SUPREME COURT STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms 132-133 of the Maryland Judicial Center, 187 Harry S. Truman Parkway, Annapolis, Maryland on Friday, January 9, 2026.

Members present:

Hon. Yvette M. Bryant, Chair
Hon. Douglas R.M. Nazarian, Vice Chair

Hon. John A. Bielec
James M. Brault, Esq.
Jamar R. Brown, Esq.
Hon. Catherine Chen
Hon. Yolanda L. Curtin
Julia Doyle, Esq.
Richard Gibson, Jr., Esq.
Arthur J. Horne, Jr., Esq.
Brian A. Kane, Esq.
Hon. Karen R. Ketterman
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Stephen S. McCloskey, Esq.
Kathleen H. Meredith, Esq.
Judy Rupp, State Court Administrator
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Brian L. Zavin, 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

Grace-Kelly Anoma, AOT Director, MDH
Maxine Curtis, Senior Program Manager Behavioral Health, Problem Solving Courts
Venesa Day, Foxx Chubby Health Policy Consulting
Eleanor Dayhoff-Brannigan, Esq., Assistant Attorney General, MDH
Thomas DeGonia II, Esq., Bar Counsel, Attorney Grievance Commission
Ann Geddes, Director, Mental Health Association of Maryland

Catherine Gray, Deputy Director/Clinical Director, Anne Arundel County Mental Health Agency, Inc.
Michael Gray, Esq., Principal, Tulipifera Strategies
Hon. Paul Grimm
Connie Kratovil-Lavelle, Esq., MSBA
Marianne Lee, Esq., Executive Counsel and Director, Attorney Grievance Commission
Michele Livshin, Director of Peer Empowerment & Policy, On Our Own of Maryland
Keith Lotridge, Esq., Deputy Public Defender, OPD
Brendan Madden, Esq.
Adrienne Mickler, Executive Director, Anne Arundel County Mental Health Agency, Inc.
Hon. John P. Morrissey, Chief Judge, District Court of Maryland
Luciene Parsley, Esq., Litigation Counsel, Disability Rights Maryland
Suzanne Pelz, Esq., Senior Government Relations & Public Affairs Officer
Hon. Marina Sabett, District Court for Montgomery County
Dr. Rachel Talley, Chief Medical Officer, Behavioral Health Administration, MDH
Gillian Tonkin, Esq., Staff Attorney to Chief Judge, District Court
William Vormelker, Government Relations Specialist, GRPA
Jared Wyma-Bradley, Senior AOT Advisor, Treatment Advocacy Center

The Chair convened the meeting.

The Reporter advised that the meeting would be recorded for the purpose of assisting with the preparation of meeting minutes and that speaking will be treated as consent to being recorded.

The Reporter also informed the Committee that a revised draft of the November 2025 meeting minutes was sent to members for review prior to the meeting. A motion to approve the November 2025 minutes was made, seconded, and approved by consensus.

Agenda Item 1. Consideration of proposed new Rule 5-107 (Illustrative Aids) and amendments to Rules 5-1006 (Summaries).

Mr. Brault presented new Rule 5-107, Illustrative Aids, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 100 – GENERAL PROVISIONS

ADD new Rule 5-107, as follows:

Rule 5-107. ILLUSTRATIVE AIDS

(a) Permitted Uses

The court may allow a party to present an illustrative aid to help the trier of fact understand the evidence or argument if the aid's utility in assisting comprehension is not substantially outweighed by the danger of prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.

(b) Record

An illustrative aid used at trial shall be marked for identification and included in the record.

(c) Use in Jury Deliberations

An illustrative aid is not evidence and may not be provided to the jury during deliberations unless:

(1) all parties consent; or

(2) the court, for good cause, orders otherwise.

If the court permits a jury to see an illustrative aid during deliberation, the court shall give a limiting instruction.

Cross reference: See Rule 5-1006 (Summaries) for admissibility of a summary of voluminous writings,

recordings, or photographs.

Rule 5-107 was accompanied by the following Reporter's note:

> The Evidence Subcommittee proposes new Rule 5-107 be adopted to cover illustrative aids. The new Rule is derived from new F.R.Ev. 107. It is intended to provide clear and uniform guidance on the use of illustrative aids.
>
> Section (a) delineates the permissible use of an illustrative aid and establishes that the judge must determine whether the benefits of the use of the aid are not substantially outweighed by the potential harms of its use.
>
> Section (b) requires that an illustrative aid used at trial must be marked for identification and included in the record.
>
> Section (c) establishes that an illustrative aid is not evidence, and therefore it may not be provided to a jury during deliberation unless the parties agree or the court finds good cause. If a jury is permitted to see an illustrative aid during deliberations, the judge must give a limiting instruction.
>
> A cross reference to Rule 5-1006 (Summaries) is included following section (c).

Mr. Brault informed the Committee that proposed new Rule 5-107 is derived from Fed. R. Evid. 107. He reminded the Committee that the new Federal Rule was one of the updates discussed by Senior U.S. District Judge Paul Grimm during his presentation to the Committee in June 2025. Following that presentation, the Evidence Subcommittee discussed and ultimately

recommended a similar Rule in Maryland.

Mr. Brault explained that the Chair of the Federal Advisory Committee on Evidence Rules ("the Advisory Committee") stated in 2023 that the new rule was proposed because "illustrative aids are utilized in every trial and yet are not governed by any rule" (see Appendix 1 – Advisory Committee on Evidence Rules, Minutes of the Meeting (April 28, 2023))[1]. The Chair of the Advisory Committee also observed that the rule "would distinguish illustrative aids from demonstrative evidence offered to prove a fact and from Rule 1006 summaries designed to prove the content of voluminous writings or recordings."

Mr. Brault explained that Rule 5-107 (a) describes the permitted uses of illustrative aids and sets forth the standard for the court to exercise its discretion.

Mr. Brault said that section (b) requires that any illustrative aid used at trial be included in the record. An illustrative aid may be used during opening statements or closing arguments. The Evidence Subcommittee believes that if the jury sees it, it should be part of the record.

Mr. Brault said that section (c) states that the aid is not substantive evidence and governs the limited circumstances for use in jury deliberations.

[1] This document was not included in the materials for the January 1, 2026 Rules Committee meeting.

Mr. Brault added that there is a cross reference to Rule 5-1006, which governs summaries of voluminous writings, recordings, or photographs, at the end of the Rule.

The Chair invited Judge Grimm to address the Committee and answer any questions. Judge Grimm said that the new Rule is intended for trial lawyers and trial judges to understand the difference between demonstrative evidence and illustrative aids and to clarify for the jury what is evidence and what is not. He explained that an illustrative aid may be something as basic as a hand-drawn diagram on a piece of paper or as complex as an artificial intelligence-created simulation, but it is only supposed to assist with a party's testimony. He added that slideshow presentations during opening statements or closing arguments also fall under this Rule; they may be useful to highlight key evidence, but the presentations themselves are not evidence.

Judge Grimm noted that the new Rule also distinguishes illustrative aids from summaries of voluminous writings, recordings, or photographs, which are governed by Rule 5-1006. Those summaries are evidence, and they come into the record in lieu of all the individual pieces of evidence. Illustrative aids are helpful for the jury, but should not be part of the jury's deliberations unless all parties agree. He added that section (a) of the Rule includes a balancing test similar to the

"probative value" balancing test in Rule 5-403.

The Chair suggested that section (a) align with the wording of Rule 5-403 by referring to "unfair prejudice" rather than just "prejudice." She asked Judge Grimm whether this is a distinction without a difference. Judge Grimm replied that the case law focuses on unfair prejudice; all evidence offered against a party is prejudicial. He noted that if a piece of evidence is equally probative and prejudicial, it will be admitted because the unfair prejudice must "substantially outweigh" the probative value to exclude it, tracking the existing balancing test in Rule 5-403.

Mr. Brown commented that he is concerned that juries will still conflate illustrative aids and demonstrative evidence. He asked whether the new Rule does enough to distinguish them. Judge Grimm replied that the Rule is adequate. The party intending to use an illustrative aid must inform the other side and obtain permission of the court. If there is a situation where the jury will not recognize that the item is merely illustrative, the court can evaluate the issue. The Chair pointed out that the court has the option of issuing a limiting instruction to the jury to clear up any confusion about the purpose of the item.

Ms. Meredith asked whether section (b) should clarify that illustrative aids used in opening statements or closing

arguments are included in the Rule. She said that she has had trials where the opposing party arrives with aids for use in opening statements that she has not had the opportunity to review. Judge Grimm said that Ms. Meredith's point is in line with the intended scope of the Federal Rule. He agreed that clarifying this point in the text of the Maryland Rule or in a Committee note would be appropriate to avoid confusion. Ms. Meredith added that, if the aid is used, it becomes part of the record, which makes it even more crucial to accurately capture what is included. Mr. Wells agreed that the Rule should state that aids used during openings and closings are included.

Ms. Lindsey suggested that section (b) clarify that the clerk should mark illustrative aids for inclusion in the record as directed by the court, to avoid confusion. She moved to add "by the clerk as directed by the court" to the end of section (b). By consensus, the Committee approved the amendment.

The Chair asked whether there should be a deadline to disclose a proposed illustrative aid to opposing counsel. Ms. Meredith said that scheduling orders often address this point. Mr. Gibson pointed out that an illustrative aid may be paper and pen during testimony, which the proffering party may not know about in advance. The Chair replied that an illustrative aid used in an opening statement seems like a critical thing that should be disclosed, with time allowed for the other party to

respond. She added that this could be particularly important in criminal proceedings. Mr. Gibson said that the jury is instructed by the court to make its determination based on the evidence presented; what happens if an illustrative aid raises issues that are not proven during trial?

Judge Chen commented that she sees issues arise during trial that could have been worked out prior to trial if both parties had disclosed their intentions. She said that she would support some kind of notice to the opposing party to avoid wasting court time. The Chair remarked that attorneys will be hesitant to "show their hand" to the opposing party. Ms. Meredith said that she would not want to give her opening statement PowerPoint to the other side prior to trial because it would disclose strategy.

Mr. Laws observed that different Rules apply to the admissibility of computer-generated evidence and other complex items. He said that there is a difference between a computer simulation of a car crash and a whiteboard with diagrams and notes in closing arguments. Ms. Meredith asked whether the Federal Rule includes a disclosure requirement. Judge Grimm replied in the negative but acknowledged Judge Chen's point that it can be inefficient for the court to address issues in the middle of trial. He suggested that judges consider encouraging disclosure in pretrial conferences to preemptively identify

issues.

