STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Ninety-Fifth Report to the Court of Appeals, transmitting thereby proposed new Title 2, Chapter 800 (Remote Electronic Participation in Judicial Proceedings), new Title 17, Chapter 600 (Proceedings in Orphans' Court), and new Rules 1-105, 4-602, 9-211, 14-214, and 16-306.1; amendments to current Rules 1-101, 1-321, 2-131, 2-422.1, 2-510, 2-510.1, 2-541, 2-542, 2-543, 2-706, 3-510, 4-213.1, 4-264, 4-265, 4-314, 4-342, 4-345, 4-346, 4-504, 7-114, 7-208, 7-402, 8-204, 8-411, 8-502, 8-602, 8-603, 8-605 (a) and (b), 9-208, 14-102, 14-208, 14-210, 14-214 [renumbered Rule 14-214.1], 14-502, 15-1305, 16-306, 16-907, 17-101, 17-206, 17-404, 18-401, 19-105, 19-202, 19-212, 19-213, 19-304.4, 19-726, and 20-106; and the proposed rescission of Rule 2-513.

The Committee's One Hundred Ninety-Fifth Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before

March 8, 2018 any written comments they may wish to make to:

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Court of Appeals of Maryland

February 6, 2018

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald,
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Joseph M. Getty,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
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Your Honors:

The Rules Committee submits this, its One Hundred Ninety-Fifth Report, and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The Report comprises 22 categories of suggested changes.

Category 1 consists of new Rule 1-105, which is intended to implement the Maryland Uniform Electronic Legal Materials Act (2017 Md. Laws, Ch. 554) (MUELMA). The statute, codified as Sections 10-1601 through 10-1611 of the State Government Article, is attached as **Appendix A**. In relevant summary, it declares the Court of Appeals to be the "official publisher" of the Maryland Rules and of *reported* "decisions" of the Court of Appeals and Court of Special Appeals and prescribes certain requirements regarding authentication, preservation, and security in the event the Court decides to make an electronic version the official record of those documents.

The Act, when coupled with MDEC and the posting of Rules and decisions on the Judiciary website, requires that some greater clarity be given to the distinctions between what constitutes the official record of those documents and how the text of Rules and decisions properly may be cited.

With respect to the Maryland Rules, at least since 1976, the Clerk of the Court of Appeals has been required to "maintain a separate record designated as the 'Maryland Rules of Procedure,' which shall contain all rules and amendments adopted by the Court." *See* current Rule 16-802 (h) and former Rule 16-801 e. The Clerk has dutifully maintained such a record. It consists of multiple bound volumes that contain, in paper form, all of the Rules Orders adopted by the Court, along with the text of the Rules adopted or amended by those Orders. Rules Orders and the accompanying text of Rules changes dating from January 2003 also are available on the Judiciary website.

Those documents are akin to the Session Laws enacted each year by the General Assembly and are the most authentic version of what the Court has promulgated, largely because the Rules Orders are signed personally by the judges of the Court. Like the Session Laws, however, they are not in codified form and, as a practical matter, are not helpful in efficiently determining what the current text of a Rule is, or was at any particular time after its first promulgation. The Maryland Rules, in up-to-date *codified* form, are currently published in both paper and electronic format by three commercial entities, and those are the principal sources that people use to find and to cite particular Rules.[1] The Committee recognizes that, at some point, the Court may decide to sign Rules Orders electronically accompanied by an electronic version of the Rules adopted or amended by the Order and that the State or other commercial entities may wish to publish an electronic or paper version of the codified Rules. Proposed Rule 1-105 deals with the situation and the practice as it is currently.

Rule 1-105 (b) recognizes the distinction between the official record of the Rules and the sources that may be used to cite the Rules. Until such time as the Court may choose to enter its Rules Orders and the text of Rules changes in electronic form, the official record would remain the paper records maintained by the Clerk pursuant to Rule 16-802 (h), because that is the most authentic version, but the electronic version posted on the Judiciary website or contained in a published codification approved by the Court may be cited as evidence of the text of the Rule. Note Rule 1-103. The reason

[1] The current publishers are LexisNexis, Thomson Reuters, and Bloomberg BNA Rules Service. Their publications currently are available in both paper and electronic form. The LexisNexis paper publication contains the text of the Rules Orders from and after April 1984, when Titles 1 through 4 of the Maryland Rules were first adopted.

for recommending Court approval of commercial publications is to guard against the citation of language appearing in versions posted or published by unknown or unreliable sources.

The issue regarding "decisions" of the two appellate courts is more complicated, first because of the incremental spread of MDEC and with it the application of Rule 20-301, second because a "decision" may be manifested by an order and not just an opinion, and third because, although MUELMA applies only to *reported* decisions, the question is raised whether unreported decisions should be treated differently in terms of what constitutes the official records of those decisions.[2]

The Committee recommends that, for purposes of determining what constitutes the official record, unreported decisions of the appellate courts be treated the same as reported decisions, largely because there seems to be no good reason to treat them differently, and that all orders of the appellate courts be treated in the same way as opinions. The objective, with respect to all decisions, is to make the most authentic version filed with the clerk the official record. Rule 1-105 (a), with the Committee note that follows, implements that objective.

Section (c) takes account of the difference between MDEC and non-MDEC appeals. In appeals not governed by MDEC, the paper version of the slip opinion or order would be the official version. The Committee recognizes that, even in non-MDEC appeals, opinions, orders, and mandates approved by or on behalf of the Court are filed with the clerk in electronic format, but because the circuit court record is in paper form, the paper version of that opinion, order, or mandate is what gets added to the circuit court record.

In appeals governed by MDEC, Rule 20-301 (a) declares the electronic version of all submissions filed electronically or scanned into the system to be the official record of those submissions, and that would include the appellate decision. Eventually, the entire State will be on MDEC and the need for

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[2] Under current practice, all opinions and dispositive orders of the Court of Appeals are reported. There are non-dispositive orders of the Court that are not reported, however – orders dealing with administrative matters such as extensions of time to file the record or briefs, allowance of longer briefs, postponement of argument. The Court of Special Appeals issues many unreported opinions and many non-dispositive orders. The unreported opinions may not be cited as precedent or as persuasive authority, but they may be cited for other purposes. *See* Rule 1-104.

this distinction will disappear, but that is not anticipated to occur until 2021.

The one problem with declaring the electronic version to be the official record is the statutory requirement that the Court be responsible for assuring the authentication, preservation, and security of electronic records. Other States that have adopted the UELMA have struggled with developing appropriate standards and protocols. The Committee has recently been advised that such standards and protocols are being developed in Maryland and may be ready for Court consideration in the spring of 2018, but, as of this writing, they are not yet in final form. Subsection (c)(2) attempts to deal with that issue by providing (1) for the development of those protocols by the Administrative Office of the Courts, (2) for their presentation to the Court for its approval through an administrative order, and (3) for delaying treatment of the electronic version of appellate decisions as the official record until a date set by the Court in the administrative order. If the necessary protocols are developed in time for consideration by the Court prior to the effective date of the proposed Rules, that language can be deleted.

Different principles apply with respect to the *citation* of appellate decisions. Article IV, §16 of the Maryland Constitution, first adopted in 1851 and amended in 1966, requires that provision be made for publishing all causes argued and determined in the Court of Appeals or Court of Special Appeals that the judges designate as proper for publication. The General Assembly has responded to that mandate by creating the position of State Reporter and authorizing that official, under the supervision of the Court of Appeals, to prepare for publication reports of cases decided in those courts and designated for publication. *See* Code, Courts Article, §13-203. Section 13-204 requires the State Reporter, under the direction and supervision of the Court of Appeals, "to let the necessary contracts for publishing the Maryland Reports containing opinions of the Court of Appeals and the Maryland Appellate Reports, containing opinions of the Court of Special Appeals." The Committee is advised that the Clerk of the Court acts as the State Reporter but that the actual contracting is handled by a unit in the Administrative Office of the Courts.

That is the origin of the Maryland Reports, consecutively numbered since 1851, and the Maryland Appellate Reports,

consecutively numbered since 1967.[3] The familiar citation of opinions or orders included in those official Reports has been the name of the case followed by the volume and page number where the opinion or order appears in those Reports and the year in which the opinion or order was filed. It also has become common to use alternative methods of citation for opinions or orders not included in those Reports, either because they were not designated for reporting or because of a time delay in publishing them in the Reports. Subsection (c)(3) of the Rule provides for those alternative methods of citation but requires that an opinion or order that appears in the official Reports state the volume and page number of where the opinion or order appears in the official Report even if another source is used to find the decision. Subsection (c)(3)(C) expressly permits a decision not included in the official Report to be cited as it appears on the Judiciary website.

Category Two consists of a new Chapter 800 to Title 2 of the Rules (Rules 2-801 through 2-806) that expands and consolidates existing Rules dealing with remote electronic participation in judicial proceedings.[4] The objective is to take advantage of the technology that allows for reliable interactive communication to provide for more efficient access to the courts, without sacrificing the required fairness in judicial proceedings. This objective, in theory, can be achieved in all courts, but each type of court presents special challenges, and the Committee decided, at this point, to limit the new Rules to civil proceedings in the circuit courts. Subject to direction from the Court of Appeals, the Committee will examine the prospect of extending them to the District Court and, to the extent Constitutionally permissible, to criminal and juvenile proceedings.

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[3] Prior to the 1851 mandate, some of the decisions and opinions of the Court of Appeals were published privately. *See* the Harris and McHenry Reports published by Thomas Harris (then the Clerk of the Court of Appeals) and John McHenry, later by Harris and Reverdy Johnson, then by Harris and Richard Gill, then by Gill and John Johnson (who had become the Clerk of the Court), and finally just by Mr. Gill.

[4] There are at least five Rules, five statutes, and two administrative orders dealing with remote electronic or telephonic participation in judicial proceedings. *See* Rules 2-513, 3-513, 4-231 (d), 7-208, and 15-1104 (d); Code, Public Safety Art., §14-3A-05, Criminal Procedure Article, §11-303, Family Law Article, §§5-326, 9.5-110, and 10-328, and Administrative Orders of the Chief Judge of the Court of Appeals dated December 18, 2013 and June 26, 2015.

Remote electronic participation can occur in two contexts – (1) where the proceeding occurs, as it normally does, in a courtroom or, in a conference situation, in chambers, but one or more parties, witnesses, or attorneys participate by remote electronic means, or (2) where the entire proceeding is conducted by remote electronic means. Both can occur in either evidentiary or non-evidentiary proceedings, but greater care must be taken when an evidentiary proceeding is conducted remotely.

Rule 2-801 defines the relevant terms. The Court will note two caveats to the definition of "non-evidentiary proceeding." A proceeding in which some evidence is presented may be considered non-evidentiary if the evidence is admitted by stipulation of all parties, and consideration of documents attached to a motion or response does not preclude the hearing on the motion from being deemed non-evidentiary.

Rule 2-802 deals with non-evidentiary proceedings. Subject to Rule 2-804, it permits the court, on motion or on its own initiative, to permit *or require* one or more participants to participate by means of remote electronic participation unless, upon an objection by a party, the court finds that such participation would be likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding. The ability to require remote electronic participation exists currently in both evidentiary and non-evidentiary proceedings. In bail review proceedings and in judicial review actions involving prisoners (*e.g.* inmate grievance cases), the prisoner generally is not in court but participates through a television connection from the correctional institution.

Section (b) of the Rule permits the county administrative judge, in an administrative order entered as part of the court's case management plan, to direct that specific categories of non-evidentiary proceedings routinely be conducted by remote electronic participation, subject to the presiding judge in a particular case ordering otherwise. Examples of the kinds of cases that would be subject to Rule 2-802 are mentioned in the Committee note to section (a). With the "escape hatch" noted, section (b) should allow for more efficient scheduling of cases. For cases not included under the administrative order, if the presiding judge intends to permit or require remote electronic participation, the judge must notify the parties of that intention and afford them an opportunity to object.

Rule 2-803 deals with evidentiary proceedings. A court may permit or require remote electronic participation in such a proceeding only (1) with the consent of all parties, or (2) upon

a finding specified in section (c) of the Rule and only after giving notice to the parties and affording them an opportunity to object. The conditions stated in section (c) are mostly self-explanatory, but the Committee does note two aspects of subsection (c)(2)(A), dealing with the situation of an essential participant who, by reason of illness, disability, risk to the participant or to others, or other good cause, is unable, without significant hardship, to be physically present. The Committee note following that subsection deals with the situation of the participant simply being out-of-State or out of the county. The element of risk to others provides a basis for requiring remote participation by persons who may be a danger. As noted in the discussion of Rule 2-802, that is applied currently with respect to prisoners. Subject to Constitutional and statutory constraints, it also could apply to persons who are involuntarily committed to mental health institutions and are regarded by the court as dangerous.

Rule 2-804 contains certain conditions to allowing remote electronic participation, all designed to assure fairness in the proceeding. Section (g) is intended to preserve the public's First Amendment right to observe court proceedings. Although these Rules apply only to civil proceedings, if there is such a proceeding in which a crime victim has a right to be present, that too will have to be accommodated. More broadly, if the entire proceeding is to be conducted by remote electronic participation, the court will need to provide a way that members of the public who wish to do so, though a court monitor, can observe what they would be able to observe if the proceeding were conducted in a courtroom.

Rule 2-805 deals with technical requirements designed to assure the fairness and reliability of remote electronic participation. Finally, Rule 2-806 preserves some of the current Rules and statutes permitting remote electronic participation in specific kinds of judicial proceedings. Those Rules or statutes have their own special conditions. The Committee recommends repealing Rule 2-513 dealing with testimony by telephone in circuit court civil proceedings as being subsumed in the new Rules and conforming amendments to Rules 7-208 and 15-1305.

Category Three consists of amendments to Rules 7-114 and 8-602 and conforming amendments to Rules 8-502, 8-603, 8-605 (a), and 17-404. Rule 7-114 deals with the dismissal of an appeal from the District Court to a Circuit Court. Rule 8-602 deals with the dismissal of an appeal from a Circuit Court to the Court of Special Appeals or the Court of Appeals. Both Rules state that the appellate court "may" dismiss an appeal for

certain listed reasons, one of which is that the appeal was not filed within the time allowed by the applicable Rule (Rule 7-104 in the case of an appeal to a circuit court and Rule 8-202 in the case of an appeal from a circuit court).

In *Brownstones at Park Potomac v. JP Morgan*, 445 Md. 12 (2015), the Court granted *certiorari* to consider a decision by a circuit court that affirmed a judgment that had been entered by the District Court. Finding that the appeal to the circuit court had not been filed within the 30 days allowed for such an appeal and, relying on an earlier decision involving a late appeal *from* a circuit court (*Ruby v. State*, 353 Md. 100 (1999)), the Court held that, notwithstanding the word "may" in Rule 7-114, the time allowed for noting an appeal was jurisdictional in nature and that the circuit court should have dismissed the appeal rather than affirm the District Court judgment.

Brownstones perpetuated an inconsistency between the substantive decisions of the Court and the text of the two Rules, which purport to make dismissal discretionary ("may") rather than mandatory ("shall"), an inconsistency that, due to its jurisdictional nature, the Committee believes should be resolved. In drafting an appropriate amendment, the Committee noted that two of the other reasons listed in Rule 7-114 and one other reason in Rule 8-602 for dismissing an appeal also appear to be jurisdictional in nature. *See* Rule 7-114 (a) (the appeal is not allowed by law), Rule 7-114 (e) (an appeal to be heard de novo has been withdrawn pursuant to Rule 7-112), and Rule 8-602 (a)(1) (the appeal is not allowed by these Rules or other law). To bring clarity to this important matter, the Committee proposes a rewriting of the two Rules to make clear which grounds are jurisdictional and require a dismissal and which are non-jurisdictional and permit, but do not require, a dismissal.

The Committee does call to the Court's attention that the time allowed for noting an appeal from the District Court to a circuit court is not only in a Rule but in a statute. *See* Code, Courts Article, §12-401 (e). The time for noting an appeal from a circuit court used to be statutory (*see* 1951 Md. Code, Art. §8), and when that was the case, the Court regarded the time as jurisdictional based on the statute. *See Thomas Sparks' Appeal in the Insolvent Estate of Tonge*, 18 Md. 417 (1862). The 30-day requirement now exists only by Rule, but the case law continues to regard that requirement as jurisdictional. The proposed amendments follow this Court's case law, but c*ompare Hamer v. Neighborhood Housing Services of Chicago*, 138 S. Ct. 13 (2017), holding that, in the Federal system, a time allowed for filing an appeal is jurisdictional only if established by statute and not where required only by a court Rule, which precludes an

appellate court from effectively establishing its own jurisdiction.[5]

Category Four consists of the addition of a new Chapter 600 to Title 17 of the Rules (Rules 17-601 through 17-605), authorizing a court-annexed ADR program for the Orphans' Courts, and conforming amendments to Rules 1-101 and 17-101. Several of those courts, as a matter of local practice, already have such programs in existence, but the Maryland Mediation and Conflict Resolution Office (MACRO) and several orphans' court judges requested Rules authorizing the program Statewide.

The proposed Rules provide several limitations on the power of the Orphans' Courts to order the parties to ADR. Rule 17-601 (a)(1) limits the program to mediation and settlement conferencing and thus excludes court-annexed arbitration and neutral fact-finding, which could impinge on the court's non-delegable statutory supervisory jurisdiction over the settlement of decedents' estates. Rule 17-602 (a) limits the referral of matters to those that are pending before the court and thus excludes those being administered by the register of wills as part of administrative probate, and, consistent with the programs operated by the Circuit Courts, (1) the court may not refer parties to ADR if there is an applicable no-contact order in place, and (2) parties have the right to opt out of a fee-for-service referral.

Rule 17-602 (e) deals with an issue considered by the Court in *Brewer v. Brewer*, 386 Md. 183, 195-96 (2005). It requires that any agreement reached through the ADR process be in writing and signed by the parties and, if the agreement may cause the distribution of an estate asset or allocation of a liability to be made in a manner inconsistent with the Will or applicable law, the agreement must be filed with the court and referenced in each account that includes that distribution or allocation. The other provisions dealing with the procedure, the qualifications for and designation of ADR practitioners, and fee schedules are generally similar to the Rules applicable in the Circuit Courts. Conforming amendments are proposed to Rules 1-101 and 17-101.

Category Five consists of adding a new section (e) to Rule 1-321 (Service of Pleadings and Papers Other Than Original Pleadings). Under section (a) of the Rule, such pleadings and

[5] The Committee notes that the Rules governing appeals to the Court of Appeals in force in 1896 allowed appeals from both law judgments and equity decrees to be taken within nine months after the entry of judgment or decree.

papers are to be served on the attorney for the party if the party was represented and, in any event, service is to be made by (1) delivery of a copy, (2) mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, (3) leaving it at the office of the person to be served with an individual in charge, (4) if there is no one in charge, leaving it in a conspicuous place in the office, or (5) if there is no office or the office is closed, leaving it at the person's dwelling place with some individual of suitable age and discretion who resides there. Service by mail is declared to be complete upon mailing.

In 2002, the question was raised by a circuit court clerk as to whether a motion or petition seeking post-judgment relief should be accompanied by a certificate of service and whether a summons should be issued. Responding through an advice letter, the Attorney General's Office concluded that no summons should issue unless the court orders otherwise and that a motion for post-judgment relief, such as a modification of child support, custody, or visitation (but not a petition for contempt) must be accompanied by a certificate of service. Several Circuit Court clerks have indicated disagreement with those conclusions, and one administrative judge has issued an administrative order directing that every civil motion, petition, or complaint to modify a provision any final court order or judgment filed after 30 days have passed from the entry of the order or judgment must be served on the opposing party using the same process required for an original action. The Rules Committee believes that the dispute needs to be resolved and a uniform policy established. It also believes that, even if possibly constituting an unauthorized local Rule (*see* Md. Rule 1-102), the substance of the administrative order is correct.

Proposed new section (e) draws a distinction between post-judgment motions or petitions that seek to *enforce* a judgment and those that seek to *modify or abrogate* an enrolled judgment. Even where modification proceedings are permissible, such as in family law cases where the court may have continuing jurisdiction over such things as support orders or access to children, there is a danger in not requiring the issuance of a summons and in allowing the motion or petition to be served on a former attorney or by mail to a party's last address stated in a pleading or paper. Under Rule 2-132 (d), an attorney's appearance is automatically stricken if no appeal was taken from a final judgment, unless the court has ordered otherwise, so delivery to a former attorney may not suffice to give notice, and it is not uncommon in family law cases, once a final judgment is entered, for one or both parties to move and not inform the court of a new address. To better assure proper

service of motions and petitions seeking to modify or abrogate an enrolled judgment, the Committee recommends (1) issuance of a summons by the clerk, and (2) service in the manner required for an original pleading.

Category Six consists of a new Rule 16-306.1 and amendments to current Rule 16-306, both dealing with personal injury asbestos cases pending in the Circuit Court for Baltimore City. By way of background, Rule 16-306 was adopted in 1992 as Rule 1211A, to deal with the massive influx of personal injury asbestos cases that had been filed and continued to be filed in the circuit courts, mostly in Baltimore City. The vast majority of those cases involved situations in which the plaintiff had sustained some physiological change, allegedly due to exposure to an asbestos product, but had not yet developed any symptoms. They perceived the need to file their action to avoid a potential limitations problem, but it was understood that, due to the long latency period for the development of certain asbestos-related diseases, many of those cases would not be ready for trial for years, or even decades, which presented a problem under Rule 2-507.

To address that dilemma, the Rule provided for a special pretrial inactive asbestos docket in the Circuit Court for Baltimore City. All new cases filed in that court would be placed on that docket, would remain there until pulled off by the parties, and would be exempt from the operation of Rule 2-507. The Rule also provided for the transfer of similar cases filed in other circuit courts, provided Baltimore City was a proper venue, which also would be placed on that docket. Issues involving the management of that docket are being handled administratively and are not the subject of this Report. Only one change of any substance is proposed to Rule 16-306. That deals with the retransfer of cases that were initially filed in a county and transferred to the City; it requires the concurrence of the county administrative judge for a retransfer of the case upon removal from the special pretrial docket. The other amendments are conforming ones.

