STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Twenty-Fourth Report to the Supreme Court of Maryland, transmitting thereby a proposed new Preamble to the Maryland Rules; proposed new Rules 4-268, 9-202.1, and 15-1601; and proposed amendments to current Rules 1-201, 1-325, 1-332, 2-705, 3-711, 4-211, 4-213.1, 4-252, 4-262, 4-263, 4-271, 4-314, 5-606, 6-209, 6-311, 9-205.3, 10-108, 10-111, 10-201, 10-202, 10-402, 10-403, 11-102, 11-302, 11-405, 11-406, 11-410, 11-419, 11-420.2, 11-422, 11-423, 15-1302, 16-911, 16-912, 16-914, 16-915, 16-916, 16-933, 16-934, 17-105, 18-101.2 (1.2), 18-201.2, 18-204.1, 18-305, 19-306.1, 19-504, 19-607, 19-737, 19-738, and 19-752.

The Committee's Two Hundred and Twenty-Fourth 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 May 2, 2025 any written comments they may wish to make to rules@mdcourts.gov or:

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THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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April 2, 2025

The Honorable Matthew J. Fader,
Chief Justice
The Honorable Shirley M. Watts
The Honorable Brynja M. Booth
The Honorable Jonathan Biran
The Honorable Steven B. Gould
The Honorable Angela M. Eaves,
The Honorable Peter K. Killough
Justices

The Supreme Court of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Honorable Justices:

The Rules Committee submits this, its Two Hundred and Twenty-Fourth Report, and recommends that the Court adopt the new Rules and the proposed amendments to existing Rules in the thirteen categories submitted in this Report, which are as follows:

CATEGORY ONE consists of proposed changes to three Rules in Title 1 – Rule 1-332, remanded following the Court's March 19, 2024 open meeting on the 221st Report; Rule 1-201, through which the Committee proposes adding a new rule of construction; and Rule 1-325, which the Court referred to the Committee following the Court's consideration and adoption of amendments to the "Waiver of Costs" Rule during its October 9, 2024 open meeting on the 223rd Report.

Following discussion of Rule 1-332 at its March 19, 2024 open meeting on the 221st Report, the Court, having expressed concern that the definition of "person with a disability" required clarification and that the language within the Rule should be consistent with the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA"), remanded the Rule for the Committee's further

consideration. The General Court Administration Subcommittee of the Rules Committee met on June 14, 2024 to address the remanded Rule. The Subcommittee referred the Rule to an informal drafting group consisting of local and national ADA experts, as well as representatives from the Maryland Judicial Council Court Access Committee. The Subcommittee met again on December 18, 2024 to review the work of the drafting group before recommending changes to the full Rules Committee. The resultant product reflects a consensus reached among the experts, internal stakeholders, and the Rules Committee.

Having reconsidered and discussed its recommendation from the 221st Report, the Committee, which addressed the Rule at its January 10, 2025 meeting, now recommends close adherence to the Federal Government's definition of persons who have disabilities, with one exception. The Committee recommends using the term "person with a disability" rather than the term "qualified person with a disability," in an effort to avoid confusion over individuals who may qualify for accommodations when accessing court services. The proposed definition otherwise tracks the language set forth in the ADA. As drafted, the definition is intended to apply to individuals who require accommodations, and who can be accommodated.

Through the proposed change to Rule 1-201, the Committee proposes a rule of construction to provide that the term "statute of limitations" includes a statute of repose.

During its October 9, 2024 open meeting on the 223rd Report, the Court adopted amendments to Rule 1-325, allowing for a self-represented litigant to file one waiver request that encompasses both prepaid and final waivers of open costs. Although the Maryland Legal Aid Bureau generally supported the proposed amendments, it sought broader consideration by way of expanding the Rule to allow legal service organizations to operate in like fashion when requesting a waiver. Having taken the matter under consideration, the Committee recommends extension of the "one-waiver request" process to individuals represented by qualified attorneys or legal service organizations that, as part of their services, apply a vetting process to ensure that the parties they represent fall within indigency guidelines.

CATEGORY TWO consists of changes to Rules governing criminal and juvenile causes. This category includes proposed amendments to Rules 4-262 and 4-263, as well as proposed new Rule 4-268, pertaining to discovery in criminal proceedings, proposed amendments to Rules 4-213.1 and Rule 4-271 pertaining to the "*Hicks*" requirement, and proposed amendments to Rules 4-252 and 11-419, pertaining to motions in criminal and juvenile causes.

Proposed amendments to the criminal discovery Rules were prompted by the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter referred to as the "EJC Report"). In March 2023, the Judicial Council approved for dissemination the EJC Report. The Rules Review Subcommittee had as its charge the identification of Rules which "reflect, perpetuate, or fail to correct systemic biases." The EJC Report offers suggestions for improving the discovery processes outlined in Rules 4-262 (Discovery in District Court) and 4-263 (Discovery in Circuit Court).

Although the Committee did not adopt, wholesale, amendments recommended in the EJC Report, and expressly declined to impose discovery deadlines and required sanctions in the District Court, the Committee, after considering both criminal discovery Rules, found value in recommending inclusion of a Committee note that acknowledges "open file" discovery may not be sufficient, in all cases, to satisfy the State's discovery obligations. For clarification, the Committee recommends outlining various sanctions that a Court may impose upon determining there has been a failure of discovery in Rule 4-262 (n). The Committee also recommends amending Rule 4-262 (d)(5)(C) and Rule 4-263 (d)(7)(C), to implement required disclosure of use of facial recognition technology, as mandated by Code, Criminal Procedure Article, § 2-504.

In addition to the above-recommended amendments, the Committee recommends an amendment to Rule 4-263, suggested by the EJC Report, that includes guidance related to requirements set forth in Code, Courts Article, § 10-924, pertaining to an in-custody witness who may receive a benefit in exchange for testimony. Stylistic changes to both Rules also are recommended, in order to conform various subsections to structural changes.

Finally, as pertains to discovery, the Committee proposes the addition of Rule 4-268, implementing the mandate of Code, Courts Article, § 10-924(e) that, upon request, a court must conduct a hearing prior to admitting testimony of an in-custody witness to determine whether a State's Attorney has complied with disclosure requirements.

Amendments to Rules 4-213.1 and 4-271 are proposed as a result of a question raised by a trial judge, primarily to clarify the intent to limit the impact of limited appearances, such as appearances at bail hearings, on the "*Hicks* Rule," since neither Code, Criminal Procedure Article, § 6-103 nor Rule 4-271 directly address whether the "appearance of counsel" includes entry of a limited appearance, as permitted in Rule 4-213.1.

In considering the proposed amendments, the Reporter's staff recognized that language regarding automatic termination of provisional representation by the Public Defender was inadvertently removed from the Rule when, following

the 183rd Report, the language previously set forth in Rule 4-216 (e)(2) was moved to new Rule 4-213.1 (g). The modification set forth in section (g) seeks to correct this error, to conform the Rule to Code, Criminal Procedure Article, § 16-210(d)(3), and to correct the word "commission" to "commissioner."

The proposed amendment to Rule 4-271 seeks to clarify that the time for setting the trial date begins once an attorney enters an appearance pursuant to Rule 4-214.

Amendments to Rules 4-252 and 11-419 are designed to bring attention to Code, Criminal Procedure Article, § 2-502, which, with limited exceptions, prohibits admissibility of facial recognition technology, and to raise awareness of the potential need to raise admissibility concerns by way of a motion.

Proposed amendments to Rules 4-314, 11-102, 11-422, and 11-423 conform the Rules to Chapter 444, 2024 Laws of Maryland (HB 432), through which the General Assembly made technical amendments to several statutes by replacing the term "mental retardation" with the term "intellectual disability." Additionally, as pertains to Rule 11-102, a proposed amendment adds to the cross-reference following section (a) the term "labor trafficking," following the General Assembly's inclusion of that defined term in Code, Courts Article, § 3-801. Finally, minor stylistic changes are made to the cross references in Rule 11-422 and 11-423.

An amendment to Rule 11-302 conforms a cross reference in the Rule to Chapters 348/349, 2024 Laws of Maryland (SB 550/HB 508), which shifted the location of the "local department" in Code, Courts Article, § 3-801.

Proposed amendments to Rules 11-405 and 11-406 conform the Rules to Code, Courts Article, §§ 3-8A-14 and 3-8A-15(k), which address requirements for officers taking children into custody and waivers of required review hearings for children taken into custody, respectively. An amendment to a cross reference following Rule 11-420.2 (e) is offered to conform the reference to Chapter 735, 2024 Laws of Maryland (HB 814), which changed the reference to a new section in Code, Courts Article, § 3-8A-14.

CATEGORY THREE is a proposed amendment to Rule 5-606 that emanates from the EJC Report and consideration of the impact of racial biases on verdicts, as recognized in *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017). The proposed amendment carves out a limited exception to the prohibition against jurors impeaching the verdict by allowing a juror to testify as to a clear statement another juror made if the statement reveals the juror relied on a racial or other unconstitutional stereotype or animus. Although the EJC Report also recommended consideration of revelation of jurors' notes, the Committee declined to recommend any change to the manner in which courts

address jurors' notes, choosing to continue to follow the American Bar Association's recommendation that jurors' notes be collected and destroyed post-trial.

CATEGORY FOUR addresses issues related to family law matters. Proposed new Rule 9-202.1 and amendments to Rule 9-205.3 are in this category.

Proposed new Rule 9-202.1 resulted from the EJC Report, which suggested that the Committee, "in collaboration with the Child Support Workgroup of the Domestic Law Committee," review the service provisions of Rule 1-321 to determine whether the existing procedural process is unfair to low-income litigants. The Child Support Workgroup identified two barriers to timely resolution of child support modifications: difficulty serving the motion and the inability to file a modification motion as a counterclaim to a contempt proceeding filed by the Child Support Administration. A key issue undergirding the concern is the legislative prohibition against retroactive modification of child support obligations. The prohibition against retroactivity, in many instances, results in a lost opportunity to lower one's support obligation where a case cannot be completed due to a lack of service.

In an attempt to address the concern that cases are either dismissed or bottle-necked due to service issues, the proposed new Rule establishes a path to service via electronic means and permits counterclaims requesting modification to be filed in contempt actions.

Proposed amendments to Rule 9-205.3 are designed to address bills introduced in the General Assembly in 2024 (SB 365/HB 405) that outlined qualifications and trainings for court-appointed custody evaluators, as well as addressed the introduction of expert testimony in cases involving alleged abuse by one parent. Similar bills were introduced in the 2025 Session of the General Assembly (SB 25/HB 152). The proposed amendments to Rule 9-205.3 are designed to address legislators' desire to ensure that evaluators receive appropriate training, including training in intimate partner violence, child abuse, and related issues, as well as rework the Rule for purposes of clarification.

Legislators also appeared to have a concern that educational and training requirements should not be waived. The proposed amendments make clear that while a waiver of educational and licensure requirements is possible (a waiver of limited impact), training waivers are not permitted and continuing education requirements must be met.

CATEGORY FIVE involves proposed amendments to various guardianship rules.

A proposed amendment to Rule 10-111 was prompted by Chapters 11/12, 2024 Laws of Maryland (SB 411/HB 431), which renamed the Maryland Department of Veterans Affairs to the Department of Veterans and Military Families. Because the name mirrors that used by the federal government, the Reporter undertook a contextual review of each reference to a "Department of Veterans Affairs" in the Rules in an effort to determine whether any pertained to the State agency. The Reporter determined that Rule 10-111 contains an incorrect reference to an "Administrator" of the Department. Thus, the Committee recommends this "housekeeping" amendment.

Amendments to Rules 10-201, 10-202, 10-402, and 10-403 result from recommendations made by the Administrative Office of the Court's Juvenile & Family Services.

An amendment to Rule 10-201 seeks to clarify that a petition for an expedited hearing in connection to a need for medical treatment may be filed concurrently with *or at any time following* the filing of a petition for guardianship. Amendments to Rule 10-202 replace the term "disabled person" with the term "alleged disabled person," which refers to the individual's status, pre-adjudication.

An amendment to Rule 10-402 would remove the requirement that a candidate for standby guardianship disclose pending charges, since the requirement, although added to the Rule, is not required by Code, Estates & Trusts, § 11-114. The Code, rather, only imposes a prohibition on appointment of individuals who have been convicted of certain crimes, absent a showing of good cause. A second amendment to the Rule would eliminate a reference in section (e) to the court ruling without a hearing, since Rule 10-404 requires a hearing on any petition filed pursuant to Rule 10-402. The Committee recommends replacing the current language with an admonishment that the court may rule on a petition without the recipient's input if the recipient fails to respond to the petition.

As is the case with Rule 10-402, the Committee recommends removing from Rule 10-403 the requirement that a candidate for standby guardian disclose pending charges.

CATEGORY SIX contains a proposed new Rule concerning derivative actions. Senior Appellate Judge James Eyler suggested to the Committee that a Rule concerning derivative actions would provide important guidance to practitioners who could benefit from uniformity in understanding how best to initiate and maintain derivative actions. Along with Senior Judge Ronald Rubin and members of the Maryland State Bar Association's Business Law Section, Senior Appellate Judge Eyler presented to the Committee a proposed new Rule, modeled after Fed. R. Civ. P. 23.1 and Delaware law. The

Committee, agreeing that such a Rule would provide guidance to attorneys as well as promote uniformity in the State, recommends proposed new Rule 15-1601.

CATEGORY SEVEN comprises a proposed amendment to Rule 17-105, involving confidentiality in mediation proceedings. The Administrative Office of the Court's Juvenile & Family Services requested clarification surrounding the confidentiality of screening tools and the processes that courts use in determining whether a matter should be referred for mediation, as may be required by Rule 9-205.

The Committee learned that screening for potential abuse and/or coercive control differs by jurisdiction, and the decision of whether to refer a case to mediation could be based on paper screening, interviews, or use of the piloted Mediators Assessment of Safety Issues and Concerns – Short ("MASIC-S"). Based on concerns raised by attorneys about confidentiality of screening tools and information, Juvenile & Family Services requested clarification concerning confidentiality of screening communications.

To eliminate confusion and to ensure that all jurisdictions hold confidential all communications associated with the screening process, the Committee recommends modifying Rule 17-105 by adding new section (f), which generally provides that written documentation, as well as statements, used to screen cases for mediation are confidential and disclosure of such communications may not be compelled. The amendment also recognizes section (f)'s subjectivity to section (b), which does prohibit parties from disclosing details of mediation in court, but not in their personal lives.

CATEGORY EIGHT involves proposed amendments to several Rules in Title 19, namely, Rules 19-737, 19-738, 19-752, 19-504, and 19-607. The proposed amendments to Rules 19-737 (d)(1) and 19-738 (d), suggested by the Clerk of the Supreme Court, seek to clarify that the time for an attorney to respond to a show cause order runs from the time of service, rather than the date the show cause order was issued.

Amendments to Rule 19-752 were borne of a listening session for the EJC Report, at which time an attorney raised a concern that the reasons Bar Counsel may oppose or support a petition for reinstatement are not always discernable because the Rule, as currently drafted, does not require Bar Counsel to include reasons for the opposition or support. The Committee recommends amendment of section (e) to require Bar Counsel to provide the reasons Bar Counsel opposes or supports a petition for reinstatement. Additionally, in light of the fact that the Rule contains no mechanism for Bar Counsel to seek an extension of time to respond, the EJC Report recommended that Bar Counsel be permitted to seek an extension, but only for good cause

shown. The Committee recommends that Bar Counsel be permitted to request an extension within the time period designated for a response; however, the Committee does not recommend requiring a showing a good cause in the language of the Rule. The Court may determine whether an extension is appropriate.

Amendments to Rules 19-504 and 19-607 are recommended for "housekeeping," rather than substantive reasons. Rule 19-504 should be amended to update internal references.

The amendment to 19-607 is also a "housekeeping" amendment; however, it differs from Rule 19-504 in that the internal reference in need of correction resulted from a 2016 typographical error that led the Rule to contain an incorrect reference to payment methods, rather than a correct reference to temporary suspension where an attorney fails to repay funds for a dishonored check. The amendment will fix the typographical error by adding a correct reference that pertains to temporary suspension.

CATEGORY NINE includes proposed amendments to Rules governing access to judicial records.

Amendments to Rule 16-911 (f) implement Chapters 414/415, 2024 Laws of Maryland (HB 664/SB 575), the Judge Andrew F. Wilkinson Judicial Security Act. The Act creates the Office of Information Privacy ("OIP") in the Administrative Office of the Courts. The Committee proposes the amendments to ensure that the OIP's records are treated as "administrative records" by making clear that records created or maintained by the OIP are shielded from public inspection.

Amendments to Rule 16-912 conform the Rule to a revision in Code, Family Law Article, § 2-301, enacted as Chapter 175, 2022 Laws of Maryland (HB 83), which prohibits minors under the age of 17 from marrying.

Amendments to Rule 16-914 implement Chapter 347, 2024 Laws of Maryland (SB 19), codified as Code, Real Property Article, § 8-503, which requires the District Court, without request, to shield certain landlord-tenant actions if a failure to pay rent case does not result in a judgment of possession. The proposed amendments require the custodian to deny inspection if the records are shielded pursuant to the statute.

Amendments to Rule 4-211 implement Chapters 877/878, 2024 Laws of Maryland (SB 111/HB 458), which prohibit public access to minor victims' identifying information in criminal or delinquency matters. The proposed change would implement a requirement that individuals filing such matters must alert the Clerk of Court that filings contain non-public information that must be redacted.

Amendments to Rule 11-410 also implement Chapters 877/878, 2024 Laws of Maryland (SB 111/HB 458). The proposed Rule change requires a juvenile court, in a waiver order, to order the State's Attorney or other filer to ensure redaction of a minor victim's identifying information or other restricted information in a case record prior to transfer of the record to the court exercising criminal jurisdiction.

An amendment to Rule 16-915 also implements the bill, by adding a section that requires the custodian of records to deny inspection of a case record that would reveal the name or other identifying information of a minor victim in a criminal or delinquency action where the juvenile court waives jurisdiction.

Rule 16-916 (b)(2) currently allows filers to notify the custodian that a part of a case record filed prior to July 1, 2016 should be shielded from public access. A proposed amendment to that Rule would permit either the filer, or someone acting on behalf of the subject of a case record, to notify the clerk of non-public information in the case record, regardless of when the record was filed. The amendment also permits the Clerk of Court to refer the matter to a judge for consideration if the Clerk requires guidance on whether a particular record should be shielded.

In Rules 10-108 and 15-1302, cross-references are updated to conform to the proposed amendments to Rule 16-915, which re-letter sections of that Rule.

Amendments to Rule 16-933 are proposed to address vexatious, frivolous, or repetitious requests for access to judicial records. Through new subsection (a)(2), the Committee recommends permitting the State Court Administrator ("SCA") to seek relief pursuant to the Maryland Declaratory Judgment Act. The proposed amendments also seek to make clear that both the right to seek relief and the time for filing a response to a request apply equally to the SCA and to the individual requesting access.

Amendments to Rule 16-934 are recommended at the behest of the Chief Judge of the District Court. According to the Chief Judge, a process is necessary to allow the District Court to rule on a motion to preclude or limit inspection of a case record where there exists, on the face of the motion, no basis to grant the motion. The amendment will help to address the significant increase in the volume of non-meritorious motions now being presented to the court.

CATEGORY TEN involves a recommendation for amendments to Rule 3-711, predicated upon a concern raised by the Access to Counsel in Evictions Task Force, established by Chapter 746, 2021 Laws of Maryland (HB 18). The

law requires landlords to provide a notice of intent to evict, and to notify tenants of the right to speak with an attorney provided by a legal service organization when facing an eviction proceeding. In enacting the legislation, the General Assembly determined that the required written notice must be in a form created by the Judiciary. A form was created for use by landlords; however, the Task Force and service providers advised the Rules Committee that landlords were not always using the standard form. The Court Access Committee of the Judicial Council considered the concern and recommended a Rule change requiring that notice be provided in the form approved by the State Court Administrator.

The Rules Committee's District Court Subcommittee considered the request of the Task Force and Court Access Committee that the form approved by the State Court Administrator be mandatory; however, the Subcommittee preferred to allow use of a document "substantially in the form approved by the State Court Administrator." Representatives of the Task Force requested that the Rules Committee remove the word "substantially," arguing that Code, Real Property, § 8-401 requires strict compliance by use of the Judiciary's form. The Committee recommends use of the Judiciary's form, in deference to the General Assembly's intent, evidenced by language that reads "the notice shall be in a form created by the Judiciary."

The Court Access Committee also requested that Rule 3-711 require that the landlord include a copy of the notice when filing a complaint, but a similar provision was proposed during the 2024 Session of the General Assembly, and was removed prior to the passage of Chapter 124, 2024 Laws of Maryland (HB 693). The Committee decided not to include such an amendment, since the General Assembly opted out of adding that requirement.

CATEGORY ELEVEN consists of proposed amendments to Rules 6-209 and 6-311. The proposed amendments implement Chapters 318/319, 2024 Laws of Maryland (SB 80/HB 326), which limit those who may object to the notice of appointment of a personal representative of a small or large estate to "all interested persons and unpaid claimants."

CATEGORY TWELVE brings before the Court proposals to amend Rules 18-101.2 and 18-201.2, which the Court remanded following consideration of the Committee's proposed amendments during the March 19, 2024 open meeting on the 221st Report. The EJC Report recommended adding provisions to various Rules in Title 4 to remind judges of the existence of implicit bias. The Committee observed that implicit bias could affect other kinds of proceedings, as well as criminal proceedings. Accordingly, the Committee drafted the Title 1 and Title 18 Rules changes, which the Court considered during the March open meeting.

At the March open meeting, the Court was asked to consider proposed new Rule 1-342, which included a general reminder to judicial personnel of the need for awareness of how the public may construe the manner in which judicial statements or decisions are expressed and enforced and to avoid making statements or taking actions others may feel indicates an unintended bias. Additionally, the Court was asked to consider amendments to Rules 18-102.3 and 18-202.3, which proposed adding comments discussing implicit bias.

