STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Ninety-Sixth Report to the Court of Appeals, transmitting thereby proposed new Rules 16-807, 16-808, and 16-809; proposed amendments to current Rules 1-202, 1-322, 1-333, 2-541, 2-542, 2-543, 4-102, 4-212, 4-262, 4-263, 4-346, 4-347, 4-351, 7-103, 8-201, 9-208, 9-209, 11-115, 16-208, 19-217, 19-305.5, 20-101, 20-103, 20-107, 20-108, 20-201, 20-203, and 20-503; and the proposed deletion of current Appendix: Court Interpreter Inquiry Questions and adoption of new Appendix: Court Interpreter Inquiry Questions.

The Committee's One Hundred Ninety-Sixth 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 September 13, 2018 any written comments they may wish to make to:

Sandra F. Haines, Esq.

Reporter, Rules Committee

2011-D Commerce Park Drive

Annapolis, Maryland 21401

Bessie M. Decker
Clerk
Court of Appeals of Maryland

August 14, 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
Annapolis, Maryland 21401

Your Honors:

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

Category One consists of new Rules 16-807, 16-808, and 16-809 and amendments to Rules 2-541, 2-542, 2-543, 9-208, and 9-209. Their purpose is to clarify and confirm the different roles and functions of magistrates, examiners, and auditors which, with respect to magistrates and examiners, have become conflated to some extent. An earlier version of these proposed changes was submitted to the Court in the Committee's 195th Report, but shortly before the Court's scheduled open hearing on that Report, we discovered that there were additional issues of which we previously were unaware that needed to be addressed and, with the Court's consent, we withdrew those proposals for further study.

There exist in the Circuit Courts, or at least in some of them, full-time or part-time *standing* magistrates, full-time or part-time *special* magistrates, full-time or part-time *standing*

examiners, full-time or part-time *special* examiners, full-time or part-time *standing* auditors, and part-time *special* auditors. All of the standing magistrates are court employees. All but nine are State employees; their compensation is set in the State Budget. The other nine are "grandfathered" county employees, but the State reimburses the county for at least part of their compensation and has reserved State positions for their replacements. Some examiners are court employees paid by the county; others are private attorneys who are not court employees and whose compensation is set by the court and assessed against the parties. *See* Code, Courts Article, §§ 2-501 (court employees, including magistrates, examiners, and auditors) and 2-101 (special officers).

The different functions of magistrates and examiners were well-summarized by Judge Marvin Smith, writing for the Court of Special Appeals in *Nnoli v. Nnoli*, 101 Md. App. 243, 261, n. 5 (1994). *See also* Edgar J. Miller, Jr., *Equity Procedure As Established in the Courts of Maryland* (Baltimore: M. Curlander, 1897); Thomas Alexander, *Summary of the Practice of the Court of Chancery, and County Courts, As Courts of Equity in Maryland* (Baltimore: Fielding Lucas, Jr., 1839).

The traditional and prescribed role of magistrates (formerly known as masters), whether full-time, part-time, standing, or special, is, upon referral of a matter by the court, to hold a hearing (unless one is waived), take testimony and receive other evidence, make initial rulings on evidentiary and other legal issues, and file with the court a Report containing proposed findings of fact, proposed conclusions of law, a recommended disposition, and a proposed order or judgment for the court to consider. Judges are not bound by those proposals but, so long as there is support for them in the record, generally give deference to them.

The traditional and generally prescribed role of examiners is more limited. It is merely to examine witnesses and report that testimony to the court, largely through a transcript of the testimony. Examiners do not rule on evidentiary or other legal issues, do not make proposed findings of fact or proposed conclusions of law, and do not make a recommended disposition. In earlier times, they were referred to as commissioners. *See* Thomas Alexander, *supra*, at 68.

The role of the auditor was described by Chancellor Bland in *Dorsey v. Hammond*, 1 Bland 463, 467 (1828) and *Townshend v. Duncan*, 2 Bland 45, 74 (1826) and confirmed by this Court in

German Luth. Church v. Heise, 44 Md. 453, 464-65 (1876): ("The auditor is the calculator and accountant of the court, and when any calculations or statements are required, all the pleadings, exhibits and proofs are referred to him, so that he be enabled fully to investigate and put the whole matter in proper order, for the action of the court.").

The role of the auditor has remained constant over time, and, except for some conforming reorganization, no significant changes are proposed with respect to them. Unfortunately, there is language in Rules 2-541, 2-542, and 9-208, dealing with the referral of cases to special magistrates and examiners that has led to referrals that the Committee regards as inappropriate and to requests by the State Court Administrator for modifications.

The origin of the concern that prompted the proposed Rules changes was the discovery by the Administrative Office of the Courts that 13 of the Circuit Courts were referring to private attorneys appointed as examiners uncontested domestic cases that could have been referred to standing magistrates. The number of these referrals, annually, ranged from a handful or less to more than 200 in Washington County, over 500 in Frederick County, and 1,300 in Anne Arundel County. Mostly, because these were uncontested cases, the examiners were taking testimony, but presentations to the Committee indicated that they also were checking for jurisdiction, venue, and grounds and presenting orders or judgments for a judge to sign. The problem was that, because they were private attorneys and not court employees, the courts were setting their fees, which vary from $75/case to $200/case, (plus the cost of a transcript) that were assessed by the court as costs against the parties.

Had those matters been referred to a court-employed standing magistrate pursuant to Rules 5-241 and 9-208, there would have been no such fees. The purported justification for this practice was that those attorneys were willing to give expedited service – to hear the case at the parties' convenience – and would waive their fees if a party could show indigence. No data were presented with respect to the number of such waivers or what the various examiners regarded as indigence.

Five concerns were expressed. First, Code, Courts Article, § 7-202 (a)(1) requires that all court costs and charges for the Circuit Courts are to be determined by the State Court Administrator, with the approval of the Board of Public Works, and are to be uniform throughout the State. Apart from the obvious dis-uniformity of these court-set charges, neither the

State Court Administrator nor the Board of Public Works had authorized the varying fees set by the Circuit Courts (nor was the State Court Administrator willing to do so).[1] The State Court Administrator was concerned also that the Circuit Courts were reporting cases referred to examiners as having been tried by a judge, which serves to artificially inflate the statistics regarding judges' caseloads. Those statistics are used in determining the need for additional judges.

After considering extensive presentations by some of the attorney-examiners on two separate occasions, the Committee also concluded that (1) as a matter of judicial policy, the Judiciary should not be allowing people to purchase expedited treatment from the courts, which appeared to be the sole basis for referring these cases to the private attorneys rather than court-employed magistrates, (2) with the enactment of 2018 Md. Laws, Chapters 849 and 850 and the recent adoption of Rules 2-801 through 2-806, magistrates should be able to provide more expedited service in these uncontested cases, reducing, if not eliminating, any advantage to referring these cases to private attorneys on a fee-for-service basis, and (3) as both a jurisprudential and administrative matter, the traditional roles of magistrates and examiners should remain separate and not be conflated in the manner they have been.

As noted, the initial problem was the practice of referring uncontested domestic cases to private attorneys and assessing their fees against the parties. After the initial Rules proposals were submitted to the Court, the Committee became aware of another inappropriate use of examiners. One Circuit Court appointed several private attorneys as examiners to conduct settlement conferences on a fee-for-service basis which, on its face, appeared to be an end-run around the Rules in Title 17 that (1) permit parties to opt out of court-annexed fee-for-service ADR and (2) put limits on the fees that can be charged for that service and on the number of hours that can be compelled. It was asserted that, as judicial appointees, those attorneys would have greater access to MDEC court files than other members of the Bar.

---

[1] Section 2-102 (b)(4) provides that special officers shall receive reasonable compensation as set by the court, and § (c) permits a special officer's fee to be taxed as costs or paid by the county. To the extent there may be a conflict with § 7-202 (a)(1), we note that § 7-202 (a)(1) was re-enacted in 2017 and is the later enactment.

The proposed changes are directed mostly at those matters. The provisions governing the appointment and duties of magistrates, examiners, and auditors are now found in Rules 2-541, 2-542, and 2-543, respectively. The Committee proposes to transfer the appointment provisions to new Rules in Title 16 (Rules 16-807, 16-808, and 16-809) on the ground that appointments of court personnel are administrative matters. *See*, for example, Rules 16-805 and 16-806. Apart from that, it is not clear that the appointment provisions in Rule 2-541 apply to magistrates sitting in the Juvenile Courts, as Title 2 does not apply to juvenile causes. *See* Rule 1-101 (b).[2]

There are no changes in actual substance in Rule 16-807. Subsection (a)(1) tracks the statutory requirement that the State Court Administrator identify the standing magistrates, and subsection (a)(2) conditions the appointment of magistrates on there being funding for the position in the State Budget, which also is a statutory requirement. Section (b) prohibits the appointment of a special magistrate for a special domestic proceeding that is otherwise referable to a standing magistrate under Rule 9-208 or Rule 11-111 and requires that their powers and duties be consistent with the traditional functions of magistrates. Similar conditions are included in Rules 16-808 and 16-809, along with the deletion of any authority of the court to determine and assess the cost of the compensation of those officials who are either State or county employees and whose compensation is set in the State or a county budget. The amendments to Rules 2-541, 2-542, 2-543, 9-208, and 9-209 are conforming ones.

Category Two consists of amendments to Rule 1-333 and to an Appendix to that Rule, dealing with court interpreters. These changes emanate from recommendations by the Court Access and Community Relations Committee of the Judicial Council. The principal changes to the Rule provide for a Registry of certified and eligible interpreters, change some of the nomenclature, and make special provision for court-employed staff interpreters. The Appendix, which consists of proposed *voir dire*-type questions designed to assure that an interpreter is qualified, has been completely rewritten.

Category Three consists of amendments to Rules 1-202, 4-102, and 4-212, dealing with arrest warrants. These amendments

---

[2] Rule 11-111 provides for the duties and authority of Juvenile Court magistrates, but says nothing about how they are appointed.

are in response to questions raised by some Circuit Court clerks as to whether it was permissible for them to issue and sign arrest warrants at the direction of a judge. Current Rule 4-102 (n) defines "warrant" as a written order by a judicial officer commanding a peace officer to arrest a person named in it or to search for and seize property as described in it," and thus (1) combines within the definition both arrest and search warrants, and (2) permits only a judicial officer to issue such warrants.

Rule 4-212 (d)(1) provides that, in the District Court, a "judge" or a "commissioner" may "issue" an arrest warrant under conditions stated in that subsection. Subsection (d)(2) provides that, in a Circuit Court, "the court" may "order issuance of" such a warrant under conditions stated in that subsection. It has been the practice in some, but not all, of the Circuit Courts, especially with respect to bench warrants for failure to appear or in response to violation-of-probation or contempt petitions, for the judge to order the clerk to issue the warrant rather than for the judge to do so him/herself, and some clerks have questioned whether that is lawful or appropriate.

The issue was discussed with the Conference of Circuit Court Judges, the members of which confirmed that there was some disparity in this practice but most of them felt that, largely for the sake of efficiency and convenience, it was appropriate for a clerk to issue an arrest warrant if clearly, conspicuously, and as a matter of record ordered to do so by a judge – that the clerk, in that situation, was acting in a ministerial capacity. It was agreed, however, that that principle applied only to *arrest* warrants and not to *search* warrants.

The proposed amendments are intended to implement that view. A new section (dd) defining "warrant," "arrest warrant", "bench warrant," and "search warrant" is added to Rule 1-202. The definition of "arrest warrant" retains the general requirement in the District Court, that only a judge or District Court commissioner may issue the warrant but, in a Circuit Court and for bench warrants in the District Court, permits the clerk to issue one upon an order of a judge that is in writing or otherwise of record and expressly directs the clerk to issue the warrant. A Committee note clarifies that an order to issue the warrant includes the authority of the clerk actually to sign it. In light of that new definition in Rule 1-202, the definition of "warrant" in Rule 4-102 is recommended for repeal. The proposed amendment to Rule 4-212 is a conforming one.

Category Four consists of amendments to Rule 1-322 and, in part, is in response to the Court's recent decision in *Hackney v. State*, 459 Md. 108 (2018), although the Committee has been working on the development of the Rule for nearly two years. In colloquial terms, it is the "prisoner mailbox" Rule – regarding a filing as "filed" when it is deposited in an authorized receptacle or delivered to an authorized employee of the facility. The problem addressed by the Rule was well-described in the *Hackney* Opinion and need not be repeated. The Committee looked at what the Federal Courts and other States have done, as well as literature in the area, and met with representatives of the Department of Public Safety, the Department of Health, the Attorney General's Office, the Office of the Public Defender, and the Maryland State Bar Association in an effort to come up with a proper and effective balance.

That effort involved several considerations: (1) to whom should the Rule apply; (2) to what kinds of filings should it apply; (3) what should count as a proper filing; (4) how should the date of such a filing be determined; and (5) what should the clerk's docket reflect?

With respect to the first two of those considerations, the Federal courts and most of the States have limited their Rules to (1) filings by unrepresented prisoners, (2) incarcerated in correctional facilities, (3) without direct access to the U.S. Postal Service, (4) in a discrete category of cases in which the prisoner is challenging either his/her criminal conviction or incarceration.

Initially, the Committee considered whether unrepresented individuals detained involuntarily in State hospitals or juvenile detention facilities should be covered as well and whether the category of cases should be expanded to include civil cases that do not directly affect the filer's conviction or detention but may involve other fundamental rights, such as termination of parental rights, adoption, divorce, or guardianship proceedings. In the end, the Committee opted, at least at this point, for limiting the Rule to self-represented prisoners and detainees in correctional or juvenile detention facilities and to filings in cases that challenge the filer's conviction or finding of delinquency or incarceration or detention.

With respect to what should count as a proper filing, it appears that all of the State correctional and detention

facilities provide a method for facilitating outgoing mail by prisoners or detainees, either by providing receptacles in the facility for the deposit of such mail or by designating employees to collect the mail directly from the prisoners or detainees and eventually delivering that mail to the USPS. Proposed new subsection (d)(2) provides that a pleading or paper filed under that section is deemed to be filed on the date that the pleading or paper, in mailable form and with proper postage affixed, was deposited by the filer in a receptacle designated by the facility for outgoing mail or personally delivered to an employee of the facility authorized to collect such mail.[3]

The Committee was advised that some, but not all, State correctional facilities will date-stamp outgoing prisoner mail, indicating when the mail was collected and processed for delivery to USPS, but that few, if any, of the local detention centers do that. Even when there is an institutional date stamp, it does not necessarily reflect when the prisoner/detainee actually deposited the mail or gave it to an authorized employee. When a weekend or holiday intervenes, several days may elapse before that stamp is applied and the mail is actually delivered to USPS. To deal with that problem, subsection (d)(3) provides that the date of filing may be established by *either* a date stamp or a certificate of filing substantially in the form stated in subsection (d)(4) of the Rule that, in the event of any dispute, the court finds to be credible. This approach is taken, in part, from Fed. R. App. P. 25 (a)(2)(C).

Finally, in order to provide some transparency, subsection (d)(2) directs the clerk to record the date the item was received by the clerk, docket the filing (including any attached certificate), and make a note for the court of any discernable filing date based on an institutional date stamp or the certificate attached to the pleading or paper. A Committee note to section (d) gives some guidance in the event there is any dispute regarding the proper filing date.

Category Five consist of amendments to Rules 4-346, 4-351, and 11-115, directing the clerk to append to commitment or probation orders entered under those Rules a copy of any restitution order and any request by a victim for notification. These changes were recommended by a victim advocacy entity in

---

3 Although, at least presently, it is not likely that more than a few, if any, prisoners or juvenile detainees will be able to use MDEC to file electronically, that prospect does exist, and the proposed Rule takes that into account.

order to assure that the correctional or parole and probation authorities are aware of those orders and requests. The Committee had an initial concern as to whether victim identification information included in those documents will continue to be properly shielded by those Executive Branch agencies but was assured that it would be.

Category Six consists of amendments to Rule 4-347, dealing with revocation of probation proceedings. They emanate from a concern expressed by the Maryland Alliance for Justice Reform, the Public Defender, and a former Secretary of Public Safety and Correctional Services regarding the practice of some judges of entering a bench warrant in response to a violation of probation (VOP) petition and, in the warrant, denying pretrial release or setting terms of release that the defendant is unable to meet, requiring that the defendant be presented only to that judge, and not setting a prompt hearing on the VOP. The problem is especially acute when the only VOP charge is conduct that, under the Justice Reinvestment Act, would constitute a "technical violation" for which a presumptively appropriate sanction would be 15, 30, or 45 days of incarceration, as the defendant may spend more than that time in pre-hearing detention.

This concern was discussed with the Conference of Circuit Court Judges and the Chief Judge of the District Court, and the Committee concluded that the best solution was to require, when the judge insists that the defendant be presented only to him/her, that the defendant be presented to that judge or, in his/her absence, another judge of the court designated by the administrative judge, within five business days following the defendant's arrest, for consideration or reconsideration of the defendant's eligibility for release. With one exception, there seemed to be a consensus that the five-business-day requirement was feasible. The Committee was made aware of possible compliance problems in Baltimore City due to tardy and incomplete reports from the City detention center but felt that was a problem that needed to be resolved administratively and should not preclude an effort to assure that defendants do not remain in detention unnecessarily and without meaningful judicial oversight.

