even that of a client--applies to defense attorneys in criminal cases, as well as in other instances. However, the definition of the attorney's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to an attorney in criminal cases. Section (e) of this Rule is intended to protect from discipline the attorney who does not make disclosures mandated by sections (a) through (d) of this Rule only when the attorney acts in the "reasonable belief" that disclosure would jeopardize a constitutional right of the client. For a definition of "reasonable belief," see Rule 19-301.0 (l) (1.0).

Duration of Obligation--~~[14]~~[15] A practical time limit on the obligation to rectify the presentation of false evidence has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. After that point, however, the attorney may be permitted to take certain actions pursuant to Rule 19-301.6 (b)(3) (1.6).

Refusing to Offer Proof Believed to Be False--~~[15]~~[16] Generally speaking, an attorney has authority to refuse to offer testimony or other proof that the attorney reasonably believes is false. Offering such proof may reflect adversely

on the attorney's ability to discriminate in the quality of evidence and thus impair the attorney's effectiveness as an advocate. In criminal cases, however, an attorney may, in some jurisdictions, be denied this authority by constitutional requirements governing the right to an attorney.

Ex Parte Proceedings--~~[16]~~[17] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The attorney for the represented party has the correlative duty to make disclosures of material facts known to the attorney and that the attorney reasonably believes are necessary to an informed decision.

Model Rules Comparison: Rule 19-303.3 (3.3) has been rewritten to retain elements of existing Maryland language and to incorporate some changes from the Ethics 2000 Amendments to the ABA Model Rules.

REPORTER'S NOTE

The Attorneys & Judges Subcommittee recently considered whether amendments to the Maryland Attorneys' Rules of Professional Conduct are necessary or desirable to address the rising use of Artificial Intelligence ("AI") by attorneys. For additional background information, see the Reporter's note to Rule 19-301.1 (1.1).

ABA Formal Opinion 512 highlights an attorney's responsibilities to the court. The Opinion explains, "In judicial proceedings, duties to the tribunal likewise require lawyers, before submitting materials to a court, to review these outputs, including analysis and citations to authority, and to correct errors, including misstatements of law and fact, a failure to include controlling legal authority, and misleading arguments." Specifically, Model Rule 3.3 "makes it clear that lawyers cannot knowingly make any false statement of law or fact to a tribunal or fail to correct a material false statement of law or fact previously made to a tribunal."

A large concern with attorneys using AI is the possibility of fabricated case citations and authorities if the materials are not appropriately reviewed. To address this issue, a proposed amendment to Rule 19-303.3 (3.3) adds new

Comment [3] to expressly highlight that an attorney is responsible for verifying citations and authorities used in materials filed with the court.

The first sentence of the new Comment is derived from ABA Formal Opinion 512. The remainder of proposed Comment [3] mirrors the language proposed to be added as a Comment to California Rules of Professional Conduct Rule 3.3.

Subsequent Comments are renumbered accordingly.

AGENDA ITEM 10

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

CLIENT-ATTORNEY RELATIONSHIP

AMEND Rule 19-301.15 by adding a reference to new section (f) in section (c), by adding new section (f) pertaining to circumstances in which a flat fee may be charged to a client, by adding a statement to the cross reference following Comment [3] concerning an attorney's duty to refund unearned fees, and by adding new Comment [6] as follows:

Rule 19-301.15. SAFEKEEPING PROPERTY (1.15)

(a) An attorney shall hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property. Funds shall be kept in a separate account maintained pursuant to Title 19, Chapter 400 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the attorney and shall be preserved for a period of at least five years after the date the record was created.

(b) An attorney may deposit the attorney's own funds in a client trust account only as permitted by Rule 19-408 (b).

(c) <u>Except as otherwise permitted by section (f) of this Rule,</u> ~~An~~ <u>an</u> attorney shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the attorney only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, an attorney shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, an attorney shall deliver promptly to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render promptly a full accounting regarding such property.

(e) When an attorney in the course of representing a client is in possession of property in which two or more persons (one of whom may be the attorney) claim interests, the property shall be kept separate by the attorney until the dispute is resolved. The attorney shall distribute promptly all portions of the property as to which the interests are not in dispute.

Cross reference: For the duties of an attorney with respect to attorney trust account funds that are presumed abandoned, see Rule 19-414.

<u>(f) In a civil matter, when an attorney charges a flat fee for specified legal services that is paid in whole or in part in advance of the attorney providing the services, the fee may be construed to be the attorney’s property earned upon</u>

receipt and not deposited into an attorney trust account only if (1) depositing the funds into an attorney trust account would not be in the client's best interest because the existence of funds in an attorney's trust account would prohibit or interfere with the client's ability to be eligible for a benefit or program with financial restrictions for which the legal services are being sought or interfere or conflict with any provision or form of relief under any federal law, and (2) the flat fee agreement is agreed to in advance in a writing signed by the client, in a manner that can easily be understood by the client, and includes the following ~~**information**~~ **provisions** in bold print: (A) the scope of the services to be provided; (B) the total amount of the fee and the terms of payment; (C) that the fee becomes the attorney's property immediately upon receipt and will not be placed into a trust account; (D) that the fee agreement does not alter the client's right to terminate the client-attorney relationship; and (E) ~~**that the client may or may not be entitled to a refund of a portion of the fee**~~ if the agreed-upon legal services have not been completed **and the client is entitled to a refund of a portion of the fee paid, the attorney agrees to pay that sum to the client**.

