

## **Notice of In-Person Meeting**

### **Standing Committee on Rules of Practice and Procedure**

### **November 21, 2025 Open Meeting, 9:30 a.m.**

### **Instructions for Members of the Public**

The November 21, 2025, 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 236-237, 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](mailto: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**

November 21, 2025 (Friday)  
9:30 a.m.  
Maryland Judicial Center  
Rooms 236-237  
187 Harry S. Truman Parkway  
Annapolis, MD 21401

|        |                                                                                                                                                                                                                               |                |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Item 1 | Consideration of proposed amendments to Rule 3-325 (Jury Trial)                                                                                                                                                               | Judge Wilson   |
| Item 2 | Consideration of a policy question regarding party access to Extreme Risk Protective Order (ERPO) filings                                                                                                                     | Judge Wilson   |
| Item 3 | Consideration of proposed amendments to Rule 3-421 (Interrogatories to Parties)                                                                                                                                               | Judge Anderson |
| Item 4 | Consideration of proposed amendments to Rule 2-422 (Discovery of Documents, Electronically Stored Information, and Property)                                                                                                  | Judge Anderson |
| Item 5 | Reconsideration of proposed amendments to Rule 4-345 (Sentencing - Revisory Power of Court)                                                                                                                                   | Judge Bryant   |
| Item 6 | Consideration of proposed amendments to Rule 5-615 (Exclusion of Witnesses)                                                                                                                                                   | Mr. Zavin      |
| Item 7 | Consideration of proposed amendments to:<br><br>Rule 4-507 (Hearing)<br>Rule 4-211 (Filing of Charging Document)<br>Rule 4-231 (Presence of Defendant)<br>Rule 4-203 (Charging Document - Joinder of Offenses and Defendants) | Mr. Zavin      |

|         |                                                                                                |                |
|---------|------------------------------------------------------------------------------------------------|----------------|
| Item 8  | Consideration of proposed amendments to Rule 5-804 (Hearsay Exceptions; Declarant Unavailable) | Mr. Brault     |
| Item 9  | Consideration of proposed amendments to Rule 19-728 (Post-Hearing Proceedings)                 | Judge Nazarian |
| Item 10 | Consideration of proposed new Rule 19-803 (Name Change)                                        | Judge Nazarian |
| Item 11 | Consideration of proposed "Housekeeping" amendments to Rule 8-501 (Record Extract)             | Reporter       |

Information Item: Update on 219<sup>th</sup> Report Remand Regarding Rule 2-422

# **AGENDA ITEM 1**

MARYLAND RULES OF PROCEDURE  
TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT  
CHAPTER 300 – PLEADINGS AND MOTIONS

AMEND Rule 3-325 by adding a reference to Title 6 of the Real Property Article of the Maryland Code to subsection (a)(2), by making stylistic changes to section (c), and by adding new subsection (c)(2), as follows:

**RULE 3-325. JURY TRIAL**

**(a) Demand – Time for Filing**

**(1) By Plaintiff**

A plaintiff whose claim is within the exclusive jurisdiction of the District Court may elect a trial by jury of any action triable of right by a jury by filing with the complaint a separate written demand therefor.

**(2) By Defendant**

A defendant, counter-defendant, cross-defendant, or third-party defendant may elect a trial by jury of any action triable of right by a jury by filing a separate written demand therefor within ten days after the time for filing a notice of intention to defend or, if applicable, the time provided in Code, Real Property Article, § 8-601, et. seq.

**(b) Waiver**

The failure of a party to file the demand as provided in section (a) of this Rule constitutes a waiver of trial by jury of the action for all purposes,

Rule 3-325 – section (a) approved by Property SC and District Court SC; section (c) approved by District Court SC  
For 11/21/2025 RC meeting

including trial on appeal.

(c) Transmittal of Record to Circuit Court

(1) Transmittal of Record

When a timely demand for jury trial is filed, the clerk shall transmit the record to the circuit court within 15 days. At any time before the record is transmitted pursuant to this section, the District Court may determine, on motion or on its own initiative, that the demand for jury trial was not timely filed or that the action is not triable of right by a jury.

(2) Effect of Transfer; Discovery

An action that is transferred from the District Court to a circuit court for trial is deemed to have originated in the circuit court. Discovery in an action transferred pursuant to this Rule is governed by the Rules in Title 3, Chapter 400, or Rule 3-711, as applicable, and not by the Rules in Title 2, Chapter 400.

Cross reference: Code, Courts Article, § 4-402 (e)(2), Code, Courts Article, § 6-404.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 343 b and c.

Section (b) is derived from former M.D.R. 343 a.

Section (c) is derived in part from former M.D.R. 343 d and e, and in part from Code, Courts Article, § 6-404.

REPORTER'S NOTE

The General Assembly recently passed the Real Property – Wrongful Detainer – Time of Hearing and Service of Process law as Chapter 188, 2025 Laws of Maryland (HB 560 / SB 46). The law specifies, among other things, that a hearing in an action covered by Chapter 188 must take place within 10

Rule 3-325 – section (a) approved by Property SC and District Court SC; section (c) approved by District Court SC  
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business days after the complaint is filed. Because of this expedited hearing provision, it is possible that a defendant in an action brought under Chapter 188 may be required to file a request for a jury trial prior to the time in which a notice of intention to defend would be due under subsection (a)(2) of this Rule.

As a result, the Property and District Court Subcommittees propose revising subsection (a)(2) of Rule 3-235 to clarify that a request for a jury trial must be filed within the time when a notice of intention to defend is due or earlier, if required by Code, Real Property Article, § 8-601, et seq.

The District Court Subcommittee proposes revisions to section (c) of this Rule. In some circumstances involving housing project leases, when the amount in controversy is sufficient, defendants in landlord/tenant actions have filed requests for jury trials pursuant to the federal model for lease valuation adopted in Maryland in Kirk v. Hilltop Apartments, 225 Md. App. 34 (2015). As a result, a question has arisen as to how landlord/tenant cases should be handled once they are in a circuit court, specifically whether they should be entitled to Title 2, Chapter 400 discovery, Title 3, Chapter 400 discovery, or no discovery at all pursuant to Rule 3-711.

Code, Courts Article, § 6-404 (Venue of Transferred Case) states that “... a case transferred from the District Court to a circuit court **for trial** shall be deemed to have originated in the circuit court ...” (emphasis added). The statute is silent on the issue of discovery, but it does indicate that a case is “deemed to have originated in the circuit court.” The language “for trial” in the statute is significant, especially if afforded a literal interpretation. If the case is transferred only for trial, then discovery, which occurs during the pre-trial phase of litigation, should be governed by District Court standards. Rule 3-711 specifically exempts landlord/tenant actions from Title 3, Chapter 400 pretrial discovery. There is no case law that addresses the issue of discovery in landlord/tenant actions transferred to a circuit court for trial. Since the provisions of § 6-404 of the Courts Article are silent as to discovery, and Rule 3-711 has indicated that landlord/tenant actions are not eligible for any pretrial discovery, it is reasonable to determine that pre-trial discovery should not be permitted in a landlord/tenant action transferred to a circuit court for trial.

To clarify this understanding, new subsection (c)(2) is proposed. This subsection is based on Code, Courts Article, §6-404, with a provision added to clarify that a party in an action transferred to a circuit court is entitled to the

same discovery in circuit court that the party is permitted to obtain in the District Court.

Stylistic changes to section (c) are also proposed.

## **AGENDA ITEM 2**

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109 by clarifying the parameters of access to case records by parties and attorneys of record in section (a) and by adding a Committee note pertaining to party access to case records following section (a), 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 an action and attorneys of record for a party in an action shall have full access to all case records in that action, including remote access to electronic case records and access to records marked confidential or shielded from public inspection. 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. Access by a party or attorney of record in an action are not impacted by a restriction on public access. See Rule 16-901 (b). Where a law, such as Code, Public Safety Article, § 5-602, does not expressly permit access to case records by a party or attorney of record for a party, access is permitted unless the court enters an order to the contrary.

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#### REPORTER'S NOTE

A circuit court clerk contacted the Committee with a question regarding the operation of Code, Public Safety Article, § 5-602, and Rule 20-109 (a). The statute pertains to petitions for an Extreme Risk Protective Order (“ERPO”) and states, “All court records relating to a petition for an extreme risk protective order made under this subtitle are confidential and the contents may not be divulged, by subpoena or otherwise, except by order of the court on good cause shown.” The statute goes on to make several exceptions, including the respondent and counsel for the respondent, but does not mention the petitioner and attorney for the petitioner.