Rule 16-306.1 is designed to deal with a different problem. There appear to be between 1,000 and 3,000 personal injury asbestos cases that were removed from the special pretrial docket and largely, but not completely, resolved. The incompletion arises from the fact that one or more defendants in those cases went into bankruptcy after the action was filed and, due to the stay that accompanies a bankruptcy filing, no proceedings are permissible with respect to those defendants so long as the stay is in effect. The claims by or against all other defendants have been resolved, but no final judgment can

be entered on those claims, which just sit, clogging the docket and preventing closure for the non-bankrupt parties.

Rule 16-306.1 attempts to deal with that problem by permitting the claims by or against defendants in bankruptcy to be severed and placed on a new, separate inactive bankruptcy docket. The Rule makes clear that the severance does not affect in any way the validity or status of any claim by or against those defendants; it preserves all rights and liabilities regarding those claims. If and when such a defendant emerges from bankruptcy, directly or through a trust, the claims by or against that defendant will be removed from the inactive docket and, unless otherwise precluded by Federal bankruptcy law, proceed to trial or other disposition. The only purpose of the severance and transfer to the new inactive bankruptcy docket is to permit judgments to be entered with respect to the non-bankrupt defendants and statistically close those cases. Sections (c) through (f) of the Rule set forth the procedure for creating and monitoring the special inactive bankruptcy docket.

Category Seven consists of amendments to Rules 2-541 (Magistrates, formerly known as Masters), 2-542 (Examiners), 2-543 (Auditors), and 9-208 (Referral of Matters to Magistrates). Those amendments were requested by the State Court Administrator. Their purpose is to recognize and preserve the different roles of magistrates and examiners, to end the practice of referring matters to a standing examiner that ought to be referred to a standing magistrate, and to preclude the circuit courts from requiring the parties to pay, in the form of costs or fees, the compensation of standing magistrates, examiners, or auditors if that compensation is, in fact, paid by the State or the county.

All three of those offices existed in England, at least until 1852, when masters in chancery were abolished. In *Townshend v. Duncan*, 2 Bland 56, 60 (1828), Chancellor Bland noted that, although the office of master and examiner were distinct in England, the Chancellor in Maryland, at least in one case, had conferred both offices on a single individual, and in *German Luth. Church v. Heise*, 44 Md. 453, 465 (1876), the Court observed that the office of auditor, though not the same in all respects, was to a certain extent "very analogous to that of a Master in Chancery."

In time, that overlap dissipated. In *Nnoli v. Nnoli*, 101 Md. App. 243, 261, n.5 (1994), Judge Marvin Smith cautioned that "[t]he role of examiners and masters should not be confused. An examiner merely swears witnesses, records their testimony, and submits it to the court, which must decide the issues presented.

A master makes recommendations to the court." Quoting in part from *Equity Procedure As Established in the Courts of Maryland*, Edward G. Miller (1897), Judge Smith continued:

> "'An examiner is an officer of the court, appointed by the circuit courts ... for the purpose of taking testimony within the jurisdiction of the court appointing him ... . The examiner shall not have the power to decide upon the competency, materiality or relevancy of any question proposed or evidence elicited, nor as to the competency or privilege of any witness offered.' On the other hand, in section 555, a master is described as 'an officer of the court who acts as an assistant to the [judge]... . The master is an advisor of the court as to matters of jurisdiction, parties, pleading, proof and in other respects where he may be of assistance to the court ... . The duties of a master are of advisory character only. He decides nothing, but merely reports to the court the result of his examination of the proceedings, with a suggestion as to the propriety of the court passing a decree. The report of the master in the absence of exceptions is usually received by the court as correct and the court passes such a decree as the master may certify to be proper."

Rules 2-541 and 2-542 reflect, at least in part, that difference. Rule 2-541 empowers magistrates to rule upon the admissibility of evidence and to recommend to the court findings of fact and conclusions of law, to which the court normally gives deference. Examiners do not have that authority. They merely certify to the court the transcript of testimony, any exhibits, and "special matters or irregularities that arose during or as a result of the examination."

This has particular significance with respect to the referral of family law matters. Rule 2-541 (b) expressly empowers a court that has a standing magistrate for domestic relations matters to refer to the magistrate domestic relations matters in accordance with Rule 9-208 and to refer to any magistrate any other matter or issue not triable of right before a jury. Rule 9-208 lists the kinds of domestic relations matters that may be referred as a matter of course but requires that the referral be to a standing magistrate. Section (b) of

Rule 2-542, dealing with orders of referral, says nothing about the referral of domestic relations matters and makes no mention of Rule 9-208 but permits the court to refer to an examiner "for the taking of evidence" issues "in uncontested proceedings not triable of right before a jury," which could include domestic relations matters. Section (d), dealing with hearings, provides that in a divorce or annulment action, the examiner must remain in the hearing room throughout the taking of testimony, which suggests that those kinds of cases may be referred to an examiner, for the taking of evidence.

What has happened is that many of the circuit courts have been referring uncontested divorce or annulment cases, and, in some circuits, other kinds of domestic cases as well, to standing examiners rather than standing magistrates. *See* **Appendix B (Standing Examiners in Domestic Cases, October 2015)**. The standing examiners to whom those cases are referred are not court employees but private attorneys who are compensated by the fees and costs assessed against the parties by the court. As shown in **Appendix B**, those assessed fees and costs range from $75 to $200 per case. Four concerns have been expressed regarding that practice.

FIRST: It conflates the different roles of magistrates and examiners. The clear thrust of Rules 2-541 and 9-208 is to have domestic cases, whether contested or uncontested, that are not going to be tried by the court referred to magistrates, not examiners. Even in uncontested cases, the person to whom the case is referred may be called upon to make proposed findings regarding the jurisdiction and venue of the court, whether adequate grounds have been alleged and proved, and the best interest of children, and to report those findings to the court. Those are not functions properly assigned to an examiner.

SECOND: Referral of those matters to an examiner permits the court to assess the costs and fees of the examiner against the parties, which would not be the case if the referral was to a magistrate. Standing magistrates are either county or State employees. Their compensation is set and paid through the State Budget. *See* Code, Courts Article, §2-501 (e). The Committee believes that it would be at least poor judicial policy, if not legally impermissible, to assess costs and fees that are covered by the State against the parties, and there is no indication that any court is doing that. Referring the case to a private attorney serving as an examiner, however, circumvents that principle.

The asserted justification for the practice is that these private-attorney examiners are willing and able to provide

expedited service – to hear the case and make their report much quicker than a standing magistrate or the court itself could do, and it therefore provides better access to the courts. The point also was made that the costs can be and are waived upon a showing of indigence. The Committee was convinced, however, that the policy of allowing litigants to purchase expedited justice denied to others itself was suspect.

THIRD: The Committee was advised that cases referred to these private-attorney examiners are treated statistically by the courts as though they were tried by the judges, thereby artificially and incorrectly inflating the reported workload of the judges.

FOURTH: Code, Courts Article, §7-202 requires the State Court Administrator, with the approval of the Board of Public Works, to determine "all court costs and charges for the circuit courts," and there is no provision in the Schedule of such costs and charges that immediately follows §7-202 for the costs and fees that are being assessed in favor of standing examiners and against the parties pursuant to Rule 2-542.

For these reasons, the Committee proposes (1) in each of the three Rules to amend section (a) to permit the court to prescribe the compensation, fees, and costs of the official only where the official is not compensated by the State or a county, to add cross-references to applicable Code sections dealing with the compensation of those officials, and to amend section (i) to allow the court to compel payment of the compensation, fees, and costs of those officials only to the extent that they are not covered by State or county funds, (2) to amend Rule 2-642 (b) to preclude the referral to an examiner of matters referable to a magistrate under Rule 9-208, and (3) to amend Rule 9-208 (j) to permit the court to assess the compensation, fees, and costs of a magistrate only if the magistrate is not compensated by the State or a county.

Category Eight consists of amendments to Rules 2-422.1, 2-510, 2-510.1, 3-510, 4-264, and 4-265, all dealing with subpoenas. The amendment to Rule 2-422.1, which deals with a subpoena permitting the inspection of the property of a nonparty or by a foreign party, conforms that Rule to the general requirement in Rules 2-510 and 2-510.1 that subpoenas be in the form approved by the State Court Administrator. The other Rules are amended to add a cross-reference to Federal and Maryland requirements on the disclosure of medical and financial records.

Category Nine consists of an amendment to Rule 20-106 (e). It was requested by the MDEC Executive Committee. The Rule

requires, in MDEC courts, that a document offered into evidence or otherwise for inclusion in the record be offered in paper form and scanned by the clerk into the electronic record. There is no problem with respect to exhibits in documentary form. The District Court, however, has experienced situations in which an attorney attempts in open court to enter an appearance or file some other paper that requires prepayment of a fee, which does cause a problem.

The general problem, in both the District and Circuit Courts, arises from the fact that MDEC comprises two separate systems – "File and Serve" and "Odyssey" – that do not communicate seamlessly. Submissions that require a fee need to be filed in "File and Serve," where any required fee is automatically collected through a credit card and electronic service can be effected, not through "Odyssey," which is the clerk's operational component. "Odyssey" is not equipped to receive a fee or to effect service. This is a particular problem in criminal cases in the circuit courts, in which the entry of an attorney's appearance triggers the running of the time allowed for the scheduling of trial.

The Committee proposes dealing with exhibits, appearances, and other documents separately in the Rule. A non-exhibit document offered by a non-registered user would be treated like an exhibit – accepted and scanned. An appearance offered by a registered user also may be accepted, subject to being stricken unless electronically filed prior to the end of the day (11:59 p.m.) Any other submission offered by a registered user may be accepted subject to being stricken if not electronically filed by the end of the next business day.

Category Ten consists of amendments to Rule 4-504 to conform the Rule to the provisions of the Justice Reinvestment Act (Laws of 2016, Chapter 515) and amendments to Rules 4-342, 4-345, and 4-346, dealing, respectively, with sentencing and probation, to add a cross reference to that Act.

Category Eleven consists of Committee notes added to Rules 2-131 and 4-213.1 to clarify that the entry of a limited appearance pursuant to those Rules does not require the payment of an appearance fee.

Category Twelve consists of an amendment to Rule 2-706 dealing with the seeking of attorneys' fees incurred in appellate litigation. The current Rule requires a motion for such fees to be filed within 30 days after the last mandate or order disposing of the appeal. If the decision of the appellate court is a remand to the trial court for further proceedings,

that may require two separate motions – one within 30 days after the appellate mandate and another when the trial court completes the proceeding on remand. The amendment would allow the motion to be filed after entry of a final order disposing of all claims following the remand.

Category Thirteen consists of new Rule 4-602, which provides a procedure for implementing Code, Criminal Procedure Article, §11-110.1, added by Chapter 486 of the Laws of 2017. That statute permits the issuance of an emergency order authorizing the taking of an oral swab from someone suspected of a criminal or delinquent act that may have caused the victim to be exposed to HIV and the testing of that swab for the presence of HIV. A copy of the statute is attached as **Appendix C**.

Category Fourteen consists of an amendment to Rule 8-605 (b) to add, as an additional question or issue that may be raised in a motion for reconsideration, whether the court's opinion determined the outcome of the appeal on an issue not raised in the briefs or proceedings below.

Category Fifteen consists of an amendment to Rule 7-402 to change the name of the pleading that commences an action for administrative mandamus from a complaint to a petition. The purpose of the amendment is to eliminate some ambiguity in that Rule, which was noted by the Court in *Hughes v. Moyer*, 452 Md. 77 (2017).

There are three causes of action that, depending on the circumstances, may be used to challenge an administrative agency decision – common law mandamus, a statutory action for judicial review, and an action for administrative mandamus where there is no statutory right of judicial review. The common law action is dealt with in Rule 15-701, section (b) of which provides that the action is commenced by the filing of a *complaint*. An action for statutory judicial review is dealt with in Rules 7-201 through 7-211. Rule 7-202 provides that the action is commenced by the filing of a *petition* that complies with the requirements of sections (b) through (e) of that Rule and that is filed within the time specified in Rule 7-203. An action for administrative mandamus is dealt with in Rules 7-401 through 7-403. Rule 7-402 (a) states that the action is commenced by filing a *complaint*, "the form, contents, and timing of which shall comply with Rules 7-202 and 7-203."

It is unclear why, if the pleading that commences an action for administrative mandamus must comply with the form and contents of the petition that commences an action for statutory judicial review, it should not also be a petition rather than a

complaint. Although there are distinctions among all three of those actions, it appears that, in terms of procedure generally and in the form of the initial pleading specifically, there is greater affinity between a statutory action for judicial review and administrative mandamus than between common law mandamus and administrative mandamus, yet the requirement of a complaint in Rule 7-402 (a) suggests otherwise and may engender some confusion.

Category Sixteen consists of an amendment to Rule 8-411 (b), which deals with the time for ordering a transcript. The current Rule sets different time limits for (1) expedited appeals subject to Rule 8-207, (2) civil actions subject to the Court of Special Appeals prehearing review pursuant to Rules 8-205 and 8-206, and (3) all other appeals. The time for all other appeals is ten days after the first notice of appeal is filed. It was brought to the Committee's attention that this may cause a hardship in those situations in which the "appeal" is in the nature of a petition for *certiorari* filed with the Court of Appeals pursuant to Code, Courts Article, §12-305 in cases that originated in the District Court and were appealed to a Circuit Court. In the absence of any provision in the Rule for that situation, petitioners interpret the Rule as requiring that a transcript be ordered within ten days after the petition is filed, which, if the petition is denied, puts the petitioner to an unnecessary expense. The Committee recommends a new subsection (b)(3) directing that, **unless the Court orders otherwise**, the transcript in that situation be ordered within ten days after the granting of the petition for *certiorari*.

Category Seventeen consists of proposed new Rule 9-211, to implement Laws of 2017, Chapter 625, which amended Code, Family Law Article, §7-105. That section previously required a court, upon request, to restore a party's former name as part of a judgment of absolute divorce, so long as the party's purpose was not illegal, fraudulent, or immoral. The 2017 amendment requires a court, subject to the same caveat, to restore the party's former name upon a motion filed within 18 months after entry of the judgment of divorce. The new Rule provides for the content of the motion, a requirement that it be under oath, that no filing fee be imposed, for service of the motion, and for action by the court.

Category Eighteen consists of proposed new Rule 14-214, conforming amendments to current Rule 14-214 and Rule 14-208, and amendments to Rules 14-102, 14-210, and 14-502. New Rule 14-214 and the amendment to Rule 14-210 implement the requirements imposed by Laws of 2017, Chapter 347, that the trustee (1) give notice to the borrower, the record owner, the

holders of subordinate interests, and any condominium or homeowners' association of any postponement or cancellation of a sale, and (2) give notice of a sale to any condominium or homeowners' association that has recorded a statement of lien against the property. The amendments to Rule 14-102 delete references to a Federal law that no longer exists and require a hearing, if one is requested, when a timely response is made to a motion for judgment awarding possession and the response asserts sufficient grounds for denial of the motion.

The amendment to Rule 14-502, dealing with tax sales, requires that a complaint to foreclose the right of redemption describe the amount necessary for redemption, including the amount paid out at the tax sale. The intent is to require the complaint to state the actual dollar amounts paid at the sale and not just a general description of what those amounts were for.

Category Nineteen consists of three amendments to Rule 16-907 dealing with categories of case records that are shielded from public access. The first is simply a housekeeping amendment moving a Committee note that currently follows section (e) to follow section (f). The second, in subsection (g)(5) dealing with presentence investigation reports, adds a reference to Rules 16-902 (c) and 4-341, and the third, in section (m), clarifies that the Child Support Guideline Worksheet and the Joint Statement of Marital and Non-marital Property also are shielded.

Category Twenty consists of housekeeping amendments to Rules 4-314, 8-204, 19-105, 19-202, 19-212, and 19-213 and a conforming amendment to Rule 17-206.

Category Twenty-One consists of an amendment to Rule 19-726 to exempt the Attorney Grievance Commission from Rule 2-412 in an attorney discipline matter. Several attorneys have attempted to take the deposition of a designee of the Commission. The Committee was advised that (1) although the Commission is a party to an attorney grievance proceeding, its organizational designee would generally have no relevant case-specific knowledge of non-privileged information to impart in a deposition, and (2) if there is some basis for suspecting some impropriety on the part of a member of the Commission, that member's deposition may be taken.

Category Twenty-Two consists of essentially housekeeping amendments to Rules 18-401 and 19-304.4. Rule 18-401 contains definitions applicable in the Judicial Disabilities Commission Rules. The Committee's 191st Report contained a proposed

rewriting of those Rules, as part of which the Committee recommended the deletion of the definition of "formal complaint." At the Court's hearing on that Report, the Court deferred action on the Judicial Disabilities Commission Rules in light of a pending case.

In the Committee's 193rd Report, which proposed substituting the term "senior judge" for "recalled judge" throughout the Rules, an amendment was proposed to Rule 18-401 for that limited purpose. Unfortunately, the Committee inadvertently used the rewriting of Rule 18-401 as contained in the 191st Report, instead of the current Rule, as the base, which, upon the Court's approval of the amendment, resulted in the deletion of the definition of "formal complaint" even though the Court had not approved that change. The amendment proposed in this Report restores that definition. The Committee expects, upon the Court's resolution of the two currently pending judicial disability cases, to review all of the revisions proposed in the 191st Report in light of the Court's decisions.

The amendments to Rule 19-304.4 are intended to restore a provision that was deleted in accordance with a proposal in the Committee's 191st Report and to add a clarifying Committee note and a cross-reference. In the Committee's 191st Report were proposed amendments to Rule 19-304.4 intended to conform the Rule to the Ethics 2000 amendments to ABA Model Rule 4.4. One of the proposed amendments deleted former section (b) of the Rule that addressed certain responsibilities of an attorney who receives information from third persons without adding comparable language elsewhere. Shortly after the Court adopted the amendments, the Committee was advised that the deleted language was important and should be restored.

The Committee proposed to do that in Category 5 of its 194th Report but noted at the Court's hearing on that Report that that provision may have an impact on three procedural Rules that deal with the same subject. In light of that, the Court deferred action on that proposal. Having examined the matter further, the Committee now believes that the deleted provision should be restored.

For the guidance of the Court and the public, following each proposed new Rule and amendments to each current Rule is a Reporter's note describing in further detail the reasons for the proposals. *We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or*

interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc
cc: Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

ADD new Rule 1-105, as follows:

Rule 1-105. OFFICIAL RECORD OF MARYLAND RULES AND APPELLATE DECISIONS

(a) Applicability; Definitions

This Rule applies to decisions of the Court of Appeals and Court of Special Appeals and to the Maryland Rules of Procedure. In this Rule, (1) "decision" means an opinion or order of the Court of Appeals or the Court of Special Appeals, (2) "MDEC action" has the meaning stated in Rule 20-101, and (3) the definitions in Code, State Government Article, §10-1601 shall apply.

Committee note: State Government Article, §§10-1601 through 10-1611 deal with "legal material," which includes the Maryland Rules and reported decisions of the Court of Appeals and Court of Special Appeals. The word "decision" is not defined in the statute. In relevant part, the statute declares the Court of Appeals to be the official publisher of the Maryland Rules and reported decisions of the two appellate courts. As such, the statute requires the court to determine whether the official record of those documents is to be the electronic version or the paper version of that legal material, and, if it determines the electronic version to be the official record, to assure the authenticity, preservation, and security of the documents. Because there should be no difference between what constitutes the official record of reported and unreported decisions, this Rule applies to both.

Cross reference: See Rule 8-605.1, concerning designation for reporting of opinions of the Court of Special Appeals.

(b) Maryland Rules

The official record of the Maryland Rules is the paper record maintained by the Clerk of the Court of Appeals pursuant to Rule 16-802. The paper or electronic version of a Rule posted on the Judiciary website or contained in a published codification of the Maryland Rules approved by the Court of Appeals may be cited in accordance with Rule 1-103 as evidence of the text of the Rule.

Committee note: The Maryland Rules of Procedure maintained by the Clerk of the Court of Appeals consists of multiple bound volumes of the Rules Orders issued by the Court, together with the text of the Rules adopted in those Orders. They constitute the most authoritative version of the Rules, as adopted in those Orders. Those volumes do not constitute a code of the Rules, however, but are comparable to the Session Laws enacted by the General Assembly, and, where Rules have been amended or repealed, may not constitute a practical source for determining the current or former version of any particular Rule. That is why the text of a Rule as it appears on the Judiciary website or in published codified form approved by the Court of Appeals, may be cited as evidence of the Rule. In the event of any dispute regarding the accuracy of the online or codified version, the text of the Rule as it appears in the relevant Rules Order(s) will prevail. Compare Code, Courts Article, §10-201.

(c) Decisions

(1) In a Non-MDEC Action

The official record of a decision of the Court of Appeals or Court of Special Appeals in a non-MDEC action is the paper slip opinion or order filed with the Clerk of that Court. The decision may be cited as provided in subsection (c)(3) of this Rule.

(2) In an MDEC Action

(A) The Administrative Office of the Courts shall develop for approval by the Court of Appeals protocols for the authentication, preservation, and security of decisions that comply with the requirements of Code, State Government Article, Title 10, Subtitle 16. If the Court is satisfied that the protocols comply with the statutory requirements and are otherwise acceptable, the Court shall enter an administrative order (i) approving the protocols and requiring their implementation and periodic monitoring by the Administrative Office of the Courts, and (ii) setting a date upon which the official record of a decision of the Court of Appeals or Court of Special Appeals in an MDEC action shall be the electronic record of the decision filed in the MDEC system.

(B) Notwithstanding the provisions of Rule 20-301, prior to the effective date established in the Court's administrative order, the official record of a decision of the Court of Appeals or the Court of Special Appeals shall be the paper slip opinion or order filed with the Clerk of that Court. Regardless of whether the official record of a decision in an MDEC action is in electronic or paper form, the decision may be cited as provided in subsection (c)(3) of this Rule.

(3) Citation of Decisions

(A) A decision as reported in the Maryland Reports or the Maryland Appellate Reports may be cited as evidence of the text

of the decision. The citation shall state the name of the case, the year of the decision, and the volume and page number of the Maryland Reports or Maryland Appellate Reports in which the decision appears.

(B) Subject to Rule 1-104, a decision that is published in any other commercial or governmental publication approved by the Court of Appeals may be cited as evidence of the text of the decision, provided that, if the decision also has been reported in the Maryland Reports or Maryland Appellate Reports, the citation also shall contain the volume and page number of the Maryland Reports or Maryland Appellate Reports in which it appears.

(C) Subject to Rule 1-104, if a decision is not, or has not yet been, reported in the Maryland Reports or the Maryland Appellate Reports, the decision may be cited as it appears on the Judiciary website.