Category Seven consists of amendments to Rules 7-103 and 8-201. This is an MDEC problem. When an appeal is taken from the District Court to a Circuit Court under Rule 7-103 or from a Circuit Court to an appellate court under Rule 8-201, the clerk of the lower court collects the filing fee of the appellate court and forwards that fee to the clerk of the appellate court.

Under MDEC, however, filing fees are processed electronically; neither checks nor cash is transmitted with the record. Because filing fees go into the State Treasury regardless of who collects them, there is no need to transmit them to the appellate court for further transmission to the State Treasurer. Instead, in an MDEC county, the clerk of the lower court will docket receipt of the fee and forward it directly to the State Treasurer.

Category Eight consists of amendments to Rule 19-217 requested by the University of Baltimore Law School. As part of its clinical program, the school employs as clinical fellows, under three-year contracts, approximately six to eight attorneys with three-to-five years of experience practicing law. Some are admitted to practice in Maryland; others are admitted in other States but not Maryland. All appointments are approved by the Dean of the school. The school would like for these fellows to act as supervising attorneys of students in the clinical programs. The current Rule requires that supervising attorneys be members of the Maryland Bar, which inhibits those fellows who are not members of the Maryland Bar from doing so.

Rule 19-215 permits a member of the Bar of another State who is employed by, or associated with, a legal services program to practice in Maryland pursuant to that program if the attorney graduated from an ABA-approved law school and will practice under the supervision of a member of the Maryland Bar. The clinics qualify as a legal services program, and the fellows all will have graduated from an ABA-approved law school and will perform their supervisory role under the supervision of the Maryland-barred faculty members.

To provide some additional assurance, the Committee recommends that there be added to the definition of "supervising attorney" under Rule 19-217 (a)(4) an attorney authorized to practice under Rule 19-215 who certifies to the Clerk of the Court of Appeals that the attorney has read and is familiar with the Maryland Attorneys' Rules of Professional Conduct as well as the Maryland law and Rules relating to any particular area of law in which the individual intends to practice. That is the same requirement that this Court approved with respect to practice in Maryland by attorneys barred in other States who are spouses of military personnel.

Category Nine consists of amendments to Rule 19-305.5, dealing with the extent to which foreign attorneys – those who are not members of the Bar in any U.S. jurisdiction – may

practice law in Maryland. This emanated from a referral by Chief Judge Barbera of a Resolution of the Conference of Chief Justices endorsing certain proposals by the American Bar Association that would allow foreign attorneys to engage in the limited practice of law in U.S. States.

There were four separate ABA proposals: (1) to permit a foreign attorney to be admitted *pro hac vice* in particular cases in association with a [Maryland] attorney; (2) to permit a foreign attorney to act as house counsel for a [Maryland] entity, as an employee of that entity; (3) to permit a foreign attorney to associate on a temporary basis with a [Maryland] attorney in a matter involving the law of the country where the foreign attorney was admitted; and (4) to permit a foreign attorney to open an office in [Maryland] and act as a "foreign legal consultant" for clients or Maryland attorneys on matters involving the law of the country where the foreign attorney was admitted. Each of those proposals contained conditions and limitations of one kind or another.

The Committee was advised that the Maryland State Bar Association, through its International Law Committee also was studying those proposals, and it was agreed that the Rules Committee would wait for the MSBA committee to complete its work and attempt to formulate a collaborative approach. That was done. The Attorneys and Judges Subcommittee of the Rules Committee met several times with the MSBA International Law Committee and, in the end, reached a consensus on the recommendation included in this Report.

Although there seemed to be no policy objection to permitting foreign attorneys to be admitted *pro hac vice* or to act as house counsel under the conditions included in the ABA proposals, there are statutory impediments to both of those proposals. Code, Bus. Occup. & Prof. Art. § 10-215 permits only Maryland attorneys or attorneys admitted to the Bar of another U.S. State to be admitted *pro hac vice*, and § 10-206 (a) of that Article puts the same limitation on acting as house counsel. It was the Rules Committee's view that a statutory change would be needed to implement the ABA proposals regarding those two matters.

The MSBA committee initially endorsed the proposal allowing foreign attorneys to act as foreign legal consultants, as several other States had done. The Rules Committee had significant problems with that proposal in terms of who would be responsible for validating the foreign attorneys' credentials

and assuring that they were practicing ethically and in conformance with the various conditions and limitations on their entrepreneurial practice. The Committee learned that, except in a handful of States – New York, California, Texas, the District of Columbia, and Florida – very few applications to become foreign legal consultants have been made and accepted and, in many States, none at all. The Board of Law Examiners was not anxious to be burdened with qualifying these individuals.

The Rules Committee does see a proper role for foreign attorneys to offer their expertise to Maryland attorneys and clients of Maryland attorneys. Maryland businesses and government are heavily involved in international economic activity. According to the Maryland Department of Commerce, Maryland exported $9.2 billion in goods and imported $32 billion in goods in 2017, and the Maryland Secretary of State's Office reports that the State itself has representation in 18 foreign countries, mostly to support commercial relations.

Through a new section (e) to Rule 19-305.5, the Committee proposes to permit qualified foreign attorneys, with respect to any matter (1) to act as a consultant to Maryland attorneys on the law and practice in a country in which the foreign attorney is admitted, and (2) in association with a Maryland attorney who actively participates in the matter, to participate in discussions with clients of the Maryland attorney or other persons involved in the matter, provided that the Maryland attorney remains fully responsible to the client for all advice and conduct by the foreign attorney with respect to the matter. The MSBA has indicated its concurrence with that recommendation.

Category Ten consists of further amendments to the Title 20 MDEC Rules requested by the MDEC Executive Steering Committee. They cover two major topics – signatures and how to deal with deficient submissions – plus some technical changes.

The current Rules define four types of signatures that may go on submissions – digital signatures (Rule 20-101 (e)); facsimile signatures (Rule 20-101 (f)); handwritten signatures (Rule 20-101 (h)); and typographical signatures (Rule 20-101 (z)). The word "signature" is defined as including any of the four (Rule 20-101 (t)). Those distinctions have turned out to be both unnecessary and confusing for the clerks. The Committee proposes to delete the definitions of and references to digital, facsimile, and typographical signatures and redefine "signature" as meaning "the signer's typewritten name accompanied by a visual image of the signer's handwritten signature or by the

symbol /s/." A signature will thus consist of two elements – an image of a handwritten signature or the one symbol and the filer's typewritten name.

This change is implemented, in part, by proposed amendments to Rule 20-107, dealing with signatures. In order to file a submission, the filer must include a signature and certain other identifying information that is not part of the signature itself but is important for purposes of identifying the filer and determining whether the filer is an attorney. An amendment to Rule 20-108 conforms the Rule to the amendments to Rule 20-107.

The second major change is in Rule 20-203. Rule 20-104 (d) requires registered users to comply with the Rules in Title 20 and the Policies and Procedures adopted by the State Court Administrator. Rule 20-203 currently requires that, when a submission is transmitted for filing, other than by a judge or judicial appointee, it goes into a queue for review by the clerk to assure that it complies with the Rules and Policies and Procedures.

One of the vexing issues the Committee has had to deal with from the beginning is what the clerk can or must do with a non-compliant submission. There were a number of possibilities, ranging from simply correcting the deficiency if it involves only the form or language of the proposed docket entry, to docketing the submission and leaving it to other parties to challenge it, to notifying the filer of the deficiency and warning that it will be stricken or held in abeyance until corrected, to striking or refusing to docket the submission. Over time, the Committee has recommended parts of all of these approaches, depending on the nature of the deficiency.

After discussions with the MDEC Executive Steering Committee, the Rules Committee now recommends that (1) for deficiencies that involve only the wording of the proposed docket entry, the clerk retain the ability to correct it, (2) for a missing certificate of service where such a certificate is required, the clerk make a docket entry that the submission was received, then strike the submission, notify the filer and other parties that the submission was received and stricken and the reason therefor, and enter that information on the docket, and (3) for all other material deficiencies, the clerk docket the submission and send a deficiency notice to the filer, with a copy to the other parties.

There are two reasons for this approach. First, striking a submission for a correctible deficiency can result in the corrected version being filed untimely, thus potentially depriving the filer of the right to have the document considered by the court, and that sanction should not be generally applied. If the submission is served, as it normally would be despite the deficiency, other parties will have the opportunity to move to strike it. When there is a lack of a certificate of service, however, that may not be the case; there is the danger that the submission will not be served on other parties. The current Rules permit the clerk to refuse to docket a filing that is missing a required certificate of service, and the Committee believes that authority should be retained.

One other deficiency issue is addressed, in Rule 20-103. Although there is a consensus that the clerks should retain some discretion in determining whether a submission is, in fact, deficient and, if so, whether the deficiency is material, the State Court Administrator has pointed out that certain kinds of errors should be regarded uniformly as deficiencies requiring correction and not left to inconsistent determinations by the clerks. Language is proposed to be added to Rule 20-103 (b) allowing the State Court Administrator to add to her Policies and Procedures examples of deficiencies that are material and require issuance of a deficiency notice.

Two other changes, of a technical nature, are recommended, one to Rule 20-201 and one to Rule 20-503. Rule 20-201 (f) requires that a filer who will be entitled to electronic service of subsequent submissions include in the submission his/her e-mail address. On the MDEC computer screen is a "drop-down" box where that information can be supplied. Unfortunately, a submission may be transmitted without checking that box and supplying the e-mail address, which can be a problem if that information was not supplied in the filer's initial submission or if the information has changed. The Committee proposes adding to section (f) a requirement that the information be supplied in the filer's initial submission or if the information has changed.

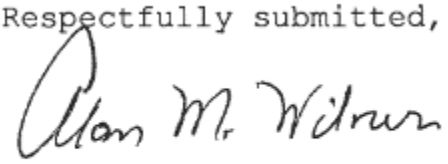
When the MDEC Rules were first developed, the question arose of how MDEC would affect the retention schedules for court records, in particular when, how, and with what, if any, limitations they would be sent to the State Archives. There were a number of issues that, at that early stage, defied resolution. Rule 20-503 delegated to the State Court Administrator and the State Archivist the responsibility for

developing a plan for consideration and approval by the Court of Appeals. Such a plan has not yet been developed. At the request of the State Court Administrator, the Committee proposes that the responsibility for developing the plan await the full implementation of MDEC. Although MDEC is now in place in 20 counties, the four major ones – Baltimore City and Baltimore, Montgomery, and Prince George's Counties, where the great bulk of case records reside – are not yet in the system, and, until we have the experience with those subdivisions, it may still be premature to attempt to develop the plan.

Category Eleven consists of essentially housekeeping amendments to Rules 4-262, 4-263, and 16-208. A Committee Note is proposed to be added to the first two of those Rules, dealing with discovery in criminal cases, calling attention to the Court's recent decision in *Green v. State*, 456 Md. 97 (2017). The amendment to Rule 16-208 (b) clarifies that the prohibition against bringing electronic devices into jury rooms applies only after deliberations have begun.

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:cmp
cc: Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 800 – MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-807, as follows:

Rule 16-807. APPOINTMENT, COMPENSATION, DUTIES OF MAGISTRATES

(a) Standing Magistrates

(1) Application of Section

Section (a) of this Rule applies to standing magistrates identified as such by the State Court Administrator.

Cross reference: See Code, Courts Article, §2-501(e)(2), directing that the Administrative Office of the Courts shall identify the standing circuit court magistrates.

(2) Appointment; Compensation

A majority of the judges of the circuit court of a county may appoint full-time and part-time standing magistrates, provided that there is included in the State budget for the Judicial Branch an appropriation of an amount necessary to pay the salary and benefits of each magistrate. The salary and benefits of a standing magistrate may not be assessed as costs against a party to an action.

Cross reference: See Code, Courts Article, §2-501(e)(1) and (5), requiring that a standing circuit court magistrate hired on or after July 1, 2002, be a State employee and that the salary and benefits of the magistrate be included in the State budget. Magistrates who were in office at the time were given the option to remain as county employees, and some did so.

(3) Duties; Procedures

The duties of a standing magistrate and the procedures relating to matters referred to a standing magistrate shall be as set forth in the Maryland Rules or by other State law.

Cross reference: See Rules 2-541 and 11-111.

Committee note: Magistrates have authority only over matters properly referred to them by the court. Their function is to conduct a hearing (unless one is waived), take evidence, and, based on the evidence, file a report with the court containing proposed findings of fact, conclusions of law, and a recommended disposition of the matter referred.

(b) Special Magistrates

(1) Appointment; Compensation

The circuit court of a county may appoint a special magistrate for a particular action, except proceedings on matters referable to a standing magistrate under Rule 9-208 or Rule 11-111. Unless the compensation of a special magistrate is paid with public funds, the court (A) shall prescribe the compensation of the special magistrate, (B) may tax the compensation as costs, and (C) may assess the costs among the parties.

Cross reference: See Code, Courts Article, § 2-102(b)(4) and (c)and § 2-501(b).

(2) Duties

The order of appointment of a special magistrate shall specify the powers and duties of the magistrate and may contain

special directions. Those powers, duties, and directions shall be consistent with the traditional function of magistrates. Cross reference: See Committee note to subsection (a)(3) of this Rule.

(c) Officer of the Court; Tenure

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

(d) Transcript

The costs of any transcript required to be prepared in connection with the referral of a matter to a magistrate may be included in the costs of the action and assessed among the parties as the court may direct.

REPORTER'S NOTE

New Rules 16-807, 16-808, and 16-809 are proposed. They include provisions relating to the appointment and compensation of magistrates, examiners, and auditors that have been transferred, with amendments, from Rules 2-541, 2-542, and 2-543, in part because the provisions relate to court administration. In addition, many magistrates handle not just domestic or general civil cases but juvenile cases as well.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 800 – MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-808, as follows:

Rule 16-808. APPOINTMENT, COMPENSATION, DUTIES OF EXAMINERS

(a) Standing Examiners

(1) Appointment; Compensation

A majority of the judges of the circuit court of a county may appoint full-time and part-time standing examiners. The compensation of an examiner who is an employee of the court shall be as determined in the appropriate budget and may not be assessed as costs against a party to an action. Otherwise, the court shall prescribe the compensation, fees, and costs of the examiner and may assess them among the parties.

Cross reference: See Code, Courts Article, §2-501 (b)(1) requiring that each employee of a circuit court, including examiners, is entitled to compensation "as provided in the appropriate budget."

(2) Duties

The duties of a standing examiner shall be as set forth in the Maryland Rules or by other State law.

Cross reference: See Rule 2-542.

Committee note: Examiners have authority only over matters properly referred to them by the court. Their function is solely to take testimony and report that testimony to the court. Unlike magistrates, they do not make proposed findings of fact

or conclusions of law and do not recommend a disposition of the matter referred. See *Nnoli v. Nnoli*, 101 Md. App. 243, 261, n.5 (1994)

(b) Special Examiners

(1) Appointment; Compensation

The circuit court of a county may appoint a special examiner to take testimony in a particular action. Unless the compensation of a special examiner is paid with public funds, the court (A) shall prescribe the compensation of the special examiner, (B) may tax the compensation as costs, and (C) may assess the costs among the parties.

(2) Powers and Duties

The order of appointment of a special examiner shall specify the powers and duties of the special examiner and may contain special directions. Those powers, duties, and directions shall be consistent with and limited to the traditional role of examiners.

Cross reference: See the Committee note to subsection (a)(2) of this Rule.

(c) Officer of the Court; Tenure

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

(d) Transcript

The cost of any transcript required to be prepared in

connection with the referral of a matter to an examiner may be included in the costs of the action and assessed among the parties as the court may direct.

REPORTER'S NOTE

See Reporter's Note to Rule 16-807.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 800 – MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-809, as follows:

Rule 16-809. APPOINTMENT, COMPENSATION, DUTIES OF AUDITORS

(a) Standing Auditors

(1) Appointment; Compensation

A majority of the judges of the circuit court of a county may appoint standing auditors. The compensation of an auditor who is an employee of the court shall be as determined in the appropriate budget and may not be assessed as costs against a party to the action. Otherwise, subject to Code, Courts Article, § 2-102 (b)(1), the court shall prescribe the compensation, fees, and costs of the auditor and may assess them among the parties.

Cross references: Code, Courts Article, § 2-501(b)(1) provides that each employee of a circuit court, including auditors, is entitled to compensation as provided in the appropriate budget.

(2) Duties

The duties of a standing auditor and the procedures relating to matters referred to a standing auditor shall be as set forth in the Maryland Rules or by other State law.

Cross reference: See Rules 2-543, 13-502, 14-305.

Committee note: Auditors have been described as "the calculator and accountant of the court, and when any calculations or statements are required, all the pleadings, exhibits and proofs are referred to him [or her], so that he [or she] be enabled to investigate and put the whole matter in proper order, for the action of the court." *German Luth. Church v. Heise*, 44 Md. 453, 64-65 (1876).

Cross reference: Section 2-102 (b) provides that a special auditor is entitled to reasonable compensation as set by the court but not less than $15 for stating an account and that the fee may be taxed as costs or paid by the county.

(b) Special Auditor

(1) Appointment; Compensation

The circuit court of a county may appoint a special auditor for a particular action. Unless the special auditor is paid with public funds, the court shall prescribe the compensation, fees, and costs of the auditor and assess them against the parties.

(2) Powers and Duties

The order of appointment may specify or limit the powers of a special auditor and may contain special directions. Those powers shall be consistent with the traditional role of auditors.

Cross reference: See the Committee Note to subsection (a)(2) of this Rule.

