COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms UL4 and 5 of the Judiciary Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on October 7, 2016.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Robert R. Bowie, Jr., Esq.
James E. Carbine, Esq.
Hon. John P. Davey
Mary Anne Day, Esq.
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Hon. JoAnn M. Ellinghaus-Jones
Alvin I. Frederick, Esq.
Ms. Pamela Q. Harris
Victor H. Laws, III, Esq.
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Sen. H. Wayne Norman
Hon. Paula A. Price
Steven M. Sullivan, Esq.
Dennis J. Weaver, Clerk
Robert Zarbin, Esq.
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
David R. Durfee, Jr., Esq., Assistant Reporter
Sherie B. Libber, Esq., Assistant Reporter

George R. Clark, Esq., Association of Professional Responsibility Lawyers
Heather Akehurst-Krause, Esq., Family Administration, Administrative Office of the Courts
Kim Doan, Esq., Anne Arundel County Circuit Court
Hon. Gary Everngam
Tom Dolina, Esq., Maryland State Bar Association

The Chair convened the meeting, welcoming everyone.

Agenda Item 1. Discussion of Issues and Proposals pertaining to Attorney Specialization and Solicitations

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The Chair informed the Committee that there was a memorandum in the meeting materials on the issue of attorneys advertising themselves as "specialists" in a certain area of law (See Appendix 1). He advised that after the Committee, in collaboration with the MSBA, made recommendations to the Court of Appeals, he was alerted to a different approach proposed by the Association of Professional Responsibility Lawyers ("APRL"). This organization had prepared a report addressing the solicitation rules in the Rules of Professional Conduct (Rule 7.2, Advertising, and Rule 7.3, Direct Contact with Prospective Clients). The Rules may be unconstitutional, and it is a sensitive subject. The Chair said that he thought that it would be useful to hear from George R. Clark, Esq., who is the President-Elect of APRL. The Report is an explanation of what the Association is proposing, why it is being proposed, and where it stands. No formal vote will be taken today; this is on the agenda for the purposes of discussion.

Mr. Frederick commented that Rule 7.4 has been renumbered in Maryland as Rule 19-307.4. The last sentence of section (a),

which reads: "A lawyer shall not hold himself or herself out publicly as a specialist" has been in the Rule since 1976. When the Rodowsky Commission was asked to look at Ethics 2000, Mr. Frederick said that he was pleased to have been included in the group of 11 attorneys on the Commission. He had moved to strike the last sentence of Rule 7.4 (a) because it has been permissible for an attorney to state that he or she concentrates in a certain area of the law, but not to state that he or she specializes. Mr. Frederick explained that he had always felt that this was a distinction without a difference. This proposal was defeated at the time by a vote of eight to three. Most of the rest of the attorneys in that group were not predominately trial attorneys.

Mr. Frederick remarked that as the Chair had said, it is possible that the last sentence of section (a) could be found to be unconstitutional as a violation or restriction of freedom of speech. A number of courts around the country have addressed this issue, and it has not worked out favorably. The American Bar Association ("ABA") has a proposed Rule 7 of its Rules of Professional Conduct. The Rules in Maryland are not adopted verbatim from the ABA. Some of the Rules in Maryland are different, and Rule 19-703.4 is one such Rule.

Mr. Frederick noted that a case that had been before the Court of Appeals, *Attorney Grievance Commission v. Zhang*, 440

Md. 128 (2014), involved a violation of Rule 7.4 (a) as well as violations of other Rules. At least two judges on the Court of Appeals expressed concern about the aspect of the case concerning Rule 7.4 and asked the Rules Committee to look at the Rule. A lengthy Attorneys and Judges Subcommittee meeting had been held, and then the issue was presented to the full Committee last year. One of the questions that was raised was whether an attorney who was able to declare himself or herself a "specialist" would have to be certified by someone or some organization. If there was to be certification, who would be the certifying organization? The ABA, for example, has a number of certifying mechanisms that attorneys could utilize.

Mr. Frederick noted that one of the issues that had been raised was whether this issue was a "back door" into mandatory Continuing Legal Education. The perspective of the Subcommittee was that it was not, because an attorney does not have to call himself or herself a specialist. A variety of organizations across the country do the certifications. Thomas Dolina, Esq., and the Hon. William Carr of the Circuit Court for Harford County, representing the Maryland State Bar Association, were at the Subcommittee meeting. After hearing from them, the Subcommittee came up with a proposal to create a certifying agency for the State of Maryland. This would require two paid employees. The legislature has not authorized the expenditure

of funds for this in the past, and it does not seem likely that this will happen in the future.

Mr. Frederick commented that all of this background leads to the role of APRL. Mr. Clark, the President-elect of the organization, is a member of its advertising committee. Mr. Frederick said that, for purposes of disclosure, he is a dues-paying member of the organization, but he had no role in any of the issues Mr. Clark will be talking about. APRL is an association of attorneys across the country who are interested in attorney ethics, and it does risk management work for attorneys. The organization looked at the advertising rules and came up with a proposal.

Mr. Clark thanked Mr. Frederick, the Chair, and the members of the Rules Committee for inviting him to the meeting. He told the Committee that he is a solo practitioner in Washington, D.C., but he had worked at a large law firm for 30 years. He has been on his own for the past 15 years, with his practice consisting of only attorney ethics and professional responsibility. His website does not state that he specializes, but actually he does. Three years ago, APRL looked at the advertising rules across the country for rationality and uniformity with respect to attorney advertising.

Mr. Clark said that the ABA publishes a list of the variations from the Model Rules. Mr. Clark and his colleagues

looked at the 51 jurisdictions around the country to determine the variations. The report on this topic is 106 pages long. It concluded that the advertising rules have the most variations of any of the ABA Model Rules. Mr. Clark and his colleagues had some other concerns, including the constitutionality of the advertising rules. A number of U.S. Supreme Court cases have struck them down at various times as too restrictive of free speech. Another concern Mr. Clark and his colleagues had was changing media, the ability to use the social media, and other modes of advertising today. Many of the members of APRL are disciplinary counsel; others represent state bars or represent attorneys, as Mr. Clark does.

Mr. Clark noted that often the enforcement of the rule against attorney advertising is uneven or non-existent. APRL is also concerned with access to justice. Many people provide legal services that are not necessarily being regulated in many jurisdictions, but which consumers are looking at to solve their legal problems. The attorneys in many instances do not have the ability to advertise in a way that would help consumers find the appropriate attorney. To study these advertising rules, APRL requested the help of representatives from the ABA Center on Professional Responsibility and from the National Organization of Bar Counsel ("NOBC").