Upon remand, the Committee was charged to reconsider the language used, in light of the Court's discussion, as well as to relocate the contents of proposed Rule 1-342 to Rules 18-101.2 and 18.201.2. Additionally, the Committee was encouraged to consider developing a Title 1 Rule that serves as an aspirational policy for the Judiciary. In lieu of a Title 1 Rule, the Committee recommends the Preamble submitted for the Court's consideration.

The proposed amendments to Rules 18-101.2 and 18.201.2 are modeled after the existing provisions in the Rule but also caution judges and judicial appointees to avoid conduct that would create in reasonable minds a perception of bias based on certain enumerated traits. Proposed new Comment 6 provides judges guidance to remain alert for the potential for an appearance of bias, guidance that is based in part on *Belton v. State*, 483 Md. 523 (2023), and based in part on the Court's comments during the March 2024 open meeting.

CATEGORY THIRTEEN consists of proposed "housekeeping" amendments to four Rules. The amendment to Rule 2-705 corrects a grammatical error in section (a). Amendments to Rules 18-204.1 and 19-306.1 correct typographical errors. Amendments to Rule 18-305 replace several incorrect references to Rules 18-703 and 18-704 with correct references to Rules 18-603 and 18-604, respectively.

For the further guidance of the Court and the public, following the proposed new Preamble, each proposed new Rule, and the proposed amendments to each existing 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,

/ s /

Yvette M. Bryant
Chair

cc: Hon. Douglas R. M. Nazarian, Vice Chair
Greg Hilton, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-332 by retitling the Rule "Reasonable Accommodations for Persons with Disabilities"; by re-titling section (a) as "Applicability" and adding a statement of applicability; by adding new section letter (b) before "Definitions"; by adding new subsection (b)(2) defining "Person with a Disability" with a cross reference following the subsection; by adding new subsection (b)(3) defining "Reasonable Accommodation"; by renumbering current subsection (a)(2) as (b)(4); by re-lettering current section (b) as section (c) and by changing the tagline to "Request for Reasonable Accommodation"; by deleting the tagline of re-lettered subsection (c)(1) and replacing it with "Generally"; by clarifying in re-lettered subsection (c)(1) who may request a reasonable accommodation; by adding a Committee note following re-lettered subsection (c)(1); by creating new subsection (c)(2) containing provisions from current subsection (b)(1), with amendments; by adding a Committee note after new subsection (c)(2); by adding new section (d) governing the procedure when a reasonable accommodation is requested; by adding new subsection (d)(1) and a Committee note pertaining to the authority to make an accommodation determination; by adding new subsection (d)(2) and a Committee note pertaining to the interactive process; by adding new subsection (d)(3) and a Committee note pertaining to the factors for consideration; by re-lettering current subsection (b)(2) as new subsection (d)(4) and modifying the tagline; by

adding a provision to new subsection (d)(4) referring to compliance with Rule 1-333 (c); by deleting current subsection (b)(3); by adding new subsection (d)(5) pertaining to notice of the court's determination; by adding new section (e) requiring publication of data on accommodation requests; and by making stylistic changes, as follows:

Rule 1-332. ~~ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT~~ REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

(a) Applicability

This Rule applies to accommodations for persons with disabilities.

(b) Definitions

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

(1) ADA

"ADA" means the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*

(2) Person with a Disability

"Person with a disability" means an individual with a disability who meets the essential eligibility requirements for the receipt of services or the participation in court services, programs, or activities, with or without reasonable modifications to policies, practices, or procedures, the removal of

architectural, communication, or transportation barriers, or the provision of auxiliary aids and services.

Cross reference: See 42 U.S.C. § 12131.

(3) Reasonable Accommodation

"Reasonable accommodation" means a measure necessary to provide a person with a disability the opportunity to access a court service, program, or activity in a manner consistent with State and federal law. A reasonable accommodation may include:

(A) a reasonable modification in policy, practice, or procedure;

(B) a reasonable modification to a deadline or time limit that Rule 1-204 permits to be modified but that does not alter a statutory deadline or a statute of limitations;

(C) remote participation by a party or witness in accordance with Title 21 of these Rules;

(D) an auxiliary aid or service other than a personal device, including equipment, that is made available without charge; and

Committee note: An auxiliary aid or service may include a qualified interpreter or other effective method of making aurally delivered materials available to an individual who is deaf or hard of hearing; a qualified reader, taped text, or another effective method of making visually delivered materials available to an individual who is blind or has low vision; acquisition or modification of equipment or devices; and other similar services and actions. See 42 U.S.C. § 12103, 28 C.F.R. § 35.104, and 28 C.F.R. § 35.160.

(E) recognition of a supported decision-making arrangement entered pursuant to Code, Estates and Trusts Article, Title 18.

~~(2)~~(4) Victim

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

~~(b) Accommodation Under the ADA~~ (c) Request for Reasonable Accommodation

(1) ~~Notification of Need for Accommodation~~ Generally

~~A person~~ An attorney, party, witness, victim, juror, prospective juror, or member of the public requesting ~~an~~ a reasonable accommodation under the ADA or other applicable Maryland or federal law ~~for an attorney, a party, a witness, a victim, a juror, or a prospective juror~~ promptly shall notify the court of the request.

Committee note: An individual authorized to act on behalf of the person with a disability or with the permission of the person with a disability may request an accommodation.

(2) Submission

To the extent practicable, a request for ~~an~~ a reasonable accommodation shall be ~~(1)~~(A) presented on a form approved by ~~administrative order of the Supreme Court~~ the State Court Administrator, posted on the Judiciary website, and available from the clerk of the court ~~and on the Judiciary website~~ and ~~(2)~~(B) submitted to the court not less than 30 days before the proceeding for which the accommodation is requested. The request should include a case number, if applicable, but need not be filed in a particular action or served on any other party.

Committee note: This Rule does not impose a strict 30-day filing deadline and recognizes that advance notice is not always practicable for all requests for accommodation. Reasonable advance notice is required to the extent feasible so that a court or staff can implement reasonable accommodations.

Insufficient advance notice may prevent the provision of a reasonable accommodation.

(d) Determination of Request

(1) Authority to Determine

The court shall consider a reasonable accommodation request that pertains to a motion before the court, the rescheduling of a case, or any other matter that involves the administration of court proceedings or the substantive rights of litigants. The court may approve the requested accommodation, deny the requested accommodation, or offer an alternative accommodation. The court may designate the ADA coordinator to consider and determine other requests.

Committee note: Accommodation requests that may be considered and determined administratively include requests that involve facilities, furniture, and other available accommodations that do not involve substantive issues or affect court procedure.

(2) Interactive Process

The court or designated ADA coordinator shall review the request and, if appropriate, engage the requestor in an interactive process to determine a reasonable accommodation.

Cross reference: See *In the Matter of Chavis*, 486 Md. 247 (2023), pertaining to procedures and standards for evaluating a request for reasonable accommodations under the ADA.

(3) Factors – Generally

In determining what, if any, accommodation to grant, the court or the ADA coordinator shall:

(A) consider (i) the provisions of the ADA and applicable federal regulations adopted under the ADA; (ii) Code, State Government Article, §§ 20-304 and 20-901; (iii) Code, Courts Article, § 9-114; (iv) Code, Criminal Procedure Article, §§ 1-202 and 3-103; and (v) other applicable Maryland and federal law;

(B) give primary consideration to the accommodation requested;

(C) consider whether an accommodation would result in (i) a fundamental alteration of the nature of a court service, program, or activity or (ii) an undue financial and administrative burden; and

(D) make the determination on an individual and case-specific basis, with due regard to the nature of the disability and the feasibility of the requested accommodation.

Committee note: In considering reasonable accommodations for a person with a disability, the primary focus is on providing accommodations that enable the individual to participate in or qualify for a program, service, or activity. The focus must not be on the extent of the individual's impairment.

~~(2)~~(4) Request for Sign Language Interpreter

~~The~~ If the accommodation requested is the provision of a sign language interpreter, the court shall determine whether a sign language interpreter is needed in accordance with the requirements of the ADA~~;~~, Code, Courts Article, § 9-114~~;~~, and Code, Criminal Procedure Article, §§ 1-202 and 3-103. If the request is granted, the court shall appoint a sign language interpreter in accordance with Rule 1-333 (c).

~~(3) Provision of Accommodation~~

~~The court shall provide an accommodation if one is required under the ADA. If the accommodation is the provision of a sign language interpreter, the court shall appoint one in accordance with Rule 1-333 (c).~~

(5) Notification of Determination

The court or ADA coordinator promptly shall notify the requestor of its accommodation determination. If a requested accommodation is denied, the court or ADA coordinator shall specify the reason for the denial.

(e) Publication of Data on Accommodation Requests

Each court shall submit an annual report to the State Court Administrator, without identifying information and in a manner that protects the identities of those requesting accommodations, containing (1) data on the number and types of reasonable accommodation requests submitted, (2) the types of reasonable accommodations granted, and (3) the number of reasonable accommodation requests denied. The State Court Administrator shall publish a compilation of the data on the Judiciary website.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 1-332 update and clarify the procedures for requesting, considering, and providing reasonable accommodations to individuals with disabilities seeking to access Maryland courts. The Supreme Court considered proposed amendments to Rule 1-332 at an open meeting on the 221st Report on March 19, 2024. After discussion, the Court remanded the Rule to the Committee for further study. The Court instructed the Committee to ensure that the language in the proposed Rule is consistent with the Americans with Disabilities Act ("the ADA") and provides at least the same minimum protections.

The General Court Administration Subcommittee discussed a proposed draft in response to the remand at its June 14, 2024 meeting. After considering the comments made by consultants, the Subcommittee referred the Rule to an informal drafting group consisting of local and national ADA experts and representatives from the Maryland Judicial Council Court Access Committee. Rules Committee staff worked with subject matter experts over the summer and the resulting draft generally reflects the consensus among these experts as well as internal stakeholders. The General Court Administration Subcommittee met again on December 18, 2024 and considered proposed amendments recommended by the drafting group.

The Rule is proposed to be renamed to address accommodations more broadly for persons with disabilities instead of only accommodations under the ADA. New section (a) addresses the broader application.

Several definitions are added to new section (b). "Person with a disability" is defined in new subsection (b)(2). The reworked definition is derived from the ADA (42 U.S.C. § 12131). The ADA uses the term "qualified person with a disability," but the drafting group suggested avoidance of the term "qualified" as it may lead to confusion. The Subcommittee discussed the necessity and clarity of the definition, concluding that it is helpful to set forth to whom the Rule applies. The Subcommittee was informed that an individual may have a disability but not require any accommodation to access the courts. Conversely, there may be individuals who cannot be accommodated due to the various provisions of the ADA that rule out accommodations that would impose a substantial burden on the court. The definition narrows the applicability of the Rule to individuals who require accommodations and who can be accommodated.

The proposed definition for "reasonable accommodation" in new subsection (b)(3) is similar to the definition of "accommodation" proposed in the 221st Report, with some changes. "Reasonable accommodation" is a term used throughout the ADA. It more accurately reflects the Act's requirements since an entity is only required to make accommodations that are reasonable, meaning consistent with State and federal law. The drafting group suggested the expansion of the Committee note following the subsection on auxiliary aids and services to provide guidance on types of auxiliary aids and services, derived in part from 42 U.S.C. § 12103. Statutory references are included in the Committee note. A new subsection (b)(3)(E) pertaining to supported decision-making arrangements was also suggested by the drafting group.

Section (c) governs the request for a reasonable accommodation. The drafting group discussed how to permit a third party to make a request on behalf of a person with a disability without encouraging unwanted intervention, which undercuts the autonomy of the person with the disability. The group ultimately recommended the addition of a provision that notice may come from another individual authorized to act on that individual's behalf. This is

reflected in the Committee note. The drafting group also suggested clarifying that the request does not have to be filed in an action or served on any party. The Committee note following subsection (c)(2) is rephrased from the way it was presented in the 221st Report to clarify that an accommodation request is allowed to be made less than 30 days before the proceeding but cautions that insufficient notice may prevent the accommodation being provided.

Section (d) is significantly restructured from its 221st Report version. Subsection (d)(1) sets forth the accommodation requests that must be considered by a judge in contrast to accommodations that may be determined by the designated ADA coordinator. Subsection (d)(2) adds the concept of an interactive process. The drafting group advised that the prior proposed language implied that the person with a disability made an accommodation request and the court or ADA coordinator granted or denied that request. In practice, if the request for accommodation cannot be granted, the court should engage in a dialogue with the requester to consider alternatives. A cross reference to a recent case on the procedures and standards for evaluating a request for reasonable accommodations provides additional guidance. The factors in subsection (d)(3) are modified from the 221st version to correct citations and make stylistic changes. They are derived from State and federal laws and regulations.

New section (e) establishes certain reporting requirements regarding requests for reasonable accommodations and the accommodations granted and denied.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 200 – CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-201 by adding new section (f), as follows:

Rule 1-201. RULES OF CONSTRUCTION

(a) General

These rules shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay. When a rule, by the word "shall" or otherwise, mandates or prohibits conduct, the consequences of noncompliance are those prescribed by these rules or by statute. If no consequences are prescribed, the court may compel compliance with the rule or may determine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule.

(b) Jurisdiction and Venue Unaffected

These rules shall not be construed to extend or limit the jurisdiction of any court or, except as expressly provided, the venue of actions.

(c) Effect on Common Law and Statutory Provisions

Neither these rules nor omissions from these rules supersede common law or statute unless inconsistent with these rules.

(d) Singular and Plural – Gender

Words in the singular include the plural and words in any gender include all genders except as necessary implication requires.

(e) Headings, References, and Notes Not Rules

Headings, subheadings, cross references, committee notes, source references, and annotations are not part of these rules.

(f) Statute of Limitations

The term "statute of limitations" includes a statute of repose, except as necessary implication requires.

Source: This Rule is derived as follows:
Section (a) is in part consistent with the 1966 version of Fed. R. Civ. P. 1 and is derived from former Rule 701. The last two sentences are new.
Section (b) is derived from former Rule 1 h and i.
Section (c) is derived from former Rules 1 g and 701.
Section (d) is derived from former Rule 2 c.
Section (e) is derived from former Rule 2 b.
Section (f) is new.

REPORTER'S NOTE

The proposed amendment to Rule 1-201 adds a rule of constitution to clarify that "statute of limitations" includes a statute of repose, except as necessary implication requires. "Statute of limitations" is used in several locations in the Rules and in most contexts would include a statute of repose (e.g., Rules 2-101, 2-323, 2-506, 3-101, and 19-301.3). It is also used in the proposed amendments to Rule 1-332.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-325 by adding "Request for Court Waiver of Open Costs" to the tagline of section (d); by creating new subsection (d)(1) with the existing provisions of section (d); by re-lettering current subsections (d)(1) and (d)(2) as (d)(1)(A) and (d)(1)(B), respectively; by re-lettering current subsections (d)(1)(A) and (d)(1)(B) as (d)(1)(A)(i) and (d)(1)(A)(ii), respectively; by re-lettering current subsections (d)(1)(A)(i) through (d)(1)(A)(iii) as (d)(1)(A)(i)(a) through (d)(1)(A)(i)(c), respectively; by adding new subsection (d)(2) governing a request for waiver of open costs; by adding a reference to new subsection (d)(2) to subsections (f)(2)(A) and (f)(2)(B); by updating the affidavit requirement in subsection (f)(2)(B); and by making stylistic changes, as follows:

Rule 1-325. WAIVER OF COSTS DUE TO INDIGENCE – GENERALLY

(a) Scope

This Rule applies only to (1) original civil actions in a circuit court or the District Court and (2) requests for relief that are civil in nature filed in a criminal action.

Committee note: Original civil actions in a circuit court include actions governed by the Rules in Title 7, Chapter 200, 300, and 400. Requests for relief that are civil in nature filed in a criminal action include petitions for expungement and requests to shield all or part of a record.

(b) Definition

In this Rule, "prepaid costs" means costs that, unless prepayment is waived pursuant to this Rule, must be paid prior to the clerk's docketing or accepting for docketing a pleading or paper or taking other requested action.

Committee note: "Prepaid costs" may include a fee to file an initial complaint or a motion to reopen a case, a fee for entry of the appearance of an attorney, and any prepaid compensation, fee, or expense of a magistrate or examiner. See Rules 1-501, 2-541, 2-542, 2-603, and 9-208.

(c) No Fee for Filing Request

No filing fee shall be charged for the filing of the request for waiver of prepaid costs pursuant to section (d) or (e) of this Rule.

(d) Waiver of Prepaid Costs by Clerk; Request for Court Waiver of Open Costs

(1) Prepaid Costs

On written request, the clerk shall waive the prepayment of prepaid costs, without the need for a court order, if:

~~(1)~~(A) the party is an individual who is represented ~~(A)~~(i) by an attorney retained through a pro bono or legal services program on a list of programs serving ~~low income~~ low-income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided that an authorized agent of the program provides the clerk with a statement that ~~(i)~~(a) names the program, attorney, and party; ~~(ii)~~(b) states that the attorney is associated with the program and the party meets the financial eligibility criteria of the Corporation; and ~~(iii)~~(c) attests that the payment of filing fees is not subject to Code, Courts Article, § 5-1002 (the Prisoner Litigation Act), or ~~(B)~~(ii) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

~~(2)~~(B) except for an attorney employed or appointed by the Office of the Public Defender in a civil action in which that Office is required by statute to represent the party, the attorney certifies that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Committee note: The Public Defender represents indigent individuals in a number of civil actions. See Code, Criminal Procedure Article, § 16-204(b).

Cross reference: See Rule 1-311 (b) and Rule 19-303.1 (3.1) of the Maryland Attorneys' Rules of Professional Conduct.

(2) Request for Waiver of Open Costs at Conclusion of Action

A request under subsection (d)(1) of this Rule may include a request for final waiver of open costs by the court at the conclusion of the action. The request for final waiver of open costs shall include the attorney's certification that the attorney's client signed an affidavit stating that the client does not anticipate a material change in the financial information contained in the client's application for representation. The court shall consider the request at the conclusion of the action in accordance with section (f) of this Rule.

(e) Waiver of Costs by Court

(1) Prepaid Costs

(A) Request for Waiver

An individual unable by reason of poverty to pay a prepaid cost and not subject to a waiver under section (d) of this Rule may file a request for an order waiving the prepayment of the prepaid cost. The request shall be accompanied

by (i) the pleading or paper sought to be filed; (ii) an affidavit substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices; and (iii) if the individual is represented by an attorney, the attorney's certification that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Cross reference: See Rule 1-311 (b) and Rule 19-303.1 (3.1) of the Maryland Attorneys' Rules of Professional Conduct.

(B) Review by Court; Factors to be Considered

The court shall review the papers presented and may require the individual to supplement or explain any of the matters set forth in the papers. In determining whether to grant a prepayment waiver, the court shall consider:

(i) whether the individual has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year, which shall be posted on the Judiciary website; and

(ii) any other factor that may be relevant to the individual's ability to pay the prepaid cost.

(C) Order; Payment of Unwaived Prepaid Costs

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the pleading or paper sought to be filed does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. In its order, the court shall state the basis for granting or denying the request for waiver. If the court denies, in whole or in part, a

request for the waiver of its prepaid costs, it shall permit the party, within 10 days, to pay the unwaived prepaid cost. If, within that time, the party pays the full amount of the unwaived prepaid costs, the pleading or paper shall be deemed to have been filed on the date the request for waiver was filed. If the unwaived prepaid costs are not paid in full within the time allowed, the pleading or paper shall be deemed to have been withdrawn.

(2) Request for Waiver of Open Costs at Conclusion of Action

A request under subsection (e)(1) of this Rule may include a request for final waiver of open costs at the conclusion of the action. The request shall indicate in the affidavit required by subsection (e)(1) of this Rule that the individual does not anticipate a material change in the information provided in the affidavit. The court shall consider the request at the conclusion of the action in accordance with section (f) of this Rule.

(f) Award of Costs at Conclusion of Action

(1) Generally

At the conclusion of an action, the court and the clerk shall allocate and award costs as required or permitted by law.

Cross reference: See Rules 2-603, 3-603, 7-116, and *Mattison v. Gelber*, 202 Md. App. 44 (2011).

(2) Waiver

(A) Request

At the conclusion of an action, a party who otherwise did not request a final waiver of open costs pursuant to subsection (d)(2) or (e)(2) of this Rule may seek a final waiver of open costs, including any unpaid appearance fee, by

filing a request for the waiver, together with (i) an affidavit substantially in the form prescribed by subsection (e)(1)(B) of this Rule, or (ii) if the party was granted a waiver of prepayment of prepaid costs by court order pursuant to section (e) of this Rule and remains unable to pay the costs, an affidavit that recites the existence of the prior waiver and the party's continued inability to pay by reason of poverty.

(B) Determination by Court

In an action under Title 9, Chapter 200 of these Rules or Title 10 of these Rules, the court shall grant a final waiver of open costs if the requirements of Rules 2-603 (e) or 10-107 (b), as applicable, are met. In all other civil matters, the court may grant a final waiver of open costs if the party against whom the costs are assessed is unable to pay them by reason of poverty. The court may require a party who requested a final waiver of open costs pursuant to subsection (d)(2) or (e)(2) of this Rule to file ~~the supplemental affidavit required by subsection (f)(2)(A)(ii) of this Rule~~ an affidavit stating that the party (i) was granted a prior waiver of prepaid costs in the action pursuant to this Rule and (ii) remains unable to pay the costs by reason of poverty.

Source: This Rule is new.

REPORTER'S NOTE

The Supreme Court considered proposed amendments to Rule 1-325 at an open meeting on the 223rd Report on October 9, 2024. After discussion, the Court adopted the proposed amendments, which generally allow for a self-represented litigant to file one request for both a waiver of prepaid costs and final waiver of open costs.

The Court received a supportive comment on the amendments from Maryland Legal Aid (see attached) but the comment also requested that the proposed change be expanded to apply to waiver requests from parties represented by qualified legal services organizations, such as Legal Aid. The Court chose to enact the proposed amendments to Rule 1-325 as presented and referred to the Committee the matter of expanding the applicability of the new provisions.

Proposed amendments to Rule 1-325 extend the "one waiver request" process to parties who are represented by qualified attorneys or legal services organizations.

New subsection (d)(1) contains the current provisions of section (d) governing waiver of prepaid costs. Subsections within new subsection (d)(1) are adjusted.