Cross reference: See Md. Constitution, Art. IV, §16 and Code, Courts Article, §§13-201 through 13-204 regarding the reporting of appellate decisions.

Source: This Rule is new.

REPORTER'S NOTE

New Rule 1-105 is proposed in light of the enactment of Chapter 554 (SB 137), effective October 1, 2017, codified as Code, State Government Article, §§10-1601 through 10-1611. This new subtitle, the "Maryland Uniform Electronic Legal Materials Act," addresses electronic publication of state legal materials, including issues of authentication. Specifically, the subtitle enumerates the "official publisher" of legal materials (e.g., the Department of Legislative Services is official publisher of

the Maryland Constitution) and prescribes certain requirements if an electronic record is to be designated as official.

Proposed Rule 1-105 applies only to decisions of the Court of Appeals and Court of Special Appeals and to the Maryland Rules of Procedure. In section (a) of the Rule, "decision" is defined to mean an order or opinion of either appellate court.

Section (b) clarifies that the official record of the Maryland Rules is the paper record maintained by the Clerk of the Court of Appeals. It also permits the text of a Rule as it appears on the Judiciary website or in a published codified form approved by the Court of Appeals to be cited as evidence of the text of the Rule, in accordance with Rule 1-103.

Section (c) addresses the official record of decisions of the Court of Appeals and the Court of Special Appeals in relation to the implementation of MDEC. For now, in both non-MDEC and MDEC actions, the official record of a decision of the Court of Appeals and the Court of Special Appeals is the paper slip opinion or order filed with the Clerk of the respective Court. Subsection (c)(2), however, specifies that the paper slip opinion or order filed with the Clerk in MDEC actions only remains the official record until protocols for electronic authentication, preservation, and security are developed. Once protocols are approved and implemented, the Court of Appeals will set a date upon which the official record of decisions in MDEC actions shall be the electronic record.

Subsection (c)(3) addresses citation of appellate decisions.

Subsection (c)(3)(A) permits a decision published in the Maryland Reports or the Maryland Appellate Reports to be cited as evidence of the text of the decision and requires a traditional citation format, including volume and page number of the Report in which the decision appears.

Subsection (c)(3)(B) permits citation of decisions published in other commercial or governmental publications approved by the Court of Appeals to be cited, subject to Rule 1-104, as evidence of the text of the decision, but with restriction. If a decision also was reported in the Maryland Reports or Maryland Appellate Reports, citation of the decision must also include the volume and page number of the Report in which the decision appears. If a decision is not, or has not yet been, reported in the Maryland Reports or the Maryland

Appellate Reports, subsection (c)(3)(C) allows the decision to be cited as it appears on the Judiciary website, subject to Rule 1-104.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

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MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

ADD new Rule 2-801, as follows:

Rule 2-801. DEFINITIONS

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

(a) Non-evidentiary Proceeding

"Non-evidentiary proceeding" means a judicial proceeding, including a conference, presided over by a judge, magistrate, auditor, or examiner, where neither testimony nor documentary or physical evidence will be presented, other than by stipulation by all parties.

Committee note: Consideration of documents attached to a motion or a response to a motion does not, itself, preclude a hearing on the motion from being deemed a "non-evidentiary proceeding."

(b) Participant

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

(c) Remote Electronic Participation

"Remote electronic participation" means simultaneous

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

(d) Remote Location

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

(e) Video Conferencing

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

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Title 2, Chapter 800 establishes procedural and substantive requirements for the use of remote electronic participation in civil proceedings in the circuit courts under Title 2.

Rule 2-801 contains definitions of terms that are used throughout the Chapter.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

ADD new Rule 2-802, as follows:

Rule 2-802. NON-EVIDENTIARY PROCEEDINGS

(a) In General

Subject to Rule 2-804, a court, on motion or on its own initiative, may permit or require one or more participants or all participants to participate in a non-evidentiary proceeding by means of remote electronic participation, unless, upon objection by a party, the court finds, with respect to that proceeding, that remote electronic participation would be likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding.

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

(b) On Court’s Own Initiative

(1) In General

The county administrative judge, by administrative order

entered as part of the court's case management plan, may direct that specific categories of non-evidentiary proceedings routinely be conducted, in whole or in part, by remote electronic participation unless otherwise ordered, for good cause, by the presiding judge in a particular case.

(2) In Particular Proceeding

If the court intends to permit or require remote electronic participation on its own initiative in a proceeding not subject to an administrative order entered pursuant to subsection (b)(1) of this Rule, the court shall notify the parties of its intention to do so and afford them a reasonable opportunity to object. An objection shall state specific grounds and may be ruled upon without a hearing.

Source: This Rule is new.

REPORTER'S NOTE

Proposed Rule 2-802 addresses remote electronic participation in non-evidentiary proceedings.

Section (a) states the court's authority to permit or require remote electronic participation, either on motion or on the court's initiative. Generally, parties may object to participation by remote electronic means, which then requires the court to consider whether such participation is likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding. A Committee note following section (a) provides some examples of non-evidentiary proceedings in which remote electronic participation could be permitted or required.

Section (b) addresses when the court, on its own initiative, may permit or require participation by remote electronic means in non-evidentiary proceedings. Subsection (b)(1) specifies that the county administrative judge may

direct, by administrative order, that specific categories of proceedings be conducted via remote electronic participation. The presiding judge in a particular proceeding, however, may order otherwise for good cause shown.

Subsection (b)(2) specifies that when proceedings are not subject to an administrative order, the court must provide notice to parties of its intent to permit or require remote electronic participation. Parties then have the opportunity to object; however, an objecting party must provide its grounds for objection.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 – REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

ADD new Rule 2-803, as follows:

Rule 2-803. EVIDENTIARY PROCEEDINGS

(a) In General

Subject to section (b) of this Rule and Rule 2-804, a court, on motion or on its own initiative, may permit one or more participants or all participants to participate in an evidentiary proceeding by means of remote electronic participation (1) with the consent of all parties, or (2) in conformance with section (c) of this Rule.

(b) On Court's Own Initiative

If the court intends to permit remote electronic participation pursuant to this Rule on its own initiative, it shall notify the parties of its intention to do so and afford them a reasonable opportunity to object. An objection shall state specific grounds. The court may rule on the objection without a hearing.

(c) Absence of Consent; Required Findings

In the absence of consent by all parties, a court may exercise the authority under section (a) only upon findings

that:

(1) participation by remote electronic means is authorized by statute; or

(2) the participant is an essential participant in the proceeding or conference; and

(A) by reason of illness, disability, risk to the participant or to others, or other good cause, the participant is unable, without significant hardship to a party or the participant, to be physically present at the place where the proceeding is to be conducted; and

(B) permitting the participant to participate by remote electronic means will not cause substantial prejudice to any party or adversely affect the fairness of the proceeding.

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

Source: This Rule is new.

REPORTER'S NOTE

Different restrictions and requirements apply to the use of remote electronic participation in evidentiary proceedings than in non-evidentiary proceedings. The restrictions and requirements for evidentiary proceedings are stated in proposed Rule 2-803.

Section (a) provides that either all parties must consent to the use of remote electronic participation, or in the absence of all parties' consent, the court must make specific findings before it may exercise its authority to permit remote electronic participation.

Section (b) specifies that the court must provide notice to parties when it acts on its own initiative to permit or require remote electronic participation. After notice, parties have the opportunity to object; however, an objecting party must provide its grounds for the objection.

In the absence of full consent, the court must make the specific findings stated in section (c) before it exercises its authority to permit remote electronic participation in an evidentiary proceeding. Unless there is a finding that participation by remote electronic means is authorized by statute, the required findings include the inability of the participant to be physically present for the proceeding due to "illness, disability, risk to the participant or to others, or other good cause." The court also must find that there will not be substantial prejudice to any party or an adverse effect on the fairness of the proceeding.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

ADD new Rule 2-804, as follows:

Rule 2-804. CONDITIONS ON REMOTE ELECTRONIC PARTICIPATION

(a) Personal Appearance

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

(b) Standards

(1) Generally

Except as otherwise provided by law or by subsection (b)(2) of this Rule, remote electronic participation shall not be permitted unless the process, including connections, software, and equipment, to be used comply with standards developed by the State Court Administrator and approved by the Chief Judge of the Court of Appeals pursuant to Rule 2-805.

(2) Exception

The court may excuse non-compliance with subsection (b)(1) of this Rule (A) with the consent of the parties, or (B) if it finds that the non-compliance will not cause substantial prejudice to the parties or adversely affect the fairness of the proceeding.

(c) Participation of Interpreters; Attorney-Client Communications

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

(d) Method of Remote Electronic Participation

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

(e) Record

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

(f) Recording of Proceedings

A person may not record or download a recording of the proceedings except (1) as directed by the court for compliance with section (e) of this Rule, or (2) with the express consent

of the court and all parties pursuant to the Rules in Title 16, Chapter 600 or Rule 16-208.

Committee note: Any remote location shall be considered to be governed by Rule 16-208.

(g) Public Access

If remote electronic participation will result in a proceeding that otherwise would be conducted in open court and be accessible to the public being conducted entirely by electronic means, the court shall ensure that members of the public who wish to do so have substantially the same ability to observe or listen to the proceeding through monitors or other equipment at the courthouse during the course of the proceeding as they would have had in open court.

Committee note: Each court may need to include in its case management plan a process to provide the public access to proceedings conducted through remote electronic participation.

Source: This Rule is new.

REPORTER'S NOTE

Proposed Rule 2-804 places conditions upon the use of remote electronic participation, which include the court's discretion to terminate remote electronic participation during a proceeding and technical specifications for participation by remote electronic means.

Section (a) states the court's authority to continue a matter at any time in order to obtain a participant's personal appearance in a proceeding using remote electronic participation. The court must continue a matter if the court determines that the participant's personal appearance is necessary to avoid substantial prejudice to a party or unfairness of the proceeding.

Section (b) requires that the technical aspects of remote electronic participation comply with standards developed by the State Court Administrator and approved by the Chief Judge of the Court of Appeals. Non-compliance may be permitted, however, if all parties consent or if the court determines non-compliance will not cause substantial prejudice to the parties or adversely affect the fairness of the proceedings.

Section (c) requires, in proceedings with remote electronic participation, the ability of interpreters to participate and the ability of attorneys to have confidential communication with clients.

Section (d) specifies a preference for video conferencing whenever feasible, rather than audio alone.

Section (e) requires that a record of proceedings be made in accordance with Rule 16-503 (a).

Section (f) forbids a person from recording or downloading a recording of court proceedings except as directed by the court for purposes of compliance with section (e), or with the express consent of the court and all parties and pursuant to the Rules in Title 16, Chapter 600 or Rule 16-208.

Finally, if a proceeding is being conducted entirely by electronic means but would otherwise have been conducted in open court, section (g) ensures that members of the public are able to observe or listen to the proceeding as it occurs to the extent they would have been able to observe or listen in open court.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 – REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

ADD new Rule 2-805, as follows:

Rule 2-805. STANDARDS AND REQUIREMENTS

(a) Existing Remote Electronic Participation Programs

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

(b) Standards and Requirements for Remote Electronic Participation

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

(c) Minimum Requirements

In addition to complying with the requirements set forth in Rule 2-804, the standards shall include the following requirements:

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

(2) Unless waived by the participants, all participants shall be able to observe all physical evidence and exhibits presented during the proceeding, and the program shall permit participants to transmit documents as necessary.

(3) Video quality shall be adequate to allow participants and the fact-finder to observe the demeanor and non-verbal communications of other participants. Sound quality shall be adequate to allow participants to hear clearly what is occurring where each of the participants is located.

Source: This Rule is new.

REPORTER'S NOTE

Rule 2-805 establishes standards and requirements applicable to remote electronic participation programs.

Section (a) permits programs in existence prior to the adoption of Chapter 800 to continue, subject to review by the State Court Administrator and the Chief Judge of the Court of Appeals to assure compliance with the Rules in Chapter 800.

Section (b) requires the State Court Administrator to develop standards and requirements for the process and technology used for remote electronic participation programs.

Section (c) establishes minimum requirements, which focus on the quality of participants' ability to observe and interact with one another.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 800 – REMOTE ELECTRONIC PARTICIPATION IN JUDICIAL PROCEEDINGS

ADD new Rule 2-806, as follows:

Rule 2-806. REMOTE ELECTRONIC PARTICIPATION AUTHORIZED BY OTHER SPECIFIC LAW

Nothing in this Chapter is intended to preclude a court from permitting:

(a) remote electronic participation in public or catastrophic emergency hearings to be conducted pursuant to Rule 15-1104 (d);

(b) testimony of out-of-State witnesses to be taken in another State in a case under the Interstate Custody Compact pursuant to Code, Family Law Article, §9.5-110 or in an action under the Uniform Interstate Family Support Act pursuant to Code, Family Law Article, §10-328;

(c) consultation by the court with a child in a guardianship review hearing pursuant to Code, Family Law Article, §5-326 (c); or

(d) remote electronic participation in other proceedings to the extent and in the manner authorized by other law.

Source: This Rule is new.

REPORTER'S NOTE

Prior to the development of Chapter 800 of Title 2, a small number of other laws authorized remote electronic participation under specific circumstances. Proposed Rule 2-806 acknowledges this and clarifies that new Chapter 800 does not preclude a court from permitting remote electronic participation under those laws.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

DELETE Rule 2-513, as follows:

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

~~(a) Definition~~

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

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

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

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

~~(c) Time for Filing Motion~~

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

~~(d) Contents of Motion~~

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

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

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

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

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

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

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

~~(e) Good Cause~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(g) Use of Deposition~~

~~A deposition of a witness whose testimony is received by telephone may be used by any party for any purpose for which the deposition could have been used had the witness appeared in person.~~

~~(h) Costs~~

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

~~Source: This Rule is new.~~

REPORTER'S NOTE

Rule 2-513 is no longer necessary in light of the Rules in Title 2, Chapter 800 and, therefore, is proposed to be deleted in its entirety.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 – JUDICIAL REVIEW OF ADMINISTRATIVE

AGENCY DECISIONS

AMEND Rule 7-208 by deleting section (c), as follows:

Rule 7-208. HEARING

(a) Generally

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

(b) Scheduling

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

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

~~(1) Generally~~

~~Except as provided in subsection (c)(2) of this Rule, the court, on motion or on its own initiative, may allow one or more parties or attorneys to participate in a hearing by video~~

~~conferencing or other electronic means. In determining whether to proceed under this section, the court shall consider:~~

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

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

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

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

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

~~(2) Exceptions and Conditions~~

~~(A) The court may not allow participation in the hearing by video conferencing or other electronic means if (i) additional evidence will be taken at the hearing and the parties do not agree to video conferencing or other electronic means, or (ii) such a procedure is prohibited by law.~~

~~(B) The court may not allow participation in the hearing by video conferencing or other electronic means on its own initiative unless it has given notice to the parties of its intention to do so and has afforded them a reasonable~~

~~opportunity to object. An objection shall state specific grounds, and the court may rule on the objection without a hearing.~~

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

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

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

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

REPORTER'S NOTE

Section (c) of Rule 7-208 is no longer necessary in light of the Rules in Title 2, Chapter 800 and, therefore, is proposed to be deleted.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1305 to revise the Committee note after subsection (b)(4) by replacing a reference to "Rule 2-513" with a reference to "Title 2, Chapter 800" and by replacing the word "telephone"" in three places with the phrase, "remote electronic participation," as follows:

Rule 15-1305. HEARING

(a) Generally

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

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

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

(b) Personal Attendance

Personal attendance at the hearing is required by:

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

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

(3) the independent professional advisor; and

(4) the petitioner or an officer or employee of the petitioner authorized to testify on behalf of the petitioner in the proceeding.

Committee note: Section (b) of this Rule is not intended to preclude the court from exercising its discretion under ~~Rule 2-513~~ Title 2, Chapter 800 to permit testimony of a witness by ~~telephone~~ remote electronic participation. The court should be mindful, however, that the petitioner bears the burden of providing sufficient evidence to permit the court to make the findings required under Rule 15-1307 and consider whether taking the testimony of a witness for the petitioner by ~~telephone~~ remote electronic participation may adversely affect the credibility of that testimony. Except under extraordinary circumstances, the court should not permit testimony of the payee or a guardian of the payee by ~~telephone~~ remote electronic participation.

(c) Examination

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

Source: This Rule is new.

REPORTER'S NOTE

The Committee note after Rule 15-1305 (b)(4) is revised to conform to the proposed deletion of Rule 2-513 and adoption of new Title 2, Chapter 800. A reference to Rule 2-513 is replaced with a reference to "Title 2, Chapter 800," and, in three places, the word "telephone" is replaced with the phrase "remote electronic participation."

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT

TO THE CIRCUIT COURT

AMEND Rule 7-114 to reorganize it, to specify grounds for mandatory dismissals and grounds for discretionary dismissals, to delete a cross reference to Rule 2-311, to add a cross reference to Rule 7-105, and to make stylistic changes, as follows:

Rule 7-114. DISMISSAL OF APPEAL

(a) On Motion or Court's Initiative

A circuit court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative.

(b) When Mandatory

~~On motion or on its own initiative, the~~ The circuit court ~~may~~ shall dismiss an appeal ~~for any of the following reasons~~ if:

~~(a)~~ (1) the appeal is not allowed by law;

~~(b) the appeal was not properly taken pursuant to Rule 7-103;~~

~~(c)~~ (2) the notice of appeal was not filed with the District Court within the time prescribed by Rule 7-104; or

(3) an appeal to be heard de novo was withdrawn pursuant to Rule 7-112.

(c) When Discretionary

The circuit court may dismiss an appeal if:

(1) the appeal was not properly taken pursuant to Rule 7-103;

~~(d)~~ (2) the record was not transmitted within the time prescribed by Rule 7-108, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, a court reporter, or the appellee; or

~~(e) an appeal to be heard de novo has been withdrawn pursuant to Rule 7-112; or~~

~~(f)~~ (3) the case has become moot.

Cross reference: ~~Rule 2-311.~~ See Rule 7-105 allowing the District Court to strike a notice of appeal for certain reasons, including failure to file the notice of appeal within the time prescribed by Rule 7-104.

Source: This Rule is derived from former Rule 1335.

REPORTER'S NOTE

In *Brownstones at Park Potomac v. JP Morgan,* 445 Md. 12 (2015), the Court held that the circuit court did not have jurisdiction to hear an appeal from the District Court that was not timely filed, and the appeal had to be dismissed.

Proposed amendments to Rule 7-114 reorganize the Rule and conform the Rule to the holding in *Brownstones at Park Potomac* by making dismissal of an appeal not timely filed mandatory, rather than discretionary. In addition, an appeal to be heard de novo that has been withdrawn pursuant to Rule 7-112 and an appeal that is not allowed by law have been included in the category of mandatory dismissals. Dismissals for the other reasons listed in the Rule continue to be discretionary.

A cross reference to Rule 2-311 is deleted as unnecessary, and a new cross reference to Rule 7-105 is added.

Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 600 – DISPOSITION

AMEND Rule 8-602 to reorganize it, to specify grounds for mandatory dismissals and grounds for discretionary dismissals, and to make stylistic changes, as follows:

Rule 8-602. DISMISSAL BY COURT

(a) ~~Grounds~~ On Motion or Court's Initiative

The court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative.

(b) When Mandatory

~~On motion or on its own initiative, the~~ The Court ~~may~~ shall dismiss an appeal ~~for any of the following reasons~~ if:

(1) the appeal is not allowed by these Rules or other law; or

~~(2) the appeal was not properly taken pursuant to Rule 8-201;~~

~~(3)~~ (2) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202~~;~~.

(c) When Discretionary

The court may dismiss an appeal if:

(1) the appeal was not properly taken pursuant to Rule 8-201;

~~(4)~~ (2) the appellant has failed to comply with the requirements of Rule 8-205;

~~(5)~~ (3) the record was not transmitted within the time prescribed by Rule 8-412, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court reporter, or the appellee;

~~(6)~~ (4) the contents of the record do not comply with Rule 8-413;

~~(7)~~ (5) a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502;

~~(8)~~ (6) the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or 8-504;

~~(9)~~ (7) the proper person was not substituted for the appellant pursuant to Rule 8-401; or

~~(10)~~ (8) the case has become moot.

Cross reference: Rule 8-501 (m).

~~(b)~~ (d) Determination by Court

An order of the Court dismissing an appeal or denying a motion to dismiss an appeal may be entered by the Chief Judge, an individual judge of the Court designated by the Chief Judge, or the number of judges required by law to decide an appeal.

Cross reference: For the number of judges required by law to decide an appeal, see Maryland Constitution, Article IV, §14 and Code, Courts Article, §1-403.

~~(c)~~ (e) Reconsideration of Dismissal

(1) Motion for Reconsideration

No later than 10 days after the entry of an order dismissing an appeal, a party may file a motion for reconsideration of the dismissal.

(2) Number of Judges; Exception

A motion for reconsideration shall be determined by the number of judges required by law to decide an appeal, except that an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal. The judges who determine the motion for reconsideration may include one or more of the judges who entered the order of dismissal.

Committee note: Although an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal upon a timely filed motion for reconsideration, a motion for reconsideration of the dismissal may be denied only by the number of judges required by law to decide an appeal.

(3) Determination of Motion for Reconsideration

The Court shall rescind an order of dismissal if:

(A) the Court determines that the appeal should not have been dismissed;

(B) the appeal was dismissed pursuant to subsection ~~(a)(4), (a)(5), or (a)(7)~~ (c)(2), (c)(3), or (c)(5) of this Rule and the Court finds that there was good cause for the failure to comply with the applicable subsection of the Rule; or

(C) the appeal was dismissed pursuant to subsection ~~(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9)~~ (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of this Rule and the Court finds that the interests of justice require reinstatement of the appeal.

(4) Reinstatement

If an order of dismissal is rescinded, the case shall be reinstated on the docket on the terms and conditions prescribed by the Court.

(5) No Further Reconsideration by the Court

If an order dismissing an appeal is reconsidered under this section, the party who filed the motion for reconsideration may not obtain further reconsideration of the motion.

~~(d)~~ (f) Judgment Entered after Notice Filed

A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

~~(e)~~ (g) Entry of Judgment not Directed Under Rule 2-602

(1) If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602 (b), the appellate court, as it finds appropriate,

may (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative or (D) if a final judgment was entered by the lower court after the notice of appeal was filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment.