In the event of a dispute relating to a fee under section (f) of this Rule, the attorney shall take reasonable and prompt action to resolve the dispute.

COMMENT

[1] An attorney should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property of clients or third persons, including prospective clients, must be

kept separate from the attorney's business and personal property and, if money, in one or more trust accounts. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities. An attorney should maintain on a current basis books and records in accordance with generally accepted accounting practice and the Rules in Title 19, Chapter 400 and comply with any other record-keeping rules established by law or court order.

[2] Normally it is impermissible to commingle the attorney's own funds with client funds, and section (b) of this Rule provides that it is permissible only as permitted by Rule 19-408 (b). Accurate records must be kept regarding which part of the funds are the attorney's.

[3] Attorneys often receive funds from which the attorney's fee will be paid. The attorney is not required to remit the client funds that the attorney reasonably believes represent fees owed. However, an attorney may not hold funds to coerce a client into accepting the attorney's contention. The disputed portion of the funds must be kept in a trust account and the attorney should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be distributed promptly.

Cross reference: See Rule 19-301.16 (d) (1.16) for requirements concerning the requirement to refund any advance payment of fee or expense that has not been earned or incurred. Section (f) of this Rule does not relieve an attorney of the obligation to refund any such sums.

[4] Section (e) of this Rule also recognizes that third parties may have lawful claims against specific funds or other property in ~~a~~ an attorney's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. An attorney may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the attorney must refuse to surrender the funds or property to the client until the claims are resolved. An attorney should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the attorney may file an action to have a court resolve the dispute.

[5] The obligations of an attorney under this Rule are independent of those arising from activity other than rendering legal services. For example, an attorney who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the attorney does not render legal services in the transaction and is not governed by this Rule.

[6] A statement in substantially the following form is sufficient to satisfy

the information requirements of subsection (f)(2) of this Rule: [Attorney/law firm] agrees to provide, for a flat fee of $_______, the following services: ____. The flat feel shall be paid as follows: ________________________. Upon [attorney's/law firm's] receipt of all or any portion of the flat fee, the funds become the property of [attorney/law firm] and will not be placed in a trust account. The fact that you have paid your fee in advance does not affect your right to terminate the client-attorney relationship. In the event our relationship is terminated before the agreed-upon legal services have been completed, ~~**you may or may not have a right to a refund of a portion of the fee**~~ **if you are entitled to receive a refund of a portion of the fee you paid, [Firm/Attorney] agrees to pay that sum to you**.

Model Rules Comparison: Rule 19-301.15 (1.15) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of the omission of ABA Comment [6] and the addition of section (f) and a Comment [6] pertaining to section (f).

REPORTER'S NOTE

Proposed amendments to Rule 19-301.15 address concerns raised by attorneys in the areas of bankruptcy and elder law. Version "A" is a re-styled draft of a proposal submitted to the Attorneys and Judges Subcommittee by those practitioners (see Version "B"), with substantive deviations from the original shown in boldfaced type.

Both versions allow an attorney in a civil matter, under certain specified circumstances, to treat a flat fee for legal services, paid in advance, as earned upon receipt.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

CLIENT-ATTORNEY RELATIONSHIP

AMEND Rule 19-301.15 as follows:

Rule 19-301.15. SAFEKEEPING PROPERTY (1.15)

(a) An attorney shall hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property. Funds shall be kept in a separate account maintained pursuant to Title 19, Chapter 400 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the attorney and shall be preserved for a period of at least five years after the date the record was created.

(b) An attorney may deposit the attorney's own funds in a client trust account only as permitted by Rule 19-408 (b).

(c) Subject to the exception set forth in section (d) of this Rule, ~~An~~ an attorney shall deposit into a client trust account legal fees and expenses that

have been paid in advance, to be withdrawn by the attorney only as fees are earned or expenses incurred.

(d) In a civil matter, an attorney may charge a flat fee for specified legal services that is paid in whole or in part in advance of the attorney providing the services and is construed to be earned upon receipt only when this fee arrangement is in the client's best interest. A flat fee is the attorney's property on receipt, in which case the fee shall not be deposited into the attorney's trust account. A flat fee agreement under this section shall be agreed to in advance in a writing signed by the client, in a manner that can easily be understood by the client, to include the following in bold print: (A) the scope of the services to be provided; (B) the total amount of the fee and the terms of payment; (C) that the fee is the attorney's property immediately upon receipt and will not be placed into a trust account; (D) that the fee agreement does not alter the client's right to terminate the client-attorney relationship; and (E) that the client may or may not be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed. A statement in substantially the following form satisfies this requirement: [Attorney/law firm] agrees to provide, for a flat fee of $_______, the following services: ____. The flat feel shall be paid as follows: ________________________. Upon [attorney's/law firm's] receipt of all or any portion of the flat fee, the funds are the property of [attorney/law firm] and will not be placed in a trust account. The fact that you have paid your fee in advance does not affect your right to terminate the client-attorney relationship.