The clerk reported that the County Attorney sought party access to an ERPO case as counsel for the petitioner, a law enforcement agency. The attorney was informed by Judicial Information Systems (“JIS”) that pursuant to this section of the statute, the petitioner and the petitioner’s attorney are precluded from accessing the case records in an ERPO. The JIS response noted that the statute expressly exempts the respondent and respondent’s counsel from the confidentiality provision but does not extend that exemption to the petitioner or the petitioner’s attorney. Thus, although an attorney is required to file through MDEC, the attorney has no access to the attorney’s own filings or to any other document filed in the action.

An ERPO was authorized by statute in 2018 and permits certain individuals to petition for a court order that temporarily requires the respondent to surrender any firearms or ammunition to law enforcement. The law permits a petition to be filed in the District Court or, when the Court is closed, a District Court Commissioner. An ERPO shares some characteristics

with a protective order authorized by Code, Family Law Article, § 4-504 and was in part modeled after this process.

Rules Committee staff reviewed the available legislative history of Chapter 250, 2018 Laws of Maryland (House Bill 1302), including the bill file and archived recordings of committee hearings and floor sessions. The confidentiality provision was introduced by the Senate Judicial Proceedings Committee after the bill was passed by the House of Delegates and transmitted to the Senate. The House sponsor informed the Senate Judicial Proceedings Committee that she would be suggesting an amendment applying “the same confidentiality protections that exist under the emergency evaluation statutes” to a petition for an ERPO.

Code, Health—General Article, § 10-630 governs confidentiality of emergency evaluation petitions and states, “All court records relating to a petition for an emergency evaluation made under this subtitle are confidential and the contents may not be divulged, by subpoena or otherwise, except by order of the court on good cause shown.” Exceptions for both the petitioner and the emergency evaluatee are included.

Although Code, Public Safety Article, § 5-602 does not explicitly extend its exception to the petitioner, the stated legislative intent was to model the provision after a section of the Code which does so. There is nothing in the legislative history file that indicates an intent for the confidentiality provisions of Code, Public Safety Article, § 5-602 to differ from the confidentiality provisions of Code, Health—General Article, § 10-630. Other Code sections addressing confidentiality of court records similarly exempt the parties from this restriction. Parties to an action and their attorneys generally are permitted access to all case records, including records that are confidential or shielded, unless there is a specific law or court order prohibiting that access. ERPO proceedings, like other protective order proceedings, move quickly and are not document-heavy cases.

A proposed amendment to Rule 20-109 clarifies that, subject to a protective order or other law expressly regulating access, parties to an action and attorneys of record in an action have full access, including electronic access, to all records, including those “marked confidential or shielded from public inspection.”

The District Court Subcommittee considered the proposed amendment and the available legislative history of Code, Public Safety Article, § 5-602. The Subcommittee was not certain that the exclusion of the petitioner and the petitioner’s attorney from access to ERPO records was a legislative oversight, although members acknowledged the possibility. The Subcommittee also was informed that the proposed amendment to the text of section (b) may not be

Rule 20-109

District Court Subcommittee referral w/o recommendation

For 11/21/25 R.C.

sufficient to supersede the JIS interpretation of the statute because it does not explicitly state that it is doing so.

The Subcommittee voted to advance the proposed amendments to Rule 20-109 to the Rules Committee for further discussion, with the addition of a Committee note clarifying that the Rule supersedes the JIS interpretation of the statute.

The Subcommittee makes no recommendation regarding approval of the proposed amendment to section (b) or of the Committee note following section (b).

## **AGENDA ITEM 3**

MARYLAND RULES OF PROCEDURE  
TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT  
CHAPTER 400 – DISCOVERY

AMEND Rule 3-421 by adding a provision to section (b) related to the ability of the court to alter the time to serve interrogatories and by making stylistic changes, as follows:

Rule 3-421. INTERROGATORIES TO PARTIES

(a) Scope

Unless otherwise limited by order of the court in accordance with this Rule, the scope of discovery by interrogatories is as follows:

(1) Generally

A party may obtain discovery regarding any matter, not privileged, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter, if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery or that the information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

An interrogatory otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact.

(2) Insurance Agreements

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subsection, an application for insurance shall not be treated as part of an insurance agreement.

(3) Request for Documents by Interrogatory

A party by interrogatory may request the party upon whom the interrogatory is served to attach to the response or submit for inspection the original or an exact copy of the following:

(A) any written instrument upon which a claim or defense is founded;

(B) a statement concerning the action or its subject matter previously made by the party seeking discovery, whether a written statement signed or otherwise adopted or approved by that party, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement made by that party and contemporaneously recorded; and

(C) any written report, whether acquired or developed in anticipation of litigation or for trial, made by an expert whom the responding party expects to call as an expert witness at trial. If the responding party fails to furnish a written report requested pursuant to this subsection, the court, upon motion of the discovering party, may enter any order that justice requires, including an order refusing to admit the testimony of the expert.

(b) Availability; Number; Time for Filing

Any party may serve written interrogatories directed to any other party. Unless the court orders otherwise, a party may serve only one set of not more than 15 interrogatories to be answered by the same party. Interrogatories, however grouped, combined or arranged and even though subsidiary or incidental to or dependent upon other interrogatories, shall be counted separately. Each form interrogatory contained in the Appendix to these Rules shall count as a single interrogatory. ~~The~~ Unless otherwise ordered by the court, (1) the plaintiff may serve interrogatories no later than ten days after the date on which the clerk mails the notice required by Rule 3-307 (d). ~~The~~ and (2) the defendant may serve interrogatories no later than ten days after the time for filing a notice of intention to defend.

(c) Protective Order

On motion of a party filed within five days after service of interrogatories upon that party, and for good cause shown, the court may enter any order that justice requires to protect the party from annoyance, embarrassment, oppression, or undue burden or expense.

(d) Response

The party to whom the interrogatories are directed shall serve a response within 15 days after service of the interrogatories or within five days after the date on which that party's notice of intention to defend is required, whichever is later. The response shall answer each interrogatory separately and fully in writing under oath, or shall state fully the grounds for refusal to answer any interrogatory. The response shall set forth each interrogatory followed by its answer. An answer shall include all information available to the party directly or through agents, representatives, or attorneys. The response shall be signed by the party making it.

(e) Option to Produce Business Records

When (1) the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of those business records or a compilation, abstract, or summary of them, and (2) the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, and (3) the party upon whom the interrogatory has been served has not already derived or ascertained the information requested, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the

interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(f) Supplementation of Response

A party who has responded to interrogatories and who obtains further material information before trial shall supplement the response promptly.

(g) Motion for Order Compelling Discovery

Within five days after service of the response, the discovering party may file a motion for an order compelling discovery. The motion shall set forth the interrogatory, any answer or objection, and the reasons why discovery should be compelled. Promptly after the time for a response has expired, the court shall decide the motion.

(h) Sanctions for Failure to Respond

When a party to whom interrogatories are directed fails to serve a response after proper service of the interrogatories, the discovering party, upon reasonable notice to other parties, may move for sanctions. The court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including an order refusing to allow the failing party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matters in evidence, or an order striking out pleadings or parts thereof, staying further proceedings until the discovery is provided, dismissing the action or any part thereof, or entering a judgment by default against the failing party if the court is satisfied that it has personal jurisdiction over that party.

Cross reference: Rule 1-341.

(i) Use of Answers

Answers served by a party to interrogatories may be used by any other party at the trial or a hearing to the extent permitted by the rules of evidence. If only part of an answer is offered in evidence by a party, an adverse party may require the offering party to introduce at that time any other part that in fairness ought to be considered with the part offered.

Cross reference: Rule 1-204.

Source: This Rule is derived as follows:  
Section (a) is derived from former M.D.R. 417 e.  
Section (b) is derived from former M.D.R. 417 a.  
Section (c) is derived from former M.D.R. 417 f.  
Section (d) is derived from former M.D.R. 417 b.  
Section (e) is derived from former M.D.R. 417 e 4.  
Section (f) is new.  
Section (g) is derived from former M.D.R. 417 c.  
Section (h) is derived from former M.D.R. 417 d.  
Section (i) is derived from former M.D.R. 417 g.

