

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held via Zoom for Government on Thursday, September 9, 2021.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.

Hon. Vicki Ballou-Watts

Julia D. Bernhardt, Esq.

Hon. Pamila J. Brown

Stan Derwin Brown, Esq.

Hon. Yvette M. Bryant

Hon. John P. Davey

Alvin I. Frederick, Esq.

Pamela Q. Harris, State Court
Administrator

Irwin R. Kramer, Esq.

Victor H. Laws, III, Esq.

Dawne D. Lindsey, Clerk

Bruce L. Marcus, Esq.

Donna Ellen McBride, Esq.

Stephen S. McCloskey, Esq.

Hon. Paula A. Price

Scott D. Shellenberger, Esq.

Gregory K. Wells, Esq.

Hon. Dorothy J. Wilson

Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter

Colby L. Schmidt, Esq., Deputy Reporter

Heather Cobun, Esq., Assistant Reporter

Meredith A. Drummond, Esq., Assistant Reporter

Richard Abbott, Esq., Program Director, Juvenile & Family
Services, Maryland Judiciary

Gray Barton, Esq., Program Director, Problem-Solving Courts,
Maryland Judiciary

Lee Blinder, Executive Director & Founder, Trans Maryland
Jodi Cavanaugh Jews, Esq.

Heather Croft, Esq., Deputy Director, Court of Special Appeals
ADR Division

Robin Davenport, Director, CASA of the Mid-Shore

Sara Elalamy, Government Relations Specialist, Maryland
Judiciary

Linda Fallowfield, Esq., Complex Litigation Coordinator,
Maryland Judiciary

Bob Frank, Esq.

Erin Gable, Esq., ADR Section, MSBA

Faye Gaskin, Deputy State Court Administrator, Maryland
Judiciary

Lou Gieszl, Assistant Administrator for Programs, Maryland
Judiciary

Jessica Gorsky, Esq.

Katherine Hager, Clerk of Court, Queen Anne's Co. Circuit
Court

Nancy Harris, Analyst, Judicial Information Systems, Maryland
Judiciary

Mallori Heely, Analyst, Judicial Information Systems, Maryland
Judiciary

Amber Herrmann, Deputy Director, Administrative Services,
District Court Headquarters

Sen. Shelly Hettleman, Maryland State Senate

C.P. Hoffman, Esq., Legal Director, FreeState Justice

Diana Hsu, Senior Analyst, Maryland Hospital Association

Kathryn Huff, Esq., ADR Section, MSBA

Daniel Jawor, Esq., Assistant Attorney General

Cynthia Jurrius, Esq., Program Director, Mediation and
Conflict Resolution, Maryland Judiciary

Ed Kilcullen, State Director, Maryland CASA Association

Connie Kratovil-Lavelle, Esq., Executive Director, Public
Interest and Legal Advocacy, Maryland Collaborative Law
and Justice Centers

Tracey Lane, Program Coordinator, Anne Arundel Co. CASA, Inc.

Dorothy Lennig, Esq., Director of Legal Clinic, House of Ruth
Maryland

Will Manahan, Esq., Law Clerk, Circuit Court for Baltimore
City

Lisa Mannisi, Esq., Civil and Criminal Case Administrator,
Anne Arundel County Circuit Court

Hon. John Morrisey, Chief Judge, District Court

Amy Nelson

Sarah Parks, Analyst, Judicial Information Systems, Maryland
Judiciary

Elizabeth Pinolini, Esq., Whitman-Walker Health

Melanie Shapiro, Esq., Maryland Network Against Domestic
Violence

David Shultie, Esq., Policy Law Specialist, Juvenile & Family
Services, Maryland Judiciary

Rebecca Snyder, Esq.

Tom Stahl, Esq.

Nisa Subasinghe, Esq., Policy Law Specialist, Juvenile & Family Services, Maryland Judiciary
Sam Williamson, Esq., Homeless Persons Representation Project
Brian Zavin, Esq., Chief Attorney, Office of the Public Defender

The Chair convened the meeting. He began by acknowledging that Court of Appeals Chief Judge Mary Ellen Barbera retires at the end of the week. He said that he has known four chief judges of the Court and all served the people of Maryland well. Each had problems and crises to face, but none had to face anything like the pandemic of the last 18 months. He said that Chief Judge Barbera kept the Judiciary functioning with no textbook to guide her and, with clear thinking, resolute perseverance, and innovation, she pulled the Judiciary through the crisis. Courts continued to function as much as possible and access to justice, while limited by circumstances, was never abandoned.

The Chair also informed the Committee that the Court of Appeals rejected the proposed amendments to Rule 4-345, opting to leave the issue in the hands of the legislature. He said that the Committee can provide its research and materials to the legislature or any of its committees on request. Finally, the Chair announced that comments received prior to today's meeting have produced handouts on certain agenda items. He noted that the handouts will be addressed when those items are

discussed.

The Chair said that Item 7 on the agenda will be taken out of order following Item 2 to allow Judge Bryant to make her presentations together.

The Reporter reminded the Committee and guests that the meeting is being recorded for the purpose of assisting with the preparation of minutes, and anyone who speaks is consenting to being recorded. She added that three sets of minutes were sent to Committee members for approval and asked for any comments. She asked for a motion to approve those minutes. A motion was made and seconded. By consensus, the Committee approved the minutes.

Agenda Item 1. Consideration of proposed amendments to Rule 9-205 (Mediation of Child Custody and Visitation Disputes).

Judge Bryant presented Rule 9-205, Mediation of Child Custody and Visitation Disputes, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

AMEND Rule 9-205 by modifying the tagline of section (a), by making stylistic changes to section (a), by adding new subsection (a)(2)(A) defining "abuse," by adding new subsection (a)(2)(B) defining "coercive control," and by

making stylistic changes and adding a reference to coercive control to subsection (b) (2), as follows:

RULE 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

(a) Scope of Rule Applicability; Definitions

(1) This Rule applies to any action or proceeding under this Chapter in which the custody of or visitation with a minor child is an issue, including:

~~(1)~~ (A) an initial action to determine custody or visitation;

~~(2)~~ (B) an action to modify an existing order or judgment as to custody or visitation; and

~~(3)~~ (C) a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.

(2) In this Rule, the following definitions apply:

(A) "Abuse" has the meaning stated in Code, Family Law Article, § 4-501.

(B) "Coercive control" means a pattern of emotional and psychological manipulation, maltreatment, or intimidation to compel an individual by force or threat of force to engage in conduct from which the individual has a right to abstain or to abstain from conduct in which the individual has a right to engage.

(b) Duty of Court

(1) Promptly after an action subject to this Rule is at issue, the court shall determine whether:

(A) mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties or the child; and

(B) a mediator possessing the qualifications set forth in section (c) of this

Rule is available to mediate the dispute.

(2) If a party or a child represents to the court in good faith that there is a genuine issue of abuse, ~~as defined in Code, Family Law Article, § 4-501~~, of the party or child or coercive control of a party and that, as a result, mediation would be inappropriate, the court may not order mediation.

(3) If the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child and that a qualified mediator is available, it shall enter an order requiring the parties to mediate the custody or visitation dispute. The order may stay some or all further proceedings in the action pending the mediation on terms and conditions set forth in the order.

Cross reference: With respect to subsection (b) (2) of this Rule, see Rule 1-341 and Rules 19-303.1 and 19-303.3 of the Maryland Attorneys' Rules of Professional Conduct.

...

Rule 9-205 was accompanied by the following Reporter's note:

Rule 9-205 addresses mediation for child custody and visitation disputes. Pursuant to Rule 9-205 (b), the court may not order mediation if a party or a child represents to the court that there is a genuine issue of abuse and mediation would be inappropriate. The Family Mediation and Abuse Screening Workgroup of the Domestic Law Committee asked the Rules Committee to consider whether language about coercive control should be added to the Rule. The Workgroup raised concerns that Rule 9-205 does not currently include non-physical controlling behaviors in the definition of "abuse." Proposed amendments to Rule 9-205 address concerns raised by the Workgroup.

The tagline of section (a) is amended to reference both the applicability and definitions of the Rule. Stylistic changes to section (a) include re-lettering the subsections. New subsection (a) (2) provides definitions that apply in this Rule, including definitions of "abuse" and "coercive control" in subsections (a) (2) (A) and (a) (2) (B), respectively.

Proposed amendments to subsection (b) (2) delete a reference to Code, Family Law Article, § 4-501, which is now included in the definitions section of the Rule. A reference to coercive control is added to subsection (b) (2), providing that the court may not order mediation if a party or a child represents to the court in good faith that there is a genuine issue of coercive control of a party, rendering mediation inappropriate.

Judge Bryant explained that, in family law cases, mediation is required except where there is a history of domestic violence. She said that there is concern that, in some cases, acts of domestic violence are less tangible and more akin to coercion. The proposed amendments define "coercive control" to assist the court with determining whether parties should be required to participate in mediation. She said that coercive control cases are more difficult than cases involving physical violence because the abused party arrives to court and is so resigned to being controlled that it can be difficult for the court to make a finding.

The Chair asked if the "and" in subsection (a) (2) should

be "or" to allow for "a pattern of emotional or psychological manipulation." Judge Bryant concurred. A motion was made and seconded. By consensus, the Committee approved the amendment.

There being no further motion to amend or reject the proposed amendments to Rule 9-205, the Committee approved the Rule as amended.

Agenda Item 2. Consideration of proposed amendments to Rule 15-901 (Action for Change of Name).

Judge Bryant presented Rule 15-901, Action for Change of Name, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 900 - NAME - CHANGE OF

AMEND Rule 15-901 by adding a Committee note following section (e), as follows:

RULE 15-901. ACTION FOR CHANGE OF NAME

(a) Applicability

This Rule applies to actions for change of name other than in connection with an adoption or divorce.

(b) Venue

An action for change of name shall be brought in the county where the person whose name is sought to be changed resides.

(c) Petition

(1) Contents

The action for change of name shall be commenced by filing a petition captioned "In the Matter of ..." [stating the name of the person whose name is sought to be changed] "for change of name to ..." [stating the change of name desired]. The petition shall be under oath and shall contain at least the following information:

(A) the name, address, and date and place of birth of the person whose name is sought to be changed;

(B) whether the person whose name is sought to be changed has ever been known by any other name and, if so, the name or names and the circumstances under which they were used;

(C) the change of name desired;

(D) all reasons for the requested change;

(E) a certification that the petitioner is not requesting the name change for any illegal or fraudulent purpose;

(F) if the person whose name is sought to be changed is a minor, the names and addresses of that person's parents and any guardian or custodian; and

(G) whether the person whose name is sought to be changed has ever registered as a sexual offender and, if so, the full name(s) (including suffixes) under which the person was registered.

Cross reference: See Code, Criminal Procedure Article, § 11-705, which requires a registered sexual offender whose name has been changed by order of court to send written notice of the change to the Department of Public Safety and Correctional Services within seven days after the order is entered.

(2) Documents to Be Attached to Petition

The petitioner shall attach to the petition a copy of a birth certificate or other documentary evidence from which the court can find that the current name of the person whose

name is sought to be changed is as alleged.

(d) Service of Petition--When Required

If the person whose name is sought to be changed is a minor, a copy of the petition, any attachments, and the notice issued pursuant to section (e) of this Rule shall be served upon that person's parents and any guardian or custodian in the manner provided by Rule 2-121. When proof is made by affidavit that good faith efforts to serve a parent, guardian, or custodian pursuant to Rule 2-121 (a) have not succeeded and that Rule 2-121 (b) is inapplicable or that service pursuant to that Rule is impracticable, the court may order that service may be made by (1) the publication required by subsection (e)(2) of this Rule and (2) mailing a copy of the petition, any attachments, and notice by first class mail to the last known address of the parent, guardian, or custodian to be served.

(e) Notice

(1) Issued by Clerk

Upon the filing of the petition, the clerk shall sign and issue a notice that (A) includes the caption of the action, (B) describes the substance of the petition and the relief sought, and (C) states the latest date by which an objection to the petition may be filed.

(2) Publication

Unless the court on motion of the petitioner orders otherwise, the notice shall be published one time in a newspaper of general circulation in the county in which the action was pending at least fifteen days before the date specified in the notice for filing an objection to the petition. The petitioner shall thereafter file a certificate of publication.

Committee note: The requirement of Code, Courts Article, §3-2201 that the court grant a motion to waive publication under this Rule

does not preclude the court from taking other appropriate measures to ensure the integrity of the proceeding, protect the best interests of a minor child for whom a name change is sought, or prevent fraud. Examples of such measures include: (1) requiring the petitioner to provide a recent credit report or criminal background report, (2) requiring the petitioner to provide notice to creditors and to any interested government and law enforcement agencies or other interested persons, (3) appointing a child's best interest attorney or child's advocate attorney, and (4) holding a hearing.

(f) Objection to Petition

Any person may file an objection to the petition. The objection shall be filed within the time specified in the notice and shall be supported by an affidavit which sets forth the reasons for the objection. The affidavit shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The objection and affidavit shall be served upon the petitioner in accordance with Rule 1-321. The petitioner may file a response within 15 days after being served with the objection and affidavit. A person desiring a hearing shall so request in the objection or response under the heading "Request for Hearing."

(g) Action by Court

After the time for filing objections and responses has expired, the court may hold a hearing or may rule on the petition without a hearing and shall enter an appropriate order, except that the court shall not deny the petition without a hearing if one was requested by the petitioner.

Source: This Rule is derived in part from former Rules BH70 through BH75 and is in part new.

Rule 15-901 was accompanied by the following Reporter's note:

Chapter 507 (SB 581), Laws of 2021, requires that that a court grant a motion to waive publication under Rule 15-901. A proposed Committee note following section (e) refers to the new statute and provides examples of measures that the court may take to ensure the integrity of the proceeding, protect the best interests of a minor child for whom a name change is sought, or prevent fraud, regardless of whether notice of the proposed name change is published.

Judge Bryant explained that Item 2 concerns the name change Rule and a new law that requires the court to grant a motion to waive the publication requirement when such a motion is made. She said that the Family/Domestic Subcommittee wrestled with how to signal to judges and members of the public who are not represented by an attorney that there is a right to request waiver of that requirement. She noted that there are questions about how to protect children and victims of domestic violence and how to protect against sex offenders who may seek to change their name without the required notifications.