Mr. Brault observed that an illustrative aid used during opening statements is often created very close to the start of trial, and one used for closing arguments is done during trial. Mr. Brault informed the Committee that a May 10, 2023 memorandum from the Chair of the Advisory Committee to the Chair of the Federal Committee on Rules of Practice and Procedure addressed this point (see Appendix 2 – Hon. Patrick J. Schiltz, Memorandum to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, May 10, 2023)[2]. The memorandum states that the issue of a proposed notice requirement was controversial, particularly when applied to the use of illustrative aids in opening and closing arguments, and the Advisory Committee decided to exclude openings and closings from the proposal issued for public comment. The memorandum went on to report that most practicing attorneys were critical of any notice requirement, arguing that it would be burdensome and lead to increased motions practice. Mr. Brault noted that the Advisory Committee ultimately agreed to delete the notice requirement, but extend the rule's applicability to openings and closings.

Judge Grimm said that he would expect similar concerns from

[2] This document was not included in the materials for the January 9, 2026 meeting of the Rules Committee.

the Maryland bar about any requirement to notify opposing counsel of the intent to offer an illustrative aid. He pointed out that attorneys could decide that it is in their best interest to disclose illustrative aids ahead of time to avoid an objection and discussion mid-trial. Judge Curtin commented that, even without openings and closings, an illustrative aid can be proposed or generated "on the fly" during a trial. Ms. Meredith thanked Mr. Brault for the background and said that she believes the Advisory Committee reached the correct conclusion regarding a notice requirement.

The Chair asked whether the Committee agreed that section (a) should refer to "unfair prejudice," rather than "prejudice," and Mr. Gibson agreed that it should. The Chair said that her suggestion is to mirror the language of Rule 5-403, which says, "...is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay or waste of time."

Mr. Laws pointed out that "unfair" is in the Federal Rule, but the rest of the Chair's proposed language is not. He suggested that Maryland's version should track the Federal Rule as closely as possible. The Reporter commented that when Title 5 was being developed, there was consideration of the Federal Rules, but the Maryland Rules of Evidence are their own entity, and they often differ stylistically from the federal version.

She suggested that it may make sense to restyle Rule 5-107 to parallel the existing Maryland Rule. The Chair commented that it could be confusing to have similar standards with different phrasing. Judge Chen said that she agrees with tracking the standard in Rule 5-403, which uses "unfair prejudice." The Chair moved to amend section (a) to read "...is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay or waste of time." The motion was seconded and approved by consensus.

The Chair called for further discussion of Rule 5-107. Mr. Wells moved to clarify that the Rule applies to opening statements and closing arguments. The motion was seconded and approved by consensus.

The Chair also pointed out several stylistic amendments. "Deliberation" is both plural and singular in section (c); it should be made uniform. The parenthetical title of Rule 5-1006 should be removed from the cross reference following section (c). The Reporter asked whether there is a preference for singular or plural "deliberation." By consensus, the Committee approved using "deliberations" throughout section (c).

There being no further motion to amend or reject proposed new Rule 5-107, the Rule was approved as amended.

Assisted Reporter Cobun commented that conforming

amendments may be required to ensure that the Rules governing the contents of the record on appeal, such as Rule 8-413, include references to illustrative aids being made part of the record by Rule 5-107 (b). The Reporter said that staff will review this issue and submit conforming amendments to the Committee for approval, as necessary.

Mr. Brault presented Rule 5-1006, Summaries, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 1000 – CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

AMEND Rule 5-1006 by adding a provision to section (a) clarifying that the underlying materials of a summary need not be offered or admitted into evidence, by adding a cross reference following section (a), and by making a stylistic change, as follows:

Rule 5-1006. SUMMARIES

(a) Generally

The contents of voluminous writings, recordings, or photographs, otherwise admissible, which cannot conveniently be examined in court may be presented in the form of a chart, calculation, or other summary, whether or not the voluminous writings, recordings, or photographs have been offered or admitted into evidence.

Cross reference: See Rule 5-107 concerning the use of a summary as an illustrative aid.

(b) Procedures

> The party intending to use such a summary must give timely notice to all parties of the intention to use the summary and shall make the summary and the originals or duplicates from which the summary is compiled available for inspection and copying by other parties at a reasonable time and place. The court may order that they be produced in court.
>
> Source: This Rule is derived from F.R.Ev. 1006.

Rule 5-1006 was accompanied by the following Reporter's note:

> The Evidence Subcommittee proposes amendments to Rule 5-1006 to reflect recent revisions made to Fed.R.Ev. 1006. The federal rule was amended to correct mistaken applications of the rule, where summaries were not being admitted into evidence unless the underlying voluminous materials were also admitted into evidence. The amendment to this Rule clarifies that the summary of admissible voluminous writings, recordings, or photographs is itself admissible evidence, with or without the need to separately admit the voluminous admissible evidence. This is in contract to an illustrative aid, which is not separately admissible evidence.

Mr. Brault explained that the Maryland Rule differs slightly from the Federal Rule, and that the proposed amendment is prompted by an update to the Federal Rules of Evidence. He said that there has been confusion among courts regarding whether a summary can be admitted into evidence without admitting the underlying items that are summarized. The Federal Rule was updated to clarify that the underlying voluminous writings, recordings, or photographs do not need to be admitted in order for the summary to be admitted. The same clarification

is proposed in Rule 5-1006. Mr. Brault added that stylistic changes break the Rule into sections (a) and (b), and a cross reference to new Rule 5-107 is added following new section (a).

Ms. Meredith said that the Reporter's note states that the Rule clarifies that the summary is itself admissible evidence, but she does not believe that the Rule explicitly says that. Mr. Laws asked whether it is implied by the phrase "may be presented." Ms. Meredith replied that there is a difference between "presenting" and "offering" evidence. The Reporter suggested language that the summary itself "may be admissible evidence." Ms. Meredith said that, unless it is an unfair or disputed summary, the idea under the Federal Rule is to summarize voluminous amounts of information and offer the summary as substantive evidence. She reiterated her point that the Maryland Rule does not actually state this.

Mr. Brault said that, rereading the Rule, he agrees with Ms. Meredith. He suggested that section (a) be amended to read, "may be presented in the form of a chart, calculation, or other summary, *and admitted into evidence*," before the new language. Ms. Meredith moved to make the amendment Mr. Brault suggested to section (a). The motion was seconded and approved by consensus.

The Chair also raised stylistic changes to the Reporter's note. The Reporter commented that every Report to the Supreme Court informs the Court and the public that the Reporter's notes

do not become part of the final Rules Order and should not be considered part of the Rules or the official commentary of the Committee. She cautioned against debating and voting on the phrasing of the Reporter's notes. She said that staff appreciates corrections of errors, but asked that they not be raised in the form of motions.

Agenda Item 2. Consideration of proposed new Title 15, Chapter 1700 (Assisted Outpatient Treatment) and conforming and housekeeping amendments.

The Vice Chair informed the Committee that Agenda Item 2 consists of a new Chapter in Title 15 to implement legislation which permits the filing of a petition seeking an order for assisted outpatient mental health treatment. There are also several conforming and housekeeping amendments. He explained that the role of the Committee is not to decide whether assisted outpatient treatment is a good idea; the legislature established the ability to file a petition for assisted outpatient treatment and the General Court Administration Subcommittee did its best to develop procedures for handling those petitions.

The Vice Chair said that the new Chapter consists of Rules governing the petition, hearings, findings and orders, and confidentiality. He said that there are some analogues to the guardianship procedures in Title 10, Chapter 200. He informed

the Committee that the proposed Rules are the result of a lengthy in-person meeting of the General Court Administration Subcommittee with participation by stakeholders from the Maryland Department of Health ("MDH"), the Maryland Office of the Public Defender ("OPD"), disability rights organizations, and the Administrative Office of the Courts. He said that the Subcommittee is comfortable that the proposed Rules carry out the directives of the legislation as well possible.

The Vice Chair presented Rule 15-1701, Applicability; Definitions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1700 – ASSISTED OUTPATIENT TREATMENT

ADD new Rule 15-1701, as follows:

Rule 15-1701. APPLICABILITY; DEFINITIONS

(a) Applicability

The Rules in this Chapter apply to assisted outpatient treatment proceedings under Code, Health—General Article, Title 10, Subtitle 6A.

(b) Definitions

(1) Statutory Definitions

The definitions in Code, Health—General Article, §§ 7.5-101 and 10-6A-01 are applicable to the Rules in this Chapter.

Cross reference: See Code, Health—General Article, § 7.5-101 for definitions of "core service agency," "local

behavioral health authority," and "mental health program."

See Code, Health—General Article, § 10-6A-01, for definitions of "assisted outpatient treatment," "care coordination team," "harm to others," "harm to individual," "hospital," "program," "serious and persistent mental illness," and "treatment plan."

(2) Additional Definition

In this Chapter, "Department" means the Maryland Department of Health.

Source: This Rule is new.

Rule 15-1701 was accompanied by the following Reporter's note:

Proposed new Title 15, Chapter 1700 implements Chapters 703/704 (HB 576/SB 453), 2024 Laws of Maryland. The law creates a new subtitle in the Health—General Article for Assisted outpatient treatment ("AOT") Programs. The Maryland Department of Health ("MDH")is required to establish an AOT program by July 1, 2026 in any county that does not opt to establish its own. The Committee has been advised that none have done so to date. The law generally permits certain individuals to file a petition for AOT in the circuit court.

Code, Health—General Article, § 10-6A-07 (a)(3) provides that "[all] rules of civil procedure shall apply" to petitions filed under the AOT subtitle. Due to the unique characteristics of AOT proceedings, such as their potentially involuntary nature, detailed pleading requirements, and testimony and findings, the General Court Administration Subcommittee recommends the creation of a new Chapter in the Special Proceedings Title to supplement the general rules of civil procedure in circuit court found in Title 2.

New Rule 15-1701 sets forth the applicability of the Chapter to AOT proceedings under Code, Health—General Article, Title 10, Subtitle 6A. It also adopts the statutory definitions in that subtitle as well as

Code, Health—General Article, § 7.5-101. Additionally, the word "Department" is defined to mean the Maryland Department of Health.

The Vice Chair said that Rule 15-1701 sets forth the applicability of the new Chapter and applicable definitions. Assistant Reporter Cobun noted that staff identified a typographical error in the cross reference following section (b); "harm to individual" should be "harm to the individual."