New subsection (d)(2) permits a request for a waiver of prepaid costs to include a request for final waiver of open costs. The request must include a certification by the attorney that the client has averred that the client does not anticipate a material change in the financial information provided to qualify for representation by a Maryland Legal Services Corporation program. Subsection (d)(2) instructs the court to consider the request for final waiver of open costs at the conclusion of the action in accordance with section (f).

Subsection (f)(2) is amended to add references to a waiver requested pursuant to subsection (d)(2). Subsection (f)(2)(B) is amended to delete reference to the supplemental affidavit required by subsection (f)(2)(A)(ii) and instead restates the required substance of the affidavit ("that the party (i) was granted a prior waiver of prepaid costs in the action pursuant to this Rule and (ii) remains unable to pay the costs by reason of poverty"). According to a Legal Aid attorney, service providers like Legal Aid conduct a detailed review of the income and assets of potential clients to determine their eligibility. These reviews are done periodically during representation to ensure that clients maintain their eligibility. Legal Aid requested that the supplemental affidavit provision in subsection (f)(2) be stricken in light of the review process. The provision was retained to permit judges to exercise discretion.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-262 by adding a Committee note after subsection (c)(2); by deleting the current tagline of subsection (d)(1); by creating new subsections (d)(1) and (d)(2) with the language of current subsection (d)(1); by deleting the tagline and stem language of current subsection (d)(2) requiring a defendant to submit a written request to obtain certain disclosures; by renumbering subsections (d)(2)(A) though (d)(2)(F) as subsections (d)(3) through (d)(8), respectively; by adding new subsection (d)(5)(C) pertaining to facial recognition technology; by adding clarifying language and deleting language referring to discovery requests in section (i); by adding new language to section (n) concerning sanctions; and by making stylistic changes, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

(a) Applicability

This Rule governs discovery and inspection in the District Court. Discovery is available in the District Court in actions that are punishable by imprisonment.

Committee note: This Rule also governs discovery in actions transferred from District Court to circuit court upon a jury trial demand made in accordance with Rule 4-301 (b)(1)(B). See Rule 4-301 (c).

(b) Definitions

In this Rule, the terms "defense," "defense witness," "oral statement," "provide," "State's witness," and "written statement" have the meanings stated in Rule 4-263 (b).

Cross reference: For the definition of "State's Attorney," see Rule 4-102 (l).

(c) Obligations of the Parties

(1) Due Diligence

The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Committee note: In many jurisdictions, the State complies with discovery requirements imposed under Rules 4-262 and 4-263 through "open file" discovery. While, in appropriate cases, "open file" discovery may satisfy the State's discovery obligation, the full scope of discovery may require provision of additional discovery material beyond that contained in the "open file," as expressly outlined in Rules 4-262 (c) and 4-263 (c).

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

~~(1) Without Request~~

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

(1) Exculpatory Information

~~all~~ All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(2) Impeachment Information

~~and all~~ All material or information in any form, whether or not admissible, that tends to impeach a State's witness~~.~~;

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

~~(2) On Request~~

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

~~(A)~~(3) Statements of Defendant and Co-defendant

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

~~(B)~~(4) Written Statements, Identity, and Telephone Numbers of State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: ~~(i)~~(A) the name of the witness; ~~(ii)~~(B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-934, the address and, if known to the State's Attorney, the

telephone number of the witness~~,~~; and ~~(iii)~~(C) the statements of the witness relating to the offense charged that are in a writing signed or adopted by the witness or are in a police or investigative report;

~~(C)~~(5) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

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

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

(C) the use of facial recognition technology, in accordance with Code, Criminal Procedure Article, § 2-504;

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)~~(6) 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)~~(A) 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)~~(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

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

~~(E)~~(7) 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)~~(8) 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.

(e) Disclosure by Defense

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

(1) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, 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; and

(2) Defense of Duress

Notice of an intention to rely on a defense of duress pursuant to Code, Criminal Law Article, § 11-306(c).

(3) Documents, Computer-Generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

(f) Person of the Defendant

(1) On Request

On written request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By Any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(i) Procedure

To the extent practicable, the discovery and inspection required or permitted by this Rule shall be completed before the hearing or trial date, except that asserting a defense pursuant to subsection (e)(2) of this Rule shall be made at least 10 days before the trial. ~~If a request was made before the date of the hearing or trial and the request was refused or denied, or pretrial compliance was impracticable~~ If compliance was refused, denied, or

impracticable, the court may grant a delay or continuance in the hearing or trial to permit the inspection or discovery.

(j) Requests, Motions, and Responses to be filed with the Court

Requests for discovery, motions for discovery, and any responses to the requests or motions shall be filed with the court.

(k) Discovery Material not to be Filed with the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

(l) Retention; Inspection of Original

The party generating discovery material shall retain the original until the expiration of any sentence imposed on the defendant and, on request, shall make the original available for inspection and copying by the other party.

(m) Protective Orders

On motion of a party, a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

(n) Failure to Comply With Discovery Obligation

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously

disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Source: This Rule is new.

REPORTER'S NOTE

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). The Rules Review Subcommittee was tasked with identifying instances in the Rules which "reflect, perpetuate, or fail to correct systemic biases." The EJC Report includes suggestions to improve the process of criminal discovery, impacting Rules 4-262 and 4-263.

Rule 4-262 concerns discovery for criminal cases in the District Court. The EJC Report discussed a proposed amendment that would institute a fixed deadline for providing discovery before trial in the District Court and would compel sanctions if the deadline was not met. The EJC Report acknowledged that the turnaround time from forensic laboratories must be considered when modifying discovery timeframes. In addition, sanctions are not intended as punishment, but primarily aim to ensure a fair trial. Although the imposition of sanctions is within the discretion of the court, there are well-established principles that a court should apply before determining a proper sanction.

The concept of a discovery deadline in the District Court has been discussed several times by the Rules Committee in the last two decades. For example, in its 163rd Report, the Rules Committee proposed amendments to section (i) of Rule 4-262 governing discovery procedure in the District Court. The proposed amendment added the phrase "to the extent practicable" before language requiring discovery and inspection to be completed before the hearing or trial. Similar new language in that section permitted a delay or continuance if "pretrial compliance was impracticable." The Reporter's note to Rule 4-262

explained, "The Rules Committee believes that specific deadlines for requesting and providing discovery would not be compatible with District Court practice, and therefore declines to recommend the addition of discovery deadlines to Rule 4-262." The proposed amendments to section (i) were adopted by Rules Order filed on March 9, 2010.

The Rules Committee has determined that a discovery deadline is not practicable at this time and declined the EJC Report's suggestion to add a deadline to Rule 4-262. However, several other amendments are proposed to Rule 4-262, primarily addressing additional concerns raised by the EJC Report.

A new Committee note after subsection (c)(2) acknowledges that some prosecutors comply with their discovery obligations by using "open file" discovery. The Committee note highlights that additional materials may still be required as outlined in the Rule. A parallel Committee note is proposed in Rule 4-263.

Rule 4-262 sets forth mandatory disclosures to the defendant in the District Court. Certain additional materials must be provided if a written request is made by the defendant. The EJC Report noted that requiring a written request may present an obstacle for unrepresented defendants and recommended that the Rules Committee consider expanding the list of mandatory disclosures provided without request.

In current Rule 4-262, subsection (d)(1) addresses discovery materials that must be provided without request and subsection (d)(2) lists materials that must be provided after a written request. Proposed amendments to section (d) in effect combine the two sections, making all of the discovery materials listed in section (d) required without the necessity of a request.

Proposed new subsection (d)(5)(C) implements Chapters 808/809, 2024 Laws of Maryland (SB 182/HB338). The new legislation adds a subtitle to the Criminal Procedure Article governing the use of facial recognition technology. Code, Criminal Procedure Article, § 2-504 requires that the State disclose in discovery certain information if facial recognition technology was used in an investigation. New subsection (d)(5)(C) in Rule 4-262 explicitly incorporates this mandatory disclosure.

Stylistic changes are made as needed in section (d) to conform the subsections to the structural change.

Clarifying language is added to section (i), noting that discovery and inspection shall, if practicable, be completed before the date of the hearing or trial. This change aims to limit the cases where discovery is completed on the same day as a scheduled proceeding, often prompting a postponement request.

The second sentence of the section is amended to reflect that discovery pursuant to section (d) no longer requires a request.

Section (n) concerns sanctions if a party fails to comply with discovery obligations. Despite comments received from some justice partners, the EJC Report discouraged the use of mandatory sanctions for discovery violations in the circuit court, but recommended that the Rules Committee consider whether a postponement should be the presumptive remedy for a failure to timely meet discovery obligations in the District Court.

In regard to sanctions, the Rules Committee determined that the current Rule allows the court to fashion an appropriate response to a discovery violation. The Committee declined to limit the court's discretion by creating presumptive remedies for discovery violations.

A proposed amendment to section (n) instead adds the same language that appears in the parallel section of Rule 4-263, enumerating some possible sanctions.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-263 by adding a Committee note after subsection (c)(2), by deleting the cross reference after subsection (d)(6), by adding new subsection (d)(7)(C) pertaining to facial recognition technology, by adding subsection (d)(11) addressing disclosures concerning in-custody witness testimony, by adding a cross reference after new subsection (d)(11), by deleting a Committee note at the end of section (n), and by making stylistic changes, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(c) Obligations of the Parties

(1) Due Diligence

The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Committee note: In many jurisdictions, the State complies with discovery requirements imposed under Rules 4-262 and 4-263 through "open file" discovery. While, in appropriate cases, "open file" discovery may satisfy the State's discovery obligation, the full scope of discovery may require provision of additional discovery material beyond that contained in the "open file," as expressly outlined in Rules 4-262 (c) and 4-263 (c).

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

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

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-912 (b), the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged;

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

~~Cross reference: For the requirement to disclose a "benefit" to an "in-custody witness," see Code, Courts Article, § 10-924.~~

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

(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 including, if the pretrial identification involved participation by personnel from a law enforcement agency, (i) a copy of or an electronic link to the written policies relating to eyewitness identification required by Code, Public Safety Article,

§§ 3-506 and 3-506.1, and (ii) documents or other evidence indicating compliance or non-compliance with the requirements of Code, Public Safety Article, §§ 3-506 and 3-506.1; and

(C) the use of facial recognition technology, in accordance with Code, Criminal Procedure Article, § 2-504;

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.; and

(11) In-custody Witness Testimony

If the State's Attorney intends to introduce testimony of an in-custody witness:

(A) any benefits an in-custody witness has received, or expects to receive, in exchange for providing testimony;

(B) the substance, time, and place of any statement (i) allegedly made by a suspect or defendant to the in-custody witness or (ii) made by an in-custody witness to law enforcement implicating the suspect or defendant; and

(C) other cases in which the in-custody witness testified, provided that the testimony can be ascertained through reasonable inquiry, and whether the in-custody witness received a benefit in exchange for providing testimony in those other cases.

Cross reference: See Rule 4-268 concerning pre-trial hearings prior to the admission of in-custody witness testimony.

(e) Disclosure by Defense

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

(1) Defense Witness

The name and, except when the witness declines permission, the address of each defense witness other than the defendant, together with all written statements of each such witness that relate to the subject matter of the

testimony of that witness. Disclosure of the identity and statements of a person who will be called for the sole purpose of impeaching a State's witness is not required until after the State's witness has testified at trial.

(2) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, 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;

(3) Character Witnesses

As to each defense witness the defense intends to call to testify as to the defendant's veracity or other relevant character trait, the name and, except when the witness declines permission, the address of that witness;

(4) Alibi Witnesses

If the State's Attorney has designated the time, place, and date of the alleged offense, the name and, except when the witness declines permission, the address of each person other than the defendant whom the defense intends

to call as a witness to show that the defendant was not present at the time, place, or date designated by the State's Attorney;

(5) Insanity Defense

Notice of any intention to rely on a defense of not criminally responsible by reason of insanity, and the name and, except when the witness declines permission, the address of each defense witness other than the defendant in support of that defense; and

Committee note: The address of an expert witness must be provided. See subsection (e)(2)(A) of this Rule.

(6) Defense of Duress

Notice of an intention to rely on a defense of duress pursuant to Code, Criminal Law Article, § 11-306(c).

(7) Documents, Computer-Generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

(f) Person of the Defendant

(1) On Request

On request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By Any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c), and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date, except that asserting a defense pursuant to subsection (e)(6) of this Rule shall be made at least 10 days before the first scheduled trial date.

(i) Motion to Compel Discovery

(1) Time

A motion to compel discovery based on the failure to provide discovery within the time required by section (h) of this Rule shall be filed within ten days after the date the discovery was due. A motion to compel based on inadequate discovery shall be filed within ten days after the date the discovery was received.

(2) Content

A motion shall specifically describe the information or material that has not been provided.

(3) Response

A response may be filed within five days after service of the motion.

(4) Certificate

The court need not consider any motion to compel discovery unless the moving party has filed a certificate describing good faith attempts to discuss with the opposing party the resolution of the dispute and certifying that they

are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

(j) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(k) Manner of Providing Discovery

(1) By Agreement

Discovery may be accomplished in any manner mutually agreeable to the parties. The parties shall file with the court a statement of their agreement.

(2) If No Agreement

In the absence of an agreement, the party generating the discovery material shall (A) serve on the other party copies of all written discovery material, together with a list of discovery materials in other forms and a statement of the time and place when these materials may be inspected, copied, and photographed, and (B) promptly file with the court a notice that (i) reasonably identifies the information provided and (ii) states the date and manner of service. On request, the party generating the discovery material shall make the original available for inspection and copying by the other party.

(3) Requests, Motions, and Responses to Be Filed With the Court

Requests for discovery, motions for discovery, motions to compel discovery, and any responses to the requests or motions shall be filed with the court.

(4) Discovery Material Not to Be Filed With the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

(l) Retention

The party generating discovery material shall retain the original until the earlier of the expiration of (i) any sentence imposed on the defendant or (ii) the retention period that the material would have been retained under the applicable records retention and disposal schedule had the material been filed with the court.

(m) Protective Orders

(1) Generally

On motion of a party, a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

(2) In Camera Proceedings

On request of party, or a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court may

permit any showing of cause for denial or restriction of disclosures to be made in camera. A record shall be made of both in court and in camera proceedings. Upon the entry of an order granting relief in an in camera proceeding, all confidential portions of the in camera portion of the proceeding shall be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

(n) Sanctions

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

~~Committee note: When testimony of an in-custody witness is offered, the Court, at the request of a defendant, shall conduct a hearing to ensure that the State's Attorney has disclosed all material and information related to the in-custody witness as required by law. See Code, Courts Article, § 10-924.~~

Source: This Rule is new and is derived in part from former Rule 741 and the 1998 version of former Rule 4-263.

REPORTER'S NOTE

In Rule 4-263, a proposed Committee note after subsection (c)(2) acknowledges that some prosecutors comply with their discovery obligations by using "open file" discovery. The Committee note highlights that additional materials may still be required as outlined in the Rule. A parallel Committee note is proposed in Rule 4-262.

Proposed new subsection (d)(7)(C) implements Chapters 808/809, 2024 Laws of Maryland (SB 182/HB338). The new legislation adds a subtitle to the Criminal Procedure Article governing the use of facial recognition technology. Code, Criminal Procedure Article, § 2-504 requires that the State disclose in discovery certain information if facial recognition technology was used in an investigation. New subsection (d)(7)(C) in Rule 4-263 explicitly incorporates this mandatory disclosure.

Additional amendments to Rule 4-263 are proposed based on the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). In March 2023, the Judicial Council approved the EJC Report for dissemination. For additional information, see the Reporter's note to Rule 4-262.

The EJC Report discussed a proposal to add a new subsection to Rule 4-263 about in-custody witness testimony and a new Rule addressing a preliminary hearing. Overall, the EJC Report recommended that Rule 4-263 be amended to incorporate the statutory requirements of Code, Courts Article, § 10-924, that the Committee consider adding a section regulating hearings under the Code section, and that the Committee consider whether pretrial sworn testimony from an in-custody witness may be demanded by a defendant.

Amendments to Rule 4-263 are proposed in response to the EJC Report. New subsection (d)(11) sets forth the required discovery material if the State's Attorney intends to introduce the testimony of an in-custody witness. The language of the section is taken from the statutory provisions. A cross reference after the new subsection points to new Rule 4-268.

The current cross reference after subsection (d)(6)(B) and the Committee note after section (n) are proposed to be deleted. Based on the addition of new subsection (d)(11), the cross reference and Committee note are unnecessary.

Stylistic changes are made to account for the addition of a new subsection.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

ADD new Rule 4-268, as follows:

Rule 4-268. PRE-TRIAL HEARING PRIOR TO ADMISSION OF IN-CUSTODY WITNESS TESTIMONY

At the request of the defendant, the court shall conduct a hearing prior to admitting the testimony of an in-custody witness to determine whether the State's Attorney has disclosed all material and information related to the in-custody witness as required by law.

Cross reference: See Rule 4-263 and Code, Courts Article, § 10-924.

Source: This Rule is new.

REPORTER'S NOTE

The Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report") discussed a proposal to add a new subsection to Rule 4-263 about in-custody witness testimony and a new Rule addressing a related preliminary hearing. For additional information, see the Reporter's note to Rule 4-263.

Proposed new Rule 4-268 addresses hearings related to § 10-924 and is prepared in tandem with the proposed amendments to Rule 4-263. Section (e) of § 10-924 states, "Prior to admitting testimony of an in-custody witness, the court shall conduct a hearing, at the request of the defendant, to ensure that the State's Attorney has disclosed all material and information related to the in-custody witness as required under subsection (d) of this section and Maryland Rule 4-263."

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-213.1 by correcting terminology in subsection (g)(1) and by adding clarifying language to subsections (g)(1) and (g)(2), as follows:

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

. . .

(g) Provisional and Limited Appearance

(1) Provisional Representation by Public Defender

Unless a District Court commissioner has made a final determination of indigence and the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance shall be provisional, shall terminate automatically upon the conclusion of that stage of the criminal action, and shall not commence the time for setting a trial date pursuant to Rule 4-271. For purposes of this section, eligibility for provisional representation shall be determined by a District Court ~~commission~~ commissioner prior to or at the time of the proceeding.

(2) Limited Appearance

Unless a general appearance has been entered pursuant to Rule 4-214, an appearance by a court-appointed or privately retained attorney shall be limited

to the initial appearance before the judicial officer, ~~and~~ shall terminate automatically upon the conclusion of that stage of the criminal action, and shall not commence the time for setting a trial date pursuant to Rule 4-271.

(3) Inconsistency with Rule 4-214

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

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

Source: This Rule is new but is derived, in part, from amendments proposed to Rule 4-216 in the 181st Report of the Standing Committee on Rules of Practice and Procedure.

REPORTER'S NOTE

Proposed amendments to Rules 4-213.1 and 4-271 primarily clarify the impact of limited appearances in criminal cases on the "*Hicks* Rule." A trial court judge brought the question to the Rules Committee of whether an attorney entering a limited appearance in a criminal action pursuant to Rule 4-213.1 starts the *Hicks* timeline.

Code, Criminal Procedure Article, § 6-103 and Rule 4-271 both provide that a trial date must be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court. However, neither the Rule, the Code, nor case law directly address whether the "appearance of counsel" includes the entry of a limited appearance as permitted by Rule 4-213.1 for an initial appearance.

A limited appearance pursuant to Rule 4-213.1 terminates automatically upon conclusion of the relevant stage of the criminal action. The Committee note following section (g) explains, at least for purposes of collecting fees, "The entry of a provisional or limited appearance in accordance with this Rule does not constitute the entry of an appearance for the purpose of bringing, prosecuting, or defending an action…" Accordingly, the limited appearance

contemplated by Rule 4-213 is distinguished from an "appearance of counsel" otherwise referenced in other Rules.

Considering that a limited appearance pursuant to Rule 4-213.1 is only for the purposes of a proceeding and not for the action, amendments to subsections (g)(1) and (g)(2) are proposed to clarify that the entry of a limited appearance pursuant to the Rules does not commence the time for setting a trial date.

An additional amendment is proposed in subsection (g)(1) to clarify that provisional representation by the Office of the Public Defender automatically terminates, parallel to the automatic termination contemplated in subsection (g)(2). A review of the Rules history suggests that a provision about automatic termination was inadvertently removed from an earlier version of subsection (g)(1).

The provisions in current Rule 4-213.1 (g) were initially proposed as new subsection (e)(2) of Rule 4-216 in the 181st Report to implement the holding of *DeWolfe v. Richmond*. The language proposed in the 181st Report and adopted by Rules Order provided: "Provisional representation by the Public Defender or representation by a court-appointed attorney shall be limited to the initial appearance before the judicial officer and *shall terminate automatically* upon the conclusion of that stage of the criminal action, unless representation by the Public Defender is extended or renewed pursuant to Rule 4-216.1." (emphasis added).

In the 183rd Report, the provisions in Rule 4-216 (e)(2) were moved to new Rule 4-213.1 (g), where they are still found. The 183rd Report explained that there was no intent to change the content of this section when moving it to the new Rule: "Sections (e), (f), and (g), dealing, respectively, with waiver of the right to an attorney, participation of attorneys by electronic means or telecommunication, and provisional or limited appearances, were included in the 181st Report and were approved in that context by the Court." Similarly, the Reporter's note for Rule 4-213.1 in the 183rd Report confirms that no major changes were intended, stating: "Section (g), pertaining to provisional and limited appearances, carries forward the provisions of Rule 4-216 (e)(2)." Despite noting that no major changes were intended, the language providing that a provisional or limited appearance would automatically terminate appeared only in the subsection concerning court-appointed or privately retained attorneys.

Code provisions suggest that the language regarding automatic termination is applicable to provisional representation by the Office of the Public Defender. Code, Criminal Procedure Article, § 16-210 (d)(3) states:

(i) For the purpose of an initial appearance proceeding or bail review, a District Court commissioner shall make a preliminary determination as to whether an individual qualifies as indigent.

…

(iii) Representation at the initial appearance shall terminate at the conclusion of the proceeding, unless the commissioner has made a final determination that the individual qualifies as indigent and the Office has entered a general appearance.