Judge Bryant explained that the Subcommittee felt that the statute must be addressed, but more time is required to address these issues. She said that the proposed amendments are a stop-gap measure to tell petitioners of the right to

request waiver of publication but also provide guidance to the courts until a comprehensive revision can be completed. Judge Bryant noted that a number of individuals and groups have submitted comments asking that the Committee table the discussion, but she said that no fundamental changes are being proposed to the Rule by the proposed amendment, which adds a Committee note. She said that she supports the Committee note at this time, with the understanding that the full Rule will be revised later.

The Chair called for comments on the proposed amendments to Rule 15-901. Ms. Subasinghe addressed the Committee. She said that she staffs the Judicial Council's Domestic Law Committee and a workgroup focused on LGBTQ+ family law matters chaired by Judge Michael DiPietro. Judge DiPietro wrote a comment to the Committee explaining that the workgroup has been looking at the name change Rule as a part of its work and would like additional time to address concerns. She agreed that adding reference to the statute is important, but the workgroup would request a cross reference to the statute without the additional text of the proposed Committee note.

Mx. Blinder of TransMaryland addressed the Committee. Mx. Blinder said that Mx. Blinder is a nonbinary transgender individual who uses they/them pronouns. Mx. Blinder said that Mx. Blinder leads a program to assist individuals with name

changes and gender marker designations. Mx. Blinder explained that it is difficult for nonbinary and transgender individuals to access the process to have an accurate name and gender marker on legal documents.

Mx. Blinder said that Mx. Blinder personally went through the name change process in 2015, including publication in the newspaper against Mx. Blinder's wishes. Mx. Blinder said that the passage of the statute requiring the court to waive publication on request was exciting for the LGBTQ+ community in Maryland because of the fear and trepidation that people have with the publication process, which predates the internet. Mx. Blinder explained that the statute lowered a barrier of access for the community because having accurate documentation that matches the name and identity that an individual uses is important for work, housing, and education. Mx. Blinder said that the Judicial Council workgroup has been discussing Rule 15-901 and its impact on nonbinary and transgender individuals and the larger LGBTQ+ community, and the group asks for the proposed amendment to be tabled to allow further discussion.

Mx. Hoffman, of FreeState Justice, said that Mx. Hoffman has specific issues with the proposed Committee note and the examples of measures that courts can take, which are not currently required by courts. Petitioners are not currently

asked to provide copies of a credit report or a background check. Mx. Hoffman explained that Mx. Hoffman's concern is that judges will read the suggestions in the Committee note as new requirements in place of publication. Mx. Hoffman believes that those provisions could become normalized and act as new barriers. Mx. Hoffman informed the Committee that the workgroup heard from the Maryland State Police, credit reporting agencies, and other stakeholders who said that they do not rely on publication to track individuals who change their names.

Mx. Williamson, of the Homeless Persons Representation Project, said that Mx. Williamson agrees with Mx. Blinder and Mx. Hoffman. Mx. Williamson said that the Committee note adds barriers, regardless of the intent, which will have a disproportionate impact on Marylanders who are Black, Indigenous, or people of color ("BIPOC"). Mx. Williamson asked for the matter to be postponed until the workgroup can complete its review of the Rule and draft recommendations.

Sen. Hettleman, who sponsored the legislation in the Senate, said that the intention of the legislation was to change the publication requirement. She explained that the requirement of publication in a print newspaper is different now that newspapers are also online and widely searchable.

The Chair called for discussion from the Rules Committee.

Judge Bryant said that she is not in favor of tabling the amendment and doing nothing, pointing out that self-represented litigants need to know about the statute. A cross reference without an explanation is likely not sufficient. The Chair noted that there are also concerns about changing the name of a child. He called for a motion.

Mr. Marcus asked what the timetable is for the Judicial Council workgroup. He suggested that if the group is going to finalize recommendations soon, the Committee can defer briefly. Ms. Subasinghe said that proposals should be ready by the end of September and can be provided to the appropriate Subcommittee for consideration by October.

Mr. Laws moved to strike the second sentence of the Committee note containing suggested actions for the court. The motion was seconded. By consensus, the Committee approved the amendment.

Judge Bryant expressed her thanks to the guests who provided their insight as the Committee considers the issue.

Sen. Hettleman asked if the Judiciary could take steps to make sure that forms make it clear that petitioners under Rule 15-901 have the right to move to waive the publication requirement. The Chair said that the matter can be referred to Judge Norman Stone's committee, which handles forms.

Mx. Hoffman expressed concern over the Committee note as

amended. Mx. Hoffman said that the note is directed to the court, rather than to the petitioner, and instructs the judge that additional measures may be imposed. Mx. Hoffman added that states requiring additional measures do so by statute, not Rules. Judge Bryant responded that the note is a cue to judges to apply the statute. Mx. Hoffman suggested that, in addition to the text of the note, as amended, the Committee note state that the statute permits a petitioner to request waiver of the publication requirement, and the court is required to grant it. The Chair said that the amendment has been approved, as amended, but the Committee will continue discussing the matter once the workgroup submits its proposals.

By consensus, the Committee approved the Rule as amended.

Agenda Item 7. Consideration of proposed amendments to Rule 16-308 (Business and Technology Case Management Program).

Judge Bryant presented Rule 16-308, Business and Technology Case Management Program, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION
AND CASE MANAGEMENT

AMEND Rule 16-308 by renumbering current

section (c) as subsection (c)(1), by adding a tagline to subsection (c)(1), by making stylistic changes to subsection (c)(1), by adding new subsections (c)(2) and (c)(3) pertaining to cases presumptively assigned to or excluded from the business and technology case management program, as follows:

RULE 16-308. BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

...

(c) Assignment of Actions to the Program

(1) Generally

On written request of a party or on the court's own initiative, the County Administrative Judge or that judge's designee may assign the action to the program if the judge determines that the action presents commercial or technological issues of such a complex or novel nature that specialized treatment is likely to improve the administration of justice. Factors that the judge may consider in making the determination include: ~~(1)~~(A) the nature of the relief sought, ~~(2)~~(B) the number and diverse interests of the parties, ~~(3)~~(C) the anticipated nature and extent of pretrial discovery and motions, ~~(4)~~(D) whether the parties agree to waive venue if assignment of the action to the program makes that necessary, ~~(5)~~(E) the degree of novelty and complexity of the factual, legal, or evidentiary issues presented, ~~(6)~~(F) whether business or technology issues predominate over other issues presented in the action, and ~~(7)~~(G) the willingness of the parties to participate in ADR procedures.

(2) Presumptive Assignment to Program

Actions in which the primary claims involve the following shall presumptively be assigned to the program:

(A) claims arising under:

(i) the Maryland Antitrust Act; or

(ii) the Maryland Securities Act, if involving unusual complexity;

(B) claims involving the internal governance or affairs of business entities (e.g., corporations, general partnerships, limited liability partnerships, limited liability companies, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations between or among stockholders, partners, and members of the liability or indemnity of officers, directors, managers, trustees, or partners, if the claims involve unusual complexity;

(C) stockholder derivative actions;

(D) claims of the following types if they involve unusual complexity, including complex technical or accounting evidence:

(i) breach of contract, fraud, misrepresentation, or statutory violations arising out of business dealings;

(ii) claims arising under trade secret, non-compete, non-solicitation, and confidentiality agreements involving unusual complexity; or

(iii) business torts, including claims for unfair competition or violations of the Maryland Uniform Trade Secret or Unfair and Deceptive Trade Practices Acts;

(E) declaratory judgment and indemnification claims brought by or against insurers where the subject insurance policy is a business or commercial policy and where the underlying dispute otherwise would be assigned to the program;

(F) stockholder or commercial class actions; or

(G) claims involving the following types of technology disputes if the evidence will involve technical issues of significant complexity:

(i) technology development, maintenance, and consulting agreements, including software, network, and internet website development and maintenance agreements;

(ii) agreements for developing or hosting internet websites for business entities;

(iii) technology licensing agreements, including software and biotechnology licensing agreements or any agreement involving the licensing of any intellectual property rights, including patent rights; or

(iv) claims arising under the Maryland Uniform Computer Information Transactions Act, including alleged breaches of the warranty provisions provided in such Act.

(3) Presumptive Exclusion from Program

Actions in which the primary claims involve the following shall be presumptively excluded from the program:

(A) personal injury, survival, or wrongful death matters;

(B) medical malpractice matters;

(C) landlord-tenant matters;

(D) professional fee disputes;

(E) professional malpractice claims;

(F) employee/employer disputes, other than those relating to matters otherwise assigned to the program;

(G) administrative agency, tax, zoning, and other appeals;

(H) criminal matters, including computer-related crimes; or

(I) proceedings to enforce judgments of any type.

...

Rule 16-308 was accompanied by the following Reporter's note:

The Maryland Judiciary Workgroup on Business and Technology issued several litigation recommendations on October 31, 2019 concerning the handling of complex commercial disputes in Maryland. Among the recommendations, the Workgroup suggested that more specific criteria be established for determining whether to assign a case to the business and technology case management program (hereinafter "the program"). To ensure more consistency statewide, the Workgroup proposed that certain case types be presumptively assigned to and certain case types be presumptively excluded from the program.

Rule 16-308 establishes the program. Section (c) addresses the assignment of actions to the program. Proposed amendments to section (c) create subsection (c)(1) using the current language of section (c), with stylistic changes. A tagline is added to subsection (c)(1).

New subsection (c)(2) and (c)(3) are also proposed. Subsection (c)(2) enumerates the actions that shall presumptively be assigned to the program. Subsection (c)(3) lists the actions that shall presumptively be excluded from the program.

Judge Bryant explained that, in late 2019, a workgroup on business and technology submitted a report with recommendations, including more specific criteria for case management and assignment. The proposed amendments establish these criteria and provide guidance to the court. There being no motion to amend or reject the proposed amendments, they were approved as presented.

Agenda Item 3. Consideration of proposed Rules changes pertaining to expungements: New Rule 4-508.1 (Expungement by Operation of Law), and amendments to Rules 4-329 (Advice of Expungement), 4-502 (Expungement Definitions), 4-508 (Court Order for Expungement of Records), and 4-510 (Compliance with Court Order for Expungement).

The Chair explained that a new statute mandates "automatic expungement" under certain circumstances. The proposed new Rule and amendments to existing Rules attempt to implement procedures to facilitate those expungements.

The Chair explained that, in normal expungement cases, the court issues an order for expungement, the clerk serves the order on persons or agencies with records subject to the order, those records are expunged, and a form is returned certifying that the person or agency has complied. He said that "automatic expungement" is a misnomer because it still requires action by the court and record custodians. There is no order to be served under the automatic expungement process, which means there is no order coming to the clerk's office to prompt the clerk to act. In addition, the case would be inactive, because three years have passed, and the records would be archived. The defendant also may petition for expungement in less than three years by following the normal process. The Chair added that the defendant has a right to be told about an expungement, normally. The proposals before the Committee were approved by the Criminal Rules Subcommittee as

a multi-part solution.

The Chair presented a "handout" version of Rule 4-508.1, Expungement by Operation of Law, for consideration.

"HANDOUT"

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

ADD new Rule 4-508.1, as follows:

RULE 4-508.1. EXPUNGEMENT BY OPERATION OF LAW

(a) Definition

In this Rule, "custodian of records" means each booking facility, law enforcement unit, and other unit of the State or political subdivision of the State that the court believes may have a record subject to expungement under Code, Criminal Procedure Article, §10-105.1.

(b) Applicability

This Rule applies to records that are required to be expunged by operation of law pursuant to Code, Criminal Procedure Article, §10-105.1 without any order of court.

Cross reference: Code, Criminal Procedure Article, §10-105.1 requires that any police record, court record, or other record maintained by the State or political subdivision of the State relating to the charging of a crime or civil offense included within that section shall be expunged three years after disposition of the charge if no charge in the case resulted in a disposition other than acquittal, dismissal, not guilty, or nolle prosequi except a nolle prosequi with a requirement of drug or alcohol treatment.

(c) Duties of Clerk

(1) Record of Identity of Custodians

Unless an alternative method is created by the Administrative Office of the Courts, upon the disposition of a charge subject to expungement under this Rule, the clerk shall make a record of all known custodians of records relating to that charge.

(2) Notice

Not later than 60 days prior to the date expungement under this Rule takes effect, the clerk shall send notice of the date the expungement takes effect to (A) the Criminal Justice Information System Central Repository, (B) each other custodian of records subject to the expungement, and (C) the person entitled to the expungement at the last known address for that person.

Cross reference: See Code, Criminal Procedure Article, § 10-105.1(b).

(d) Compliance by Custodians

No later than ten days after the effective date of the expungement stated in the notice, each custodian shall expunge all records subject to the expungement.

Cross reference: See Code, Criminal Procedure Article, §10-101 (e) for methods of expungement.

Source: This Rule is new.

Rule 4-508.1 was accompanied by the following Reporter's note:

Chapter 680, 2021 Laws of Maryland (SB 201) implements several changes to expungement procedures. Pursuant to new Code, Criminal Procedure Article, § 10-105.1, records shall be expunged by operation of law three years after a disposition if no charge in the case resulted in a disposition other than acquittal, dismissal, not guilty, or nolle prosequi,

except nolle prosequi with a requirement of drug or alcohol treatment. Proposed new Rule 4-508.1 sets forth procedures to comply with the new statute.

Section (a) provides the definition of "custodian of records," consistent with Code, Criminal Procedure Article, § 10-105.1. The applicability of the Rule is addressed in section (b). A cross reference to § 10-105.1 details the requirements of the statutory section.

Section (c) concerns the duties of the clerk when a charge is subject to expungement by operation of law. Subsection (c)(1) requires the clerk to make a record of all known custodians of records relating to the charge upon the disposition of a charge subject to expungement under Rule 4-508.1. The subsection indicates, however, that the Administrative Office of the Courts may develop an alternative method of recording the custodians. The amendments require that this information be gathered at the time of disposition because it is easier to locate at that time. The clerk requires information about the custodians to comply with the notice requirements of subsection (c)(2). Pursuant to subsection (c)(2), the clerk must send notice of the date the expungement takes effect to certain custodians and persons not later than 60 days prior to the date of expungement by operation of law. The electronic system used by the clerk can generate and provide notice to the clerk of the appropriate date of the expungement to include in the notice to custodians.

Section (d) requires the custodians to file a certificate indicating that all subject records have been expunged within thirty days after the effective date in the notice. This duty mirrors the actions required of custodians upon receipt of an order for expungement.