There being no motion to amend or reject proposed new Rule 15-1701, it was approved as presented, subject to the correction in the cross reference.

The Vice Chair presented Rule 15-1702, Petition, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1700 – ASSISTED OUTPATIENT TREATMENT

ADD new Rule 15-1702, as follows:

Rule 15-1702. PETITION

(a) Who May File

A petition for assisted outpatient treatment may be filed by:

(1) the director of a mental health program; or

(2) any individual who is at least 18 years old and has a legitimate interest in the welfare of the respondent.

Cross reference: See Code, Health—General Article, § 10-6A-04(a).

(b) Venue

A petition for assisted outpatient treatment shall be filed in the circuit court for the county in which the respondent resides or in the county of the last known address of the residence of the respondent.

Cross reference: See Code, Health—General Article, § 10-6A-04(d).

(c) Contents

A petition for assisted outpatient treatment shall be in writing, signed by the petitioner, and state:

(1) the name and address of the petitioner;

(2) the name and address of the respondent;

(3) the relationship of the petitioner to the respondent, if any;

(4) the name and address of each guardian and health care agent of the respondent, if any, or that there are no known guardians or health care agents; and

(5) that the petitioner has reason to believe that the respondent meets the criteria for assisted outpatient treatment set forth in Code, Health—General Article, § 10-6A-05, and, as to each criterion, specific allegations of fact supporting that belief as to each criterion.

(d) Required Affidavit or Affirmation

The petitioner shall file with the petition an affidavit or affirmation of a psychiatrist in accordance with Code, Health—General Article, § 10-6A-04.

Source: This Rule is new.

Rule 15-1702 was accompanied by the following Reporter's note:

> Proposed new Rule 15-1702 governs the petition for Assisted outpatient treatment ("AOT"). It is derived in part from Code, Health—General Article, § 10-6A-04.
>
> Section (a) is derived from the statute and permits a petition to be filed by a director of a mental health program or an individual at least 18 years old who has a legitimate interest in the welfare of the respondent. "Legitimate interest" is not a defined term in the statute.
>
> Section (b) is derived from the statute and states the venue where the petition may be filed.
>
> Section (c) is derived in part from the statute, with some modifications to enable the court to comply with its requirements. The additional information required by section (c) includes the name and address of any guardian or health care agent of the respondent. The court is required by section (d) of the statute to notify these individuals of the filing of the petition.
>
> Rule 15-1702 (d) refers to the affidavit or affirmation of a psychiatrist required by the statute.

The Vice Chair said that Rule 15-1702 tracks the statutory requirements for a petition for assisted outpatient treatment. There being no motion to amend or reject proposed new Rule 15-1702, it was approved as presented.

The Vice Chair presented Rule 15-1703, Initial Hearing; Show Cause; Service, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1700 – ASSISTED OUTPATIENT TREATMENT

ADD new Rule 15-1703, as follows:

Rule 15-1703. INITIAL HEARING; SHOW CAUSE; SERVICE

(a) Show Cause Order

(1) Generally

Upon the filing of a petition, the court shall schedule an initial hearing to be held ten days from the date the petition is filed and issue a show cause order in accordance with subsection (a)(2) of this Rule. If the respondent is not served in accordance with section (b) of this Rule prior to the date of the initial hearing, the court shall schedule a new date for the initial hearing and reissue the show cause order. The court may postpone the initial hearing for up to 30 days for good cause shown.

(2) Contents of Show Cause Order

The show cause order shall direct the persons on whom it is served to appear for an initial hearing pursuant to Rule 15-1705 to (A) determine whether the petition meets the requirements of Code, Health—General Article, § 10-6A-04; (B) inform the respondent of the right to be represented by counsel, and; (C) as appropriate, schedule a hearing pursuant to Code, Health—General Article, § 10-6A-07. The order also shall specify who is to be served, the method of service, and the date, time, and place of the initial hearing and be accompanied by a copy of the petition and an "Advice of Rights" in the form set forth in Rule 15-1704.

(b) Service on Respondent

The petitioner shall cause the show cause order issued pursuant to section (a) of this Rule to be served on the respondent in the manner provided by Rule 2-

121 (a) and returnable as provided by Rule 2-126. If the respondent resides with the petitioner, service shall be made upon the respondent and on such other persons as the court may direct.

(c) Notice to Other Persons

Unless the court orders otherwise, the clerk shall mail a copy of the petition and show cause order by first-class mail to:

(1) the Mental Health Division of the Office of the Public Defender;

Committee note: The respondent is entitled to representation by the Office of the Public Defender in assisted outpatient treatment proceedings in accordance with Code, Criminal Procedure Article, §§ 16-204 and 16-208 and Code, Health—General Article, § 10-6A-07 or may elect to retain private counsel.

(2) The Department or, if the county has established a program pursuant to Code, Health—General Article, § 10-6A-03, the applicable local behavioral health authority or the core service agency of the county;

(3) the county attorney; and

(4) each guardian and health agent of the respondent listed in the petition.

Source: This Rule is new.

Rule 15-1703 was accompanied by the following Reporter's note:

Proposed new Rule 15-1703 establishes an initial hearing procedure to bring the petitioner, respondent, and counsel to court after the petition is filed and served. It is derived in part from the statute and in part from Rule 10-203, which applies to service of a show cause order in an action for guardianship of the person.

The General Court Administration Subcommittee expressed concern about scheduling a hearing on the merits of a petition for Assisted

outpatient treatment ("AOT") without first ensuring that the petition meets the requirements of the statute and that the respondent understands the implications of the petition and has made contact with the Maryland Office of the Public Defender ("OPD"), which may provide representation to qualifying individuals. The Subcommittee heard comments from the OPD and advocates from the disability rights community and concluded that an initial hearing procedure would be an appropriate step to help the court and the parties identify and address any issues or needs early in the proceeding.

Section (a) establishes a process for the court to schedule an initial hearing ten days after the filing of the petition and to issue a show cause order for that hearing. Subsection (a)(1) provides for scheduling the initial hearing and rescheduling the hearing if the respondent is not served prior to the hearing date. Subsection (a)(2) sets forth the contents of the order, which explains the purpose of the initial hearing and provides instructions for service. The order must be accompanied by a copy of the petition and the Advice of Rights in the form set forth in Rule 15-1704.

Section (b) requires service of the show cause order, petition, and attachments on the respondent. Code, Health—General Article, § 10-6A-04 (c)(2) states that "the circuit court shall notify… the respondent" of the filing of the petition. The General Court Administration identified this provision as a due process concern because it does not call for service on the respondent. If the court is responsible for conducting service of an initial pleading, that service will be accomplished by the sheriff. There were concerns with defaulting to service by law enforcement on a respondent who is alleged to have a serious and persistent mental illness.

The Subcommittee recommends in section (b) that it should be the responsibility of the petitioner to cause the show cause order to be served on the respondent. If the respondent resides with the petitioner, the court specifies how service on the petitioner is to be made. This provision is derived from Rule 10-203.

> Section (c) requires the clerk to mail the petition and show cause order to the remaining individuals named in Code, Health—General Article, § 10-6A-04, including the Mental Health Division of the OPD, the applicable local health authority, the county attorney, and any guardian or health agent for the respondent who has been identified in the petition.

The Vice Chair said that Rule 15-1703 provides for issuance of a show cause order for the respondent to appear at an initial hearing. Section (a) requires the court to schedule the initial hearing when a petition for assisted outpatient treatment is filed and issue a show cause order, which instructs the persons served to appear at the hearing. There are also provisions for what to do if the respondent is not served by the date of the hearing and authorization for the court to postpone the hearing for up to 30 days.

The Vice Chair informed the Committee that there was a detailed discussion at the Subcommittee meeting regarding the appropriateness of a show cause order to summon the parties to court. He explained that there was concern that a show cause order seems inherently punitive and may appear to shift the burden onto the respondent despite the statute placing the burden on the petitioner to show that assisted outpatient treatment is necessary. He added that he shared these concerns himself, particularly as the draft of the Rule considered by the Subcommittee may have contemplated substantive orders being

issued at the show cause hearing. He said that the Subcommittee, in consultation with various stakeholders, created the concept of an "initial hearing" where the court can review the petition for sufficiency, as required by the law, and assign counsel to the respondent, if necessary. He commented that, after considerable debate, the Subcommittee concluded that a show cause order is the most appropriate mechanism to have the parties appear in court. He added that if a respondent does not appear, the only thing that will happen is that a hearing on the merits of the petition may be scheduled without the respondent's input.

The Vice Chair said that section (b) provides for service on the respondent, which must be in the manner proscribed by Rule 2-121 (a), the general Rule for initial service of process in a civil matter in circuit court. Section (c) requires the clerk to mail notice of the hearing and a copy of the petition to other persons, including the Mental Health Division of the OPD; the applicable health agency, either MDH or a local behavioral health authority; the county attorney; and any guardian or health care agent of the respondent listed in the petition.

The Vice Chair said that he was aware that OPD submitted a written comment (see Appendix 3) and wished to speak to this Rule. Keith Lotridge and Krystal Williams from OPD addressed

the Committee. Ms. Williams suggested that subsection (c)(2) should refer to Code, Health – General Article, § 10-6A-04, not § 10-6A-03. She explained that § 10-6A-04 requires notice of the petition to be sent to the MDH and, as applicable, the local behavioral health authority. Assistant Reporter Cobun said Ms. Williams is correct as to the requirements of Code, Health – General Article, § 10-6A-04, but § 10-6A-03 is the authority by which a county may establish a program; it is being used in Rule 15-1703 to refer to a program "established pursuant to Code, Health – General Article, § 10-6A-03." The Vice Chair said that the reference will remain as presented.

Ms. Williams also informed the Committee that her office has concerns with the show cause language. She said that OPD would prefer that the court instead issue a "notice to appear" to avoid suggesting negative consequences for failing to comply with a show cause order.

Judge Curtin commented that the statute requires a hearing on the merits of the petition to be scheduled "upon the filing of a petition that meets the requirements" of the statute. She said that one of the reasons for the initial hearing, which is not on the merits, is to permit the court to evaluate the sufficiency of the petition before scheduling a merits hearing. The Vice Chair said that subsection (a)(2) and the initial hearing Rule, which will be discussed later, both state that one

of the purposes of the hearing is to evaluate the petition for compliance with the requirements.