In the event our relationship is terminated before the agree-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee. In the event of a dispute relating to a fee under section (d) of this Rule, the attorney shall take reasonable and prompt action to resolve the dispute.

~~(d)~~(e) Upon receiving funds or other property in which a client or third person has an interest, an attorney shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, an attorney shall deliver promptly to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render promptly a full accounting regarding such property.

~~(e)~~(f) When an attorney in the course of representing a client is in possession of property in which two or more persons (one of whom may be the attorney) claim interests, the property shall be kept separate by the attorney until the dispute is resolved. The attorney shall distribute promptly all portions of the property as to which the interests are not in dispute.

Cross reference: For the duties of an attorney with respect to attorney trust account funds that are presumed abandoned, see Rule 19-414.

COMMENT

[1] An attorney should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property of clients or third persons, including prospective clients, must be kept separate from the attorney's business and personal property and, if

money, in one or more trust accounts. Separate trust accounts may be warranted when administering estate money or acting in similar fiduciary capacities. An attorney should maintain on a current basis books and records in accordance with generally accepted accounting practice and the Rules in Title 19, Chapter 400 and comply with any other record-keeping rules established by law or court order.

[2] Normally it is impermissible to commingle the attorney's own funds with client funds, and section (b) of this Rule provides that it is permissible only as permitted by Rule 19-408 (b). Accurate records must be kept regarding which part of the funds are the attorney's.

[3] Attorneys often receive funds from which the attorney's fee will be paid. The attorney is not required to remit the client funds that the attorney reasonably believes represent fees owed. However, an attorney may not hold funds to coerce a client into accepting the attorney's contention. The disputed portion of the funds must be kept in a trust account and the attorney should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be distributed promptly. A flat fee pursuant to section (d) of this Rule is in a client’s best interest when the funds in an attorney’s trust account would prohibit or interfere with a client’s ability to be eligible for a benefit or program with financial restrictions for which the legal services are being sought or interfere or conflict with any provision or form of relief under any federal law. If the requirements of section (d) are not met, a flat fee received in advance shall be deposited in the attorney’s trust account pursuant to section (c).

Cross reference: See Rule 19-301.16 (d) (1.16) for requirements concerning the requirement to refund any advance payment of fee or expense that has not been earned or incurred.

[4] Section (e) of this Rule also recognizes that third parties may have lawful claims against specific funds or other property in ~~a~~ an attorney's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. An attorney may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the attorney must refuse to surrender the funds or property to the client until the claims are resolved. An attorney should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the attorney may file an action to have a court resolve the dispute.

[5] The obligations of an attorney under this Rule are independent of those arising from activity other than rendering legal services. For example, an

attorney who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the attorney does not render legal services in the transaction and is not governed by this Rule.

Model Rules Comparison: Rule 19-301.15 (1.15) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of the omission of ABA Comment [6].

AGENDA ITEM 11

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-101 (b)(5) to correct a typographical error, as follows:

Rule 9-101. APPLICABILITY; DEFINITIONS

. . .

(b) Definitions

The terms used in this Chapter that are defined in Code, Family Law Article, Titles 1 and 5 shall have the meanings stated in those titles. In addition, in this Chapter, the following definitions apply except as expressly otherwise provided or as necessary implication requires.

. . .

(5) Public Agency Adoption Without Prior TPR

"Public Agency Adoption without Prior ~~TRP~~ TPR" means an adoption under Code, Family Law Article, Title 5, Subtitle 3, Part III, without prior termination of parental rights.

(6) TPR

"TPR" means termination of parental rights.

Source: This Rule is in part derived from former Rule D71 and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

AMEND Rule 19-606 (b)(3) to correct a typographical error, as follows:

Rule 19-606. ENFORCEMENT OF OBLIGATIONS

. . .

(b) Administrative Suspension

(1) List of Defaulting Attorneys

As soon as practicable after February 10 of each year but no later than March 10, the Fund shall transmit to the Supreme Court a list that includes the name and AIS number of those attorneys who failed to cure the default stated in the Notice of Default. At the request of the Court, the Fund shall furnish to the Court additional information from its records or give further notice to the defaulting attorneys.

(2) Administrative Suspension Order

If satisfied that the Fund has given the required Notice of Default to the attorneys named in the list, the Supreme Court shall enter an Administrative Suspension Order prohibiting each of the attorneys in default from practicing law in Maryland. The Clerk of the Supreme Court shall (A) send electronically a copy of the Order to each administratively suspended attorney named in the Order, (B) comply with Rule 19-761, and (C) post notice of the Order on the Judiciary website.

(3) Effect of Order

An attorney who has been sent a copy of the Administrative Suspension Order and who has not been restored to good standing may not practice law in Maryland and shall comply with the requirements of Rule 19-741 (b) and (c). In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against an attorney who practices law in violation of ~~a~~ an Administrative Suspension Order.

. . .