Proposed new Rule 4-508.1 governs the automatic

expungement process mandated by the statute. The Chair explained that a "handout" version with a revised section (d) was provided to the Committee. Section (a) defines "custodian of records" because the term is used differently than in the access Rules. Section (b) states that the Rule applies to records that must be expunged by operation of law under the statute. Section (c) outlines the clerk's duties, including making a record of custodians at the time of the disposition, and sending notice prior to the expungement. Section (d) of the handout requires the custodians to comply within 10 days of the notice.

Mr. Shellenberger moved to adopt the handout version of Rule 4-508.1. The motion was seconded. By consensus, the Committee approved the Rule as presented.

The Chair presented Rule 4-329, Advice of Expungement, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-329 by adding new subsections (a) (1), (a) (2), and (a) (3) concerning notice pursuant to Code, Criminal Procedure Article, § 10-105.2; by creating new subsection (b) (1) with language from the current Rule to address notice required by Code, Criminal Procedure Article, § 6-232; by requiring the notice provided by subsection (b) (1) to be in writing;

by making stylistic changes to subsection (b) (1); by adding language to subsection (b) (1) concerning the delivery or sending of notice to the defendant; by deleting language in subsection (b) (1) pertaining to notices provided by Rules 4-247 and 4-248; and by adding new subsection (b) (2) concerning an exception to notice under section (b), as follows:

RULE 4-329. ADVICE OF EXPUNGEMENT

(a) Notice Pursuant to Code, Criminal Procedure Article, § 10-105.2

(1) Generally

When all of the charges in a case involving a criminal offense or a civil offense under Code, Criminal Law Article, § 5-601(C) (2) (II) are disposed of by (A) acquittal, including an acquittal based on a verdict of not guilty, (B) dismissal, or (C) nolle prosequi other than nolle prosequi with a requirement of drug or alcohol treatment, the court shall provide written notice to the defendant of the defendant's right to expungement in accordance with and subject to the conditions of Code, Criminal Procedure Article, § 10-105.2.

(2) Form and Content of Notice

The notice shall be on a form approved by the State Court Administrator and shall notify the defendant of (A) the defendant's entitlement under Code, Criminal Procedure Article, § 10-105.1 to automatic expungement three years after the disposition and (B) the right to file a petition for expungement in accordance with Code, Criminal Procedure Article, Title 10, Subtitle 1 and Title 4, Chapter 500 of these Rules within three years after the disposition if accompanied by a completed General Waiver and Release form approved by the State Court Administrator. The notice shall include or be accompanied by a blank General Waiver and Release form for all tort claims relating to the charge or charges

eligible for expungement under Code, Criminal Procedure Article, § 10-105.

(3) Method of Delivery

If the defendant is in court when the disposition occurs, the written notice may be handed to the defendant in court. If the defendant does not receive the notice at that time, the court shall send the notice to the defendant by first class mail to the defendant's last known address.

(b) Notice Pursuant to Code, Criminal Procedure Article, § 6-232

(1) Generally

When all of the charges in a criminal case against a defendant are disposed of by acquittal, dismissal, probation before judgment, nolle prosequi, or stet, the court shall, pursuant to Code, Criminal Procedure Article, § 6-232, advise the defendant in writing that the defendant may be entitled to have the records relating to the charge or charges against the defendant expunged expunge the records relating to the charge or charges against the defendant in accordance with Code, Criminal Procedure Article, Title 10, Subtitle 1 and Title 4, Chapter 500 of these Rules. If the defendant is in court when the disposition occurs, the written notice may be handed to the defendant in court. If the defendant does not receive the notice at that time, the court shall send the notice to the defendant by first class mail to the defendant's last known address. If the defendant is not present, and the case has been disposed of by dismissal, nolle prosequi, or stet, the advice of expungement shall be included in the notice to the defendant required by Rules 4-247 and 4-248.

(2) Exception

If the charges were disposed of by acquittal, dismissal, or nolle prosequi without a requirement of drug or alcohol treatment, and notice has been delivered or sent to the

defendant pursuant to section (a) of this Rule,
no notice shall be sent pursuant to this
section.

Cross reference: For expungement of charges in cases that include a minor traffic violation, see Code, Criminal Procedure Article, § 10-107.

Source: This Rule is new.

Rule 4-329 was accompanied by the following Reporter's note:

Chapter 680, 2021 Laws of Maryland (SB 201) implements several changes to expungement procedures. Pursuant to new Code, Criminal Procedure Article, § 10-105.2, notice of the defendant's right to expungement and a blank General Waiver and Release form must now be provided in cases where no charge in the case resulted in a disposition other than acquittal, dismissal, not guilty, or nolle prosequi, except nolle prosequi with a requirement of drug or alcohol treatment.

Proposed new section (a) of Rule 4-329 incorporates the new notice provisions of Code, Criminal Procedure Article, § 10-105.2.

Subsection (a)(1) sets forth the application of the section to certain dispositions, following the language of the statute. Subsection (a)(2) addresses the form and content of the notice, providing that the notice shall be on a form set forth by the State Court Administrator and include certain information. The subsection further provides that the notice be accompanied by a blank General Waiver and Release form. The method of delivery of the notice is set forth in subsection (a)(3), stating that the written notice may be handed to the defendant in court. If the defendant does not receive notice in court at that time, the notice must be sent by first class mail to the defendant's last known address.

New section (b) is created to distinguish between the different notices provided by

statute. Section (b) concerns the notice required by Code, Criminal Procedure Article, § 6-232. Subsection (b)(1) is created from the current language of Rule 4-329, with some stylistic changes. New language clarifies the method of delivery, conforming it with the delivery of the notice required by section (a) of the Rule. References to the notice required by Rule 4-247 and 4-248 have been deleted because the proposed amendments to Rule 4-329 already require the sending of written notice to the defendant. Because there is a partial overlap between the notices provided in sections (a) and (b), subsection (b)(2) provides that notice under section (b) is not required if notice was sent pursuant to section (a). This exception avoids the sending of two notices.

The Chair said that proposed amendments to Rule 4-329 provide notice to the defendant of the right to petition for expungement in less than three years. The statutes governing expungements require conflicting notices to the defendant, and the proposed amendments consolidate those notices. New section (a) governs notice of expungement of criminal charges and civil offenses involving marijuana that result in a disposition of *acquittal, dismissal, not guilty, or nolle prosequi* other than one requiring drug or alcohol treatment. Section (b) governs notice pursuant to Code, Criminal Procedure Article, §6-232, including cases resolved by entry of a probation before judgment, *stet*, or *nolle prosequi* with required drug or alcohol treatment. The Rule provides that if notice is provided under section (a), the notice under section

(b) is not required.

There being no motion to amend or reject the proposed amendments to Rule 4-329, they were approved as presented.

The Chair presented a "handout" version of Rule 4-502, Expungement Definitions, for consideration.

"HANDOUT"

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-502 by adding language concerning electronic service to section (k), as follows:

RULE 4-502. EXPUNGEMENT DEFINITIONS

...

(k) Service

"Service" with respect to the application or petition means electronically serving or mailing a copy by certified mail or delivering it to any person admitting service, and with respect to any answer, notice, or order of court required by this Rule or court order to be served means electronically serving or mailing by first class mail.

...

The Chair said that a handout version of Rule 4-502 was provided to the Committee. The amendment was drafted at the request of the Major Projects Committee and Judicial Information Systems, who asked that notice given to the

State's attorneys, Criminal Justice Information System, and law enforcement be electronic.

A motion to adopt the handout version of Rule 4-502 was made and seconded. By consensus, the Committee approved the Rule as presented.

The Chair presented Rule 4-508, Court Order for Expungement of Records, and Rule 4-510, Compliance with Court Order for Expungement, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-508 by deleting certain language from section (d) and by adding to section (d) that the State Court Administrator shall transmit data electronically to the Central Repository, as follows:

RULE 4-508. COURT ORDER FOR EXPUNGEMENT OF RECORDS

. . .

(d) Service of Order and Compliance Form
Upon entry of a court order granting or denying expungement, the clerk forthwith shall serve a true copy of the order and any stay of the order on all parties to the proceeding. Upon entry of an order granting expungement, the clerk shall serve on each custodian of records designated in the order ~~and on the Central Repository~~ a true copy of the order together with a blank form of Certificate of Compliance set forth at the end of this Title as Form 4-508.3. The State Court Administrator shall transmit electronically to the Central Repository the data included in the order.

Source: This Rule is derived in part from former Rule EX7 and is in part new.

Rule 4-508 was accompanied by the following Reporter's note:

Rule 4-508 (d) details requirements for the service of a court order granting expungement, noting that the clerk shall serve a copy of the order on each custodian of records designated in the order and the Central Repository. Proposed amendments to Rule 4-508 (d) delete the requirement that the order be served on the Central Repository and instead require electronic transmission of the data in the order by the State Court Administrator to the Central Repository. The proposed amendments are recommended by the State Court Administrator and the Major Projects Committee. Permitting expungement data to be transmitted electronically will eliminate the need for the Central Repository to process paper orders and will streamline the process.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-510 by clarifying that the Central Repository receives notice of the data included in certain orders and by making stylistic changes, as follows:

RULE 4-510. COMPLIANCE WITH COURT ORDER FOR EXPUNGEMENT

Upon receipt of an order for expungement that is not stayed or notice that a stay has been lifted, or, in the case of the Central Repository, notice of the data included in the order or lifting of a stay, each custodian of records subject to the order and the Central

Repository shall forthwith remove the records from public inspection. As soon as practicable but in no event later than 60 days after the entry of a court order for expungement, or if the order for expungement is stayed, 30 days after the stay is lifted, every custodian of police records and court records subject to the order, including the Central Repository, shall comply with the order, file an executed Certificate of Compliance, and serve a copy of the certificate on the applicant or petitioner.

Source: This Rule is derived from former Rule EX9.

Rule 4-510 was accompanied by the following Reporter's note:

Rule 4-510 addresses compliance with an order of expungement by custodians of records. Proposed amendments to Rule 4-510 add language indicating that the Central Repository receives notice of the data included in an order for expungement or lifting of a stay instead of receiving a paper order. The amendments further clarify that the Central Repository must still comply with the order, file an executed Certificate of Compliance, and serve a copy of the certificate on the applicant or petitioner. The proposed amendments are recommended by the State Court Administrator and the Major Projects Committee. Permitting expungement data to be transmitted electronically will eliminate the need for the Central Repository to process paper orders and will streamline the process.

The Chair explained that the remaining amendments to Rules 4-508 and 4-510 make similar changes regarding electronic notice. There being no motion to amend or reject

the proposed amendments to the Rules, they were approved as presented.

Agenda Item 4. Consideration of proposed amendments to Rules 4-212 (Issuance, Service, and Execution of Summons or Warrant); 4-248 (Stet); 4-251 (Motions in District Court); 4-252 (Motions in Circuit Court); 4-342 (Sentencing - Procedure); 4-601 (Search Warrants); and 4-612 (Order for Cell Site Simulator or Electronic Device Location Information) and proposed new Rule 4-613 (Order for Forensic Genetic Genealogical DNA Analysis and Search).

Mr. Marcus presented Rule 4-212, Issuance, Service, and Execution of Summons or Warrant, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-212 by creating new subsection (d)(1)(B)(i) using language from former subsection (d)(1)(B), by making stylistic changes to subsection (d)(1)(B)(i), and by adding new subsection (d)(1)(B)(ii) concerning the recall of warrants issued by commissioners, as follows:

RULE 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR WARRANT

...

(c) Summons - Service

The summons and charging document shall be served on the defendant by mail or by personal service by a sheriff or other peace officer, as directed (1) by a judicial officer in the District Court, or (2) by the State's Attorney in the circuit court.

(d) Warrant - Issuance; Inspection

(1) In the District Court.

(A) By Judge

A judge may, and upon request of the State's Attorney shall, issue a warrant for the arrest of the defendant, other than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that (i) the defendant has previously failed to respond to a summons that has been personally served or a citation, or (ii) there is a substantial likelihood that the defendant will not respond to a summons, or (iii) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court, or (iv) the defendant is in custody for another offense, or (v) there is probable cause to believe that the defendant poses a danger to another person or to the community. A copy of the charging document shall be attached to the warrant.

(B) By Commissioner

(i) Generally

On review of an application by an individual for a statement of charges, a commissioner may issue a warrant for the arrest of the defendant, other than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that ~~(i)~~(1) the defendant has previously failed to respond to a summons that has been personally served or a citation, or ~~(ii)~~(2) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court, or ~~(iii)~~(3) the defendant is in custody for another offense, or ~~(iv)~~(4) there is probable cause to believe that the defendant poses a danger to another person or to the community. A copy of the charging document shall be attached to the warrant.

(ii) Recall of Warrant

A judge of the District Court or a circuit court, upon a finding of good cause, may recall a warrant issued by a commissioner and issue a summons pursuant to section (c) of this Rule.

Cross reference: See Code, Courts Article, § 2-607.

(2) In the Circuit Court

Upon the request of the State's Attorney, a judge may order, in writing or on the record, issuance of a warrant for the arrest of a defendant, other than a corporation, if an information has been filed against the defendant and the circuit court or the District Court has made a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document or if an indictment has been filed against the defendant; and (A) the defendant has not been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2, or (B) the court finds there is a substantial likelihood that the defendant will not respond to a summons. A copy of the charging document shall be attached to the warrant. Unless the court finds that there is a substantial likelihood that the defendant will not respond to a criminal summons, the court shall not order issuance of a warrant for a defendant who has been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2 if the circuit court charging document is based on the same alleged acts or transactions. When the defendant has been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2, the issuance of a warrant for violation of conditions of release is governed by Rule 4-217.

(3) Inspection of the Warrant and Charging Document

Unless otherwise ordered by the court, files and records of the court pertaining to a warrant issued pursuant to subsection (d)(1) or

(d) (2) of this Rule and the charging document upon which the warrant was issued shall not be open to inspection until either (A) the warrant has been served and a return of service has been filed in compliance with section (g) of this Rule or (B) 90 days have elapsed since the warrant was issued. Thereafter, unless sealed pursuant to Rule 4-201 (d), the files and records shall be open to inspection.

Committee note: This subsection does not preclude the release of otherwise available statistical information concerning unserved arrest warrants nor does it prohibit a State's Attorney or peace officer from releasing information pertaining to an unserved arrest warrant and charging document.