(2) If, upon remand, the lower court decides not to direct entry of a final judgment pursuant to Rule 2-602 (b), the lower court shall promptly notify the appellate court of its decision and the appellate court shall dismiss the appeal. If, upon remand, the lower court determines that there is no just reason for delay and directs the entry of a final judgment pursuant to Rule 2-602 (b), the case shall be returned to the appellate court after entry of the judgment. The appellate court shall treat the notice of appeal as if filed on the date of entry of the judgment.

(3) If the appellate court enters a final judgment on its own initiative, it shall treat the notice of appeal as if filed on the date of the entry of the judgment and proceed with the appeal.

Source: This Rule is in part derived from former Rules 1035 and 835 and in part new.

REPORTER'S NOTE

Proposed amendments to Rule 8-602 reorganize the Rule and categorize the listed grounds for dismissal as "mandatory" or "discretionary." Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 – RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-502 to conform an internal reference to the reorganization of Rule 8-602, as follows:

Rule 8-502. FILING OF BRIEFS

. . .

(d) Default

If an appellant fails to file a brief within the time prescribed by this Rule, the appeal may be dismissed pursuant to Rule 8-602 ~~(a)(7)~~ (c)(5). An appellee who fails to file a brief within the time prescribed by this Rule may not present argument except with permission of the Court.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 8-502 conforms an internal reference to the reorganization of Rule 8-602.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 600 – DISPOSITION

AMEND Rule 8-603 to conform internal references to the reorganization of Rule 8-602, as follows:

Rule 8-603. MOTION TO DISMISS APPEAL

(a) Time for Filing

Unless included in the appellee's brief as permitted by section (c) of this Rule or by order of the appellate court, a motion to dismiss shall be filed within the following time periods:

(1) ten days after the record was or should have been filed pursuant to Rule 8-412 if the motion is based on subsection ~~(a)(2), (3), (5), or (6)~~ (b)(2), (c)(1), (c)(3), or (c)(4) of Rule 8-602;

(2) ten days after the information report was or should have been filed pursuant to Rule 8-205 if the motion is based on subsection ~~(a)(4)~~ (c)(2) of Rule 8-602;

(3) ten days after the appellant's brief was or should have been filed pursuant to Rule 8-502 if the motion is based on subsection ~~(a)(7) or (8)~~ (c)(5) or (6) of Rule 8-602;

(4) ten days after the case becomes moot, if the motion is based on subsection ~~(a)(10)~~ (c)(8) of Rule 8-602.

(b) Where Filed; Number of Copies

A motion to dismiss and any response shall be filed with the Clerk of the appellate court. If the motion or response is not included in a brief as permitted by section (c) of this Rule, an original shall be filed together with three copies in the Court of Special Appeals or seven copies in the Court of Appeals.

(c) Included in Appellee's Brief

A motion to dismiss based on subsection ~~(a)(1), (2), (3), (9), or (10)~~ (b)(1), (b)(2), (c)(1), (c)(7), or (c)(8) of Rule 8-602 may be included in the appellee's brief. The appellant may include in a reply brief any response to the motion.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 8-603 conform internal references to the reorganization of Rule 8-602.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 600 – DISPOSITION

AMEND Rule 8-605 (a) to conform an internal reference to the proposed reorganization of Rule 8-602, as follows:

Rule 8-605. RECONSIDERATION

(a) Motion; Response; No Oral Argument

Except as otherwise provided in Rule 8-602 ~~(c)~~ (e), a party may file pursuant to this Rule a motion for reconsideration of a decision by the Court that disposes of the appeal. The motion shall be filed (1) before issuance of the mandate or (2) within 30 days after the filing of the opinion of the Court, whichever is earlier. A response to a motion for reconsideration may not be filed unless requested on behalf of the Court by at least one judge who concurred in the opinion or order. Except to make changes in the opinion that do not change the decision in the case, the Court ordinarily will not grant a motion for reconsideration unless it has requested a response. There shall be no oral argument on the motion.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 8-605 (a) conforms an internal reference to the reorganization of Rule 8-602.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 – PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

AMEND Rule 17-404 to conform an internal reference to the reorganization of Rule 8-602, as follows:

Rule 17-404. MEDIATION

. . .

(f) Order Implementing Settlement

(1) Proposed Order

Within 30 days after the conclusion of a Court-ordered mediation at which a full or partial settlement is achieved, if an order is necessary to implement the settlement, the parties shall submit a proposed order for review by the Chief Judge. The proposed order may include dismissal of the appeal, proceeding with the appellate process, limiting issues, a remand pursuant to Rule 8-602 ~~(e)~~ (g), or any other appropriate directives necessary to implement the settlement.

(2) Review by Chief Judge

After review, the Chief Judge shall (A) sign the order as presented, (B) reject the proposed order, or (C) return the order to the parties with recommended changes, but the Chief Judge may not preclude an appellant from dismissing the appellant's appeal as permitted by Rule 8-601 or preclude the

parties from otherwise proceeding in a manner authorized by the Rules in Title 8.

(3) Recommended Changes

If the Chief Judge returns an order with recommended changes and, within 15 days after return of the order, the parties do not accept the recommended changes, the appeal shall proceed as if no agreement had been reached, unless the Chief Judge agrees to withdraw an unaccepted recommended change. If the parties accept the recommended changes, the Chief Judge shall sign the order with those changes included.

(4) Duty of Clerk

The clerk shall send a copy of a signed order to each party and to the ADR Division.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 17-402 conforms an internal reference to the reorganization of Rule 8-602.

MARYLAND RULES OF PROCEDURE

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MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

ADD new Rule 17-601, as follows:

Rule 17-601. DEFINITIONS; APPLICABILITY

(a) Definitions

In this Chapter:

(1) to the extent relevant, the definitions in Rule 17-102 shall apply, except that "ADR" includes only mediation and settlement-conferencing; and

(2) "Chief Judge" means the Chief Judge of the orphans' court for the county in which the court is located, except that, in Harford and Montgomery Counties, "Chief Judge" means the County Administrative Judge.

Committee note: Rule 17-102 (a) and (d) include within the definition of "ADR" arbitration and neutral fact-finding. The Committee believes that it is inappropriate for the court to order parties to resort to those forms of ADR, especially if the results of such a referral are intended to be binding. Such a referral may constitute an improper delegation of the statutory duties and responsibilities of the orphans' courts and registers of wills with respect to the administration of estates. Accordingly, ADR referrals are limited to mediation and settlement-conferencing.

(b) Applicability

The Rules in this Chapter apply only to actions and matters pending in an orphans' court that has an alternative dispute resolution program.

Source: This Rule is new.

REPORTER'S NOTE

The Director of the Maryland Judiciary's Mediation and Conflict Resolution Office requested that Rules be drafted providing for Alternative Dispute Resolution in the orphans' courts. This originated from the requests of several orphans' court judges. Mediation has already been used in some of the orphans' courts around the State, and the judges felt that a set of Rules would be helpful. The Rules are drafted based on the ADR Rules in Title 17, Chapters 200, 300, and 400.

Rule 17-601 adopts the definitions of Rule 17-102, excluding arbitration and neutral fact-finding as part of ADR. The Committee note after subsection (a)(2) explains this. A definition of the term "Chief Judge" was added, because of the differences in orphans' court procedure in Harford and Montgomery Counties.

Section (b) states that the Rules in this Chapter apply only to an orphans' court that has an ADR program. Such programs are not mandatory, and some orphans' courts may not have a program.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

ADD new Rule 17-602, as follows:

Rule 17-602. AUTHORITY TO ORDER ADR

(a) Generally

After the filing of a petition, exception, or other objection seeking the resolution of a matter by an orphans' court, the court may order parties to participate in alternative dispute resolution only in accordance with this Rule.

Committee note: Examples of the kinds of disputes that may be referred by the court to ADR are those relating to the validity of a will, the appointment or removal of a personal representative, exceptions to an inventory or account, attorneys' fees, personal representative's commissions, claims against the estate, or the distribution of estate property. It is not the intent of these Rules to have orphans' court judges referring to ADR matters arising in the course of administrative probate that are within the jurisdiction of registers of wills or to preclude parties from engaging in ADR or reaching agreements on their own without intervention of the court.

(b) Non-Fee-for-service

An orphans' court may order the parties in a matter pending before the court to participate in a non-fee-for-service mediation or settlement conference proceeding. Unless agreed to by the parties, the order may not require participation in more than two sessions not exceeding in the aggregate four hours in length.

(c) Fee-for-service

An orphans' court may order the parties in a matter pending before the court to participate in a fee-for-service mediation or settlement conference proceeding, but any party may choose not to participate. The order (1) shall specify the maximum fee or hourly rate that may be charged (2) unless the parties agree otherwise, may not require participation in more than two sessions not exceeding in the aggregate four hours in length, (3) be accompanied by a form notice of non-participation, (4) state that any party may choose not to participate by signing the notice of non-participation and returning it to the court within ten days after service of the order, and (5) state that, if any party timely returns a notice of non-participation, the order will be rescinded and the ADR proceeding will be cancelled.

(d) Exception

An orphans' court may not order parties to participate in a mediation or settlement conference if a "no contact" order has been issued pursuant to Code, Family Law Article, Title 4, Subtitle 5, Code (domestic violence), Courts and Judicial Proceedings Article, Title 3, Subtitle 15 (peace order), or any other law, in favor of one of the parties and against another party.

Committee note: A “no contact” order also may be issued in proceedings other than those mentioned in section (c), such as a criminal or juvenile delinquency case as a condition of pretrial release, probation, or parole.

(e) Requiring Record of Agreement

(1) Generally

An order referring a matter to mediation or settlement conference shall require that any agreement be in writing and signed by the parties.

(2) Agreements Relating to Distribution of Assets or Allocation of Liabilities

An order referring a matter to mediation or settlement conference shall require that any agreement that may cause the distribution of an estate asset or allocation of a liability to be made in a manner inconsistent with a will or law otherwise applicable to the distribution or allocation be in writing, signed by the parties, filed with the court, and referenced in each account that includes the distribution or allocation.

Cross reference: See *Brewer v. Brewer*, 386 Md. 183, 195-96 (2005) (“If the account shows a distribution inconsistent with the Will and there is no adequate documentation attached to it to explain the inconsistency, the Register [of Wills] cannot complete a proper audit and the court cannot properly approve the account.”)

(f) Designation of ADR Practitioner

(1) Generally

The order shall designate an individual to conduct the mediation or settlement conference (A) agreed to by the parties, or (B) in the absence of such an agreement, from a list of

qualified individuals maintained by the court pursuant to Rule 17-603.

(2) Discretion in Designation

In designating an individual under subsection (e)(1)(B) of this Rule, the court is not required to choose at random or in any particular order from among the qualified individuals on its lists. The court should endeavor to use the services of as many qualified individuals as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

Committee note: Nothing in these Rules is intended to preclude the parties from participating in a collaborative law process as long as all parties agree to it.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-602 is derived from Rules 17-201 and 17-202.

Section (a) and the Committee note following it were added to clarify which actions and matters pending in the orphans' court can be referred to ADR.

The Committee felt that parties should be able to opt out of fee-for-service ADR, and this is reflected in section (c). The Committee added requirements that agreements reached in orphans' court ADR shall be in writing and signed by the parties and that agreements that result in the distribution of an estate asset or allocation of a liability to be made in a manner inconsistent with a will or law be in writing, signed by the parties, filed with the court, and referenced in each account that includes the distribution or allocation. The Committee also added a Committee note to clarify that the parties in an

orphans’ court ADR proceeding are not prohibited from participating in a collaborative law process as long as the parties agree.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

ADD new Rule 17-603, as follows:

Rule 17-603. QUALIFICATIONS OF COURT-DESIGNATED ADR PRACTITIONERS

(a) Court-designated Mediators

A mediator designated by the court pursuant to Rule 17-602 (e)(1)(B) shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or, for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the rules, statutes, and procedures governing wills, the administration of estates, the authority of orphans' courts and registers of wills, and the mediation program operated by the orphans' court;

(4) complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;

(5) abide by any mediation standards adopted by the Court of Appeals; and

(6) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the Chief Judge.

(b) Court-designated Settlement Conference Presiders

An individual designated as a settlement conference presider shall:

(1) be a member in good standing of the Maryland Bar and have at least three years of experience in the active practice of law;

(2) be familiar with the rules, statutes, and procedures governing wills, the administration of estates, the authority of orphans' courts and registers of wills, and appropriate settlement conference procedures; and

(3) have conducted at least three settlement conferences as a judge, senior judge, or magistrate, or pursuant to a designation by a Maryland court.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-603 is derived from Rule 17-304 with changes in the qualifications that apply to court-designated mediators and settlement conference presiders in the orphans' courts, such as familiarity with the rules, statutes, and procedures governing wills, the administration of estates, the authority of orphans' courts and registers of wills, and the orphans' court mediation program. Court-designated settlement conference presiders must be familiar with the same subjects as mediators and must have conducted at least three settlement conferences as a judge, senior judge, magistrate or pursuant to a designation by any Maryland court.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

ADD new Rule 17-604, as follows:

Rule 17-604. PROCEDURE FOR APPROVAL

(a) Application

(1) Generally

An individual seeking designation to conduct mediation or settlement conference proceedings shall file an application with the Chief Judge of the orphans' court from which the individual is willing to accept referrals. The application shall be substantially in the form approved by the Chief Judge. An individual may apply for designation to conduct both mediations and settlement conferences but shall file a separate application for each. The Chief Judge may select a designee to accept and maintain the applications.

Committee note: The Committee recommends that the Chief Judges of the orphans' courts attempt to develop a uniform application form that can be used throughout the State.

(2) Documentation

The application shall be accompanied by documentation that the applicant meets the requirements of Rule 17-603 (a) or (b), as relevant, and may include documentation of the

applicant's approval to conduct mediations or settlement conferences in other orphans' courts of the State.

(b) Action on Application

After such investigation as the Chief Judge finds appropriate, the Chief Judge shall notify the applicant of the approval or disapproval of the application and the reasons for any disapproval.

(c) Lists

(1) Generally

The Chief Judge shall maintain lists of individuals who have been approved for designation to conduct mediations or settlement conferences, which shall be available to the public and to the other orphans' courts of the State.

(2) Removal

After notice and a reasonable opportunity to respond, the Chief Judge may remove an individual from a list for failure to maintain the required qualifications or for other good cause.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-604 is derived from Rules 17-207 and 17-304 with modifications that would apply to approval of ADR practitioners in orphans' court cases.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 600 – PROCEEDINGS IN ORPHANS' COURT

ADD new Rule 17-605, as follows:

Rule 17-605. FEE SCHEDULES

(a) Authority to Adopt

The Chief Judge shall develop and adopt maximum hourly rate fee schedules for court-designated individuals conducting mediation or settlement conference proceedings. In developing the fee schedules, the Chief Judge shall take into account the availability of qualified individuals willing to provide those services and the ability of litigants to pay for them.

(b) Applicability of Fee Schedules

The fee schedules adopted by the Chief Judge apply only to an individual designated by the court to conduct a mediation or settlement conference and not to an individual selected by the parties.

(c) Compliance

A court-designated individual conducting mediation or settlement conference proceedings subject to a fee schedule may not charge or accept a fee for that service in excess of that allowed under the fee schedule. A violation of this Rule shall

because for removal of the individual from the lists.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-605 is derived from Rule 17-208 with minor modifications so that it applies to fee schedules for ADR practitioners in the orphans' court.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-101 (q) by adding a reference to an orphans' court and by making a stylistic change, as follows:

Rule 1-101. APPLICABILITY

. . .

(q) Title 17

Title 17 applies to alternative dispute resolution proceedings in civil actions in the District Court, ~~the~~ a circuit court, an orphans' court, and the Court of Special Appeals, except for actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute resolution. Title 17 also applies to collaborative law processes under the Maryland Uniform Collaborative Law Act.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 1-101 conforms the Rule to the addition of Title 17, Chapter 600.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 17-101 by adding a new section (g), as follows:

Rule 17-101. APPLICABILITY

(a) General Applicability of Title

Except as provided in sections (b) and (f) of this Rule, the Rules in this Title apply when a court refers all or part of a civil action or proceeding to ADR.

Committee note: The Rules in this Title other than the Rules in Chapter 500 do not apply to an ADR process in which the parties participate without a court order of referral to that process.

(b) Exceptions

Except as otherwise provided by Rule, the Rules in this Title do not apply to:

(1) an action or order to enforce a contractual agreement to submit a dispute to ADR;

(2) an action to foreclose a lien against owner-occupied residential property subject to foreclosure mediation conducted by the Office of Administrative Hearings under Rule 14-209.1;

(3) an action pending in the Health Care Alternative Dispute Resolution Office under Code, Courts Article, Title 3, Subtitle 2A, unless otherwise provided by law; or

(4) a matter referred to a magistrate, examiner, auditor, or parenting coordinator pursuant to Rule 2-541, 2-542, 2-543, or 9-205.2.

(c) Applicability of Chapter 200

The Rules in Chapter 200 apply to actions and proceedings pending in a circuit court.

(d) Applicability of Chapter 300

The Rules in Chapter 300 apply to actions and proceedings pending in the District Court.

(e) Applicability of Chapter 400

The Rules in Chapter 400 apply to civil appeals pending in the Court of Special Appeals.

(f) Applicability of Chapter 500

The Rules in Chapter 500 apply to collaborative law processes under the Maryland Uniform Collaborative Law Act, regardless of whether an action or proceeding is pending in a court.

(g) Applicability of Chapter 600

The Rules in Chapter 600 apply to actions and proceedings in an orphans' court as specified in Rule 17-601 (b).

Source: This Rule is derived from former Rule 17-101 (2011).

REPORTER'S NOTE

Rule 17-101 contains conforming amendments because of the addition of Title 17, Chapter 600.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-321 by adding a new section (e) pertaining to proceedings to modify a judgment in a civil action, a cross reference, and a Committee note, as follows:

Rule 1-321. SERVICE OF PLEADINGS AND PAPERS OTHER THAN ORIGINAL PLEADINGS

(a) Generally

Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the

office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

(b) Service After Entry of Limited Appearance

Every document required to be served upon a party's attorney that is to be served after entry of a limited appearance also shall be served upon the party and, unless the attorney's appearance has been stricken pursuant to Rules 2-132 or 3-132, upon the limited appearance attorney.

Cross reference: See Rule 1-324 with respect to the sending of notices by a clerk when a limited appearance has been entered.

(c) Party in Default – Exceptions

No pleading or other paper after the original pleading need be served on a party in default for failure to appear except:

(1) a pleading asserting a new or additional claim for relief against the party shall be served in accordance with the rules for service of original process; and

(2) a request for entry of judgment arising out of an order of default under Rule 2-613 shall be served in accordance with section (a) of this Rule.

(d) Requests to Clerk – Exception

A request directed to the clerk for the issuance of process or any writ need not be served on any party.

(e) Proceedings to Modify Judgment in a Civil Action

If a motion, petition, or other paper that initiates proceedings to modify a judgment in a civil action is filed more than 30 days after entry of the judgment, it shall be served, together with a summons issued pursuant to Rule 2-114 or 3-114, as applicable, in accordance with the rules for service of an original pleading.

Cross reference: For the time for filing a response to an original pleading, see Rules 2-321 and 3-307.

Committee note: A certificate of service under Rule 1-323 is not required when a motion, petition, or paper is treated as an original pleading pursuant to section (e) of this Rule.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 306 a 1 and c and the 1980 version of Fed. R. Civ. P. 5 (a).
Section (b) is new.
Section (c) is derived from former Rule 306 b and the 1980 version of Fed. R. Civ. P. 5 (a).
Section (d) is new.
Section (e) is new.

REPORTER'S NOTE

A May 8, 2002 Letter of Advice from the Office of the Attorney General advised that:

> the clerk should not issue a summons in connection with a motion or petition seeking post-judgment relief, unless expressly directed by the court to do so, and that a motion for post-judgment relief, such as modification of child support, custody, or visitation, but not a petition for contempt, needs to contain or be accompanied by a certification of service, or an admission or waiver of service.

A number of jurisdictions have raised concerns about the advice, and various local approaches have been implemented,

including at least one circuit court requiring that “every civil Motion, Petition or Complaint filed with the Clerk of this Court to modify any provision of any final court order or judgment, which is filed after thirty (30) days have passed from the entry of such final order, shall be served on the opposing party using the same process required for an original action.”

To provide a more uniform procedure throughout the State and to assure that parties receive notice of post-judgment proceedings that may affect their rights, the Rules Committee recommends an amendment to Rule 1-321. The proposed amendment adds a new section (e), pertaining to post-judgment motions, petitions, and papers that seek to modify the judgment in a civil action. Such motions, petitions, and papers are served in accordance with the rules for service of an original pleading, together with a summons that is issued under Rule 2-114 or 3-114, as applicable.

The Rules Committee also recommends that a cross reference and a Committee note be added following new section (e). For the cross reference, the Committee considered the time for filing a response and felt that the same rules for responding to an original pleading applied to responding to motions, petitions, or papers to which section (e) applies. The Committee note clarifies that a certificate of service is not required when a motion, petition, or paper is being treated as an original pleading.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

AMEND Rule 16-306 by renaming the special docket for asbestos cases to the special inactive pretrial docket for asbestos actions ("SIPD"); by substituting the word "action" for the word "case" throughout, including plurals; by revising in subsection (c)(3) the process for re-transferring an action to the court in which it was originally filed after the action's removal from the SIPD; and by making a stylistic change in the Committee note following section (e), as follows:

Rule 16-306. SPECIAL INACTIVE PRETRIAL DOCKET FOR ASBESTOS ~~CASES~~ ACTIONS

(a) Definition

In this Rule~~,~~:

(1) Asbestos Action

"Asbestos ~~case~~ action" means an action seeking money damages for personal injury or death allegedly caused by exposure to asbestos or products containing asbestos. It does not include an action seeking principally equitable relief or seeking principally damages for injury to property or for

removal of asbestos or products containing asbestos from property.

(2) SIPD

"SIPD" means the special inactive pretrial docket established pursuant to this Rule.