In light of the Rules history and § 16-210, it appears that the language regarding automatic termination was inadvertently removed from subsection (g)(1) when the provisions were moved to new Rule 4-213.1 in the 183rd Report. Accordingly, proposed amendments to Rule 4-213.1 (g)(1) add language clarifying that provisional representation by the Office of the Public Defender terminates unless a final determination is made by the District Court commissioner or a general appearance is entered pursuant to Rule 4-214.

In addition, in subsection (g)(1), the term "District Court commission" is corrected to read "District Court commissioner."

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-271 by adding clarifying language to section (a), as follows:

Rule 4-271. TRIAL DATE

(a) Trial Date in Circuit Court

(1) The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel pursuant to Rule 4-214 or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events. When a case has been transferred from the District Court because of a demand for jury trial, and an appearance of counsel entered in the District Court was automatically entered in the circuit court pursuant to Rule 4-214 (a), the date of the appearance of counsel for purposes of this Rule is the date the case was docketed in the circuit court. On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date. If a circuit court trial date is changed, any subsequent changes of the trial date may be made only by the county administrative judge or that judge's designee for good cause shown.

Cross reference: See Code, Criminal Procedure Article, § 6-103; see also *Jackson v. State*, 485 Md. 1 (2023).

(2) Upon a finding by the Chief Justice of the Supreme Court that the number of demands for jury trial filed in the District Court for a county is having a critical impact on the efficient operation of the circuit court for that county, the Chief Justice, by Administrative Order, may exempt from this section cases transferred to that circuit court from the District Court because of a demand for jury trial.

(b) Change of Trial Date in District Court

The date for trial in the District Court may be changed on motion of a party, or on the court's initiative, and for good cause shown.

Committee note: Subsection (a)(1) of this Rule is intended to incorporate and continue the provisions of Rule 746 from which it is derived. Stylistic changes have been made.

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rule 746 a and b, and is in part new.
Section (b) is derived from former M.D.R. 746.

REPORTER'S NOTE

Proposed amendments to Rules 4-213.1 and 4-271 clarify the impact of limited appearances in criminal cases on the "*Hicks* Rule." For further discussion, see the Reporter's note to Rule 4-213.1.

Rule 4-271 (a) provides that a trial date must be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213. A proposed amendment to Rule 4-271 (a)(1) notes that the subsection refers to an appearance of counsel entered pursuant to Rule 4-214, addressing the entry of appearance of defense counsel. The added language makes clear that the beginning of the 30-day period is not triggered by a provisional or limited appearance entered pursuant to Rule 4-213.1.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-252 by adding a cross reference following subsection (a)(3), as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

(a) Mandatory Motions

In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:

(1) A defect in the institution of the prosecution;

(2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;

(3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;

Cross reference: See Code, Criminal Procedure Article, Title 2, Subtitle 5 regarding admissibility of results generated by facial recognition technology.

(4) An unlawfully obtained admission, statement, or confession; and

Cross reference: See Code, Courts Article, § 3-8A-14.2 regarding admissibility of a statement made by a child, including a child charged as an adult, during a custodial interrogation.

(5) A request for joint or separate trial of defendants or offenses.

. . .

REPORTER'S NOTE

Chapters 808/809, 2024 Laws of Maryland (SB 182/HB338), add a new subtitle to the Criminal Procedure Article governing the use of facial recognition technology. Code, Criminal Procedure Article, § 2-502 prohibits use of facial recognition technology as evidence in criminal and delinquency proceedings, with certain exceptions.

In Rule 4-252, a cross reference to the new statute is proposed to be added following subsection (a)(3), which requires "an unlawful… pretrial identification" to be raised by motion filed within the time stated in section (b) of the Rule. The new cross reference is modeled after a similar provision recently added following subsection (a)(4) pertaining to a law governing admissibility of statements by a juvenile in a custodial interrogation.

A parallel reference is proposed in Rule 11-419 governing motions in delinquency proceedings.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 400 – DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-419 by adding a cross reference following subsection (b)(3), as follows:

Rule 11-419. MOTIONS

. . .

(b) Mandatory Motions—Generally

In a delinquency proceeding, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:

(1) A defect in the institution of the prosecution;

(2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;

(3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;

Cross reference: See Code, Criminal Procedure Article, Title 2, Subtitle 5 regarding admissibility of results generated by facial recognition technology.

(4) An unlawfully obtained admission, statement, or confession; and

Cross reference: See Code, Courts Article, § 3-8A-14.2 regarding admissibility of a statement made by a child during a custodial interrogation.

(5) A request for a joint trial or separate trials or respondents or offenses.

. . .

REPORTER'S NOTE

Chapters 808/809, 2024 Laws of Maryland (SB 182/HB 338), add a new subtitle to the Criminal Procedure Article governing the use of facial recognition technology. Code, Criminal Procedure Article, § 2-502 prohibits use of facial recognition technology as evidence in criminal and delinquency proceedings, with certain exceptions.

In Rule 11-419, a cross reference to the new statute is proposed following subsection (b)(3), which requires "an unlawful... pretrial identification" to be raised by motion filed in conformity with the Rule. The new cross reference is modeled after a similar provision recently added following subsection (b)(4) pertaining to a law governing admissibility of statements by a juvenile in a custodial interrogation.

A parallel reference is proposed in Rule 4-252 governing motions in criminal proceedings.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-314 by updating terminology in subsection (b)(6), as follows:

Rule 4-314. DEFENSE OF NOT CRIMINALLY RESPONSIBLE

. . .

(b) Procedure for Bifurcated Trial

. . .

(6) Order of Proof

(A) Evidence of mental disorder or ~~mental retardation~~ intellectual disability as defined in Code, Criminal Procedure Article, § 3-109 shall not be admissible in the guilt stage of the trial for the purpose of establishing the defense of lack of criminal responsibility. This evidence shall be admissible for that purpose only in the second stage following a verdict of guilty.

. . .

REPORTER'S NOTE

The proposed amendment conforms Rule 4-314 to Chapter 444, 2024 Laws of Maryland (HB 432). The bill made technical amendments to a series of statutes by replacing the term "mental retardation" with "intellectual disability."

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 11-102 by updating the terms in the cross reference following section (a), as follows:

Rule 11-102. DEFINITIONS

The following definitions apply in this Title:

(a) Statutory Definitions

The definitions in Code, Courts Article, §§ 3-801 and 3-8A-01 are applicable to this Title. If a definition in Code, Courts Article, Title 3, Subtitle 8 differs from the definition of the term in Code, Courts Article, Title 3, Subtitle 8A, the definition in the Subtitle under which the particular action or proceeding was filed applies.

Cross reference: See Code, Courts Article, § 3-801 for definitions of "abuse," "adjudicatory hearing," "adult," "child," "child in need of assistance," "CINA," "commit," "custodian," "custody," "developmental disability," "disposition hearing," "guardian," "guardianship," "labor trafficking," "local department," "mental disorder," "mental injury," "neglect," "parent," "party," "qualified residential treatment program," "reasonable efforts," "relative," "sex trafficking," "sexual abuse," "sexual molestation or exploitation," "shelter care," "shelter care hearing," "TPR proceeding," "voluntary placement," and "voluntary placement hearing."

See Code, Courts Article, § 3-8A-01 for definitions of "adjudicatory hearing," "adult," "child," "child in need of supervision," "citation," "commit," "community detention," "competency hearing," "custodian," "delinquent act," "delinquent child," "detention," "developmental disability," "disposition hearing," "incompetent to proceed," "intake officer," "intellectual disability," "mental disorder," ~~"mental retardation,"~~ "mentally handicapped child," "party,"

"peace order proceeding," "peace order request," "petition," "qualified expert," "respondent," "shelter care," "victim," "violation," and "witness."

. . .

REPORTER'S NOTE

Proposed amendments conform Rule 11-102 to Chapters 348/349, 2024 Laws of Maryland (SB 550/HB 508) and Chapter 444, 2024 Laws of Maryland (HB 432).

Ch. 348/349 added a definition of "labor trafficking" to Code, Courts Article, § 3-801. The first paragraph of the cross reference following section (a) is updated to reflect this addition.

Ch. 444 made technical amendments to a series of statutes by replacing the term "mental retardation" with "intellectual disability." The second paragraph of the cross reference following section (a) is updated to reflect this change.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 400 – DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-422 by updating the terminology in the cross reference following subsection (d)(1) and by making stylistic changes, as follows:

Rule 11-422. DISPOSITION HEARING AND ORDER

. . .

(d) Permitted Dispositions – Delinquency Petition

(1) Generally

In a proceeding based on a delinquency petition, the court may enter a disposition authorized by Code, Courts Article, § 3-8A-19(d), (f), (g), (h), (i), or (j), subject to the conditions and limitations set forth in those sections and in Code, Courts Article, §§ 3-8A-19.6, 3-8A-22, 3-8A-24, and 3-8A-35.

Cross reference: In Code, Courts Article, § 3-8A-19, subsection (d) addresses the court's disposition generally. Subsection (f) ~~of that section~~ addresses the guardian appointed under the section. Subsection (g) ~~of that section~~ addresses placement of a child in an emergency facility on an emergency basis under Code, Health-General Article, Title 10, Subtitle 6, Part IV. Subsections (h) and (i) ~~of that section~~ address commitment of a child to the custody of the State Department of Health for inpatient care and treatment in a State mental hospital or State ~~mental retardation facility~~ facility for individuals with an intellectual disability, respectively. Subsection (j) ~~of that section~~ addresses the requirement that a commitment order issued under either subsection (h) or (i) must require the State Department of Health to file certain progress reports.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 11-422 conform the Rule to Chapter 444, 2024 Laws of Maryland (HB 432) and make stylistic changes. The bill made technical amendments to a series of statutes by replacing the term "mental retardation" with "intellectual disability."

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 400 – DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-423 by updating the terminology in the cross reference following section (c) and by making stylistic changes, as follows:

Rule 11-423. REVISORY POWER; POST-DISPOSITION HEARINGS

. . .

(c) Commitment to Maryland Department of Health

If the order sought to be modified or vacated committed the respondent to the Department of Health pursuant to Code, Courts Article, § 3-8A-19(h), (i), or (j), the court shall proceed in accordance with those sections.

Cross reference: In Code, Courts Article, § 3-8A-19, subsection (h) addresses the commitment of a child to the custody of the Department of Health for inpatient care and treatment in a State mental hospital. Subsection (i) ~~of that statute~~ addresses commitment of a child to the custody of the Department of Health for inpatient care and treatment in a State ~~mental retardation facility~~ facility for individuals with an intellectual disability. Subsection (j) ~~of that statute~~ addresses the requirement that a commitment order issued under either subsection (i) or (j) must require the Department of Health to file certain progress reports.

. . .

REPORTER'S NOTE

Proposed amendments conform Rule 11-423 to Chapter 444, 2024 Laws of Maryland (HB 432) and make stylistic changes. The bill made technical amendments to a series of statutes by replacing the term "mental retardation" with "intellectual disability."

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 300 – GUARDIANSHIP TERMINATING PARENTAL RIGHTS

AMEND Rule 11-302 by updating the terms in the cross reference following section (b), as follows:

Rule 11-302. DEFINITIONS

The following definitions apply in this Chapter:

. . .

(b) Additional Definitions

(1) CINA

"CINA" means a child in need of assistance under Chapter 200 of these Rules.

(2) Local Department

"Local department" means the local department of social services for the county in which the court is located. In Montgomery County, "local department" means the Department of Health and Human Services.

Cross reference: See Code, Courts Article, §§ 3-801 ~~(p)~~(q) and 5-301.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment conforms Rule 11-102 to Chapters 348/349, 2024 Laws of Maryland (SB 550/HB 508).

Ch. 348/349 shifted the location of the definition of "local department" in Code, Courts Article, § 3-801. The cross reference following section (b) is updated to reflect this change.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 400 – DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-405 by adding a statutory reference to section (b), as follows:

Rule 11-405. TAKING CHILD INTO CUSTODY

. . .

(b) Notice; Release; Detention

A law enforcement officer who takes a child into custody shall comply with the requirements of Code, Courts Article, §§ 3-8A-14(b) and (d) and 3-8A-14.2.

. . .

REPORTER'S NOTE

The proposed amendment conforms Rule 11-405 to Chapter 735, 2024 Laws of Maryland (HB 814). The bill added new section (d) to Code, Courts Article, § 3-8A-14 to include additional requirements for a law enforcement officer taking a child into custody. A reference to section (d) is added to Rule 11-405 (b).

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 400 – DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-406 by adding a provision pertaining to waiver of the required review hearing to subsection (f)(2) and by making a stylistic change, as follows:

Rule 11-406. DETENTION; COMMUNITY DETENTION; SHELTER CARE

. . .

(f) Child in Detention--Required Actions

(1) Plan for Release

Within 10 days after a court orders detention of a child, the Department of Juvenile Services shall submit a plan to the court for releasing the child into the community.

Cross reference: See Code, Courts Article, § 3-8A-15(l).

(2) Review Hearing

Within 14 days after the court orders detention of a child, and every 14 days thereafter, the Department of Juvenile Services shall appear at a review hearing before the court with the child to explain the reasons for continued detention. With the consent of the State's Attorney and the child's attorney, the court may waive the hearing, provided that no waiver of a review hearing under this subsection previously was granted.

Cross reference: See Code, Courts Article, § 3-8A-15(k).

. . .

REPORTER'S NOTE

The proposed amendments conform Rule 11-406 to Chapter 735, 2024 Laws of Maryland (HB 814). The bill added a provision to Code, Courts Article, § 3-8A-15(k) governing waiver of the required review hearing. The new provision states, "A hearing required under this subsection may be waived one time on the consent of the court, the State's Attorney, and counsel for the child." Rule 11-406 (f)(2) is updated to include this provision, which is reworded for clarity.

The addition of the word "review" to the first sentence of subsection (f)(2) is stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 400 – DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-420.2 by updating a statutory reference in the cross reference following section (e), as follows:

Rule 11-420.2. SAFE HARBOR – VICTIMS OF CHILD SEX TRAFFICKING AND HUMAN TRAFFICKING

. . .

(e) Use of Certain Evidence in Other Proceedings

Any statement made by the child or information elicited from the child (1) in connection with services provided pursuant to a referral under Code, Courts Article, § 3-8A-17.13(b)(1)(iii) or (2) at a hearing pursuant to section (c) of this Rule is inadmissible against the child in any proceeding except a hearing held pursuant to subsection (c)(1) of this Rule.

Cross reference: See Code, Family Law Article, § 5-704.4 pertaining to the Safe Harbor Regional Navigator Grant Program. See Code, Courts Article, § 3-8A-14 ~~(d)~~(e) pertaining to duties of a law enforcement officer if there is reason to believe that a child who has been detained is a victim of sex trafficking or human trafficking. See Code, Courts Article, § 3-8A-14.2 pertaining to custodial interrogation of children.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 11-420.2 conforms a cross reference to Chapter 735, 2024 Laws of Maryland (HB 814). The bill added a new section to Code, Courts Article, § 3-8A-14, which changed the reference used in the cross reference following section (e).

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 600 – WITNESSES

AMEND Rule 5-606 by adding clarifying language to subsection (b)(1), by adding new subsection (b)(2), by adding a cross reference after new subsection (b)(2), and by renumbering subsequent subsections, as follows:

Rule 5-606. COMPETENCY OF JUROR AS WITNESS

(a) At the Trial

A member of a jury may not testify as a witness before that jury in the trial of the case in which the sworn juror is sitting. If the sworn juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry Into Validity of Verdict

(1) ~~In~~ Except as provided in subsection (b)(2) of this Rule, in any inquiry into the validity of a verdict, a sworn juror may not testify as to (A) any matter or statement occurring during the course of the jury's deliberations, (B) the effect of anything upon that or any other sworn juror's mind or emotions as influencing the sworn juror to assent or dissent from the verdict, or (C) the sworn juror's mental processes in connection with the verdict.

(2) In any inquiry into the validity of a verdict, a sworn juror may testify as to a clear statement made by a juror indicating that the juror relied on a racial or other unconstitutional stereotype or animus.

Cross reference: See *Peña–Rodriguez v. Colorado*, 580 U.S. 206 (2017).

~~(2)~~(3) A sworn juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying may not be received for these purposes.

~~(3)~~(4) Notes made under Rule 2-521 (a) or Rule 4-326 (a) may not be used to impeach a verdict.

(c) "Verdict" Defined

For purposes of this Rule, "verdict" means a verdict returned by a trial jury.

Committee note: This Rule does not address or affect the secrecy of grand jury proceedings.

Source: This Rule is derived in part from F.R.Ev. 606.

REPORTER'S NOTE

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). The Rules Committee recently reviewed a recommendation from the EJC Report concerning *Peña–Rodriguez v. Colorado*, 580 U.S. 206 (2017) and the impact of racial biases on verdicts.

Current Rule 5-606 addresses the competency of a juror as a witness. Subsection (b)(1) states, "In any inquiry into the validity of a verdict, a sworn juror may not testify as to (A) any matter or statement occurring during the course of the jury's deliberations, (B) the effect of anything upon that or any other sworn juror's mind or emotions as influencing the sworn juror to assent or dissent from the verdict, or (C) the sworn juror's mental processes in connection with the verdict." Rule 5-606 (b)(3) further provides that "[n]otes made under Rule 2-521 (a) or Rule 4-326 (a) may not be used to impeach a verdict." Rules 2-521 and 4-326 require the prompt destruction of a juror's notes after a civil or criminal trial, respectively.

Despite the prohibition against revealing certain aspects of a jury's deliberation, the Supreme Court of the United States has held that this prohibition may yield to the Sixth Amendment right of a defendant to a fair trial. In *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017), the defendant was convicted by a jury of unlawful sexual contact and harassment. After the trial, two jurors spoke with defendant's counsel and indicated that "another juror had expressed anti-Hispanic bias toward [the defendant] and [the defendant's alibi witness]" by making a number of biased statements in the presence of other jurors. *Id.* at 212. After the Colorado Supreme Court affirmed the defendant's conviction, finding no basis to permit impeachment of the verdicts, the United States Supreme Court reversed and remanded, holding:

> [W]here a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee. *Id.* at 225.

Maryland has acknowledged the *Peña-Rodriguez* holding in subsequent opinions. In *Williams v. State*, 478 Md. 99 (2022), the defendant argued that the trial court permitted legally inconsistent verdicts. *Id.* at 114. Upon a juror's request, the defendant's counsel met with the juror after trial and submitted an affidavit to the court indicating that the jury instructions were misinterpreted by the jury. *Id.* On appeal, the Supreme Court of Maryland held:

> [W]e conclude that the circuit court correctly granted the motion to strike statements by jurors referenced in the motion for a new trial and that the circuit court did not abuse its discretion in denying the motion for a new trial. The information obtained from jurors after the verdict that Williams's counsel proffered on the last day of the trial and the averments in the affidavit accompanying the motion for a new trial purported to be statements by jurors about discussions that occurred during the jury's deliberations and the jurors' thought processes during deliberations. None of the information attributed to the jurors involved allegations of racial bias or discrimination or the existence of external influences on the jury. *Id.* at 137.

The Court further explained, "To date, Maryland appellate courts have not deviated from the no-impeachment rule — *i.e.*, neither this Court nor the [former] Court of Special Appeals has recognized an exception to the no impeachment rule under Maryland law." *Id.* at 138. In this manner, the Supreme Court of Maryland recently declined to extend the *Peña-Rodriguez* exception.

Although the *Peña-Rodriguez* exception has been recognized by the U.S. Supreme Court as an appropriate reason to invade the province of the jury, locating clear evidence of the racial animus of a juror may prove challenging. The EJC Report highlights a proposal to retain jurors' notes to assist defendants in determining whether racial bias impacted the verdict in their trial. The EJC Report discusses this proposal, but refrains from recommending or discouraging the proposed change. The EJC Report acknowledges that "[t]he rare, but not non-existent, chance of finding a 'clear statement' of racial animus in a juror's notebook should be weighed against the chilling effects of making such notes a public record."

In summary, the EJC Report included the following recommendation for the Committee: "The Rules Committee may wish to examine the benefits and drawbacks of adding a *Peña-Rodriguez* exception to Rules 4-326 and 5-606." To address this recommendation, the Rules Committee considered two possible changes: (1) permitting inspection of jurors' notes in certain circumstances and (2) adding a *Peña–Rodriguez* exception to the Rules.

In regard to permitting inspection of jurors' notes, the petitioners in *Peña-Rodriguez* and *Williams* sought to introduce statements of jurors through testimony or affidavits. The cited cases did not concern requests to view a juror's notes or allegations that a juror's notes would reveal bias.

The American Bar Association has published Principles for Juries and Jury Trials, revised in 2016. In regard to notetaking, Principle 13 states that jurors should be permitted to take notes and provides: "Jurors should be instructed at the beginning of the trial that they are permitted, but not required, to take notes… Jurors should also be instructed that after they have reached their verdict, all juror notes will be collected and destroyed." Current Maryland Rules also provide for the destruction of a juror's notes, consistent with the ABA Principles.

After thorough discussion, the Criminal Rules Subcommittee declined to recommend amending the Rules concerning the destruction of a juror's notes and no motion to the contrary was made at a full Rules Committee meeting.

However, the Committee does recommend adding an exception to Rule 5-606 permitting inquiry into the validity of a verdict in limited circumstances, derived from the holding set forth in *Peña–Rodriguez*. Accordingly, a proposed amendment to Rule 5-606 adds new subsection (b)(2). The language is derived from the holding in *Peña–Rodriguez* permitting a sworn juror to testify as to a clear statement made by a juror indicating that the juror relied on a stereotype or animus based on race to convict a defendant.

The Rules Committee recognized that the holding in *Peña–Rodriguez* was (1) premised on rights grounded in the Sixth Amendment applicable only in criminal cases and (2) limited to a stereotype or animus based on race. The Committee considered whether to incorporate these two limitations into any amendment at its January 10, 2025 meeting.