Cross reference: See Rule 4-201 concerning charging documents. See Code, General Provisions Article, § 4-316, which governs inspection of court records pertaining to an arrest warrant.

...

Rule 4-212 was accompanied by the following Reporter's

note:

Chapter 594, 2021 Laws of Maryland (HB 366) permits a judge of the District Court or of the circuit court to recall an arrest warrant issued by a District Court commissioner and issue a summons in its place upon a finding of good cause.

Proposed amendments to Rule 4-212 account for the new law. Rule 4-212 (d) (1) (B) concerns the ability of a commissioner to issue an arrest warrant. Proposed amendments to Rule 4-212 create new subsection (d) (1) (B) (i) with the language of former subsection (d) (1) (B), with stylistic changes. New subsection (d) (1) (B) (ii) addresses the recall of arrest warrants issued by commissioners as permitted in Chapter 594, 2021 Laws of Maryland (HB 366).

Mr. Marcus said that the proposed amendments to Rule 4-212 implement a recent statute that addresses concerns over the authority of a circuit court judge to recall a warrant issued by a District Court commissioner. Chief Judge Morrissey explained that the legislation was unnecessary because judges inherently have the authority to recall a warrant, and all judges are cross-designated. Mr. Marcus explained that the proposed amendment captures a practice that is already happening. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Marcus presented Rule 4-248, *Stet*, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-248 by adding language to section (b) requiring a court order, as follows:

RULE 4-248. STET

(a) Disposition by *Stet*

On motion of the State's Attorney, the court may indefinitely postpone trial of a charge by marking the charge "stet" on the docket. The defendant need not be present when a charge is stetted but if neither the defendant nor the defendant's attorney is present, the clerk shall send notice of the stet to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. Notice shall not be sent if either the defendant or the defendant's

attorney was present in court when the charge was stetted. If notice is required, the clerk may send one notice that lists all of the charges that were stetted. A charge may not be stetted over the objection of the defendant. A stetted charge may be rescheduled for trial at the request of either party within one year and thereafter only by order of court for good cause shown.

(b) Effect of Stet

When a charge is stetted, the court shall order the clerk ~~shall to~~ take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of the charge, unless the court orders that any warrant or detainer shall remain outstanding.

Committee note: For provisions relating to bail or recognizance when criminal charges are stetted, see Code, Criminal Procedure Article, § 5-208.

Cross reference: For provisions relating to expungement of the records after a stet has been entered in a case, see Rule 4-329. For provisions relating to a stet with the requirement of drug or alcohol treatment in non-violent crimes, see Code, Criminal Procedure Article, § 6-229.

Source: This Rule is derived from former Rule 782 c and d and M.D.R. 782 c and d.

Rule 4-248 was accompanied by the following Reporter's note:

On June 17, 2021, the Committee approved changes to Title 11, Chapter 400 concerning delinquency and citation proceedings in Juvenile Court. Proposed new Rule 11-420, addressing stetted cases, was derived from Rule 4-248. During the discussion of Rule 11-420, it was noted that the clerk does not take action to recall or revoke any outstanding

warrant, writ, or detainer without a court order. Accordingly, language was added to proposed Rule 11-420 (c) stating that the court shall order the clerk to take action to recall or revoke any outstanding warrant, writ, or detainer when a stet is entered on the docket.

Rule 4-248 (b) currently requires the clerk to take necessary action when a stet is entered on the docket without referencing a court order. Proposed amendments to section (b) add that the court shall order the clerk to take the action necessary to recall or revoke any outstanding warrants or detainees that could lead to the arrest or detention of the defendant because of the charge. The amendments mirror the language recently approved by the Committee in proposed new Rule 11-420 (c).

Mr. Marcus explained that the amendment to Rule 4-248 conforms it to a change made as part of the discussion of the new Title 11 Juvenile Rules approved by the Committee earlier this year. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Marcus presented Rule 4-251, Motions in District Court, and Rule 4-252, Motions in Circuit Court, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-251 by adding a citation to the cross reference after subsection (b) (3), as follows:

RULE 4-251. MOTIONS IN DISTRICT COURT

...

(b) When Made; Determination

(1) A motion asserting a defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense shall be made and determined before the first witness is sworn and before evidence is received on the merits.

(2) A motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial.

(3) A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court. See also *Davis v. State, ___ Md. (2021)* for discussion of the statutory factors in Code, Criminal Procedure Article, § 4-202(d) governing transfer of jurisdiction to the juvenile court.

(4) Other motions, including a motion under Code, Courts Article, § 10-923, may be determined at any appropriate time.

...

Rule 4-251 was accompanied by the following Reporter's

note:

On June 12, 2021, the Court of Appeals issued a decision in *Davis v. State, ___ Md. ___ (2021)*, addressing a trial court's denial of a child's request for waiver to the juvenile court in a criminal action. The Court addressed the statutory factors governing transfer of jurisdiction in Code, Criminal

Procedure Article, § 4-202(d). A proposed amendment to Rule 4-251 adds a cross reference to the recent decision after subsection (b) (3), including a short description of the relevance to the subsection.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-252 by adding a citation to the cross reference after subsection (g) (2), as follows:

RULE 4-252. MOTIONS IN CIRCUIT COURT

...

(g) Determination

(1) Generally

Motions filed pursuant to this Rule shall be determined before trial and, to the extent practicable, before the day of trial, except that the court may defer until after trial its determination of a motion to dismiss for failure to obtain a speedy trial. If factual issues are involved in determining the motion, the court shall state its findings on the record.

(2) Motions Concerning Transfer of Jurisdiction to the Juvenile Court

A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court. See also Davis v. State, Md. (2021) for discussion of the statutory factors in Code, Criminal Procedure

Article, § 4-202(d) governing transfer of jurisdiction to the juvenile court.

...

Rule 4-252 was accompanied by the following Reporter's note:

On June 12, 2021, the Court of Appeals issued a decision in *Davis v. State*, ___ Md. __ (2021), addressing a trial court's denial of a child's request for waiver to the juvenile court in a criminal action. The Court addressed the statutory factors governing transfer of jurisdiction in Code, Criminal Procedure Article, § 4-202(d). A proposed amendment to Rule 4-252 adds a cross reference to the recent decision after subsection (g)(2), including a short description of the relevance to the subsection.

Mr. Marcus explained that a recent Court of Appeals opinion (*Davis v. State*, 474 Md. 439 (2021)) provided an overview of the analysis required of the court when determining whether to waive jurisdiction and transfer a case involving a juvenile to the juvenile court. The cross references in the motions Rules for the District Court and the circuit courts are amended to address the decision. There being no motion to amend or reject the proposed Rules, they were approved as presented.

Mr. Marcus presented Rule 4-342, Sentencing - Procedure, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 by adding a cross reference to *Mainor v. State* following section (e), as follows:

Rule 4-342. SENTENCING - PROCEDURE

. . .

(e) Allocution and Information in Mitigation.

Before imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

Cross reference: See *Mainor v. State*, Md. (2021).

. . .

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 772 b and M.D.R. 772 a.
Section (c) is derived from former Rule 772 c and M.D.R. 772 b.
Section (d) is new.
Section (e) is derived from former Rule 772 d and M.D.R. 772 c.
Section (f) is derived from former Rule 772 e and M.D.R. 772 d.
Section (g) is derived from former Rule 772 f and M.D.R. 772 e.
Section (h) is in part derived from former Rule 772 h and M.D.R. 772 g and in part new.
Section (i) is new.
Section (j) is new.
Section (k) is new.

Rule 4-342 was accompanied by the following Reporter's

note:

A cross reference to *Mainor v. State*, ___ Md. ___ (No. 55, September Term, 2020, filed August 11, 2021) is proposed to be added following section (e) of Rule 4-342. In this opinion, the Court reiterates that a defendant has an "absolute right to allocution, which includes an absolute right to present mitigating information, prior to sentencing" (Id. at 10).

Mr. Marcus explained that the Court of Appeals in *Mainor v. State*, 475 Md. 487 (2021), issued a reminder to parties and judges of the need to be deliberate in sentencing. In that case, the judge made comments at sentencing while the jury remained in the courtroom, which the Court of Appeals found concerning. The opinion suggests that the sentencing phase of a case should be thoughtful and provide the defendant and counsel an opportunity to put together an argument in mitigation. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Mr. Marcus presented Rule 4-601, Search Warrants, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 600 - CRIMINAL INVESTIGATIONS AND
MISCELLANEOUS PROVISIONS

AMEND Rule 4-601 by adding a cross reference after subsection (b) (1), by changing

15 days to 10 days in subsection (h)(1), and by updating a cross reference after subsection (h)(1), as follows:

RULE 4-601. SEARCH WARRANTS

...

(b) Submission of Application

(1) Method of Submission

An applicant may submit an application for a search warrant by (A) delivery of three copies of (i) the application, (ii) a supporting affidavit, and (iii) a proposed search warrant in person or by secure facsimile; or (B) transmission of those documents to the judge by secure and reliable electronic mail that permits the judge to print the complete text of the documents. If the documents are transmitted electronically the proposed warrant shall be sent in an electronic text format specified by the State Court Administrator, and the judge shall print and retain a copy of the documents.

Cross reference: See Code, Criminal Procedure Article, § 1-203 (a)(2)(vi) regarding requirements for no-knock search warrants.

(2) Request for Sealing Affidavit

The application may include a request that the affidavit be sealed pursuant to Code, Criminal Procedure Article, § 1-203(e).

(3) Discussion about Application

Upon receipt of an application, the judge may discuss it with the applicant in person or by telephone, video conferencing, or other electronic means.

Committee note: A discussion between the applicant and the judge may be explanatory in nature but may not be for the purpose of adding or changing any statement in the affidavit that is material to the determination of probable cause. Probable cause must be determined from the four corners of the affidavit. See *Abeokuto*

v. State, 391 Md. 289, 338 (2006); *Valdez v. State*, 300 Md. 160, 168 (1984) (The four-corners rule "prevents consideration of evidence that seeks to supplement or controvert the truth of grounds stated in the affidavit.").

...

(h) Unexecuted Warrants

(1) A search warrant is valid for 15 10 days from the date it was issued and may be served only within that time. After the expiration of 15 10 days, the warrant is void.

Cross reference: See Code, Criminal Procedure Article, § 1-203(a)~~(4)~~(5).

(2) A search warrant that becomes void under subsection (h)(1) of this Rule shall be returned to the judge who issued it. The judge may destroy the warrant and related papers or make any other disposition the judge deems proper.

...

Rule 4-601 was accompanied by the following Reporter's

note:

Chapter 62, 2021 Laws of Maryland (SB 178) addresses requirements for no-knock search warrants and other aspects of the warrant process. Chapter 62 also states that searches and seizures under the authority of a search warrant shall be made within 10, formerly 15, days after the day that the search warrant is issued.

Rule 4-601 concerns search warrants. A proposed cross reference is added after section (b)(1) highlighting where to find the statutory requirements for no-knock warrants. Pursuant to the amendments to Code, Criminal Procedure Article, § 1-203 made by Chapter 62, subsection (h)(1) is amended to change 15 days to 10 days. A cross reference after subsection (h)(1) is

updated to account for the renumbering of sections by Chapter 62.

Mr. Marcus explained that the Maryland Police Accountability Act of 2021, referred to as "Anton's Law," in part restricts the use of "no-knock" search warrants. The statute restricts when and under what circumstances the authority should be given to enter a home with a no-knock warrant. Rule 4-601 is amended to reference the statute and makes the necessary changes to the time to execute such a warrant.

Mr. Marcus pointed out that the statute requires a police supervisor and a state's attorney to review and approve an application for a no-knock warrant. Mr. Shellenberger said that this was the practice already in some jurisdictions, but not in others. He said that he has asked the Attorney General's Office for an opinion regarding whether the statute requires him as the State's Attorney to sign off or if one of his assistants is authorized to do so. He noted that the statute is phrased similarly to the wiretap statute, which requires the elected State's Attorney to give the authorization.

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

Mr. Marcus presented Rule 4-612, Order for Cell Site

Simulator or Electronic Device Location Information, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

AMEND Rule 4-612 by adding new subsections (b) (1), (b) (2), and (b) (3) concerning the submission of an application for an order, by re-lettering former section (b) as new subsection (c) (1), by adding a tagline to and deleting certain language from new subsection (c) (1), and by adding new subsection (c) (2), as follows:

RULE 4-612. ORDER FOR CELL SITE SIMULATOR OR ELECTRONIC DEVICE LOCATION INFORMATION

(a) Definitions

The definitions in Code, Criminal Procedure Article, § 1-203.1 (a) apply in this Rule.

(b) Submission of Application for Order

(1) Generally

The application for an order for cell site simulator or electronic device location information shall conform to the requirements of Code, Criminal Procedure Article, § 1-203.1.

(2) Method of Submission

An applicant may submit the application by delivering the application, the affidavit, and a proposed court order to a judge (A) in-person or (B) by secure and reliable fax or electronic mail that permits the judge to print the complete text of the documents.

(3) Discussion About Application

Upon receipt of an application, the

judge may discuss it with the applicant in person or by telephone, video conferencing, or other electronic means.

~~107~~(c) Issuance of Order

(1) Generally

A court may issue an order authorizing or directing a law enforcement officer to use a cell site simulator or obtain location information from an electronic device if there is probable cause to believe that a misdemeanor or felony has been or will be committed by the owner or user of the electronic device or by an individual about whom the information sought by the cell site simulator or the location information is being sought, and the information sought by the cell site simulator or the location information being sought (1) is evidence of or will lead to evidence of the misdemeanor or felony being investigated or (2) will lead to the apprehension of an individual for whom an arrest warrant has been previously issued. The ~~application for the order~~, the order issued, and the notice of the order shall conform to the requirements of Code, Criminal Procedure Article, § 1-203.1.

(2) Method of Issuance

The judge may issue an order authorizing or directing a law enforcement officer to use a cell site simulator or obtain location information from an electronic device by (A) signing an order and recording on it the date and time of issuance, and (B) delivering the signed and dated order, along with a copy of the application and affidavit, to the applicant in person or by secure and reliable facsimile or electronic mail that permits the applicant to print the complete text of the documents.

Source: This Rule is new.

Rule 4-612 was accompanied by the following Reporter's

note:

Chapter 392, 2021 Laws of Maryland (HB 477) amends Code, Criminal Procedure Article, § 1-203.1 to create a process by which an application for a court order to use a cell site simulator or to obtain location information may be submitted to a judge. Amendments to Rule 4-612 are proposed to account for the details added to § 1-203.1 by Chapter 392.