Mr. Clark said that APRL conducted a survey of all jurisdictions with 36 states responding. The responding states reported that 78% of all complaints about attorney advertising came from other attorneys. Only 8% of complaints came from consumers. Fifty-six percent of the states reported that they rarely get any complaints about advertising. APRL also discovered that many jurisdictions address advertising in a non-disciplinary way. For example, an attorney should not be disciplined if the size of the type of his or her advertisement is not correct.

Mr. Clark pointed out that in D.C., attorney advertising is allowed as long as it is not false or misleading. This standard is what APRL recommends. Mr. Clark said that APRL was fortunate to have on its committee professors who are very experienced in this field. The first proposal on advertising that came out a few years ago was to prohibit only advertising that is false and misleading. This is part of the ABA Model Rule now. With this, the questions of certification and specialization arise. The view of APRL was that an attorney should be able to say that he or she specializes in some area as long as the statement is not false or misleading. If an attorney would like to say that he or she is certified, the attorney needs to be certified, because otherwise it is false and misleading. Mr. Clark and his colleagues spoke with the ABA about this at great length. The

ABA does not want to lose its certifying authority. The members of APRL have thought very seriously about becoming a certifying authority, and they believe in certification.

Mr. Clark said that he and his colleagues did a second report earlier this year on solicitation. He added that he could answer questions on this issue. He wanted to specify where APRL stood as an organization with respect to its proposal. The organization has dealt with the ABA throughout the process. He said that a year ago, he made a presentation to the Ethics Committee where he was met with a friendly reception. Many members of APRL were on that committee. They met with other committees at the Center on Professional Responsibility. The mid-year meeting in February in Miami, Florida will likely have a roundtable discussion on the APRL proposal with the hope that the ABA will consider it at its meeting in August.

Mr. Clark remarked that APRL has been active in other places. A Virginia proposal that was released last Friday in large measure adopts the position of APRL. Washington State may consider a proposal that is even more open to advertising. Others are moving forward on similar proposals. The advertising rule that he and his colleagues came up with allows advertising that is not false and misleading.

Mr. Laws asked how many states set up their own machinery for certification, as opposed to using the ABA for

certification. Mr. Clark said that he does not know the answer, but he knew that a number of states, such as California, have their own certification system. The Chair commented that when the Committee got involved in this subject, a survey had been done and most of the states that use the approach of referring to certification as a specialist require that the certifying agency be accredited by someone. Some states allow ABA certification; other states rely on more than the ABA and have a state authority. There were variations on how this is structured. Pennsylvania has had a certifying authority for 20 years, but it has certified only one specialty, which is workers' compensation. The decision was not to use that approach in Maryland.

The Chair commented that the prior effort to set up certification of specialties was done in collaboration with the MSBA, and there was also a special committee on specialization. Mr. Dolina is the co-chair of that committee. The initial approach of the Attorneys and Judges Subcommittee was to latch onto the ABA, because it is credible, inexpensive, and has done all of the work. The ABA has protocols for what an organization must do to be accredited. The MSBA and others objected to this approach, and this is why the suggestion was made for a state authority.

The Chair noted that, as Mr. Frederick had said, the way that the Rule was structured, it would have required at least two full-time employees who would have to go around the country to see which entities were credible and legitimate, and they would need some protocols to do that. A request for two employees was made, and the legislature rejected the request. It seemed evident that this rejection was fairly permanent. Also, the Judiciary needed funds for judicial administration, which also is important.

Mr. Frederick asked Mr. Clark what a realistic timetable was for the ABA to consider APRL projects. Mr. Clark answered that the proposal must go through the ABA House of Delegates, and the earliest that would be is August 2017. This may be optimistic.

Mr. Frederick inquired whether the NOBC had any role in this. Mr. Clark replied that a liaison from that organization worked with them from the beginning. NOBC had reviewed both of the reports Mr. Clark and his colleagues had prepared. The NOBC's view was that for political reasons, it would not take a position. Mr. Frederick commented that he had spoken to Bar Counsel and Deputy Bar Counsel of Maryland, who were unable to attend today's meeting. Their position is that they have no objection to the APRL reports.

Mr. Clark remarked that he had heard from attorney disciplinary authorities from around the country, including those who said that they were not sure that their regulators would agree with the proposal. Most Bar Counsel do not like to deal with advertising because they do not see it as necessarily presenting a problem of protecting the public. The Chair observed that Glenn Grossman, Esq., Bar Counsel for Maryland, had been very active at the Subcommittee level on this issue. He had said that he and his colleagues are often involved in more serious charges against attorneys; they would not have the time to go after attorneys who have advertising issues. Mr. Clark noted that sometimes the advertising does not look professional. When he sees advertisements that are bad, his reaction is that anyone who wants to hire that attorney can do so notwithstanding the advertisement.

Mr. Clark said that when an attorney signs up to get a newsletter or for something else, the dropdown list for an electronic sign-up asks the nature of the attorney's practice. Rarely is there a choice for Mr. Clark's practice, because so few attorneys do this. This brings up a different issue: an established specialization authority must consider who may specialize and how many specialties there are. A particular specialty may not have a certification for it, but there are attorneys who do that type of work, and they are the experts.

Issues can arise, especially after *North Carolina Board of Dental Examiners v. F.T.C.*, 135 S. Ct. 1101 (2015), which addressed certification of dentists. Mr. Clark added that he was not opposed to certification of attorneys. The ABA certification process is lengthy and difficult, and it can be time-consuming.

The Chair said that he learned at a symposium in 2014 that only about 3% of the attorneys in the country have sought to obtain certification in any specialty. The highest number was in California, with 10% of its attorneys, followed by Florida. The reason for the minimal requests is that the certification process is very burdensome. One of the ABA accreditation groups requires a 12-hour examination in the specialty. Others require exams of some kind, but the length varies. Some require that the application contain recommendations from judges and attorneys in one's state who practice in that area. Certification is expensive. This is why it is suggested that this process be handled by Rules. Most other states that have adopted the ABA Rule permit attorneys to hold out that they have been certified as a specialist by some entity that has been accredited to certify them. The APRL proposal goes further, permitting an attorney to advertise that he or she is a specialist as well as that he or she is certified. An attorney can advertise one or both.

Mr. Zarbin asked Mr. Clark whether APRL is using the ABA specialization model. Mr. Clark answered that he thought that this is the case. Mr. Zarbin inquired whether an attorney who is certified in the states that have certification would be held to a higher standard of care and whether certified attorneys pay more in malpractice insurance. Mr. Frederick responded that certified attorneys do not pay higher malpractice insurance premiums, but the attorney would be held to a reasonable standard of care that would apply to a reasonable and prudent person in the same or similar circumstances. Looking at attorney websites, an aggressive attorney may advertise that he or she only handles one case type. This suggests that, because the attorney practices only that type of law, the attorney is better at it than attorneys who also practice in other areas of the law.