Lucienne Parsley, of Disability Rights Maryland ("DRM"), addressed the Committee. She said that DRM is the state-mandated protection and advocacy organization for individuals with disabilities. She informed the Committee that DRM agrees with OPD regarding the issuance of a show cause order and would prefer the court issue a notice for the initial hearing.

Ms. Parsley also questioned whether it is necessary for MDH or the local health authority to be notified of the initial hearing because the petition has not been deemed sufficient to move forward. The Vice Chair clarified that Ms. Parsley is contending that MDH should not receive notice of the hearing or attend because the petition might be deemed insufficient. Ms. Parsley agreed. The Vice Chair asked why MDH should not be present and given an opportunity to be heard on the sufficiency of the petition or any other issues that might be discussed at the initial hearing. Ms. Parsley replied that MDH does not yet have an interest in the case. The Vice Chair pointed out that MDH may be the petitioner. Ms. Parsley agreed that MDH would be an appropriate attendee at the initial hearing in that scenario.

The Chair pointed out that MDH does not have to attend the hearing; the notice merely informs MDH of the filing of the petition and the date of the initial hearing. Ms. Parsley said

that, unless MDH is the petitioner, it is not a party and has no interest in the initial hearing. The Vice Chair pointed out that MDH is notified of the petition by law pursuant to Code, Health – General Article, § 10-6A-04(d)(2). Assistant Reporter Cobun added that § 10-6A-06 requires the care coordination team to begin developing a treatment plan after the filing of the petition.

The Vice Chair said that, to the extent DRM is arguing that a petition should not be deemed "filed" until after the court has reviewed it for sufficiency, that would not be consistent with how courts treat filings. Judge Chen commented that such an interpretation would make the Rules Committee appear to be inserting itself unnecessarily into the plain language of the statute. Ms. Parsley replied that the initial hearing procedure being contemplated by the Rules Committee is not in the statute.

The Chair asked how it is harmful for MDH to receive notice. Ms. Parsley said that, if a petition is not going to proceed, whether it is filed as a nuisance or by someone without the required relationship to the respondent, MDH should not be involved. Assistant Reporter Cobun pointed out that the statute requires MDH to be notified of the petition. Ms. Parsley suggested that notice should only occur on the filing of a "valid" petition. The Vice Chair said that this might be an issue to be addressed by the legislature, but the current law

requires notice to MDH and, if applicable, the local behavioral health authority.

Eleanor Dayhoff-Brannigan, an Assistant Attorney General representing MDH, addressed the Committee. Ms. Dayhoff-Brannigan said that MDH does not anticipate the office of the county attorney having any role in assisted outpatient treatment proceedings. She acknowledged that the requirement that the county attorney be notified is in Code, Health – General Article, § 10-6A-04, but informed the Committee that the county attorney rarely serves as counsel for the local behavioral health authority. Usually, her office represents the local authority. In addition, unless a county chooses to establish its own program, MDH and, by extension, her division, will be the only relevant agencies to notify. The Vice Chair said that Ms. Dayhoff-Brannigan's point is reflected in the Reporter's note to the Rule.

Mr. Zavin asked about the contents of the show cause order. He said that what is proposed does not state "show cause or else something will happen." He asked whether the thought was that the respondent must show cause why a merits hearing should not be scheduled. The Vice Chair acknowledged Mr. Zavin's point but said that a show cause order is the best mechanism already in existence to achieve the goal of summoning the respondent and other relevant individuals to court. Mr. Zavin said that, if

this is the case, the court can simply issue a notice. The Vice Chair said that the Subcommittee discussion on this issue led to the conclusion that courts know what a show cause is and how it works.

Ms. Doyle suggested that the document issued could be called a scheduling order or something else. She said that a show cause order has a certain connotation and could be understood to carry the possibility of contempt. She agreed that the court should issue an order, not merely a notice.

The Chair observed that the court does not obtain jurisdiction over an individual by issuing a notice. She said that a show cause is a traditional mechanism for obtaining jurisdiction and requiring prompt attendance before the court. She reminded the Committee that, by law, there can be no consequences for failing to comply with an order for assisted outpatient treatment.

Ms. Meredith responded that what is being described is not a typical show cause order. She suggested that the Committee use a different term, such as a scheduling order. The Chair replied that the court must have jurisdiction over the person to issue a scheduling order. She explained that the Subcommittee's thinking was to liken the process in many ways to a guardianship, which uses a show cause order to instruct the petitioner on service and summon the parties for a hearing.

The Reporter said that an assisted outpatient treatment proceeding is not a typical Title 2 civil matter that consists of a complaint, service, and an answer. She said that actions initiated by petition generate a show cause order. She asked Ms. Lindsey for her perspective as a clerk. Ms. Lindsey agreed with the Chair that a notice will not establish jurisdiction, and a show cause is the only mechanism currently used by courts to order an appearance.

Assistant Reporter Cobun pointed out that a show cause order also allows the court to specify how to achieve service. Like a guardianship matter, the petitioner might live with the respondent, in which case the court may provide specific instructions for serving the respondent. The show cause order procedure also requires the Advice of Rights contained in Rule 15-1704 to be attached. By using the mechanism of a show cause order, the Rule can require these additional layers of protection for the respondent.

Mr. Brown asked whether the Rules can create a new mechanism for this purpose rather than using the show cause, which is not a perfect fit. Ms. Lindsey said that a civil summons only requires someone to file an answer, not come to court. The Vice Chair acknowledged that the show cause is an imperfect fit.

Chief Judge Morrissey said that one of his concerns with

using a show cause order is that the typical response to a failure to appear for a show cause hearing is a body attachment. He said that the Judiciary can provide judicial education not to issue body attachments in these cases, but it is a concern. Mr. Zavin said that his concern with a show cause order is how the recipient will interpret it. The Vice Chair said that subsection (a)(2) of the Rule states that the show cause order will order the person to show cause and appear. He reiterated that it is not a perfect fit, but the goal is to assemble the parties and interested parties and address preliminary, non-substantive matters.

Judge Curtin said that the initial hearing is comparable to a criminal arraignment. In a criminal arraignment, the charging document triggers the issuance of a summons or warrant. She asked whether the petition for assisted outpatient treatment can trigger a summons and order to appear.

Judge Chen said that she understands that the term "show cause" is troubling some people, but that after the discussion and based on Ms. Lindsey's remarks, she thinks that it makes sense. She said that the assisted outpatient treatment statute prohibits a contempt finding for failure to comply with a treatment order. If there is no threat of a negative consequence in the show cause, it is otherwise a good fit. The Chair added that, to Mr. Brown's point, she does not like the

idea of creating a new type of order for this unique case type where the court has limited power to enforce its orders.

Chief Judge Morrissey asked whether the procedure can be likened to peace and protective orders where the petition initiates the action and there is a summons to an initial hearing where the court determines whether the petition is sufficient. If one or both parties do not appear, the court still makes the determination. The Vice Chair asked whether there are any consequences for not attending a hearing for an intermediate peace or protective order. Chief Judge Morrissey replied that there is not; the court decides whether to issue the intermediate order.

The Chair asked what would happen if the respondent to a petition for assisted outpatient treatment did not appear at an initial hearing, the merits hearing was set, and the respondent did not appear at that hearing either. Assistant Reporter Cobun replied that the burden is on the petitioner to show that assisted outpatient treatment is warranted under the standard set forth in the statute.

Ms. Meredith commented that, if the court can proceed without the respondent, maybe the court should issue a summons instead of a show cause order. She added that this would alleviate Chief Judge Morrissey's concern about courts issuing a body attachment for failure to appear. The Chair said that the

Rule can prohibit body attachments from issuing in assisted outpatient treatment cases, if that is a concern. Chief Judge Morrissey said that he supported prohibiting body attachments in the Rule.

Mr. Marcus said that issuing a summons seems like the appropriate solution. The Vice Chair said that a summons makes sense to him but expressed his worry that a civil summons is a specific type of document that has "baggage" associated with it in the Rules. The Reporter said that a summons has a distinct meaning and function. Mr. Marcus said that, in civil cases, when a complaint is served, the only "baggage" is that if you fail to participate, there may be action taken against you. The Vice Chair commented that a summons does not require the defendant to appear; the defendant can file an answer or notice of intention to defend. The Reporter pointed out that, under Rule 2-113, a party has 60 days to serve a summons, and the legislature clearly intended the assisted outpatient treatment process to move quickly. Ms. Lindsey reminded the Committee that a show cause order instructs the petitioner on how to complete service.

Mr. Gibson said that he understands that the premise of the assisted outpatient treatment law is that there are individuals in the community in some kind of mental health crisis who are not taking care of themselves and pose a serious risk to

themselves or others. He asked what tools the court has available to address an individual who refuses to appear, is ordered to participate in assisted outpatient treatment, and does not comply. The Chair replied that there are no tools in the statute to compel participation and it is a question for the legislature. The issue before the Committee is how to deal with these petitions, which the statute has authorized to be filed in circuit court.

Mr. Kane commented that the statute expressly prohibits failure to comply with assisted outpatient treatment as the basis for a contempt finding or involuntary commitment. He suggested that the Rules could extend this provision to failure to comply with a show cause order, if that is the ultimate concern. The Vice Chair said that it seems odd to state in the Rule that the Rule is "toothless," but acknowledged Mr. Kane's suggestion as a way to alleviate concerns. Mr. Brown said that he agrees with Mr. Kane's suggestion.

The Vice Chair said that a Committee note can be added to the Rules stating that failure to comply with the show cause order cannot be the basis of a contempt finding or a body attachment. The Chair commented that the same or similar provision also could be added to Rule 15-1705, which governs the conduct of the initial hearing. She added that the prohibition on contempt or a body attachment should be in the Rule itself,

not a Committee note.

The Vice Chair said that the wording of such a provision can be discussed during consideration of Rule 15-1705. He asked the Committee whether any other language should be added to Rule 15-1703 on this point. Judge Chen said that a reference in Rule 15-1703 to the statute's prohibition of certain consequences would be helpful to trial judges.

The Reporter asked whether the Advice of Rights contained in Rule 15-1704 should state that failure to appear for a show cause hearing cannot result in contempt or a body attachment. Mr. Laws questioned whether the Rules should alert the respondent that there are no consequences for opting out of participation in the case. He said that he likes that the show cause order feels coercive, and it encourages people to come to court and address the issues in the petition. Judge Chen said that a reference in Rule 15-1703, even if it is a Committee note with a cross reference to the substantive provision in Rule 15-1705, would be helpful.