New section (b) addresses the submission of an application for the order. Subsection (b) (1) provides that submissions must generally comply with Code, Criminal Procedure Article, § 1-203.1. Subsection (b) (2) sets forth the different methods of submission, either in-person or by secure and reliable fax or electronic mail. Subsection (c) (3) indicates the methods by which the court may discuss an application with the applicant.

Former section (c), with the deletion of certain language, is renamed as subsection (c) (1), providing general information about the issuance of orders. New subsection (c) (2) addresses the method of issuance of an order authorizing or directing a law enforcement officer to use a cell site simulator or obtain location information from an electronic device. Issuance of such orders involves signing the order and recording the date and time of issuance, as well as delivering certain documents to the applicant in person or by secure and reliable facsimile or electronic mail.

Mr. Marcus explained that Rule 4-612 applies to so-called "stingray" devices, which can obtain location information by mimicking a cell phone tower. A statute amends the process for application for a court order to use such a device. The proposed amendments use the language from the statute. There being no motion to amend or reject the proposed Rule, it was

approved as presented.

Mr. Marcus presented Rule 4-613, Order for Forensic Genetic Genealogical DNA Analysis and Search, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

ADD new Rule 4-613, as follows:

RULE 4-613. ORDER FOR FORENSIC GENETIC GENEALOGICAL DNA ANALYSIS AND SEARCH

(a) Applicability; Definitions

(1) Applicability

This Rule applies to orders for a forensic genetic genealogical DNA analysis and search ("FGGS") pursuant to Code, Criminal Procedure Article, §17-102.

(2) Definitions

The definitions contained in Code, Criminal Procedure, §17-101 apply in this Rule.

(b) Issuance of Order

A court shall issue an order authorizing the initiation of a FGGS if the FGGS is certified before the court in accordance with Code, Criminal Procedure Article, §17-102. The application for the order, the order issued, and the notice of the order shall conform to the requirements of Code, Criminal Procedure Article, §17-102.

Cross reference: See Code, Criminal Procedure Article, §17-102 (g) for requirements to collect a DNA sample.

(c) Orders to Destroy Samples and Information

(1) Issuance

Except as provided in Code, Criminal Procedure Article, §17-102 (h)(1)(ii), on completion of (A) an FGGS investigation that does not result in a prosecution or results in an acquittal, (B) a sentence and postconviction litigation associated with a conviction obtained through the use of FGGS, or (C) any criminal prosecution that may arise from the FGGS, the authorizing court or any court that has jurisdiction over any criminal case that arose from the FGGS shall issue orders to all persons in possession of DNA samples gathered in the FGGS and all genetic genealogy information derived from the FGG analysis of those samples to destroy the samples and information.

(2) Notice to Court

If a FGGS investigation does not result in a prosecution, the law enforcement agent who sought authorization of the FGGS shall notify the court in writing when the investigation is completed. If an FGGS investigation results in prosecution, the prosecutor shall notify the court in writing when an order to destroy samples and information pursuant to subsection (c)(1) of this Rule may be issued.

(3) Content

The orders shall (A) require the removal and destruction of any FGG profiles previously uploaded to direct-to-consumer or publicly available open-data personal genomics databases and (B) provide notice by certified delivery to individuals entitled to notice pursuant to Code, Criminal Procedure Article, §17-102(h)(3).

QUERY: How will the Court know what persons are in possession of samples gathered in the FGGS?

Source: This Rule is new.

Rule 4-613 was accompanied by the following Reporter's

note:

Chapters 681/682, 2021 Laws of Maryland (HB 240/SB 187) sets forth the requirements to seek judicial authorization for a forensic genetic genealogical DNA analysis and search ("FGGS"). Proposed new Rule 4-613 addresses this new process.

Section (a) addresses the applicability of the Rule and the relevant definitions.

Subsection (a)(1) clarifies that the Rule applies to an application for a FGGS.

Subsection (a)(2) states that the definitions in Code, Criminal Procedure, §17-101 apply to the Rule.

Section (b) concerns the issuance of an order authorizing a FGGS. The court shall authorize the FGGS if the FGGS is certified before the court in accordance with Code, Criminal Procedure Article, § 17-102.

Additional language explains that the application for the order, the order issued, and the notice of the order shall conform to the requirements of the Code section. A cross reference following section (b) cites the Code section permitting covert collection of a DNA sample.

Section (c) implements Code, Criminal Procedure Article, §17-102 (h) requiring the destruction of samples and information at a certain time after a FGGS. Provisions concerning the necessary court order are included in the section.

Mr. Marcus said that Rule 4-613 is new and introduces the term "forensic genealogical DNA analysis and search" ("FGGS"), which refers to the use of private DNA databases in criminal investigations. He said that the widely-publicized case of the Golden State Killer, a 40-year-old cold case, involved

identification of a suspect through a third-party direct-to-consumer DNA database. These private vendors have different databases than the FBI's DNA database. Proposed Rule 4-613 requires court authorization for use of these databases in the course of a criminal investigation.

Mr. Shellenberger said that the legislation has been in the works for three years, and an education program for the Judiciary is being created. He explained that the legislation controls how and when the State can obtain a DNA sample to submit for comparison to a private database. He said that the type of search being contemplated is rare and has only happened less than ten times in Maryland. A workgroup is preparing a draft warrant, which will include the information regarding who is in possession of samples, to answer the query at the end of the draft Rule.

Mr. Shellenberger continued that the statute also permits a convicted individual to make a request for analysis. Judge Bryant asked how the subject of an analysis is made aware that it has occurred. Mr. Shellenberger responded that Judge Bryant's concern may need to be addressed in future iterations of the Rule.

Mr. Laws asked about the language related to destruction of the sample, which can be used to exonerate as well as to implicate an individual. Mr. Shellenberger said that the

sample taken from a crime scene will never be destroyed, but law enforcement may suspect a relative based on a partial DNA match. He confirmed that, under the statute, the sample obtained to check for a match from a third party must be destroyed if there is no match. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 5. Consideration of proposed amendments to Rule 16-208 (Cell Phones; Other Electronic Devices; Cameras).

The Chair presented Rule 16-208, Cell Phones; Other Electronic Devices; Cameras, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 200 - GENERAL PROVISIONS - CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-208 by deleting language in subsection (b) (2) (E) (ii) pertaining to liberally allowing use of electronic devices, by adding language in subsection (b) (2) (E) (ii) permitting an attorney to use electronic devices in court proceedings, by adding new subsections (b) (2) (E) (ii) (a)-(e) establishing the criteria that must be followed when an attorney uses an electronic device during a court proceeding, and by adding language to subsection (b) (2) (F) so that this subsection applies to the use of electronic devices in court and not just their possession, as follows:

Rule 16-208. CELL PHONES; OTHER ELECTRONIC DEVICES; CAMERAS

(a) Definitions.

In this Rule the following definitions apply:

(1) Court Facility.

“Court facility” means the building in which a circuit court or the District Court is located. If the court is in a building that also is occupied by county or State executive agencies having no substantial connection with the court, “court facility” means only that part of the building occupied by the court.

(2) Electronic Device.

“Electronic device” means (A) a cell phone, a computer, and any other device that is capable of transmitting, receiving, or recording messages, images, sounds, data, or other information by electronic means or that, in appearance, purports to be a cell phone, computer, or such other device; and (B) a camera, regardless of whether it operates electronically, mechanically, or otherwise and regardless of whether images are recorded by using digital technology, film, light-sensitive plates, or other means. “Electronic device” does not include court equipment used by judicial officials or personnel.

(3) Local Administrative Judge.

“Local Administrative Judge” means the County Administrative Judge in a circuit court and the District Administrative Judge in the District Court.

(b) Possession and Use of Electronic Devices.

(1) Generally.

Subject to inspection by court security personnel and the restrictions and prohibitions set forth in section (b) of this Rule, a person may (A) bring an electronic device into a court facility and (B) use the electronic device for

the purpose of sending and receiving phone calls and electronic messages and for any other lawful purpose not otherwise prohibited.

(2) Restrictions and Prohibitions.

(A) Rule 5-615 Order.

An electronic device may not be used to facilitate or achieve a violation of an order entered pursuant to Rule 5-615 (d).

(B) Photographs and Video.

Except as permitted in accordance with this Rule, Rules 16-502, 16-503, 16-504, or 16-603, or as expressly permitted by the Local Administrative Judge, a person may not (i) take or record a photograph, video, or other visual image in a court facility, or (ii) transmit a photograph, video, or other visual image from or within a court facility.

Committee note: The prohibition set forth in subsection (b) (2) (B) of this Rule includes still photography and moving visual images. It is anticipated that permission will be granted for the taking of photographs at ceremonial functions.

(C) Interference with Court Proceedings or Work.

An electronic device shall not be used in a manner that interferes with court proceedings or the work of court personnel.

Committee note: An example of a use prohibited by subsection (b) (2) (C) of this Rule is a loud conversation on a cell phone near a court employee's work station or in a hallway near the door to a courtroom.

(D) Jury Deliberation Room.

An electronic device may not be brought into a jury deliberation room after deliberations have begun.

(E) Courtroom.

(i) Except with the express permission of the presiding judge or as otherwise

permitted by this Rule, Rules 16-502, 16-503, 16-504, or 16-603, all electronic devices inside a courtroom shall remain off and no electronic device may be used to receive, transmit, or record sound, visual images, data, or other information.

(ii) Subject to subsection (b) (2) (F) of this Rule, ~~the court shall liberally allow the attorneys in a proceeding currently being heard, their employees, and agents to make are permitted the reasonable and lawful use of an electronic device in connection with the proceeding provided that:~~

- (a) the electronic device makes no audible sound;
- (b) the electronic device is positioned so the screen is unseen by the trier of fact or any witness;
- (c) the electronic device is not used to record any part of the proceeding;
- (d) the electronic device is not used to communicate with any other person during the proceeding without the express permission of the court; and
- (e) a court shall not deny reasonable and lawful use of an electronic device, except upon a finding of good cause made upon the record.

(F) Security or Privacy Issues in a Particular Case. Upon a finding that the circumstances of a particular case raise special security or privacy issues that justify a restriction on the possession or use of electronic devices, the Local Administrative Judge or the presiding judge may enter an order limiting or prohibiting the possession of electronic devices in a courtroom or other designated areas of the court facility. The order shall provide for notice of the designated areas and for the collection of the devices and their return when the individual who possessed the device leaves the courtroom or other area. No liability shall accrue to the

security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(c) Violation of Rule.

(1) Security personnel or other court personnel may confiscate and retain an electronic device that is used in violation of this Rule, subject to further order of the court or until the owner leaves the building. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(2) An individual who willfully violates this Rule or any reasonable limitation imposed by the local administrative judge or the presiding judge may be found in contempt of court and sanctioned in accordance with the Rules in Title 15, Chapter 200.

(d) Notice. Notice of the provisions of sections (b) and (c) of this Rule shall be:

(1) posted prominently at the court facility;

(2) included on the main Judiciary website and the website of each court; and

(3) disseminated to the public by any other means approved in an administrative order of the Chief Judge of the Court of Appeals.

Source: This Rule is derived from former Rule 16-110 (2016).

Rule 16-208 was accompanied by the following Reporter's

note:

Proposed amendments to Rule 16-208 modify the procedures that govern the use of an electronic device in a court room by an attorney. These changes address a concern raised by a practitioner with inconsistent permissions granted by various courts regarding

the use of technology by attorneys during court proceedings. In some instances, an assistant State's Attorney is permitted to use a computer at the trial table, and the Defendant's attorney was denied the same privilege. In other instances, neither attorney is permitted to use a computer at the trial table.

Subsection (b) (2) (E) (ii) is amended to allow attorneys in a proceeding to use an electronic device provided that the conditions listed in proposed new subsections (b) (2) (E) (ii) (a)-(e) are complied with.

Subsection (b) (2) (F) is amended so that it applies to the use of electronic devices in court and not just their possession.

The Chair said that amendments to Rule 16-208 are recommended to address a concern raised by an attorney who said that he has encountered judges who will not permit him to use a computer at counsel table when he is acting as defense counsel. The attorney reported that judges typically permit him, upon request, to use a laptop computer, but some judges refuse no matter the circumstances. The Subcommittee looking at the matter determined that computers are a common tool for attorneys and should be permitted absent a compelling reason to refuse permission. Judge Bryant said that subsection (b) (2) (E) (ii) (e) should be a stand-alone provision, because it is a mandate. She moved to restyle the Rule to move that provision to another location in the Rule. The motion was seconded. By consensus, the Committee approved the motion.

There being no further motion to amend or reject the

proposed Rule, it was approved as presented, subject to being restyled.

Agenda Item 6. Consideration of proposed amendments to Rule 16-302 (Assignment of Actions for Trial; Case Management Plan).

The Chair presented Rule 16-302, Assignment of Actions for Trial; Case Management Plan, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION
AND CASE MANAGEMENT

AMEND Rule 16-302 by substituting "susceptible or older adult" for "vulnerable adult" in subsection (b) (2) (A) and a Committee note following the subsection and by adding a cross reference after the subsection, as follows:

RULE 16-302. ASSIGNMENT OF ACTIONS FOR TRIAL;
CASE MANAGEMENT PLAN

(a) Generally

The County Administrative Judge in each county shall supervise the assignment of actions for trial in a manner that maximizes the efficient use of available judicial personnel, brings pending actions to trial, and disposes of them as expeditiously as feasible.

(b) Case Management Plan; Information Report

(1) Development and Implementation

(A) The County Administrative Judge shall develop and, upon approval by the Chief Judge of the Court of Appeals, implement a case

management plan for the prompt and efficient scheduling and disposition of actions in the circuit court. The plan shall include a system of differentiated case management in which actions are classified according to complexity and priority and are assigned to a scheduling category based on that classification and, to the extent practicable, follow any template established by the Chief Judge of the Court of Appeals.

(B) The County Administrative Judge shall send a copy of the plan and all amendments to it to the State Court Administrator. The State Court Administrator shall review the plan or amendments and transmit the plan or amendments, together with any recommended changes, to the Chief Judge of the Court of Appeals.

(C) The County Administrative Judge shall monitor the operation of the plan, develop any necessary amendments to it, and, upon approval by the Chief Judge of the Court of Appeals, implement the amended plan.