Mr. Frederick noted that a number of cases have been reported from around the country involving the specialization issue. It is not just that someone calls himself or herself a specialist; it is what is being advertised. The first action that Bar Counsel takes is to pull up the attorney's website and use it as Exhibit 1. The attorney must be able to back up all claims that are on the website.

The Chair told Mr. Zarbin that he does not know the answer to Mr. Zarbin's first question about attorneys being held to a

higher standard of care if they are certified in a specialty. The Chair's recollection is that physicians who are board-certified in a particular specialty and who are sued in a malpractice case are held to the standard expected of doctors in that specialty. Mr. Clark said that this is statutory.

Mr. Dolina said that he appreciated being invited to the meeting. He informed the Committee that the MSBA has some concerns about attorney advertising, but attorneys should be protected as much as possible. It may be a restriction on attorneys, but it also may be a protection. The MSBA is not in favor of the ABA Rule with its multi-level processes. The Chair inquired whether the MSBA Special Committee is still in existence, and Mr. Dolina replied affirmatively.

Mr. Frederick expressed his concern with the second sentence of Rule 7.4 (a), which can be raised in litigation by an opponent or by someone who brings it to the attention of Bar Counsel. A person could go into a federal court and ask for an injunction against the State of Maryland and the Court of Appeals for enforcing that Rule. Without taking a position on anything else at this point, Mr. Frederick moved to delete the second sentence of Rule 7.4 (a) and refer this back to the Attorney and Judges Subcommittee for a more comprehensive proposal. The motion was seconded.

The Chair pointed out that Mr. Clark had indicated in the

report in the meeting materials that there have been a number of federal cases striking down similar provisions, starting with *Peel v. Atty. Reg. & Disc. Comm.*, 496 U.S. 91 (1990). That case addressed the issue of claiming to be certified as a specialist in personal injury law. Other cases around the country struck down similar language (e.g. *Alexander v. Cahill*, 598 F.3d 79 (2d Cir. 2010) and *Rubenstein v. The Florida Bar*, 72 F. Supp. 3d 1298 (2014)).

Mr. Carbine suggested that the second part of Mr. Frederick's motion should be voted on before the first part is voted on. It is not a good idea to strike the language in Rule 7.4 (a), which would let anyone claim that he or she is a specialist, without a mechanism in place to regulate that. The Chair asked whether Mr. Carbine was opposing that part of the motion, and Mr. Carbine answered that he was opposing the first part of the motion to strike the language.

Mr. Sullivan noted that the agenda for today's meeting had implied that the issue of specialization was only going to be discussed without a vote. Now there is a motion on the floor. The Chair agreed, explaining that the Committee was not there to vote on the APRL proposals, which were being presented only for the purposes of discussion.

The Chair remarked that the question about what to do with the second sentence of Rule 7.4 is difficult, as was pointed out

by Mr. Frederick and Mr. Carbine. The second sentence is a lawsuit waiting to happen. No one has filed suit yet, but in the *Zhang* case, the request of two judges on the Court of Appeals in a concurring opinion had included a time element. On the other hand, as Mr. Carbine had said, if the second sentence of section (a) is stricken, what happens next?

Mr. Frederick answered that it is necessary to look at Rule 7.1, which states: "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading." This would be the safety net.

Judge Price asked why the sentence should be retained when its constitutionality is questionable. Mr. Zarbin remarked that this reminded him of the law that provided that African-American people could not marry Caucasian people. This law had been on the books despite rulings from the U.S. Supreme Court. Finally, the law was struck down by the legislature. The second sentence of Rule 7.4 (a) is unconstitutional.

The Chair said that cases around the country have struck this down. The U.S. District Court for the District of Maryland has not struck down Rule 7.4 yet. The Chair called for a vote on the motion that was on the floor. The Reporter said that the

motion was in two parts. The first part was to strike the second sentence of Rule 7.4 (a); the second part was to refer this issue to the Attorneys and Judges Subcommittee. The vote would be on both. Mr. Marcus suggested an amendment to the motion which would be that the vote be on whether to remand the issue to the Subcommittee. The Chair asked whether Mr. Frederick accepted that amendment, and he did not. Mr. Carbine pointed out that parts A and B of the original motion could be split. Part A could be voted on first, and then Part B could be voted on. By consensus, the Committee agreed to vote on Part A first.

The Chair called for a vote on deleting the second sentence of Rule 7.4 (a). The motion passed on a majority vote. The Chair said that the second part of the motion was to refer this matter to the Subcommittee to consider whether or not to suggest amendments to Rule 7.4 or to any other Rule. The motion passed unanimously.

The Reporter asked Mr. Clark to speak to the second part of the APRL proposal, the solicitation of clients issue, and the supplement to the APRL report. Mr. Clark replied that there would have been a tremendous amount of support in his committee to adopt what he called the "D.C. Rule," which is that, as long as the advertisement is not false and misleading, it is proper. There has been widespread support for this. However, he and the

others on his committee thought that the House of Delegates might not agree with the approach. The House of Delegates wanted to limit the restrictions on solicitation to face-to-face contact and to live telephone contact. As to anything else, the "do whatever you want" standard would be applied unless it is false and misleading. An attorney will not be told that he or she cannot send out e-mails.

Mr. Clark noted that APRL's view of the solicitation rule was to open it up, consistent with the advertising rule. The Association recommended retaining some of the restrictions where they were deemed necessary. People are used to dealing with advertising constantly, particularly on their cell phones.

The Chair thanked Mr. Clark for coming to the meeting. The Chair asked Mr. Clark whether the Subcommittee could call on him for his expertise. Mr. Clark answered that he would be happy to help the Subcommittee. He thanked the Chair and the Committee for inviting him to speak.

Agenda Item 2. Consideration of proposed new Title 2, Chapter 800 (Remote Electronic Participation in Judicial Proceedings) and conforming amendments to: Rule 2-513 (Testimony Taken by Telephone), Rule 7-208 (Hearing), and Rule 15-1305 (Hearing)

The Chair presented proposed new Title 2, Chapter 800 (Remote Electronic Participation in Judicial Proceedings)

and conforming amendments to: Rule 2-513, Testimony Taken by Telephone; Rule 7-208, Hearing; and Rule 15-1305, Hearing, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 – REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

ADD new Rule 2-801, as follows:

Rule 2-801. DEFINITIONS

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

(a) Non-evidentiary Proceeding

Non-evidentiary proceeding means a judicial proceeding or conference presided over by a judge or magistrate where neither testimony nor documentary or physical evidence will be presented.