The Rules Committee discussed whether an amendment to Rule 5-606 should be limited to criminal cases. The Committee noted that the Federal Rule of Evidence 606, which also contains exceptions to the general prohibition against inquiry into a verdict, does not contain such limitation. When impaneling a jury in both civil and criminal cases, jurors are questioned as to whether they can decide a case fairly and impartially. Committee members offered anecdotal examples of similar prejudices occurring within civil juries. Similarly, the Committee noted that the application of *Batson v. Kentucky*, 476 U.S. 79 (1986) has expanded beyond the criminal context and has been applied to the *voir dire* of a jury in civil cases. *See, e.g., Edmonson v. Leesville Concrete Co.,* 500 U.S. 614 (1991). Overall, the Rules Committee recommends that new subsection (b)(2) should apply to both civil and criminal cases.

The Rules Committee also considered whether the exception should be limited to a stereotype or animus based on race. The Committee noted that expansion of protections based on race to other protected classifications has precedent. For example, *Batson* prohibited peremptory strikes based solely on race, but has been expanded to apply to peremptory strikes based solely on gender. *See J.E.B. v. Alabama,* 511 U. S. 127 (1994).

The Rules Committee acknowledges that there are complications associated with any erosion of the bright-line directives of Rule 5-606. However, the Committee recommends that those concerns be balanced with the existence of instances that should permit inquiry into a verdict, and a juror's reliance on an unconstitutional bias tips the scale. Furthermore, by including other unconstitutional stereotypes or animus within the exception instead of enumerating specific stereotypes within the language of the Rule, proper application of the Rule will be determined by the interpretation of the Constitution.

On a split vote, the majority of the Rules Committee voted for inclusion of the phrase "other unconstitutional stereotype or animus" in proposed subsection (b)(2). There were four dissenting votes. One of the dissenters believed that the subsection should be limited to race to conform to the limited holding of the *Peña–Rodriguez* decision.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

ADD new Rule 9-202.1, as follows:

Rule 9-202.1. CHILD SUPPORT MODIFICATION

(a) Applicability

This Rule applies to a motion to modify child support pursuant to Code, Family Law Article, § 12-104 that is filed more than 30 days after entry of an order by a Maryland court establishing or modifying child support. It does not apply to modification of a support order or income withholding order issued in another state or a foreign support order registered in this State.

Cross reference: See Code, Family Law Article, Title 10, Subtitle 3, Part VI, Subpart C pertaining to registration and modification of a child support order of another state.

(b) Form of Motion

The motion shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the clerks' offices.

(c) Issuance of Summons

Pursuant to Rule 1-321 (e), the clerk shall issue a summons to be served with the motion.

(d) Service

(1) On Non-Moving Party

Except as otherwise provided in section (e) of this Rule, the summons and the motion shall be served on the non-moving party in accordance with Rule 2-121 (a).

(2) On Child Support Administration

If the Child Support Administration is charged with collecting child support in the action, in addition to the service required by subsection (d)(1) of this Rule, the moving party shall serve a copy of the summons and the motion on the local office of child support by first-class mail.

(e) Alternative Methods of Service

(1) Request

If (A) the current address of the non-moving party is not known to the moving party, (B) the moving party is unable to serve the non-moving party after having made reasonable good faith efforts to do so, or (C) the moving party alleges facts supporting that personal service on the non-moving party is impracticable, the moving party may file a request to permit an alternative method of service pursuant to Rule 2-121 (b) or (c), as appropriate, together with an affidavit in support of the request. The request and affidavit shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the clerks' offices. If the Child Support Administration is charged with collecting child support in the action, the moving party shall serve the Child Support Administration by mailing a copy of the request and affidavit to the local office of child support by first-class mail.

(2) Determination of Request

The court promptly shall consider a request filed pursuant to section (e) of this Rule. The court may hold a hearing to determine an appropriate method of service, except that the court shall hold a hearing if the Child Support Administration is charged with collecting child support in the action and requests a hearing within 15 days of being served pursuant to subsection (e)(1) of this Rule. If a hearing is held, the court shall permit remote electronic participation pursuant to Rule 21-201. If the court grants the request, it shall enter an order permitting an alternative method of service reasonably calculated to give actual notice of the action to the non-moving party, which may include:

(A) authorizing service pursuant to Rule 2-121 (b);

(B) permitting the moving party to send a copy of the summons and the motion to the non-moving party by electronic means, including email, text message, or social media; or

(C) if the Child Support Administration is charged with collecting child support and has an email address or cell phone number for the non-moving party in its records, ordering the Child Support Administration to make prompt electronic service by email, text message, or both.

(3) Order Permitting Alternative Service

An order permitting an alternative method of service shall include:

(A) the authorized method or methods of alternative service;

(B) a method for demonstrating proof of service;

(C) if the Child Support Administration is ordered to serve the non-moving party electronically, instructions for providing the court with the email address or cell phone number used for service confidentially; and

(D) a directive to the non-moving party to provide to the court, in writing, within the time allowed for filing a response to the motion, an address to which pleadings, papers, and notices are to be sent.

Committee note: The non-moving party may provide any street address or post office box at which the party is willing and able to receive pleadings, papers, and notices, including any documents that may require prompt action on the part of the non-moving party. The address may be provided as part of a response to the motion.

Cross reference: See Code, State Government Article, §§ 7-301 to 7-313 and Rule 1-205 concerning participation in the Address Confidentiality Program. See Rule 1-311 (a) concerning information to be provided when filing a pleading or paper with the court.

(4) Failure to Provide Address

If a non-moving party who is served pursuant to section (e) of this Rule fails to provide the court with an address as required by subsection (e)(3)(D) of this Rule within the time allowed for responding to the motion, the court shall enter an order stating a method by which pleadings and papers may be served and notices may be sent, which may be the method of alternative service used for service of the initial motion.

(f) Motion to Modify Child Support as Counterclaim

A non-moving party who is served with a summons and motion to modify child support or a petition for contempt in an action involving child support may file a motion to modify child support as a counterclaim and serve it on the moving party in accordance with Rule 1-321 (a). If the Child Support

Administration is charged with collecting child support in the action and is not the moving party, the party filing the counterclaim shall serve a copy of it on the local office of child support by first-class mail. If the Child Support Administration is the moving party, the party filing the counterclaim shall serve each other party named in the child support order sought to be modified in accordance with the procedure set forth in subsection (d)(1) or (e) of this Rule.

Source: This Rule is new.

REPORTER'S NOTE

The Equal Justice Committee Rules Review Subcommittee Report and Recommendations ("the EJC Report"), referred to the Rules Committee in March 2023 by the Judicial Council, suggested that the Committee, "in collaboration with the Child Support Workgroup of the Domestic Law Committee, may wish to review the service provisions under Rule 1-321 to determine if the procedural process creates potential unfairness for low-income litigants in child custody cases."

The Child Support Workgroup raised two key issues that may prevent timely determination of motions to modify child support: difficulty serving the motion and the inability to file the motion as a counterclaim to a contempt petition filed by the Child Support Administration ("CSA"). Code, Family Law Article, § 12-104 permits a court to modify a child support award after a motion and showing of a material change in circumstances, but provides that a court "may not retroactively modify a child support award prior to the date of the filing of the motion for modification." A parent seeking to modify a support obligation who has a motion dismissed for lack of prosecution or who is prevented from countering a petition for contempt with a request to modify faces arrears which the court cannot retroactively modify.

Rule 2-121 (a) governs service of an original pleading in circuit court. Rule 1-321 governs service of pleadings and papers other than original pleadings. Rule 1-321 (e) was added in 2018 to address a lack of uniformity among jurisdictions pertaining to service of motions to modify child support. Individual courts had instituted local rules for this issue, with some requiring "fresh" service pursuant to Rule 2-121 and others permitting mailing pursuant to Rule 1-321 (a). Rule 1-321 (e), which went into effect on July 1, 2018,

requires personal service for a motion to modify a judgment in a civil action more than 30 days after entry of the judgment. The 195th Report to the Court recommending the new section explained that there is a risk to allowing a motion to be mailed, possibly years after a case had been closed, to an attorney whose appearance had been terminated by operation of Rule 2-132 (d) or to a party who may have relocated.

When CSA is charged with collecting child support, it is also authorized to bring constructive civil contempt proceedings by Rules 15-206 and 15-207. The Committee was informed that the custodial parent is not typically a party to the contempt action. If the alleged contemnor's defense to the contempt amounts to an argument for modification of the support order, that party must file a motion to that effect and serve both the other parent and CSA. The Supreme Court has observed that "there is no rule or Maryland precedent explicitly allowing [counterclaims or cross-claims] in a contempt action." *Dodson v. Dodson*, 380 Md. 438, 454 (2004). However, *Dodson* does not forestall permitting a motion to modify child support as a counterclaim to a contempt action as its analysis and holding centered on the appropriateness of allowing compensatory damages to be recovered in a civil contempt action. *See id.*

To address the concerns identified by the Child Support Workgroup, proposed new Rule 9-202.1 (1) establishes a path to alternative service by electronic means and (2) permits a motion to modify child support to be filed as a counterclaim in a contempt action.

Section (a) sets forth the applicability of the Rule. It applies to a motion to modify child support pursuant to Code, Family Law Article, § 12-104 filed more than 30 days after an order establishing or modifying support is entered. A cross reference to the subpart of the Maryland Uniform Interstate Family Support Act governing modification of child support orders of another state follows the section.

Section (b) requires the motion to be substantially in the form approved by the State Court Administrator. Section (c) instructs the clerk to issue a summons pursuant to Rule 1-321 (e) (which refers to a summons pursuant to Rule 2-114).

Section (d) generally requires service of the motion on the non-moving party in accordance with Rule 2-121 (a), unless alternative service is ordered pursuant to section (e), and on the local office of child support, if applicable, by first-class mail.

Section (e) provides for alternative methods of service. Rule 2-121 (b) permits the serving party, on proof of evasion of service, to mail papers to the individual's last known address and deliver a copy to the individual's place of business. Rule 2-121 (c) permits the court to order "any other means of service that it deems appropriate in the circumstances and reasonably calculated to

give actual notice," if there have been good faith efforts to serve and section (b) is not appropriate or impracticable. Alternate service methods ordered pursuant to Rule 2-121 (c) could include modern options, such as emailing, texting, and transmittal via social media. However, Maryland's form motion for alternate service does not prompt the filer to suggest electronic service options to the court. The current form concludes: "FOR THESE REASONS, I request that the court order service by posting, or in the alternative by publication, or by any other means of notice that the court may deem appropriate." Posting and publication are unlikely to be effective methods of providing actual notice to the respondent, but electronic service would be permitted as "any other means of notice."

Subsection (e)(1) permits a party to request alternative service pursuant to Rule 2-121 (b) or (c) under certain circumstances. The party must file an affidavit alleging that there is no known current address for the opposing party or reasonable good faith efforts at personal service have failed or are impracticable. The request must also be mailed to CSA, if applicable.

Subsection (e)(2) requires the court to consider the request promptly and establishes that a hearing on the request is optional and should permit remote participation. If CSA requests the hearing, the court must hold a hearing on the request. The court may order alternative methods of service, including electronic service.

Subsection (e)(2)(B) permits the court to order the moving party to send a copy of the summons and motion to the non-moving party by electronic means, such as email or text message.

Subsection (e)(2)(C) permits the court to order CSA to serve the summons and motion on the non-moving party electronically if CSA is charged with collecting child support in the case and has an email address or cell phone number for the non-moving party. CSA, having been served with the request for alternative service, will have the opportunity to inform the court whether the agency has a reliable contact method for the non-moving party. CSA informed the Committee that it has concerns about the staff time that could be required to facilitate service, even electronically. CSA also cannot guarantee that it has up-to-date contact information, particularly for temporary cash assistance cases where child support payments do not go to the custodial parent, decreasing the incentive to maintain a current cell phone number and email address with the agency. Because CSA will only be asked to facilitate service by court order with notice and an opportunity to be heard on feasibility, the Committee believes that the agency's involvement will be limited to cases where there is no other option for service and the agency has the best contact information.

Subsection (e)(3) sets forth the required contents of an order permitting alternative service, including instructions for proof of service and a directive to the non-moving party to provide the court with an address to receive future

papers. A Committee note provides further guidance to the non-moving party and a cross reference to the Address Confidentiality Program follows subsection (e)(3).

Subsection (e)(4) establishes a procedure for the court if a party is served via alternative means and does not provide an address for future papers.

Section (f) explicitly permits a non-moving party to file a motion to modify child support as a counterclaim to either a motion to modify child support or a petition for contempt in an action involving child support. Section (f) requires service of the counterclaim on any other party or CSA, where applicable.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205.3 by adding clarifying language to subsection (c)(2); by creating new subsection (d)(1)(A) using the language of current subsection (d)(1); by adding new subsection (d)(1)(B) regarding continuing education and licensing requirements; by creating new subsection (d)(2)(A) addressing mandatory training using language from current subsection (d)(2), with modifications; by creating new subsection (d)(2)(B) concerning required experience using language from current subsection (d)(2), with modifications; by updating the topics of required knowledge and experience in subsection (d)(2)(B); by modifying the court's ability to waive licensing requirements in subsection (d)(3); and by making stylistic changes, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

(a) Applicability

This Rule applies to the appointment or approval by a court of a person to ~~perform~~ conduct an assessment in an action under this Chapter in which child custody or visitation is at issue.

Committee note: In this Rule, when an assessor is selected by the court, the term "appointment" is used. When the assessor is selected by the parties and the selection is incorporated into a court order, the term "approval" is used.

(b) Definitions

In this Rule, the following definitions apply:

(1) Assessment

"Assessment" includes a custody evaluation, a home study, a mental health evaluation, and a specific issue evaluation.

(2) Assessor

"Assessor" means an individual who ~~performs~~ conducts an assessment.

(3) Custody Evaluation

"Custody evaluation" means a study and analysis of the needs and development of a child who is the subject of an action or proceeding under this Chapter and of the abilities of the parties to care for the child and meet the child's needs.

(4) Custody Evaluator

"Custody evaluator" means an individual appointed or approved by the court to ~~perform~~ conduct a custody evaluation.

(5) Home Study

"Home study" means an inspection of a party's home that focuses upon the safety and suitability of the physical surroundings and living environment for the child.

(6) Mental Health Evaluation

"Mental health evaluation" means an evaluation of an individual's mental health ~~performed~~ conducted by a psychiatrist or psychologist who has the qualifications set forth in subsection ~~(d)(1)(A) or (B)~~ (d)(1)(A)(i) or (ii) of this Rule. A mental health evaluation may include psychological testing.

(7) Specific Issue Evaluation

"Specific issue evaluation" means a focused investigation into a specific issue raised by a party, the child's attorney, or the court affecting the safety, health, or welfare of the child as may affect the child's best interests.

Committee note: A specific issue evaluation is not a "mini" custody evaluation. A custody evaluation is a comprehensive study of the general functioning of a family and of the parties' parenting capacities. A specific issue evaluation is an inquiry, narrow in scope, into a particular issue or issues that predominate in a case. The issue or issues are defined by questions posed by the court to the assessor in an order. The evaluation primarily is fact-finding, but the court may opt to receive a recommendation. Examples of questions that could be the subject of specific issue evaluations are questions concerning the appropriate school for a child with special needs and how best to arrange physical custody and visitation for a child when one parent is relocating.

(8) State

"State" includes the District of Columbia.

(c) Authority

(1) Generally

On motion of a party or child's counsel, or on its own initiative, the court may order an assessment to aid the court in evaluating the health, safety, welfare, or best interests of a child in a contested custody or visitation case.

(2) Appointment or Approval

The court may appoint or approve any person deemed competent by the court to ~~perform~~ conduct a home study. The court may not appoint or approve a person to ~~perform~~ conduct a custody evaluation or specific issue evaluation unless (A) the assessor has the qualifications set forth in subsections (d)(1) and (d)(2) of this Rule, or (B) the qualifications set forth in subsection (d)(1) of this

Rule have been waived for the assessor pursuant to subsection (d)(3) of this Rule.

(3) Cost

The court may not order the cost of an assessment to be paid, in whole or in part, by a party without giving the parties notice and an opportunity to object.

Committee note: Nothing in this Rule precludes the court from ordering preliminary screening or testing for alcohol and substance use.

(d) Qualifications of Custody Evaluator

(1) Education and Licensing

(A) Required Education and Licensure

A custody evaluator shall be:

~~(A)~~(i) a physician licensed in any State who is board-certified in psychiatry or has completed a psychiatry residency accredited by the Accreditation Council for Graduate Medical Education or a successor to that Council;

~~(B)~~(ii) a Maryland-licensed psychologist or a psychologist with an equivalent level of licensure in any other state;

~~(C)~~(iii) a Maryland-licensed clinical marriage and family therapist or a clinical marriage and family therapist with an equivalent level of licensure in any other state;

~~(D)~~(iv) a Maryland-licensed certified social worker-clinical or a clinical social worker with an equivalent level of licensure in any other state;

~~(E)~~(v) ~~(i)~~(a) a Maryland-licensed graduate or master social worker with at least two years of experience in ~~(a)~~(1) one or more of the areas listed in

subsection ~~(d)(2)~~(d)(2)(B) of this Rule, ~~(b) performing~~ (2) conducting custody evaluations, or ~~(c)~~(3) any combination of subsections ~~(a)~~(d)(1)(A)(v)(a)(1) and ~~(b)~~(d)(1)(A)(v)(a)(2),~~;~~ or ~~(ii)~~(b) a graduate or master social worker with an equivalent level of licensure and experience in any other state; or

~~(F)~~(vi) a Maryland-licensed clinical professional counselor or a clinical professional counselor with an equivalent level of licensure in any other state.

(B) Continuing Education and Licensure Requirements

A custody evaluator shall comply with all conditions necessary to maintain professional licensure, including completing all mandatory continuing education requirements.

(2) Training and Experience

(A) Mandatory Training

~~Unless waived by the court, a~~ A custody evaluator shall have completed~~,~~ ~~or commit to completing, the next available~~ a training program that conforms ~~with~~ to guidelines established by the Administrative Office of the Courts. ~~The current guidelines~~ Current training guidelines shall be posted on the Judiciary's website.

(B) Required Experience

~~In addition to complying with the continuing requirements of the custody evaluator's field, a~~ A custody evaluator shall have ~~training or~~ experience in conducting or observing ~~or performing~~ custody evaluations, and shall have ~~current~~ demonstrated knowledge ~~in the following areas~~ of and experience in the following topics:

~~(A)~~(i) domestic and family violence;

~~(B)~~(ii) child neglect and abuse;

(iii) child and adult development;

(iv) trauma and its impact on children and adults;

~~(C)~~(v) family ~~conflict and~~ dynamics and conflict resolution;

~~(D) child and adult development;~~ and

~~(E)~~(vi) the impact of divorce and separation on children and adults.

(3) Waiver of Licensing Requirements

If a court employee, or an individual under contract with the court, regularly has ~~been performing~~ conducted custody evaluations ~~on a regular basis as an employee of, or under contract with, the court~~ for at least ~~five~~ fourteen years prior to January 1, ~~2016~~ 2025, the court may waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual ~~participates in~~ completes a training program required by subsection (d)(2)(A) of this Rule and completes at least 20 hours per year of continuing education relevant to ~~the performance of~~ conducting custody evaluations~~,~~ ~~including course work in one or more of the areas listed in subsection (d)(2) of this Rule~~.

(e) Custody Evaluator Lists and Selection

(1) Custody Evaluator Lists

If the circuit court for a county appoints custody evaluators who are not court employees, the family support services coordinator for the court shall maintain a list of qualified custody evaluators. An individual, other than a

court employee, who seeks appointment by a circuit court as a custody evaluator shall submit an application to the family support services coordinator for that court. If the applicant has the qualifications set forth in section (d) of this Rule, the applicant's name shall be placed on a list of qualified individuals. The family support services coordinator, upon request, shall make the list and the information submitted by each individual on the list available to the public.

(2) Selection of Custody Evaluator

(A) By the Parties

By agreement, the parties may employ a custody evaluator of their own choosing who may, but need not, be on the court's list. The parties may, but need not, request the court to enter a consent order approving the agreement and selection. The court shall enter the order if one is requested and the court finds that the custody evaluator has the qualifications set forth in section (d) and that the agreement contains the relevant information set forth in section (g) of this Rule.

(B) By the Court

An appointment of an individual, other than a court employee, as a custody evaluator by the court shall be made from the list maintained by the family support services coordinator. In appointing a custody evaluator from a list, the court is not required to choose at random or in any particular order from among the qualified evaluators on the list. The court should endeavor to use the services of as many qualified individuals as practicable, but the court may consider, in light of the issues and circumstances presented by the action

or the parties, any special training, background, experience, expertise, or temperament of the available prospective appointees. An individual appointed by the court to serve as a custody evaluator shall have the qualifications set forth in section (d) of this Rule.

(3) Selection of Assessor to ~~Perform~~ Conduct Specific Issue Evaluation

Selection of an assessor to ~~perform~~ conduct a specific issue evaluation shall be made from the same list and by the same process as pertains to the selection of a custody evaluator.

(f) Description of Custody Evaluation

(1) Mandatory Elements

Subject to any protective order of the court, a custody evaluation shall include:

(A) a review of the relevant court records pertaining to the litigation;

(B) an interview of each party and any adult who performs a caretaking role for the child or lives in a household with the child or, if an adult who lives in a household with the child cannot be located despite best efforts by the custody evaluator, documentation or a description of the custody evaluator's efforts to locate the adult and any information gained about the adult;

(C) an interview of the child, unless the custody evaluator determines and explains that by reason of age, disability, or lack of maturity, the child lacks capacity to be interviewed;

(D) a review of any relevant educational, medical, and legal records pertaining to the child;

(E) if feasible, observations of the child with each party, whenever possible in that party's household;

(F) contact with any high neutrality/low affiliation collateral sources of information, as determined by the assessor;

Committee note: "High neutrality/low affiliation" is a term of art that refers to impartial, objective collateral sources of information. For example, in a custody contest in which the parties are taking opposing positions about whether the child needs to continue taking a certain medication, the child's treating doctor would be a high neutrality/low affiliation source, especially if the doctor had dealt with both parties.

(G) screening for intimate partner violence;

(H) factual findings about the needs of the child and the capacity of each party to meet the child's needs; and

(I) a custody and visitation recommendation based upon an analysis of the facts found or, if such a recommendation cannot be made, an explanation of why.