(2) Family Law Actions

(A) The plan shall include appropriate procedures for the granting of emergency relief and expedited case processing in family law actions when there is a credible prospect of imminent and substantial physical or emotional harm to a child or ~~vulnerable~~ susceptible or older adult.

Committee note: The intent of this subsection is that the case management plan contain procedures for assuring that the court can and will deal immediately with a credible prospect of imminent and substantial physical or emotional harm to a child or ~~vulnerable~~ susceptible or older adult, at least to stabilize the situation pending further expedited proceedings. Circumstances requiring expedited processing include threats to imminently terminate services necessary to the physical or mental health or sustenance of the child or ~~vulnerable~~ susceptible or older adult or the imminent removal of the child or

vulnerable susceptible or older adult from the jurisdiction of the court.

Cross reference: See Code, Estates & Trust Article, § 13-601 for definitions of the terms "Older Adult" and "Susceptible Adult."

. . .

Source: This Rule is derived in part from former Rule 16-202 (2016) and is in part new.

Rule 16-302 was accompanied by the following Reporter's note:

Chapter 311, 2021 Laws of Maryland (SB 327) establishes a civil cause of action for a financially exploited "susceptible adult" or "older adult," formerly referred to as a "vulnerable adult." Proposed amendments to Rule 16-302 change the term "vulnerable adult" to "susceptible or older adult" and add a cross reference to Code, Estates and Trusts Article, §13-601 for definitions of the terms "older adult" and "susceptible adult."

The Chair explained that the proposed amendments follow a statute that changes certain terminology. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 8. Consideration of proposed amendments to Rule 16-913 (Access to Administrative Records).

The Chair presented Rule 16-913, Access to Administrative Records, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 900 - ACCESS TO JUDICIAL RECORDS
DIVISION 2 - LIMITATIONS ON ACCESS

AMEND Rule 16-913 by replacing references to a jury commissioner in subsection (a)(5) with references to a unit within the Administrative Office of the Courts selected by the State Court Administrator and by adding a cross reference after subsection (a)(5), as follows:

RULE 16-913. ACCESS TO ADMINISTRATIVE RECORDS

(a) Records Pertaining to Jurors

(1) A custodian shall deny inspection of an administrative record used by a jury commissioner in the jury selection process, except (i) as otherwise ordered by a trial judge in connection with a challenge under Code, Courts Article, §§ 8-408 and 8-409; or (ii) as provided in subsections (a)(2) and (a)(3) of this Rule.

(2) Upon request, the trial judge may authorize a custodian to disclose the names and zip codes of the sworn jurors contained on a jury list after the jury has been impaneled and sworn.

Cross reference: See Rule 4-312 (d).

(3) After a source pool of qualified jurors has been emptied and re-created in accordance with Code, Courts Article, § 8-207, and after every individual selected to serve as a juror from that pool has completed the individual's service, a trial judge, upon request, shall disclose the name, zip code, age, gender, education, occupation, marital status, and spouse's occupation of each person whose name was selected from that pool and placed on a jury list, unless, in the interest of justice, the trial judge determines that this information should remain confidential in whole

or in part.

(4) A jury commissioner may provide jury lists to the Health Care Alternative Dispute Resolution Office as required by that Office in carrying out its duties, subject to any regulations of that office to ensure against improper dissemination of juror data.

Cross reference: See Rule 4-312 (d).

(5) At intervals acceptable to the jury commissioner a unit within the Administrative Office of the Courts selected by the State Court Administrator, a jury commissioner the unit shall provide to the State Board of Elections and State Motor Vehicle Administration data about prospective, qualified, or sworn jurors needed to correct erroneous or obsolete information, such as that related to a death or change of address, subject to the Board's and Administration's adoption of regulations to ensure against improper dissemination of juror data.

Cross reference: See Code, Courts Article, § 8-105.

...

Rule 16-913 was accompanied by the following Reporter's

note:

Rule 16-913 concerns access to administrative records. Records relating to jurors are addressed in section (a). Current subsection (a)(5) provides that the Board of Elections and the Motor Vehicle Administration shall be provided with certain data by a jury commissioner. The Committee was informed that the Judicial Information Systems, not a jury commissioner, now transmits the data addressed in subsection (a)(5). Amendments are therefore proposed to conform the Rule to current business practice. References to a jury commissioner are replaced with references to a unit within the Administrative Office of the

Courts selected by the State Court Administrator.

A cross reference to the statutory provisions requiring the Rules to provide for the disclosure of information to the State Board of Elections and the Motor Vehicle Administration has been added after subsection (a) (5).

The Chair said that the proposed amendments conform the Rule to current practices regarding certain administrative records. There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 9. Consideration of proposed amendments to Rule 16-914 (Case Records - Required Denial of Inspection - Certain Categories).

The Chair presented Rule 16-914, Case Records - Required Denial of Inspection - Certain Categories, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURT ADMINISTRATION
CHAPTER 900 - ACCESS TO JUDICIAL RECORDS
DIVISION 2 - LIMITATIONS ON ACCESS

AMEND Rule 16-914 by adding new subsection (f) (9) pertaining to the confidentiality of certain criminal case records involving juveniles and by adding a Committee note after the new subsection, as follows:

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

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

...

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

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

(2) The following case records pertaining to search warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601, except as authorized by a judge under that Rule.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d) (3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, § 4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) Unless entered into evidence at a hearing or trial or otherwise ordered by the court, a case record pertaining to (i) a pen register or trace device applied for or ordered pursuant to Rule 4-601.1, (ii) an emergency order applied for or entered pursuant to Rule 4-602, (iii) the interception of wire or oral communications applied for or ordered pursuant to Rule 4-611, or (v) an order for electronic

device location information applied for or entered pursuant to Rule 4-612.

(5) A case record maintained under Code, Courts Article, § 9-106, of the refusal of an individual to testify in a criminal action against the individual's spouse.

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

(7) Except as otherwise provided by law, a case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, § 15-108, (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, § 14-110, or (D) the Attorney General when acting pursuant to Article V, § 3 of the Maryland Constitution or other law or a federal law enforcement agency.

Cross reference: See Code, Criminal Procedure Article, §§ 1-203.1, 9-101, 14-110, and 15-108, and Rules 4-612 and 4-643 dealing, respectively, with electronic device location, extradition warrants, States' Attorney, State Prosecutor, and grand jury subpoenas, and Code, Courts Article, §§ 10-406, 10-408, 10-4B-02, and 10-4B-03 dealing with wiretap and pen register orders. See also Code, Criminal Procedure Article, §§ 11-110.1 and 11-114 dealing with HIV test results.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of judicial records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(8) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3 (Criminal Records--Shielding).

Cross reference: See Code, Criminal Law Article, § 5-601.1 governing confidentiality of

judicial records pertaining to a citation issued for a violation of Code, Criminal Law Article, § 5-601 involving the use or possession of less than 10 grams of marijuana.

(9) The following case records pertaining to a child excluded from the jurisdiction of the Juvenile Court under Code, Courts Article, §3-8A-03 (d) (1), (4), or (5):

(A) A case record pertaining to a case where a motion to transfer jurisdiction to the Juvenile Court pursuant to Code, Criminal Procedure Article, §4-202 is pending or the time for filing such motion has not expired.

(B) A case record pertaining to a case transferred to the Juvenile Court.

Committee note: Nothing in this Rule precludes a clerk from divulging a case number to an attorney for the purpose of entering an appearance in the case or petitioning the court for access to determine whether to enter an appearance in the case.

...

Rule 16-914 was accompanied by the following Reporter's note:

Chapter 12, 2021 Laws of Maryland (SB 314 of the 2020 General Session) establishes that the confidentiality provisions of Code, Courts Article, § 3-8A-27 concerning a child's records apply under certain circumstances when a child excluded from the jurisdiction of the juvenile court under Code, Courts Article, § 3-8A-03(d) (1), (4), or (5) is charged as an adult.

Rule 16-914 (f) provides that a custodian shall deny inspection of certain case records in criminal proceedings. Proposed new subsection (f) (9) addresses case records pertaining to a child excluded from the jurisdiction of the Juvenile Court under Code, Courts Article, §3-8A-03 (d) (1), (4), or (5). Subsection (f) (9) (A) notes that case records

are confidential if pertaining to a case where a motion to transfer jurisdiction to the Juvenile Court is pending or the time to file such motion has not yet expired. Subsection (f) (2) (B) adds that case records pertaining to a case transferred to the Juvenile Court are also confidential.

A Committee note after new subsection (f) (9) notes that a clerk is not precluded from divulging a case number to an attorney for the purpose of entering an appearance in the case or petitioning the court for access to determine whether to enter an appearance in the case.

The Chair explained that the General Court Administration and Criminal Rules Subcommittees both discussed Rule 16-914 to address issues raised by a new statute which shields access to records of a juvenile charged as an adult under certain circumstances. He said that the statute applies after the juvenile is charged, during the period when the juvenile is entitled to move to transfer the case to juvenile court. If the case is transferred to juvenile court, the case is shielded. He noted that a potential unintended consequence creates an issue for an attorney seeking to enter an appearance in the juvenile's case or to review the case in anticipation of entering an appearance. Under the statute, the record is shielded, which presents a Sixth Amendment concern for a juvenile who has the right to counsel of the juvenile's choosing.

The Chair said that proposed amendments adopt the

statutory provisions about access to records, but a Committee note addresses the concerns of attorneys by permitting the clerk to provide a case number to an attorney for the purpose of entering an appearance or applying to the court for an order granting access to the record.

Judge Bryant moved to amend the Committee note to state that the attorney would petition the court for access "to the file" to determine whether to enter an appearance. Judge Ballou-Watts concurred with Judge Bryant. Ms. Lindsey said that the proposed language would be clear to clerks. The motion was seconded and approved by consensus. There being no motion to further amend or reject the proposed Rule, it was approved as amended.

Agenda Item 10. Consideration of proposed amendments to Rules 20-101 (Definitions) and 20-107 (MDEC Signature) and proposed conforming amendments to Rules 1-101 (Applicability); 1-324 (Notification of Orders, Rulings, and Court Proceedings); 7-206.1 (Record - Judicial Review of Decision of the Workers' Compensation Commission); and 16-918 (Access to Electronic Records).

The Chair presented Rule 20-101, Definitions, and Rule 20-107, MDEC Signature, as well as conforming amendments to Rules 1-101, Applicability; 1-324, Notification of Orders, Rulings, and Court Proceedings; 7-206.1, Record - Judicial Review of Decision of the Workers' Compensation Commission;

and 16-918, Access to Electronic Records, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE
MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-101 by adding new section (e) defining "digital signature" and by conforming the lettering of subsequent sections, as follows:

RULE 20-101. DEFINITIONS

...

(e) Digital Signature

A digital signature means the visual image of the signer's handwritten signature or the signer's cursive signature that was affixed using a digital program.

~~(e)~~ (f) Filer

"Filer" means a person who is accessing the MDEC system for the purpose of filing a submission and includes each person whose signature appears on the submission for that purpose.

Committee note: The internal processing of documents filed by registered users, on the one hand, and those transmitted by judges, judicial appointees, clerks, and judicial personnel, on the other, is different. The latter are entered directly into the MDEC electronic case management system, whereas the former are subject to clerk review under Rule 20-203. For purposes of these Rules, however, the term "filer" encompasses both groups.

~~(f)~~ (g) Hand-Signed or Handwritten Signature

"Hand-signed or handwritten signature" means the signer's original genuine signature on a paper document.

~~(g)~~ (h) Hyperlink

“Hyperlink” means an electronic link embedded in an electronic document that enables a reader to view the linked document.

~~(h)~~ (i) Judge

“Judge” means a judge of the Court of Appeals, Court of Special Appeals, a circuit court, or the District Court of Maryland and includes a senior judge when designated to sit in one of those courts.

~~(i)~~ (j) Judicial Appointee

“Judicial appointee” means a judicial appointee, as defined in Rule 18-200.3.

~~(j)~~ (k) Judicial Personnel

“Judicial personnel” means an employee of the Maryland Judiciary, even if paid by a county, who is employed in a category approved for access to the MDEC system by the State Court Administrator.

~~(k)~~ (l) MDEC or MDEC System

“MDEC” or “MDEC system” means the system of electronic filing and case management established by the Court of Appeals.

Committee note: “MDEC” is an acronym for Maryland Electronic Courts. The MDEC system has two components. (1) The electronic filing system permits users to file submissions electronically through a primary electronic service provider (PESP) subject to clerk review under Rule 20-203. The PESP transmits registered users' submissions directly into the MDEC electronic filing system and collects, accounts for, and transmits any fees payable for the submission. The PESP also accepts submissions from approved secondary electronic service providers (SESP) that filers may use as an intermediary. (2) The second component - the electronic case management system - accepts submissions filed through the PESP, maintains the official electronic record in an MDEC county, and performs other case management

functions.

~~(l)~~ (m) MDEC Action

“MDEC action” means an action to which this Title is made applicable by Rule 20-102.

~~(m)~~ (n) MDEC County

“MDEC County” means a county in which, pursuant to an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, MDEC has been implemented.

~~(n)~~ (o) MDEC Start Date

“MDEC Start Date” means the date specified in an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website from and after which a county first becomes an MDEC County.

~~(o)~~ (p) MDEC System Outage

(1) For registered users other than judges, judicial appointees, clerks, and judicial personnel, “MDEC system outage” means the inability of the primary electronic service provider (PESP) to receive submissions by means of the MDEC electronic filing system.

(2) For judges, judicial appointees, clerks, and judicial personnel, “MDEC system outage” means the inability of the MDEC electronic filing system or the MDEC electronic case management system to receive electronic submissions.

~~(p)~~ (q) Redact

“Redact” means to exclude information from a document accessible to the public.

~~(q)~~ (r) Registered User

“Registered user” means an individual authorized to use the MDEC system by the State Court Administrator pursuant to Rule 20-104.

~~(r)~~ (s) Restricted Information

“Restricted information” means

information that, by Rule or other law, is not subject to public inspection or is prohibited from being included in a court record absent a court order.

Committee note: There are several Rules and statutes that (1) make certain categories of records inaccessible to the public except by court order or (2) preclude certain information from being included in judicial records that otherwise are accessible to the public. See generally the Rules in Title 16, Chapter 900 and Rule 1-322.1. Filers of submissions under MDEC need to be aware of those provisions and alert the clerk to whether a document, or a part of a document, included in a submission is that kind of document or contains that kind of information. See Rules 20-201 (h), 20-201.1, and 20-203 (d), (e), and (f). Failure to comply with the requirements in those Rules may result in rejection or striking of the submission.