Mr. Gibson suggested that the Judiciary communicate with the General Assembly regarding some of the issues being discussed by the Committee. The Vice Chair noted the presence of members of the Office of Government Relations and Public Affairs at the meeting. He said that, regardless of whether the law is a good or a bad policy, the Committee is attempting to

make recommendations to implement it.

Mr. Brown remarked that he is mostly concerned with giving guidance to the courts, particularly when a law places limits on the traditional authority of judges. Judge Curtin informed the Committee that she serves on a Judicial Advisory Panel formed by MDH to discuss implementation of assisted outpatient treatment. She said that the group is aware of the lack of enforcement mechanisms in the law and that courts will be educated before the July 1, 2026 effective date.

Judge Bielec asked why a petitioner would file a petition for assisted outpatient treatment and not a petition for an emergency evaluation. Ms. Dayhoff-Brannigan replied that MDH anticipates assisted outpatient treatment being a follow-up to an emergency evaluation where the individual is evaluated by a psychiatrist and does not meet the threshold for commitment; a family member or the treating physician can file the petition for assisted outpatient treatment and attach the evaluation. Judge Bielec thanked Ms. Dayhoff-Brannigan for the explanation.

The Vice Chair asked for any further discussion on Rule 15-1703. He said that the consensus seems to be to add a Committee note or cross reference to Code, Health – General Article, § 10-6A-10(d), which contains the prohibition on using lack of compliance with an assisted outpatient treatment order as the basis for a contempt finding or emergency evaluation petition.

Judge Wilson moved to add the amendment described by the Vice Chair to Rule 15-1703. The motion was seconded and approved by consensus.

There being no further motion to amend or reject proposed new Rule 15-1703, it was approved as amended.

The Vice Chair presented Rule 15-1704, Advice of Rights, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1700 – ASSISTED OUTPATIENT TREATMENT

ADD new Rule 15-1704, as follows:

Rule 15-1704. ADVICE OF RIGHTS

The Advice of Rights required to be served on a respondent shall be in the following form:

ADVICE OF RIGHTS

TO _____

(Name)

[Petitioner's name] has filed a petition alleging that you are in need of outpatient mental health treatment. A copy of the petition is attached. If the court grants the petition, you could be ordered to participate in assisted outpatient treatment for up to one year. You have not been charged with a crime.

YOU HAVE CERTAIN RIGHTS IN THIS CASE:

1. You are entitled to be represented by an attorney of your choosing. The Maryland Office of the Public Defender will be notified of the filing of the petition,

and you may be entitled to representation at no expense. You may contact the office by calling 410-999-8279.

2. You have a right to a hearing on the petition.

3. You have the right to be present at the hearing.

4. You have the right to present evidence on your own behalf and to cross-examine witnesses against you. You are not required to testify at the hearing.

5. The hearing may be closed to the public if you so request.

6. You will have the opportunity to participate in the development of a treatment plan and the opportunity to voluntarily agree to the treatment plan.

7. If you have an advance directive that applies to your mental health treatment, the court must honor it.

The above statements cannot cover all possible situations. Please read the attached papers carefully. You should consult with your attorney to determine what is in your best interest.

Source: This Rule is new.

Rule 15-1704 was accompanied by the following Reporter's note:

Proposed new Rule 15-1704 establishes a form for the Advice of Rights required to be served with the show cause order and petition by Rule 15-1703. The form is derived in part from the Advice of Rights form in Rule 10-204 used in actions for guardianship of the person.

The form informs the respondent that a petition for assisted outpatient treatment ("AOT") has been filed, who filed it, and the possibility of the court ordering treatment for up to one year. The form sets forth a series of rights afforded to the respondent, including the right to representation by an attorney, to have a hearing on the petition, to present evidence, to ask for the hearing to be closed, to participate in

development of the treatment plan, and to have a mental health advance directive honored. The Mental Health Division of the Office of the Public Defender requested that its phone number be included in the section pertaining to representation to encourage the respondent to make contact with the office.

The Vice Chair said that Rule 15-1704 goes against the trend of removing forms from the Rules; it proscribes the form for the Advice of Rights required to be served with the show cause order. Judge Ketterman said that, in light of the discussion on Rule 15-1703, she would recommend that Number 3 on the form be updated to inform the respondent of the effect of not attending the initial hearing. She suggested adding, "If you choose not to be present, decisions may be made without your input." She also said that this section should refer to "any hearing," not "the hearing." By consensus, the Committee approved these amendments.

Mr. Laws pointed out that Number 7 is not an accurate statement of the law, which does not require the court to honor a mental health advance directive. He said that this section of the Advice of Rights should be reworded to inform the respondent that the court must consider the advance directive or that a guardian or health care agent will have the right to participate and advocate for the respondent.

Assistant Reporter Cobun said that Code, Health – General

Article, § 10-6A-06(b)(2) requires the care coordination team to honor the advance directive. The original version of the bill read "shall consider" and it was amended to read "shall honor." Ms. Dayhoff-Brannigan said that this is accurate; the care coordination team is required to honor the agreement, but the court will still review the treatment plan. She added that there will be times when it will be difficult for the court to adhere to the terms of some advance directives. She noted that the care coordination team and the court would need to be aware of the advance directive.

The Vice Chair asked whether Number 7 in the Advice of Rights should be amended or removed. The Chair said that it seems like an important piece of information to flag for the respondent. Mr. Laws moved to amend Number 7 to make it clear that the health care agent has the right to participate in the proceedings and prompt the respondent to bring the advance directive to the attention of the court. The motion was seconded. The Vice Chair called for any further discussion on Mr. Laws's motion.

Mr. Lotridge said that the care coordination team is required to honor the advance directive and the court must incorporate elements of the treatment plan "essential to the maintenance of the respondent's health or safety" into its order, pursuant to Code, Health – General Article, § 10-6A-

08(b)(2).

The Vice Chair said that Mr. Laws's motion is to state in Number 7 that a health care agent has the right to participate in the proceedings and that the care coordination team must honor an advance directive that applies to the respondent's mental health. Mr. Laws amended his motion to refer to a "valid advance directive." The motion was seconded and approved by consensus.

The Vice Chair called for further discussion on the Advice of Rights form. The Chair suggested that Number 1, which refers to possible representation by OPD, include the OPD's website in addition to the phone number. She pointed out that the phone number could change, and individuals can apply for representation through the website. By consensus, the Committee approved the amendment.

Ms. Dayhoff-Brannigan asked whether contact information for Disability Rights Maryland ("DRM") can be included in the Advice of Rights form as well. The Chair remarked that the organization is not mentioned in the statute. Ms. Dayhoff-Brannigan replied that DRM is a nonprofit, but it is the federally mandated statewide protection and advocacy organization for the State. The Reporter said that the Judiciary does not usually mention private entities in the Rules. Ms. Parsley commented that DRM has served in this role

since 1977. Judge Chen pointed out that this designation could change, however unlikely that is, and then the Rule would have to be changed to the new designee.

Chief Judge Morrissey pointed out that many forms have been moved out of the Rules and put under the authority of the State Court Administrator partly because it takes longer to update a form through the Rules process than through an administrative process. Assistant Reporter Cobun responded that certain forms have remained in the Rules because of the rights implicated, such as the advice of rights to parents facing termination of their parental rights and alleged disabled persons subject to guardianship petitions.

There being no further motion to amend or reject proposed new Rule 15-1704, it was approved as amended.

The Vice Chair presented Rule 15-1705, Initial Hearing, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1700 – ASSISTED OUTPATIENT TREATMENT

ADD new Rule 15-1705, as follows:

Rule 15-1705. INITIAL HEARING

(a) Generally

The court shall hold an initial hearing in accordance with this Rule.

(b) Required Attendees

The initial hearing shall be attended by:

(1) the petitioner;

(2) the respondent;

(3) a guardian or health care agent for the respondent, if any; and

(4) unless a private attorney has entered an appearance on behalf of the respondent, a representative from the Maryland Office of the Public Defender.

(c) Permitted Attendees

Any other person who receives notice of the initial hearing pursuant to Rule 15-1703 may attend the hearing but is not required to do so.

(d) Conduct of Hearing

At the initial hearing, the court shall:

(1) determine whether the petition meets the requirements of Code, Health—General Article, § 10-6A-04 and, if so, schedule a hearing on the merits of the petition pursuant to Rule 15-1706;

(2) inform the respondent of the rights set forth in the Advice of Rights issued pursuant to Rule 15-1704; and

(3) appoint counsel, if appropriate.

Source: This Rule is new.

Rule 15-1705 was accompanied by the following Reporter's note:

Proposed new Rule 15-1705 governs the conduct of the initial hearing after the filing of a petition for assisted outpatient treatment.

> Section (b) requires attendance at the hearing by the petitioner, respondent, any guardian or health agent for the respondent, and, unless an attorney has entered an appearance on behalf of the respondent, the Maryland Office of the Public Defender.
>
> Section (c) permits, but does not require, any other person who receives notice of the initial hearing pursuant to Rule 15-1703 to attend the hearing.
>
> Section (d) requires the court to make a determination as to whether the petition meets the statutory requirements in Code, Health—General Article, § 10-6A-04, inform the respondent of the rights contained in the Advice of Rights, and appoint counsel, if appropriate.

The Vice Chair said that Rule 15-1705 governs the conduct of the initial hearing. He noted that there already has been discussion about adding a statement prohibiting a respondent from being held in contempt or subject to a body attachment for failure to attend the initial hearing. He asked whether there were any additional comments on the Rule.

Ms. Williams said that OPD has concerns about subsection (b)(4), which requires a representative from OPD to be present at the hearing. She pointed out that the appearance of OPD may not be entered into the case yet, and the respondent may not qualify for OPD representation. She said that OPD proposes that subsection (b)(4) read, "if retained by the respondent, a private attorney, or a representative from the Maryland Office of the Public Defender." The Vice Chair pointed out that this proposal does not change the meaning of the subsection, as far

as OPD's involvement. Assistant Reporter Cobun commented that her understanding of OPD's position is that the office is only able to staff hearings where its attorneys are representing clients, not where respondents may be potential clients. She said that, if this is the case, subsection (b)(4) can be deleted in its entirety because retained counsel for any party will be required to attend the hearing.