(2) Optional Elements – Generally

Subject to subsection (f)(4) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

(A) contact with collateral sources of information that are not high neutrality/low affiliation;

(B) a review of additional records;

(C) employment verification;

(D) a mental health evaluation;

(E) consultation with other experts to develop information that is beyond the scope of the evaluator's practice or area of expertise; and

(F) an investigation into any other relevant information about the child's needs.

(3) Elements of Specific Issue Evaluation

Subject to any protective order of the court, a specific issue evaluation may include any of the elements listed in subsections (f)(1)(A) through (G) and (f)(2) of this Rule. The specific issue evaluation shall include fact-finding pertaining to each issue identified by the court and, if requested by the court, a recommendation as to each.

(4) Optional Elements Requiring Court Approval

The custody evaluator or specific issue evaluation assessor may not include an optional element listed in subsection (f)(2)(D), (E), or (F) if any additional cost is to be assessed for the element unless, after notice to the parties and an opportunity to object, the court approved inclusion of the element.

(g) Order of Appointment

An order appointing or approving a person to ~~perform~~ conduct an assessment shall include:

(1) the name, business address, and telephone number of the person being appointed or approved;

(2) any provisions the court deems necessary to address the safety and protection of the parties, all children of the parties, any other children residing in the home of a party, and the person being appointed or approved;

(3) a description of the task or tasks the person being appointed or approved is to undertake;

(4) a provision concerning payment of any fee, expense, or charge, including a statement of any hourly rate that will be charged which, as to a court appointment, may not exceed the maximum rate established under section (n) of this Rule and, if applicable, a time estimate for the assessment;

(5) the term of the appointment or approval and any deadlines pertaining to the submission of reports to the parties and the court, including the dates of any pretrial or settlement conferences associated with the furnishing of reports;

(6) any restrictions upon the copying and distribution of reports, whether pursuant to this Rule, agreement of the parties, or entry of a separate protective order;

(7) as to a custody evaluation, whether a written report pursuant to subsection (i)(1)(B) of this Rule or an oral report on the record pursuant to subsection (i)(1)(A) of this Rule is required;

(8) as to a specific issue evaluation, each issue to be evaluated and whether a recommendation is requested as to each; and

(9) any other provisions the court deems necessary.

(h) Removal or Resignation of Person Appointed or Approved to ~~Perform~~ Conduct an Assessment

(1) Removal

The court may remove a person appointed or approved to ~~perform~~ conduct an assessment upon a showing of good cause.

(2) Resignation

A person appointed or approved to ~~perform~~ conduct an assessment may resign prior to completing the assessment and preparing a report pursuant to section (i) of this Rule only upon a showing of good cause, notice to the parties, an opportunity to be heard, and approval of the court.

(i) Report of Assessor

(1) Custody Evaluation Report

A custody evaluator shall prepare a report and provide the parties access to the report in accordance with subsection (i)(1)(A) or (i)(1)(B) of this Rule.

(A) Oral Report on the Record

If the court orders a pretrial or settlement conference to be held at least 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered, and the order appointing or approving the custody evaluator does not require a written report, the custody evaluator may present the custody evaluation report orally to the parties and the court on the record at the conference. The custody evaluator shall produce and provide to the court and parties at the conference a written list containing an adequate description of all documents reviewed in connection with the custody evaluation. If custody and access are not resolved at the conference, and no written report has been provided, the court shall (i) provide a transcript of the oral report to the parties free of charge and, if a copy of the transcript is prepared for the court's file, maintain that copy under seal, or (ii) direct the custody evaluator to prepare a written report and furnish it to the parties and

the court in accordance with subsection (i)(1)(B) of this Rule. Absent the consent of the parties, the judge or magistrate who presides over a settlement conference at which an oral report is presented shall not preside over a hearing or trial on the merits of the custody dispute.

(B) Written Report Prepared by the Custody Evaluator

If an oral report is not prepared and presented pursuant to subsection (i)(1)(A) of this Rule, the custody evaluator shall prepare a written report of the custody evaluation and shall include in the report a list containing an adequate description of all documents reviewed in connection with the custody evaluation. The report shall be furnished to the parties and to the court under seal at least 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered. The court may shorten or extend the time for good cause shown but the report shall be furnished to the parties no later than 15 days before the scheduled trial or hearing.

(2) Report of Specific Issue Evaluation

An assessor who ~~performed~~ conducted a specific issue evaluation shall prepare a written report that addresses each issue identified by the court in its order of appointment or approval and, if requested by the court, make a recommendation. The report shall be furnished to the parties and to the court, under seal, as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date. The report shall include a list containing an adequate description of all documents reviewed in connection with the specific issue evaluation.

(3) Report of Home Study

Unless preparation of a written report is waived by the parties, an assessor who ~~performed~~ conducted a home study shall prepare a written report of the home study and furnish it to the parties and to the court under seal. The report shall be furnished as soon as practicable after completion of the home study and, if a date is specified in the order of appointment or approval, by that date.

(4) Report of Mental Health Evaluation

An assessor who ~~performed~~ conducted a mental health evaluation shall prepare a written report. The report shall be made available to the parties solely for use in the case and shall be furnished to the court under seal. The report shall be made available and furnished as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date.

Committee note: An assessor's written report submitted to the court in accordance with section (i) of this Rule shall be kept by the court under seal. The only access to these reports by a judge or magistrate shall be in accordance with subsections (k)(2) and (k)(3) of this Rule. Each circuit court, through MDEC, shall devise the means for keeping these reports under seal.

(j) Copying and Dissemination of Report

A party may copy a written report of an assessment or the transcript of an oral report prepared pursuant to subsection (i)(1)(A) of this Rule but, except as permitted by the court, shall not disseminate the report or transcript other than to individuals intended to be called as experts by the party.

Cross reference: See subsection (g)(6) of this Rule concerning the inclusion of restrictions on copying and distribution of reports in an order of appointment

or approval of an assessor. See the Rules in Title 15, Chapter 200, concerning proceedings for contempt of court for violation of a court order.

(k) Court Access to Written Report

(1) Generally

Except as otherwise provided by this Rule, the court may receive access to a report by an individual appointed or approved by the court to ~~perform~~ conduct an assessment only if the report has been admitted into evidence at a hearing or trial in the case.

(2) Advance Access to Report by Stipulation of the Parties

Upon consent of the parties, the court may receive and read the assessor's report in advance of the hearing or trial.

(3) Access to Report by Settlement Judge or Magistrate

A judge or magistrate conducting a settlement conference shall have access to the assessor's report.

(l) Discovery

(1) Generally

Except as provided in this section, an individual who ~~performs~~ conducts an assessment under this Rule is subject to the Maryland Rules applicable to discovery in civil actions.

(2) Deposition of Court-Paid Assessor

Unless leave of court is obtained, any deposition of an assessor who is a court employee or is working under contract for the court and paid by the court shall: (A) be held at the courthouse where the action is pending or other court-approved location; (B) take place after the date on which an oral or written

report is presented to the parties; and (C) not exceed two hours, with the time to be divided equally between the parties.

(m) Testimony and Report of Assessor at Hearing or Trial

(1) Subpoena for Assessor

A party requesting the presence of the assessor at a hearing or trial shall subpoena the assessor no less than ten days before the hearing or trial.

(2) Admission of Report Into Evidence Without Presence of Assessor

The court may admit an assessor's report into evidence without the presence of the assessor, subject to objections based other than on the presence or absence of the assessor. If the assessor is present, a party may call the assessor for cross-examination.

Committee note: The admissibility of an assessor's report pursuant to subsection (m)(2) of this Rule does not preclude the court or a party from calling the assessor to testify as a witness at a hearing or trial.

(n) Fees

(1) Applicability

Section (n) of this Rule does not apply to a circuit court for a county in which all custody evaluations are ~~performed~~ conducted by court employees, free of charge to the litigants.

(2) Fee Schedules

Subject to the approval of the Chief Justice of the Supreme Court, the county administrative judge of each circuit court shall develop and adopt maximum fee schedules for custody evaluations. In developing the fee schedules, the county administrative judge shall take into account the

availability of qualified individuals willing to provide custody evaluation services and the ability of litigants to pay for those services. A custody evaluator appointed by the court may not charge or accept a fee for custody evaluation services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal of the individual from all lists maintained pursuant to subsection (e)(1) of this Rule.

(3) Allocation of Fees and Expenses

As permitted by law, the court may order the parties or a party to pay the reasonable and necessary fees and expenses incurred by an individual appointed by the court to ~~perform~~ conduct an assessment in the case. The court may fairly allocate the reasonable and necessary fees of the assessment between or among the parties. In the event of the removal or resignation of an assessor, the court may consider the extent to which any fees already paid to the assessor should be returned.

Source: This Rule is new.

REPORTER'S NOTE

Rule 9-205.3 sets forth the requirements for and procedures associated with the appointment of a custody evaluator in a family law action. The Rules Committee recently received proposed amendments to Rule 9-205.3 from the Domestic Law Committee.

In the 2024 Regular Session of the Maryland legislature, SB 365/HB 405 were introduced. The bills addressed the required qualifications and training for custody evaluators appointed by a court and discussed requirements for the introduction of expert evidence related to alleged abuse by a parent. The Judiciary opposed the bills. After the bills failed, Delegate Charlotte Crutchfield, Chair of the House Judiciary Committee's Family and Juvenile

Law Subcommittee, facilitated discussions with the bills' sponsors and the Domestic Law Committee's Custody Evaluator Standards & Training Workgroup.

The key issues identified by the bills' sponsors included ensuring that custody evaluators receive appropriate training, including training on intimate partner violence, child abuse, and related issues. As a result of the discussions, Delegate Crutchfield's group agreed on proposed amendments to Rule 9-205.3 which were submitted to the Rules Committee by the Domestic Law Committee for consideration.

The Rules Committee had concerns that some language of the proposed amendments was vague. The Committee made several changes to the proposal. Overall, the amendments approved by the Committee aim to maintain the substance of the amendments submitted by the Domestic Law Committee, while re-working certain language and organization of the Rule for clarity. After reviewing the Rule in its entirety, additional stylistic amendments were also approved.

A proposed amendment to subsection (c)(2) clarifies that a waiver pursuant to subsection (d)(3) relates solely to the qualifications set forth in subsection (d)(1). In other words, a waiver of qualifications does not include a waiver of the training required by subsection (d)(2).

Amendments are proposed to reorganize subsection (d)(1) for clarity. First, new subsection (d)(1)(A) is created with the language of current subsection (d)(1). The new tagline clarifies that the subsection sets forth the required education and licensing requirements of a custody evaluator. Current subsections (d)(1)(A) through (d)(1)(F) are accordingly re-lettered as subsections (d)(1)(A)(i) through (d)(1)(A)(vi).

A proposed new subsection (d)(1)(B) sets forth the requirement that a custody evaluator comply with all conditions necessary to maintain the evaluator's licensure. This requirement is currently contained in subsection (d)(2) of the Rule, which sets forth the training and experience required "in addition to complying with the continuing requirements of the custody evaluator's field." Because this requirement concerns education and licensing, it has been moved to section (d)(1).

Changes regarding the training of custody evaluators are proposed in subsection (d)(2). First, the current language of subsection (d)(2), with some modifications, is divided into two subsections.

New subsection (d)(2)(A) sets forth the mandatory training requirement for all custody evaluators. A proposed deletion to the current language eliminates the ability of the court to waive the completion of a training

program. An additional deletion in the same subsection requires that certain training be completed instead of accepting a commitment to complete the training.

New subsection (d)(2)(B), using modified language from current subsection (d)(2), addresses the experience required to conduct custody evaluations. The current relevant areas of experience are updated with some additions and modifications to language, as well as re-ordering of the topics. For example, "domestic violence" is changed to "domestic and family violence," while "family conflict and dynamics" is changed to "family dynamics and conflict resolution." In addition, new subsection (d)(2)(B)(iv) now requires a custody evaluator to have demonstrated knowledge of trauma and its impact on children and adults. Overall, the listed topics in which an evaluator is required to have knowledge of and experience in are reorganized and the subsections are re-lettered accordingly.

The Domestic Law Committee has advised that meeting the training requirements should not be difficult for those who wish to become qualified to conduct custody evaluations. The Association of Family and Conciliation Courts' program, "Fundamentals of Conducting Parenting Plan Evaluations," conforms with the training guidelines referenced in (d)(2) and is offered online and live for a fee. To help ensure cost is not a barrier, Juvenile & Family Services within the Administrative Office of the Courts will offer free training programs. One program was held in May of 2023, and another will be offered in 2025.

Proposed amendments to subsection (d)(3) modify the ability of a court to waive licensing requirements. The current waiver remains a possibility for court employees and contractors who have been conducting custody evaluations for at least fourteen years prior to January 1, 2025. This provision allows the Circuit Court for Anne Arundel County to continue to use the services of two individuals who have been conducting custody evaluations for over twenty years. These individuals are not exempt from the training requirements, and both attended the May 2023 program hosted by Juvenile & Family Services.

Several stylistic changes are also made throughout the Rule. In subsection (d)(1)(A), a hyphen is added to the phrase "Maryland-licensed." Internal references are also updated in subsections (b)(6) and (d)(1)(A)(v).

The term "perform" is replaced with "conduct" throughout the Rule. Although both terms have been used in model standards relating to custody evaluations, "conduct" appears more frequently. Therefore, proposed amendments update Rule 9-205.3 to use "conduct" in relation to the completion of an assessment or evaluation.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-111 by altering a reference to the head of the Department of Veterans Affairs in the instructions, as follows:

Rule 10-111. PETITION FOR GUARDIANSHIP OF MINOR

. . .

ADDITIONAL INSTRUCTIONS

1. The required exhibits are as follows:

(a) A copy of any instrument nominating a guardian [Code, Estates and Trusts Article, § 13-701 and Maryland Rule 10-301 (d)];

(b) If the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the ~~Administrator or the Administrator's authorized representative~~ Secretary of that Department or any authorized representative of the Secretary, setting forth the age of the minor as shown by the records of the Department of Veterans Affairs, and the fact that appointment of a guardian is a condition precedent to the payment of any moneys due the minor from the Department of Veterans Affairs shall be prima facie evidence of the necessity for the appointment [Code, Estates and Trusts Article, § 13-802 and Maryland Rule 10-301 (d)].

2. Attached additional sheets to answer all the information requested in this petition, if necessary.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 10-111 was prompted by Chapters 11/12, 2024 Laws of Maryland (SB 411/HB 431). The legislation renamed the Maryland Department of Veterans Affairs to be the Department of Veterans and Military Families, among other terminology adjustments. Because the federal counterpart of this agency is also named the Department of Veterans Affairs, a contextual review was undertaken of each reference to a "Department of Veterans Affairs" in the Rules to ascertain whether any are intended to refer to the State agency.

It was determined that Rule 10-111 contains an incorrect reference to an "Administrator" of the federal Department. The referenced statute and Rule 10-301 refer to the U.S. Department and "a certificate of the Secretary of that Department or any authorized representative of the Secretary." A housekeeping amendment is proposed to Rule 10-111.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-201 by stating that a request pursuant to section (f) may be filed any time after the filing of a petition, as follows:

Rule 10-201. PETITION FOR APPOINTMENT OF A GUARDIAN OF THE PERSON

. . .

(f) Request for Expedited Hearing in Connection with Medical Treatment

(1) Contents

A request for an expedited hearing in connection with medical treatment pursuant to Code, Estates and Trust Article, § 13-705(f) shall be verified and filed with the petition for guardianship of the person of an alleged disabled person or at any time after the filing of the petition. The request shall contain the following information:

(A) the reason for seeking an expedited hearing;

(B) a description of the proposed change in the alleged disabled person's medical treatment;

(C) a statement of how the alleged disabled person's medical circumstances will be harmed if the proceeding is not expedited;

(D) a description of all efforts made to notify interested persons and any person nominated as guardian of person about the request for an expedited hearing; and

(E) whether the alleged disabled person lacks sufficient understanding or capacity to make or communicate a responsible decision to consent or to refuse consent, the basis for that belief, and an explanation of steps taken to obtain consent to the proposed medical treatment through other means.

Committee note: Examples of consent "through other means" include consent obtained or ascertained though a valid advance directive, consent by an individual pursuant to an applicable Power of Attorney that specifically authorizes health care decision-making, and consent by a surrogate authorized under Code, Health General Article, Title 5, Subtitle 6, Part I (Health Care Decisions Act).

(2) Factors for Court to Consider

In determining whether to expedite the hearing in connection with medical treatment, the court shall consider:

(A) the degree to which the alleged disabled person's current circumstances are not meeting his or her medical needs in the most appropriate manner;

(B) the degree to which alternative arrangements are or can be made available;

(C) the urgency, necessity, and gravity of the proposed medical treatment and any medical risks to the alleged disabled person if the proceedings are not expedited;

(D) the ability of the alleged disabled person or other legally authorized individual to provide necessary consents for services; and

(E) any other factor that the court considers relevant.

(3) Scheduling of an Expedited Hearing

If the court makes a determination to expedite a hearing because of the need for medical treatment, the hearing shall be scheduled as soon as practicable, taking into account:

(A) the ability of the petitioner to properly serve or notify interested persons on an expedited basis;

(B) the ability of the attorney for the alleged disabled person, government agencies, and court-appointed investigators to perform necessary investigations on an expedited basis; and

(C) any other circumstances that the court considers relevant.

Committee note: The procedure set forth in section (f) of this Rule is not a substitute for a petition for emergency services under Rule 10-210, nor is it intended to affect the court's discretion to schedule expedited hearings, generally. If the petition is also for the appointment of a guardian of the property, the court may hear and rule on that part of the petition on an expedited basis as well.

Cross reference: See Code, Estates and Trusts Article, §§ 13-702 and 13-705(f), Rule 10-205 (b), and *In re: Sonny E. Lee*, 132 Md. App. 696 (2000).

Source: This Rule is derived as follows:
Section (a) is derived from former Rule R71 a.
Section (b) is new.
Section (c) is derived from former Rule R72 a and b.
Section (d) is new.
Section (e) is new.
Section (f) is new.

REPORTER'S NOTE

The proposed amendment to Rule 10-201 was recommended by Juvenile & Family Services in the Administrative Office of the Courts to clarify that a petition for an expedited hearing in connection with medical treatment – authorized by section (f) of the Rule – may be filed at the same time as or any time after the filing of a petition for guardianship under Chapter 200. The current wording of the Rule suggests that the petition for an expedited hearing may only be filed at the same time as the petition for guardianship; however, the Committee was informed that an expedited hearing may become necessary after the guardianship petition has been filed.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 – GUARDIAN OF PERSON

AMEND Rule 10-202 by changing references to a "disabled person" in section (a) to an "alleged disabled person," as follows:

Rule 10-202. CERTIFICATES AND CONSENTS

(a) Certificates

(1) Generally Required

If guardianship of the person of ~~a~~ an alleged disabled person is sought, the petitioner shall file with the petition signed and verified certificates of the following persons who have examined or evaluated the alleged disabled person: (A) two physicians licensed to practice medicine in the United States, or (B) one such licensed physician and one licensed psychologist, licensed certified social worker-clinical, or nurse practitioner. An examination or evaluation by at least one of the health care professionals shall have been within 21 days before the filing of the petition.

(2) Form

Each certificate required by subsection (a)(1) of this Rule shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

(3) Absence of Certificates

(A) Refusal to Permit Examination

If the petition is not accompanied by the required certificate and the petition alleges that the alleged disabled person is residing with or under the control of a person who has refused to permit examination or evaluation by a physician, psychologist, licensed certified social worker-clinical, or nurse practitioner, and that the alleged disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the alleged disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the alleged disabled person should not be examined or evaluated. The order shall be personally served on that person and on the alleged disabled person.

(B) Appointment of Health Care Professionals by Court

If the court finds after a hearing that examinations are necessary, it shall appoint (i) two physicians or (ii) one physician and one psychologist, licensed certified social worker-clinical, or nurse practitioner to conduct the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

Cross reference: See Code, Estates and Trusts Article, § 13-705.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 10-202 are recommended by Juvenile & Family Services in the Administrative Office of the Courts. Section (a) of the Rule uses the term "disabled person" to refer to an individual who has not yet been adjudged to be disabled by a court. The term is amended to be "alleged disabled person" throughout the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 400 – STANDBY GUARDIAN

AMEND Rule 10-402 by deleting "or any such charge is currently pending against the standby guardian" from subsection (c)(12), by altering a provision in the Notice issued pursuant to section (e), and by making a stylistic change, as follows:

Rule 10-402. PETITION BY PARENT

. . .

(c) Contents

The petition shall be captioned "In the Matter of ..." [stating the name of the minor]. It shall be signed and verified by the petitioner and shall include the following information:

(1) The petitioner's name, address, age, and telephone number;

(2) The petitioner's familial relationship to the minor;

(3) The name, address, and date of birth of the minor;

(4) If the minor is at least 14 years of age, the wishes of the minor, if known;

(5) Whether the minor has any siblings and, if so, their names and ages and whether a standby guardianship is sought for them;

(6) The proposed standby guardian's name, address, age, and telephone number;

(7) The proposed standby guardian's relationship to the minor;

(8) A statement explaining why the appointment of the proposed standby guardian is in the best interests of the minor;

(9) Whether and under what circumstances the standby guardianship is to be of the minor's person, property, or both;

(10) If the standby guardian is to be a guardian of the property of the minor, the nature, value, and location of the property;

(11) A description of the duties and powers of the standby guardian, including whether the standby guardian is to have the authority to apply for, receive, and use public benefits and child support payable on behalf of the minor;

Cross reference: For the powers of a guardian of the person of a minor, see Code, Estates and Trusts Article, § 13-702. For the powers of a guardian of the property, see Code, Estates and Trusts Article, § 15-102.

(12) A statement (A) whether the standby guardian has been convicted of a crime listed in Code, Estates and Trusts Article, § 11-114 ~~or any such charge is currently pending against the standby guardian,~~ and (B) if the standby guardian has been convicted of such a crime, the charge for which the standby guardian was convicted, the year of the conviction, the court in which the conviction occurred, and any good cause for the appointment, if applicable under § 11-114(b);

(13) Whether the authority of the standby guardian is to become effective on the petitioner's incapacity, death, or the first of those circumstances to occur;

Cross reference: Code, Estates and ~~Trust~~ Trusts Article, § 13-906.