(b) Participant

Participant includes a party, a witness, an attorney for a party or witness, a judge or magistrate, and any other individual entitled to speak or make a presentation at the proceeding.

(c) Remote Electronic Participation

Remote electronic participation means simultaneous participation in a judicial proceeding or conference from a remote location by means of telephone, video-conferencing, or other electronic means approved pursuant to the Rules in this Chapter.

(d) Remote Location

Remote location means a place other than the courtroom or other physical location where a judicial proceeding or conference is to be conducted.

(e) Video Conferencing

Video conferencing means a proceeding conducted by the use of an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video monitors and related audio equipment.

Source: This Rule is new.

Rule 2-801 was accompanied by the following Reporter's note.

Proposed new Title 2, Chapter 800 would establish procedural and substantive requirements for the use of remote electronic participation in civil proceedings in the circuit courts under Title 2. Proposed Rule 2-801 contains definitions of terms that are used throughout the Chapter.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 – REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

ADD new Rule 2-802, as follows:

Rule 2-802. PERMITTED OR REQUIRED USE

(a) Except as otherwise provided by law and subject to conditions imposed by statute, Rule, or by the court, a court, on motion or on its own initiative:

(1) may permit or require one or more participants or all participants to participate in a non-evidentiary proceeding by means of remote electronic participation, unless, upon objection by a party, the court finds that remote electronic participation would be likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding.

Committee note: The intent of this subsection is to allow a court to permit or require remote electronic participation in a variety of proceedings such as (1) status and scheduling conferences, (2) discussion of other administrative matters in which the physical presence of one or more participants is not essential; (3) proceedings limited to the argument of motions, petitions, requests, or applications involving only questions of law; and (4) judicial review actions to be decided solely on the record made before an administrative agency.

(2) may permit one or more participants or all participants to participate in a non-evidentiary proceeding by means of remote electronic participation, but only:

(A) with the consent of all parties; or

(B) upon a finding by the court that;

(i) participation by remote electronic means in the manner requested or selected by the court is authorized by statute; or

(ii) that the participant is an essential participant in the proceeding or conference and

(a) by reason of illness,

disability, or other good cause, the participant is unable, without significant hardship to a party or a participant, to be physically present at the place where the proceeding is to be conducted;

(b) permitting the participant to participate by remote electronic means will not cause substantial prejudice to any party or impact adversely on the fairness of the proceeding; and

(c) the form of remote electronic participation has been approved by the court for the proceeding or conference; and

(C) if the court has raised remote electronic participation on its own motion, it has notified the parties of its intention to do so and afforded them a reasonable opportunity to object. An objection shall state specific grounds and the court may rule on the objection without a hearing.

Committee note: It is not the intent of this subsection that mere absence from the county or State constitute good cause, although the court may consider the distance involved and whether there are any significant impediments to the ability of the participant to appear personally.

(b) Conditions and Limitations

(1) Personal Appearance

If, at any time during a proceeding or conference in which one or more participants are participating by remote electronic participation under this Rule the court determines that the personal appearance of that participant is necessary in order to avoid substantial prejudice to a party or unfairness of the proceeding, the court shall continue the matter and require the personal appearance.

(2) Standards; Process, Connections, Software, and Equipment

(A) Generally

Except as otherwise provided by law or by subsection (b)(2)(B) of this Rule, remote electronic participation shall not be permitted unless the process, connections, software, and equipment to be used comply with standards developed by the State Court Administrator and approved by the Chief Judge of the Court of Appeals pursuant to Rule 2-803.

(B) Exception

The court may excuse non-compliance with subsection (b)(2)(A) of this Rule: (i), for good cause shown if it finds that the non-compliance will not cause substantial prejudice to the parties or impact adversely on the fairness of the proceeding; or (ii), with the consent of the parties.

Cross reference: Rule 2-513 (b) provides that testimony may be taken by telephone either upon stipulation of the parties or upon motion of a party and for good cause shown. Similarly, it is expected that in many cases the parties will consent to proceeding by videoconferencing.

(3) Participation of Interpreters; Attorney-client Communications

The process, connections, software, and equipment shall permit interpreters to perform their function and permit confidential communication between attorneys and their clients during the proceeding.

(4) Method of Remote Electronic Participation

If remote electronic participation is to be permitted in an evidentiary proceeding, the court, whenever feasible, shall give preference to requiring that the participation be by video conferencing rather than mere audio.

(5) Record

A full record of proceedings

conducted, in whole or in part, by remote electronic means shall be made in accordance with Rule 16-503 (a).

(6) Public Access

If remote electronic participation will result in a proceeding that otherwise would be conducted in open court and be accessible to the public being conducted entirely by electronic means, the court must ensure that members of the public have the ability to observe or listen to the proceeding through monitors or other equipment at the courthouse during the course of the proceeding.

Source: This Rule is new.

Rule 2-802 was accompanied by the following Reporter's note.

Chief Judge Barbera, in the ADMINISTRATIVE ORDER ON CONCLUSION OF VIDEO CONFERENCING PILOT PROGRAMS, dated December 18, 2013, concluded on the basis of a report from the State Court Administrator, that "that each of the Pilot Programs ha[d] delivered justice fairly and effectively. Accordingly, [she] approve[d] the use of video conferencing."

While videoconferencing is occurring in courts throughout the state, there are no legal criteria guiding the courts and participants on the conditions that must exist in order for it to be used. Proposed Rule 2-802 would establish those criteria. It is expected that remote electronic participation in non-evidentiary proceedings, as discussed in Rule 2-802 (a), will be used more frequently when the technology is in place.

Remote electronic participation where evidence is being presented, in contrast, raises concerns about the ability of a

factfinder to assess credibility and demeanor. Accordingly, proposed Rule 2-802 sets forth conditions that must exist in order for a court to permit the use of remote electronic participation when evidence is being taken to safeguard the fairness of the proceeding.

Proposed Rule 2-802 (b)(2) would provide that remote electronic participation will not be permitted unless the process, connections, software, and equipment to be used comply with standards developed by the State Court Administrator and approved by the Chief Judge of the Court of Appeals pursuant to Rule 2-803.

Proposed 2-802 (b)(3) would require that the process, software, and equipment permit confidential communications between attorneys and their clients and also to permit interpreters to perform their function. The latter requirement reflects a growing awareness of the use of remote interpretation. *See* T. Clarke, Trends in State Courts 2014, "Video Remote Interpretation as a Business Solution," National Center for State Courts. *See also* 28 CFR 35.160(d)(Video remote interpreting (VRI) services – Department of Justice ADA Title 2 regulation).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 – REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

ADD new Rule 2-803, as follows:

Rule 2-803. STANDARDS AND REQUIREMENTS

(a) Existing Remote Electronic Participation Programs

Remote electronic participation programs in existence on _____, 2016 may continue in effect, subject to review by the State Court Administrator for consistency with the standards and requirements established under the Rules in this Chapter. After review, the Chief Judge of the Court of Appeals, upon a recommendation by the State Court Administrator, may direct changes necessary to make those programs consistent with the standards and requirements established under the Rules in this Chapter.