REPORTER'S NOTE

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter “the EJC Report”). One of the recommendations within the EJC Report concerned civil discovery in the District Court.

Current Rule 3-421 addresses discovery procedures for civil actions in the District Court. Section (b) sets forth the time for serving interrogatories:

The plaintiff may serve interrogatories no later than ten days after the date on which the clerk mails the notice required by Rule 3-307 (d) [promptly when the defendant files a notice of intention to defend]. The defendant may serve interrogatories no later than ten days after the time for filing a notice of intention to defend.

Rule 3-421  
Recommended by Discovery SC 06/17/25  
For RC 11/21/25

The EJC Report highlighted the concern of an attorney that “the existence of two different deadlines for filing discovery was unfair to debtors in consumer debt actions because they often were unrepresented.” However, since a defendant typically has 15 days to file a notice of intention to defend pursuant to Rule 3-307, the defendant often has 25 days after being served with the complaint to serve interrogatories. The plaintiff’s time to serve interrogatories is ten days, beginning when the clerk mails notice that a notice of intention to defend was filed. As noted in the EJC Report, the two parties have roughly the same timeframe for submitting interrogatory requests.

The EJC Report further stated, “It is unclear why two different triggering events would lead to [unfairness to debtors], but if the problem is that defendants have insufficient time to file their own discovery requests, the rule could be amended to extend the 10-day deadline to some longer period.” Accordingly, the EJC Report did not propose altering the varying discovery deadlines, instead recommending that, “The Rules Committee should consider whether defendants have enough time to file discovery requests under Rule 3-421.”

The Discovery Subcommittee addressed the recommendation of the EJC Report and determined that the anecdotal evidence from the EJC Report’s listening session did not merit changes to the timeframe for interrogatories at this time. The Subcommittee considered that, although using the same triggering event for the time for both sides to serve interrogatories may appear more straightforward, the current staggered deadlines reflect the different information available to each party at different times of the action. The plaintiff, for example, may not know what information is needed in discovery until there is a notice of intention to defend filed indicating that the defendant disputes the claim. The defendant, in contrast, is aware of the plaintiff’s allegations when the complaint is served.

The Subcommittee also noted that if there are concerns about having sufficient time to serve interrogatories, discovery deadlines can be extended by court order in a particular case. Rule 3-421, however, does not directly address the filing of a motion to extend the discovery deadline. Section (b) acknowledges the ability of the court to permit more than the typical number of interrogatories: “Unless the court orders otherwise, a party may serve only one set of not more than 15 interrogatories to be answered by the same party.” However, the remaining provisions of section (b) setting forth the timeframe to serve interrogatories do not include a statement that the court may order different deadlines.

Accordingly, a proposed amendment to Rule 3-421 (b) addresses some of the concern discussed in the EJC Report by adding language to section (b)

Rule 3-421

Recommended by Discovery SC 06/17/25

For RC 11/21/25

highlighting the court's authority to alter the deadline for a party to serve interrogatories. Stylistic changes are also proposed in the section.

## **AGENDA ITEM 4**

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-422 by adding language to section (c), as follows:

Rule 2-422. DISCOVERY OF DOCUMENTS, ELECTRONICALLY STORED  
INFORMATION, AND PROPERTY – FROM PARTY

(a) Scope

Any party may serve one or more requests to any other party (1) as to items that are in the possession, custody, or control of the party upon whom the request is served, to produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test or sample designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 2-402 (a); or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing,

testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

Cross reference: For inspection of property of a nonparty in an action pending in this State and for discovery under the Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(b) Request

A request shall set forth the items to be inspected, either by individual item or by category; describe each item and category with reasonable particularity; and specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form in which electronically stored information is to be produced.

(c) Response

The party to whom a request is directed shall serve a written response within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later.

The As to each item or category requested to be inspected, the response shall set forth the request and shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If a refusal relates to the form in which electronically stored information is requested to be

produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

Cross reference: See Rule 2-402 (b)(1) for a list of factors used by the court to determine the reasonableness of discovery requests and (b)(2) concerning the assessment of the costs of discovery.

(d) Production

(1) A party who produces documents or electronically stored information for inspection shall (A) produce the documents or information as they are kept in the usual course of business or organize and label them to correspond with the categories in the request, and (B) produce electronically stored information in the form specified in the request or, if the request does not specify a form, in the form in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same electronically stored information in more than one form.

Committee note: Onsite inspection of electronically stored information should be the exception, not the rule, because litigation usually relates to the informational content of the data held on a computer system, not to the operation of the system itself. In most cases, there is no justification for direct inspection of an opposing party's computer system. See *In re Ford Motor Co.*, 345 F.3d 1315 (11th Cir. 2003) (vacating order allowing plaintiff direct access to defendant's databases).

To justify onsite inspection of a computer system and the programs used, a party should demonstrate a substantial need to discover the information and the lack of a reasonable alternative. The inspection procedure should be documented by agreement or in a court order and should be narrowly restricted to protect confidential information and system integrity and to avoid giving the discovering party access to data unrelated to the litigation. The data subject to inspection should be dealt with in a way that preserves the producing party's rights, as, for example, through the use of neutral court-appointed consultants. See, generally, The Sedona Conference, *The Sedona*

Rule 2-422

For Discovery SC 06/17/25

For RC 11/21/25

*Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production* (2d ed. 2007), Comment 6. c.

Source: This Rule is derived from former Rule 419 and the 1980 and 2006 versions of Fed. R. Civ. P. 34.

REPORTER'S NOTE

A practitioner suggested that the Rules Committee consider an amendment to Rule 2-422 (c) to make the format for discovery responses consistent across the Rules.

Rules 2-421 and 2-424, concerning interrogatories and requests for admission, require that responses set forth each interrogatory or request before stating the response. For example, Rule 2-421 (b) provides, "The response shall set forth each interrogatory followed by its answer." Rule 2-424 states, similarly, "As to each matter of which an admission is requested, the response shall set forth each request for admission and shall specify an objection, or shall admit or deny the matter, or shall set forth in detail the reason why the respondent cannot truthfully admit or deny it."

Rule 2-422, addressing requests for documents, does not contain the same formatting requirement found in Rules 2-421 and 2-424. Although attorneys may repeat the request in the response, it does not appear to be a mandatory practice.

A proposed amendment to Rule 2-422 adds language to section (c) requiring that each response set forth the request before stating the required information.

# **AGENDA ITEM 5**

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-345 by deleting certain language in subsection (e)(1) and adding language regarding the court’s revisory power to enter a disposition of probation before judgment, by expanding the current cross reference and Committee note after subsection (e)(1), by adding new subsection (e)(2) addressing the duration of the court’s revisory power, by adding new subsection (e)(3) requiring the filing of a Request for Hearing and Determination, by renumbering current subsection (e)(2) as (e)(4), by moving section (f) and making current subsection (e)(3) new subsection (f)(1), by making new subsection (f)(2) with the language of current section (f), and by updating an internal reference in subsection (f)(2), as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

Cross reference: See *State v. Brown*, 464 Md. 237 (2019), concerning an evident mistake in the announcement of a sentence.

(d) Desertion and Non-Support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

(e) Modification Upon Motion

(1) Generally

Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence ~~except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not, including the ability to enter a disposition of probation before judgment, for the period of time stated in subsection (e)(2) of this Rule.~~ The revisory power does not include the ability to increase the sentence.

Cross reference: See Rule 7-112 (b) regarding a de novo appeal from a judgment of the District Court. See Code, Criminal Procedure Article, § 6-220(f) for restrictions on a court's authority to enter probation before judgment.

Committee note: The revisory power to enter a disposition of probation before judgment applies in any action in which probation before judgment would have been a lawful disposition at the original sentencing. Except as provided in Code, Health-General Article, § 8-505, the court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health-General Article, § 8-507.

(2) Duration of Revisory Power

In ruling on a motion filed pursuant to subsection (e)(1) of this Rule, the court may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant, except that the court, for good cause shown, may extend the five-year period by an additional 60 days.