(c) Officer of the Court; Tenure

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

(d) Transcript

The cost of any transcript required to be prepared in connection with the referral of a matter to an auditor may be included in the costs of the action and assessed among the parties as the court may direct.

REPORTER'S NOTE

See Reporter's Note to Rule 16-807.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-541 to delete provisions relating to the appointment, compensation, fees, and costs of magistrates that have been transferred to Rule 16-807, 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 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 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.~~

The appointment and compensation of standing and special magistrates shall be governed by Rule 16-807.

. . .

~~(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

The provisions relating to the appointment and compensation of magistrates have been transferred, with amendments, to Rule 16-807, in part because they relate to court administration and in part because many of the magistrates handle not just domestic or general civil cases but juvenile cases as well.

Provisions relating to the appointment and compensation of examiners and auditors currently in Rules 2-542 and 2-543 are transferred to Rules 16-808 and 16-809, respectively.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-542 to delete provisions relating to the appointment, compensation, fees, and costs of examiners that have been transferred to Rule 16-808; to prohibit referral to an examiner of a matter referable to a standing magistrate under Rule 9-208; and to make stylistic changes 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 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 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.~~

The appointment and compensation of examiners shall be governed by Rule 16-808.

(b) Referral by Order

On motion of any party or on its own initiative, the court may refer to an examiner, for the purpose of taking ~~of~~ evidence~~, issues~~ in proceedings held in execution of judgment pursuant to Rule 2-633 and in uncontested proceedings ~~not~~ other than proceedings triable of right before a jury or referable to a standing 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

See Reporter's Note to Rule 2-541.

Section (b) is restyled and a provision is added prohibiting referral of any matter that is referable to a standing magistrate under Rule 9-208.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-543 to delete provisions relating to the appointment, compensation, fees, and costs of auditors that have been transferred to Rule 16-809, 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 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 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.~~

The appointment and compensation of auditors shall be governed by Rule 16-809.

. . .

~~(i) Costs~~

~~Payment of the compensation, fees, and costs of an auditor 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

See Reporter's Note to Rule 2-541.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-208 by adding the word "standing" to the title of the Rule and to subsection (a)(1), by adding language to subsection (a)(1) to clarify that the court may direct that a matter be heard by a judge, by correcting an internal reference in the Committee note following subsection (a)(1) and adding clarifying language to the Committee note, by deleting section (j) and the Committee note following section (j), as follows:

Rule 9-208. REFERRAL OF MATTERS TO STANDING 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 standing magistrate as of course, unless, in a specific case, the court directs ~~otherwise in a specific case~~ that the matter be heard by a judge:

(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).

Cross reference: See Rule 16-807.

Committee note: Examples of matters that a court may include in its case management plan for referral to a standing 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 the compensation, fees, and costs of the magistrate and 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 subsection (a)(1) of Rule 9-208 clarify that a matter ordinarily referable to a standing magistrate may, in a specific case, be heard by a judge. The Rule does not authorize referral to a special magistrate, as new

Rule 16-807(b)(1) expressly prohibits the appointment of a special magistrate for such matters.

The delineation between standing magistrates and special magistrates reflects respective funding sources: the salary and benefits of a standing magistrate are paid by the Judiciary through the State and may not be assessed as costs against a party to an action; compensation of a special magistrate may be taxed as costs and may be assessed against the parties. Thus, parties might be assessed costs if a matter is referred to a special magistrate, but parties could not be assessed costs if the same matter is instead referred to a standing magistrate.

Proposed amendments also 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 section (j) and the Committee note following section (j). Provisions pertaining to the assessment among the parties of the compensation, fees, and costs of a standing magistrate are deleted in their entirety. The substance of the other deletions is transferred to new Rule 16-807.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY,

CHILD SUPPORT, AND CHILD CUSTODY

Amend Rule 9-209 by deleting references to examiners, by deleting the last sentence of the Rule, and by deleting an obsolete cross reference, as follows:

Rule 9-209. TESTIMONY

A judgment granting a divorce, an annulment, or alimony may be entered only upon testimony in person before ~~an examiner or~~ a magistrate or in open court. In an uncontested case, testimony shall be taken before ~~an examiner or~~ a magistrate unless the court directs otherwise. ~~Testimony of a corroborating witness shall be oral unless otherwise ordered by the court for good cause.~~

Cross reference: For the requirement of oral testimony by the plaintiff in a divorce action, see Code, Family Law Article, § 1-203 (c). ~~For the requirement of corroboration, see Code, Family Law Article, § 7-101(b).~~ For default procedures, see Rule 2-613.

Source: This Rule is derived from former Rules S73 and S75 a.

REPORTER'S NOTE

Proposed amendments to Rule 9-209 delete from the Rule references to testimony before an examiner. The change conforms

the Rule to the provisions of proposed new Rule 16-808 and amendments to Rules 2-542 and 9-208.

The proposed amendments also delete references to corroboration of testimony, which were rendered obsolete by the repeal of Code, Family Law Article, § 7-101 (b). See Chapter 379 (SB 359), 2016 Laws of Maryland. With the statutory change, no corroboration requirement exists as to any action to which Rule 9-209 applies. Accordingly, the last sentence of the Rule and the second sentence of the cross reference are deleted.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-333 by deleting the language "eligible for certification" and adding the word "eligible" before the word "interpreter"; by substituting the word "non-registry" for the word "non-certified" and by deleting language referring to interpreters who are "certified" or "eligible for certification"; in subsection (a)(5), by adding language referring to an interpreter who has not completed the Maryland Judiciary's Orientation Program and is not listed on the Court Interpreter Registry; in subsection (a)(7), by adding a new definition of the term "registry"; in subsection (c)(1), by adding the language "Registry interpreter" and the word "not"; in subsection (c)(2)(A), by adding the language "except as provided in subsection (2)(B)," by changing the word "shall" to the word "may," and by adding language referring to the interpreter's skills and qualifications, to any potential conflicts or other ethical issues, and to the court permitting parties to participate in the inquiry; by adding a subsection (c)(2)(B) allowing the court to dispense with any inquiry if the interpreter is a court-employed staff interpreter; in the Committee note after subsection (c)(2)(B), by deleting the

reference to the inquiry questions promulgated by the Maryland Judicial Conference Advisory Committee on Interpreters and to publication of the inquiry questions in a certain Report and by adding the word "included"; by adding a tagline to subsection (c)(3)(A); in subsection (c)(3)(A), by deleting language referring to appointment by the court and to swearing or affirming under the penalty of perjury and substituting the language "take an oath"; in subsection (c)(3)(A), by deleting the reference to subscribing an oath; and by adding a new subsection (c)(3)(B) and a Committee note following it pertaining to court-employed staff interpreters, as follows:

Rule 1-333. COURT INTERPRETERS

(a) Definitions

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

(1) Certified Interpreter

"Certified Interpreter" means an interpreter who is certified by:

(A) the Maryland Administrative Office of the Courts;

(B) any member of the Council for Language Access Coordinators, provided that, if the interpreter was not approved

by the Maryland member of the Council, the interpreter has successfully completed the orientation program required by the Maryland member of the Council;

Committee note: The Council for Language Access Coordinators is a unit of the National Center for State Courts.

(C) the Administrative Office of the United States Courts; or

(D) if the interpreter is a sign language interpreter, the Registry of Interpreters for the Deaf or the National Association of the Deaf.

(2) Individual Who Needs an Interpreter

"Individual who needs an interpreter" means a party, attorney, witness, or victim who is deaf or unable adequately to understand or express himself or herself in spoken or written English and a juror or prospective juror who is deaf.

(3) Interpreter

"Interpreter" means an adult who has the ability to render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written and without explanation.

(4) Eligible Interpreter ~~Eligible for Certification~~

"Eligible Interpreter ~~eligible for certification~~" means an interpreter who is not a certified interpreter but who:

(A) has submitted to the Maryland Administrative Office of

the Courts a completed Maryland State Judiciary Information Form for Spoken and Sign Language Court Interpreters and ~~a statement swearing or affirming compliance~~ an oath that the interpreter will comply with the Maryland Code of Conduct for Court Interpreters;

(B) has successfully completed the Maryland Judiciary's orientation workshop on court interpreting; and

(C) does not have, in a state or federal court of record, a pending criminal charge or conviction on a charge punishable by a fine of more than $500 or imprisonment for more than six months unless the interpreter has been pardoned or the conviction has been overturned or expunged in accordance with law.

(5) ~~Non-certified~~ Non-Registry Interpreters

"~~Non-certified~~ Non-registry interpreter" means an interpreter ~~other than a certified interpreter or an interpreter eligible for certification~~ who has not completed the Maryland Judiciary's orientation program and is not listed on the Court Interpreter Registry.

(6) Proceeding

"Proceeding" means (A) any trial, hearing, argument on appeal, or other matter held in open court in an action, and (B) an event not conducted in open court that is in connection with an action and is in a category of events for which the court is

required by Administrative Order of the Chief Judge of the Court of Appeals to provide an interpreter for an individual who needs an interpreter.

(7) Registry

"Registry" means the Court Interpreter Registry, a listing of certified or eligible interpreters who have qualified for assignments under the Maryland Court Interpreter Program.

~~(7)~~ (8) Victim

"Victim" includes a victim's representative as defined in Code, Criminal Procedure Article, §11-104.

(b) Spoken Language Interpreters

(1) Applicability

This section applies to spoken language interpreters. It does not apply to sign language interpreters.

Cross reference: For the procedure to request a sign language interpreter, see Rule 1-332.

(2) Application for the Appointment of an Interpreter

An individual who needs an interpreter shall file an application for the appointment of an interpreter. To the extent practicable, the application shall be filed not later than 30 days before the proceeding for which the interpreter is requested on a form approved by the State Court Administrator and available from the clerk of the court and on the Judiciary website. If a timely and complete application is filed, the

court shall appoint an interpreter free of charge in court proceedings in accordance with section (c) of this Rule.

(3) When Additional Application Not Required

(A) Party

If a party who is an individual who needs an interpreter includes on the application a request for an interpreter for all proceedings in the action, the court shall provide an interpreter for each proceeding without requiring a separate application prior to each proceeding.

Committee note: A nonparty who may qualify as an individual who needs an interpreter must timely file an application for each proceeding for which an interpreter is requested.

(B) Postponed Proceedings

Subject to subsection (b)(5) of this Rule, if an individual who needs an interpreter filed a timely application and the proceeding for which the interpreter was requested is postponed, the court shall provide an interpreter for the postponed proceeding without requiring the individual to file an additional application.

(4) Where Timely Application Not Filed

If an application is filed, but not timely filed pursuant to subsection (b)(2) of this Rule, or an individual who may qualify as an individual who needs an interpreter appears at a proceeding without having filed an application, the court shall make a diligent effort to secure the appointment of an

interpreter and may either appoint an interpreter pursuant to section (c) of this Rule or determine the need for an interpreter as follows:

(A) Examination on the Record

To determine whether an interpreter is needed, the court, on request or on its own initiative, shall examine a party, attorney, witness, or victim on the record. The court shall appoint an interpreter if the court determines that:

(i) the party does not understand English well enough to participate fully in the proceedings and to assist the party's attorney, or

(ii) the party, attorney, witness, or victim does not speak English well enough to readily understand or communicate the spoken English language.

(B) Scope of Examination

The court's examination of the party, witness, or victim should include questions relating to:

(i) identification;

(ii) active vocabulary in vernacular English; and

(iii) the court proceedings.

Committee note: Examples of matters relating to identification are: name, address, birth date, age, and place of birth. Examples of questions that elicit active vocabulary in vernacular English are: How did you come to court today? What kind of work do you do? Where did you go to school? What was the highest grade you completed? What do you see in the courtroom? Examples of questions relating to the proceedings are: What do

you understand this case to be about? What is the purpose of what we are doing here in court? What can you tell me about the rights of the parties to a court case? What are the responsibilities of a court witness? Questions should be phrased to avoid "yes or no" replies.

(5) Notice When Interpreter Is Not Needed

If an individual who needs an interpreter will not be present at a proceeding for which an interpreter had been requested, including a proceeding that had been postponed, the individual, the individual's attorney, or the party or attorney who subpoenaed or otherwise requested the appearance of the individual shall notify the court as far in advance as practicable that an interpreter is not needed for that proceeding.

(c) Selection and Appointment of Interpreters

(1) Certified Interpreter Required; Exceptions

When the court determines that an interpreter is needed, the court shall make a diligent effort to obtain the services of a certified interpreter. If a certified interpreter is not available, the court shall make a diligent effort to obtain the services of an eligible interpreter ~~eligible for certification~~. The court may appoint a ~~non-certified~~ non-Registry interpreter only if ~~neither a certified interpreter nor an interpreter eligible for certification~~ a Registry interpreter is not available. An individual related by blood or marriage to a party or to the individual who needs an interpreter may not act

as an interpreter.

Committee note: The court should be cautious about appointing a ~~non-certified~~ non-Registry interpreter and should consider carefully the seriousness of the case and the availability of resources before doing so.

(2) Inquiry of Prospective Interpreter

(A) Except as provided in subsection (c)(2)(B) of this Rule, ~~Before~~ before appointing an interpreter under this Rule, the court shall conduct an appropriate inquiry of the prospective interpreter on the record with respect to the interpreter's skills and qualifications and any potential conflicts or other ethical issues. The court may permit the parties to participate in that inquiry.

(B) If the interpreter is a court-employed staff interpreter, the court may dispense with any inquiry regarding the interpreter's skills and qualifications.

Committee note: The court should use the Court Interpreter Inquiry Questions ~~promulgated by the Maryland Judicial Conference Advisory Committee on Interpreters and published, together with suggested responses, in the October 20, 1998 Report of the Advisory Committee. The questions and suggested responses are reprinted~~ included as an Appendix to these Rules.

(3) Oath

(A) Generally

~~Upon appointment by the court and before~~ Before acting as an interpreter in ~~the~~ a proceeding, ~~the~~ an interpreter shall ~~swear or affirm under the penalties of perjury~~ take an oath to interpret accurately, completely, and impartially and to refrain

from knowingly disclosing confidential or privileged information obtained while serving in the proceeding. If the interpreter is to serve in a grand jury proceeding, the interpreter also shall take ~~and subscribe~~ an oath that the interpreter will keep secret all matters and things occurring before the grand jury.

(B) Court-employed Staff Interpreters

Upon employment, a court-employed staff interpreter shall make the prescribed oaths in writing and file them with the clerk of each court in which the interpreter will serve and with the Administrative Office of the Courts. The oath shall be applicable to all proceedings in which the interpreter is called to serve and need not be repeated on each occasion.

Committee note: Court-employed staff interpreters often are in and out of court, substituting for other court-employed staff interpreters, and the need for an oath may be overlooked. The intent of subsection (c)(3)(B) is to assure that each applicable prescribed oath has been made.

(4) Multiple Interpreters in the Same Language

At the request of a party or on its own initiative, the court may appoint more than one interpreter in the same language to ensure the accuracy of the interpretation or to preserve confidentiality if:

(A) the proceedings are expected to exceed three hours;

(B) the proceedings include complex issues and terminology or other such challenges; or

(C) an opposing party requires an interpreter in the same language.

Committee note: To ensure accurate interpretation, an interpreter should be granted reasonable rest periods at frequent intervals.

(d) Removal From Proceeding

A court interpreter may be removed from a proceeding by a judge or judicial appointee within the meaning of Rule 18-200.3 (a)(1), who shall then notify the Maryland Administrative Office of the Courts that the action was taken.

(e) Compensation of Court Interpreters

Compensation for interpreters shall be in accordance with a schedule adopted by the State Court Administrator consistent with Code, Criminal Procedure Article, §§ 1-202 and 3-103 and Code, Courts Article, § 9-114.

Committee note: Code, Courts Article, § 9-114 provides for the appointment of interpreters for certain parties and witnesses, generally. Code, Criminal Procedure Article, §§ 1-202 and 3-103 provide for the appointment of interpreters for certain defendants in criminal proceedings and proceedings under Title 3 of that Article.

Source: This Rule is derived from former Rule 16-819 (2014).

REPORTER'S NOTE

The Court Access and Community Relations Committee of the Maryland Judicial Council reviewed Rule 1-333 to evaluate whether additional changes are necessary to address whether and when a trial court is to administer an oath to court interpreters. This matter was discussed by the Language Access Subcommittee and the full Court Access and Community Relations

Committee. The Committee recommends that the court continue to administer the interpreter's oath at the commencement of court proceedings but provides an exception for staff interpreters who will record an oath with the Maryland Administrative Office of the Courts. The Committee's recommended changes are shown in the revised version of Rule 1-333.

In previous versions of Rule 1-333, two kinds of interpreters were referred to - "certified interpreters" and "interpreters eligible for certification." The Court Access and Community Relations Committee has removed the designation of "interpreter eligible for certification" and replaced it with the term "eligible interpreter." The important designations are "certified interpreters," "eligible interpreters," "non-Registry interpreters," and "Registry interpreters." These are defined in section (a). Eligible interpreters are not certified, but they have submitted to the Administrative Office of the Courts an information form and have completed the Judiciary's orientation workshop on court interpreting. They also do not have certain criminal charges pending against them. The Court Access and Community Relations Committee has added the term "Registry," which is the Court Interpreter Registry consisting of certified or eligible interpreters who have qualified for assignments under the Maryland Court Interpreter Program. These interpreters went through the appropriate training. In place of the term "non-certified interpreter," the Committee has substituted the term "non-Registry interpreter." Non-Registry interpreters are usually obtained from other agencies.