(s) (t) Scan

"Scan" means to convert printed text or images to an electronic format compatible with MDEC.

(t) (u) Signature

Unless otherwise specified, "signature" means the signer's typewritten name accompanied by a visual image of the signer's handwritten signature or by the symbol /s/.

Cross reference: Rule 20-107.

(u) (v) Submission

"Submission" means a pleading or other document filed in an action. "Submission" does not include an item offered or admitted into evidence in open court.

Cross reference: See Rule 20-402.

(v) (w) Tangible Item

"Tangible item" means an item that is not required to be filed electronically. A tangible item by itself is not a submission; it may either accompany a submission or be offered

in open court.

Cross reference: See Rule 20-106 (c) (2) for items not required to be filed electronically.

Committee note: Examples of tangible items include an item of physical evidence, an oversize document, and a document that cannot be legibly scanned or would otherwise be incomprehensible if converted to electronic form.

(w) (x) Trial Court

“Trial court” means the District Court of Maryland and a circuit court, even when the circuit court is acting in an appellate capacity.

Committee note: “Trial court” does not include an orphans’ court, even when, as in Harford and Montgomery Counties, a judge of the circuit court is sitting as a judge of the orphans’ court.

Source: This Rule is new.

Rule 20-101 was accompanied by the following Reporter’s note:

Proposed amendments to Rule 20-101 add a definition of “digital signature” as new section (e). The definition is needed as a result of proposed amendments to Rule 20-107 permitting documents signed under oath, affirmation, or with verification in an MDEC jurisdiction to be signed by hand or by affixing the signer’s digital signature.

Former sections (e) through (w) are relettered as sections (f) through (x) to conform with the addition of new section (e).

MARYLAND RULES OF PROCEDURE
TITLE 20 - ELECTRONIC FILING AND CASE
MANAGEMENT
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-107 by updating a cross reference after section (a); by adding language to subsection (d)(1) permitting signers to affix a digital signature to a document under oath, affirmation, or with verification; by making stylistic changes; and by updating a reference in subsection (d)(2), as follows:

RULE 20-107. MDEC SIGNATURE

(a) Signature by Filer; Additional Information Below Signature

Subject to sections (b), (c), and (d) of this Rule, when a filer is required to sign a submission, the submission shall:

(1) include the filer's signature on the submission, and

(2) provide the following information below the filer's signature: the filer's address, e-mail address, and telephone number and, if the filer is an attorney, the attorney's identifying Attorney Number registered with the Attorney Information System. That information shall not be regarded as part of the signature. A signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

Cross reference: For the definition of "signature" applicable to MDEC submissions, see Rule 20-101 ~~(t)~~(u).

...

(d) Signature Under Oath, Affirmation, or With Verification

(1) Generally

When a person is required to sign a document under oath, affirmation, or with

verification, the signer shall hand-sign the document or affix the signer's digital signature to the document. If the signature is hand-signed, the filer shall scan the hand-signed document and file the scanned document electronically. The filer shall retain the original hand-signed document or a copy of the document with the digital signature at least until the action is concluded or for such longer period ordered by the court. At any time prior to the conclusion of the action, the court may order the filer to produce the original hand-signed document.

(2) Actions for Nonpayment of Rent

In an action for nonpayment of rent under Code, Real Property Article, § 8-401, a person who signs a document under oath, affirmation, or with verification may use a signature as defined in Rule 20-101 ~~(t)~~(u). A person who signs a document under this subsection is subject to the provisions of section (e).

...

Rule 20-107 was accompanied by the following Reporter's note:

The proposed conforming amendment to the cross reference after section (a) reflects proposed amendments to Rule 20-101.

Proposed amendments to Rule 20-107 (d) reflect the growing use of digital signatures. Rule 20-107 (d) currently requires that signatures under oath, affirmation, or with verification be hand-signed and scanned when filing in MDEC jurisdictions. As a result, clerks may issue deficiency notices if a filing under oath, affirmation, or with verification does not appear to include a hand-signed signature. When viewing a document electronically, however, it is difficult to determine if a document is hand-signed or if a wet signature has been digitized. As the use

of remote and electronic means for conducting business increases, the use of digital signatures has grown more accepted and reliable. For example, programs such as Adobe and DocuSign may be used to create "original" signatures in real estate transactions.

Subsection (d)(1) is amended to indicate that a document signed under oath, affirmation, or with verification shall be hand-signed or affixed with the signer's digital signature. Additional language added and stylistic changes to the subsection account for the permitted use of digital signatures.

The updated reference in subsection (d)(2) is necessitated by proposed amendments to Rule 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 by adding a reference to Rule 20-101 (e) and updating other references in subsection (t), as follows:

RULE 1-101. APPLICABILITY

...

(t) Title 20

Title 20 applies to electronic filing and case management in the trial and appellate courts of this State as specified in Rule 20-102. Where practicable, Rules 20-101 (e), 20-101 (f)~~(g)~~, 20-101 (t)~~(u)~~, and 20-107 may be applied to the signature of a judge, judicial officer, judicial appointee, or court clerk in proceedings in a county that is not an MDEC County to the same extent they apply in an MDEC County, and (2) Rules 20-403 through 20-406 may be applied in appeals and other proceedings in the Court of Appeals and Court of Special Appeals arising out of a court that is a non-

MDEC court to the same extent they apply in matters arising out of a court in an MDEC County.

Rule 1-101 was accompanied by the following Reporter's note:

Rule 1-101 (t) provides that, where practicable, the "hand-signed or handwritten signature" and "signature" definitions of Rule 20-101 may be applied to the signature of a judge, judicial officer, judicial appointee, or court clerk in a non-MDEC county to the extent they apply in an MDEC county. A proposed amendment to section (t) adds a reference to the new "digital definition" signature added by proposed amendments to Rule 20-101.

Additional conforming amendments update references in section (t) as a result of proposed amendments to Rule 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-324 by updating a reference in subsection (b), as follows:

RULE 1-324. NOTIFICATION OF ORDERS, RULINGS, AND COURT PROCEEDINGS

...

(b) Notification When Attorney Has Entered Limited Appearance

If, in an action that is not an MDEC action as defined in Rule 20-101 ~~(n)~~(m), an attorney has entered a limited appearance for a party pursuant to Rule 2-131 or Rule 3-131 and the automated operating system of the clerk's office does not permit the sending of notifications to both the party and the

attorney, the clerk shall send all notifications required by section (a) of this Rule to the attorney as if the attorney had entered a general appearance. The clerk shall inform the attorney that, until the limited appearance is terminated, all notifications in the action will be sent to the attorney and that it is the attorney's responsibility to forward to the client notifications pertaining to matters not within the scope of the limited appearance. The attorney promptly shall forward to the client all such notifications, including any received after termination of the limited appearance.

...

Rule 1-324 was accompanied by the following Reporter's note:

The proposed conforming amendment to Rule 1-324 updates a reference in section (b) as a result of proposed amendments to Rule 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-206.1 by updating a reference in subsection (d), as follows:

RULE 7-206.1. RECORD - JUDICIAL REVIEW OF DECISION OF THE WORKERS' COMPENSATION COMMISSION

...

(d) Electronic Transmission

If the Commission is required by section (b) of this Rule or by order of court to transmit all or part of the record to the

court, the Commission may file electronically if the court to which the record is transmitted is the circuit court for an "MDEC county" as defined in Rule 20-101 ~~(m)~~(n).

...

Rule 7-206.1 was accompanied by the following Reporter's note:

The proposed conforming amendment to Rule 7-206.1 updates a reference in section (d) as a result of proposed amendments to Rule 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO JUDICIAL RECORDS

DIVISION 2 - LIMITATIONS ON ACCESS

AMEND Rule 16-918 by updating a reference in subsection (b) (1), as follows:

RULE 16-918. ACCESS TO ELECTRONIC RECORDS

...

(b) Denial of Access

(1) Restricted Information

A custodian shall take reasonable steps to prevent access to restricted information, as defined in Rule 20-101 ~~(r)~~(s), that the custodian is on notice is included in an electronic judicial record.

...

Rule 16-918 was accompanied by the following Reporter's note:

The proposed conforming amendment to Rule

16-918 updates a reference in subsection (b) (1) as a result of proposed amendments to Rule 20-101.

The Chair explained that Rule 20-101 is amended to define "digital signature." Rule 20-107 allows for a digital signature to be affixed to a document under oath or affirmation. Conforming amendments to other Rules are necessitated by the re-lettering of Rule 20-101. There being no motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 11. Consideration of proposed amendments to Rule 20-106 (When Electronic Filing Required; Exceptions) and proposed conforming amendments to Rule 2-504 (Scheduling Order).

The Chair presented Rule 20-106, When Electronic Filing Required; Exceptions, and conforming amendments to Rule 2-504, Scheduling Order, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-106 by adding new section (f) pertaining to the indexing, pre-marking, and pre-filing of documentary exhibits in a circuit court hearing or trial, as follows:

RULE 20-106. WHEN ELECTRONIC FILING REQUIRED;

EXCEPTIONS

. . .

(e) Exhibits and Other Documents Offered in Open Court

(1) Exhibits

(A) Generally

Unless otherwise approved by the court, a document offered into evidence as an exhibit in open court shall be offered in paper form. The document shall be appropriately marked.

Committee note: In a document-laden action, if practicable, the court and the parties are encouraged to agree to electronically prefiling documents to be offered into evidence, instead of offering them in paper form. Prefiling merely facilitates the offering of the document and does not constitute, of itself, an admission of the documents.

(B) Scanning and Return of Document

As soon as practicable, the clerk shall scan the document into the MDEC system and return the document to the party who offered it at the conclusion of the proceeding, unless the court orders otherwise. If immediate scanning is not feasible, the clerk shall scan the document as soon as practicable and notify the person who offered it when and where the document may be retrieved.

(2) Documents Other than Exhibits

(A) Generally

Except as otherwise provided in subsection (e) (2) (B) of this Rule, if a document in paper form is offered in open court for inclusion in the record, but not as an exhibit, the court shall accept the document, and the clerk shall follow the procedure set forth in subsection (e) (1) (B) of this Rule.

Committee note: Examples of documents other than exhibits offered for inclusion in the

record are written motions made in open court, proposed voir dire questions, proposed jury instructions, communications from a jury, and special verdict sheets.

(B) Certain Submissions by Registered Users

If a registered user offers a submission that requires prepayment of a fee, or an entry of appearance, whether or not a fee is required, in open court for inclusion in the record, but is not as an exhibit, the court may accept the submission conditionally, subject to it being electronically filed by the registered user. In criminal proceedings, the submission shall be filed by the end of the day that the submission was offered in court. In all proceedings other than criminal, the submission shall be filed no later than the end of the next business day after the submission was offered in court. If the registered user fails to file by the applicable deadline, the court may strike the submission.

(f) Pre-filing of Documentary Exhibits

(1) This section applies to documents proposed to be offered into evidence at a scheduled hearing or trial in a circuit court. This section does not apply (A) to an exhibit attached to a pleading or other paper or (B) to a rebuttal or impeachment exhibit. If the trial is to be a virtual jury trial conducted pursuant to Rule 2-807, proposed exhibits shall be filed and dealt with in accordance with section (c) of that Rule.

(2) Proposed documentary exhibits in a pending action may be pre-filed in accordance with this Rule and, if directed by the court, shall be pre-filed in accordance with this Rule.

(3) Unless otherwise directed by the court, the proposed exhibits shall be indexed, pre-numbered, and pre-filed with the clerk at least three days prior to the date of the scheduled hearing or trial [and served on the other parties]. The clerk shall enter on the docket

that proposed exhibits were filed but those documents shall not be accessible until they have been offered into evidence.

Source: This Rule is new.

Rule 20-106 was accompanied by the following Reporter's note:

Proposed amendments to Rule 20-106 address a concern raised by circuit court Clerks with whether documentary exhibits in an MDEC action should be pre-filed. Currently, the practice varies from jurisdiction to jurisdiction, and the General Court Administration Subcommittee proposes amendments to Rule 20-106 to ensure that a uniform procedure is adopted throughout the state.

Proposed new section (f) is added to require documentary exhibits proposed to be offered into evidence in a circuit court hearing or trial to be indexed, pre-marked, and pre-filed at least three days prior to the hearing or trial.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504 by adding new subsection (b) (1)(J) mandating that documentary exhibits be pre-filed and by making stylistic changes, as follows:

RULE 2-504. SCHEDULING ORDER

(a) Order Required

(1) Unless otherwise ordered by the County Administrative Judge for one or more specified categories of actions, the court shall enter a scheduling order in every civil action, whether

or not the court orders a scheduling conference pursuant to Rule 2-504.1.

(2) The County Administrative Judge shall prescribe the general format of scheduling orders to be entered pursuant to this Rule. A copy of the prescribed format shall be furnished to the Chief Judge of the Court of Appeals.

(3) Unless the court orders a scheduling conference pursuant to Rule 2-504.1, the scheduling order shall be entered as soon as practicable, but no later than 30 days after an answer is filed by any defendant. If the court orders a scheduling conference, the scheduling order shall be entered promptly after conclusion of the conference.

(b) Contents of Scheduling Order

(1) Required

A scheduling order shall contain:

(A) an assignment of the action to an appropriate scheduling category of a differentiated case management system established pursuant to Rule 16-302;

(B) one or more dates by which each party shall identify each person whom the party expects to call as an expert witness at trial, including all information specified in Rule 2-402(g)(1);

(C) one or more dates by which each party shall file the notice required by Rule 2-504.3(b) concerning computer-generated evidence;

(D) a date by which all discovery must be completed;

(E) a date by which all dispositive motions must be filed, which shall be no earlier than 15 days after the date by which all discovery must be completed;

Cross reference: See Rule 2-501(a), which provides that after the date by which all dispositive motions are to be filed, a motion

for summary judgment may be filed only with the permission of the court.

(F) a date by which any additional parties must be joined;

(G) a date by which amendments to the pleadings are allowed as of right; and

(H) any other matter resolved at a scheduling conference held pursuant to Rule 2-504.1.