(3) Request for Hearing and Determination of Motion

Subsection (e)(3) of this Rule applies to motions filed on or after [effective date of amendment]. No later than six months before the expiration of five years from the date the sentence originally was imposed on the defendant, if the motion has not been ruled upon, the defendant shall file a “Request for Hearing and Determination” of the motion. Upon receipt of the request, the court shall review the request and the motion and shall either (a) deny the motion without a hearing or (b) proceed in accordance with section (f) of this Rule. Except for good cause shown, a failure to timely file a Request for Hearing and Determination of the motion may be deemed a withdrawal of the motion.

~~(2)~~(4) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(f) Open Court Hearing

~~(3)~~(1) Inquiry by Court

Before considering a motion under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, § 11-403(e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

~~(f) Open Court Hearing~~

(2) Conduct of Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present at the hearing. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in subsection ~~(e)(2)~~(e)(4) of this Rule have been satisfied. If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Cross reference: See Code, Criminal Law Article, § 5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto. See Code, Criminal Procedure Article, § 10-105.3 regarding an application for resentencing by a person incarcerated after a conviction of possession of cannabis under Code, Criminal Law Article, § 5-601.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

#### REPORTER'S NOTE

At May 2025 Rules Committee meeting, the Criminal Rules Subcommittee recommended several amendments to Rule 4-345 to conform the provisions of the Rule to current practice and to address issues recently raised in an appellate decision.

The amendments approved by the Criminal Rules Subcommittee were presented to the Rules Committee at the May 2025 meeting. Concerns were raised about whether the amendments sufficiently address the underlying issue of ensuring that motions are heard within the five-year deadline. The Committee also questioned the number of these motions currently pending that must be addressed before the five-year deadline. It was noted that the Subcommittee may want to consider a uniform process for the processing of

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these motions by the courts, such as certain notifications to defendants. Overall, Rule 4-345 was remanded to the Subcommittee for further discussion.

The Criminal Rules Subcommittee reconsidered the proposed amendments to Rule 4-345 at an August 2025 meeting. In regard to the question about how many Rule 4-345 motions are pending throughout the State, staff reached out to Research & Analysis to determine whether there is a feasible search of court data to determine the number of motions for modification currently pending in the District Court and circuit courts throughout the State. Although certain searches may be conducted for relevant filing codes, review of the returned data found that different filings codes may have been utilized in different jurisdiction when a Rule 4-345 motion was filed. Docket entries indicating the final disposition of such a motion also varied throughout cases. As a result, a feasible search with reliable results could not be created.

The Subcommittee discussed the Committee's concern regarding whether the amendments sufficiently ensure that Rule 4-345 motions are heard within the five-year deadline. Subcommittee members noted that defendants are advised of their rights after sentencing. A new advice of rights form could make clear that a motion for modification under this Rule is a two-step process, explaining that the defendant must seek a hearing on a Rule 4-345 motion within five years. Because changes to most forms are outside the purview of the Rules Committee, the matter may be referred to the Forms Subcommittee if the proposed amendments proceed.

The Subcommittee discussed also that proposed new subsection (e)(3) uses "shall" to indicate that, upon receipt of a request for hearing, the court must either deny the motion or schedule a hearing. Because the court is required to act pursuant to the subsection, an emphasis on this language may alleviate the concerns of the Rules Committee about whether the proposed amendments ensure that Rule 4-345 motions are timely decided.

Therefore, after consideration of the questions raised at the Rules Committee meeting, the Criminal Rules Subcommittee recommends the amendments to Rule 4-345 as proposed at the May 2025 Rules Committee meeting.

Proposed amendments to subsection (e)(1) delete and add certain language. The provision that the court may not revise a sentence after five years from the date the sentence was imposed is deleted from subsection (e)(1) and moved to new subsection (e)(2). New language in subsection (e)(1) highlights that revisory power includes the court's ability to enter a disposition of probation before judgment ("PBJ"). Despite courts historically demonstrating their ability to enter PBJs when considering a motion to revise

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under Rule 4-345, the current language of the Rule does not clearly confer this authority. Accordingly, this new language ensures that the current practice is permitted within the language of the Rule.

The cross reference after subsection (e)(1) is proposed to be updated. Additional language is added to clarify the current reference to Rule 7-112 (b). A new reference to Code, Criminal Procedure Article, § 6-220(f) is added, pointing to restrictions on probation before judgment.

The Committee note following subsection (e)(1) is also expanded. A new sentence is added noting that the revisory power to enter a disposition of probation before judgment applies in actions where probation before judgment would have been a lawful disposition at the original sentence. A reference to Code, Health-General Article, § 8-505 is also added to the current language of the Committee note. The current language does not account for the 2018 amendments to the Health-General Article of the Code limiting the eligibility of a defendant convicted of a crime of violence for evaluations and treatment pursuant to § 8-507. The proposed amendment acknowledges this exception to the court's ability to commit a defendant to treatment for drug or alcohol dependency.

New subsections (e)(2) and (e)(3) are proposed to address situations similar to that found in *State v. Thomas*, 488 Md. 456 (2024). In *Thomas*, the defendant filed a timely motion to modify his sentence and repeatedly requested a hearing before the deadline for ruling. However, the motion was neither denied nor granted during the five-year period. The Supreme Court of Maryland held that a trial court lacked jurisdiction to modify a sentence more than five years after entry of the sentence, even if a timely motion to modify was filed.

In addition to the majority opinion in *Thomas*, one concurring opinion, one concurring and dissenting opinion, and one dissenting opinion were filed. In the concurring and dissenting opinion, Justice Eaves noted that Rules changes may address concerns about the type of uncorrectable error demonstrated by *Thomas*:

This pitfall requires correction either by the General Assembly or this Court in its rulemaking capacity based on recommendations from the Standing Committee on Rules of Practice and Procedure. Such a correction could be as simple as requiring that a defendant need only request a hearing within five years for the court to have jurisdiction. If the defendant complies, then the sentencing court retains jurisdiction until a definitive ruling is made. Any revision, of course, also could address finality concerns and instruct the sentencing judge to use reasonable efforts to schedule a hearing within five years from the date

the defendant originally was sentenced, but otherwise make clear that an inability to do so, for whatever reason, does not deprive the court of jurisdiction. *Id.* at 518.

Proposed new subsection (e)(2) of Rule 4-345 reiterates the five-year limitation currently included in subsection (e)(1). However, the new language provides that the period may be extended by 60 days for good cause shown. This 60-day extension intends to address situations, such as seen in *Thomas*, where logistic or administrative hurdles make holding a hearing and ruling on the motion within the five-year period impracticable.

New subsection (e)(3) requires a Request for Hearing and Determination of Motion to be filed no later than six months before the expiration of the five-year period, alerting the court of the approaching deadline to rule on the motion. A failure to file such a request may be treated as a withdrawal of the motion, except for good cause shown. To ensure that this amendment to the Rule does not impact the rights of defendants with pending motions to revise, the new language states that the subsection applies only to motions filed on or after the effective date of the Rule.

The remaining amendments to Rule 4-345 are stylistic. Current subsection (e)(2) is renumbered as subsection (e)(4). Upon review, it was determined that current subsection (e)(3) concerns an inquiry by the court at an open court hearing on a motion pursuant to Rule 4-345. Accordingly, the subsection is moved to section (f), becoming new subsection (f)(1). Current section (f) is relabeled as subsection (f)(2) and an appropriate tagline is added. Finally, an internal reference in new subsection (f)(2) is updated to reflect the structural changes to the Rule.

# **AGENDA ITEM 6**

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 600 – WITNESSES

AMEND Rule 5-615 by adding new language in subsection (b)(2) concerning the applicability to the State in a criminal action and by adding a Committee note after subsection (b)(2), as follows:

Rule 5-615. EXCLUSION OF WITNESSES

(a) In General

Except as provided in sections (b) and (c) of this Rule, upon the request of a party made before testimony begins, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. When necessary for proper protection of the defendant in a criminal action, an identification witness may be excluded before the defendant appears in open court. The court may order the exclusion of a witness on its own initiative or upon the request of a party at any time. The court may continue the exclusion of a witness following the testimony of that witness if a party represents that the witness is likely to be recalled to give further testimony.

Cross reference: For circumstances when the exclusion of a witness may be inappropriate, see *Tharp v. State*, 362 Md. 77 (2000).

(b) Witnesses Not to Be Excluded

A court shall not exclude pursuant to this Rule:

- (1) a party who is a natural person,

(2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, except that in a criminal action the State may not be so represented,

Committee note: Nothing in subsection (b)(2) of this Rule is intended to exclude an individual who otherwise qualifies to be present under subsections (b)(3), (b)(4), or (b)(5) of this Rule.