(14) A statement that there is a significant risk that the petitioner will become incapacitated or die within two years of the filing of the petition and the basis for the statement;

Cross reference: Code, Estates and Trusts Article, § 13-903(a).

(15) If the petitioner is unable to appear in court for a hearing pursuant to Rule 10-404, a statement explaining why;

(16) If a person having parental rights does not join in the petition, a statement to that effect and the following information, to the extent known: (A) the identity of the person, (B) if the identity of the person is not known, what efforts were made to identify and locate the person, and (C) if the identity of the person is known, the reasons the person did not join the petition, if known, and a description of the efforts made to inform the person about the petition; and

(17) If the petitioner believes that notice to the minor would be unnecessary or would not be in the best interests of the minor, a statement explaining why.

. . .

(e) Notice to Interested Persons

The Notice to Interested Persons shall be in the following form:

In the Matter of	In the Circuit Court for
_____	_____
(Name of minor)	(County)
	_____
	(docket reference)

NOTICE TO INTERESTED PERSONS

A petition has been filed seeking the appointment of a standby guardian of the [person] [property] [person and property] of _____, a minor.

You are receiving this because you are related to or otherwise concerned with the welfare of the minor.

Please examine the attached papers carefully.

If you object to the appointment of a standby guardian, please file a response with the court at (address of courthouse) no later than 30 days after the date of issue of this Notice. (Be sure to include the case number.) If a response is not received by the court, the court may rule on the petition without ~~a hearing~~ your input. If you wish to participate in this proceeding in any way, notify the court and be prepared to attend any hearing.

CERTIFICATE OF SERVICE

I certify that a copy of the petition and the "Notice to Interested Persons" was mailed, by ordinary mail, postage prepaid, and by certified mail, postage prepaid and return receipt requested, this ____ day of _____, to _____ at _____.

_____
Petitioner

_____
Name (printed)

_____
Address

_____
Telephone Number

. . .

REPORTER'S NOTE

Proposed amendments to Rule 10-202 are recommended by Juvenile & Family Services in the Administrative Office of the Courts. The amendment to subsection (c)(12) removes the requirement that a pending charge against a candidate for standby guardian be disclosed in the petition. The Committee

was informed that this language was added to the Rule but is not required by Code, Estates and Trusts Article, § 11-114. The statute provides that a court may not appoint a person convicted of certain offenses as a standby guardian without good cause shown, but including a pending charge in the analysis raises the standard proposed by the statute. No other type of guardianship petition requires disclosure of a pending charge.

According to Juvenile & Family Services, due to disproportionate rates of arrest for marginalized individuals, this requirement unnecessarily burdens prospective standby guardians from communities of color, particularly immigrant communities. Immigrant communities were intended to be users of the standby guardian process following the 2018 addition of "adverse immigration action" as a basis for such a guardianship. The Rules Committee recommends amending the Rule to track the requirements of the statute to avoid unintentionally discouraging potential standby guardians from making themselves known to the court.

An additional amendment is proposed in section (e). The Notice in section (e) states that the court may rule on the petition without a hearing. However, Rule 10-404 requires a hearing on any petition filed pursuant to Rule 10-402. It is recommended that the reference to ruling without a hearing be deleted from the Notice in section (e) and replaced with an admonishment that the court may rule without the recipient's input if there is no response.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 400 – STANDBY GUARDIAN

AMEND Rule 10-403 by deleting "or any such charge is currently pending against the standby guardian" from subsection (c)(10), as follows:

Rule 10-403. PETITION BY STANDBY GUARDIAN

. . .

(c) Contents

The petition shall be captioned "In the Matter of ..." [stating the name of the minor]. It shall be signed and verified by the petitioner and shall contain the following information:

(1) The petitioner's name, address, age, telephone number, and relationship to the minor and the minor's parents;

(2) The name, address, and date of birth of the minor;

(3) If the minor is at least 14 years of age, the wishes of the minor, if known;

(4) Whether the minor has any siblings and, if so, their names and ages and whether a guardianship is sought for them;

(5) The names and addresses of the witnesses to the written designation of the petitioner as standby guardian of the minor and any relationship of the petitioner to those witnesses;

(6) A statement explaining why the appointment of the proposed standby guardian is in the best interests of the minor;

(7) Whether and under what circumstances the standby guardianship is to be of the minor's person, property, or of both;

(8) If the standby guardian is to be a guardian of the property of the minor, the nature, value, and location of the property;

(9) A description of the duties and powers of the standby guardian, including whether the standby guardian is to have the authority to apply for, receive, and use public benefits and child support payable on behalf of the minor;

(10) A statement (A) whether the standby guardian has been convicted of a crime listed in Code, Estates and Trusts Article, § 11-114 ~~or any such charge is currently pending against the standby guardian,~~ and (B) if the standby guardian has been convicted of such a crime, the charge for which the standby guardian was convicted, the year of the conviction, the court in which the conviction occurred, and any good cause for the appointment, if applicable under § 11-114(b);

(11) If the petition is filed by a person designated by a parent as alternate standby guardian pursuant to Code, Estates and Trusts Article, § 13-904(b)(2), a statement that the person designated as standby guardian is unwilling or unable to act as standby guardian and the basis for the statement; and

(12) A list of interested persons.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 10-403 is recommended by Juvenile & Family Services in the Administrative Office of the Courts. The amendment to subsection (c)(10) removes the requirement that a pending charge against a candidate for standby guardian be disclosed in the petition. See the Reporter's note to Rule 10-402.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1600 – DERIVATIVE ACTIONS

ADD new Rule 15-1601, as follows:

Rule 15-1601. DERIVATIVE ACTIONS

(a) Applicability

This Rule applies to a derivative action against a business entity to enforce a right that properly may be asserted by that entity.

Cross reference: See *Werbowsky v. Collomb*, 362 Md. 581 (2001) pertaining to corporations; *Plank v. Cherneski*, 469 Md. 548 (2020) and Code, Corporations and Associations Article, Title 4A, Subtitle 8 pertaining to limited liability companies; and Code, Corporations and Associations Article, Title 10, Subtitle 10 pertaining to limited partnerships.

(b) Complaint

Notwithstanding the provisions of Rule 2-304, the complaint shall state:

(1) facts supporting that the plaintiff is entitled to bring each derivative cause of action on behalf of the business entity nominal defendant;

(2) that the plaintiff was so entitled at the time of the transaction or conduct complained of and at the time the derivative action is brought, or that the plaintiff's entitlement devolved on the plaintiff by operation of law; and

(3) with particularity, (A) the attempts, if any, of the plaintiff to obtain the desired action from the business entity, and, if known, the reasons the desired action was not obtained, or (B) the reasons for not making an attempt to obtain the desired action.

Committee note: A court may consider the use of Rule 2-502 when appropriate. See *Bender v. Schwartz*, 172 Md. App. 648 (2007).

(c) Plaintiff as Representative

The derivative action may be maintained only if it appears, under applicable law, that the plaintiff fairly and adequately represents the interests of the business entity in pursuing the derivative action.

(d) Settlement, Dismissal, and Compromise

Unless all equity holders consent to a proposed settlement, voluntary dismissal, or compromise of the derivative action, a derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval, after notice of the proposed settlement, voluntary dismissal, or compromise has been given to all equity holders in the manner ordered by the court and an opportunity for a hearing has been provided. Unless specified by the court, the consent may be either in writing or on the record in open court.

(e) Fees and Costs

A court may award reasonable attorneys' fees and costs as permitted by law.

Cross reference: For the ability of the court to award attorneys' fees and costs, see *Boland v. Boland*, 423 Md. 296, 317 (2011) pertaining to corporations; Code, Corporations and Associations Article, § 4A-804 pertaining to limited liability companies; and Code, Corporations and Associations Article, § 10-1004, pertaining to limited partnerships.

Source: This Rule is new. It is derived in part from Fed. R. Civ. P. 23.1.

REPORTER'S NOTE

Proposed new Rule 15-1601 establishes a procedure for filing, maintaining, and resolving derivative actions. A derivative action generally is a lawsuit brought by one or more shareholders of a corporation or equity holders of another form of business entity on behalf of a business entity against a third party or the directors alleging a breach of duty and seeking to protect the interests of the business entity. Maryland does not have a statute or Rule setting forth a procedure for this form of litigation, which has unique features and requirements that litigants and the court may overlook.

Senior Appellate Court Judge James Eyler contacted the Committee to suggest the creation of a derivative actions Rule to provide guidance to practitioners after he observed a lack of understanding among the bar regarding how to initiate and maintain derivative action cases. Judge Eyler, in collaboration with Senior Judge Ronald Rubin and members of the Maryland State Bar Association Business Law Section, proposed the new Rule, which is modeled after Fed. R. Civ. P. 32.1 and Delaware law.

Section (a) sets forth the applicability of the Rule. A cross reference identifies cases and statutes pertaining to derivative actions against various business entitles.

Section (b) lists the pleading requirements to establish standing and a cause of action. It is derived from Fed. R. Civ. P. 23.1. A Committee note suggests that the court may make use of Rule 2-502 (Separation of Questions for Decision by Court) and cites to an Appellate Court case on that issue.

Section (c) requires the plaintiff to fairly and adequately represent the interests of the business entity to maintain the action.

Section (d) sets forth the circumstances and notice requirements to settle, dismiss, or compromise a derivative action. It is derived from Fed. R. Civ. P. 23.1. The Committee was informed that many states distinguish small businesses from other types of entities in their derivative action Rules. Section (d) instead addresses the different needs of a small ownership group compared to numerous shareholders by imposing certain requirements to resolve the case unless all stakeholders consent. In a small business context, consent is more likely to be achievable, which then permits the court to dispense with some of the procedures.

Section (e) permits the court to award reasonable attorneys' fees and costs. A cross reference following section (e) sets forth the case law and statutory law on attorneys' fees and costs in derivative actions.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 17-105 by adding new section (f), as follows:

Rule 17-105. MEDIATION CONFIDENTIALITY

(a) Mediator

Except as provided in sections (c) and (d) of this Rule, a mediator and any person present or otherwise participating in the mediation at the request of the mediator shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(b) Parties

Except as provided in sections (c) and (d) of this Rule:

(1) a party to a mediation and any person present or who otherwise participates in a mediation at the request of a party may not disclose or be compelled to disclose a mediation communication in any judicial, administrative, or other proceeding; and

(2) the parties may enter into a written agreement to maintain the confidentiality of mediation communications and to require all persons who are present or who otherwise participate in a mediation to join in that agreement.

Cross reference: See Rule 5-408 (a)(3).

(c) Signed Document

A document signed by the parties that records points of agreement expressed and adopted by the parties or that constitutes an agreement reached by the parties as a result of mediation is not confidential, unless the parties agree otherwise in writing.

Cross reference: See Rule 9-205 (h) concerning the submission of a document embodying the points of agreement to the court in a child access case.

(d) Permitted Disclosures

In addition to any disclosures required by law, a mediator, a party, and a person who was present or who otherwise participated in a mediation may disclose or report mediation communications:

(1) to a potential victim or to the appropriate authorities to the extent they reasonably believe necessary to help prevent serious bodily harm or death to the potential victim;

(2) when relevant to the assertion of or defense against allegations of mediator misconduct or negligence; or

(3) when relevant to a claim or defense that an agreement arising out of a mediation should be rescinded because of fraud, duress, or misrepresentation.

Cross reference: For the legal requirement to report suspected acts of child abuse, see Code, Family Law Article, § 5-705.

(e) Discovery; Admissibility of Information

Mediation communications that are confidential under this Rule are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Cross reference: See Rule 5-408 (b). See also Code, Courts Article, Title 3, Subtitle 18, which does not apply to mediations to which the Rules in Title 17 apply.

(f) Screening; Confidentiality

Except as provided in section (d) of this Rule and subject to the provisions of section (b) of this Rule pertaining to parties, all documents, records, and statements containing mediation communications made by, for, or at the request of the court to assist with a determination of whether to order or refer a matter to mediation shall be confidential, and any person privy to the mediation communications shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose the mediation communication in any judicial, administrative, or other proceeding.

Source: This Rule is derived from former Rule 17-109 (2012). Section (f) is new.

REPORTER'S NOTE

Juvenile & Family Services in the Administrative Office of the Courts referred to the Rules Committee a request for clarification in the Rules regarding the confidentiality of screening tools and processes used by courts to determine if certain matters should be referred to mediation.

The issue arose in the context of Rule 9-205, which requires the court to "determine whether mediation of the dispute… is appropriate and likely would be beneficial to the parties or the child." Subsection (b)(2) of Rule 9-205 states that a court "may not" order mediation in a child custody and visitation matter "[i]f a party or a child represents to the court in good faith that there is a genuine issue of abuse of the party or child or coercive control of a party and that, as a result, mediation would be inappropriate."

According to representatives from the Judicial Council Alternative Dispute Resolution ("ADR") Committee, screening for abuse or coercive control

is handled differently in each jurisdiction. Some courts conduct an interview, others do a "paper screening" that looks for past protective orders between the parties. While the screening process is not new, there is a pilot program currently expanding to utilize a standardized screening tool, the Mediator's Assessment of Safety Issues and Concerns-Short ("MASIC-S"). The screener asks a series of questions of the party and inputs the answers into the MASIC-S tool. At the conclusion of the screening, a recommendation form is uploaded into MDEC indicating whether the case is appropriate, is not appropriate, or may be appropriate for mediation. When courts begin using the MASIC-S tool, the screening process looks different from the perspective of parties and their attorneys. As a result, some attorneys have asked questions about confidentiality and the screening process. Juvenile & Family Services, in consultation with the Judicial Council ADR Committee, proposed clarifying in the Rules that screening communications are confidential.

Rule 17-102 (h) defines "mediation communication" to include "a communication made for the purpose of considering, initiating, continuing, reconvening, or evaluating a mediation or a mediator." The definition was proposed in substantially the form it exists today following a 1999 report by the Maryland Alternative Dispute Resolution Commission. The report recommended the definition in tandem with a proposed confidentiality Rule intended to make all mediation communications confidential, subject to some exceptions. The circumstances of the proposal of the definition and its inclusion of "communication made for the purpose of considering [or] initiating ... a mediation" strongly indicate that mediation screening conversations have always been intended to be subject to the same confidentiality provisions as statements made during the mediation itself.

Rule 17-105, made applicable to custody and visitation mediation by Rule 9-205 (f), generally governs mediation confidentiality and imposes broad confidentiality requirements on mediators, individuals present or participating in the mediation at the mediator's request, and the parties. Though Rule 17-105 does not explicitly address confidentiality of mediation screening tools, the inclusion of "communication made for the purpose of considering... a mediation" in the definition of "mediation communication" suggests that these communications should be subject to the same confidentiality policy. Juvenile & Family Services reports that there is confusion in at least one jurisdiction regarding the confidentiality of screening tools and conversations used solely for the purpose of screening cases for mediation.

A proposed amendment to Rule 17-105 adds new section (f), which generally states that documents, records, and statements used to screen cases for mediation that contain mediation communications are confidential and no

person can be compelled to disclose the mediation communication. This provision is subject to the provisions of section (b) governing parties, which are slightly less strict because they only restrict parties' ability to disclose details of a mediation in court, not in their personal lives generally.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

SPECIAL PROCEEDINGS

AMEND Rule 19-737 by adding "service of" to subsection (d)(1), as follows:

Rule 19-737. RECIPROCAL DISCIPLINE OR INACTIVE STATUS

. . .

(d) Temporary Suspension of Attorney

(1) Show Cause Order

When the petition and disciplinary or remedial order demonstrate that an attorney has been disbarred or suspended, is currently suspended from practice pending a final order of a court in another jurisdiction, or has been transferred to disability inactive status based on incapacity in another jurisdiction, the Supreme Court shall order that the attorney, within 15 days from the date of <u>service of</u> the order, show cause in writing why the attorney should not be suspended from the practice of law or transferred to disability inactive status immediately until the further order of the Supreme Court. The show cause order shall be served in accordance with Rule 19-723.

. . .

REPORTER'S NOTE

The Rules Committee proposes that subsection (d)(1) of this Rule be amended to clarify that the time in which the attorney's response to a show cause order under this subsection is due begins to run from the time of service of the show cause order and not the date of issuance of the order. It is anticipated that this will result in fewer show cause orders being re-issued due to lack of timely service and will allow the attorney more time to respond to the show cause order than sometimes happens under the current version of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION

SPECIAL PROCEEDINGS

AMEND Rule 19-738 by adding "service of" to section (d), as follows:

Rule 19-738. DISCIPLINE ON CONVICTION OF CRIME

. . .

(d) Show Cause Order

When the petition demonstrates that an attorney has been found guilty or convicted of a serious crime, the Supreme Court shall order that the attorney, within 15 days from the date of <u>service of</u> the order, show cause in writing why the attorney should not be suspended immediately from the practice of law until the further order of the Supreme Court.

. . .

<u>REPORTER'S NOTE</u>

The Rules Committee proposes that section (d) of this Rule be amended to clarify that the time in which the attorney's response to a show cause order under this section is due begins to run from the time of service of the show cause order and not the date of issuance of the order. It is anticipated that this will result in fewer show cause orders being re-issued due to lack of timely service and will allow the attorney more time to respond to the show cause order than sometimes happens under the current version of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 700 – DISCIPLINE, INACTIVE STATUS, RESIGNATION REINSTATEMENT

AMEND Rule 19-752 by changing "may" to "shall" in subsection (e)(1) and by adding new subsection (e)(3), as follows:

Rule 19-752. REINSTATEMENT – OTHER SUSPENSION; DISBARMENT; DISABILITY INACTIVE STATUS; RESIGNATION

. . .

(e) Response to Petition

(1) Generally

Within 30 days after service of the petition, Bar Counsel shall file and serve on the attorney a response. Except as provided in subsection (d)(2) of this Rule, the response shall admit or deny the averments in the petition in accordance with Rule 2-323 (c). The response ~~may~~ shall include Bar Counsel's recommendations and reasoning in support of or opposition to the petition and with respect to any conditions to reinstatement.

(2) Consent

If Bar Counsel is satisfied that the attorney has complied fully with the provisions of Rule 19-741 and any requirements or conditions in the order of suspension or disbarment, and there are no known complaints or disciplinary

proceedings pending against the attorney, the response may be in the form of a consent to the reinstatement.

(3) Extension

Upon written request by Bar Counsel filed within the time for filing a response, the Court may grant an extension for a specified period.

. . .

REPORTER'S NOTE

In March 2023, the Judicial Council approved for dissemination the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee (hereinafter "the EJC Report"). The EJC Report contains several recommendations for consideration by the Rules Committee.

During a listening session for the EJC Report, an attorney raised concerns about certain aspects of Rule 19-752 concerning the process for reinstatement. Although it appears that the suggestions regarding Rule 19-752 were outside the scope of the EJC Report and were therefore not addressed in the body of the Report, a memorandum on the topic was prepared and included in the Appendices of the EJC Report. Accordingly, the suggestions concerning Rule 19-752 were forwarded to the Rules Committee for consideration.

Rule 19-752 (e) sets forth requirements for Bar Counsel's response to a petition for reinstatement. Section (e) provides that the response "may include Bar Counsel's recommendations in support of or opposition to the petition and with respect to any conditions to reinstatement."

Speakers at listening sessions conducted for the EJC Report suggested that there were at least some instances where petitioners were unable to discern from Bar Counsel's response the reasoning for Bar Counsel's support of or opposition to reinstatement. To address this concern, the proposed amendment to section (e) changes "may" to "shall" and adds the phrase "and reasoning," making it clear that Bar Counsel is required to provide the reasoning behind any support or opposition.

Rule 19-752 contains no provisions concerning a request by Bar Counsel for an extension of time to respond. The memorandum from the EJC Report

suggested that the Rule be amended to clarify that good cause must be shown in a request for an extension.

In light of the concerns raised, proposed new subsection (e)(3) addresses Bar Counsel's requests for an extension. The new language clarifies that Bar Counsel may request an extension by written request filed within the time for filing a response. The Court may grant an extension for a specified period.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

AMEND Rule 19-504 by updating a reference in sections (a) and (b), as follows:

Rule 19-504. PRO BONO ATTORNEY

(a) Definition

As used in this Rule, "pro bono attorney" means an attorney who is authorized by Rule 19-218 or Rule 19-605 ~~(a)(2)~~ (b)(2) to represent clients, without compensation other than reimbursement of reasonable and necessary expenses, and whose practice is limited to providing such representation. "Pro bono attorney" does not include (1) an active member of the Maryland Bar in good standing or (2) an attorney whose certificate of authorization to practice under Rule 19-218 permits the attorney to receive compensation for the practice of law under that Rule.

Cross reference: For the professional responsibility of an active member of the Maryland Bar to render pro bono publico legal service, see Rule 19-306.1 (6.1) (Pro Bono Publico Service) of the Maryland Attorneys' Rules of Professional Conduct.

(b) Authorization to Practice as a Pro Bono Attorney

To practice as a pro bono attorney, an out-of-state attorney shall comply with Rule 19-218 and a retired/inactive member of the Maryland Bar shall comply with Rule 19-605 ~~(a)(2)~~ (b)(2).

. . .

REPORTER'S NOTE

Proposed changes to Rule 19-504 are housekeeping amendments. The references to Rule 19-605 (a)(2) in Rule 19-504 were not updated after Rule 19-605 was restructured in 2018. Accordingly, amendments are proposed to update the references to Rule 19-605 in Rule 19-504 (a) and (b).

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

AMEND Rule 19-607 by updating a reference in subsection (d)(1), as follows:

Rule 19-607. DISHONORED CHECKS

. . .

(c) Temporary Suspension Order

(1) Notice by Treasurer

The treasurer of the Fund promptly, but not more often than once each calendar quarter, shall submit to the Supreme Court a proposed interim Temporary Suspension Order stating the name and account number of each attorney who remains in default of payment for a dishonored check and related charges.

(2) Entry and Service of Order

The Supreme Court shall enter an Interim Temporary Suspension Order prohibiting the practice of law in the State by each attorney as to whom the Court is satisfied that the treasurer has made reasonable efforts to give notice concerning the dishonored check. The treasurer shall mail by first class mail a copy of the interim Temporary Suspension Order to each attorney named in the order at the attorney's last address as it appears on the records of the trustees.