(b) Special Inactive Pretrial Docket

The Administrative Judge of the Circuit Court for Baltimore City may establish and maintain a special inactive pretrial docket (SIPD) for asbestos ~~cases~~ actions filed in or transferred to that court. The order:

(1) shall specify the criteria and procedures for placement of an asbestos ~~case~~ action on the ~~inactive docket~~ SIPD and for removal of ~~a case~~ such an action from ~~the~~ that docket;

(2) may permit an asbestos ~~case~~ action meeting the criteria for placement on the ~~inactive docket~~ SIPD to be placed on that docket at any time prior to trial; and

(3) with respect to any ~~case~~ action placed on the ~~inactive docket~~ SIPD, may stay the time for filing responses to the complaint, discovery, and other proceedings until the ~~case~~ action is removed from the docket.

(c) Transfer of ~~Cases~~ Actions from Other Counties

(1) The Circuit Administrative Judge for any other judicial circuit, by order, may:

(A) adopt the criteria established in an order entered by the Administrative Judge of the Circuit Court for Baltimore City

pursuant to section (b) of this Rule for placement of an asbestos ~~case~~ action on the ~~inactive docket~~ SIPD for asbestos ~~cases~~ actions;

(B) provide for the transfer to the Circuit Court for Baltimore City, for placement on the ~~inactive docket~~ SIPD, of any asbestos ~~case~~ action filed in a circuit court in that other circuit for which venue would lie in Baltimore City; and

(C) establish procedures for the prompt disposition in the circuit court where the action was filed of any dispute as to whether venue would lie in Baltimore City.

(2) If an action is transferred pursuant to this Rule, the clerk of the circuit court where the action was filed shall transmit the record to the clerk of the Circuit Court for Baltimore City, and, except as provided in subsection (c)(3) of this Rule, the action shall thereafter proceed as if initially filed in the Circuit Court for Baltimore City.

(3) ~~Unless otherwise ordered by the Circuit Court, any action transferred pursuant to section (c) of this Rule, upon removal from the inactive docket, shall be re-transferred~~ Upon removal of an action from the SIPD, the Administrative Judge of the Circuit Court for Baltimore City, with the concurrence of the County Administrative Judge of the circuit court in which the action originally was filed, may re-transfer the action to the circuit court in which it was originally filed and all further proceedings shall take place in that court.

(d) Exemption from Rule 2-507

Any action placed on ~~an inactive docket~~ the SIPD pursuant to this Rule shall not be subject to Rule 2-507 until the action is removed from that docket.

(e) Effect on Rule 2-327 (d)

To the extent of any inconsistency with Rule 2-327 (d), this Rule shall prevail.

Committee note: Section (e) of this Rule does not preclude a transfer under Rule 2-327 upon ~~retransfer~~ re-transfer of an action under subsection (c)(3) of this Rule.

(f) Applicability of Rule

This Rule shall apply only to actions filed on or after December 8, 1992.

Source: This Rule is derived from former Rule 16-203 (2016).

REPORTER'S NOTE

Amendments to Rule 16-306 and proposed new Rule 16-306.1 were requested by the Circuit Court for Baltimore City, which oversees the majority of asbestos actions in the State, including some actions originally filed in other circuit courts. Rule 16-306 and new Rule 16-306.1 recognize the unique nature of asbestos actions, including a plaintiff's need to file an action to preserve a claim before active litigation is ripe, as well as the fluid status of defendants that are in bankruptcy or leaving bankruptcy.

Proposed amendments to Rule 16-306 (a) and (b) rename the docket established by this Rule to the special inactive pretrial docket for asbestos actions ("SIPD"). This change is necessary for clarification, in light of the new docket proposed by Rule 16-306.1.

A stylistic change is made, substituting the word "action" for the word "case" throughout the Rule, including plural forms. "Action" is a defined term encompassing "all the steps by which a party seeks to enforce any right in a court." See Rule 1-202.

Subsection (c)(3) revises the process for re-transferring an action to the circuit court in which it was originally filed once it has been removed from the SIPD. The amendment provides that the Administrative Judge of the Circuit Court for Baltimore City may re-transfer an action to its original venue, with the concurrence of the County Administrative Judge of the circuit court in which it was originally filed, after the action is removed from the SIPD.

A stylistic change is made to the Committee note following section (e).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

ADD new Rule 16-306.1, as follows:

Rule 16-306.1. SPECIAL INACTIVE BANKRUPTCY DOCKET FOR ASBESTOS ACTIONS

(a) Definitions

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

(1) Asbestos Action

"Asbestos action" has the meaning set forth in Rule 16-306 (a);

(2) Bankrupt Defendant

"Bankrupt defendant" means a defendant in an asbestos action who is in bankruptcy and, as a result, is subject to the protection of a stay of proceedings under 11 U.S.C. §362 or by order of the Bankruptcy Court.

(3) SIBD

"SIBD" means the special inactive bankruptcy docket created pursuant to this Rule.

(b) Applicability

This Rule applies only to asbestos actions in which (1) all claims by all plaintiffs against all non-bankrupt defendants and all claims by non-bankrupt defendants against other non-bankrupt defendants have been fully resolved or abandoned and, (2) but for open claims by or against a bankrupt defendant, final judgment could be entered with respect to the plaintiffs' claims against the non-bankrupt defendants and claims by non-bankrupt defendants against other non-bankrupt defendants.

(c) Notice of Resolution

(1) Any party to an asbestos action who has reason to believe that the action falls within the ambit of this Rule may file a Notice of Resolution.

(2) To the extent feasible, the Notice shall

(A) include an affirmation by counsel that all claims by all plaintiffs against all non-bankrupt defendants and all claims by non-bankrupt defendants against other non-bankrupt defendants have been, or pursuant to section (e) of this Rule, will be, fully resolved, and

(B) identify all bankrupt defendants by or against whom claims are still pending but cannot be adjudicated because proceedings against those defendants are stayed under Federal bankruptcy law.

(3) The Notice shall be served on all other parties, other than a bankrupt defendant, in accordance with the procedures for service applicable to asbestos actions.

(4) Upon the filing of a Notice of Resolution, the Administrative Judge may cancel or postpone any pending events in the action that may be unnecessary in light of the Notice.

(d) Objection

Any party may contest the Notice of Resolution by filing and serving on all other parties, other than a bankrupt defendant, an objection within 15 days after service of the Notice. If an objection is filed, the court, after an opportunity for a hearing if one is requested, shall determine whether the Notice is valid and further proceedings under section (e) of this Rule should occur.

(e) Ruling; Severance; Transfer

(1) If the court concludes that an objection has merit and that the action does not fall within the ambit of this Rule, the court shall reject the Notice and state the basis for the rejection.

(2) If no objection to the Notice is timely filed or if, upon the filing of an objection, the court determines that the objection is without merit, the court may (A) cancel pending events in the action, (B) sever all claims by or against the bankrupt defendants and transfer those claims to the SIBD created pursuant to section (f) of this Rule, and (C) enter appropriate judgments with respect to all existing claims (i) by all plaintiffs against all non-bankrupt defendants and (ii) by

all non-bankrupt defendants against other non-bankrupt defendants.

(f) Creation of Special Inactive Bankruptcy Docket (SIBD)

(1) By administrative order, the Administrative Judge of the Circuit Court for Baltimore City shall establish a Special Inactive Bankruptcy Docket for Asbestos Actions (SIBD) in accordance with this Rule. The docket shall consist of all claims severed and transferred to it pursuant to section (e) of this Rule.

(2) The severance and transfer of claims to the SIBD shall not affect the substantive status or validity of any claim by or against the bankrupt defendant or any defense to such a claim, whether existing at the time of severance and transfer or filed or raised upon termination of the bankruptcy stay. The purpose of the severance and transfer is solely to permit judgments to be entered on resolved claims against the non-bankrupt defendants.

(3) The plaintiffs are responsible for monitoring periodically the status of the bankruptcy actions and notifying the court upon (A) any lifting of a stay that would permit the action to proceed against a bankrupt defendant or successor that emerges from the bankruptcy, or (B) a discharge or other resolution in the bankruptcy proceeding that would permanently preclude any relief in the circuit court against a defendant and its successor. Upon the lifting of a stay that would permit the

action to proceed against a bankrupt defendant or its successor, or upon a permanent preclusion of relief in the circuit court against a bankrupt defendant and its successor, the action against that defendant shall be removed from the SIBD in accordance with an appropriate order of the Administrative Judge or a designee of that judge.

(4) Because no proceedings are permissible with respect to any claims by or against a bankrupt defendant while the bankruptcy stay is in effect, actions on the SIBD shall not be subject to Rule 2-507 and shall be deemed to be administratively closed for statistical purposes, including any otherwise applicable time standards, subject to being reopened upon removal from that docket.

Source: This Rule is new.

REPORTER'S NOTE

Amendments to Rule 16-306 and proposed Rule 16-306.1 were requested by the Circuit Court for Baltimore City, which oversees the majority of asbestos actions in the State, including some actions originally filed in other circuit courts. Rule 16-306 and new Rule 16-306.1 recognize the unique nature of asbestos actions, including a plaintiff's need to file an action to preserve a claim before active litigation is ripe, as well as the fluid status of defendants that are in bankruptcy or leaving bankruptcy.

Statistically, thousands of open asbestos actions in the Circuit Court for Baltimore City, as well as other circuit courts, have some claims, but not all, litigated to finality. Those actions, however, cannot be closed because of other claims that are stayed against defendants in bankruptcy—itself a lengthy process that may take years. The proposed Rules changes seek to address the need to close claims that are fully litigated, while preserving the ability of a plaintiff to

proceed in the future on other claims against defendants currently in bankruptcy.

Proposed Rule 16-306.1 establishes a special inactive bankruptcy docket for asbestos actions ("SIBD"). This docket permits a court to sever claims in an action, closing those that have been litigated to finality and placing those stayed under federal bankruptcy law on a special inactive docket that is not subject to Rule 2-507.

Section (a) defines terms used in the Rule.

Section (b) specifies the actions to which the Rule applies. Those actions must have all claims by all plaintiffs against all non-bankrupt defendants, and all claims by non-bankrupt defendants against other non-bankrupt defendants, fully resolved or abandoned, with the only open claims being those by or against a bankrupt defendant.

Section (c) permits any party to an asbestos action who believes that this Rule applies to the action to file a Notice of Resolution. The Notice must include, to the extent feasible, an affirmation by counsel of the fully resolved status of all claims by or against all parties that are not in bankruptcy and an identification of the bankrupt defendants by or against whom claims cannot be adjudicated. The Notice must be served on all other parties, other than a bankrupt defendant. Once the Notice is filed, the Administrative Judge may cancel or postpone pending events in the action that are unnecessary in light of the Notice.

Section (d) permits any party who wishes to contest the Notice of Resolution to do so by filing an objection and serving it on all other parties, except bankrupt defendants. After an opportunity for a hearing, if one is requested, the court determines whether the Notice is valid.

If the court determines that an objection under section (d) has merit and an action does not fall within the ambit of Rule 16-306.1, the court must reject, under section (e), the Notice of Resolution and state its basis for doing so. If there is no objection to a Notice, or the court determines that any objection is without merit, the court may proceed with the cancellation of any pending events in the action, sever all claims by or against bankrupt defendants and transfer those claims to the SIBD, and enter appropriate judgments in the fully litigated claims.

Subsection (f)(1) requires the Administrative Judge of the Circuit Court for Baltimore City to establish the SIBD by administrative order. Subsection (f)(2) states that the severance and transfer of claims to the SIBD does not affect the substantive status or validity of any claim by or against a bankrupt defendant. Under subsection (f)(3), plaintiffs are responsible for monitoring the status of bankruptcy actions and updating the court if a relevant stay is lifted or a discharge or other final resolution occurs in a defendant's bankruptcy proceeding. Upon the lifting of a stay that would permit the action to proceed against a defendant or its successor, or upon a permanent preclusion of relief in the circuit court against a bankrupt defendant and its successor, the action against that defendant shall be removed from the SIBD by order of the Administrative Judge or a designee of the judge. Finally, subsection (f)(4) affirms that actions on the SIBD are not subject to Rule 2-507 because no proceedings are permissible with respect to any claims by or against a bankrupt defendant while a bankruptcy stay is in effect.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-541 to clarify that the court does not prescribe the compensation, fees, and costs of a magistrate who is compensated by the State or a county; and to exclude from assessed costs in an action the compensation, fees, and costs of a magistrate to the extent covered by State or county funds, as follows:

Rule 2-541. MAGISTRATES

(a) Appointment - Compensation

(1) Standing Magistrate

A majority of the judges of the circuit court of a county may appoint a full time or part time standing magistrate. ~~and~~ If the magistrate is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the magistrate.

(2) Special Magistrate

The court may appoint a special magistrate for a particular action. ~~and~~ If the magistrate is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the special magistrate and assess them among the parties. The order of appointment may

specify or limit the powers of a special magistrate and may contain special directions.

(3) Officer of the Court

A magistrate serves at the pleasure of the appointing court and is an officer of the court in which the referred matter is pending.

. . .

(i) Costs

Payment of the compensation, fees, and costs of a magistrate, to the extent not covered by State or county funds, may be compelled by order of court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the court may direct.

. . .

REPORTER'S NOTE

Two amendments to Rule 2-541 are proposed.

An amendment to section (a) clarifies that the court does not prescribe the compensation, fees, and costs of a magistrate who is compensated by the State or a county.

An amendment to section (i) excludes from assessed costs in an action the compensation, fees, and costs of a magistrate to the extent covered by State or county funds.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-542 to clarify that the court does not prescribe the compensation, fees, and costs of an examiner who is compensated by the State or a county; to prohibit referral to an examiner of a matter referable to a magistrate under Rule 9-208; and to exclude from assessed costs in an action the compensation, fees, and costs of an examiner to the extent covered by State or county funds, as follows:

Rule 2-542. EXAMINERS

(a) Appointment - Compensation

(1) Standing Examiner

A majority of the judges of the circuit court of a county may appoint a standing examiner. ~~and~~ If the examiner is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the examiner.

(2) Special Examiner

The court may appoint a special examiner for a particular action. ~~and~~ If the examiner is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the special examiner and assess them among

the parties. The order of appointment may specify or limit the powers of a special examiner and may contain special directions.

(3) Officer of the Court

An examiner serves at the pleasure of the appointing court and is an officer of the court in which the referred matter is pending.

(b) Referral by Order

On motion of any party or on its own initiative, the court may refer to an examiner, for the taking of evidence, issues in uncontested proceedings not triable of right before a jury or referable to a magistrate under Rule 9-208 and proceedings held in aid of execution of judgment pursuant to Rule 2-633. The order of reference may prescribe the manner in which the examination is to be conducted and may set time limits for the completion of the taking of evidence and the submission of the record of the examination.

. . .

(i) Costs

Payment of the compensation, fees, and costs of an examiner, to the extent not covered by State or county funds, may be compelled by order of court. The costs of the transcript may be included in the costs of the action and assessed among the parties as the court may direct.

. . .

REPORTER'S NOTE

Three amendments to Rule 2-542 are proposed.

An amendment to section (a) clarifies that the court does not prescribe the compensation, fees, and costs of an examiner who is compensated by the State or a county.

An amendment to section (b) prohibits referral to an examiner of any matter referable to a magistrate under Rule 9-208.

An amendment to section (i) excludes from assessed costs in an action the compensation, fees, and costs of an examiner to the extent covered by State or county funds.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-543 to clarify that the court does not prescribe the compensation, fees, and costs of an auditor who is compensated by the State or a county; and to exclude from assessed costs in an action the compensation, fees, and costs of an auditor to the extent covered by State or county funds, as follows:

Rule 2-543. AUDITORS

(a) Appointment - Compensation

(1) Standing Auditor

A majority of the judges of the circuit court of a county may appoint a standing auditor. ~~and~~ If the auditor is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the auditor.

(2) Special Auditor

The court may appoint a special auditor for a particular action. ~~and~~ If the auditor is not compensated by the State or a county, the court shall prescribe the compensation, fees, and costs of the special auditor and assess them among the parties. The order of appointment may specify or limit the powers of a special auditor and may contain special directions.

(3) Officer of the Court

An auditor serves at the pleasure of the appointing court and is an officer of the court in which the referred matter is pending.

. . .

(i) Costs

Payment of the compensation, fees, and costs of an auditor, to the extent not covered by State or county funds, may be compelled by order of court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the court may direct.

. . .

REPORTER'S NOTE

Two amendments to Rule 2-543 are proposed.

An amendment to section (a) clarifies that the court does not prescribe the compensation, fees, and costs of an auditor who is compensated by the State or a county.

An amendment to section (i) excludes from assessed costs in an action the compensation, fees, and costs of an auditor to the extent covered by State or county funds.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-208 by correcting an internal reference in the Committee note following subsection (a)(1) and adding clarifying language to the Committee note, by deleting the Committee note following section (j), and by transferring the substance of the deleted Committee note to the text of section (j), as follows:

Rule 9-208. REFERRAL OF MATTERS TO MAGISTRATES

(a) Referral

(1) As of Course

If a court has a full-time or part-time standing magistrate for domestic relations matters and a hearing has been requested or is required by law, the following matters arising under this Chapter shall be referred to the magistrate as of course unless the court directs otherwise in a specific case:

(A) uncontested divorce, annulment, or alimony;

(B) alimony pendente lite;

(C) child support pendente lite;

(D) support of dependents;

(E) preliminary or pendente lite possession or use of the family home or family-use personal property;

(F) subject to Rule 9-205, pendente lite custody of or visitation with children or modification of an existing order or judgment as to custody or visitation;

(G) subject to Rule 9-205 as to child access disputes, constructive civil contempt by reason of noncompliance with an order or judgment relating to custody of or visitation with a minor child, the payment of alimony or support, or the possession or use of the family home or family-use personal property, following service of a show cause order upon the person alleged to be in contempt;

(H) modification of an existing order or judgment as to the payment of alimony or support or as to the possession or use of the family home or family-use personal property;

(I) counsel fees and assessment of court costs in any matter referred to a magistrate under this Rule;

(J) stay of an earnings withholding order; and

(K) such other matters arising under this Chapter and set forth in the court's case management plan filed pursuant to Rule 16-302 (b).

Committee note: Examples of matters that a court may include in its case management plan for referral to a magistrate under subsection ~~(a)(1)(J)~~ (a)(1)(K) of this Rule include scheduling conferences, settlement conferences, uncontested matters in addition to the uncontested matters listed in subsection (a)(1)(A) of this Rule, and the application of methods of alternative dispute resolution.

(2) By Order on Agreement of the Parties

By agreement of the parties, any other matter or issue arising under this Chapter may be referred to the magistrate by order of the court.

. . .

(j) Costs

The court, by order, may assess among the parties (1) the compensation, fees, and costs of the magistrate if the magistrate is not compensated by the State or a county, and (2) the cost of any transcript.

~~Committee note: Compensation of a magistrate paid by the State or a county is not assessed as costs.~~

Cross reference: See, Code, Family Law Article, §10-131, prescribing certain time limits when a stay of an earnings withholding order is requested.

Source: This Rule is derived in part from Rule 2-541 and former Rule S74A and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 9-208 correct and clarify the Committee note following subsection (a)(1) by changing an internal reference from "subsection (a)(1)(J)" to "subsection (a)(1)(K)" and adding the word "uncontested" to the description of matters listed in subsection (a)(1)(A). The amendments also delete the Committee note following section (j) and transfer the substance of the deleted Committee note to the text of section (j).

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 – DISCOVERY

AMEND Rule 2-422.1 to require that the written undertaking and notice accompanying a subpoena issued to a nonparty under subsection (d)(2) be in a form approved by the State Court Administrator, as follows:

Rule 2-422.1. INSPECTION OF PROPERTY--OF NONPARTY OR BY FOREIGN PARTY--WITHOUT DEPOSITION

. . .

(d) Form

(1) Except as otherwise provided by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator and shall:

(A) contain the caption of the action, including the civil action number for the Maryland court issuing the subpoena;

(B) contain the name and address of the person to whom it is directed;

(C) contain the name of the person at whose request it is issued;

(D) describe with reasonable particularity the land or property to be entered and any actions to be performed;

(E) state the nature of the controversy and the relevancy of the entrance and proposed acts;

(F) specify a reasonable time and manner of entering and performing the proposed acts;

(G) contain or be accompanied by a description of the good faith attempts made by the party to reach agreement and with the person to whom the subpoena is directed concerning the entry and proposed acts;

(H) contain the date of issuance; and

(I) contain a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter.

(2) A subpoena issued pursuant to this Rule shall be accompanied by the following, in a form approved by the State Court Administrator:

(A) a written undertaking that the requesting party will pay for all damages arising out of the entry and performance of the proposed acts; and

(B) a notice informing the person to whom the subpoena is directed that:

(i) the person has the right to object to the entry and proposed acts by filing an objection with the court and serving a copy of it on the requesting party;

(ii) any objection must be filed and served within 30 days after the person is served with the subpoena; and

(iii) the objection must include or be accompanied by a certificate of service, stating the date on which the person mailed a copy of the objection to the requesting party.

Cross reference: See Rules 1-321 and 1-323.

. . .

REPORTER'S NOTE

A practicing attorney observed that subsection (d)(2) of Rule 2-422.1 does not require that the written undertaking and notice accompanying a subpoena issued to a nonparty for inspection and testing of the nonparty's property in an action pending in this State be in a form approved by the State Court Administrator. This requirement is proposed to be added to the Rule to ensure that the documents are uniformly consistent with the Rule and adequately protect the interests of the nonparty.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-510 to add references to the cross reference following section (d), as follows:

Rule 2-510. SUBPOENAS – COURT PROCEEDINGS AND DEPOSITIONS

. . .

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health

- General Article, §§4-302 and 4-306 (b)(6), 45 C.F.R. 164.512 regarding medical records; Code, Health - General Article, §4-307 regarding mental health records; and Code, Financial Institutions Article, §1-304.

. . .

REPORTER'S NOTE

An attorney pointed out that 45 C.F.R. §164.512 addresses disclosure of medical records without the written authorization of the patient to whom the records pertain. The attorney also noted that Code, Health - General Article, §4-302 pertains to the confidentiality and disclosure of medical records and Code, Health - General Article, §4-307 addresses the confidentiality and disclosure of mental health records. The attorney recommended adding the citations to these statutes to the statutes already cross referenced in Rules 2-510, 2-510.1, 3-510, 4-264, and 4-265, which will be helpful for attorneys who would like to subpoena medical information. The Rules Committee approved adding these citations to the cross references in the Rules pertaining to subpoenas.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-510.1 to add references to the cross reference following section (f), as follows:

Rule 2-510.1. FOREIGN SUBPOENAS IN CONJUNCTION WITH A DEPOSITION

. . .