(3) an expert who is to render an opinion based on testimony given at the trial,

(4) a person whose presence is shown by a party to be essential to the presentation of the party's cause, such as an expert necessary to advise and assist counsel, or

(5) a victim of a crime or a delinquent act, including any representative of such a deceased or disabled victim, to the extent required by statute.

Cross reference: Code, Courts Article, § 3-8A-13; Criminal Procedure Article, § 11-102 and § 11-302; Rule 4-231.

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#### REPORTER'S NOTE

By letter dated May 2, 2025, Chief Justice Fader asked the Rules Committee to consider whether amendments to Rule 5-615, specifically to subsection (b)(2), are needed. The Chief Justice noted that the issue arose during consideration of *Cromartie v. State*, 490 Md. 297 (2025), in which “the parties disputed whether the trial court has erred in permitting the State to designate a law enforcement officer as its party representative pursuant to Rule 5-615 (b)(2).”

In *Cromartie*, the defendant was convicted of second-degree assault and other offenses after a jury trial. At the beginning of trial, the defendant invoked Rule 5-615 to exclude witnesses from the courtroom. The State designated the primary detective investigating the incident, also a witness, as the State's

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representative. *Cromartie*, 490 Md. at 301. The defendant appealed his conviction, arguing in part that the detective should not have been exempted from witness sequestration and should not have been permitted to remain at counsel table during the trial.

The Supreme Court ultimately determined that it did not need to resolve the question of whether Rule 5-615 allows the State to designate a detective who will testify as a witness as a representative who is not subject to exclusion from the courtroom because any error was harmless beyond a reasonable doubt.

The Chief Justice noted in his May 2, 2025 letter that several questions were raised in the case on appeal, including “(1) whether the exception [in Rule 5-615 (b)(2)] applies to the State in a criminal prosecution; (2) if so, whether a local law enforcement officer is an ‘officer or employee’ of the State for purposes of the exception; and (3) whether the exception is discretionary or mandatory.” The Rules Committee was asked to consider these questions and what, if any, amendments should be recommended to Rule 5-615.

The topic was referred to the Criminal Rules Subcommittee for consideration. The Subcommittee considered the arguments of both the State and the Office of the Public Defender from the *Cromartie* case, which included a review of the Rule’s history. The Subcommittee also reviewed the results of staff’s research regarding the practice in other states. While most states have a rule regarding witness exclusion similar to Maryland Rule 5-615 and Federal Rule 615, the application of the exceptions, specifically in regard to the State in criminal cases, is most often determined in case law.

Amendments are proposed to subsection (b)(2) of Rule 5-615. New language clarifies that, although the State is not a natural person, it is not entitled to exclude from sequestration an officer or employee designated as its representative by its attorney in criminal cases. A Committee note following subsection (b)(2) highlights that, even though the State in a criminal action may not designate a representative to remain in the courtroom under subsection (b)(2), an individual may be otherwise qualified to be present pursuant to subsections (b)(3), (b)(4), or (b)(5).

## **AGENDA ITEM 7**

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGEMENT OF RECORDS

AMEND Rule 4-507 by expanding the cross reference after section (b), as follows:

Rule 4-507. HEARING

(a) On Application

In the case of an application for expungement, a hearing shall be held not later than 45 days after the filing of the application.

Cross reference: Code, Criminal Procedure Article, § 10-103(f).

(b) On Petition

In the case of a petition for expungement, a hearing shall be held only if the State's Attorney or law enforcement agency objects to the petition by way of timely answer.

Cross reference: See Code, Criminal Procedure Article, §§ 10-105(e) and 10-110(f) regarding hearings on petitions for expungement, including factors for the court to consider in determining whether a person is entitled to expungement.

Source: This Rule is derived from former Rule EX6.

REPORTER'S NOTE

Chapter 95, 2025 Laws of Maryland (SB 432) impacts expungement statutes in the Criminal Procedure Article by altering some terminology and adding new provisions. The bill adds new subsection (e)(5) to Code, Criminal Procedure Article, § 10-105 requiring the court, when ruling on a petition for expungement, to consider a petitioner's success at probation, parole, or mandatory supervision and whether the person has paid or does not have the ability to pay monetary restitution as ordered by the court. Similar language is added to Code, Criminal Procedure Article, § 10-110(f)(2) setting forth the required considerations.

Current Rule 4-507 addresses hearings on expungement applications and petitions. The Rule does not include the factors to be considered by the court, but a cross reference after section (b) points to the statutory provisions regarding hearings on petition for expungements pursuant to Code, Criminal Procedure Article, § 10-105.

A proposed amendment to Rule 4-507 expands the cross reference by adding a reference to the hearing provisions in Code, Criminal Procedure Article, § 10-110 and noting that the cited statutes include factors for the court to consider when determining if a petitioner is eligible for expungement.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-211 by updating the cross reference after section (b), as follows:

Rule 4-211. FILING OF CHARGING DOCUMENT

(a) Citation

The original of a citation shall be filed in District Court promptly after its issuance and service. Electronic data documenting the citation uploaded to the District Court by or on behalf of the peace officer who issued the citation shall be regarded as an original of the citation.

(b) Statement of Charges

(1) Before Any Arrest

Except as otherwise provided by statute, a judicial officer may file a statement of charges in the District Court against a defendant who has not been arrested for that offense upon written application containing an affidavit showing probable cause that the defendant committed the offense charged. If not executed by a peace officer, the affidavit shall be made and signed before a judicial officer.

(2) After Arrest

When a defendant has been arrested without a warrant, unless an information is filed in the District Court, the officer who has custody of the defendant shall (A) forthwith cause a statement of charges to be filed against the defendant in the District Court and (B) at the same time or as soon thereafter as is practicable file an affidavit containing facts showing probable cause that the defendant committed the offense charged.

Cross reference: See Code, Courts Article, § 2-608 for special requirements concerning an application for a statement of charges against a law enforcement officer, an educator, an adult protective services worker, a child welfare caseworker, or a person within the definition of “emergency services personnel” in that section for an offense allegedly committed in the course of executing the person's duties.

(c) Information

A State's Attorney may file an information as permitted by Rule 4-201.

Committee note: Nothing in section (b) of this Rule precludes the filing of an information in the District Court by a State's Attorney at any time, whether in lieu of the filing of a statement of charges or as an additional or superseding charging document after a statement of charges has been filed.

(d) Indictment

The circuit court shall file an indictment returned by a grand jury.

Source: This Rule is derived as follows:

Section (a) is derived from the last clause of M.D.R. 720 i.

Section (b) is derived from M.D.R. 720 a and b.

Section (c) is new.

Section (d) is new.

REPORTER'S NOTE

Current Code, Courts Article, § 2-608 addresses special requirements for an application for a statement of charges against law enforcement officers,

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emergency services personnel, or educators. Chapter 134, 2025 Laws of Maryland (HB 302) amends the statute by adding adult protective services workers and child welfare caseworkers to the list of people impacted by these special requirements.

A cross reference after section (b) in Rule 4-211 acknowledges the special requirements for an application for statement of charges pursuant to Code, Courts Article, § 2-608. A proposed amendment adds adult protective services workers and child welfare caseworkers to the list of people impacted by the requirements of § 2-608.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-231 by expanding the cross reference after section (b) and by making a stylistic change, as follows:

Rule 4-231. PRESENCE OF DEFENDANT

(a) When Presence Required

A defendant shall be present at all times when required by the court. A corporation may be present by counsel.

(b) Right to Be Present—Exceptions

A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; and (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248.

Cross reference: See Code, Criminal Procedure Article, § 11-303 concerning the testimony of a child victim by closed circuit television in certain circumstances.

(c) Waiver of Right to Be Present

The right to be present under section (b) of this Rule is waived by a defendant:

(1) who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; or

- (2) who engages in conduct that justifies exclusion from the courtroom; or
- (3) who, personally or through counsel, agrees to or acquiesces in being absent.