The Reporter commented that the OPD could send a paralegal or other staff member to conduct an intake for a respondent who is a potential client at the initial hearing. Mr. Lotridge said that this would be impossible with the office's current staffing. Assistant Reporter Cobun pointed out that Code, Health – General Article, § 10-6A-07(b)(2) requires OPD to provide representation for a respondent who cannot afford an attorney or "is unable to obtain an attorney due to the respondent's mental illness." Mr. Lotridge replied that the respondent will have to contact OPD. Assistant Reporter Cobun asked how the representation will be facilitated if the respondent is "unable" to contact the office due to mental illness. Mr. Lotridge reiterated that any respondent seeking OPD representation must contact the office.

Mr. Lotridge restated that his office does not have the personnel to send someone to every initial hearing. The Vice Chair asked whether criminal defendants are required to request

representation by the OPD. Mr. Lotridge replied that, when a defendant appears before a District Court commissioner, the commissioner determines the individual's eligibility for representation by the OPD and gives contact information to the individual.

The Vice Chair suggested that subsection (b)(4) could be revised to require "counsel for any required attendee" to be present. By consensus, the Committee approved the amendment.

The Vice Chair called for any further comment on Rule 15-1705. Ms. Dayhoff-Brannigan asked whether the respondent's status as a required attendee means that the initial hearing will not go forward if the respondent is not present. Ms. Williams commented that, if the Committee moves forward with the recommendation to add a statement prohibiting contempt or a body attachment for a respondent who does not attend, the respondent should be a "permitted attendee" under section (c) of the Rule. The Vice Chair asked whether a guardian or health care agent should be a required attendee if the respondent is not required to attend. Ms. Williams suggested that the petitioner should be the only person required to attend the initial hearing. Ms. Dayhoff-Brannigan remarked that a court-appointed guardian should attend the hearing.

Judge Curtin said that the goal of the initial hearing is to get the respondent to court to review the sufficiency of the

petition and ensure that the respondent is informed of the rights in the Advice of Rights. She said that the respondent should be a required attendee.

The Vice Chair suggested that the Rule state that the court may proceed without the respondent being present. He moved to add new section (e) to Rule 15-1705 to state that, if the respondent is not present, no contempt or body attachment may issue, and the court may proceed without the respondent or the respondent's agent or guardian. Assistant Reporter Cobun suggested that this new provision could be section (d), since it instructs the court to proceed with the initial hearing if the respondent is not present. Current section (d) can be re-lettered to follow this new section. The Vice Chair amended his motion to add new section (d) and re-letter current section (d) as section (e). The motion was seconded and approved by consensus.

The Reporter asked how the respondent can be informed of the rights in the Advice of Rights if the respondent is not present. Assistant Reporter Cobun suggested that new subsection (e)(2) read, "inform the respondent, if present." By consensus, the Committee approved the amendment.

There being no further motion to amend or reject proposed new Rule 15-1705, it was approved as amended.

The Vice Chair presented Rule 15-1706, Hearing, for consideration:

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1700 – ASSISTED OUTPATIENT TREATMENT

ADD new Rule 15-1706, as follows:

Rule 15-1706. HEARING

(a) Requirement; Scheduling

Upon a determination that a petition meets the requirements of Code, Health—General Article, § 10-6A-04, the court shall schedule a hearing on the merits of the petition. Unless (1) otherwise ordered by the court for good cause shown or (2) the respondent has filed a written consent to a treatment plan and a stipulated treatment plan, the merits hearing on the petition shall be held no later than 60 days from the date the petition was filed.

Cross reference: See Code, Health—General Article, § 10-6A-06(b)(3) regarding voluntary participation in assisted outpatient treatment.

(b) Required Testimony

At the merits hearing, petitioner shall present the testimony of one or more psychiatrists as required by Code, Health—General Article, § 10-6A-07(d) and (e).

Source: This Rule is new.

Rule 15-1706 was accompanied by the following Reporter's note:

Proposed new Rule 15-1706 governs the hearing on the merits of the petition for assisted outpatient

treatment. It is derived from Code, Health—General Article, § 10-6A-07.

Section (a) requires the court to hold a hearing on the merits of the petition no later than 60 days after the date the petition was filed unless the court orders otherwise for good cause shown or the respondent consents to the treatment plan pursuant to Code, Health—General Article, § 10-6A-06.

Section (b) requires the petitioner to present the testimony required by Code, Health—General Article, § 10-6A-07(d) and (e).

The Vice Chair said that Rule 15-1706 governs the hearing on the merits of the petition. He suggested that the title of the Rule be changed to "Merits Hearing" to clarify and distinguish it from Rule 15-1705, the initial hearing Rule. He said that OPD proposed an amendment in its comment letter and invited Mr. Lotridge or Ms. Williams to speak.

Ms. Williams said that OPD suggested that the first sentence of section (a) be stricken, and the second sentence be restructured. She explained that the current draft could be read as a waiver of a postponement if the request is not made at the initial hearing. The Vice Chair acknowledged that the first sentence of the Rule, which requires the court to schedule a hearing after determining the sufficiency of the petition, is redundant because of provisions in Rule 15-1705, but said he is inclined to leave it. As to the second sentence, he said that the hearing should occur within 60 days of the filing of the

petition unless otherwise ordered by the court or the respondent consents to a treatment plan. He asked what OPD seeks to clarify in that sentence.

Ms. Williams said that OPD is mostly concerned about the 60-day time for the hearing to occur. The Vice Chair asked whether the timing came from the statute. Assistant Reporter Cobun informed the Committee that there are no time standards for action on the petition in the assisted outpatient treatment subtitle. Ms. Williams said that her office suggests 120 days to allow time to investigate, retain experts, and get discovery. She said that OPD would need frequent postponements if 60 days is the standard time.

The Chair observed that there is some urgency to assisted outpatient treatment cases. She said that the Rule does permit the hearing to be postponed, if necessary. Ms. Williams replied that she is concerned that judges will not find good cause to postpone. She added that, if there is imminent danger to the respondent, there are other mechanisms, including a petition for emergency evaluation. The Chair said that emergency evaluation petitions are not a long-term solution for an individual with mental health issues. Judge Chen agreed; she sees a lot of petitions for emergency evaluations and they are not a fix for someone who needs sustained treatment.

Judge Chen acknowledged OPD's concerns but said that 120 days is a long time for a situation involving someone with an allegedly deteriorating persistent mental health condition. Ms. Williams said that she understands the intent behind the assisted outpatient treatment statute, but she is commenting from the perspective of an attorney managing a case and representing a client. Mr. Lotridge added that his office will make frequent requests for postponements to obtain experts and prepare to litigate these cases. He said that setting a hearing in for 60 days after the petition is filed creates a system with time standards that will never be met.

The Chair asked the Committee whether the members were interested in changing the 60-day timeline. Judge Chen asked whether OPD can raise concerns about experts and discovery at the initial hearing when the hearing on the merits is scheduled. Mr. Lotridge said that a contested hearing cannot be held within 60 days. Judge Bielec commented that if the 60-day timeframe will only lead to mass postponements, it is not practicable.

Judge Curtin said that 60 days is reasonable with the possibility of a continuance. She pointed out that guardianship proceedings also move quickly, though they are rarely heavily contested. She informed the Committee that the Judicial Advisory Panel recognizes that assisted outpatient treatment petitions are specialty proceedings that likely will be routed

to the same handful of judges who are cognizant of the issues involved in those proceedings.

Mr. Gibson said that he understands OPD's point about time constraints and resources. Mr. Lotridge informed the Committee that OPD asked for money to be appropriated to fund assisted outpatient treatment representation and did not receive any additional funding from the legislature. Mr. Gibson said that he would support changing the 60-day time period.

Dr. Rachel Talley of MDH addressed the Committee. She said that, from a clinical perspective, 60 days is an appropriate timeframe to develop a treatment plan and provide resolution to the respondent. She added that she would not want to see a respondent's mental health deteriorate while the petition is pending. She said that 60 days allows for people to engage with the process but is still expedited.

The Vice Chair said that he is in favor of advancing the Rule as drafted. He said that he understands the resource constraints, but holding the hearing 120 days after the petition, which is required to be filed no more than 30 days after a psychiatrist has evaluated the respondent, puts the hearing five months after the initial evaluation. He said that this timeline does not seem appropriate for the circumstances of these cases.

The Vice Chair asked whether there was a motion to change the 60-day period. Mr. Zavin moved to amend Rule 15-1706 to provide for a hearing to occur within 120 days of the date the petition is filed. The motion was seconded. The Chair called for a vote and the motion failed with three voting in favor.

Ms. Meredith moved to amend the 60-day period to be 90 days. The motion was seconded and failed with five voting in favor.

The Chair called for further discussion on Rule 15-1706. Ms. Parsley suggested that dismissal of the petition be included in the Rule. She said that Code, Health – General Article, § 10-6A-06(b)(3) requires the care coordination team to notify the court that the case is dismissed pursuant to Rule 2-506 if the respondent voluntarily agrees to treatment. Assistant Reporter Cobun pointed out that section (a) states that the hearing is not required if the respondent consents to treatment and the cross reference following section (a) cites to that statutory provision. Ms. Parsley said that DRM recommends that the dismissal provision be included in the text of the Rule.

Ms. Dayhoff-Brannigan informed the Committee that there could be a situation where the care coordination team develops a treatment plan that the petitioner disagrees with but the respondent consents to follow. The statute only requires the respondent's consent. The Vice Chair replied that, if all

parties do not consent, it is not appropriate to file a dismissal pursuant to Rule 2-506 (a). The care coordination team and respondent can alert the court to the respondent's consent to treatment, but a stipulated dismissal must be signed by all parties.

Judge Curtin said that, although the language of the statute provides that a hearing on the merits of the petition should not be held if the respondent consents to a treatment plan, she can imagine a scenario where there is a dispute regarding the validity of that consent. She said that this could be an issue for a judge to decide. Ms. Dayhoff-Brannigan said that, if the petitioner does not consent to dismissal, the court would make a determination and could enter the order over the petitioner's objection; this would not be a stipulated dismissal but an order for assisted outpatient treatment. The Vice Chair agreed that an order may be necessary if all parties are not in agreement.

The Vice Chair asked if there were any further motions to amend Rule 15-1706. There being no motion to amend or reject the proposed Rule, it was approved as presented subject to changing the title to "Merits Hearing."