(f) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health - General Article, §§4-302 and 4-306 (b)(6), 45 C.F.R. 164.512 regarding medical records; Code, Health - General Article, §4-307 regarding mental health records; and Code, Financial Institutions Article, §1-304.

. . .

REPORTER’S NOTE

See the Reporter’s note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-510 to add references to the cross reference following section (d), as follows:

Rule 3-510. SUBPOENAS

. . .

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 3-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health

- General Article, §§4-302 and 4-306 (b)(6), 45 C.F.R. 164.512 regarding medical records; Code, Health - General Article, §4-307 regarding mental health records; and Code, Financial Institutions Article, §1-304.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-264 to add references to the cross reference at the end of the Rule, as follows:

Rule 4-264. SUBPOENA FOR TANGIBLE EVIDENCE BEFORE TRIAL IN CIRCUIT COURT

On motion of a party, the circuit court may order the issuance of a subpoena commanding a person to produce for inspection and copying at a specified time and place before trial designated documents, recordings, photographs, or other tangible things, not privileged, which may constitute or contain evidence relevant to the action. Any response to the motion shall be filed within five days.

Cross reference: As to additional requirements for certain subpoenas, see Code, Health - General Article, §§4-302 and 4-306 (b)(6), 45 C.F.R. §164.512 regarding medical records; Code, Health - General Article, §4-307 regarding mental health records; and Code, Financial Institutions Article, §1-304.

Source: This Rule is derived from former Rule 742 a.

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-265 to add references to the cross reference at the end of the Rule, as follows:

Rule 4-265. SUBPOENA FOR HEARING OR TRIAL

. . .

(d) Filing and Service

Unless the court waives the time requirements of this section, a request for subpoena shall be filed at least nine days before trial in the circuit court, or seven days before trial in the District Court, not including the date of trial and intervening Saturdays, Sundays, and holidays. At least five days before trial, not including the date of the trial and intervening Saturdays, Sundays, or holidays, the clerk shall deliver the subpoena for service pursuant to Rule 4-266 (b). Unless impracticable, there must be a good faith effort to cause a trial subpoena to be served at least five days before the trial.

Cross reference: As to additional requirements for certain subpoenas, see Code, Health - General Article, §§4-302 and 4-306 (b)(6), 45 C.F.R. §164.512 regarding medical records; Code, Health - General Article, §4-307 regarding mental health records; and Code, Financial Institutions Article, §1-304.

Source: This Rule is in part derived from former Rule 742 b and M.D.R. 742 a and in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106 by adding a Committee note following subsection (e)(1)(A), by providing an alternative method of handling of a submission that requires prepayment of a fee, or an entry of appearance, whether or not a fee is required, offered in open court by a registered user for inclusion in the record but not as an exhibit, and by making stylistic changes, as follows:

Rule 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

. . .

(e) Exhibits and Other Documents Offered in Open Court

(1) ~~Generally~~ Exhibits

(A) Generally

Unless otherwise approved by the court, a document offered into evidence ~~or otherwise for inclusion in the record~~ as an exhibit in open court shall be offered in paper form. ~~If the document is offered as an exhibit, it~~ The document shall be appropriately marked.

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

~~(2)~~ (B) Scanning and Return of Document

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

(2) Documents Other than Exhibits

(A) Generally

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

Committee note: Examples of documents other than exhibits offered for inclusion in the record are written motions made in open court, proposed voir dire questions, proposed jury instructions, communications from a jury, and special verdict sheets.

(B) Certain Submissions by Registered Users

If a registered user offers a submission that requires prepayment of a fee, or an entry of appearance, whether or not a fee is required, in open court for inclusion in the record, but is not as an exhibit, the court may accept the submission conditionally, subject to it being electronically filed by the

registered user. In criminal proceedings, the submission shall be filed by the end of the day that the submission was offered in court. In all proceedings other than criminal, the submission shall be filed no later than the end of the next business day after the submission was offered in court. If the registered user fails to file by the applicable deadline, the court may strike the submission.

Source: This Rule is new.

REPORTER'S NOTE

Under current Rule 20-106 (e), all documents in paper form offered in open court for inclusion in the record are scanned into the MDEC system by the clerk. The current practice is problematic when a fee is attendant to the filing or when the document is the entry of an appearance by an attorney in a criminal proceeding.

To address the problem, proposed amendments to the Rule give the court an alternative method of handling a paper submission that requires prepayment of a fee, or a paper entry of appearance, whether or not a fee is required, offered by a registered user in open court for inclusion in the record, but not as an exhibit. In that situation, the court may either follow the current procedure, or conditionally accept the submission and require that the registered user electronically file it before the end of the day in criminal proceedings, or by the end of the next business day in all other proceedings.

A Committee note is added following subsection (e)(1)(A), encouraging the parties and the court to agree to the electronic prefiling of documents to be offered into evidence.

Additionally, stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGEMENT OF RECORDS

AMEND Rule 4-504 to conform to Chapter 515, Laws of 2016, as follows:

Rule 4-504. PETITION FOR EXPUNGEMENT WHEN CHARGES FILED

(a) Scope and Venue

A petition for expungement of records may be filed by any defendant who has been charged with the commission of a crime and is eligible under Code, Criminal Procedure Article, §10-105 or Code, Criminal Procedure Article, §10-110, as applicable, to request expungement. The petition shall be filed in the original action. If that action was commenced in one court and transferred to another, the petition shall be filed in the court to which the action was transferred, except that for criminal proceedings that began in a circuit court or the District Court and were transferred to a juvenile court under Code, Criminal Procedure Article, §§4-202 or 4-202.2, the petition shall be filed in the court that issued the order of transfer. If ~~an appeal was taken, the petition shall be filed in the circuit court that had jurisdiction over the action~~ the proceeding in a court of original jurisdiction was appealed to a court

exercising appellate jurisdiction, the petition shall be filed in the appellate court.

Cross reference: See Code, Criminal Procedure Article, §10-104, which permits the District Court on its own initiative to order expungement when the State has entered a nolle prosequi as to all charges in a case in which the defendant has not been served. See Code, Criminal Procedure Article, §10-105, which allows an individual's attorney or personal representative to file a petition for expungement if the individual died before disposition of the charge by nolle prosequi or dismissal. See also Criminal Procedure Article, §10-105 (a)(11), which permits a person who has been convicted of a crime to file a petition for expungement when the act on which the conviction is based no longer is a crime, and Criminal Procedure Article, §10-105 (e)(4), which permits a person to petition for an expungement for an act on which a probation before judgment was based no longer is a crime. See Code, Criminal Procedure Article, §10-110 regarding petitions for expungement of certain misdemeanor convictions.

(b) Contents - Time for Filing

The petition shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices. The petition shall be filed within the times prescribed in Code, Criminal Procedure Article, §10-105 or Code, Criminal Procedure Article, §10-110, as applicable. When required by law, the petitioner shall file with the petition a duly executed General Waiver and Release in the form set forth at the end of this Title as Form 4-503.2.

(c) Copies for Service

The petitioner shall file with the clerk a sufficient number of copies of the petition for service on the State's Attorney and each law enforcement agency named in the petition.

(d) Procedure Upon Filing

Upon filing of a petition, the clerk shall serve copies on the State's Attorney and each law enforcement agency named in the petition. If a petition is filed pursuant to Code, Criminal Procedure Article, §10-110, the court shall send written notice of the expungement request to each victim listed in the case in which the petitioner is seeking expungement at the address listed in the court file, advising the victim of the right to offer information relevant to the expungement petition to the court.

(e) Retrieval or Reconstruction of Case File

Upon the filing of a petition for expungement of records in any action in which the original file has been transferred to a Hall of Records Commission facility for storage, or has been destroyed, whether after having been microfilmed or not, the clerk shall retrieve the original case file from the Hall of Records Commission facility, or shall cause a reconstructed case file to be prepared from the microfilmed record, or from the docket entries.

Source: This Rule is derived in part from former Rule EX3 b and c and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 4-504 conform the Rule to Chapter 515, Laws of 2016 (SB 1005), the Justice Reinvestment Act. Among the provisions of the Act, new Code, Criminal Procedure Article, §10-110 permits expungement of certain misdemeanor convictions.

Section (a) is amended to conform to Code, Criminal Procedure Article, §§10-105 (b)(3) and 10-110 (b)(3), both of which state that if a "proceeding in a court of original jurisdiction was appealed to a court exercising appellate jurisdiction," the petition for expungement is to be filed in the appellate court, and the "appellate court may remand the matter to the court of original jurisdiction." References to Code, Criminal Procedure Article, §10-110 are added to the text of section (a) and to the cross reference following section (a).

Section (b) is amended by adding a reference to Code, Criminal Procedure Article, §10-110 (e).

Section (d) is amended to include the requirements of Code, Criminal Procedure Article, §10-110 (e)(2).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 by adding language to the cross reference following section (f) to conform to Chapter 515, Laws of 2016, as follows:

Rule 4-342. SENTENCING - PROCEDURE

. . .

(f) Reasons

The court ordinarily shall state on the record its reasons for the sentence imposed.

Cross reference: For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, §6-231 and Code, Criminal Law Article, §5-601 (e). For procedures to commit a defendant who has a drug or alcohol dependency to a treatment program in the Maryland Department of Health as a condition of release after conviction, see Code, Health General Article, §8-507. For procedures to be followed by the court to depart from a mandatory minimum sentence for certain drug-related offenses, see Code, Criminal Law Article, §5-609.1.

. . .

REPORTER'S NOTE

Chapter 515, Laws of 2016 (SB 1005) amended Code, Criminal Law Article, §5-601 (e) to provide that a court, before imposing sentence for a controlled dangerous substance offense, may order the Maryland Department of Health to conduct an assessment of the defendant for a substance use disorder, which the court shall consider when imposing sentence. The Rules Committee recommends amending the cross reference following section (f) to reflect the amended statute.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-345 by adding language to the cross reference following section (f) to reflect amendments to Code, Criminal Law Article, §5-609.1, made by Chapter 515, Laws of 2016, as follows:

Rule 4-345. SENTENCING – REVISORY POWER OF COURT

. . .

(f) Open Court Hearing

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

Cross reference: See Code, Criminal Procedure Article, §8-302, which allows the court to vacate a judgment, modify a sentence, or grant a new trial for an individual convicted of prostitution if, when the crime was committed, the individual was acting

under duress caused by the act of another committed in violation of Code, Criminal Law Article, §11-303, the prohibition against human trafficking. See Code, Criminal Law Article, §5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to October 1, 2017, and for procedures relating thereto.

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

REPORTER'S NOTE

Chapter 515, Laws of 2016 (SB 1005), amended Code, Criminal Law Article, §5-609.1, to provide:

> (a) Notwithstanding any other provision of law and subject to subsection (c) of this section, a person who is serving a term of confinement that includes a mandatory minimum sentence imposed on or before September 30, 2017, for a violation of §§5–602 through 5–606 of this Subtitle may apply to the court to modify or reduce the mandatory minimum sentence as provided in Maryland Rule 4–345, regardless of whether the defendant filed a timely motion for reconsideration or a motion for reconsideration was denied by the court.
>
> (b) The court may modify the sentence and depart from the mandatory minimum sentence unless the State shows that, giving due regard to the nature of the crime, the history and character of the defendant, and the defendant's chances of successful rehabilitation:
>
> (1) retention of the mandatory minimum sentence would not result in substantial injustice to the defendant; and
>
> (2) the mandatory minimum sentence is necessary for the protection of the public.
>
> (c)(1) Except as provided in paragraph (2) of this subsection, an application for a hearing under subsection (a) of this section shall be submitted to the court or review panel on or before September 30, 2018.
>
> (2) The court may consider an application after September 30, 2018, only for good cause shown.

(3) The court shall notify the State's Attorney of a request for a hearing.

(4) A person may not file more than one application for a hearing under subsection (a) of this section for a mandatory minimum sentence for a violation of §§5–602 through 5–606 of this Subtitle.

The Rules Committee proposes adding a sentence to the cross reference following section (f) of Rule 4-345 to reflect Code, Criminal Law Article, §5-609.1.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-346 by adding a sentence to the cross reference following section (b) to reflect statutory changes effected by Chapter 515, Laws of 2016 (SB 1005), as follows:

Rule 4-346. PROBATION

. . .

(b) Modification of Probation Order

During the period of probation, on motion of the defendant or of any person charged with supervising the defendant while on probation or on its own initiative, the court, after giving the defendant an opportunity to be heard, may modify, clarify, or terminate any condition of probation, change its duration, or impose additional conditions.

Cross reference: For orders of probation or parole recommending that a defendant reside in or travel to another state as a condition of probation or parole, see the Interstate Compact for Adult Offender Supervision, Code, Correctional Services Article, §6-201 et seq. For evaluation as to the need for drug or alcohol treatment before probation is ordered in cases involving operating a motor vehicle or vessel while under the influence of or impaired by drugs or alcohol, see Code, Criminal Procedure Article, §6-220. For victim notification procedures, see Code, Criminal Procedure Article, §11-104 (f). For procedures concerning compliance with restitution judgments, see Code, Criminal Procedure Article, §11-607. For procedures concerning a revocation of probation due to a technical violation of probation, as defined in Code, Correctional Services Article, §6-101 (m), see Code, Criminal Procedure Article, §§6-223 and 6-224.

Source: This Rule is derived from former Rule 775 and M.D.R. 775.

REPORTER'S NOTE

The Rules Committee proposes adding a sentence to the cross reference following section (b) of Rule 4-346, to reflect statutory changes made to Code, Correctional Services Article, §6-101 (m) and Code, Criminal Procedure Article, §§6-223 and 6-224, by Chapter 515, Laws of 2016 (SB 1005), regarding possible revocation of probation due to a "technical violation" of probation.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 by adding a Committee note following section (b), as follows:

Rule 2-131. APPEARANCE

. . .

(b) Limited Appearance

(1) Notice of Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with Rule 19-301.2 (c) of the Maryland Attorneys' Rules of Professional Conduct, may enter an appearance limited to participation in a discrete matter or judicial proceeding. The notice of appearance (A) shall be accompanied by an Acknowledgment of Scope of Limited Representation substantially in the form specified in subsection (b)(2) of this Rule and signed by the client, and (B) shall specify the scope of the limited appearance, which (i) shall not exceed the scope set forth in the Acknowledgment but (ii) unless otherwise ordered by the court, shall include the performance of any procedural task required by law to achieve the objective of the appearance.

Committee note: Although the scope of a limited representation is largely a matter of contract between the attorney and the

client, if there are procedural requirements necessary to the achievement of the objective agreed upon, a limited appearance, unless otherwise ordered by the court for good cause, must include satisfaction of those requirements, and the Acknowledgment must include that commitment. As examples, (1) if the appearance is limited to filing and pursuing a motion for summary judgment and achievement of that objective requires the filing of affidavits, the attorney is responsible for assuring that the affidavits are prepared, that they are in proper form, and that they are properly filed; (2) if the appearance is limited to obtaining child support for the client, the attorney is responsible for assuring that any financial statements, child support guideline worksheets, and other documents necessary to obtaining the requested order are prepared, are in proper form, and are properly filed.

(2) Acknowledgment of Scope of Limited Representation

The Acknowledgment of Scope of Limited Representation shall be substantially in the following form:

(Caption)

ACKNOWLEDGMENT OF SCOPE OF LIMITED REPRESENTATION

Client: _____

Attorney: _____

I have entered into a written agreement with the above-named attorney. I understand that the attorney will represent me for the following limited purposes (check all that apply):

[ ] Arguing the following motion or motions:

_____

[ ] Attending a pretrial conference.

[ ] Attending a settlement conference.

[ ] Attending the following court-ordered mediation or other court-ordered alternative dispute resolution proceeding for purposes of advising the client during the proceeding:

_____

[ ] Acting as my attorney for the following hearing, deposition, or trial: _____

_____

[ ] With leave of court, acting as my attorney with regard to the following specific issue or a specific portion of a trial or hearing: _____

_____

I understand that except for the legal services specified above, I am fully responsible for handling my case, including complying with court Rules and deadlines. I understand further that during the course of the limited representation, the court may discontinue sending court notices to me and may send all court notices only to my limited representation attorney. If the court discontinues sending notice to me, I understand that although my limited representation attorney is responsible for forwarding to me court notices pertaining to matters outside the scope of the limited representation, I remain responsible for keeping informed about my case.

_____
Client

_____
Signature

_____
Date

Cross reference: See Maryland Attorneys' Rules of Professional Conduct, Rule 19-301.2, Comment 8. For striking of an attorney's limited appearance, see Rule 2-132 (a).

Committee note: The entry of a limited appearance in accordance with this Rule does not constitute the entry of an appearance for the purpose of bringing, prosecuting, or defending an action and does not require the payment of a fee under Code, Courts Article, §7-204.

. . .

REPORTER'S NOTE

The Rules Committee proposes the addition of a Committee note following section (b) of Rule 2-131, to make clear that an attorney's entry of appearance limited to participation in a discrete matter or judicial proceeding does not require payment of an appearance fee under Code, Courts Article, §7-204.

Subject to certain variations and exceptions among the counties, Code, Courts Article, §7-204 requires the clerk of a circuit court to collect a fee for docketing the appearance of counsel when "bringing or defending a civil action."

Rule 1-202 (a) defines "action" as "collectively all the steps by which a party seeks to enforce any right in a court or all the steps in a criminal prosecution." An "action" is, therefore, distinct from a "proceeding," which is defined in Rule 1-202 (v) as "any part of an action." The limited appearances contemplated under Rule 2-131 are appearances for the purposes of a proceeding, rather than for the purposes of an action; therefore, the Committee believes that no appearance fee is required.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-213.1 by adding a Committee note following section (g), as follows:

Rule 4-213.1. APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT INITIAL APPEARANCE

. . .

(g) Provisional and Limited Appearance

(1) Provisional Representation by Public Defender

Unless a District Court commissioner has made a final determination of indigence and the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance shall be provisional. For purposes of this section, eligibility for provisional representation shall be determined by a District Court commission prior to or at the time of the proceeding.

(2) Limited Appearance

Unless a general appearance has been entered pursuant to Rule 4-214, an appearance by a court-appointed or privately retained attorney shall be limited to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that stage of the criminal action.

(3) Inconsistency with Rule 4-214

Section (g) of this Rule prevails over any inconsistent provision in Rule 4-214.

Committee note: The entry of a provisional or limited appearance in accordance with this Rule does not constitute the entry of an appearance for the purpose of bringing, prosecuting, or defending an action and does not require the payment of a fee under Code, Courts Article, §7-204.

. . .

REPORTER'S NOTE

The Rules Committee proposes the addition of a Committee note following section (g) of Rule 4-213.1 to make clear that the entry of either a provisional appearance or a limited appearance of an attorney at an initial appearance does not require payment of an appearance fee under Code, Courts Article, §7-204.

Rules in Title 4 were recently amended to permit limited appearances in connection with pretrial release determinations. These limited appearances terminate automatically upon conclusion of that stage of litigation.

Subject to certain variations and exceptions among the counties, Code, Courts Article, §7-204 requires the clerk of a circuit court to collect a fee for docketing the appearance of counsel when "prosecuting or defending a criminal action," or "bringing or defending a criminal action."

Rule 1-202 (a) defines "action" as "collectively all the steps by which a party seeks to enforce any right in a court or all the steps in a criminal prosecution." An "action" is, therefore, distinct from a "proceeding," which is defined in Rule 1-202 (v) as "any part of an action." The limited or provisional appearances contemplated under Rule 4-213.1 are appearances for the purposes of a proceeding, rather than for the purposes of an action; therefore, the Committee believes that no appearance fee is required.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 700 – CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

AMEND Rule 2-706 to allow a party to file a motion seeking an award of attorneys' fees up to 30 days after the entry of a final order in proceedings conducted on remand from an appellate court, as follows:

Rule 2-706. FEES FOR APPELLATE LITIGATION

A party who seeks an award of attorneys' fees incurred in connection with an appeal, application for leave to appeal, or petition for certiorari shall file a motion for such fees in the circuit court that entered the judgment or order that is the subject of the appellate litigation. The motion shall be filed: (a) within 30 days after entry of the last mandate or order disposing of the appeal, application, or petition; or (b) if an appellate court remands for further proceedings, within 30 days after the entry of a final order disposing of all claims. Proceedings on the motion shall be in the circuit court and shall be consistent with the standards and procedures set forth in Rule 2-703 or Rule 2-705, as applicable.

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee has been advised that litigants, particularly indigent litigants, have been adversely affected by the application of Rule 2-706 in cases that are remanded for further proceedings by an appellate court. Litigants in such cases must file two fee petitions—one for proceedings through the appellate stage of disposition and one after the conclusion of proceedings on remand. A proposed amendment to Rule 2-706 redresses the issue of multiple petitions by permitting a single petition to be filed within 30 days after entry of a final order disposing of all claims in a case remanded by an appellate court.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 600 – CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

ADD new Rule 4-602, as follows:

Rule 4-602. EMERGENCY ORDERS PURSUANT TO CODE, CRIMINAL PROCEDURE ARTICLE, §11-110.1

(a) Applicability; Definitions

(1) Applicability

This Rule applies to the application, issuance, and execution of emergency orders to obtain an oral swab to be tested for the presence of HIV pursuant to Code, Criminal Procedure Article, §11-110.1.

(2) Definitions

The definitions contained in Code, Criminal Procedure, §11-107 apply in this Rule.

(b) Application

An application for an emergency order under this Rule:

(1) shall be made as soon as possible after the alleged prohibited exposure to which it relates and no later than 72 hours after the alleged prohibited exposure;

(2) shall be in writing, signed and sworn to by the applicant, and accompanied by an affidavit that sets forth the

basis to believe that the person from whom an oral swab is requested has caused a prohibited exposure to a victim;

(3) may be submitted and processed in the manner set forth in Rule 4-601 (b); and

(4) shall be sealed.

(c) Issuance

An emergency order shall be issued in the manner set forth in Rule 4-601 (c) and shall comply with the relevant requirements of Code, Criminal Procedure Article, §1-203.

(d) Execution of Emergency Order

An emergency order issued pursuant to this Rule shall be executed in the manner set forth in Code, Criminal Procedure Article, §11-110.1 (c) and (d).

Committee note: Code, Criminal Procedure Article, §11-110.1 (d)(2) provides that the results of a test conducted pursuant to the statute are not admissible as evidence of guilt or innocence in a criminal proceeding arising out of the alleged prohibited exposure.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 4-602 provides a procedure for the issuance of an emergency order to obtain an oral swab to be tested for the presence of HIV pursuant to Code, Criminal Procedure Article, §11-110.1, which was added by Chapter 486, Laws of 2017 (HB 1375).