(d) Video Conferencing in District Court

In the District Court, if the Chief Judge of the District Court has approved the use of video conferencing in the county, a judicial officer may conduct an initial appearance under Rule 4-213 (a) or a review of the commissioner's pretrial release determination under Rule 4-216.2 with the defendant and the judicial officer at different locations, provided that:

- (1) the defendant's right to counsel under Rules 4-213.1 and 4-216.2 is not infringed;
- (2) the video conferencing procedure and technology are approved by the Chief Judge of the District Court for use in the county; and
- (3) immediately after the proceeding, all documents that are not a part of the District Court file and that would be a part of the file if the proceeding had been conducted face-to-face shall be electronically transmitted or hand-delivered to the District Court.

(e) Electronic Proceedings in Circuit Court

A circuit court may conduct an initial appearance under Rule 4-213 (c) or a review of the District Court's release determination in accordance with Rule 21-301 and the procedures, standards, and requirements set forth in Rule 21-104 relating to remote electronic participation, provided that (1) the defendant's right to an attorney is not infringed, (2) the defendant's right to a qualified

interpreter under Code, Criminal Procedure Article, § 1-202 is not infringed, and (3) to the extent required by law and practicable, any victim or victim's representative has been notified of the proceeding and has an opportunity to observe it.

Committee note: Except when specifically covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to exhaust all situations.

Source: Sections (a), (b), and (c) of this Rule are derived from former Rule 724 and M.D.R. 724. Sections (d) and (e) are new.

#### REPORTER'S NOTE

Current Code, Criminal Procedure Article, § 11-303 addresses the testimony of a child victim in certain child abuse cases. Chapters 150/151, 2025 Laws of Maryland (HB 293/SB 274) amend certain provisions of § 11-303 and add a new provision noting that, if a child victim testifies by closed circuit television, the testimony shall occur “within the courthouse in a setting that the court finds will reasonably mitigate the likelihood that the child victim will suffer emotional distress.”

Upon review, the amendments to Code, Criminal Procedure Article, § 11-303 do not appear to necessitate any substantive Rules revisions. Although certain Rules reference § 11-303, the Rules do not detail the process of a child victim's testimony. Rule 4-231, however, includes a cross reference to the statute setting forth specific exceptions to the right of a defendant to be present. A proposed amendment expands the cross reference after section (b) to more clearly explain the applicability of the statutory section.

A stylistic change is proposed in section (b) to correct punctuation and add “and” between subsections (b)(1) and (2).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-203 by adding a cross reference after section (a), as follows:

Rule 4-203. CHARGING DOCUMENT – JOINDER OF OFFENSES AND DEFENDANTS

(a) Multiple Offenses

Two or more offenses, whether felonies or misdemeanors or any combination thereof, may be charged in separate counts of the same charging document if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

Cross reference: See Code, Criminal Law Article, § 7-103(f)(2) permitting joinder of multiple thefts under one scheme or a continuing course of conduct committed by the same defendant in multiple counties.

(b) Multiple Defendants--Separate Charging Documents

Regardless of whether two or more defendants are alleged to have participated in the same act or transaction or in the same series of acts or transactions, a charging document may not contain charges against more than one defendant.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 712 a and M.D.R. 712.

Section (b) is derived from former Rule 712 b.

REPORTER'S NOTE

Chapters 191/192, 2025 Laws of Maryland (SB 11/HB 179), also known as the Organized Retail Theft Act of 2025, amend and add certain provisions to the Criminal Law Article of the Code about an individual committing a series of thefts from retailers. In addition to adding new Code, Criminal Law Article, § 7-104.1 establishing the crime of “organized retail theft,” the bill amends § 7-103(f) to provide that “[m]ultiple thefts committed by the same person in multiple counties under one scheme or continuing course of conduct may be joined and prosecuted in any county in which any one of the thefts occurred.”

A proposed amendment to Rule 4-203 adds a cross reference after section (a) to Code, Criminal Law Article, § 7-103(f)(2) to highlight that the statute permits joinder of certain theft offenses, even if committed in different counties.

## **AGENDA ITEM 8**

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 – HEARSAY

AMEND Rule 5-804 by adding to the cross reference following subsection (b)(3), as follows:

Rule 5-804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

(a) Definition of Unavailability

“Unavailability as a witness” includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) Refuses to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

(3) Testifies to a lack of memory of the subject matter of the declarant's statement;

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subsection (b)(2), (3), or (4) of this Rule, the declarant's attendance or testimony) by process or other reasonable means.

A statement will not qualify under section (b) of this Rule if the unavailability is due to the procurement or wrongdoing of the proponent of the statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony

Testimony given as a witness in any action or proceeding or in a deposition taken in compliance with law in the course of any action or proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death

In a prosecution for an offense based upon an unlawful homicide, attempted homicide, or assault with intent to commit a homicide or in any civil action, a statement made by a declarant, while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death.

(3) Statement Against Interest

A statement which was at the time of its making so contrary to the declarant's pecuniary or proprietary interest, so tended to subject the declarant to civil or criminal liability, or so tended to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position

would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Cross reference: See Code, Courts Article, § 10-920, distinguishing expressions of regret or apology by health care providers from admissions of liability or fault and *State v. Smith*, 487 Md. 635 (2024) concerning a trial court's duty to parse each statement in a narrative and exclude those that do not inculcate the declarant.

(4) Statement of Personal or Family History

(A) A statement concerning the declarant's own birth; adoption; marriage; divorce; legitimacy; ancestry; relationship by blood, adoption, or marriage; or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated.

(B) A statement concerning the death of, or any of the facts listed in subsection (4)(A) about another person, if the declarant was related to the other person by blood, adoption, or marriage or was so intimately associated with the other person's family as to be likely to have accurate information concerning the matter declared.

(5) Witness Unavailable Because of Party's Wrongdoing

(A) Civil Actions

In civil actions in which a witness is unavailable because of a party's wrongdoing, a statement that (i) was (a) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (b) reduced to writing and was signed by the declarant; or (c) recorded in substantially

verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement, and (ii) is offered against a party who has engaged in, directed, or conspired to commit wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness, provided however the statement may not be admitted unless, as soon as practicable after the proponent of the statement learns that the declarant will be unavailable, the proponent makes known to the adverse party the intention to offer the statement and the particulars of it.

Committee note: A “party” referred to in subsection (b)(5)(A) also includes an agent of the government.

**(B) Criminal Causes**

In criminal causes in which a witness is unavailable because of a party's wrongdoing, admission of the witness's statement under this exception is governed by Code, Courts Article, § 10-901.

Committee note: Subsection (b)(5) of this Rule does not affect the law of spoliation, “guilty knowledge,” or unexplained failure to produce a witness to whom one has superior access. See *Washington v. State*, 293 Md. 465, 468 n. 1 (1982); *Breeding v. State*, 220 Md. 193, 197 (1959); *Shpak v. Schertle*, 97 Md. App. 207, 222-27 (1993); *Meyer v. McDonnell*, 40 Md. App. 524, 533, (1978), rev'd on other grounds, 301 Md. 426 (1984); *Larsen v. Romeo*, 254 Md. 220, 228 (1969); *Hoverter v. Director of Patuxent Inst.*, 231 Md. 608, 609 (1963); and *DiLeo v. Nugent*, 88 Md. App. 59, 69-72 (1991). The hearsay exception set forth in subsection (b)(5)(B) is not available in criminal causes other than those listed in Code, Courts Article, § 10-901 (a).

Cross reference: For the residual hearsay exception applicable regardless of the availability of the declarant, see Rule 5-803 (b)(24).

Source: This Rule is derived from F.R.Ev. 804.

REPORTER'S NOTE

The Evidence Subcommittee proposes adding a reference to *State v. Smith*, 487 Md. 635 (2024) to the cross reference following subsection (b)(3) to emphasize a trial court's duty to parse each statement in a narrative and exclude the statements that do not inculcate the declarant.

## **AGENDA ITEM 9**

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

DIVISION 3. PROCEEDINGS ON PETITION FOR

DISCIPLINARY OR REMEDIAL ACTION

AMEND Rule 19-728 by removing the provision concerning paper copies from section (d), as follows:

RULE 19-728. POST-HEARING PROCEEDINGS

(a) Notice of the Filing of the Record

Upon receiving the record, the Clerk of the Supreme Court shall notify the parties that the record has been filed.

(b) Exceptions; Recommendations; Statement of Costs

Within 30 days after service of the notice required by section (a) of this Rule, each party may file (1) exceptions to the findings and conclusions of the hearing judge, (2) recommendations concerning the appropriate disposition under Rule 19-740 (c), and (3) a statement of costs to which the party may be entitled under Rule 19-709.