The Vice Chair presented Rule 15-1707, Findings; Order, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1700 – ASSISTED OUTPATIENT TREATMENT

ADD new Rule 15-1707, as follows:

Rule 15-1707. FINDINGS; ORDER

(a) Findings

The court may order the respondent to participate in assisted outpatient treatment for a period not to exceed one year if the court finds, by clear and convincing evidence, that:

(1) the respondent is at least 18 years old;

(2) the respondent has a serious and persistent mental illness;

(3) the respondent has demonstrated a lack of adherence with treatment for the serious and persistent mental illness that meets the requirements of Code, Health—General Article, § 10-6A-05(a)(3);

(4) in view of the respondent's treatment history and behavior at the time the petition was filed, the respondent is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would create a substantial risk of serious harm to the individual or harm to others;

(5) the respondent is unlikely to adequately adhere to outpatient treatment on a voluntary basis, as demonstrated by the respondent's history of treatment nonadherence in the three years immediately preceding the filing of the petition that is not due to financial, transportation, or language issues during that period; and,

(6) assisted outpatient treatment is the least restrictive alternative appropriate to maintain the health and safety of the respondent.

(b) Order

> An order for participation in assisted outpatient treatment shall incorporate a treatment plan developed pursuant to Code, Health—General Article, § 10-6A-06 and may include only those elements of the treatment plan that the court finds by clear and convincing evidence are essential to the maintenance of the respondent's health or safety.
>
> Cross reference: See Code, Health—General Article, § 10-6A-08.
>
> Source: This Rule is new.

Rule 15-1707 was accompanied by the following Reporter's note:

> Proposed new Rule 15-1707 pertains to the findings required for the court to enter an order for assisted outpatient treatment ("AOT") and the contents of the order.
>
> Section (a) is derived from Code, Health—General Article, § 10-6A-05 and lists the findings required before the court may order AOT.
>
> Section (b) is derived from Code, Health—General Article, § 10-6A-08 and governs the contents of the order.

The Vice Chair said that Rule 15-1707 sets forth the required findings by the court prior to entering an order for assistant outpatient treatment and the contents of the order. There being no motion to amend or reject proposed new Rule 15-1707, it was approved as presented.

The Vice Chair presented Rule 15-1708, Modification; Review Hearings, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1700 – ASSISTED OUTPATIENT TREATMENT

ADD new Rule 15-1708, as follows:

Rule 15-1708. MODIFICATION; REVIEW HEARINGS

(a) Modification

(1) Generally

At any time during the period of an order for assisted outpatient treatment, a petitioner, care coordination team member, or a respondent may file a motion requesting that the court stay, vacate, or modify the order. A motion for a material change to the treatment plan shall be made in accordance with subsection (a)(3) of this Rule.

Cross reference: See Code, Health—General Article, § 10-6A-09 (a) defining a "material change" as the addition or deletion of a category of services listed in the treatment plan.

(2) Without Motion

The care coordination team shall notify the court of a nonmaterial change to the treatment plan or of a material change that is explicitly authorized by the terms of the assisted outpatient treatment order.

(3) On Motion

(A) The court may incorporate the requested material change into the order for assisted outpatient treatment if (i) the respondent consents to the proposed change or (ii) the court finds, by clear and convincing evidence, that the material change is essential to the maintenance of the respondent's health or safety.

(B) At the request of the respondent, the court shall hold a hearing on a motion for material change and may hold a hearing on a motion for material change on its own initiative.

(C) Except as provided in subsection (a)(4) of this Rule, the court shall rule on a motion for material change no later than 30 days after the filing of a timely response or, if no response is timely filed, the expiration of the time to file a response.

(4) Immediate Necessity

If a treating psychiatrist makes a change to a treatment plan due to immediate necessity, a care coordination team member shall:

(A) notify the respondent, the respondent's attorney, and, if applicable and known, the respondent's guardian and health care agent; and

(B) immediately file an emergency motion with the court to be considered on an expedited basis after providing the respondent with notice and an opportunity to be heard.

(b) Review Hearing

At any time after entry of an order for assisted outpatient treatment, the court may schedule a status conference to review the progress of the respondent.

(c) Notice of Emergency Evaluation

If the care coordination team becomes aware of a petition for emergency evaluation of the respondent filed pursuant to Code, Health—General Article, Title 10, Subtitle 6, Part IV, the care coordination team shall notify the court in writing of the reasons for the evaluation and findings of the evaluation.

Cross reference: Code, Health—General Article, § 10-6A-10.

Source: This Rule is new.

Rule 15-1708 was accompanied by the following Reporter's note:

Proposed new Rule 15-1708 governs modifications to a treatment plan and review hearings. It is derived from Code, Health—General Article, §§ 10-

6A-09 and 10-6A-10.

Section (a) is derived from the statute and provides that certain individuals may file a motion at any time requesting that the court stay, vacate, or modify the order for assisted outpatient treatment ("AOT"). A cross reference to the definition of "material change" in the statute follows subsection (a)(1).

Subsection (a)(2) sets forth the types of modifications that may be made to the treatment plan without court order. It requires the care coordination team to notify the court of such changes.

Subsection (a)(3) establishes a procedure for modification to the order on motion. The court shall hold a hearing on the motion at the request of the respondent and may hold a hearing on its own initiative. The court is required by Code, Health—General Article, § 10-6A-09(d) to rule on a motion for material change within 30 days of the filing of the motion and any timely response.

Subsection (a)(4) contains an exception to the requirement that a material change may only be made by court order where the treating psychiatrist deems the change an "immediate necessity." Code, Health—General Article, § 10-6A-09(f) requires the care coordination team to notify the respondent, respondent's attorney, and any guardian or health agent of the respondent. If a change based on "immediate necessity" is made, the Rule requires the team to immediately file an emergency motion with the court to be considered on an expedited basis.

Section (b) is derived from Code, Health—General Article, § 10-6A-10 and permits the court to schedule a status conference at any time to review the progress of the respondent.

Section (c) also is derived from Code, Health—General Article, § 10-6A-10 and requires certain notice to the court if the respondent is the subject of a petition for emergency evaluation.

The Vice Chair said that Rule 15-1708 governs modification of an assisted outpatient treatment order, with and without a motion. Ms. Dayhoff-Brannigan asked whether the Committee would consider adding a Committee note stating that, if an order is for less than one year of treatment, the court can modify the order to extend its duration up to one year. The Vice Chair said that this would be a modification of the order, which the statute and Rule cover already. He called for a motion to amend Rule 15-1708. There being no motion to amend or reject proposed Rule 15-1708, it was approved as presented.

The Vice Chair presented Rule 15-1709, Confidentiality, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1700 – ASSISTED OUTPATIENT TREATMENT

ADD new Rule 15-1709, as follows:

Rule 15-1709. CONFIDENTIALITY

(a) Records

Except for docket entries, all papers and submissions in an assisted outpatient treatment proceeding shall be shielded upon filing and not open for public inspection. Unless the court orders otherwise, parties, the Department, and members of the care coordination team shall have access to case records.

Committee note: In cases where the petitioner is not a physician, a petitioner who does not already have authorization to access medical information relating to the respondent will have access to the case record in the proceeding unless the court enters an order restricting that access.

(b) Hearings

A hearing conducted pursuant to this Chapter may be closed at the request of the respondent or counsel for the respondent.

Source: This Rule is new.

Rule 15-1709 was accompanied by the following Reporter's note:

Proposed new Rule 15-1709 governs confidentiality of records and hearings in assisted outpatient treatment ("AOT") proceedings. Code, Health—General Article, § 10-6A-04(e) requires that a petition for AOT "be held under seal" and prohibits publication on the Case Search website.

The General Court Administration Subcommittee considered the intent of the legislature and the existing scheme of Rules governing confidentiality of similar records. The statute refers only to the petition, not any subsequent records filed in the action, and is silent on the openness of hearings on AOT petitions. The Subcommittee concluded that prohibition of publication to Case Search indicates a strong intent to prevent public inspection of case records.

Section (a) is derived from the provisions governing access to records in guardianship proceedings. It makes all papers and submissions in an AOT proceeding shielded upon filing and not open for public inspection. Docket entries are public, as they are in guardianships, for the limited purpose of permitting interested persons to learn of the existence of the case.

> The Rule specifies that parties, the Department, and the care coordination team shall have access to case records unless the court orders otherwise. The Committee note following section (a) cautions that a lay petitioner who initiates the proceeding will have access to records in the case, including medical records the individual would not otherwise be authorized to see, as a party.
>
> Section (b) states that hearings conducted in an AOT proceeding may be closed at the request of the respondent. Court proceedings are presumed to be open to permit the public to see how cases are adjudicated and to protect litigants from decisions impacting their rights being made in secret. The General Court Administration Subcommittee proposes that AOT hearings similarly be presumptively open but, like guardianship proceedings, be permitted to be closed at the request of the respondent.

The Vice Chair informed the Committee that Rule 15-1709 provides for confidentiality of records and hearings in assisted outpatient treatment proceedings. He said that OPD had a comment on this Rule and invited Ms. Williams to speak.

Ms. Williams said that OPD wished to limit access to health information by those would are not already authorized to have it. She said that the Rule permits MDH and members of the care coordination team to have access to the records and OPD opposes such access. The Vice Chair pointed out that MDH is served with the petition and, through the care coordination team, participates in the case. He asked why it is inappropriate for those groups to have access to case records.

Ms. Williams asked what is meant by a "case record." The Vice Chair replied that it is a defined term. Assistant Reporter Cobun said that a case record is defined in Rule 16-903 as, "all or any portion of a paper, document, exhibit, order, notice, docket entry, or other record, whether in paper, electronic, or other form, that is made, entered, filed with, or maintained by the clerk of a court in connection with an action or proceeding." She informed Ms. Williams that there are Rules in Title 16, Chapter 900 governing public access to case records, but the general principle is that parties and their attorneys have access to records in their own cases unless the court orders otherwise.

Judge Bielec asked whether, if he filed a petition for assisted outpatient treatment for a neighbor, he would obtain access to the medical records of the neighbor. Assistant Reporter Cobun replied that he would be a party and, if a medical record is filed in the case and not under seal, he would have access to it. She pointed out that the Committee note seeks to address situations where a petition is filed by a layperson and not a medical provider; the note reminds the participants that the layperson will have access to all records in the case, including sensitive medical information, unless the court orders otherwise. The Reporter noted that, to file a petition, the petitioner needs to obtain the physician's

certificate stating that the respondent has been evaluated and is a good candidate for treatment, adding that a neighbor most likely would have difficulty obtaining such a certificate.