In subsection (c)(2), the Court Access and Community Relations Committee added language providing that the court may dispense with any inquiry regarding an interpreter's skills and qualifications if the interpreter is a court-employed staff interpreter. This will streamline the inquiry process.

MARYLAND RULES OF PROCEDURE

APPENDIX: COURT INTERPRETER INQUIRY QUESTIONS

DELETE the current Appendix: Court Interpreter Inquiry Questions and add the new Appendix: Court Interpreter Inquiry Questions, as follows:

Court Interpreter Inquiry Questions

All spoken and sign language interpreters appointed by the court may be asked the following questions at the beginning of the hearing:

(a) State your full name.

(b) Are you listed on the Maryland Court Interpreter Registry?

(c) Do you have any potential conflicts of interest in this case?

(d) Did you have an opportunity to speak with the person for whom interpreter services are to be provided before the hearing today to make sure you understand each other?

(e) Do you anticipate any difficulties in communicating with that person?

Interpreters who are listed on the Maryland Court Interpreter Registry, regardless of whether they are eligible or certified, have been trained and qualified for service, and they

need not be questioned other than to establish their status on the Registry. The following questions may be used when an interpreter who is not listed on the Registry has been assigned to serve in a court proceeding. This may include interpreters provided through an approved agency. Agency interpreters may not have received training on interpreting in a legal setting. The court also may want to question interpreters who are listed on the Registry if the court is concerned about the interpreter's skills or ability or has a concern about ethical issues.

These questions are intended to elicit from a prospective interpreter, whether sign or spoken, the information that the Court needs to determine whether an individual is a competent court interpreter and whether the individual is the appropriate interpreter for the particular case.

(1) Where are you employed currently?

(The Court needs to determine whether there is any potential conflict due to full- or part-time employment of an interpreter or assignments as an independent contractor.)

(2) How long have you known [sign/spoken] language?

(Research indicates that it takes between 6 to 10 years of language study before an individual has the language skills necessary to learn the interpreting process in his or her second language.)

(3) Where did you learn [sign/spoken language]?

(A mix of formal and informal language training is an asset. For a second language, 6 to 10 years' use should be expected.)

(4) Can you communicate fluently in [sign/spoken language]?

(5) What is your educational background?

(Formal education may vary dramatically among interpreters, depending on their cultural heritage, but the Court should realize the complexity of interpreting. For this reason, the Court is urged not to accept an interpreter on the basis of a voir dire examination unless the interpreter has at least a high school education or its cultural equivalent.)

(6) What formal interpreter training have you undertaken?

(7) Are you certified? By whom? What is your certification called? (For ASL interpreters, ask whether they are certified by the Registry of Interpreters for the Deaf (RID) or by the National Association of the Deaf (NAD)).

(8) Have you spent time in a country where the spoken language is used?

(9) Are you active in any professional organization?

(10) How many times have you interpreted in court and in what kinds of situations?

(11) What process would you use to inform the Court of an error in your interpretation?

(12) Do you have, in a state or federal court of record, a pending criminal charge or criminal conviction on a charge punishable by a fine of more than $500 or imprisonment for more than 6 months for which you have not been pardoned or for which the charge or conviction has not been expunged?

REPORTER'S NOTE

Currently reprinted as an Appendix in the Rules of Procedure are Interpreter Voir Dire questions, together with explanations of responses to those questions, that were in the October 20, 1998 Report of the Maryland Judicial Conference Advisory Committee on Interpreters and were adapted from the 1981 Legal Interpreting Workshop of the William Mitchell School of Law (St. Paul, Minnesota). After the authors revised them in 1986, the Maryland Judicial Conference's Task Force on Interpreters revised them further in 1994. In May 1997, the Subcommittee on Court Interpreter Fees, Qualification Standards, and Usage, which was a part of the Advisory Committee on Interpreters, revised the Interpreter Voir Dire Questions.

In March 2018, the Court Access and Community Relations Committee of the Judicial Council submitted a substantially streamlined revision of the Court Interpreter Inquiry Questions, which the Rules Committee has approved. If the revised Questions are adopted, they will be placed in an Appendix to the Rules.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 200 – CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 by adding a definition of "warrant" and by including in the definition subsections that differentiate "arrest warrants," "bench warrants," and "search warrants" from one another, and by adding a Committee note and cross reference following section (dd), as follows:

Rule 1-202. DEFINITIONS

. . .

(dd) Warrant; Arrest Warrant; Bench Warrant; Search Warrant

"Warrant" means an arrest warrant, a bench warrant, or a search warrant.

(1) "Arrest warrant" means a written order that (A) in the District Court is signed by a judge or District Court commissioner; (B) in a circuit court is signed by (i) a judge or (ii) the clerk of the court upon an order by a judge that is in writing or otherwise of record, is docketed, and expressly directs the clerk to issue the warrant; and (C) commands a peace officer to arrest the person named in the warrant.

(2) "Bench warrant" means an arrest warrant that (A) is signed by (i) a judge or (ii) the clerk of the court upon an

order by a judge that is in writing or otherwise of record, is docketed, and directs the clerk to issue the warrant, and (B) commands a peace officer to arrest the person named in the warrant.

Committee note: A bench warrant may be issued to enforce an order to appear, for a violation of probation, or on a petition for contempt.

(3) "Search warrant" means a written order signed by a judge pursuant to Code, Criminal Procedure Article, § 1-203 that commands a peace officer to search for and seize property described in the warrant.

Committee note: A clerk of the court may sign an arrest warrant or bench warrant upon an order to "issue" the warrant, provided the order conforms to this section.

Cross reference: See Wilson v. State, 345 Md. 437, 450 (1997); Nnoli v. Nnoli, 389 Md. 315, 323, n.1 (2005).

~~(dd)~~ (ee) Writ

"Writ" means a written order issued by a court and addressed to a sheriff or other person whose action the court desires to command to require performance of a specified act or to give authority to have the act done.

Source: This Rule is derived as follows:

. . .

Section (dd) is derived in part from former Rule 702 h and M.D.R. 702 m and is in part new.
Section (ee) is derived from former Rule 5 ff.

REPORTER'S NOTE

Amendments to Rule 1-202 are proposed in light of recommended changes to Rule 4-212.

Confusion arose over the practice of judges ordering certain warrants to "issue" and the question of whether and when a clerk may sign a warrant so issued. The existing definition of "warrant" in Rule 4-102 appears to limit to a judicial officer the power to sign a warrant. The definition of "judicial officer" in the same Rule includes "a judge or District Court commissioner."

In practice, several courts report an efficiency consideration in permitting a judge to order the issuance of an arrest or bench warrant but allowing a clerk to sign the order. Recommended amendments include provisions for such orders to be made in writing or otherwise of record, and docketed, allowing interested parties to identify the authority under which a warrant is issued.

Differentiation among "arrest warrant," "bench warrant," and "search warrant" is made because of the different authorities under which those warrants may issue and the different purposes they serve.

A Committee note follows section (dd) to clarify that a judge ordering an arrest or bench warrant to issue need not also order a clerk to sign the warrant. The preference and practice of a judge or a court will frequently be known to a clerk; a judge wishing to personally sign a warrant may have the warrant returned to the judge when it has been prepared by the clerk.

In addition, a cross reference is added following the Committee note, which refers to case law on the distinction among warrant types and terminology.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 100 – GENERAL

AMEND Rule 4-102 by deleting section (n), as follows:

Rule 4-102. DEFINITIONS

. . .

~~(n) Warrant~~

~~"Warrant" means a written order by a judicial officer commanding a peace officer to arrest the person named in it or to search for and seize property as described in it.~~

Source: This Rule is derived as follows:

. . .

~~Section (n) is derived from former Rule 702 h and M.D.R.702 m.~~

REPORTER'S NOTE

Section (n) of Rule 4-102 is proposed to be deleted, with the definition of "warrant" contained in it transferred, with amendments, to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-212 by removing the phrase "the court" and replacing it with the phrase "a judge," and by requiring that a judge's order to issue an arrest warrant be made in writing or on the record, as follows:

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

. . .

(d) Warrant - Issuance; Inspection

. . .

(2) In the Circuit Court

Upon the request of the State's Attorney, ~~the court~~ a judge may order, in writing or on the record, issuance of a warrant for the arrest of a defendant, other than a corporation, if an information has been filed against the defendant and the circuit court or the District Court has made a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document or if an indictment has been filed against the defendant; and (A) the defendant has not been processed and released pursuant to Rule 4-216, 4-216.1,

or 4-216.2, or (B) the court finds there is a substantial likelihood that the defendant will not respond to a summons. A copy of the charging document shall be attached to the warrant. Unless the court finds that there is a substantial likelihood that the defendant will not respond to a criminal summons, the court shall not order issuance of a warrant for a defendant who has been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2 if the circuit court charging document is based on the same alleged acts or transactions. When the defendant has been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2, the issuance of a warrant for violation of conditions of release is governed by Rule 4-217.

. . .

REPORTER'S NOTE

After being contacted by some concerned clerks, the State Court Administrator requested that the Rules Committee review language in Rule 4-212 relating to the issuance of arrest warrants. Specifically, the Administrator requested clarification of the phrase "the court" and the propriety of clerks signing warrants once a judge has ordered issuance of the warrants.

The Rules Committee recommends that the phrase "a judge" be substituted for the phrase "the court" and that the language "in writing or on the record" be added to specify how an order to issue a warrant may be executed.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-322 to permit a self-represented party confined in a certain facility to file certain pleadings and papers by a specified method under certain circumstances, to add provisions pertaining to proof of the date of filing by the specified method, to add a form Certificate of Filing by the specified method, and to add a Committee note, as follows:

Rule 1-322. FILING OF PLEADINGS, PAPERS, AND OTHER ITEMS

(a) Generally

The filing of pleadings, papers, and other items with the court shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the item the date the judge accepted it for filing and forthwith transmit the item to the office of the clerk. On the same day that an item is received in a clerk's office, the clerk shall note on it the date it was received and enter on the docket that date and any date noted on the item by a judge. The item shall be deemed filed on the ~~earlier~~ earliest of (1) the filing date noted by a judge on the

item ~~or~~ (2) the date noted by the clerk on the item, or (3) the date established under section (d) of this Rule. No item may be filed directly by electronic transmission, except (1) pursuant to an electronic filing system approved under Rule 16-203, (2) as permitted by Rule 14-209.1, (3) as provided in section (b) of this Rule, or (4) pursuant to Title 20 of these Rules.

(b) Electronic Transmission of Mandates of the U.S. Supreme Court

A Maryland court shall accept a mandate of the Supreme Court of the United States transmitted by electronic means unless the court does not have the technology to receive it in the form transmitted, in which event the clerk shall promptly so inform the Clerk of the Supreme Court and request an alternative method of transmission. The clerk of the Maryland court may request reasonable verification of the authenticity of a mandate transmitted by electronic means.

(c) Photocopies; Facsimile Copies

A photocopy or facsimile copy of a pleading or paper, once filed with the court, shall be treated as an original for all court purposes. The attorney or party filing the copy shall retain the original from which the filed copy was made for production to the court upon the request of the court or any party.

(d) Filings by Self-Represented Individuals Confined in Certain Facilities

(1) Application of section

This section applies only to self-represented individuals who (A) are confined in a correctional or other detention facility pursuant to a court order in a criminal or juvenile delinquency case, (B) have no direct access to the U.S. Postal Service or the ability to file an electronic submission under the Rules in Title 20, and (C) seek relief from a criminal conviction or their confinement by filing (i) a motion for new trial, an appeal, an application for review of sentence by a panel, a motion for modification of sentence, a petition for certiorari in the Court of Appeals, an application for leave to appeal, a motion or petition for a writ of habeas corpus or coram nobis, a motion or petition for statutory post-conviction relief, or a petition for judicial review of the denial of an inmate grievance complaint, or (ii) a paper in connection with any of those matters.

(2) Generally

A pleading or paper filed under this section shall be deemed to have been filed on the date that the pleading or paper, in mailable form and with proper postage affixed, was deposited by the individual into a receptacle designated by the facility for outgoing mail or personally delivered to an

employee of the facility authorized by the facility to collect such mail. The clerk shall record the date a filing was received by the clerk, docket the filing, and make a note for the court of any discernable filing date as defined in subsection (d)(3).

(3) Proof of Date of Filing

The date of filing may be proved by (A) a date stamp affixed by the facility to the pleading, paper, or envelope containing the pleading or paper, or (B) a Certificate of Filing attached to or included with the pleading or paper, substantially in the form provided in subsection (d)(4) of this Rule that, in the event of a dispute, the court finds to be credible.

(4) Certificate of Filing

A Certificate of Filing shall be substantially in the following form:

CERTIFICATE OF FILING

I, _____ (name), certify that (1) I am involuntarily confined in _____ (name of facility); (2) I have no direct access to the U.S. Postal Service or to a permitted means of electronically filing the attached pleading or paper; (3) on _____ (date) at approximately _____ (time) I personally [ ] deposited the attached

pleading or paper for mailing in a receptacle designated by the facility for outgoing mail or [ ] delivered it to an employee of the facility authorized by the facility to collect outgoing mail; and (4) the item was in mailable form and had the correct postage on it.

I solemnly affirm this day of , 20 under the penalty of perjury and upon personal knowledge that the foregoing statements are true.

_____
(Signature)

Committee note: This section recognizes that individuals who are confined in a correctional or detention facility usually have no direct access to the U.S. Postal Service and may be dependent on the facility to deliver outgoing mail to the Postal Service on behalf of the confined individual. The best the individual in that situation can do is to deposit the item in a mail collection receptacle provided by the facility or, if that be the practice of the facility, deliver it to an employee of the facility authorized by the facility to collect outgoing mail. The section also recognizes that the facility may not actually collect the mail on the day it is deposited and may not affix a date-stamp showing when the mail was collected. Proving the date that the item was actually deposited in the facility's mailbox may therefore be difficult, other than by an affidavit from the filer, which may not always be credible. In the event of any question or dispute, the court can consider, in addition to the affidavit and for such relevance it may have, the U.S.P.S post mark on the envelope, any internal date stamp applied by the facility, any written policy of the facility regarding outgoing mail from confined individuals that had been communicated to those individuals, and other relevant and reliable evidence.

Cross reference: See Rule 1-301 (d), requiring that court papers be legible and of permanent quality.

Source: This Rule is derived in part from the 1980 version of Fed. R. Civ. P. 5 (e) and Rule 102 1 d of the Rules of the United States District Court for the District of Maryland and is in part new.

REPORTER'S NOTE

Rule 1-322 is proposed to be amended by adding a new section (d) pertaining to the date of filing of pleadings or papers by self-represented individuals who are confined in a correctional or other detention facility pursuant to a court order and who do not have direct access to the U.S. Postal service or a permitted method of electronically filing pleadings or papers in court. These amendments are proposed, in part, in response to Hackney v. State, No. 53, Sept. Term, 2017, 2018 WL 2126467 (Md. May 9, 2018), in which the Court of Appeals adopted the prison mailbox rule.

Subsection (d)(1) limits the application of section (d) to self-represented individuals confined in a facility who do not have direct access to U.S. Postal Service or a permitted method of electronically filings pleadings or papers. Subsection (d)(1) also limits the application of section (d) to certain specified filings.

Subsection (d)(2) provides that the date of filing by self-represented individuals who are covered under subsections (d)(1) shall be deemed to be the date the individual deposited the pleading or paper into a designated receptacle or delivered the pleading or paper to an authorized employee of the facility, with proper postage affixed and in a mailable form.

Subsection (d)(3) provides that the date of filing may be proved by a date stamp affixed by the facility to the pleading, paper, or envelope containing the pleading or paper, or a Certificate of Filing that the court finds to be credible. The Certificate of Filing must be attached to the pleading or paper.

Subsection (d)(4) provides that a Certificate of Filing must be substantially in the form provided in that subsection.

The Committee note following section (d) instructs that in the event of a dispute about the date of filing, a court may consider, in addition to the affidavit, the postmark, any internal date stamp applied by the facility, any written policy of the facility regarding outgoing mail from confined individuals, and other relevant evidence.

The Federal Rules and statutes and rules of several states address how to establish a filing date of a pleading or paper by a party who is confined in an institution, usually a jail or a prison, and does not have direct access to the U.S. mail. *See, e.g.,* Barbara J. Van Arsdale, Application of "Prisoner Mailbox Rule" by State Courts under State Statutory and Common Law, 29 A.L.R.6th 237 (2007); 2A Federal Procedure, L.Ed., § 3:609, Appeals by inmates confined in institutions (June 2018 Update).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-346 by adding a new section (c) pertaining to the delivery of probation orders, judgments of restitution, and victim notifications to the Division of Parole and Probation, as follows:

Rule 4-346. PROBATION

(a) Manner of Imposing

When placing a defendant on probation, the court shall advise the defendant of the conditions and duration of probation and the possible consequences of a violation of any of the conditions. The court also shall file and furnish to the defendant a written order stating the conditions and duration of 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.

(c) Delivery or Transmittal to the Division of Parole and Probation

The clerk shall deliver or transmit a copy of any probation order, the details or a copy of any order or judgment of restitution, and the details or a copy of any request for victim notification to the Division of Parole and Probation.

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.

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

REPORTER'S NOTE

The Rules Committee has been advised that at times, victim notification forms and orders of restitution are not reaching the individuals who need the information in order to provide notice to victims or to collect restitution, including the Division of Parole and Probation.