(b) Standards and Requirements for Remote Video Conferencing Participation

The State Court Administrator shall develop and present to the Chief Judge of the Court of Appeals standards and requirements for the process, connections, software, and equipment for remote electronic participation in judicial proceedings. All programs of remote electronic participation in judicial proceedings shall comply with the standards and requirements approved by the Chief Judge of the Court of Appeals.

(c) Minimum Requirements

In addition to complying with the requirements set forth in Rule 2-802, the standards shall include the following requirements:

(1) All participants shall be able to see, hear, and communicate with each other by sight, hearing, or both as relevant.

(2) All participants shall be able to observe all physical evidence and exhibits presented during the proceeding.

(3) Video and sound quality shall be adequate to allow participants and the fact-finder to observe the demeanor and non-

verbal communications of other participants and to hear clearly what is occurring in the courtroom or other location where the proceeding is being conducted.

(4) The program shall permit documents to be transmitted to and from remote locations.

(5) Absent express consent from the court pursuant to the Rules in Title 16, Chapter 600 or Rule 16-208, the equipment shall preclude participants from recording and downloading the proceeding.

Source: This Rule is new.

Rule 2-803 was accompanied by the following Reporter's note.

Proposed Rule 2-803 would require the State Court Administrator, subject to the approval of the Chief Judge of the Court of Appeals, to develop "standards and requirements for the process, connections, software, and equipment for remote video conferencing participation." Now, pursuant to the December 19, 2013, ADMINITRATIVE ORDER ON CONCLUSION OF VIDEO CONFERENCING PILOT PROGRAMS, the State Court Administrator is responsible for establishing "criteria." Proposed Rule 2-802 (a), would also require the review of existing programs, to determine whether existing programs are consistent with the new standards and requirements. The proposal is based on and similar to former Rule 16-1008 (b), as adopted by the Court of Appeals in its Rules Order of March 4, 2004, concerning existing programs providing electronic access to a database of court records. Placing responsibility on the State Court Administrator over the technical requirements of video conferencing is a common requirement in the rules of other States. *See, e.g.,* Mich.R.Civ.P 2.407 and

Michigan Administrative Order 2014-25; 20 Okl.St.Ann. §3006; Arizona Rule 1.6 of Criminal Procedure; Washington General Rules, GR 19.

MARYLAND RULES OF PROCEDURE

TITLE 2 CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

DELETE Rule 2-513, as follows:

~~Rule 2-513. TESTIMONY TAKEN BY TELEPHONE~~

~~(a) Definition~~

~~In this Rule, "telephone" means a landline telephone and does not include a cellular phone.~~

~~(b) When Testimony Taken by Telephone Allowed; Applicability~~

~~A court may allow the testimony of a witness to be taken by telephone (1) upon stipulation by the parties or (2) subject to sections (c) and (f) of this Rule, on motion of a party to the action and for good cause shown. This Rule applies only to testimony by telephone and does not preclude testimony by other remote means allowed by law or, with the approval of the court, agreed to by the parties.~~

~~Cross reference: For an example of testimony by other means allowed by law, see Code, Family Law Article, §9.5-110.~~

~~(c) Time for Filing Motion~~

~~Unless for good cause shown the court allows the motion to be filed later, a motion to take the testimony of a witness by telephone shall be filed at least 30 days before the trial or hearing at which the~~

~~testimony is to be offered.~~

~~(d) Contents of Motion~~

~~The motion shall state the witness's name and, unless excused by the court:~~

~~(1) the address and telephone number of the witness;~~

~~(2) the subject matter of the witness's expected testimony;~~

~~(3) the reasons why testimony taken by telephone should be allowed, including any circumstances listed in section (e) of this Rule;~~

~~(4) the location from which the witness will testify;~~

~~(5) whether there will be any other individual present in the room with the witness while the witness is testifying and, if so, the reason for the individual's presence and the individual's name, if known; and~~

~~(6) whether transmission of the witness's testimony will be from a wired handset, a wireless handset connected to the landline, or a speaker phone.~~

~~(e) Good Cause~~

~~A court may find that there is good cause to allow the testimony of a witness to be taken by telephone if:~~

~~(1) the witness is otherwise unavailable to appear because of age, infirmity, or illness;~~

~~(2) personal appearance of the witness cannot be secured by subpoena or other reasonable means;~~

~~(3) a personal appearance would be an undue hardship to the witness; or~~

~~(4) there are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by~~

~~telephone.~~

~~Committee note: This section applies to the witness's unavailability to appear personally in court, not to the witness's unavailability to testify.~~

~~(f) When Testimony Taken by Telephone Is Prohibited~~

~~If a party objects, a court shall not allow the testimony of a witness to be taken by telephone unless the court finds that:~~

~~(1) the witness is not a party and will not be testifying as an expert;~~

~~(2) the testimony is not to be offered in a jury trial;~~

~~(3) the demeanor and credibility of the witness are not likely to be critical to the outcome of the proceeding;~~

~~(4) the issue or issues about which the witness is to testify are not likely to be so determinative of the outcome of the proceeding that the opportunity for face-to-face cross-examination is needed;~~

~~(5) a deposition taken under these Rules is not a fairer way to present the testimony;~~

~~(6) the exhibits or documents about which the witness is to testify are not so voluminous that testimony by telephone is impractical;~~

~~(7) adequate facilities for taking the testimony by telephone are available;~~

~~(8) failure of the witness to appear in person is not likely to cause substantial prejudice to a party; and~~

~~(9) no other circumstance requires the personal appearance of the witness.~~

~~(g) Use of Deposition~~

~~A deposition of a witness whose testimony is received by telephone may be~~

~~used by any party for any purpose for which the deposition could have been used had the witness appeared in person.~~

~~(h) Costs~~

~~Unless the court orders otherwise for good cause, all costs of testimony taken by telephone shall be paid by the movant and may not be charged to any other party.~~

~~Source: This Rule is new.~~

Rule 2-513 was accompanied by the following Reporter's note.

Proposed Title 2, Chapter 800 would establish standards and requirements for remote electronic participation, which includes participation by means of telephone. If proposed Title 2, Chapter 800 is adopted, Rule 2-513 would no longer be needed.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 200 – JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-208 by deleting provisions related to a hearing conducted by video conferencing or other electronic means, as follows:

Rule 7-208. HEARING

(a) Generally

Unless a hearing is waived in writing by the parties, the court shall hold a hearing.