The Vice Chair said that he is still confused about who is being granted access to case records by Rule 15-1709 that should not have it. Ms. Williams said that MDH may not be a party, and the care coordination team members are not parties. Mr. Laws asked how the care coordination team can develop a treatment plan without access to case records. The Vice Chair added that the parties and other participants in the case will see only what is filed in the case; he said that he struggles to see how MDH or the care coordination team can participate without seeing the filings. He said that MDH is given notice of the petition by law. Mr. Laws added that either MDH or, if a county establishes a program, the local behavioral health authority, is tasked with oversight of the care coordination team.

Ms. Dayhoff-Brannigan commented that the care coordination team members should only be granted access to case records in individual cases where those members are involved, not to records in every assisted outpatient treatment case. The Vice Chair said that the Rule is not intended to grant broad access where it is not necessary; only participants in a specific case can access records in that case. Ms. Dayhoff-Brannigan

suggested that section (a) refer to "the respondent's care coordination team."

Ms. Williams said that the care coordination team members are not parties and should not have access to case records. The Vice Chair reiterated that MDH is required to receive notice of the petition and the care coordination team is required to develop a plan based on the petition and subsequent filings. Mr. Lotridge said that OPD is concerned about records being obtained and used by MDH or other participating entities outside of the case where they were filed. The Chair pointed out that the Rule provides that access is for "all papers and submissions in an assisted outpatient treatment proceeding."

The Vice Chair suggested that, for the sake of clarity, the Rule refer to "the Department or, if the county has established a program pursuant to Code, Health – General Article, § 10-6A-03, the applicable local behavioral health authority or the core service agency of the county." Though no county has established a program at this time, this lnguage clarifies that only the relevant agency should be granted access in a case. He moved to make that amendment and to use the term "the respondent's care coordination team." The motion was seconded and approved by consensus.

There being no further motion to amend or reject proposed Rule 15-1709, it was approved as amended.

The Vice Chair presented conforming amendments to Rules 1-101, Applicability; 16-914, Case Records – Required Denial of Inspection – Certain Categories; 10-203, Service; Notice, and 10-302, Service; Notice, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-101 by adding categories of special proceedings to section (o), as follows:

Rule 1-101. APPLICABILITY

. . .

(o) Title 15

Title 15 applies to special proceedings relating to arbitration, assisted outpatient treatment, catastrophic health emergencies, contempt, coram nobis, derivative actions, habeas corpus, health claims arbitration, injunctions, judicial releases of individuals confined for mental disorders, liens for unpaid wages, mandamus, marriage of minors, the Maryland Automobile Insurance Fund, name changes and judicial declaration of gender identity, structured settlement transfers, and wrongful death.

. . .

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

Proposed amendments to Rule 1-101 (o) are both housekeeping amendments to update the Rule and a conforming amendment in light of proposed new Title 15, Chapter 1700 (Assisted Outpatient Treatment).

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 (i)7) pertaining to records in assisted outpatient treatment proceedings, 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:

. . .

(i) The following case records containing medical or other health information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health-General Article, § 18-338.1, § 18-338.2, or § 18-338.3.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health-General Article, § 5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, § 18-201 or § 18-202.

(5) A case record that contains information concerning the consultation, examination, or

treatment of a developmentally disabled individual, declared confidential by Code, Health-General Article, § 7-1003.

(6) A case record relating to a petition for an emergency evaluation made under Code, Health-General Article, § 10-622 and declared confidential under § 10-630 of that Article.

(7) Except for docket entries, a case record relating to a petition for assisted outpatient treatment made under Code, Health-General Article, § 10-6A-01 *et. seq.* and shielded pursuant to Rule 15-709.

. . .

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

Proposed amendments to Rule 16-914 (i) are conforming ones in light of confidentiality provisions governing petitions for assisted outpatient treatment ("AOT").

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF THE PERSON

AMEND Rule 10-203 by clarifying in section (a) that the petitioner is responsible for causing the show cause order to be served, as follows:

Rule 10-203. SERVICE; NOTICE

(a) Service on Minor or Alleged Disabled Person

The petitioner shall ~~serve~~ cause a show cause order issued pursuant to Rule 10-104 to be served on the minor or alleged disabled person and on the parent, guardian, or other person having care or

custody of the minor or alleged disabled person. Service shall be in accordance with Rule 2-121 (a). If the minor or alleged disabled person resides with the petitioner, service shall be made upon the minor or disabled person and on such other person as the court may direct. Service upon a minor under the age of ten years may be waived provided that the other service requirements of this section are met. The show cause order served on a disabled person shall be accompanied by an "Advice of Rights" in the form set forth in Rule 10-204.

. . .

Rule 10-203 was accompanied by the following Reporter's note:

Proposed amendments to 10-203 and 10-302 are clarifying ones to accurately state service requirements for a show cause order in a guardianship proceeding. Rule 2-123 prohibits a party to the action from serving original papers; the amendments make it clear that the petitioner is responsible for causing the respondent to be served, not for conducting the service.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 – GUARDIAN OF PROPERTY

AMEND Rule 10-302 by clarifying in section (a) that the petitioner is responsible for causing the show cause order to be served, as follows:

Rule 10-302. SERVICE; NOTICE

(a) Service on Minor or Alleged Disabled Person

The petitioner shall ~~serve~~ cause a show cause

> order issued pursuant to Rule 10-104 to be served on the minor or alleged disabled person and on the parent, guardian, or other person having care or custody of the minor or alleged disabled person or of the estate belonging to the minor or alleged disabled person. Service shall be in accordance with Rule 2-121 (a). If the minor or alleged disabled person resides with the petitioner, service shall be made upon the minor or disabled person and on such other person as the court may direct. Service upon a minor under the age of ten years may be waived provided that the other service requirements of this section are met. The show cause order served on a disabled person shall be accompanied by an "Advice of Rights" in the form set forth in Rule 10-303.
>
> . . .

Rule 10-302 was accompanied by the following Reporter's note:

> Proposed amendments to 10-203 and 10-302 are clarifying ones to accurately state service requirements for a show cause order in a guardianship proceeding. Rule 2-123 prohibits a party to the action from serving original papers; the amendments make it clear that the petitioner is responsible for causing the respondent to be served, not for conducting the service.

The Vice Chair said that Rule 1-101 is updated to reference assisted outpatient treatment and other special proceedings that have been added to Title 15. Rule 16-914 is amended to state that case records in an assisted outpatient treatment proceeding are not available for public inspection. Mr. Laws pointed out a typo in the reference to Rule 15-1709 in new subsection (i)(7). The Reporter said that this will be fixed.

The Vice Chair said that Rules 10-203 and 10-302 are updated to clarify service requirements for show cause orders in guardianships.

There being no motion to amend or reject the proposed conforming amendments, they were approved as presented, subject to correction of the typographical error identified in Rule 16-914.

Agenda Item 3. Consideration of proposed amendments to Rule 20-109 (Access to Electronic Records in an Action).

The Vice Chair presented Rule 20-109, Access to Electronic Records in an Action, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109 by adding a Committee note following section (i), as follows:

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

. . .

(i) Government Agencies and Officials

Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional information contained in case

records to government agencies and officials (1) who are approved for such access by the Chief Justice of the Supreme Court, upon a recommendation by the State Court Administrator, and (2) when those agencies or officials seek such access solely in their official capacity, subject to such conditions regarding the dissemination of such information imposed by the Chief Justice.

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

. . .

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

The proposed amendment to Rule 20-109 was suggested by the Major Projects Committee to implement Chapter 578, 2025 Laws of Maryland (HB 681). The law adds a provision to Code, Family Law Article, § 12-202 requiring the court, after establishing a child support order, to "send a copy of the guideline calculation and the order to the Child Support Administration."

The General Assembly was informed that this provision would have a significant operational impact on the courts and likely result in the transmittal of tens of thousands of documents to the Child Support Administration in cases where the Administration is not involved. According to the Fiscal Note, there were approximately 8,200 dispositions in cases involving the Administration in the 2024 fiscal year. The Administration was provided child support orders in those cases through MDEC, but not the guidelines calculation. The Judiciary estimated that more than 50,000 additional cases could be impacted by the statute, in addition to the requirement that the guidelines calculation be shared.

> Since the passage of the statute, the Administrative Office of the Courts and the Major Projects Committee discussed compliance with the Child Support Administration. Rules Committee staff was informed that the Administration expressed concern about receiving orders from cases in which the agency is not involved and may never become involved. Both the Administration and the Judiciary wish to comply with the law, which requires these records to be "sent," but are seeking business process solutions that allow both sides to share necessary records without wasting resources.
>
> The proposed amendment to Rule 20-109 (i) adds a Committee note stating that an agreement to provide MDEC government access pursuant to the second can satisfy a statutory requirement to "send" a case record, if the government agency agrees in writing.

The Vice Chair explained that a Committee note is proposed to be added to Rule 20-109 (i) to assist with compliance with a 2025 law. He said that the new law requires the Judiciary to send every order establishing or modifying child support to the Child Support Administration, even if the agency is not charged with collecting support. Due to logistical concerns, there was a request from the Major Projects Committee to establish in the Rules that the statute can be satisfied by permitting remote access to the relevant records rather than transmitting each record.

The Vice Chair said that the proposed amendment adds a Committee note to the section on remote access by government agencies stating that statutes such as Code, Family Law Article,

§ 12-202 may be satisfied, with the consent of the agency, by providing remote access pursuant to the section. The Vice Chair described the amendment as a practical response to the new statute.

There being no motion to amend or reject the proposed amendment to Rule 20-109, it was approved as presented.

Agenda Item 4. Consideration of proposed "housekeeping" amendment to Rule 16-903 (Definitions).

The Deputy Reporter presented Rule 16-903, Definitions, for consideration.

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 1 – GENERAL PROVISIONS

AMEND Rule 16-903 by correcting a typographical error and making a stylistic change to subsection (j)(2) as follows:

Rule 16-903. DEFINITIONS

...

(j) Judicial Record

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

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

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

(3) includes:

(A) an administrative record;

(B) a license record;

(C) a case record;

(D) a notice record;

(E) a special judicial record.

...

Source: This Rule is derived from former Rule 16-902 (2019).

Rule 16-903 was accompanied by the following Reporter's note:

A housekeeping amendment is proposed to subsection (j)(2) of this Rule to correct a typographical error in the citation to the General Provisions Article of the Maryland Code. A stylistic change is also proposed.

The Deputy Reporter informed the Committee that the proposed housekeeping amendment corrects an obsolete reference. A motion to approve the housekeeping amendment was made, seconded, and approved by consensus.

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