To address these issues, amendments to three Rules are proposed, including Rule 4-346. The proposed amendment to Rule 4-346 requires the clerk to transmit or deliver to the Division of Parole and Probation a copy of any probation order, any order or judgment of restitution, and any request for victim notification.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-351 by adding the language "or transmit" to section (a), by correcting a cross reference after subsection (a)(6), and by adding a new subsection (a)(7) pertaining to delivery to the custodial officer of any request for victim notification, as follows:

Rule 4-351. COMMITMENT RECORD

(a) Content

When a person is convicted of an offense and sentenced to imprisonment, the clerk shall deliver or transmit to the officer into whose custody the defendant has been placed a commitment record containing:

(1) The name and date of birth of the defendant;

(2) The docket reference of the action and the name of the sentencing judge;

(3) The offense and each count for which the defendant was sentenced;

(4) The sentence for each count, the date the sentence was imposed, the date from which the sentence runs, and any credit allowed to the defendant by law;

(5) A statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the preceding term or to any other outstanding or unserved sentence; ~~and~~

(6) the details or a copy of any order or judgment of restitution~~.~~; and

(7) the details or a copy of any request for victim notification.

Cross reference: See Code, Criminal Procedure Article, §6-216 (c) concerning Maryland Sentencing Guidelines Worksheets prepared by a court. See Code, Criminal Procedure Article, §11-104 ~~(f)~~ (g) for notification procedures for victims. See Code, Criminal Procedure Article, §11-607 for procedures concerning compliance with restitution judgments.

(b) Effect of Error

An omission or error in the commitment record or other failure to comply with this Rule does not invalidate imprisonment after conviction.

Source: This Rule is derived from former Rule 777 and M.D.R. 777.

REPORTER'S NOTE

The Rules Committee has been advised that at times, victim notification forms and orders of restitution are not reaching the individuals who need the information in order to provide notice to victims or to collect restitution, including correctional officers and detention centers.

To address these issues, amendments to three Rules are proposed, including Rule 4-351. The proposed amendment to Rule 4-351 requires the clerk to transmit or deliver to the officer

into whose custody a defendant has been placed the details or a copy of any request for victim notification.

In addition, the language "or transmit" is proposed to be added to section (a), and a citation in the cross reference following subsection (a)(6) has been updated.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

AMEND Rule 11-115 by adding a new section (e) requiring the delivery or transmittal of the details or a copy of any order or judgment of restitution and any request for victim notification to the custodial agency, as follows:

Rule 11-115. DISPOSITION HEARING

. . .

(e) Delivery or Transmittal of Documents to Custodial Agency

Along with any commitment or probation order, the clerk shall deliver or transmit the details or a copy of any order or judgment of restitution and any request for victim notification to the agency having custody of or supervision over the child.

Source: This Rule is former Rule 915.

REPORTER'S NOTE

The Rules Committee has been advised that at times, victim notification forms and orders of restitution are not reaching the individuals who need the information in order to provide notice to victims or to collect restitution, including the agencies that have custody of or supervision over a child.

To address these issues, amendments to three Rules are proposed, including Rule 11-115. The proposed amendment to Rule 11-115 requires the clerk to deliver or transmit to the agency having custody of or supervision over a child the details or a

copy of any order or judgment of restitution and any request for victim notification.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-347 by revising section (c) to clarify the circumstances under which a defendant arrested on a violation of probation warrant is presented to a judicial officer of the District Court, a judge of the Circuit Court, or the judge who issued the warrant and to provide a time limit for conducting pretrial release hearings; and by adding a Committee Note regarding technical violations, as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

(a) How initiated

Proceedings for revocation of probation shall be initiated by an order directing the issuance of a summons or warrant. The order may be issued by the court on its own initiative or on a verified petition of the State's Attorney or the Division of Parole and Probation. The petition, or order if issued on the court's initiative, shall state each condition of probation that the defendant is charged with having violated, and the nature of the violation.

. . .

(c) Release pending revocation hearing

(1) Unless the judge who issues the warrant (A) sets conditions of release, ~~or~~ (B) expressly denies ~~bail~~ pretrial release, or (C) directs that the defendant be presented only to that judge, a defendant arrested upon a warrant shall be taken before a judicial officer of the District Court or before a judge of the circuit court without unnecessary delay ~~or, if the warrant so specifies, before a judge of the District Court or circuit court~~ for the purpose of determining the defendant's eligibility for release.

(2) If the judge who issues the warrant expressly denies pretrial release, sets conditions of release that the defendant is unable to meet, or directs that the defendant be presented before that judge, the defendant shall be taken before that judge, or, in the absence of that judge, before another judge of the court designated by the administrative judge, within five business days following the defendant's arrest for consideration or reconsideration of the defendant's eligibility for release.

Committee Note: Particularly where the only alleged violations are technical ones under Code, Criminal Procedure Article, §§ 6-223 and 6-224, care must be taken that a defendant is not detained unnecessarily while awaiting a revocation hearing. Although the 15, 30, and 45-day penalties provided for in those sections are not binding on the court, they are presumptively appropriate and should not be circumvented by having the defendant remain in pre-hearing detention for a longer period.

REPORTER'S NOTE

The proposed amendments to Rule 4-347 address concerns brought to the Committee's attention regarding the length of pre-hearing detention faced by some defendants arrested on a violation of probation warrant. The problem seems particularly acute when (1) the only alleged violation is a "technical violation" under the Justice Reinvestment Act, or (2) the judge who issued or ordered the issuance of the warrant denies pre-hearing release in the warrant or directs that the defendant, upon arrest, be presented only to that judge, and does not schedule a prompt VOP hearing.

Section (c) is amended to provide that, if the issuing judge, in the warrant, denies pretrial release, sets conditions of pre-hearing release that the defendant is unable to meet, or directs that the defendant be presented only to that judge, the defendant must be presented to that judge, or, in the absence of that judge, another judge designated by the administrative judge, within five business days following the defendant's arrest for consideration or reconsideration of eligibility for pre-hearing release.

A Committee Note is added explaining the reason for expedition when the only alleged violations are "technical" ones under JRA. The reason for requiring a release hearing before the judge who already denied pretrial release or set conditions that the defendant is unable to meet, after considering only the petition, is to give the defendant an opportunity to provide information or argument that may convince the judge to reconsider that decision. That opportunity is routinely provided to arrested defendants presented to a judicial officer as a matter of due process.

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 7-103 (e) by requiring the clerk to enter on the docket a statement of the fees paid and forward the filing fee to the circuit court only in a non-MDEC county, as follows:

Rule 7-103. METHOD OF SECURING APPELLATE REVIEW

(a) By Notice of Appeal

The only method of securing appellate review in the circuit court is by the filing of a notice of appeal with the clerk of the District Court within the time prescribed in Rule 7-104.

(b) District Court Costs

Unless the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1, before the clerk transmits the record pursuant to section (e) of this Rule, the appellant shall pay to the clerk of the District Court the cost of preparation of a transcript, if a transcript is necessary to the appeal.
Cross reference: Rule 7-113 (b).

(c) Filing Fee

Within the time for transmitting the record under Rule 7-108, the appellant shall deposit the fee prescribed by Code, Courts Article, §7-202 with the clerk of the District Court unless:

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1; or

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or the appellant is represented by the Public Defender's Office.

(d) Appeals Where Public Defender Representation Denied - Payment by State

The court shall order the State to pay the court costs related to an appeal and the costs of preparing any transcript of testimony necessary in connection with the appeal in any case in which (1) the Public Defender's Office is authorized by these Rules or other law to represent a party, (2) the Public Defender has declined representation of the party, and (3) the party is unable by reason of poverty to pay those costs.

(e) Transmittal of Record

After all required fees have been paid, the clerk shall transmit the record as provided in Rules 7-108 and 7-109. ~~The filing fee shall be forwarded~~ The clerk shall enter on the docket a statement of the fees paid, and, in a non-MDEC county,

forward the filing fee with the record to the clerk of the circuit court.

Committee note: When a notice of appeal is filed, the clerk should check the docket to see if it contains the entry of a judgment in compliance with Rules 3-601 and 3-602, and if not, advise the parties and the court. This note is not intended to authorize the clerk to reject a notice of appeal or to place a mandatory duty on the clerk, or to relieve counsel of their responsibility to assure that there is an appealable order or judgment properly entered on the docket before noting an appeal.

Source: This Rule is derived from former Rule 1311, except that section (d) is derived from the 2014 version of former Rule 1-325 (b).

REPORTER'S NOTE

In an MDEC county, filing fees are processed electronically; no paper checks are forwarded with the record.

Proposed amendments to Rules 7-103 and 8-201 require that the clerk of the lower court enter on the docket a statement of the fees paid, and forward the filing fee to the appellate court only if the lower court is in a non-MDEC county, or if it is an orphans' court.

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 8-201 (c) by requiring the clerk to enter on the docket a statement of the fees paid and forward the filing fee to the clerk of the Court of Special Appeals only if the lower court is a circuit court in a non-MDEC county or an orphans' court, as follows:

Rule 8-201. METHOD OF SECURING REVIEW – COURT OF SPECIAL APPEALS

(a) By Notice of Appeal

Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202. The notice shall be filed with the clerk of the lower court or, in an appeal from an order or judgment of an Orphans' Court, with the register of wills. The clerk or register shall enter the notice on the docket.

(b) Filing Fees

At the time of filing a notice of appeal in a civil case, or within the time for transmitting the record under Rule 8-412

in a criminal case, an appellant shall deposit the fee prescribed pursuant to Code, Courts Article, §7-102 with the clerk of the lower court unless:

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1; or

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or the appellant is represented by the Public Defender's Office

(c) Transmittal of Record

After all required fees have been deposited, the clerk shall transmit the record as provided in Rules 8-412 and 8-413. ~~The fee shall be forwarded~~ The clerk shall enter on the docket a statement of the fees paid, and, if the lower court is a circuit court in a non-MDEC county or an orphans' court, forward the filing fee with the record to the Clerk of the Court of Special Appeals.

Committee note: When a notice of appeal is filed, the clerk should check the docket to see if it contains the entry of a judgment in compliance with Rules 2-601 and 2-602, and if not, advise the parties and the court. This note is not intended to authorize the clerk to reject a notice of appeal, to place a mandatory duty on the clerk, or to relieve counsel of their responsibility to assure that there is an appealable order or judgment properly entered on the docket before noting an appeal.

Source: This Rule is derived from former Rule 1011 with the exception of the first sentence of (a) which is derived from former Rule 1010.

REPORTER'S NOTE

See the Reporter's note to Rule 7-103.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

AMEND Rule 19-217 by revising the definition of "supervising attorney" in subsection (a)(4), as follows:

Rule 19-217. LEGAL ASSISTANCE BY LAW STUDENTS

(a) Definitions

As used in this Rule, the following terms have the following meanings:

(1) Law School

"Law school" means a law school that meets the requirements of Rule 19-201 (a)(2).

(2) Clinical Program

"Clinical program" means a law school program for credit in which a student obtains experience in the operation of the legal system by engaging in the practice of law that (A) is under the direction of a faculty member of the school and (B) has been approved by the Section Council of the Section of Legal Education and Admission to the Bar of the Maryland State Bar Association, Inc.

(3) Externship

"Externship" means a field placement for credit in a government or not-for-profit organization in which a law student obtains experience in the operation of the legal system by engaging in the practice of law, that (A) is under the direction of a faculty member of a law school, (B) is in compliance with the applicable American Bar Association standard for study outside the classroom, (C) has been approved by the Section Council of the Section of Legal Education and Admission to the Bar of Maryland State Bar Association, Inc., and (D) is not part of a clinical program of a law school.

(4) Supervising Attorney

"Supervising attorney" means (A) an attorney who is a member in good standing of the Bar of this State ~~and whose service as a supervising attorney for the clinical program or externship is approved by the dean of the law school in which the law student is enrolled or by the dean's designee.~~, or (B) an attorney who has been authorized to practice pursuant to Rule 19-215 and who certifies in writing to the Clerk of the Court of Appeals that the attorney has read and is familiar with the Maryland Attorneys' Rules of Professional Conduct, as well as the Maryland law and Rules relating to any particular area of law in which the individual intends to practice. Service as a supervising attorney for a clinical program or externship must be approved by the dean of the law school in which the law

student is enrolled or by the dean's designee.

Cross reference: See Rule 19-305.1 (5.1) for the responsibilities of a supervising attorney.

(b) Eligibility

A law student enrolled in a clinical program or externship is eligible to engage in the practice of law as provided in this Rule if the student:

(1) is enrolled in a law school;

(2) has read and is familiar with the Maryland Attorneys' Rules of Professional Conduct and the relevant Maryland Rules of Procedure; and

(3) has been certified in accordance with section (c) of this Rule.

(c) Certification

(1) Contents and Filing

The dean of the law school shall file the certification of a student with the Clerk of the Court of Appeals. The certification shall state that the student is in good academic standing and has successfully completed legal studies in the law school amounting to the equivalent of at least one-third of the total credit hours required to complete the law school program. It also shall state its effective date and expiration date, which shall be no later than one year after the effective date.

(2) Withdrawal or Suspension

The dean may withdraw the certification at any time by mailing a notice to that effect to the Clerk of the Court of Appeals. The certification shall be suspended automatically upon the issuance of an unfavorable report of the Character Committee made in connection with the student's application for admission to the Bar. Upon any reversal of the unfavorable report, the certification shall be reinstated.

(d) Practice

In connection with a clinical program or externship, a law student for whom a certification is in effect may appear in any trial court or the Court of Special Appeals, or before any administrative agency, and may otherwise engage in the practice of law in Maryland, provided that the supervising attorney (1) is satisfied that the student is competent to perform the duties assigned, (2) assumes responsibility for the quality of the student's work, (3) directs and assists the student to the extent necessary, in the supervising attorney's professional judgment, to ensure that the student's participation is effective on behalf of the client the student represents, and (4) accompanies the student when the student appears in court or before an administrative agency. The law student shall neither ask for nor receive personal compensation of any kind for service rendered under this Rule, but may receive academic credit pursuant to the clinical program or externship.

Source: This Rule is derived from former Rule 16 of the Rules Governing Admission to the Bar of Maryland (2016).

REPORTER'S NOTE

Rule 19-217 is proposed to be amended after consideration of a request from the University of Baltimore School of Law to modify the definition of "supervising attorney." UB requests the modification so that its clinical fellows who are members of another state's bar may supervise law students practicing under this Rule in one of the school's clinics.

Clinical programs at both UB and the University of Maryland Carey School of Law function as small legal service providers. At UB, the clinics serve over 200 low-income individuals and organizations each year. Both law schools employ a number of clinical fellows -- licensed attorneys who supervise student practice in the clinic.

Rule 19-217 provides that an attorney supervising clinical students must be a member of the Maryland bar in good standing. A clinical fellow who is a member of another state's bar must become a member of the Maryland bar before engaging in the supervision of students. This requirement entails a significant investment of time and financial resources; however, fellows' positions are contractually limited to no more than three years.

By contrast, out-of-state attorneys providing legal services who meet the requirements of Rule 19-215 are not required to become a member of the Maryland bar, though their authorization to practice may be limited to two years if they receive compensation for their services. UB states that its fellows engage in the same legal services work as these attorneys and its fellows receive similar supervision by members of the Maryland bar. In addition, many cases the clinics receive are referred by the same legal services organizations contemplated in Rule 19-215.

The Rules Committee recommends modifying the definition of "supervising attorney" in subsection (a)(4) to include attorneys authorized to practice law under Rule 19-215, provided that those attorneys also certify to the Clerk of the Court of Appeals their familiarity with the Rules relevant to their practice. Attorneys must also be approved by the dean of their law school, or the dean's designee.

A cross reference to Rule 19-305.1, on the responsibilities of a supervising attorney, is proposed to be added following the amended definition.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-305.5 by adding a new section (e) pertaining to foreign attorneys and a new Comment [22], as follows:

Rule 19-305.5. UNAUTHORIZED PRACTICE OF LAW; MULTI-JURISDICTIONAL PRACTICE OF LAW (5.5)

(a) An attorney shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) An attorney who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the attorney is admitted to practice law in this jurisdiction.

(c) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with an attorney who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the attorney, or a person the attorney is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within subsections (c)(2) or (c)(3) of this Rule and arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice.

(d) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the attorney's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the attorney is authorized to provide by federal law or other law of this jurisdiction.

(e) (1) In this section, "foreign attorney" means an attorney who (A) is not admitted to practice law in any United States jurisdiction, (B) is a member in good standing of a recognized legal profession in a country other than the United States and, as such, is authorized to practice law in that country, (C) is subject to effective regulation and discipline by a duly constituted professional body or a public authority of that country, and (D) has not been disbarred or suspended from the practice of law in any jurisdiction of the United States.

(2) A foreign attorney may not establish an office or other systematic and continuous presence in this State for the practice of law, or hold out to the public or otherwise represent that the attorney is admitted to practice law in this State. Any violation of this provision or any material misrepresentation regarding the requirements in subsection (e)(1) of this Rule by the foreign attorney will subject the foreign attorney to liability for the unauthorized practice of law.

(3) A foreign attorney, with respect to any matter, may (A) act as a consultant to a Maryland attorney on the law and practice in a country in which the foreign attorney is admitted to practice, including principles of international law recognized and enforced in that country and (B) in association with a Maryland attorney who actively participates in the matter, participate in discussions with a client of the Maryland attorney or with other persons involved with the matter, provided that the Maryland attorney shall remain fully responsible to the client for all advice and other conduct by the foreign attorney with respect to the matter.

...