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 600 – DISPOSITION

AMEND Rule 8-605 (b) to permit a motion for reconsideration when the court's opinion determined the outcome of an appeal on an issue not raised in the briefs or proceedings below, as follows:

Rule 8-605. RECONSIDERATION

. . .

(b) Content

A motion or response ordinarily shall be limited to addressing one or more of the following:

(1) whether the Court's opinion or order did not address a material factual or legal matter raised in the lower court and argued by a party in its submission to the Court, and if not raised or argued, a brief statement as to why it was not raised or argued;

(2) whether a material change in the law relevant to the appeal occurred after the case was submitted and was not addressed in the Court's opinion or order;

(3) whether the court's opinion determined the outcome of

the appeal on an issue not raised in the briefs or proceedings below;

~~(3)~~ (4) whether there is a significant consequence of the decision that was not addressed in the opinion;

~~(4)~~ (5) if the motion or response is filed in the Court of Appeals, whether and how the Court's opinion or order is in material conflict with a decision of the United States Supreme Court or a decision of the Court of Appeals; or

~~(5)~~ (6) if the motion or response is filed in the Court of Special Appeals, whether and how the Court's opinion or order is in material conflict with a decision of the United States Supreme Court or the Court of Appeals or a reported opinion of the Court of Special Appeals.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 8-605 (b) permits a motion for reconsideration when an appellate court decides a case on an issue not raised in the briefs or proceedings below.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 400 – ADMINISTRATIVE MANDAMUS

AMEND Rule 7-402 by replacing the word "complaint" in sections (a) and (b) with the word "petition," as follows:

Rule 7-402. PROCEDURES

(a) ~~Complaint~~ Petition and Response

An action for a writ of administrative mandamus is commenced by the filing of a ~~complaint~~ petition, the form, contents, and timing of which shall comply with Rules 7-202 and 7-203. A response to the filing of the ~~complaint~~ petition shall comply with the provisions of Rule 7-204.

(b) Stay

The filing of the ~~complaint~~ petition does not stay the order or action of the administrative agency. The court may grant a stay in accordance with the provisions of Rule 7-205.

(c) Discovery

The court may permit discovery, in accordance with the provisions of Title 2, Chapter 400, that the court finds to be appropriate, but only in cases where the party challenging the agency action makes a strong showing of the existence of fraud or extreme circumstances that occurred outside the scope of the

administrative record, and a remand to the agency is not a viable alternative.

(d) Record

If a record exists, the record shall be filed in accordance with the provisions of Rule 7-206. If no record exists, the agency shall provide (1) a verified response that fully sets forth the grounds for its decision and (2) any written materials supporting the decision. The court may remand the matter to the agency for further supplementation of materials supporting the decision.

(e) Memoranda

Memoranda shall be filed in accordance with the provisions of Rule 7-207.

(f) Hearing

The court may hold a hearing. If a hearing is held, additional evidence in support of or against the agency's decision is not allowed unless permitted by law.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 7-402 substitutes the word "petition" for the word "complaint" in order to clarify the document that initiates an action for a writ of administrative mandamus. This comports with the language of Rules 7-202 and 7-203, both of which are referenced in section (a) of this Rule.

The Rules Committee was advised of persistent confusion between commencing an action for a writ of administrative mandamus and commencing an action for a common law writ of mandamus. An administrative mandamus proceeding is initiated by

the filing of a petition, while a common law mandamus proceeding is initiated by the filing of a complaint. The Committee's recommended amendment addresses this problem, insofar as the problem stemmed from the language of Rule 7-402.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-411 to require an appellant to order a transcript within ten days after the granting of a petition for writ of certiorari under Code, Courts Article, §12-305, as follows:

Rule 8-411. TRANSCRIPT

. . .

(b) Time for Ordering

Unless otherwise ordered by the court, the appellant shall order the transcript within the applicable time specified in this section:

(1) in a civil action subject to Rule 8-207 (a), the time prescribed by Rule 8-207 (a)(3);

(2) in all other civil actions subject to Rule 8-205 (a), ten days after the date of an order entered pursuant to Rule 8-206 (c); ~~or~~

(3) within ten days after the granting of a petition for writ of certiorari under Code, Courts Article, §12-305; or

~~(3)~~ (4) in all other actions, ten days after the date the

first notice of appeal is filed.

Cross reference: Rule 8-207 (a).

. . .

REPORTER'S NOTE

The Rules Committee was advised of a timing issue for litigants requesting a transcript after petitioning for a writ of certiorari following an appeal to a circuit court. Rule 8-411 (b) is silent on the matter. As a result, petitioners are following current subsection (b)(3) of the Rule. If a petitioner follows current subsection (b)(3) and the petition is denied, the petitioner has paid for the transcript unnecessarily and the court reporter has prepared it needlessly. The proposed amendment directly addresses this issue by requiring an appellant to order a transcript within ten days after the granting of a petition for writ of certiorari under Code, Courts Article, §12-305.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

ADD new Rule 9-211, as follows:

Rule 9-211. RESTORATION OF FORMER NAME AFTER JUDGMENT OF ABSOLUTE DIVORCE

(a) Applicability

This Rule applies to a post-judgment motion for a change of name pursuant to Code, Family Law Article, §7-105.

Committee note: A motion under Code, Family Law Article, §7-105 must be filed within 18 months after the judgment of absolute divorce was entered. Instead of proceeding under §7-105 and this Rule, a party may file a petition for change of name at any time under Rule 15-901.

(b) Motion

The motion shall be filed under oath in the action in which the judgment of absolute divorce was entered and shall state:

(1) the change of name desired and the fact that the party formerly used the name;

(2) that the party took a new name upon marriage and no longer wishes to use it; and

(3) that the party is not requesting the name change for any illegal, fraudulent, or immoral purpose.

(c) No Fee for Filing Motion

No filing fee shall be charged for the filing of the motion for change of name pursuant to Code, Family Law Article, §7-105.

(d) Service

A motion filed within 30 days after the entry of the judgment of absolute divorce shall be served in the manner provided in Rule 1-321. If more than 30 days have passed since the entry of the judgment, the motion shall be served in the manner described in Rule 2-121, and proof of service shall be filed in accordance with the method described in Rule 2-126.

(e) Action by Court

Notwithstanding Rule 2-311 (f), the court may hold a hearing or may rule on the motion without a hearing even if one was requested. The court shall not deny the motion without a hearing, regardless of whether a hearing was requested.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 9-211 implements Chapter 625, Laws of 2017 (SB 83), which authorizes a court, upon motion of a party filed within 18 months after the entry of a judgment of absolute divorce, to change the name of the party if the statutory requirements are met.

The Committee's recommendations fill gaps where the statute is silent, including requirements that: (1) a motion be filed under oath; (2) no fee be charged for the filing of the motion; (3) service on the other party be effected in a manner that is

determined by the motion’s time of filing, but no process is issued by the clerk regardless of the time of filing; and (4) a motion not be denied without a hearing, even though a motion may be granted without one even if one is requested.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 200 – FORECLOSURE OF LIEN INSTRUMENTS

ADD new Rule 14-214, as follows:

Rule 14-214. POSTPONEMENT OR CANCELLATION OF THE SALE

Within 14 days after a postponement or cancellation of a sale, the trustee shall send a notice that the sale was postponed or cancelled to (a) the borrower; (b) the record owner of the property; (c) the holder of any subordinate interest in the property subject to the lien; and (d) if applicable, a condominium or homeowners association to which notice of the proposed sale was sent pursuant to Rule 14-210 (b)(1)(D). The notices shall be sent by first-class mail, postage prepaid.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 347, Laws of 2017 (SB 24) requires the trustee in a foreclosure sale to give notice of the postponement or cancellation of the sale to a condominium or homeowners association that has previously been sent notice.

The Rules Committee recognizes the lack of a rule providing notice of the postponement or cancellation of a foreclosure sale, generally, and not just notice to condominium and homeowner associations. Proposed new Rule 14-214 fills this gap. The entities to whom notice of a postponement or cancellation is sent are the entities to whom Rule 14-210 (b) requires notice of the sale be sent. The statute provides that notice to condominium and homeowner associations of postponement

or cancellation of a foreclosure sale is to be sent by first-class mail, so the Committee has used the same method of delivery for any notice of postponement or cancellation that is sent.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 200 – FORECLOSURE OF LIEN INSTRUMENTS

AMEND current Rule 14-214 by renumbering the Rule as Rule 14-214.1, as follows:

Rule ~~14-214~~ 14-214.1. SALE

(a) Only by Individual

Only an individual may sell property pursuant to the Rules in this Chapter.

(b) Under Power of Sale

(1) Individual Authorized to Conduct a Sale other than Under a Deed of Trust

Except as provided in subsection (b)(2) of this Rule, a secured party authorized by the lien instrument to make the sale or any other individual designated by name in the lien instrument to exercise the power of sale shall conduct the sale.

(2) Individual Authorized to Conduct a Sale under a Deed of Trust

An individual appointed as trustee in a deed of trust or as a substitute trustee shall conduct the sale of property subject to a deed of trust.

(3) Payment Terms

A sale of property under a power of sale shall be made upon the payment terms specified in the lien instrument. If no payment terms are specified in the lien instrument, the sale shall be made upon payment terms that are reasonable under the circumstances.

(c) Under Assent to a Decree

(1) Individual Authorized to Sell

An individual appointed as a trustee in a lien instrument or as a substitute trustee shall conduct the sale of property pursuant to an assent to a decree.

(2) Payment Terms

A sale of property under an order of court entered pursuant to an assent to a decree shall be made upon the payment terms provided in the order.

(d) No Power of Sale or Assent to Decree

(1) Individual Authorized to Sell

If there is no power or sale or assent to a decree in the lien instrument, or if the lien is a statutory lien, the sale shall be made by an individual trustee appointed by the court.

(2) Payment Terms

The sale shall be made upon payment terms that are reasonable under the circumstances.

Cross reference: For requirements concerning the timing of the sale of residential property, see Code, Real Property Article, §7-105.1 (n).

Source: This Rule is derived in part from the 2008 version of former Rule 14-207 (b) and (c) and is in part new.

REPORTER'S NOTE

Current Rule 14-214 is proposed to be renumbered as Rule 14-214.1 because of the addition of proposed new Rule 14-214, Postponement or Cancellation of the Sale.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 200 – FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-208 to conform an internal reference to the renumbering of current Rule 14-214, as follows:

Rule 14-208. SUBSEQUENT PROCEEDINGS IF NO POWER OF SALE OR ASSENT TO A DECREE

(a) Process and Service

When a complaint is filed to foreclose a lien that has neither a power of sale nor an assent to a decree, process shall issue and be served in accordance with Title 2, Chapter 100 of these Rules, except that in an action to foreclose a lien on residential property, service shall be in accordance with Rule 14-209. Except as provided in section (b) of this Rule, the action shall proceed in the same manner as any other civil action.

(b) Order Directing Immediate Sale

If after a hearing, the court finds that the interests of justice require an immediate sale of the property that is subject to the lien and that a sale would likely be ordered as a result of a judgment entered in the action, the court may order a sale of the property before judgment and shall appoint an individual to make the sale pursuant to Rule ~~14-214~~ 14-214.1,

provided any applicable requirements of Code, Real Property Article, §7-105.1 have been satisfied. The court shall order that the proceeds be deposited or invested pending distribution pursuant to judgment.

Source: This Rule is derived from the 2008 version of former Rule 14-205 (a) and (b)(2).

REPORTER'S NOTE

An internal reference in section (b) of 14-208 is proposed to be changed to conform to the renumbering of Rule 14-214 as Rule 14-214.1.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 14-102 by deleting references to a certain statute, by adding a sentence to subsection (d)(4) pertaining to a hearing after the filing of a timely response to a motion for judgment awarding possession, and by adding a cross reference, as follows:

Rule 14-102. JUDGMENT AWARDING POSSESSION

(a) Motion

(1) If the purchaser of an interest in real property at a sale conducted pursuant to the Rules in this Title is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser or a successor in interest who claims the right of immediate possession may file a motion for judgment awarding possession of the property.

(2) The motion shall state the legal and factual basis for the movant's claim of entitlement to possession.

(3) If the movant's right to possession arises from a foreclosure sale of a dwelling or residential property, the motion shall include averments, based on a reasonable inquiry into the occupancy status of the property and made to the best of the movant's knowledge, information, and belief, establishing

either that the person in actual possession is not a bona fide tenant having rights under ~~the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22) or~~ Code, Real Property Article, §7-105.6 or, if the person in possession is such a bona fide tenant, that the notice required under these laws has been given and that the tenant has no further right to possession. If a notice pursuant to ~~the Federal Act or~~ Code, Real Property Article, §7-105.6 is required, the movant shall state the date the notice was given and attach a copy of the notice as an exhibit to the motion.

Committee note: Unless the purchaser is a foreclosing lender or there is waste or other circumstance that requires prompt remediation, the purchaser ordinarily is not entitled to possession until the sale has been ratified and the purchaser has paid the full purchase price and received a deed to the property. See *Legacy Funding v. Cohn*, 396 Md. 511 (2007) and *Empire v. Hardy*, 386 Md. 628 (2005).

~~The Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22) requires that a purchaser at a foreclosure sale of a dwelling or residential property give a 90-day notice to a "bona fide tenant" before any eviction and precludes the eviction if the tenant has a "bona fide lease or tenancy," unless the new owner of the property will occupy the property as a primary residence.~~

. . .

(d) Service and Response

(1) On Whom

The motion and all accompanying documents shall be served on the person in actual possession and on any other person affected by the motion.

(2) Party to Action or Instrument

(A) If the person to be served was a party to the action that resulted in the sale or to the instrument that authorized the sale, the motion shall be served in accordance with Rule 1-321.

(B) Any response shall be filed within the time set forth in Rule 2-311.

(3) Not a Party to Action or Instrument

(A) If the person to be served was not a party to the action that resulted in the sale or a party to the instrument that authorized the sale, the motion shall be served:

(i) by personal delivery to the person or to a resident of suitable age and discretion at the dwelling house or usual place of abode of the person, or

(ii) if on at least two different days a good faith effort was made to serve the person under subsection (d)(3)(A)(i) of this Rule but the service was not successful, by (a) mailing a copy of the motion by certified and first-class mail to the person at the address of the property and (b) posting in a conspicuous place on the property a copy of the motion, with the date of posting conspicuously written on the copy.

(B) Any response shall be filed within the time prescribed by sections (a) and (b) of Rule 2-321 for answering a complaint. If the person asserts that the motion should be denied because the person is a bona fide tenant having a right of possession

under ~~the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22), or~~ Code, Real Property Article, §7-105.6, the response shall (i) state the legal and factual basis for the assertion and (ii) be accompanied by a copy of any bona fide lease or documents establishing the existence of such a lease or state why the lease or documents are not attached.

(4) Judgment of Possession

If a timely response to the motion is not filed and the court finds that the motion complies with the requirements of sections (a) and (b) of this Rule, the court may enter a judgment awarding possession. If a timely response to the motion is filed, and the response asserts sufficient grounds for denial of a judgment awarding possession, the court shall hold a hearing, if requested.

Cross reference: See Rule 2-311 (f), providing that the court may not render a decision that is dispositive of a claim or defense without a hearing if a hearing was requested as provided in that section.

. . .

REPORTER'S NOTE

Subsection (d)(4) of Rule 14-102 currently does not address the situation where a timely response to a motion for judgment awarding possession of the property is filed. The Rules Committee recommends the addition of a sentence to subsection (d)(4) to expressly permit a hearing if a timely response to the motion is filed, and the response asserts sufficient grounds for denial of a judgment awarding possession. A cross reference to Rule 2-311 (f) also is added.

References to the Federal Protecting Tenants at Foreclosure Act of 2009 are deleted, because the law is no longer in effect.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 200 – FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-210 by adding another category of recipients of notice prior to sale, by adding a cross reference at the end of the Rule, and by making stylistic changes, as follows:

Rule 14-210. NOTICE PRIOR TO SALE

(a) By Publication

Before selling property in an action to foreclose a lien, the individual authorized to make the sale shall publish notice of the time, place, and terms of the sale in a newspaper of general circulation in the county in which the action is pending. Notice of the sale of an interest in real property shall be published at least once a week for three successive weeks, the first publication to be not less than 15 days before the sale and the last publication to be not more than one week before the sale. Notice of the sale of personal property shall be published not less than five days nor more than 12 days before the sale.

(b) By Certified and First-class Mail

Before selling the property subject to the lien, the individual authorized to make the sale shall also send notice of the time, place, and terms of sale (1) by certified mail and by

first-class mail to (A) the borrower, (B) the record owner of the property, ~~and~~ (C) the holder of any subordinate interest in the property subject to the lien, and (D) a condominium or homeowners association that, at least 30 days before the date of the proposed sale, has recorded a statement of lien against the property under the Maryland Contract Lien Act and (2) by first-class mail to "All Occupants" at the address of the property. The notice to "All Occupants" shall be in the form and contain the information required by Code, Real Property Article, §7-105.9 (c). Except for the notice to "All Occupants," the mailings shall be sent to the last known address of all such persons, including to the last address reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale. The mailings shall be sent not more than 30 days and not less than ten days before the date of the sale.

(c) To Counties or Municipal Corporations

In addition to any other required notice, not less than 15 days before the sale, the individual authorized to make the sale shall send written notice to the county or municipal corporation where the property subject to the lien is located. The notice shall include the name, address, and telephone number of the individual authorized to make the sale and the time, place, and terms of sale.

(d) Holders of a Subordinate Interest

If the individual authorized to make the sale receives actual notice at any time before the sale that there is a person holding a subordinate interest in the property and if the interest holder's identity and address are reasonably ascertainable, the individual authorized to make the sale shall give notice of the time, place, and terms of sale to the interest holder as promptly as reasonably practicable. The notice may be given in any manner reasonably calculated to apprise the interest holder of the sale, including by telephone or electronic transmission. This notice need not be given to anyone to whom notice was sent pursuant to section (b) of this Rule.

(e) Affidavit of Notice by Mail

An individual who is required by this Rule to give notice by mail shall file an affidavit stating that (1) the individual has complied with the mailing provisions of this Rule or (2) the identity or address of the borrower, record owner, or holder of a subordinate interest is not reasonably ascertainable. If the affidavit states that an identity or address is not reasonably ascertainable, the affidavit shall state in detail the reasonable, good faith efforts that were made to ascertain the identity or address. If notice was given to the holder of a subordinate interest in the property, the affidavit shall state the date, manner, and content of the notice.

Cross reference: For notice following a postponement or cancellation of a sale, see Rule 14-214.

Source: This Rule is derived in part from the 2008 version of former Rule 14-206 (b) and is in part new.

REPORTER'S NOTE

Chapter 347, Laws of 2017 (SB 24) requires a person authorized to make a foreclosure sale to give written notice of the proposed sale to a condominium or homeowners association that, at least 30 days before the date of the proposed sale, has recorded a statement of lien against the property under the Maryland Contract Lien Act.

The Rules Committee recommends adding language to section (b) of Rule 14-210 to conform to the amended statute.

A cross reference to proposed new Rule 14-214, Postponement or Cancellation of the Sale, is proposed to be added at the end of Rule 14-210.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 500 – TAX SALES

AMEND Rule 14-502 (b)(4) to track the language of Code, Tax-Property Article, §14-835 (b)(7), as follows:

Rule 14-502. FORECLOSURE OF RIGHT OF REDEMPTION – COMPLAINT

. . .

(b) Contents

In an action to foreclose the right of redemption in property sold at a tax sale, the complaint, in addition to complying with Rules 2-303 through 2-305, shall set forth:

(1) the fact of the issuance of the certificate of sale;

(2) a description of the property in substantially the same form as the description appearing on the certificate of tax sale;

(3) the fact that the property has not been redeemed by any party in interest; and

(4) a ~~statement~~ description of the amount necessary for redemption, including the amount paid out at the tax sale.

. . .

REPORTER'S NOTE

Rule 14-502 (b)(4) requires that a complaint to foreclose the right of redemption in property sold at a tax sale contain "a statement of the amount necessary for redemption."

A circuit court judge pointed out that some complaints are filed that do not set forth dollar amounts. Instead, the complaint contains only a "description" of the amount necessary – i.e., taxes, expenses, etc., and the plaintiffs assert that this "description" is sufficient to comply with Code, Tax-Property Article, §14-835 (a)(7).

To address this issue, the Rules Committee suggests changing the language of subsection (b)(4) by deleting the word "statement" and substituting the word "description" and by adding the language "including the amount paid at the tax sale." This tracks the language of Code, Tax-Property Article, §14-835 (b)(7).

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO JUDICIAL RECORDS

AMEND Rule 16-907 by moving the Committee note that follows section (f) to follow section (e), by adding to subsection (g)(5) a reference to Rules 16-902 (c) and 4-341, by deleting in section (m) a reference to Rule 9-203 and adding references to Rules 9-206 and 9-207, and by adding a cross reference following section (m), as follows:

Rule 16-907. 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:

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) adoption;

(B) guardianship; or

(C) to revoke a consent to adoption or guardianship for which there is no pending adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, child in need

of supervision, and truancy actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection unless the record was ordered expunged.

Committee note: In most instances, the "children" referred to in this section will be minors, but, as Juvenile Court jurisdiction extends until a child is 21, in some cases, the children legally may be adults.

(b) The following case records pertaining to a marriage license:

(1) A certificate of a physician or certified nurse practitioner filed pursuant to Code, Family Law Article, §2-301, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.

(2) Until a license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.

Cross reference: See Code, Family Law Article, §2-402 (f).

(c) Case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, §4-504, which shall be sealed until the earlier of service or denial of the petition.

(d) Case records required to be shielded pursuant to Code, Courts Article, §3-1510 (peace orders) or Code, Family Law Article, §4-512 (domestic violence protective orders).

(e) In any action or proceeding, a record created or

maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, Human Services Article, §§1-202 and 1-203 and Code, Family Law Article, §5-707.

(f) Papers filed by a fiduciary or a guardian of the property of a minor or disabled person pursuant to Title 10, Chapter 200, 400, or 700 of the Maryland Rules that include financial information regarding the minor or disabled person.