(b) Scheduling

Upon the filing of the record pursuant to Rule 7-206, a date shall be set for the hearing on the merits. Unless otherwise ordered by the court or required by law, the hearing shall be no earlier than 90 days from the date the record was filed.

~~(c) Hearing Conducted by Video Conferencing or Other Electronic Means~~

~~(1) Generally~~

~~Except as provided in subsection (c)(2) of this Rule, the court, on motion or on its own initiative, may allow one or more parties or attorneys to participate in a hearing by video conferencing or other electronic means. In determining whether to proceed under this section, the court shall consider:~~

~~(A) the availability of equipment at the court facility and at the relevant remote location necessary to permit the parties to participate meaningfully and to make an accurate and complete record of the proceeding;~~

~~(B) whether, in light of the issues before the court, the physical presence of a party or counsel is particularly important;~~

~~(C) whether the physical presence of a party is not possible or may be accomplished only at significant cost or inconvenience;~~

~~(D) whether the physical presence of fewer than all parties or counsel would make the proceeding unfair; and~~

~~(E) any other factors the court finds relevant.~~

~~(2) Exceptions and Conditions~~

~~(A) The court may not allow participation in the hearing by video conferencing or other electronic means if (i) additional evidence will be taken at the hearing and the parties do not agree to~~

~~video conferencing or other electronic means, or (ii) such a procedure is prohibited by law.~~

~~(B) The court may not allow participation in the hearing by video conferencing or other electronic means on its own initiative unless it has given notice to the parties of its intention to do so and has afforded them a reasonable opportunity to object. An objection shall state specific grounds, and the court may rule on the objection without a hearing.~~

~~(d)~~ (c) Additional Evidence

Additional evidence in support of or against the agency's decision is not allowed unless permitted by law.

Cross reference: Where a right to a jury trial exists, see Rule 2-325 (d). See *Montgomery County v. Stevens*, 337 Md. 471 (1995) concerning the availability of prehearing discovery.

Source: This Rule is in part derived from former Rules B10 and B11 and in part new.

Rule 7-208 was accompanied by the following Reporter's note.

Proposed Title 2, Chapter 800 would establish standards and requirements for remote electronic participation. Current Rule 7-208 (c) governs hearing conducted by video conferencing or other electronic means. If proposed Title 2, Chapter 800 is adopted, Rule 7-208 (c) may be deleted as no longer being necessary.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1305 by replacing a reference in a Committee note to Rule 2-513 with a reference to 2-802, as follows:

Rule 15-1305. HEARING

(a) Generally

(1) The court may not act on a petition under this Chapter without holding a hearing.

(2) The petitioner shall have the burden of producing sufficient credible evidence to permit the court to make the findings required under Rule 15-1307.

(3) The payee or the payee's guardian shall testify at the hearing.

(b) Personal Attendance

Personal attendance at the hearing is required by:

(1) the payee, unless, for good cause, the court excuses the payee's personal attendance;

(2) if a person serves as a (A) guardian of the person of the payee, (B) guardian of the property of the payee, or (C) representative payee of the payee, each such person;

(3) the independent professional advisor; and

(4) the petitioner or a duly authorized officer or employee of the petitioner, other than an attorney for the petitioner bound by an attorney-client privilege.

Committee note: Section (b) of this Rule is

not intended to preclude the court from exercising its discretion under Rule ~~2-513~~ 2-802 to permit testimony of a witness by telephone. The court should be mindful, however, that the petitioner bears the burden of providing sufficient evidence to permit the court to make the findings required under Rule 15-1307 and consider whether taking the testimony of a witness for the petitioner by telephone may adversely affect the credibility of that testimony. Except under extraordinary circumstances, the court should not permit testimony of the payee or a guardian of the payee by telephone.

(c) Examination

The court may examine under oath the payee, any guardian of the payee, the independent professional advisor, and the petitioner or representative of the petitioner, and any other witness.

Source: This Rule is new.

Rule 15-1305 was accompanied by the following Reporter's note.

Elsewhere in this Report, it is proposed that Rule 2-513, a rule permitting testimony to be taken by telephone, be deleted if the proposed addition of a new Chapter 2, Chapter 800, is adopted. The proposed addition would set criteria and requirements which would pertain to any form of remote electronic participation in hearings and conferences. Current Rule 2-513, which deals with one form of remote electronic participation, would become unnecessary. Consequently, a conforming change from the current reference in the Committee note to Rule 2-513 to a reference to Rule 2-802 should be made.

The Chair told the Committee that the proposed new Title 2, Chapter 800 Rules had been redrafted many times. The Chapter governs remote electronic participation in the circuit courts; there is no comparable proposal for District Court. He said that the Rules were not yet ready to be voted on and recommended that discussion be deferred.

The Reporter suggested that since the Rules are on the agenda, the Committee can take the opportunity to provide input on how these Rules could be improved or changed. She explained that the Subcommittee had been concerned that this issue of remote electronic participation cannot necessarily be applied to criminal cases because criminal defendants have confrontation rights that could preclude this type of participation. It was not clear how some of this would apply to the District Court. She said that it is a question of whether the various court buildings have the necessary equipment and connections, such as speaker phones. It is not clear whether all of the circuit courts have this. The Chair had heard that Baltimore County has jacks for telephones and other devices in all of the courtrooms, but this may not be the case in some of the Eastern Shore counties.

Mr. Zarbin remarked that he knew of some of the practicalities of this kind of communication. One of the ways testimony is taken in workers' compensation cases is that one of

the attorneys will put his or her cell phone on the bench, allowing those in the room to speak to the witness. What is interesting about this is that the attorneys have FaceTime on their cell phones. There could be video conferencing of the witness who is out of state and cannot attend the hearing. This way, the judge gets to see the witness testify. It is easier to determine credibility when the judge can see the witness.

The Chair said that one of the issues with this is that current Rule 2-513 applies only to testimony, and it does not permit testimony by cell phone. This can be changed. When the full Rules Committee discussed the telephone testimony Rule, this issue was brought up. Cell phones then were not as sophisticated as they are now. This decision may need to be reconsidered.

Mr. Zarbin commented that the Chair is correct about the variability of courthouses having the proper jacks for telephones and other devices. The newer courtrooms have them; it depends on budgetary constraints and the age of the buildings. The Chair said that Rule 2-802 permits video conferencing or other electronic means in non-evidentiary hearings. The subject may be motions, scheduling conferences, or judicial review actions where no evidence is taken. This is the easy part as long as the equipment is sufficient for everyone to participate. One of the considerations, however, is

the public's right to see what is going on in the courts. Anyone can come into a courtroom, unless it is a closed proceeding. Any Rule written would need to make a provision for this right of the public. The proposed Chapter 2, Title 800 Rules do this.