[21] Sections (c) and (d) of this Rule do not authorize communications advertising legal services to prospective clients in this jurisdiction by attorneys who are admitted to practice in other jurisdictions. Rules 19-307.1 (7.1) to 19-307.5 (7.5) govern whether and how attorneys may communicate the availability of their services to prospective clients in this jurisdiction.

[22] Section (e) is not intended to permit a foreign attorney to be admitted *pro hac vice* in any proceeding, but it does not preclude the foreign attorney (1) from being present with a Maryland attorney at a judicial, administrative, or ADR proceeding to provide consultative services to the Maryland attorney during the proceeding, or (2) subject to Rule 5-702, from testifying as an expert witness.

. . .

Model Rules Comparison: Rule 19-305.5 (5.5) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, except that section (e) is new.

REPORTER'S NOTE

In April 2015, Chief Judge Barbera of the Court of Appeals forwarded to the Rules Committee a Resolution of the Conference of Chief Justices endorsing certain proposals by the American Bar Association that would allow attorneys admitted to practice in foreign countries, but not in any U.S. State (i.e., foreign attorneys), to engage in the limited practice of law in U.S. States. She asked that the Committee study those proposals, some of which have since been amended by the ABA.

At present, Maryland does not permit a foreign attorney, who is not admitted in Maryland after successfully completing the Maryland Bar Examination or admitted in another State or U.S. jurisdiction, to practice law here.

Consideration of practice by foreign attorneys was deferred from action until a report by the International Law Committee (ILC) of the MSBA could be finalized. ILC produced its report in November 2016, which made two recommendations: that (1) Maryland should allow foreign attorneys to "gain 'foreign legal consultant' status," and (2) the specifics for accomplishing that "should be done through the Rules Committee (or other appropriate entity) with reference to the ABA Model Rule." The committee noted that foreign legal consultant rules implemented in other States require that the foreign attorney be a member in good standing of the legal profession in his/her home country and that they limit any U.S. practice to the subject matter and experience developed in his/her home country.

Members of the Attorneys and Judges Subcommittee who considered the matter expressed concern over how and by whom such an entrepreneurial operation could be regulated and the cost of establishing and maintaining a regulatory structure. A question was raised regarding how many individuals would be likely to apply and be accepted and whether the service they might perform is otherwise available. The Subcommittee took no final action but indicated a need to do some further investigation.

Since that time, it has been learned, principally from ILC, that, except in a handful of States – New York, California, Texas, District of Columbia, and Florida – very few applications to become foreign legal consultants have been made and accepted, in many States none at all.

The matter was considered again, and the Rules Committee now proposes a new section (e) to Rule 19-305.5 that defines

"foreign attorney"; forbids systematic and continuous presence in this State for the practice of law, or any representation to the public or otherwise that the attorney is admitted to practice law; and permits a foreign attorney to act as a consultant to a Maryland attorney on the law and practice in a country in which the foreign attorney is admitted to practice, as well as participate in discussions, in association with a Maryland attorney who actively participates in the matter, with a client of the Maryland attorney or with other persons involved with the matter, with limitations. These proposals reflect the review of reports and recommendations received from various sources, as well as the compelling interests embedded in the issue of practice by foreign attorneys in Maryland courts.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-101 by deleting definitions of "digital signature," "facsimile signature," and "typographical signature"; by revising the definition of "signature"; and by adding a cross reference following the definition of "signature," as follows:

Rule 20-101. DEFINITIONS

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

(a) Appellate Court

"Appellate court" means the Court of Appeals or the Court of Special Appeals, whichever the context requires.

(b) Business Day

"Business day" means a day that the clerk's office is open for the transaction of business. For the purpose of the Rules in this Title, a "business day" begins at 12:00.00 a.m. and ends at 11:59.59 p.m.

(c) Clerk

"Clerk" means the Clerk of the Court of Appeals, the Court of Special Appeals, or a circuit court, an administrative clerk of the District Court, and authorized assistant clerks in those offices.

(d) Concluded

An action is "concluded" when

(1) final judgment has been entered in the action;

(2) there are no motions, other requests for relief, or charges pending; and

(3) the time for appeal has expired or, if an appeal or an application for leave to appeal was filed, all appellate proceedings have ended.

Committee note: This definition applies only to the Rules in Title 20 and is not to be confused with the term "closed" that is used for other administrative purposes.

~~(e) Digital Signature~~

~~"Digital signature" means a secure electronic signature inserted using a process approved by the State Court Administrator that uniquely identifies the signer and ensures authenticity of the signature and that the signed document has not been altered or repudiated.~~

~~(f) Facsimile Signature~~

~~"Facsimile signature" means a scanned image or other visual representation of the signer's handwritten signature,~~

~~other than a digital signature, together with the signer's typed name.~~

~~(g)~~ (e) Filer

"Filer" means a person who is accessing the MDEC system for the purpose of filing a submission.

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

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

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

~~(i)~~ (g) Hyperlink

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

~~(j)~~ (h) Judge

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

~~(k)~~ (i) Judicial Appointee

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

~~(l)~~ (j) Judicial Personnel

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

~~(m)~~ (k) MDEC or MDEC System

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

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

~~(n)~~ (l) MDEC Action

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

~~(o)~~ (m) MDEC County

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

~~(p)~~ (n) MDEC Start Date

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

~~(q)~~ (o) MDEC System Outage

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

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

~~(r)~~ (p) Redact

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

~~(s)~~ (q) Registered User

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

~~(t)~~ (r) Restricted Information

"Restricted information" means information (1) prohibited by Rule or other law from being included in a court record, (2)

required by Rule or other law to be redacted from a court record, (3) placed under seal by a court order, or (4) otherwise required to be excluded from the court record by court order.

Cross reference: See Rule 1-322.1 (Exclusion of Personal Identifier Information in Court Filings) and the Rules in Title 16, Chapter 900 (Access to Judicial Records).

~~(u)~~ (s) Scan

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

~~(v)~~ (t) Signature

Unless otherwise specified, "signature" means ~~any of the following: a digital signature, a facsimile signature, a handwritten signature, or a typographical signature~~ the signer's typewritten name accompanied by a visual image of the signer's handwritten signature or by the symbol /s/.

Cross reference: Rule 20-107.

~~(w)~~ (u) Submission

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

Cross reference: See Rule 20-402.

~~(x)~~ (v) Tangible Item

"Tangible item" means an item that is not required to be filed electronically. A tangible item by itself is not a

submission; it may either accompany a submission or be offered in open court.

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

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

~~(y)~~ (w) Trial Court

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

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

~~(z) Typographical Signature~~

~~"Typographical signature" means the symbol "/s/" affixed to the signature line of a submission, together with the typed name, address, e-mail address, and telephone number of the signer.~~

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-101 simplify the concept of a "signature," as applied in the Rules in Title 20, and delete the definitions of "digital signature," "facsimile signature," and "typographical signature."

Under the revised definition, a "signature" contains two components: (1) the symbol "/s/" or a visual image of the signer's handwritten signature, and (2) the signer's typewritten name. The revised definition provides clearer guidance as to what constitutes a signature, and proposed amendments to Rules 20-107 and 20-203 provide that a submission lacking a signature is no longer stricken by a clerk but is instead cause for a deficiency notice.

Also following the definition, a cross reference to Rule 20-107 is added.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-107 by changing the name of the Rule; by requiring signatures that conform to the proposed revised definition of "signature"; by requiring that certain information be included below the filer's signature and specifying that the information shall not be regarded as part of the signature; by deleting references to "digital signature," "facsimile signature," and "typographical signature"; by adding a cross reference following section (a); by adding provisions pertaining to clerks' signatures to section (b); by deleting section (c); by specifying the two methods by which a judge, judicial appointee, or clerk may sign a submission; and by making stylistic changes, as follows:

Rule 20-107. ~~ELECTRONIC~~ MDEC SIGNATURES

(a) Signature by Filer; ~~Generally~~ Additional Information Below Signature

~~(1)~~ Subject to sections (b), (c), and (d)~~, and (e)~~ of this Rule, when a filer is required to sign a submission, the ~~filer shall electronically sign the submission by inserting a (A) facsimile signature or (B) typographical signature.~~

~~(2) The filer shall insert the electronic~~ submission shall:

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

(2) provide the following information below the filer's signature: ~~above the filer's typed name,~~ the filer's address, e-mail address, and telephone number and, if the filer is an attorney, the attorney's Client Protection Fund ID number. That information shall not be regarded as part of the signature. ~~An electronic~~ A signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

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

(b) Signature by Judge, ~~or~~ Judicial Appointee, or Clerk

A judge, ~~or~~ judicial appointee, or clerk shall sign a submission ~~electronically~~ by:

(1) personally affixing the judge's, ~~or~~ judicial appointee's, or clerk's ~~digital~~ signature to the submission by using an electronic process approved by the State Court Administrator, or

(2) hand-signing a paper version of the submission and scanning ~~or directing an assistant to scan~~ the hand-signed submission ~~to convert the handwritten signature to a facsimile signature in preparation for electronic filing~~ into the MDEC system.

Cross reference: For delegation by an attorney, judge, or judicial appointee to file a signed submission, see Rule 20-108.

~~(c) Signature by Clerk~~

~~When a clerk is required to sign a submission electronically, the clerk's signature shall be a digital signature or a facsimile signature.~~

~~(d)~~ (c) Multiple Signatures on a Single Document

When the signature of more than one person is required on a document, the filer shall (1) confirm that the content of the document is acceptable to all signers; (2) obtain the ~~handwritten, facsimile, typographical, or digital~~ signatures of all signers; and (3) file the document electronically, indicating the signers in the same manner as the filer's signature. Filers other than judges, judicial appointees, clerks, and judicial personnel shall retain the signed document at least until the action is concluded.

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

When a person is required to sign a document under oath, affirmation, or with verification, the signer shall hand-sign the document. The filer shall scan the hand-signed document~~, converting the signer's handwritten signature to a facsimile signature,~~ and file the scanned document electronically. The filer shall retain the original hand-signed document at least

until the action is concluded or for such longer period ordered by the court. At any time prior to the conclusion of the action, the court may order the filer to produce the original hand-signed document.

~~(f)~~ (e) Verified Submissions

When a submission is verified or ~~attaches~~ the submission includes a document under oath, the ~~electronic~~ signature of the filer constitutes a certification by the filer that (1) the filer has read the entire document; (2) the filer has not altered, or authorized the alteration of, the text of the verified material; and (3) the filer has either personally filed the submission or has authorized a designated assistant to file the submission on the filer's behalf pursuant to Rule 20-108.

Cross reference: For the definition of "hand-signed," see Rule 20-101.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-107 change the name of the Rule and conform its provisions to the amendments to Rule 20-101.

The terms "digital signature," "facsimile signature," and "typographical signature" are deleted from the Rule, and the term "signature" is used throughout.

Amendments to section (a) clearly separate the requirement that a filer's signature be on a submission (subsection (a)(1)) from the requirement that certain additional information be included below the filer's signature (subsection (a)(2)). The

amendments include a statement that the additional information "shall not be regarded as part of the signature." As noted in a proposed new Committee note following Rule 20-203 (c), while the absence of the accompanying information may be cause for the issuance of a deficiency notice, the absence of the information does not trigger the striking of the submission by the clerk for lack of a signature.

Provisions pertaining to signatures by clerks are moved to section (b) of Rule 20-107, and section (c) of the Rule is deleted. As amended, section (b) specifies the two methods by which a judge, judicial appointee, or clerk may sign a submission: (1) by affixing a signature using an electronic process approved by the State Court Administrator or (2) by hand-signing the submission and scanning the hand-signed submission into the MDEC system. The term "an electronic process approved by the State Court Administrator" is used in place of the deleted term "digital signature."

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-108 by deleting the word "electronically" in section (b), as follows:

Rule 20-108. DELEGATION OF AUTHORITY TO FILE

(a) Attorneys

After a submission has been signed in accordance with Rule 20-107, an attorney may authorize a paralegal, assistant, or other staff member in the attorney's office to file the signed submission electronically on behalf of the attorney. A submission filed pursuant to this delegation constitutes a filing by the attorney and the attorney's assurance that the attorney has complied with the requirements of Rule 1-311 (b) and has authorized the paralegal, assistant, or staff member to file the submission. The attorney is responsible for assuring that there is no unauthorized use of the attorney's username or password.

Cross reference: See Rule 1-311 (b) for the effect of signing pleadings and other papers.

(b) Judges and Judicial Appointees

After a submission has been signed ~~electronically~~ in accordance with Rule 20-107, a judge or judicial appointee may authorize a secretary, administrative assistant, or law clerk to file the signed submission electronically on behalf of the judge or judicial appointee. The judge or judicial appointee who signs the submission is responsible for assuring that there is no unauthorized use of the signer's username and password.

Source: This Rule is new.

REPORTER'S NOTE

A proposed amendment to Rule 20-108 deletes the word "electronically" in section (b), conforming the Rule to proposed changes to Rule 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-203 by deleting reference to all Rules in subsection (a)(2) except Rule 20-201 (g) and deleting the second sentence of that subsection, by deleting references to Rule 20-107 (a)(1) from section (c), by clarifying procedures pertaining to certain non-compliant submissions, by extending the time to resolve a deficiency in a filing to 14 days, and by providing for the refund of certain fees only upon motion and order of the court, as follows:

Rule 20-203. REVIEW BY CLERK; STRIKING OF SUBMISSION; DEFICIENCY NOTICE; CORRECTION; ENFORCEMENT

(a) Time and Scope of Review

(1) Inapplicability of Section

This section does not apply to a submission filed by a judge, or, subject to Rule 20-201 (m), a judicial appointee.

(2) Review by Clerk

As soon as practicable, the clerk shall review a submission for compliance with Rule ~~20-106, 20-107 (a)(1),~~ 20-201 ~~(d),~~ (g)~~, and (l)~~ and the published policies and procedures for acceptance established by the State Court Administrator.

~~Until the submission is accepted by the clerk, it remains in the clerk's queue and shall not be docketed.~~

(b) Docketing

(1) Generally

The clerk shall promptly correct errors of non-compliance that apply to the form and language of the proposed docket entry for the submission. The docket entry as described by the filer and corrected by the clerk shall become the official docket entry for the submission. If a corrected docket entry requires a different fee than the fee required for the original docket entry, the clerk shall advise the filer, electronically, if possible, or otherwise by first-class mail of the new fee and the reasons for the change. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

(2) Submission Signed by Judge or Judicial Appointee

The clerk shall enter on the docket each judgment, order, or other submission signed by a judge or judicial appointee.

(3) Submission Generated by Clerk

The clerk shall enter on the docket each writ, notice, or other submission generated by the clerk.

(c) Striking of Certain Non-compliant Submissions

If, upon review pursuant to section (a) of this Rule, the clerk determines that a submission, other than a submission filed by a judge or, subject to Rule 20-201 (m), by a judicial appointee, fails to comply with the requirements of ~~Rule 20-107 (a)(1) or~~ Rule 20-201 (g), the clerk shall (1) make a docket entry that the submission was received, (2) strike the submission, ~~(2)~~ (3) notify the filer and all other parties of the striking and the reason for it, and ~~(3)~~ (4) enter on the docket that the submission ~~was received, that it~~ was stricken for non-compliance with the applicable ~~section~~ subsection of ~~Rule 20-107 (a)(1) or~~ Rule 20-201 (g), and that notice pursuant to this section was sent. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court. Any fee associated with the filing shall be refunded only on motion and order of the court.

(d) Deficiency Notice

(1) Issuance of Notice

If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20 or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer

with a copy to the other parties a deficiency notice describing the nature of the violation.

(2) Judicial Review; Striking of Submission

The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice. Unless (A) the judge issues such an order, or (B) the deficiency is otherwise resolved within ~~10~~ 14 days after the notice was sent, upon notification by the clerk, the court shall strike the submission.

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

If, after filing, a submission is found to contain restricted information, the clerk shall issue a deficiency notice pursuant to section (d) of this Rule and shall shield the submission from public access until the deficiency is corrected.

(2) Shielding of Unredacted Version of Submission

If, pursuant to Rule 20-201 (h)(2), a filer has filed electronically a redacted and an unredacted submission, the clerk shall docket both submissions and shield the unredacted submission from public access. Any party and any person who is the subject of the restricted information contained in the unredacted submission may file a motion to strike the unredacted

submission. Upon the filing of a motion and any timely answer, the court shall enter an appropriate order.

(3) Shielding on Motion of Party

A party aggrieved by the refusal of the clerk to shield a filing or part of a filing that contains restricted information may file a motion pursuant to Rule 16-912.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 20-203 address the handling of certain non-compliant submissions.

Reference to Rules 20-106, 20-107 (a)(1), 20-201 (d), and 20-201(l), and the second sentence of subsection (a)(2), are deleted from the subsection to assure that non-compliant submissions are not rejected at the "File and Serve" level of MDEC processing. Rather, a non-compliant submission is transmitted out of "File and Serve" into the "Odyssey" portion of the MDEC system, where the clerk proceeds to handle it in accordance with other sections of the Rule, as applicable.

Section (c) is revised and restyled to delete references to Rule 20-107(a)(1) and to clarify the procedure for handling a submission that fails to comply with the requirements of Rule 20-201 (g). Deletion of the references to Rule 20-107(a)(1) means non-compliance with that subsection is no longer cause for striking a submission but rather is cause for a deficiency notice. The latter affords the filer an opportunity to correct the deficiency or deficiencies, making it less likely than a striking to impact litigation through issues such as an elapsed statute of limitations.