(2) Permitted

A scheduling order also may contain:

(A) any limitations on discovery otherwise permitted under these rules, including reasonable limitations on the number of interrogatories, depositions, and other forms of discovery;

(B) the resolution of any disputes existing between the parties relating to discovery;

(C) a specific referral to or direction to pursue an available and appropriate form of alternative dispute resolution, including a requirement that individuals with authority to settle be present or readily available for consultation during the alternative dispute resolution proceeding, provided that the referral or direction conforms to the limitations of Rule 2-504.1(e);

(D) an order designating or providing for the designation of a neutral expert to be called as the court's witness;

(E) in an action involving child custody or child access, an order appointing child's counsel in accordance with Rule 9-205.1;

(F) a further scheduling conference or pretrial conference date;

(G) provisions for discovery of electronically stored information;

(H) a process by which the parties may assert claims of privilege or of protection

after production;

(I) procedures and requirements the court finds necessary when any proceedings in the action will be conducted by remote electronic participation pursuant to Title 2, Chapter 800 of these Rules; and

(J) a requirement that, to the extent practicable, all documentary exhibits in an MDEC action be indexed, pre-numbered, and pre-filed in accordance with Rule 20-106 (f); and

~~(J)~~(K) any other matter pertinent to the management of the action.

(c) Modification of Order

The scheduling order controls the subsequent course of the action but shall be modified by the court to prevent injustice.

Cross reference: See Rule 5-706 for authority of the court to appoint expert witnesses.

Source: This Rule is in part new and in part derived as follows:

Subsection (b) (2) (G) is new and is derived from the 2006 version of Fed. R. Civ. P. 16(b) (5).

Subsection (b) (2) (H) is new and is derived from the 2006 version of Fed. R. Civ. P. 16(b) (6).

Rule 2-504 was accompanied by the following Reporter's note:

Proposed amendments to Rule 2-504 conform to proposed changes to Rule 20-106. These changes address a concern raised by circuit court Clerks with whether documentary exhibits in an MDEC action should be pre-filed. Currently, the practice varies from jurisdiction to jurisdiction, and the General Court Administration Subcommittee proposes amendments to section (b) to ensure that a uniform procedure is adopted throughout the state.

Proposed new subsection (b) (2) (J) is added

to permit a scheduling order to require documentary exhibits to be indexed, pre-marked, and pre-filed. Stylistic changes are also proposed.

The Chair said that the proposed amendments apply to electronic pre-filing of documents, which arose as an issue during discussion of Rules for remote trials. Section (f) of Rule 20-106 is new and applies to documentary exhibits in MDEC. There is bracketed language concerning whether the pre-filed documents must be served on the other parties. The Chair noted that, ordinarily, pre-filed documents are not disclosed until trial. Ms. Lindsey said that she has not heard about any issues related to pre-filing. Ms. Hager said that when Title 20 was written, it only referred to paper exhibits presented the day of trial, which were scanned and returned to the party. There currently is no reference to pre-filing in Title 20. She said that she is in support of the proposed amendment. Mr. Frederick said that he supports the inclusion of the bolded language, as it allows attorneys to be more prepared. Mr. Wells agreed with Mr. Frederick.

There being no motion to amend or reject proposed Rule 20-106, it was approved as presented with the bracketed language. There being no motion to amend or reject the proposed conforming amendment to Rule 2-504, it was approved as presented.

Agenda Item 12. Consideration of proposed amendments to Rule 20-109 (Access to Electronic Records in MDEC Actions).

The Chair presented Rule 20-109, Access to Electronic Records in MDEC Actions, for consideration.

MARYLAND RULES OF PROCEDURE
TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-109 by adding new section (e) concerning access to court records by court-designated ADR practitioners, by re-lettering subsequent sections, by adding new section (i) concerning access to court records by certain registered users associated with court appointed special advocate programs, and by making stylistic changes, as follows:

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

(a) Generally

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

(b) Parties and Attorneys of Record

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

(c) Judges and Judicial Appointees

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

(d) Clerks and Judicial Personnel

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

(e) Court-Designated ADR Practitioners

(1) Definition

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

(2) Access to Case Records

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

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

~~(e)~~ (f) Public Access

(1) Access Through CaseSearch

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

(2) Unshielded Documents

Subject to any protective order issued by the court, members of the public shall have free access to unshielded case records and unshielded parts of case records from computer terminals or kiosks that the courts make available for that purpose. Each court shall provide a reasonable number of terminals or kiosks for use by the public. The terminals or kiosks shall not permit the user to download, alter, or forward the information, but the user is entitled to a copy of or printout of a case record in accordance with Rule 16-904 (c).

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

~~(f)~~ (g) Department of Juvenile Services

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

~~(g)~~ (h) Government Agencies and Officials

Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional information contained in case records to government agencies and officials (1) who are approved for such access by the

Chief Judge of the Court of Appeals, upon a recommendation by the State Court Administrator, and (2) when those agencies or officials seek such access solely in their official capacity, subject to such conditions regarding the dissemination of such information imposed by the Chief Judge.

(i) CASA Program

(1) Definition

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

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

More than a dozen CASA programs have been created throughout the State, some of which serve the Juvenile Courts in more than one county. Upon an appointment to assist a child in a particular case, the director of the program assigns a volunteer attached to that program to provide that assistance. The confidentiality that applies to court records in juvenile cases does not prohibit review of a court record by a "Court-Appointed Special Advocate for the child" in a proceeding involving that child. See Code, Courts Article, §§3-827 (a) (2) and 3-8A-27 (b) (2).
The purpose of this section is to clarify how

that access and ability to file reports may be accomplished through MDEC.

(2) Registered Users; Reports

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

(3) Limitations; Access

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

(4) Control of Records

The registered user with remote access (A) shall keep exclusive control over the records obtained and (B) may not permit such records to be shared with or copied for anyone other than (i) an authorized volunteer designated by the CASA program to provide service to the child pursuant to the order of appointment and (ii) CASA program staff authorized to supervise the volunteer. Any order expunging the court records in a case in which the CASA program participated shall include the expungement of records in that case obtained and maintained by the program.

Source: This Rule is new.

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

The Rules Committee previously approved proposed new section (e) and the re-lettering of subsequent sections at the October meeting. See Rules Committee materials from October 16, 2020 for further details on proposed section (e).

The Major Projects Committee asked the Committee to consider amendments to Rule 20-109 to provide MDEC access, including remote access, to Court-Appointed Special Advocate Programs ("CASA programs"). Providing certain MDEC access to CASA programs would ensure timely access to case information. Due to an inability to access case records remotely through MDEC, CASA programs have experienced issues that negatively impact their services, including failure to receive court orders appointing CASAs, missed hearing notices, and an inability to review court records prior to assigning a volunteer.

New subsection (i)(1) defines the term "CASA program" used throughout the section. Following section (i)(1) is a proposed Committee note providing background information and details about the administration of CASA programs. The Committee note describes the purpose of section (i) to clarify how CASA programs may access and file reports through MDEC.

Proposed subsection (i)(2) requires that each CASA program provide the clerk in each relevant county with the name and contact information of not more than two staff persons, in writing, to have remote access and file reports on behalf of the program. The subsection also provides that only those registered users may have remote access and file reports on behalf of the CASA program and

that reports must be filed through MDEC in MDEC jurisdictions.

A CASA program's ability to file and have remote access is restricted by new subsection (i) (3), providing that it is limited to cases in which the program or a volunteer on behalf of the program has been appointed. The access is allowed only for the period that service is being provided. Subsection (i) (3) further notes that access includes hearing notices and all records not under seal.

Subsection (i) (4) addresses the CASA program's control over the case records. The subsection states that the registered user shall keep exclusive control over the obtained records and may not permit such records to be shared with or copied for anyone other than an authorized volunteer designated to provide services pursuant to the order of appointment and CASA program staff authorized to supervise the volunteer. The last sentence of subsection (i) (4) notes that any order expunging court records in a case in which the CASA program participated shall include the expungement of records maintained by the CASA program.

The Chair explained that the proposed amendments grant remote access to MDEC records for two categories of individuals: Alternative Dispute Resolution ("ADR") practitioners and Court Appointed Special Advocates ("CASAs"). Court-designated ADR practitioners are granted access to the case while the individual is assigned to the case. In circuit court, the notice of the designation and notice that the designation has ended are to be filed with the clerk. In the District Court, the notice is not required because a mediator is usually designated for a whole docket or day, not just one

case, and the work ends that day. Limited access for CASAs also is added to the Rule. The CASA program is a program created by statute to assist the court and a child in a juvenile proceeding. The Chair explained that the access will be limited to supervisors who can share records with the volunteer CASAs as needed for specific cases. There being no motion to amend or reject the proposed Rule, it was approved as presented.

The Chair also presented a "handout" version of a proposed new section governing Judiciary contractors.

"HANDOUT"

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE
MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-109 by adding new section (e) concerning access to electronic records for Judiciary contractors, as follows:

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

...

(e) Judiciary Contractors. The State Court Administrator, by written directive, may allow appropriate access for Judiciary contractors to the extent that such access is necessary to the performance of their official duties.

+e) (f) Public Access.

(1) *Access Through CaseSearch.* Members of the public shall have free access to information posted on CaseSearch.

(2) *Unshielded Documents.* Subject to any protective order issued by the court, members of the public shall have free access to unshielded case records and unshielded parts of case records from computer terminals or kiosks that the courts make available for that purpose. Each court shall provide a reasonable number of terminals or kiosks for use by the public. The terminals or kiosks shall not permit the user to download, alter, or forward the information, but the user is entitled to a copy of or printout of a case record in accordance with Rule 16-904 (c).

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

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

~~(g)~~ (h) *Government Agencies and Officials.* Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional information contained in case records to government agencies and officials (1) who are approved for such access by the Chief Judge of the Court of Appeals, upon a recommendation by the State Court Administrator, and (2) when those agencies or officials seek such access solely in their official capacity, subject to such conditions

regarding the dissemination of such information imposed by the Chief Judge.

• • •

The Chair said that a "handout" version of Rule 20-109 to address an additional category of individuals seeking remote MDEC access has been provided to the Committee. The handout uses new "section (e)," but he noted that it will need to be re-lettered in light of the amendments just approved.

Ms. Harris explained that Judiciary contractors working for the court help centers assist individuals with expungement petitions, but they lack access to the MDEC system because they are not Judiciary employees. She said that some information and records are shielded from the public Case Search website, which makes it difficult for the court help center workers to provide meaningful assistance.

The Reporter asked whether the remote access contemplated by the amendment extends to off-site computers if a contractor is working from home, or if it only applies to a computer on the Judiciary premises. Ms. Harris responded that the goal is for contractors to be able to do their jobs at home. She said that the Committee can adopt a provision that the contractor must be at work. By consensus, the Committee amended the proposed language to restrict access to the contractors at their workstations. There being no further motion to amend or

reject the proposed handout amendment to Rule 20-109, it was approved as amended, subject to re-lettering.

Agenda Item 13. Consideration of proposed amendments to Rule 5-611 (Mode and Order of Interrogation and Presentation: Control by Court; Scope of Cross-Examination; Leading Questions), and Rule 5-615 (Exclusion of Witnesses).

The Chair presented Rule 5-611, Mode and Order of Interrogation and Presentation: Control by Court; Scope of Cross-Examination; Leading Questions, and Rule 5-615, Exclusion of Witnesses, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-611 by updating a cross reference following section (a), as follows:

RULE 5-611. MODE AND ORDER OF INTERROGATION AND PRESENTATION: CONTROL BY COURT; SCOPE OF CROSS-EXAMINATION; LEADING QUESTIONS

(a) Control by Court.

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

Cross reference: For the ~~Court Dog and Child Witness Program~~ Court Dog Program, see Code, Courts Article, § 9-501.

. . .

Source: This Rule is derived from F.R.Ev. 611.

Rule 5-611 was accompanied by the following Reporter's note:

Chapters 181/182, 2021 Laws of Maryland (HB 186/SB 7) rename the Court Dog and Child Witness Program, authorized in Code, Courts and Judicial Proceedings Article, §9-501, to be the Court Dog Therapy Program. Proposed amendments to Rules 5-611 and 5-615 amend cross references to conform to the new name for the program.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-615 by updating a cross reference following section (c) as follows:

RULE 5-615. EXCLUSION OF WITNESSES

. . .

(c) Permissive Non-Exclusion.

The court may permit a child witness's parents or another person having a supportive relationship with the child to remain in court during the child's testimony.

Cross reference: For the ~~Court Dog and Child Witness Program~~ Court Dog Program, see Code, Courts Article, § 9-501.

. . .

Source: This Rule is derived from F.R.Ev. 615 and Rules 2-513, 3-513, and 4-321.

Rule 5-615 was accompanied by the following Reporter's

note:

Chapters 181/182, 2021 Laws of Maryland (HB 186/SB 7) rename the Court Dog and Child Witness Program, authorized in Code, Courts and Judicial Proceedings Article, §9-501, to be the Court Dog Therapy Program. Proposed amendments to Rules 5-611 and 5-615 amend cross references to conform to the new name for the program.

The Chair said that the proposed amendments update cross references. There being no motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 14. Consideration of a proposed amendment to Rule 6-151 (Filing a Will).

Mr. Laws presented Rule 6-151, Filing a Will, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-151 by updating a cross reference, as follows:

Rule 6-151. FILING A WILL

Promptly after learning of the decedent's death, the custodian of a document appearing to be the last will of the decedent shall file it with the register even if it is not to be offered for probate. The will shall be filed in the county in which administration should be had pursuant to Rule 6-111. A prior will need not be filed with the register unless (a) the

custodian learns that the subsequent will has been declared invalid or is being or may be contested, (b) the custodian is requested to produce it in connection with a proceeding to interpret the subsequent will, or (c) the court orders the custodian to produce it. A will to be offered for probate, unless previously filed, shall be filed in conjunction with the filing of a petition for administrative or judicial probate or administration of a small estate.

Cross reference: Code, Estates and Trusts Article, ~~§§ 4-202, and 4-102~~ §§4-102 and 4-203.

Rule 6-151 was accompanied by the following Reporter's note:

The proposed amendment to Rule 6-151 was necessitated by Chapter 513, 2021 Laws of Maryland (House Bill 1266), which changes the numbering of certain statutes in the Estates and Trusts Article. Code, Estates and Trusts Article, §4-202 is now §4-203.

Mr. Laws said that the proposed amendment updates a cross reference. There being no motion to amend or reject the proposed Rule, it was approved as presented.

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