The Chair commented that although these Rules would not apply to criminal cases, victims have a right to be present at trials. The proposed Rules have not considered all the factors related to remote electronic participation in judicial proceedings. This matter can be put on a fast track for reconsideration. If the current Rule is going to be replaced, there has to be the ability to have remote hookups. If the judge is in chambers, it is not likely to be a problem. However, if it is going to be a court proceeding, it is important to make sure that remote electronic participation can happen.

Judge Everngam agreed that more work needs to be done on this. He referred to proposed Rule 2-802 (a)(2) and asked whether the term "non-evidentiary proceeding" should be "evidentiary proceeding." The Chair answered affirmatively. Judge Everngam pointed out that the requirements of Rule 2-803 (c)(3) are entangled with the requirements of subsection (c)(1). He suggested that the Subcommittee should look at this. He added that the proposed Rules are improving. As was seen in the

case of *White v. State*, 223 Md. App. 353 (2015), judges are handling this on their own because there are no rules to give them guidance. Judge Everngam said that he would be willing to answer questions, since he was part of a video conferencing work group. The Chair told Judge Everngam that the Subcommittee could get the benefit of having Judge Everngam as a consultant and anyone else he could recommend.

The Chair asked the Committee members if they approved of sending the Rules back to the Subcommittee for further work. Judge Nazarian remarked that there is a lot of experience with remote testimony in the regulatory world. When he had been a practicing attorney, he found that, in other states, remote participation was common in many kinds of hearings – mostly non-evidentiary – and especially involving industries where companies are multi-state and spread out. There may be some practical experience in that. The big question is how to handle evidentiary hearings, as opposed to non-evidentiary hearings.

The Chair responded that evidentiary hearings initially were not part of the proposed Rules, but the Subcommittee expanded the scope of the Rules to include them. Concerning evidentiary hearings, the focus is on witnesses who cannot be present at the hearing due to emergencies or having an out-of-state location. Judge Nazarian noted that it depends on the purpose of the witness. If a witness is only certifying that

the documents came out of someone's files, it is not necessary to make that person fly from California to do that. This would not apply to critical witnesses.

Mr. Zarbin commented that the way Prince George's County operates for scheduling conferences works very well. On the Eastern Shore, Courtcall is used, and it works very well. The Chair pointed out that the procedure for remote participation in the non-evidentiary hearings is easier. He had seen a demonstration of Courtcall at the MSBA convention. Mr. Zarbin remarked that considering the convenience factor, many people would prefer testifying remotely to driving several hours to get to court.

The Chair stated that the Rules pertaining to remote testimony would be sent back to the Subcommittee.

Agenda Item 3. Consideration of proposed amendments to: Form 9-102.2 (Consent of Parent to a Private Agency Guardianship), Form 9-102.4 (Consent of Parent to an Independent Adoption With Termination of Parental Rights), and Form 9-102.5 (Consent of Parent to an Independent Adoption Without Termination of Parental Rights)

Judge Eaves presented Form 9-102.2, Consent of Parent to a Private Agency Guardianship; Form 9-102.4, Consent of Parent to an Independent Adoption with Termination of Parental Rights; and Form 9-102.5, Consent of Parent to an Independent Adoption

without Termination of Parental Rights, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

FORMS FOR GUARDIANSHIPS THAT TERMINATE PARENTAL RIGHTS AND ADOPTIONS

AMEND section (H) of Form 9-102.2 to add certain expenses that may be paid to a parent who is giving up a child for adoption, as follows:

Form 9-102.2. CONSENT OF PARENT TO A PRIVATE AGENCY GUARDIANSHIP

CONSENT OF PARENT TO GUARDIANSHIP WITH THE RIGHT TO CONSENT TO ADOPTION OF

_____ TO

_____, A LICENSED PRIVATE ADOPTION AGENCY

INSTRUCTIONS

These instructions and attached consent form may be used only in cases where the child is being placed for adoption with the assistance of a licensed private adoption agency. Code, Family Law Article, Title 5, Subtitle 3A.

The attached consent form is an important legal document. You must read all of these instructions BEFORE you sign the consent form. If you do not understand the instructions or the consent form, you should not sign it. If you are under 18 years old or if you have a disability that makes it difficult for you to understand, do not sign the consent form unless you have a lawyer.

A. Right to Have This Information in a Language You Understand

You have the right to have these instructions and the consent form translated into a language that you understand. If you cannot read or understand English, you should not sign the consent form. You should have this form translated for you into a language you do understand. The translated consent form is the one you should read and decide whether or not to sign. Any translation must have an affidavit attached in which the translator states that it is a true and accurate translation of this document.

. . .

H. Compensation

Under Maryland law, you are not allowed to charge or receive money or compensation of any kind for the placement for adoption of your child or for your agreement to the adoptive parent having custody of your child, except that (1) reasonable and customary charges or fees for adoption counseling, hospital, legal, or medical services, (2) reasonable expenses for transportation for medical care associated with the pregnancy or birth of the child, (3) reasonable expenses for food, clothing, and shelter for a birth mother if, on written advice of a physician, the birth mother is unable to work or otherwise support herself because of medical reasons associated with the pregnancy or birth of the child, and (4) reasonable expenses associated with any required court appearance relating to the adoption, including transportation, food, and lodging expenses may be paid.

. . .

Form 9-102.2 was accompanied by the following Reporter's

note.

An Assistant Attorney General pointed out that some expenses that are allowed to be paid to parents who are giving up their child for a private agency or independent adoption have been left out of the consent forms in Forms 9-102.2, 9-102.4, and 9-102.5. These expenses are provided for in Code, Family Law Article, §5-3A-45 and 5-3B-32. The Assistant Attorney General suggested that these expenses be added to Forms 9-102.2, 9-102.4, and 9-102.5.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

FORMS FOR GUARDIANSHIPS THAT TERMINATE PARENTAL RIGHTS AND ADOPTIONS

AMEND section (H) of Form 9-102.4 to add certain expenses that may be paid to a parent who is giving up a child for adoption, as follows:

Form 9-102.4. CONSENT OF PARENT TO AN INDEPENDENT ADOPTION WITH TERMINATION OF PARENTAL RIGHTS

CONSENT OF PARENT TO ADOPTION OF

_____

Independent Adoption with Termination of Parental Rights

INSTRUCTIONS

These instructions and attached consent form may be used only in independent adoptions, not those that are arranged by an adoption agency. This form should only be used for a parent whose parental rights are

being terminated. It should not be used for a parent who is retaining parental rights, for example, a custodial parent in a step-parent adoption. Code, Family Law Article, Title 5, Subtitle 3B.