A new sentence is added at the end of section (c) to provide that any fee associated with a filing that is stricken pursuant to section (c) is refundable only on motion and order of the court.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-103 by restyling subsection (b)(1) and adding additional language pertaining to submission deficiencies, and by adding a Committee note following section (b), as follows:

Rule 20-103. ADMINISTRATION OF MDEC

(a) General Authority of State Court Administrator

Subject to supervision by the Chief Judge of the Court of Appeals, the State Court Administrator shall be responsible for the administration of the MDEC system and shall implement the procedures established by the Rules in this Title.

(b) Policies and Procedures

(1) Authority to Adopt

The State Court Administrator shall adopt policies and procedures that are ~~(A)~~ necessary or useful for the proper and efficient implementation of the MDEC System and ~~(B)~~ consistent with ~~(i)~~ the Rules in this Title, ~~(ii)~~ other provisions in the Maryland Rules that are not superseded by the Rules in this Title, and ~~(iii)~~ other applicable law. The policies and procedures may be supplemented by:

(A) examples of deficiencies in submissions that the State Court Administrator has determined constitute a material violation of the Rules in Title 20 or an applicable policy or procedure and justify the issuance of a deficiency notice under Rule 20-203(d); and,

(B) with the approval of the Chief Judge of the Court of Appeals, ~~the policies and procedures may include~~ the approval of pilot projects and programs in one or more courts to test the fiscal and operational efficacy of those projects or programs.

Committee note: The examples of deficiencies listed by the State Court Administrator are not intended (1) to be an exclusive or exhaustive list of deficiencies justifying the issuance of a deficiency notice, or (2) to preclude a judge from determining that the submission does not materially violate a Rule in Title 20 or an applicable policy or procedure. They are intended, however, to require the clerk to issue a deficiency notice when the submission is deficient in a manner listed by the State Court Administrator. See Rule 20-201(d).

(2) Publication of Policies and Procedures

Policies and procedures adopted by the State Court Administrator that affect the use of the MDEC system by judicial personnel, attorneys, or members of the public shall be posted on the Judiciary website and, upon written request, shall be made available in paper form by the State Court Administrator.

Source: This Rule is new.

REPORTER'S NOTE

Rule 20-103 is proposed to be amended in order to conform it to recommended changes to Rule 20-203.

Subsection (b)(1) is restyled and new language is added. The new text specifies that the policies and procedures the State Court Administrator adopts may include examples of deficiencies that the Administrator has determined constitute a material violation of the Rules in Title 20 or an applicable policy or procedure, and justify the issuance of a deficiency notice.

A Committee note following section (b) is also suggested. The note clarifies that the list of deficiency examples is not exclusive or exhaustive. The list likewise does not preclude a judge from finding that a submission does not materially violate a Rule in Title 20 or an applicable policy or procedure. Clerks are, however, required to issue a deficiency notice when a submission is deficient in a manner listed by the State Court Administrator.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-201 (f) by deleting certain language, by adding a certain requirement pertaining to an initial filing or a change in e-mail address, and by adding a Committee note, as follows:

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

. . .

(f) Service Contact Information

~~Unless previously provided, a~~ A registered user who files a submission and who will be entitled to electronic service of subsequent submissions in the action shall include in the submission accurate information as to the e-mail address where such electronic service may be made upon the registered user. If the submission is the registered user's initial submission in an action, or if a change in the e-mail address is made, the filer also shall provide service contact information by using the "Actions" drop-down box that is part of the MDEC submission process.

Committee note: If the "Actions" drop-down box is not used to provide service contact information when an initial submission is filed in an action, the default e-mail address for subsequent

notifications and service of other parties' submission in the action will be the e-mail address that the filer used when transmitting the initial submission in the action.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 20-201 (f) and a Committee note following section (f) address a "service contact information" problem that has arisen in MDEC.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 500 – MISCELLANEOUS RULES

AMEND Rule 20-503 (a) by adding the phrase, "upon the full statewide implementation of MDEC," as follows:

Rule 20-503. ARCHIVAL OF RECORDS

(a) Development of Plan

~~The~~ Upon the full statewide implementation of MDEC, the State Court Administrator shall work with the State Archivist to develop a plan for the transmission of electronic case records to the Maryland State Archives for the purpose of archiving of those records. Any plan recommended by the State Archivist and the State Court Administrator shall be presented to the Court of Appeals for approval. The plan shall not take effect until approved by the Court of Appeals after a public hearing.

(b) Contents of Plan

The plan shall provide for:

(1) the entire lifecycle of the electronic record, including creation, use, destruction, and transfer to the Maryland State Archives;

(2) the Courts' records retention and disposition schedules to define the retention period of non-permanent records and the

transfer of permanent electronic records to the Maryland State Archives;

(3) when electronic records may be transmitted to the Maryland State Archives;

(4) the categories or types of records to be transmitted or not to be transmitted;

(5) the format and manner of transmission and the format in which the records will be retained by the Maryland State Archives;

(6) the preservation of all limitations on public access to the transmitted electronic records provided for by the Rules in Title 16, Chapter 900 and Title 20 of these Rules until such time or times provided for in the plan;

(7) a method by which MDEC can retrieve and modify records transmitted to the Maryland State Archives;

(8) procedures for the expungement of records transmitted to the Maryland State Archives when ordered by a court in accordance with applicable expungement laws;

(9) procedures to ensure that the electronic records are exported for transfer to the Maryland State Archives in non-proprietary (open-source) formats that constitute a complete and accurate representation of the record as defined by the Court; and

(10) any other matters relevant to the transmission and archiving of court records, including the tracking, verification, and authentication of transfers.

(c) Optional - Archives as Duplicate Repository

The plan may provide for immediate transmission of electronically filed case records in order that the Maryland State Archives constitute a duplicate repository of electronic court records.

Source: This Rule is new.

REPORTER'S NOTE

A proposed amendment to Rule 20-503 adds the phrase, "upon full statewide implementation of MDEC," to section (a). The larger counties and Baltimore City are among the final jurisdictions in which MDEC implementation will occur, and issues may surface in those jurisdictions that were not observed in smaller jurisdictions. After full statewide implementation of MDEC, the experience of all jurisdictions regarding records in the MDEC system can be taken into account in the formulation of the plan.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-262 by adding a Committee note following subsection (d)(2)(C)(ii), as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

. . .

(d) Disclosure by the State's Attorney

. . .

(2) On Request

On written request of the defense, the State's Attorney shall provide to the defense:

. . .

(C) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(i) specific searches and seizures, eavesdropping, or electronic surveillance including wiretaps; and

(ii) pretrial identification of the defendant by a State's witness;

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant

by a State's witness also may be required. See *Green v. State*, 456 Md. 97 (2017).

(D) Reports or Statements of Experts

As to each State's witness the State's Attorney intends to call to testify as an expert witness other than at a preliminary hearing:

(i) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(ii) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(iii) the substance of any oral report and conclusion by the expert;

(E) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(F) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

. . .

REPORTER'S NOTE

Rule 4-262 (d)(2)(C)(ii) requires a prosecutor to disclose, upon written request of the defense during discovery, a pretrial identification of the defendant by a State's witness; however, under circumstances such as those found in *Green v. State*, 456 Md. 97 (2017), a prosecutor also is required to disclose, upon written request of the defense during discovery, a pretrial identification of a co-defendant by a State's witness.

In *Green*, the Court held that under the specific facts of the case, "a pretrial identification of a co-defendant is relevant information regarding pretrial identification of the defendant where the pretrial identification of the co-defendant is effectively the equivalent of a pretrial identification of the defendant." 456 Md. at 161-62. In light of that holding, a Committee note to *Green* is proposed to be added following subsection (d)(2)(C)(ii).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSE

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-263 by adding a Committee note following subsection (d)(7), as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

. . .

(7) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's witness;

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant by a State's witness also may be required. See *Green v. State*, 456 Md. 97 (2017).

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

. . .

REPORTER'S NOTE

Rule 4-263 (d)(7)(B) requires a prosecutor to disclose, during discovery, a pretrial identification of a defendant by a State's witness; however, under circumstances such as those found in Green v. State, 456 Md. 97 (2017), a prosecutor also is required to disclose, during discovery, a pretrial identification of a co-defendant by a State's witness.

In Green, the Court held that under the specific facts of the case, "a pretrial identification of a co-defendant is relevant information regarding pretrial identification of the defendant where the pretrial identification of the co-defendant is effectively the equivalent of a pretrial identification of the defendant." 456 Md. at 161-62. In light of that holding, a Committee note to Green is proposed to be added following subsection (d)(7).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-208(b)(2)(D) to add language clarifying that electronic devices may not be brought into a jury deliberation room after deliberations have begun, as follows:

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

. . .

(b) Possession and Use of Electronic Devices

(1) Generally

Subject to inspection by court security personnel and the restrictions and prohibitions set forth in section (b) of this Rule, a person may (A) bring an electronic device into a court facility and (B) use the electronic device for the purpose of sending and receiving phone calls and electronic messages and for any other lawful purpose not otherwise prohibited.

(2) Restrictions and Prohibitions

(A) Rule 5-615 Order

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

(B) Photographs and Video

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

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

(C) Interference with Court Proceedings or Work

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

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

(D) Jury Deliberation Room

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

(E) Courtroom

(i) Except with the express permission of the presiding judge or as otherwise permitted by this Rule, Rules 16-502, 16-503, 16-504, or 16-603, all electronic devices inside a courtroom shall remain off and no electronic device may be used

to receive, transmit, or record sound, visual images, data, or other information.

...

REPORTER'S NOTE

A circuit court judge suggested that Rule 16-208 (b)(2)(D) be clarified. The subsection could be read to mean that anyone in a room used for jury deliberations may not have an electronic device, even if the jury is not deliberating. The Rules Committee proposes adding language to subsection (b)(2)(D) stating that electronic devices may not be brought into a jury deliberation room after deliberations have begun.

APPENDIX TO THE ONE HUNDRED NINETY-SIXTH REPORT

This appendix contains a marked copy of the Appendix: Court Interpreter Inquiry Questions, showing changes from the current Questions.

MARKED COPY, SHOWING CHANGES FROM THE CURRENT APPENDIX:

COURT INTERPRETER INQUIRY QUESTIONS

MARYLAND RULES OF PROCEDURE

COURT INTERP. INQUIRY QUESTIONS

APPENDIX: COURT INTERPRETER INQUIRY QUESTIONS

DELETE the current Appendix: Court Interpreter Inquiry Questions and add the new Appendix: Court Interpreter Inquiry Questions, as follows:

~~*Following is an excerpt from the October 20, 1998 Report of the Maryland Judicial Conference Advisory Committee on Interpreters.*~~

Court Interpreters ~~Voir Dire~~ Inquiry Questions

All spoken and sign language interpreters appointed by the court may be asked the following questions at the beginning of the hearing:

(a) State your full name.

(b) Are you listed on the Maryland Court Interpreter Registry?

(c) Do you have any potential conflicts of interest in this case?

(d) Did you have an opportunity to speak with the person for whom interpreter services are to be provided before the hearing today to make sure you understand each other?

(e) Do you anticipate any difficulties in communicating with that person?

Interpreters who are listed on the Maryland Court Interpreter Registry, regardless of whether they are eligible or certified, have been trained and qualified for service, and need not be questioned other than to establish their status on the Registry. The following questions may be used when an interpreter who is not listed on the Registry has been assigned to serve in a court proceeding. This may include interpreters provided through an approved agency. Agency interpreters may not have received training on interpreting in a legal setting. The court also may want to question interpreters who are listed on the Registry if the court is concerned about the interpreter's skills or ability or has a concern about ethical issues.

These questions are intended to elicit from a prospective interpreter, whether sign or spoken, the information that the Court needs to determine whether an individual is a competent court interpreter and whether the individual is the appropriate interpreter for the particular case. ~~*A few questions are appropriate only to a sign or a spoken language interpreter. In*~~

~~*the event that the interpreter is considered "certified" in Maryland, the voir dire need not be as extensive.*~~

~~(1) State your full name and address.~~

~~(2) Where are you employed currently?~~

~~(3) How long have you known **[sign/spoken language]**?~~

~~(4) Where did you learn **[sign/spoken language]**?~~

~~(5) Can you communicate fluently in **[sign/spoken language]**?~~

~~(6) What is your educational background?~~

~~(7) What formal interpreter training have you undertaken?~~

~~(8) What formal legal interpreter training have you undertaken?~~

~~(9) What knowledge and skill areas did you study?~~

~~(10) Have you attended the Maryland Judiciary's Orientation Workshop for Court Interpreters?~~

~~(11) Are you certified? By whom? What is your certification called?~~

~~(12) Please explain the certification process?~~

~~*Questions 13 through 19 need not be asked if the interpreter is "certified" for purposes of Maryland courts.*~~

~~*(13) Have you spent time in a country where your spoken language is used?*~~

~~(14) *Are you active in any professional organization?*~~

~~*(15) What do "RID" and "NAJIT" mean?*~~

~~*(16) How many times have you interpreted in court and in what kinds of situations have you interpreted?*~~

~~*(17) Have you met _____ (the person for whom interpreter services are to be provided)?*~~

~~*(18) Were you able to establish communication?*~~

~~*(19) How could you determine that you were being understood and that communication was established?*~~

~~(20) What language does the person use?~~

~~(21) How did you determine the language used?~~

~~(22) How long did it take you to determine the language used?~~

~~(23) In your opinion, is the deaf person American Sign Language-English bilingual?~~

~~*Questions 24 through 30 need not be asked if the interpreter is "certified" for purposes of Maryland courts.*~~

~~*(24) Please explain the difference between interpreting and transliterating. Between interpreting and translation.*~~

~~*(25) Can you define "minimal language skills"?*~~

~~*(26) Is it possible to sign in American Sign Language at the same time you are speaking in English?*~~

~~*(27) Will the interpretation you provide today be verbatim?*~~

~~*(28) What process would you use to inform the Court of an error in your interpretation?*~~

~~*(29) Can you explain the difference between simultaneous and consecutive interpretation?*~~

(30) *What issues significantly affect your interpreting in court?*

(31) Have you submitted to the Administrative Office of the Courts a completed information form, a statement swearing or affirming compliance with the Maryland Code of Conduct for Court Interpreters and a statement subscribing to the Interpreter's Oath?

(32) Have you, in a state or federal court of record, a pending criminal charge or criminal conviction on a charge punishable by a fine of more than $500 or imprisonment for more than 6 months and not pardoned or expunged?

(33) Are you a potential witness in this case?

(34) Do you have any other potential conflicts of interests that you have not yet mentioned to the Court?

(35) Are you ready to take the oath for interpreters?

Explanation of Responses to Voir Dire Questions for Interpreters[2]

The following is an explanation or suggested responses to the *voir dire* questions used to determine the qualifications of interpreters working in Maryland courts. In some instances, the appropriateness of the response will depend on whether a sign or spoken language interpreter is being questioned.

(1) State your full name and address.

~~No explanation needed.~~

~~*(2)*~~*(1) Where are you employed currently?*

(The Court needs to determine whether there is any potential conflict due to full- or part-time employment of an interpreter or assignments as an independent contractor.) ~~For example, some police forces employ bilingual officers who freelance as interpreters. The Court may need to evaluate whether a conflict arises from that employment in, *e.g.*, a vehicle tort case. Interpreters may be self employed, "freelance" interpreters, may work through interpreter service agencies, or do both. In certain localities, such as Frederick or Columbia, a number of certified interpreters work full-time at the schools for the deaf and freelance on a part-time basis.~~

~~*(3)*~~*(2) How long have you known [sign/spoken] language?*

(Research indicates that it takes between 6 to 10 years of language study before an individual has the language skills necessary to learn the interpreting process in his or her second language.) ~~An interpreter may indicate that the signed or spoken language is his or her first language~~.

~~*(4)*~~*(3) Where did you learn [sign/spoken language]?*

~~The answer to this question reinforces the answer to question 3, indicating whether the language was learned in the home in which the interpreter was raised, in school, or in some combination of these or other settings.~~ (A mix of formal and informal language

training is an asset. For a second language, 6 to 10 years' use should be expected.)

~~(5)~~ (4) *Can you communicate fluently in [sign/spoken language]?*

~~The answer to this question should be "yes".~~

~~On occasion, a deaf person will use a language other than American Sign Language (ASL) such as French Sign Language, and an interpreter may be available in that language. Thus, if the Court inquires about ASL specifically, the answer may be "No, I do not use American Sign Language; however, the individual for whom I am to interpret uses French Sign Language, which I do use."~~

~~(6)~~ (5) *What is your educational background?*

(Formal education may vary dramatically among interpreters, depending on their cultural heritage, but the Court should realize the complexity of interpreting. For this reason, the Court is urged not to accept an interpreter on the basis of a *voir dire* examination unless the interpreter has at least a high school education or its cultural equivalent.)