~~Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, Human Services Article, §§1-202 and 1-203 and Code, Family Law Article, §5-707.~~

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

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

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

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

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

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

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the

warrant was issued until the conditions set forth in Rule 4-212 (d)(3) are satisfied.

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

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

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

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

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

(7) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3 (Incompetency and Criminal Responsibility).

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

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

(h) A transcript or an audio, video, or digital recording of any court proceeding that was closed to the public pursuant to Rule, order of court, or other law.

(i) Subject to the Rules in Title 16, Chapter 500, backup audio recordings, computer disks, and notes of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

(j) The following case records containing medical 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 or §18-338.2.

(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.

(k) A case record that consists of the federal or Maryland income tax return of an individual.

(l) A case record that:

(1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or

(2) in accordance with Rule 16-912 (b) is the subject of a motion to preclude or limit inspection.

(m) ~~As provided in Rule 9-203 (d), a~~ A case record that consists of a financial statement filed pursuant to Rule 9-202, a Child Support Guideline Worksheet filed pursuant to Rule 9-206, or a Joint Statement of Marital and Non-marital Property filed pursuant to Rule 9-207.

Cross reference: See also Rule 9-203.

(n) A document required to be shielded under Rule 20-203 (e)(1).

(o) An unredacted document filed pursuant to Rule 1-322.1 or Rule 20-203 (e)(2).

Source: This Rule is derived from former Rule 16-1006 (2016).

REPORTER'S NOTE

Subsection (g)(5) of Rule 16-907 is proposed to be amended to reference Rules 16-902 (c) and 4-341, which allow inspection of presentence investigation reports when they are part of an exhibit submitted in support of or in opposition to a motion that has been ruled on by the court or marked for identification at trial, or they have been admitted into evidence. These are exceptions to the confidentiality of presentence investigation reports.

The Committee note that currently follows section (f) is moved to follow section (e), as a matter of style.

Section (m) is proposed to be amended to clarify the requirement to shield financial statements, child support guideline worksheets, and joint statements of marital and non-marital property in family law actions.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-314 by updating a statutory reference in subsection (b)(6)(A), as follows:

Rule 4-314. DEFENSE OF NOT CRIMINALLY RESPONSIBLE

. . .

(b) Procedure for Bifurcated Trial

. . .

(6) Order of Proof

(A) Evidence of mental disorder or mental retardation as defined in Code, ~~Health - General Article, §12-108~~ Criminal Procedure Article, §3-109 shall not be admissible in the guilt stage of the trial for the purpose of establishing the defense of lack of criminal responsibility. This evidence shall be admissible for that purpose only in the second stage following a verdict of guilty.

(B) In the criminal responsibility stage of the trial, the order of proof and argument shall reflect that the defendant has the burden of establishing the lack of criminal responsibility. The defendant and the State may rely upon evidence admitted during the first stage and may recall witnesses.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 4-314 corrects a statutory reference in subsection (b)(6)(A). The reference to Code, Health – General Article, §12-108 is updated to Code, Criminal Procedure Article, §3-109.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 200 – OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-204 by updating statutory references in the cross reference following section (a), as follows:

Rule 8-204. APPLICATION FOR LEAVE TO APPEAL TO COURT OF SPECIAL APPEALS

(a) Scope

This Rule applies to applications for leave to appeal to the Court of Special Appeals.

Cross reference: For Code provisions governing applications for leave to appeal, see Courts Article, §3-707 concerning bail; Courts Article, §12-302 (e) concerning guilty plea cases; Courts Article, §12-302 (g) concerning revocation of probation cases; Criminal Procedure Article, §11-103 concerning victims of violent crimes or delinquent acts; Criminal Procedure Article, §7-109 concerning post conviction cases; Correctional Services Article, §10-206 et seq. concerning inmate grievances; and ~~Health - General Article, §§12-117 (e)(2), 12-118 (d)(2), and 12-120 (k)(2)~~ Criminal Procedure Article, §§3-118 (e)(2), 3-119 (d)(2), and 3-121 (k)(2) concerning continued commitment, conditional release, or discharge of an individual committed as not criminally responsible by reason of insanity or incompetent to stand trial.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 8-204 corrects statutory references in the cross reference following section (a). The references to Title 12 of the Health – General Article are updated to Title 3 of the Criminal Procedure Article.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

AMEND Rule 19-105 to change the term "Law School Admission Council number" to "NCBE number," as follows:

Rule 19-105. CONFIDENTIALITY

. . .

(c) When Disclosure Authorized

The Board may disclose:

. . .

(9) to the National Conference of Bar Examiners, the following information regarding individuals who have filed applications for admission pursuant to Rule 19-202 or petitions to take the attorney's examination pursuant to Rule 19-213: the applicant's name and any aliases, applicant number, birthdate, ~~Law School Admission Council number~~ NCBE number, law school, date that a juris doctor or equivalent degree was conferred, bar examination results and pass/fail status, and the number of bar examination attempts;

. . .

REPORTER'S NOTE

The Rules Committee is advised that the term "Law School Admission Council Number" is obsolete. A proposed amendment to Rule 19-105 replaces the obsolete term with the current term, "NCBE number."

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

AMEND Rule 19-202 by deleting from section (a) the requirement that the application be accompanied by a Notice of Intent to Take a Scheduled Bar Examination and by moving the cross reference following section (a) to follow subsection (c)(2)(A), as follows:

Rule 19-202. APPLICATION FOR ADMISSION

(a) By Application

An individual who meets the requirements of Rule 19-201 or had the requirement of Rule 19-201 (a)(2) waived pursuant to Rule 19-201 (b) may apply for admission to the Bar of this State by filing with the Board an application for admission~~, accompanied by a Notice of Intent to Take a Scheduled General Bar Examination,~~ and the prescribed fee.

~~Cross reference: See Rule 19-204 (Notice of Intent to Take a Scheduled General Bar Examination).~~

(b) Form of Application

The application shall be on a form prescribed by the Board and shall be under oath. The form shall elicit the information the Board considers appropriate concerning the applicant's character, education, and eligibility to become an applicant. The application shall require the applicant to

provide the applicant's Social Security number and shall include an authorization to release confidential information pertaining to the applicant's character and fitness for the practice of law to a Character Committee, the Board, and the Court. The application shall be accompanied by satisfactory evidence that the applicant meets the pre-legal education requirements of Rule 19-201 and a statement under oath that the applicant is eligible to take the examination. No later than the first day of September following an examination in July or the fifteenth day of March following an examination in February, the applicant shall cause to be sent to the Office of the State Board of Law Examiners an official transcript that reflects the date of the award to the applicant of a qualifying law degree under Rule 19-201, unless the official transcript already is on file with the Office.

(c) Time for Filing

(1) Without Intent to Take Particular Examination

At any time after the completion of pre-legal studies, an individual may file an application to determine whether there are any existing impediments, including reasons pertaining to the individual's character and the sufficiency of pre-legal education, to the applicant's qualifications for admission.

(2) With Intent to Take Particular Examination

(A) Generally

An applicant who intends to take the examination in July shall file the application no later than the preceding May 20. An applicant who intends to take the examination in February shall file the application no later than the preceding December 20.

Cross reference: See Rule 19-204 (Notice of Intent to Take a Scheduled General Bar Examination).

(B) Acceptance of Late Application

Upon written request of the applicant and for good cause shown, the Board may accept an application filed after the applicable deadline prescribed in subsection (c)(2)(A) of this Rule. If the Board rejects the application for lack of good cause for the untimeliness, the applicant may file an exception with the Court within five business days after notice of the rejection is transmitted.

(d) Preliminary Determination of Eligibility

On receipt of an application, the Board shall determine whether the applicant has met the pre-legal education requirements set forth in Rule 19-201 (a) and in Code, Business Occupations and Professions Article, §10-207. If the Board concludes that the requirements have been met, it shall forward the application to a Character Committee. If the Board concludes that the requirements have not been met, it shall promptly notify the applicant in writing.

(e) Updated Application

If an application has been pending for more than three years since the date of the applicant's most recent application or updated application, the applicant shall file with the Board an updated application contemporaneously with filing any Notice of Intent to Take a Scheduled General Bar Examination. The updated application shall be under oath, filed on the form prescribed by the Board, and accompanied by the prescribed fee.

(f) Withdrawal of Application

At any time, an applicant may withdraw an application by filing with the Board written notice of withdrawal. No fees will be refunded.

Committee note: Withdrawal of an application terminates all aspects of the admission process.

(g) Subsequent Application

An applicant who reapplies for admission after an earlier application has been withdrawn or rejected pursuant to Rule 19-203 must retake and pass the bar examination even if the applicant passed the examination when the earlier application was pending. If the applicant failed the examination when the earlier application was pending, the failure shall be counted under Rule 19-208.

Source: This Rule is derived from former Rule 2 of the Rules Governing Admission to the Bar of Maryland (2016). Section (b) is derived in part from former Rule 6 (d).

REPORTER'S NOTE

"Housekeeping" amendments to Rule 19-202 are proposed at the request of the State Board of Law Examiners.

Because an application for admission may be filed without an accompanying Notice of Intent to Take a Scheduled General Bar Examination, a reference to the Notice of Intent is deleted from section (a). With that deletion, the cross reference to Rule 19-204 (Notice of Intent to Take a Scheduled General Bar Examination) is moved from following section (a) to following subsection (c)(2)(A).

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

AMEND Rule 19-212 by replacing the word "accredited" with the word "approved" in subsection (a)(1) and section (b), as follows:

Rule 19-212. ELIGIBILITY OF OUT-OF-STATE ATTORNEYS FOR ADMISSION BY ATTORNEY EXAMINATION

(a) Generally

An individual is eligible for admission to the Bar of this State under this Rule if the individual:

(1) is a member in good standing of the Bar of a state;

(2) has passed a written bar examination in a state or is admitted to a state bar by diploma privilege after graduating from a law school ~~accredited~~ approved by the American Bar Association;

(3) has the professional experience required by this Rule;

(4) successfully completes the attorney examination prescribed by Rule 19-213; and

(5) possesses the good moral character and fitness necessary for the practice of law.

(b) Required Professional Experience

The professional experience required for admission under this Rule shall be on a full time basis as (1) a practitioner of law as provided in section (c) of this Rule; (2) a teacher of law at a law school ~~accredited~~ approved by the American Bar Association; (3) a judge of a court of record in a state; or (4) a combination thereof.

. . .

REPORTER'S NOTE

The Rules Committee is advised that the American Bar Association no longer "accredits" law schools; rather, it currently "approves" them. Proposed amendments to Rule 19-212 (a)(2) and (b) conform the Rule to the current terminology.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

AMEND Rule 19-213 by changing the deadline for filing a petition to take the attorney examination from "at least 60 days before the scheduled attorney examination" to May 20 for a petition to take the July attorney examination and December 20 for a petition to take the February attorney examination, as follows:

Rule 19-213. ADMISSION OF OUT-OF-STATE ATTORNEYS BY ATTORNEY EXAMINATION – PROCEDURE

. . .

(c) Time for Filing

~~The petition shall be filed at least 60 days before the scheduled attorney examination that the petitioner wishes to take.~~ An applicant who intends to take the attorney examination in July shall file the petition no later than the preceding May 20. An applicant who intends to take the attorney examination in February shall file the petition no later than the preceding December 20. On written request of the petitioner and for good cause shown, the Board may accept a petition filed after the deadline. If the Board rejects the petition for lack of good cause for the untimeliness, the petitioner may file an exception

with the Court within five business days after notice of the rejection is transmitted.

Cross reference: See Board Rule 2.

. . .

REPORTER'S NOTE

At the request of the State Board of Law Examiners, the deadline for filing a petition to take the attorney examination is proposed to be changed from a "floating" date of "at least 60 days before the scheduled examination that the petitioner wishes to take" to fixed deadlines of May 20 for the July attorney examination and December 20 for the February attorney examination. These dates coincide with the filing deadlines for the Maryland General Bar examination.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-206 by replacing the word “accredited” with the word “approved” in subsection (a)(4), as follows:

Rule 17-206. QUALIFICATIONS OF COURT-DESIGNATED ADR PRACTITIONERS OTHER THAN MEDIATORS

(a) Generally

Except as provided in section (b) of this Rule, an ADR practitioner designated by the court to conduct ADR other than mediation shall, unless the parties agree otherwise:

(1) abide by any applicable standards adopted by the Court of Appeals;

(2) submit to periodic monitoring of court-ordered ADR proceedings by a qualified person designated by the county administrative judge;

(3) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-302 (b) relating to diligence, quality assurance, and a willingness, upon request by the court, to accept a reasonable number of referrals at a reduced-fee or pro bono;

(4) either (A) be a member in good standing of the Maryland bar and have at least five years experience as (i) a judge, (ii)

a practitioner in the active practice of law, (iii) a full-time teacher of law at a law school ~~accredited~~ approved by the American Bar Association, or (iv) a Federal or Maryland administrative law judge, or (B) have equivalent or specialized knowledge and experience in dealing with the issues in dispute; and

(5) have completed any training program required by the court.

. . .

REPORTER'S NOTE

The Rules Committee is advised that the American Bar Association no longer "accredits" law schools; rather, it currently "approves" them. A proposed amendment to Rule 17-206 (a)(4) conforms the Rule to the current terminology.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

AMEND Rule 19-726 by designating the existing Rule language as section (a) and by adding a new section (b) to provide that the Attorney Grievance Commission is not subject to an organizational designee deposition in an attorney disciplinary matter, as follows:

Rule 19-726. DISCOVERY

(a) Except as provided in section (b) of this Rule, ~~After~~ after a Petition for Disciplinary or Remedial Action has been filed, discovery is governed by Title 2, Chapter 400, subject to any scheduling order entered pursuant to Rule 19-722.

(b) The Attorney Grievance Commission shall not be subject to an organizational designee deposition, pursuant to Rule 2-412 (d), in an attorney disciplinary matter.

Source: This Rule is in part derived from former Rule 16-756 (2016) and in part new.

REPORTER'S NOTE

The Rules Committee was advised that the Attorney Grievance Commission ("AGC") has been the subject of organizational designee deposition subpoenas issued pursuant to Rule 2-412 (d). Bar Counsel and the Office of the Attorney General have moved to quash such subpoenas and sought protective orders from the circuit courts for privileged and confidential materials of the

AGC, including attorney-client communications and attorney work product.

The AGC requested a Rule change in response to its receipt of organizational designee deposition subpoenas, citing the negative impact the subpoenas have had on the AGC's resources, the accelerated schedule of attorney disciplinary cases, and the absence of relevant, case-specific knowledge of non-privileged information on the part of the organizational designee. In opposition to the AGC's request, some attorneys expressed the view that a fact-based motions practice, with a case-by-case determination, is preferable to a blanket prohibition.

In considering the AGC's request and the opposition to it, the Committee noted that nothing in the proposed amendment prevents an individual from being deposed, as a witness or a non-party witness, as appropriate. The Committee, therefore, recommends an amendment to Rule 19-726 stating that the Attorney Grievance Commission is not subject to the organizational designee deposition provision contained in Rule 2-412 (d).

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISCIPLINE

AMEND Rule 18-401 by deleting the text of the current Rule and replacing it with corrected text for the purpose of restoring the Rule to the language that existed on July 31, 2017, except for the substitution of the term “senior judge” for the term “retired judge,” as follows:

Rule 18-401. COMMISSION ON JUDICIAL DISABILITIES - DEFINITIONS

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

(a) Address of Record

"Address of record" means a judge's current home address or another address designated by the judge.

Cross reference: See Rule 18-409 (a)(1) concerning confidentiality of a judge's home address.

(b) Board

"Board" means the Judicial Inquiry Board appointed pursuant to Rule 18-403.

(c) Charges

"Charges" means the charges filed with the Commission by Investigative Counsel pursuant to Rule 18-407.

(d) Commission

"Commission" means the Commission on Judicial Disabilities.

(e) Commission Record

"Commission record" means all documents pertaining to the judge who is the subject of charges that are filed with the Commission or made available to any member of the Commission.

(f) Complainant

"Complainant" means a person who has filed a complaint.

(g) Complaint

"Complaint" means a communication alleging that a judge has a disability or has committed sanctionable conduct.

(h) Disability

"Disability" means a mental or physical disability that seriously interferes with the performance of a judge's duties and is, or is likely to become, permanent.

(i) Formal Complaint

"Formal Complaint" means a written communication under affidavit signed by the complainant, alleging facts indicating that a judge has a disability or has committed sanctionable conduct.

Committee note: The complainant may comply with the affidavit requirement of this section by signing a statement in the following form: "I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief." It is not required that the complainant appear before a notary public.

(j) Judge

"Judge" means a judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court, and a senior judge during any period that the senior judge has been approved to sit.

Cross reference: See Md. Const., Art. 4, §3A and Code, Courts Article, §1-302.

(k) Sanctionable Conduct

(1) "Sanctionable conduct" means misconduct while in office, the persistent failure by a judge to perform the duties of the judge's office, or conduct prejudicial to the proper administration of justice. A judge's violation of any of the provisions of the Maryland Code of Judicial Conduct promulgated by Title 18, Chapter 100 may constitute sanctionable conduct.

(2) Unless the conduct is occasioned by fraud or corrupt motive or raises a substantial question as to the judge's fitness for office, "sanctionable conduct" does not include:

(A) making an erroneous finding of fact, reaching an incorrect legal conclusion, or misapplying the law; or

(B) failure to decide matters in a timely fashion unless such failure is habitual.

Committee note: Sanctionable conduct does not include a judge's making wrong decisions - even very wrong decisions - in particular cases.

Cross reference: Md. Const., Article IV, §4B (b)(1). For powers of the Commission in regard to any investigation or proceeding under §4B of Article IV of the Constitution, see Code, Courts Article §§13-401 to 13-403.

Source: This Rule is former Rule 16-803 (2016).

REPORTER'S NOTE

The 193rd Report of the Rules Committee contained proposed amendments to numerous Rules to change the term "retired judge" to "senior judge" in each Rule. One of the Rules was Rule 18-401.

At the time the 193rd Report was transmitted to the Court, a proposed comprehensive revision of the Rules in Title 18, Chapter 400 was pending as part of the 191st Report. The proposed comprehensive revision currently remains pending.

An incorrect version of Rule 18-401 was inadvertently used as the baseline for the "retired judge/senior judge" amendment to that Rule in the 193rd Report. Instead of the then-current version of Rule 18-401, the 191st Report version was used. All of the "retired judge/senior judge" amendments contained in the 193rd Report were adopted by Rules Order dated June 20, 2017, effective August 1, 2017.

To restore the language of the Rule to the language that existed on July 31, 2017, except for the substitution of the term "senior judge" for the term "retired judge," the text of the current version of Rule 18-401 is proposed to be deleted and replaced by the correct text of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-304.4 by adding a new section (c) pertaining to obtaining information from third parties, by adding a Committee note and a cross reference following section (c), and by adding a new Comment [4], as follows:

Rule 19-304.4. RESPECT FOR RIGHTS OF THIRD PERSONS (4.4)

(a) In representing a client, an attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that the attorney knows violate the legal rights of such a person.

(b) An attorney who receives a document, electronically stored information, or other property relating to the representation of the attorney's client and knows or reasonably should know that the document, electronically stored information, or other property was inadvertently sent shall promptly notify the sender.

(c) In communicating with third persons, an attorney representing a client in a matter shall not seek information relating to the matter that the attorney knows or reasonably should know is protected from disclosure by statute or by an

established evidentiary privilege, unless the protection has been waived. An attorney who receives information that is protected from disclosure shall (1) terminate the communication immediately and (2) give notice of the disclosure to any tribunal in which the matter is pending and to the person entitled to enforce the protection against disclosure.

Committee note: If the person entitled to enforce the protection against disclosure is represented by an attorney, the notice required by this Rule shall be given to the person's attorney. See Rules 1-331 and 19-304.2 (4.2).

Cross reference: To compare generally the duties of a party who receives inadvertently sent materials during discovery in a civil action in a circuit court, see Rule 2-402. See also Rules 2-510 and 2-510.1 to compare the duties of a party who receives inadvertently sent materials in answer to a subpoena.

COMMENT

[1] Responsibility to a client requires an attorney to subordinate the interests of others to those of the client, but that responsibility does not imply that an attorney may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-attorney relationship.

[2] Section (b) recognizes that attorneys sometimes receive a document, electronically stored information, or other property that was inadvertently sent or produced by opposing parties or their attorneys. A document, electronically stored information, or other property is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document, electronically stored information, or other property is accidentally included with information that was intentionally transmitted. If an attorney knows or reasonably should know that such a document, electronically stored information, or other property was sent inadvertently, this Rule requires the attorney promptly to notify the sender in order to permit that person to take protective measures. Whether the attorney is required to take additional steps, such as returning the

document, electronically stored information, or other property, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document, electronically stored information, or other property has been waived. Similarly, this Rule does not address the legal duties of an attorney who receives a document, electronically stored information, or other property that the attorney knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, "document, electronically stored information, or other property" includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving attorney knows or reasonably should know that the metadata was inadvertently sent to the receiving attorney.

[3] Some attorneys may choose to return a document or delete electronically stored information unread, for example, when the attorney learns before receiving it that it was inadvertently sent. Where an attorney is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the attorney. See Rules 19-301.2 and 19-301.4.

[4] Third persons may possess information that is confidential to another person under an evidentiary privilege or under a law providing specific confidentiality protection, such as trademark, copyright, or patent law. For example, present or former organizational employees or agents may have information that is protected as a privileged attorney-client communication or as work product. An attorney may not knowingly seek to obtain confidential information from a person who has no authority to waive the privilege. Regarding current employees of a represented organization, see also Rule 19-304.2 (4.2).

Model Rules Comparison. - Sections (a) and (b) of Rule 19-304.4 ~~is~~ are substantially similar to the language of Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct. Section (c) substantially restores to the Rule Maryland language as it existed prior to a 2017 amendment.

REPORTER'S NOTE

Amendments to Rule 19-304.4, effective April 1, 2017, conformed it to Model Rule 4.4 of the Ethics 2000 amendments to the ABA Model Rules of Professional Conduct. The amendments deleted language from former section (b) that addressed certain responsibilities of an attorney when obtaining information from third persons, without adding comparable language elsewhere.

Proposed amendments to Rule 19-304.4 substantially restore the deleted language by adding a new section (c), a Committee note following section (c), and Comment [4].

Additionally, a cross reference to Rules 2-402, 2-510, and 2-510.1 is added following the new Committee note.

A conforming amendment to Rule 19-304.2 also is proposed.