(c) Response

Within 15 days after service of exceptions, recommendations, or a statement of costs, the adverse party may file a response.

(d) Form

~~The parties shall file eight copies of any~~ Any exceptions, recommendations, and responses. ~~The copies~~ shall conform to the requirements of Rule 8-112.

(e) Proceedings in Supreme Court

Review in and disposition by the Supreme Court are governed by Rule 19-740.

Source: This Rule is derived from former Rule 16-758 (2016).

REPORTER'S NOTE

In the wake of the Judiciary's migration to MDEC, the Attorneys and Judges Subcommittee, at the request of the Clerk of the Supreme Court, proposes revising section (d) of this Rule to eliminate the requirement to file eight paper copies.

# **AGENDA ITEM 10**

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 800 – ATTORNEY INFORMATION SYSTEM

ADD new Rule 19-803, as follows:

RULE 19-803. NAME CHANGE

(a) Request to Change an Attorney’s Name in AIS

A request to change an attorney’s name in AIS shall be made in writing and filed with the Clerk of the Supreme Court. The request shall state:

- (1) the attorney’s present name reflected in AIS;
- (2) the attorney’s proposed name change;
- (3) the attorney’s AIS number; and
- (4) if wanted, a request for a new bar certificate.

(b) Required supporting documentation

The attorney’s name change request shall be accompanied by an original or certified copy of at least one of the following documents:

- (1) a marriage certificate;
- (2) a divorce decree that includes an order restoring the attorney to a former name;
- (3) a court order changing the attorney’s name;
- (4) a certificate of citizenship; or
- (5) a certificate of naturalization.

(c) Clerk's Duties on Receipt of Request

(1) Upon receipt of a request for name change, the Clerk shall review the request and, if the request complies with this Rule, change the attorney's name in AIS.

(2) The Clerk shall keep a record of the attorney's former names and each request for name change.

(3) If the request is approved and the attorney requests a new bar certificate, the Clerk, subject to payment of any applicable fee charged by the Clerk, shall send the new certificate to the attorney's address on record in AIS.

(d) Action on Non-compliant Request

If the Clerk determines that the request for name change is not in compliance with this Rule, the Clerk shall:

(1) Request that the attorney supplement the request with additional information or documents supporting the request; or

(2) Refer the request, supporting documentation, and any supplementary documentation to the Chief Justice or designee for a determination of the request.

Source: This Rule is new.

REPORTER'S NOTE

The Attorneys and Judges Subcommittee proposes new Rule 19-803, which provides procedures an attorney may follow to request a change to the attorney's name in AIS. The documentation sufficient to effectuate a name

change in AIS is similar to the requirements necessary for an individual to obtain a name change with the MVA.

Section (a) specifies the contents of a request to change an attorney's name in AIS.

Section (b) requires that at least one of the listed supporting documents must be submitted with a name change request.

Section (c) establishes the Clerk of the Supreme Court's responsibilities after a name change request is received.

Section (d) specifies the actions the Clerk is to take if a non-compliant request is received. The Clerk must either request additional documentation or refer the request to the Chief Justice of the Supreme Court or the Chief Justice's designee for a determination of the request.

# **AGENDA ITEM 11**

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 by correcting a reference to Rule 8-412 in section (l)  
as follows:

Rule 8-501. RECORD EXTRACT

• • •

(l) Deferred Record Extract; Special Provisions Regarding Filing of Briefs

(1) If the parties so agree in a written stipulation filed with the Clerk or if the appellate court so orders on motion or on its own initiative, the preparation and filing of the record extract may be deferred in accordance with this section. The provisions of section (d) of this Rule apply to a deferred record extract, except that the designations referred to therein shall be made by each party at the time that party serves the page-proof copies of its brief.

(2) If a deferred record extract authorized by this section is employed, the appellant, within 30 days after the filing of the notice required by Rule 8-412 ~~(a)~~(c), shall file one page-proof copy of the brief and shall serve one copy on each party. Within 30 days after the filing of the page-proof copy of the appellant's brief, the appellee shall file one page-proof copy of the brief and shall serve one copy on the appellant. The page-proof copies shall contain

appropriate references to the pages of the parts of the record involved. The parties are not required to file paper copies of page-proof briefs if they are represented by counsel or are registered users of MDEC.

Committee note: Attorneys and other registered users are required to file briefs and other papers with the court electronically.

. . .

REPORTER'S NOTE

A housekeeping amendment is proposed to subsection (l)(2) of this Rule to correct the reference to section of (a) of Rule 8-412 to section (c).

**INFORMATION ITEM**

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

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

**Judiciary A-POD**  
**580 Taylor Avenue**  
**Annapolis, Maryland**  
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**(410) 260-3630**  
**FAX: (410) 260-3631**

**MEMORANDUM**

TO : Members of the Rules Committee  
FROM : Meredith Drummond, Esq., Assistant Reporter  
DATE : September 25, 2025  
SUBJECT : Information Item: Update on Rule 2-422 – Remand from  
219<sup>th</sup> Report

The Supreme Court considered a series of proposed amendments to the Discovery Rules at its Open Meeting on the Two Hundred and Nineteenth Report on November 2, 2023. As part of that Report, the Rules Committee recommended several changes to Rule 2-422 (Discovery of Documents, Electronically Stored information, and Property – From Party), including a cap on requests pursuant to the Rule.

The Court heard from several commenters and discussed concerns about the proposed cap on requests. Questions were raised about whether a different numerical cap would be appropriate and whether certain case types require different limits. Ultimately, the Supreme Court did not adopt the recommendations and remanded the Rule to the Committee for further study of possible solutions to address the asserted discovery abuses.

**Consideration by Discovery Subcommittee**

In response to the remand, the Discovery Subcommittee reconsidered the proposed amendments to Rule 2-422 in June 2025. At the meeting, the Subcommittee considered the comments submitted in response to the 219<sup>th</sup> Report, as well as the results of staff's 50-state survey on the use of limitations in other states. During discussion, the Subcommittee questioned the need for a limit on requests pursuant to Rule 2-422 and noted the difficulties in establishing caps for different case types. Members noted the concerns raised by the commenters and highlighted that a majority of states do not place a limit in their rules for similar requests.

The Subcommittee determined that the current Rules contain sufficient mechanisms to address discovery abuses, including the right to seek a protective order pursuant to Rule 2-403 and the ability of the court to impose limits on discovery as set forth in Rule 2-402 (b)(1). Accordingly, the Subcommittee concluded that Rules changes are not needed at this time and decided to take no further action.

Excerpts from the 219<sup>th</sup> Report and the memorandum prepared by staff for the June 2025 Subcommittee meeting are enclosed for reference.

**EXCERPTS**  
**FROM 219<sup>TH</sup> REPORT**

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

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## **CATEGORY ONE (Rules 2-422, 2-433, 2-504, and 2-501)**

Rule 2-422, which deals with the discovery of documents, electronically stored information, and property from a party, is amended to add a new subsection to section (b) that limits the number of requests that can be made under the Rule to 30, unless otherwise agreed by the parties or ordered by the court. That is consistent with a provision in Md. U.S. Dist. Ct. Rule 104. Currently, there is no limit on the number of requests that can be made under Rule 2-422, and the Committee was advised of situations in which more than 150 requests were made. A stylistic change is made in section (c) of the Rule.

Rule 2-433 deals with sanctions for discovery violations. Section (b), which is regarded as a "safe harbor" Rule, precludes, absent "exceptional circumstances," the imposition of sanctions for failing to provide electronically stored information that is no longer available as a result of the routine good faith operations of an electronic information system.

The Committee was advised that section (b) is no longer "functional," that it has not been used since its adoption in 2008, and that the parallel Federal Rule of Civil Procedure was amended in 2015. Current section (b) is rewritten and a Committee note is added to explain some limitations on the duty to preserve material. Style and typographical errors in sections (d) and (f) are corrected.

Rule 2-504, which deals with scheduling orders, is amended to add language to subsection (b)(1)(D) clarifying what actions may not occur after the discovery completion date. New subsection (b)(1)(E) requires a scheduling order to contain a date not less than 35 days before the date set for completion of discovery, after which certain discovery requests may not be served. A new Committee note is added to explain that that section does not alter a party's obligation to supplement discovery responses. An amendment to Rule 2-501 (a) is a conforming one.