The attached consent form is an important legal document. You must read all of these instructions BEFORE you sign the consent form. If you do not understand the instructions or the consent form, you should not sign it. If you are under 18 years old or if you have a disability that makes it difficult for you to understand, do not sign the consent form unless you have a lawyer.

A. Right to Have This Information in a Language You Understand

You have the right to have these instructions and the consent form translated into a language that you understand. If you cannot read or understand English, you should not sign the consent form. You should have this form translated for you into a language you do understand. The translated consent form is the one you should read and decide whether or not to sign. Any translation must have an affidavit attached in which the translator states that it is a true and accurate translation of this document.

. . .

H. Compensation

Under Maryland law, you are not allowed to charge or receive money or compensation of any kind for the placement for adoption of your child or for your agreement to the adoptive parent having custody of your child, except that (1) reasonable and customary charges or fees for adoption counseling, hospital, legal, or medical services, (2) reasonable expenses for transportation for medical care associated with the pregnancy or birth of the child, (3) reasonable expenses for food, clothing, and shelter for a birth mother if, on

written advice of a physician, the birth mother is unable to work or otherwise support herself because of medical reasons associated with the pregnancy or birth of the child, and (4) reasonable expenses associated with any required court appearance relating to the adoption, including transportation, food, and lodging expenses may be paid.

. . .

Form 9-102.4 was accompanied by the following Reporter's note.

See the Reporter's note to Form 9-102.2.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

FORMS FOR GUARDIANSHIPS THAT TERMINATE PARENTAL RIGHTS AND ADOPTIONS

AMEND section (H) of Form 9-102.5 to add certain expenses that may be paid to a parent who is giving up a child for adoption, as follows:

Form 9-102.5. CONSENT OF PARRENT TO AN INDEPENDENT ADOPTION WITHOUT TERMINATION OF PARENTAL RIGHTS

CONSENT OF PARENT TO ADOPTION OF

_____

Independent Adoption without Termination of Parental Rights

INSTRUCTIONS

These instructions and attached consent form may be used only in independent adoptions, not those that are arranged by an adoption agency. This form should only be used for a parent whose parental rights are not being terminated. I t should be used for a parent who is retaining parental rights, for example, a custodial parent in a step-parent adoption. Code, Family Law Article, Title 5, Subtitle 3B.

The attached consent form is an important legal document. You must read all of these instructions BEFORE you sign the consent form. If you do not understand the instructions or the consent form, you should not sign it. If you are under 18 years old or if you have a disability that makes it difficult for you to understand, do not sign the consent form unless you have a lawyer.

A. Right to Have This Information in a Language You Understand

You have the right to have these instructions and the consent form translated into a language that you understand. If you cannot read or understand English, you should not sign the consent form. You should have this form translated for you into a language you do understand. The translated consent form is the one you should read and decide whether or not to sign. Any translation must have an affidavit attached in which the translator states that it is a true and accurate translation of this document.

. . .

H. Compensation

Under Maryland law, you are not allowed to charge or receive money or compensation of any kind for the placement for adoption of your child or for your agreement to the adoptive parent having custody of your child, except that (1) reasonable and

customary charges or fees for adoption counseling, hospital, legal, or medical services, (2) reasonable expenses for transportation for medical care associated with the pregnancy or birth of the child, (3) reasonable expenses for food, clothing, and shelter for a birth mother if, on written advice of a physician, the birth mother is unable to work or otherwise support herself because of medical reasons associated with the pregnancy or birth of the child, and (4) reasonable expenses associated with any required court appearance relating to the adoption, including transportation, food, and lodging expenses may be paid.

. . .

Form 9-102.5 was accompanied by the following Reporter's note.

See the Reporter's note to Form 9-102.2.

The Reporter said that an Assistant Attorney General had pointed out some problems with some of the adoption forms, which had not been updated to conform to Code, Family Law Article, §§5-3A-45 and 5-3B-32.

The Chair told the Committee that the Judicial Council has a Forms Committee. There also has been a District Court Forms Committee, which developed many forms. The circuit courts are not doing this; most of them have their own internal forms, but they were not sharing them among the circuits. Judge Eaves agreed. The Chair noted that the Judicial Council Forms Committee is looking at both circuit court and District Court

forms. The forms that are scattered throughout the Rules, including probate, guardianship, juvenile, and domestic forms, were put into the Rules because no Forms Committee or centralized website existed for those forms to be hosted. The only exposure anyone had to a mandated form was in the Rules. That no longer is the case.

The question now is whether any of the forms should be in the Rules. Having a mandated form in the Rules makes it difficult to change the form, as any change requires going through the entire rule-making process. The Judicial Council's view is that each form in the Rules should be identified and reviewed for a determination as to whether the form should be in the Rules. The Committee would make a report on this and recommend which forms should be removed and which should remain.

The Chair commented that when the juvenile and adoption forms were being worked on, it was noted that some are extremely important. Some contain show cause orders that are served on parents, and if the parent does not object within 30 days, the parent may lose his or her child. The consent forms and show cause order forms are especially important forms. The Juvenile Subcommittee had started to work on this. One of the questions that came up in the context of the Juvenile Rules, which also applies to adoption forms, is the issue of forms that need to be translated into another language. Section A. of Form 9-102.2

states: "You have the right to have these instructions and the consent form translated into a language that you understand." If someone who speaks only a language other than English is given this form, what can the person do about this? The person will not understand this language.

Judge Eaves remarked that the judges are aware of persons with limited English proficiency. If the Department of Social Services ("DSS") is involved in the case, the person already would have an interpreter and access to counsel. The Chair said that one of the issues with the juvenile forms and the adoption forms is to require that, if DSS is involved, which they are in most cases, they must translate the forms. They have to provide the form for the parent in the language that the parent understands. This is not the case in all matters in which a form is part of the proceedings. It is with Child in Need of Assistance and Termination of Parental Rights cases. What happens with other types of cases in which the party is *pro se*? Some of the Department of Motor Vehicle forms and some of the court forms are available in about six different languages, including Russian, Spanish, Korean, Chinese (Mandarin), and French. The Chair was not certain whether the forms are in Arabic. Some languages use a different alphabet.

The Chair said that this language issue is a problem, and there is no procedure for it. It may be necessary to add to the

Juvenile Rules that if DSS or some similar agency is involved with the case, the agency will have to translate the form.

By consensus, the Committee approved the changes to Forms 9-102.2, 9-102.4, and 9-102.5, but the issue of whether the forms should remain in the Rules was deferred.

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