~~(7)~~ (6) *What formal interpreter training have you undertaken?*

~~The advent of formal postsecondary programs for interpreters is relatively recent, but the number of programs are growing in recognition that interpreter training differs from general, non-interpreting language training.~~

~~Such programs for sign language interpreting degree programs have been offered since the 1970's, usually at a 2-year associate of arts level. About 10, 4-year interpreting programs exist throughout the country and, within the vicinity of Maryland, 2 master's degree interpreting programs are available. Additionally or in the alternative, the interpreter may have less formal training such as completion of workshops through professional organizations.~~

~~An individual with no formal interpreter training should be questioned to document nonformal training.~~

~~*(8) What formal legal interpreter training have you undertaken?*~~

~~Resources for formal training in legal interpreting have not stabilized. Over the past 10 years, intensive programs have been offered through California State University/Northridge (6 weeks), Advancement Seminars Inc. (3 weeks), Haury Institute for Court Interpreting (3 weeks), and Montclair State University (3 weeks). Less intensive courses include those of the Galluadet University School of Professional and Sign Language Studies Department (4 days), Potomac Chapter of the Registry of Interpreters for the Deaf (4 days), and the Bicultural Center formerly of Riverdale, Maryland (2 days).~~

~~*(9) What knowledge and skill areas did you study?*~~

~~Interpreters who have had legal training have studied the vocabulary of the law and the manner in which language is used in the courtroom. In addition, these interpreters have spent considerable time interpreting legal texts. The interpreter training programs for legal interpreting include course work on courtroom protocol and legal interpreting ethics. Interpreters also should have successfully participated in supervised fieldwork prior to completing the program. Each of these subject areas is extensive and a competent interpreter should be able to explain each thoroughly.~~

~~Sign language interpreters also study how deaf people use American Sign Language to discuss legal topics.~~

~~*(10) Have you attended the Maryland Judiciary's Orientation Workshop for Court Interpreters?*~~

~~The answer should be "yes", as this is required under the Administrative Order issued on October 18, 2012. This workshop includes components on legal terminology, ethics, and skills but is merely a 2-day overview and not an intensive course.~~

~~(11)~~(7) *Are you certified? By whom? What is your certification called*? ~~+~~(For ASL interpreters, ask whether they are certified by the Registry of Interpreters for the Deaf (RID) or by the National Association of the Deaf (NAD)).

~~The answer to the first of these questions preferably is "yes", but the Court should be aware that "certified" often is used~~

loosely. Refer to the next answer for an explanation of the various types of certification credentials.

For a sign language interpreter, certification is offered throughout the United States by the Registry of Interpreters for the Deaf, Inc. (RID), which has several types of certificates. Additionally, the National Association of the Deaf (NAD), the Mid-Atlantic Quality Assurance Test developed by the Kansas Commission for the Hearing Impaired in cooperation with the Johnson County Community College, and some states also establish levels that some courts use in determining competency in sign language interpretation and that may denote an interpreter as "certified". As these categories are not in general use in this area at this time, however, the following discussion describes RID certification. As the RID certification process is in transition, you may wish to contact its FAX on Demand number (800-711-3691) for a document entitled "Explanation of Certificates".

After a lapse of almost 10 years, RID has renewed testing for skills and specialized knowledge of legal settings and terminology, as evidenced by a Specialist Certificate: Legal (SC:L). RID previously issued Specialist Certificate: Legal (SC:L) but discontinued doing so when the reliability of the testing procedures were questioned. Various training programs were instituted, leading to the Provisional Specialist

~~Certificate: Legal (Prov. SC:L) for intensive training and testing, the Conditional Legal Interpreting Permit (CLIP) and Conditional Legal Interpreting Permit-Relay (CLIP-R) certificates for training followed by a supervision component. A revamped SC:L examination has been developed. SC:L Prov. and CLIP holders must take and pass the new examination to retain specialized certification in legal settings. CLIP-R certificates will remain valid until RID develops an appropriate examination. Other current RID certificates are: the Certificate of Interpretation (CI), which is indicative of a demonstrated ability to interpret between American Sign Language and spoken English, both in sign-to-voice and voice-to-sign; the Certificate of Transliteration (CT), which denotes a demonstrated ability to transliterate between an English-based sign language (traditionally, but inaccurately, termed Signed English, Pidgin Sign Language, Ameslan or otherwise) and spoken English, both in sign-to-voice and voice to-sign; the combined Certificate of Interpretation and Certificate of Translation (CI and CT); the Oral Transliteration Certificate (OTC), which denotes a demonstrated ability to transliterate a spoken message from a hearing person to, and to understand and repeat the message and intent of the speech and mouth movements of, a deaf or hard of hearing person; the Certified Deaf Interpreter (CDI), which denotes testing of a deaf or hard of hearing person with~~

~~at least 1 year's work experience and 16 hours of training in interpreting; and the Certified Deaf Interpreter-Provisional (CDI-P), which is awarded for partial completion of CDI testing. RID certificates that no longer are issued, but may remain valid so long as RID continuing education requirements are met, include: the Master Comprehensive Skills Certificate (MCSC), which denotes testing both of American Sign Language (ASL) and other varieties of sign language that do not conform to ASL grammar; the Comprehensive Skills Certificate (CSC), which denotes the same testing as the MCSC, at a lower level but comparable to the current, combined CI and CT; the Interpretation Certificate/Transliteration Certificate (IC/TC); the Interpretation Certificate (IC) and the Transliteration Certificate (TC), which were awarded to persons not scoring sufficiently high marks for the full CSC and, for holders who are deaf interpreters, is being replaced by the CDI and the CDI-P certificates; the Reverse Skills Certificate (RSC), which also was awarded to persons not scoring sufficiently high marks; the Oral Interpreting Certificate: Comprehensive (OIC:C), the Oral Interpreting Certificate: Spoken to Visible (OIC:S/V) and the Oral Interpreting Certificate: Visible to Spoken (OIC:V/S), being phased out by the OIC; and the Specialist Certificate: Performing Arts (SC:PA).~~

~~Due to the limitations on the availability of these tests for deaf interpreters and the unique need for these interpreters for some assignments, some deaf interpreters may have extensive experience without certification. However, this situation should change with renewed RID testing.~~

~~Similarly, for spoken language interpreters, a number of forms of recognition exist, which are informally or formally denoted as certification. For purposes of court interpretation, however, an interpreter should be listed in the Maryland Administrative Office of the Courts' Registry of Court Interpreters as certified, because Maryland certification standards require, in addition to passing an examination of the United States Administrative Office of the Courts or State Court Interpreter Certification Consortium, attendance at a Maryland orientation workshop and, if practicable, a background check.~~

~~(12) *Please explain the certification process?*~~

~~RID certification involves written testing of knowledge as to the ethics of interpreting, the history of interpreting, the culture of deaf people, the protocol of the interpreting process and the business of interpreting, followed by an interpretation skills evaluation, and/or transliteration evaluation. This process is not directed at interpretation in a legal setting, which is evaluated by written and practical test for the specialist certificate.~~

~~(13)~~ *(8) Have you spent time in a country where the spoken language is used?*

~~This question is intended to elicit information about time that afforded intensive exposure to, and use of, the spoken language.~~

~~(10)~~ *(9) Are you active in any professional organization?*

~~The answer to this question should be "yes". See question 15.~~

~~(15) What do "RID" and "NAJIT" mean?~~

~~"RID" is the acronym for The Registry of Interpreters for the Deaf, Inc., a professional membership organization formed in 1964, and certifying sign language interpreters.~~

~~"NAJIT" is the National Association of Judiciary Interpreters and Translators.~~

~~(16)~~ *(10) How many times have you interpreted in court and in what kinds of situations? ~~have you interpreted?~~*

~~While usage of interpreters in court seems to be growing for every language, it still will be a rarity to encounter an interpreter with hundred hours of court interpreting experience even in the most frequently used languages. Furthermore, experience may run the gamut of court proceedings and is not a guarantee of quality skills. Consequently, the Court needs to elicit whether an interpreter has professional experience and evaluate that experience in light of the interpreter's education and testing and the particular court assignment.~~

(17) Have you met _____ (the person for whom interpreter services are to be provided)?

The answer should be "yes", for two reasons.

First, an interpreter needs to establish his or her ability to communicate with the person and to identify any potential communication barriers deriving from the person's unique language patterns.

Second, the Code of Conduct for Court Interpreters requires an interpreter to disclose prior contact with the person, in order to have the Court determine whether there is or may appear to be a conflict of interest. The deaf community and various linguistic groups, and their respective pools of interpreters, can be very limited in number, and meeting with the person may remind the interpreter of an earlier contact.

(18) Were you able to establish communication?

The answer should be "yes", or the interpreter cannot fulfill the function of the job.

For example, a deaf person who uses an idiosyn-cratic variation of sign language may require that a deaf and hearing interpreter be used as a team. Deaf people with limited English or American Sign Language skills often benefit from this type of arrangement.

Communication must not only be established but maintained, and the interpreter should bring to the attention of the Court any

difficulty in communicating that subsequently arises, as soon as the difficulty becomes apparent to the interpreter. Furthermore, the interpreter should suggest that the Court check on a continuous basis with the individual for whom interpreter services are being provided, to monitor whether communication is maintained.

(19) How could you determine that you were being understood and that communication was established?

During the initial meeting between an interpreter and an individual with limited English proficiency, the interpreter should ask open-ended questions about neutral topics unrelated to the case, such as the individual's life, current events, or the community, to determine whether the interpreter and individual understand one another. "Yes" or "no" questions do not suffice. A perceived problem should be explored by asking the individual to rephrase his or her questions. If the individual answers appropriately, the interpreter is assured that communication has been established.

(20) What language does the person use?

The Court needs to establish on the record which language or combination of the 5,000 plus extant languages is being used. For example, a deaf person may be monolingual American Sign Language, monolingual-English, monolingual-other signed language, or bilingual American Sign Language and English. Most

deaf persons are somewhat bilingual by virtue of the fact that they live in an English speaking environment; however, most are not equally fluent in both languages. The majority of deaf Americans are described accurately as "American Sign Language dominant bilingual."

(21) How did you determine the language used?

The answer of a sign language interpreter should discuss the linguistic features that would indicate whether the person uses American Sign Language (ASL). For example, an ASL user would use a subject-object-verb or object-subject-verb sentence structure; time and tense markers would be at or near the beginning of the utterances; adverbs and other grammar would take place on the face and not in separate signs; complex features, such as sentence structure that incorporates topic-comment eyebrow markers, would be used; rhetorical question eyebrow markers would be employed; relative clause eyebrow and head-tilt markers would be used; verbs would incorporate pronouns; and pronouns would be performed by eye-gaze and not by signs.

(22) How long did it take you to determine the language used?

The answer will vary. If no communication difficulties arise, a reasonable time allows the interpreter and individual for whom interpreter services are to be provided to become comfortable communicating. It can, however, take a considerable amount of

~~time, so that the interpreter and individual should be allowed to decide, within limits, the amount of time they need. The crucial point is to allow enough time for the interpreter and individual, as well as the Court and attorneys, to feel comfortable that communication is effective.~~

~~*(23) In your opinion, is the* **deaf** *person American Sign Language-English bilingual?*~~

~~The answer will vary, depending on the deaf person. The question is intended to determine the interpreter's grasp of bilingualism.~~

~~*(24) Please explain the difference between interpreting and transliterating. Between interpreting and translation.*~~

~~Interpretation involves working between two formal languages-transmitting a message from a source language into an appropriate equivalent message in a target language. Interpreting requires rearrangement of the syntax of both languages in order to convey the message faithfully. Transliterating involves changing the form of a single language. Thus, an interpreter might listen to spoken English or watch a variation of sign language that approximates English and convey the message in either a signed or spoken form. Transliterating does not necessarily involve fluency in American Sign Language. Approximately 30% of deaf Americans can be accommodated satisfactorily with a transliteration.~~

Translation involves transmitting a message from written form to written form between languages.

Sight translation is a hybrid of interpretation and translation, whereby an interpreter translates a written document into a spoken or signed rendition.

(25) Can you define "minimal language skills"?

"Minimal language skills" refers to an absence of, or limitation on, language skills due to limited education and/or minimal exposure to a community of language users. By virtue of isolation, an individual may lack fluency in a formal language system such as American Sign Language. If the Court encounters such an individual, a linguistic evaluation should be performed to determine the best method of interpretation for that individual.

(26) Is it possible to sign in American Sign Language at the same time you are speaking in English?

No. American Sign Language and English differ significantly in syntax, making it no more possible to use American Sign Language and speak English at the same time than to use two spoken languages simultaneously.

The question derives from the common experience of people who do in fact sign and speak at the same time in what is called "simultaneous communication", a practice of speaking English while attempting to sign in a language that approximates

English. As 70% of deaf Americans use American Sign Language and simultaneous communication supposedly is a form of English, most deaf persons cannot rely on simultaneous communication as an effective means of courtroom interpretation.

(27) Will the interpretation you provide today be verbatim? The answer should be "no". Some interpreters will answer "yes" and assume that the Court's intention is to determine whether, as required by the Code of Conduct for Court Interpreters, they will interpret the message accurately while retaining the nuances of the language. However, the assumption may not be clear to counsel or other persons interested in the role of the interpreter.

Verbatim means "word-for-word", which is impossible in interpreting since it would necessitate a disregard for grammar and other features unique to a language. The interpreter's task is to convey the source message in the target language appropriately. A proper interpretation will retain the mood, tone, nuances, and meaning of the speaker to the extent that the target language has an appropriate equivalent.

(28)(11) What process would you use to inform the Court of an error in your interpretation?

An interpreter has an ethical duty to inform the Court of an error of substance made in interpretation, and the interpreter should construe "substance" broadly. On the other hand, an

interpreter should not continually interrupt the proceedings to refine the interpretation. Furthermore, the Court should be notified as soon as possible with the least disruption of the proceedings.

If the interpreter realizes an error while still interpreting, the proper manner to inform the Court is to speak in the third person and state something like, "The interpreter erred in conveying the last question, may Counsel please repeat?" or "The interpreter has erred in interpreting the last response, the correct interpretation is ..." Otherwise, the interpreter should apprise the Court by note, during the next break or in some other, unobtrusive manner.

A second interpreter who realizes an error may apprise the first interpreter. Should the first interpreter refuse to correct a substantive error, the second interpreter has an ethical obligation to do so.

(29) Can you explain the difference between simultaneous and consecutive interpretation?

Simultaneous interpretation occurs when continuous spoken text is interpreted while the speaker or signer convey their message. Notwithstanding the word "simultaneous", the interpreter may allow a lag time of up to two or three sentences, in order to comprehend the message to be interpreted. The Nuremberg trials were the first notable example of the use of simultaneous

~~interpretation in court and involved the entire proceedings, but now simultaneous interpretation is used most often during opening and closing statements, jury instructions or other relatively uninterrupted segments of spoken text. As explained below, it should not be used during questioning of a witness. In consecutive interpreting, an interpreter listens or watches an entire message before beginning to convey the interpretation. Accordingly, consecutive interpreting can be more accurate, by obviating the need to guess at the entire message and allowing time to refine the interpretation after the pressure of continued spoken or signed text is removed. Accordingly, it should always be used during examination of a witness.~~

~~*(30) What issues significantly affect your interpreting in court?*~~

~~Interpreters may view these issues as too numerous to list, but among the obstacles are: the interpreter's lack of familiarity with legal terminology, process, protocol, and ethics specifically relating to court interpretation; the Court's, counsels' or parties' lack of understanding of the role of the interpreter; positioning in the room; and the speed of the spoken text.~~

~~*(31) Have you submitted to the Administrative Office of the Courts a completed information form, a statement swearing or affirming compliance with the Maryland Code of Conduct*~~

~~*for Court Interpreters and a statement subscribing to the Interpreter's Oath?*~~

~~The answer to this question should be "yes" as to the information form, as this is required under the Administrative Order dated October 18, 2012. The remaining documents will be required should the Subcommittee report be adopted.~~

~~(32)~~ *(12)* Do you ~~*H*~~ *have* ~~*you*~~*, in a state or federal court of record, a pending criminal charge or criminal conviction on a charge punishable by a fine of more than $500 or imprisonment for more than 6 months* ~~*and*~~ *for which you have not been pardoned or for which the charge or conviction has not been expunged?*

~~The answer should be "no". This is the standard for juror qualification, although Courts Article § 8-204 as to disclosures by prospective jurors contains an exclusion for traffic offenses.~~

~~*(33) Are you a potential witness in this case?*~~

~~The answer should be "no".~~

~~*(34) Do you have any other potential conflicts of interests that you have not yet mentioned to the Court?*~~

~~In addition to conflicts that may stem from the interpreter's employment or a prior relationship with the individual for whom he or she would be interpreting, the interpreter may raise~~

~~issues of financial interest in the proceedings or other actual or potential conflicts.~~

~~*(35) Are you ready to take the oath for interpreters?* This question presents the prospective interpreter with a final opportunity to raise with the Court any points of concern about undertaking the role of court interpreter in this particular case, and the Court should note any hesitancy that may indicate unresolved issues that could disrupt the proceedings if the interpreter later must be replaced.~~

REPORTER'S NOTE

Currently reprinted as an Appendix in the Rules of Procedure are Interpreter Voir Dire questions, together with explanations of responses to those questions, that were in the October 20, 1998 Report of the Maryland Judicial Conference Advisory Committee on Interpreters and were adapted from the 1981 Legal Interpreting Workshop of the William Mitchell School of Law (St. Paul, Minnesota). After the authors revised them in 1986, the Maryland Judicial Conference's Task Force on Interpreters revised them further in 1994. In May 1997, the Subcommittee on Court Interpreter Fees, Qualification Standards, and Usage, which was a part of the Advisory Committee on Interpreters, revised the Interpreter Voir Dire Questions.

In March 2018, the Court Access and Community Relations Committee of the Judicial Council submitted a substantially streamlined revision of the Court Interpreter Inquiry Questions, which the General Court Administration Subcommittee approved. If the revised Questions are adopted, they will be placed in an Appendix to the Rules.