## **CATEGORY TWO (Rules 3-202, 3-731, 2-202, and 7-112)**

Rule 3-202 deals with the capacity to file an action in the District Court. A new subsection (b)(2) is added to permit either parent or a guardian of a minor child to sue for a peace order on behalf of the child. A conforming amendment is made to subsection (b)(1).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-422 by creating new subsection (b)(1) with the language of current section (b), by creating new subsection (b)(2) limiting the number of requests by a party, and by making a stylistic change, as follows:

Rule 2-422. DISCOVERY OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND PROPERTY - FROM PARTY

(a) Scope

~~Any~~ Subject to section (b) of this Rule, any party may serve one or more requests to any other party (1) as to items that are in the possession, custody, or control of the party upon whom the request is served, to produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test or sample designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any designated

tangible things which constitute or contain matters within the scope of Rule 2-402 (a); or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

Cross reference: For inspection of property of a nonparty in an action pending in this State and for discovery under the Maryland Uniform Interstate Depositions and Discovery Act that is not in conjunction with a deposition, see Rule 2-422.1.

(b) Request

(1) Content

A request shall set forth the items to be inspected, either by individual item or by category; describe each item and category with reasonable particularity; and specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form in which electronically stored information is to be produced.

(2) Number

Unless otherwise ordered by the court or agreed upon by the parties, a party may not serve upon any other party, at one time or cumulatively, more than 30 requests pursuant to this Rule, including all parts and sub-parts.

(c) Response

The party to whom a request is directed shall serve a written response within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later. The response shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If a refusal relates to the form in which electronically stored information is requested to be produced (or if no form was specified in the request), the responding party shall state the form in which it would produce the information.

Cross reference: See Rule 2-402 (b)(1) for a list of factors used by the court to determine the reasonableness of discovery requests and (b)(2) concerning the assessment of the costs of discovery.

...

REPORTER'S NOTE

The Rules Committee was contacted by a practitioner regarding a proposed change to Rule 2-422 governing the discovery of documents, electronically stored information, and property from a party. The Rule currently permits service of one or more requests to produce items in the possession, custody, or control of a party or to permit entry on the land or other property in the possession or control of the party. The

Rule, however, contains no limit on the number of permitted requests. The attorney informed the Committee that, because of the unlimited scope, the Rule may be subject to abuse. She noted her involvement in cases where the number of requests to a party have exceeded 150. She advised that, in the United States District Court for the District of Maryland, Rule 104 limits the number of requests for production to no more than 30.

Proposed amendments to Rule 2-422 limit the number of requests for production by a party unless otherwise ordered by the court or agreed upon by the parties. New subsection (b)(1), regarding the content of a request for production, is created with the current language of section (b). New subsection (b)(2) sets forth the limit on requests for production, permitting no more than 30 requests.

A stylistic change is made in section (c).

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

Hon. YVETTE M. BRYANT, Chair  
Hon. DOUGLAS R.M. NAZARIAN, Vice Chair  
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MEMORANDUM

TO: Discovery Subcommittee

FROM: Heather Cobun, Esq., Assistant Reporter and Meredith  
Drummond, Esq., Assistant Reporter

DATE: December 4, 2023; Updated June 6, 2025

RE : Rule 2-422 – Remand from 219<sup>th</sup> Report

The Supreme Court considered a series of proposed amendments to the Discovery Rules at its Open Meeting on the Two Hundred and Nineteenth Report on November 2, 2023. As part of that Report, the Rules Committee recommended several changes to Rule 2-422 (Discovery of Documents, Electronically Stored information, and Property – From Party), including a cap on requests pursuant to the Rule. Ultimately, the Supreme Court did not adopt the recommendations and remanded the Rule to the Committee for further study of a range of solutions to address possible discovery abuses.

**Concerns over Cap; Suggestions for Study**

The Court heard from several commenters and discussed concerns about the proposed cap on requests. The justices debated what an appropriate numerical cap could be, whether a cap would apply to individual documents or to categories of documents, and whether there should be different caps by case type. It was suggested that certain case types lend themselves to more document requests than others. There was also concern that a higher cap to accommodate the needs of more complex cases would lead to parties unnecessarily maxing out requests in less complex cases.

The Court also discussed several alternatives to address abuse of the document request process other than a cap, including required disclosures similar to the requirements set forth in Fed. R. Civ. P. 26, form requests that

are presumptively compliant with the “particularity” requirement of the Rule, and a “meet and confer” requirement so that parties could suggest limitations to the court that are tailored to the specific needs of the particular case.

The Court expressed a concern about addressing the document production provisions of Rule 2-422 without also addressing the document production provisions in the subpoena Rule (Rule 2-510).

In its remand of Rule 2-422 to the Committee, the Court directed that the Committee conduct a broad review of any identified problems with the discovery process, consider a wide range of possible solutions, and develop a holistic approach to solve the problem.

### **Comments on 219<sup>th</sup> Report**

14 comments were received in response to the 219<sup>th</sup> Report. Four comment letters indicated support for the proposed amendment. One comment in support of the proposed amendment also suggested that the Committee consider a similar limitation in Rule 2-424 concerning requests for admissions.

However, the majority of the comments were from family law practitioners expressing concerns that a limit of 30 requests was too low, particularly in family law cases. Family law actions are not tried in federal courts and involve numerous issues, including property, custody, alimony, and reasons for a divorce. As a result, many practitioners suggested that requests for documents often exceed 30. Commenters noted that, if a limit is imposed, attorneys will likely see an increase in depositions and requests for subpoenas to account for missing documents, resulting in higher costs for clients.

A few commenters opposed the proposed amendments but acknowledged that abusive discovery requests present an issue. Some suggested a higher limit, such as 50, 60, or 75 requests. Other commenters suggested that the Committee consider Form Requests, similar to the current Form Interrogatories, for certain case types to address these concerns.

### **50 State Survey**

Staff completed a 50-state survey to determine whether limitations on requests for production of documents were common nationwide. Upon review, 44 states, including Maryland, do not currently have such a limitation. Accordingly, Maryland law is currently consistent with the practice in most other states.

Of the states that impose a numerical limit on requests for production of documents, only Colorado applies the same limit to all case types. See C.R.C.P. 26(b)(2)(D) (“A party may serve each adverse party requests for production of documents or tangible things or for entry, inspection or testing of land or property pursuant to C.R.C.P. 34, except such requests for production shall be limited to 20 in number, each of which shall consist of a single request.”).

Five states set a limit for document requests based on the case type. Nebraska, for example, limits the document requests in expedited civil actions to 10, while Texas permits only 15 written requests for production in all expedited actions or divorces involving \$250,000 or less. See Nev. Stat. § 25-2744; Tex. R. Civ. P. 190.2. Arizona and Utah separate all civil case types into tiers based on the complexity of the case, and limit requests for documents based on the applicable tier. See Az. R. Civ. Pro. 26.2; Utah R. Civ. P. 26. Connecticut limits requests in certain actions, including personal injury, premises liability, and uninsured/underinsured motorist, by permitting only the requests included in Form Requests for Documents. Medical negligence cases in Connecticut are permitted 20 requests in addition to use of the Form Requests. See Conn. Practice Book Sec. 13-9.

Overall, while state most commonly do not limit the number of requests for documents in civil actions, there are a few states that provide examples of how Maryland may consider implementing limitations, if needed.

### **CONCLUSION**

Staff seeks direction from the Subcommittee before conducting additional outreach and research. In response to the remand from the 219<sup>th</sup> Report, the Subcommittee is asked to consider:

- (1) Whether the Subcommittee still believes that a limit on requests for production of documents should be added to Rule 2-422?
  - a. If so, (a) would the Subcommittee prefer a blanket limitation, or a limitation based on case type and (b) would the Subcommittee like to further consider limitations to requests for admissions pursuant to Rule 2-424?
- (2) Whether the Subcommittee would like to pursue development of Form Requests for Documents?

The following documents are attached to assist in the Subcommittee's discussion:

- Excerpts from the 219<sup>th</sup> Report
- Rules Order from the 219<sup>th</sup> Report
- Comments from the 219<sup>th</sup> Report
- Arizona Rule of Civil Procedure 26.2