The mailing by the treasurer of the copy constitutes service of the order on the attorney.

(d) Payment; Termination or Replacement of Interim Order

(1) Procedure Upon Payment

Upon payment of the full amount due by the attorney, the trustees and the Court shall follow the procedure set forth in Rule ~~19-605 (a)(4)~~ 19-606 (c).

(2) If No Payment

If the full amount due is not paid by the time the Court enters its next Temporary Suspension Order under Rule 19-606 and, as a result, the attorney is included in that order, the interim order shall terminate and be replaced by the Temporary Suspension Order.

Source: This Rule is derived from former Rule 16-811.7 (2016).

REPORTER'S NOTE

A housekeeping amendment is proposed to Rule 19-607. Rule 19-607 addresses the procedure when a check to the Client Protection Fund is dishonored. If payment is not timely made after notice to the attorney, an Interim Temporary Suspension Order shall be entered by the Supreme Court of Maryland. Rule 19-607 (d)(1) addresses the procedure when an attorney then makes the required payment to the Client Protection Fund.

When Rule 19-607 was adopted in 2016, subsection (d)(1) contained the same language as the current version of the Rule, including a reference to Rule 19-605. However, it appears that this initial reference to Rule 19-605 (a)(4) was a typographical error. In 2016, Rule 19-605 (a)(4) addressed methods of payment, not a process for the trustees and Court to follow.

Earlier versions of Rule 19-607, formerly Rule 16-811.7, referenced the procedure set forth in former Rule 19-811.6 (e). The text of former Rule 19-811.6 (e), setting forth the procedure for terminating a Temporary Suspension Order, now appears in Rule 19-606 (c).

Accordingly, the reference in Rule 19-607 (d)(1) has been updated to refer to Rule 19-606 (c), describing the procedure by which the Court or trustees terminate a Temporary Suspension Order.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-911 by updating the tagline to section (f) and by adding new subsection (f)(3), as follows:

RULE 16-911. REQUIRED DENIAL OF INSPECTION--IN GENERAL

(a) When Inspection Would be Contrary to Federal Law, Certain Maryland Law, Maryland Rules, or Court Order

A custodian shall deny inspection of a judicial record or any part of a judicial record if inspection would be contrary to:

(1) the Constitution of the United States, a Federal statute, or a Federal regulation adopted under a Federal statute and that has the force of law;

(2) the Maryland Constitution;

(3) a provision of the PIA that is made applicable to judicial records by the Rules in this Chapter;

(4) a Rule adopted by the Supreme Court; or

(5) an order entered by the court having custody of the judicial record or by any higher court having jurisdiction over

(A) the judicial record,

(B) the custodian of the judicial record, or

(C) the person seeking inspection of the judicial record.

(b) When Inspection Would be Contrary to Other Maryland Statutes

Unless inspection is otherwise permitted by the Rules in this Chapter, a custodian shall deny inspection of a judicial record or any part of a judicial record if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than the PIA, that expressly or by necessary implication applies to a judicial record.

(c) When Record is Subject to Lawful Privilege or Confidentiality

Unless otherwise ordered by a court, a custodian shall deny inspection of a judicial record or part of a judicial record that, by law, is confidential or is subject to an unwaived lawful privilege.

(d) Judicial or other Professional Work Product

A custodian shall deny inspection of a judicial record or part of a judicial record that contains judicial or other professional work product.

(e) Record Subject to Expungement Order

A custodian shall deny inspection of a judicial record that has been ordered expunged.

(f) Security of Judicial Facilities, Equipment, Operations, Personnel; Protected Individuals and Information

A custodian shall deny inspection of:

(1) a continuity of operations plan; ~~and~~

(2) judicial records or parts of judicial records that consist of or describe policies, procedures, directives, or designs pertaining to the security or safety

of judicial facilities, equipment, operations, or personnel, or of the members of the public while in or in proximity to judicial facilities or equipment; and

(3) judicial records or parts of judicial records created or maintained by the Office of Information Privacy in relation to Code, Courts Article, Title 3, Subtitles 23 and 24.

Cross reference: For an example of a statute enacted by the General Assembly other than the PIA that restricts inspection of a case record, see Code, Criminal Procedure Article, Title 10, Subtitle 3.

Committee note: Subsection (a)(5) of this Rule allows a court to seal a record or otherwise preclude its disclosure. So long as a judicial record is under seal or subject to an order precluding or limiting disclosure, it may not be disclosed except in conformance with the court's order. The authority to seal a judicial record must be exercised in conformance with the general policy of these Rules and with supervening standards enunciated in decisions of the Supreme Court of the United States and the Supreme Court of Maryland. See *Baltimore Sun Co. v. Colbert*, 323 Md. 290 (1991).

Source: This Rule is derived from former Rule 16-906 (2019).

REPORTER'S NOTE

Proposed amendments to Rule 16-911 implement Chapters 414/415, 2024 Laws of Maryland (HB 664/SB 575). The Judge Andrew F. Wilkinson Judicial Security Act creates the Office of Information Privacy ("OIP") in the Administrative Office of the Courts. A "protected individual" as defined by the Act may request or ask the OIP to request that certain personal information be removed from websites, social media, and publications.

In carrying out its duties under the Act, the OIP will necessarily be custodian of highly sensitive information (the Act defines "personal information" to include everything from a judge's home address and phone number to banking information and the daycare for a judge's child). The State Court Administrator has requested that Title 16, Chapter 900 ("the Access Rules") expressly prohibit public access to the records of the OIP.

Rule 16-903 (b) defines an administrative record as "a record that (A) pertains to the administration or administrative support of a court, a judicial

agency, a special judicial unit, or the judicial system of the State; and (B) is not a case record." An administrative record includes "policies, procedures, directives, or designs pertaining to the security or safety of judicial facilities, equipment, operations, personnel, or members of the public while in or in proximity to judicial facilities or equipment." Pursuant to Rule 16-913 (d), an administrative record is not public if it is "(1) prepared by or for a judge or other judicial personnel; (2) either (A) purely administrative in nature but not a local rule, policy, or directive that governs the operation of the court or (B) a draft of a document intended for consideration by the author or others and not intended to be final in its existing form; and (3) not filed with the clerk and not required to be filed with the clerk."

The records of the OIP are likely covered by the administrative records provision of Rule 16-913 (d). However, to ensure the security of those records, the proposed amendment to Rule 16-911 (f), which addresses security of judicial facilities, equipment, operations, and personnel, adds a new subsection to make it clear that records "created or maintained" by the OIP are shielded from public inspection.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-912 by replacing the number "15" with the number "17" in subsection (c)(2)(B) and by conforming the cross reference following subsection (c)(2)(B) to the amended subsection, as follows:

Rule 16-912. ACCESS TO NOTICE, SPECIAL JUDICIAL UNIT, LICENSE, AND DOMESTIC PARTNERSHIP RECORDS

(a) Notice Records

Except as otherwise provided by statute, a custodian may not deny inspection of a notice record that has been recorded and indexed by the clerk.

Cross reference: See Code, Real Property Article, § 3-111, precluding certain personal information from being included in recordable documents after June 1, 2010 and providing for the redaction of such information if included.

(b) Special Judicial Unit Records

(1) Generally

Subject to unwaived lawful privileges and subsection (b)(2) of this Rule, where a requested record falls within the confidentiality rules applicable to a special judicial unit, access to the record is governed by the confidentiality Rules applicable to that unit.

(2) Exception

Access to administrative records of special judicial units that are not subject to a confidentiality provision in the Rules governing the unit shall be governed by Rule 16-913.

Cross reference: See Rule 18-407, applicable to records and proceedings of the Commission on Judicial Disabilities, the Judicial Inquiry Board, and Investigative Counsel; Rule 19-105, applicable to the State Board of Law Examiners, the Accommodation Review Committee, and the character committees; and Rule 19-707, applicable to records and proceedings of the Attorney Grievance Commission and Bar Counsel.

(c) License Records

(1) Business License Records

Except as otherwise provided by the Rules in this Chapter, the right to inspect business license records is governed by the applicable provisions of Parts II, III, and IV of the PIA.

(2) Marriage License Records

A custodian shall deny inspection of the following records pertaining to a marriage license:

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

(B) until the license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a minor party to be married who is ~~15~~ 17 years old or older.

Cross reference: See Code, Family Law Article, § 2-301, which lists the conditions necessary to permit a 17-year-old minor ~~between 15 and 17 years old~~ to legally marry and Code, Family Law Article, § 2-402(e), which permits disclosure to a parent or guardian of such a minor prior to the license becoming effective.

(d) Domestic Partnership Records

A custodian shall deny inspection of the portion of a declaration of domestic partnership or declaration of termination that contains the home address of either domestic partner.

Cross reference: See Code, Estates and Trusts Article, § 2-214(d)(3).

Source: This Rule is derived from former Rule 16-905 (2019).

REPORTER'S NOTE

Amendments are proposed to Rule 16-912 (c)(2)(B) and the cross reference following the subsection to conform to the revisions to Code, Family Law Article, § 2-301 enacted as Chapter 175, 2022 Laws of Maryland (HB 83). The statute was revised to prohibit minors under the age of 17 from legally marrying in the State.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-914 by adding new section (s), as follows:

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

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

. . .

(c) Case records shielded pursuant to Code, Courts Article, § 3-1510 (peace orders), Code, Family Law Article, § 4-512 (domestic violence protective orders), or Code, Public Safety Article, § 5-602(c) (extreme risk protective orders).

. . .

(r) In an action under Title 7, Chapter 200 of these Rules, the record of an administrative agency proceeding where the Administrative Agency Restricted Information Statement indicates that the record contains restricted information as defined by Rule 20-101 (s).

Cross reference: See Rules 7-206 and 7-206.1 pertaining to the record of an administrative agency proceeding filed in an action for judicial review of an administrative agency decision. For procedures to request an administrative agency to provide access to public portions of the agency's record of an administrative agency proceeding, see Code, General Provisions Article, Title 4 (Public Information Act).

(s) Case records shielded pursuant to Code, Real Property Article, § 8-503 (failure to pay rent actions).

Source: This Rule is derived in part from former Rule 16-907 (2019), and is in part new.

REPORTER'S NOTE

The proposed amendment to Rule 16-914 implements Chapter 347, 2024 Laws of Maryland (SB 19). The bill requires the District Court, without request, to shield certain landlord-tenant actions if a failure to pay rent case does not result in a judgment of possession. There is also a provision for shielding these actions by motion under certain circumstances. Proposed new section (s) requires the custodian of these records to deny inspection if they are shielded pursuant to the statute. This language is modeled after a similar provision in section (c) of Rule 16-914.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-211 by adding new section (e) pertaining to the identity of a minor victim and by adding a cross reference following section (e), as follows:

Rule 4-211. FILING OF CHARGING DOCUMENT

(a) Citation

The original of a citation shall be filed in District Court promptly after its issuance and service. Electronic data documenting the citation uploaded to the District Court by or on behalf of the peace officer who issued the citation shall be regarded as an original of the citation.

(b) Statement of Charges

(1) Before Any Arrest

Except as otherwise provided by statute, a judicial officer may file a statement of charges in the District Court against a defendant who has not been arrested for that offense upon written application containing an affidavit showing probable cause that the defendant committed the offense charged. If not executed by a peace officer, the affidavit shall be made and signed before a judicial officer.

(2) After Arrest

When a defendant has been arrested without a warrant, unless an information is filed in the District Court, the officer who has custody of the

defendant shall (A) forthwith cause a statement of charges to be filed against the defendant in the District Court and (B) at the same time or as soon thereafter as is practicable file an affidavit containing facts showing probable cause that the defendant committed the offense charged.

Cross reference: See Code, Courts Article, § 2-608 for special requirements concerning an application for a statement of charges against a law enforcement officer, an educator, or a person within the definition of "emergency services personnel" in that section for an offense allegedly committed in the course of executing the person's duties.

(c) Information

A State's Attorney may file an information as permitted by Rule 4-201.

Committee note: Nothing in section (b) of this Rule precludes the filing of an information in the District Court by a State's Attorney at any time, whether in lieu of the filing of a statement of charges or as an additional or superseding charging document after a statement of charges has been filed.

(d) Indictment

The circuit court shall file an indictment returned by a grand jury.

(e) Identity of Minor Victim

If a person responsible for filing a charging document with the court pursuant to this Rule knows that the charging document contains the name of or any other information that reasonably could be expected to identify a minor victim, the person shall notify the clerk in writing of the presence of identifying information in the document and where in the document that information is contained.

Cross reference: See Code, Criminal Procedure Article, § 11-301.

Source: This Rule is derived as follows:
Section (a) is derived from the last clause of M.D.R. 720 i.
Section (b) is derived from M.D.R. 720 a and b.

Section (c) is new.
Section (d) is new.
Section (e) is new.

REPORTER'S NOTE

The proposed amendment to Rule 4-211 implements Chapters 877/878, 2024 Laws of Maryland (SB 111/HB 458). The statute deals with protection from public access of identifying information of a minor victim in a delinquency or criminal action. "Identifying information" includes the name of the minor victim or "information that reasonably could be expected to identify" the minor victim. The court is required to deny inspection of a filing containing this information "on notice that [the filing] includes identifying information of a minor victim." The court is permitted to order disclosure of the information on a finding by clear and convincing evidence that there is good cause to do so.

The Judiciary expressed concerns about the statute as it pertains to existing public filings that may contain this information. The Department of Legislative Services stated in a revised Fiscal and Policy Note that "because the required redaction of identifying information prior to authorizing specified disclosure/inspection appears to only be triggered after *notice* that filings contain such information, it is assumed that identifying information within *existing* records that are available under current standards does not have to be redacted (which would necessitate significant time and resources) *unless* the Judiciary receives specific supplemental notice regarding the content of a particular document." (emphasis in original).

Records in criminal proceedings involving minor victims must comply with the statute. The Rules contain procedures for filers to alert the court that filings contain information that is not public:

- Rule 20-101 defines "restricted information" as "information that, by Rule or other law, is not subject to public inspection or is prohibited from being included in a court record absent a court order."
- Rule 20-201 (h) prohibits a submission from containing restricted information, except as provided in Rule 20-201.1.
- Rule 20-201.1 (c) requires (1) the completion of a Notice of Restricted Information form, (2) the redaction of the restricted information, and (3) the filing of the redated copy for public access and an unredacted copy under seal that is not accessible to members of the general public.

The statute makes the identifying information of a minor victim in a criminal proceeding "restricted information" subject to Rules 20-201 and 20-201.1. Prosecutors and defense attorneys are subject to these Rules, which apply in every jurisdiction now that all counties utilize MDEC. However, because the statute explicitly applies to all types of charging documents, several categories of filers are not governed by the current procedures surrounding restricted information. District Court Commissioners – defined as "judicial personnel" in Rule 20-101 – and judges and other court personnel are exempted from compliance with Rule 20-201 (h).

The proposed amendment to Rule 4-211 adds new section (e), requiring the person who files a charging document with the court to notify the clerk of identifying information required to be redacted by the statute. See the Reporter's notes to Rules 16-915 and 16-916 for information regarding the proposed process for compliance with the statute's requirements.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 400 - DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-410 by adding to the tagline of subsection (f)(1), by adding new subsection (f)(1)(C) pertaining to records containing identifying information of a minor victim, by adding a cross reference following new subsection (f)(1)(C), and by making stylistic changes, as follows:

Rule 11-410. WAIVER OF JURISDICTION

. . .

(e) Required Condition for Waiver; Criteria; Considerations

(1) Required Condition

The court may not waive its jurisdiction unless it determines, by a preponderance of the evidence presented at the hearing, that the child is an unfit subject for juvenile rehabilitative measures.

(2) Criteria and Considerations

In considering that determination, the court shall assume that the respondent child committed the delinquent act alleged in the delinquency petition and shall consider the criteria set forth in Code, Courts Article, § 3-8A-06(e).

Cross ~~Reference~~ reference: See *Davis v. State*, ~~___Md. ___~~ 474 Md. 439 (2021).

(f) Waiver Order

(1) Statement of Grounds; Contents of Order

If the court concludes that its jurisdiction should be waived, it shall prepare and file or dictate into the record a statement of the grounds for its decision and enter an order:

(A) waiving its jurisdiction and ordering the child held for trial under the appropriate criminal procedure; ~~and~~

(B) committing the child to the custody of the sheriff or other appropriate officer in an adult detention facility pending a pretrial release hearing pursuant to Rule 4-222; and

(C) if identifying information of a minor victim or other restricted information is in the case record, ordering the State's Attorney or other filer to comply with the requirements of Rule 20-201.1 prior to the transfer of the case record to the court exercising criminal jurisdiction.

Cross reference: See Code, Courts Article, § 11-301 pertaining to redaction of identifying information of a minor victim.

(2) Effect of Delinquency Petition

The delinquency petition shall be considered a charging document for the purpose of detaining the respondent child pending a pre-trial release hearing.

(3) Copies

Pending a pre-trial release hearing, the clerk promptly shall furnish to the appropriate officer true copies of the delinquency petition and the court's waiver order.

Source: This Rule is derived in part from former Rule 11-113 (2021) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 11-410 implement Chapters 887/888, 2024 Laws of Maryland (HB 458/SB 111). The law prohibits the court or a party in a criminal or juvenile delinquency proceeding from disclosing or allowing inspection of a filing that could identify a minor victim involved in the proceeding to a non-party without redaction of that information. The statute provides specifically that "identifying information" includes the name of the minor victim or "information that reasonably could be expected to identify" the minor victim.

The court record in a delinquency proceeding is confidential by law and not subject to public inspection (Code, Courts Article, § 3-8A-27(b) and Rule 16-914 (a)(2)). A proposed amendment to Rule 11-420 (f) requires the court to order the parties to comply with Rule 20-201.1 when the juvenile court waives its jurisdiction. A cross reference to the statute is added after the new subsection.

See the Reporter's notes to Rules 16-915 and 16-916 for additional information regarding compliance with the statute by the court.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-915 by adding new section (d) pertaining to identifying information of a minor victim; by adding a cross reference following new section (d); and by re-lettering sections (d) through (h) as (e) through (i), respectively, as follows:

Rule 16-915. CASE RECORDS – REQUIRED DENIAL OF INSPECTION – SPECIFIC INFORMATION

Except as otherwise provided by law, the Rules in this Chapter, or court order, a custodian shall deny inspection of a case record or a part of a case record that would reveal:

(a) The name, address, telephone number, e-mail address, or place of employment of an individual who reports the abuse of a vulnerable adult pursuant to Code, Family Law Article, § 14-302.

(b) Except as provided in Code, General Provisions Article, § 4-331, the home address, telephone number, and private e-mail address of an employee of the State or a political subdivision of the State.

(c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested, or as to

whom the State has requested, that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or petition filed under Rule 16-934.

(d) The name of a minor victim or any other information that could reasonably be expected to identify a minor victim in a criminal action or a juvenile delinquency action where the juvenile court waives jurisdiction.

Cross reference: See Code, Criminal Procedure Article, § 11-301(b).

~~(d)~~(e) The address, telephone number, and e-mail address of a witness in a criminal or juvenile delinquency action, who has requested, or as to whom the State has requested, that such information be shielded. Such a request may be made at any time, including a request or petition filed under Rule 16-934.

~~(e)~~(f) Any part of the Social Security or federal tax identification number of an individual.

~~(f)~~(g) A trade secret, confidential commercial information, confidential financial information, or confidential geological or geophysical information.

~~(g)~~(h) Information about a person who has received a copy of a case record containing information prohibited by Rule 1-322.1.

~~(h)~~(i) The address, telephone number, and e-mail address of a payee contained in a Consent by the payee filed pursuant to Rule 15-1302 (c)(1)(F).

Cross reference: See Rule 16-934 (i) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions. For obligations of a filer of a submission containing restricted information, see Rules 16-916 and 20-201.1.

Source: This Rule is derived from former Rule 16-908 (2019).

REPORTER'S NOTE

Proposed amendments to Rule 16-915 implement Chapters 887/888 (HB 458/SB 111), 2024 Laws of Maryland. The law prohibits the court or a party in a criminal or juvenile delinquency proceeding from disclosing or allowing inspection of a filing that could identify a minor victim involved in the proceeding to a non-party without redaction of that information. The statute provides specifically that "identifying information" includes the name of the minor victim or "information that reasonably could be expected to identify" the minor victim. See the Reporter's note to Rule 4-211.

New section (d) implements the statute's requirements. A cross reference to the new law follows the section. Subsequent sections are re-lettered. See the Reporter's note to Rule 16-916 for additional information regarding compliance with the statute by the court.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 2 – LIMITATIONS ON ACCESS

AMEND Rule 16-916 by adding to subsection (b)(2) a provision authorizing a person who is the subject of a case record to advise the custodian that a case record contains information not subject to inspection and a provision permitting the custodian to refer to a judge a question as to whether information is subject to public inspection and by making stylistic changes, as follows:

Rule 16-916. CASE RECORDS – PROCEDURES FOR COMPLIANCE

(a) Duty of Person Filing Record

(1) A person who files or authorizes the filing of a case record shall inform the custodian, in writing, whether, in the person's judgment, the case record, any part of the case record, or any information contained in the case record is confidential and not subject to inspection under the Rules in this Chapter.

(2) The custodian is not bound by the person's determination that a case record, any part of a case record, or information contained in a case record is not subject to inspection and shall permit inspection of a case record unless, in the custodian's independent judgment, subject to review as provided in Rule 16-932, the case record is not subject to inspection.

(3) Notwithstanding subsection (a)(2) or (b)(2) of this Rule, a custodian may

rely on a person's failure to advise that a case record, part of a case record, or information contained in a case record is not subject to inspection, and, in default of such advice, the custodian is not liable for permitting inspection of the case record, part of the case record, or information, even if the case record, part of the case record, or information in the case record is not subject to inspection under the Rules in this Chapter.

Cross reference: See Rule 1-322.1 and 20-201.

(b) Duty of Clerk

(1) The clerk shall make a reasonable effort, promptly upon the filing or creation of a case record, to shield any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian by the person filing or authorizing the filing of the case record.

Cross reference: See Rule 20-203.

(2) ~~Persons~~ A person (A) who filed or authorized the filing of a case record filed prior to July 1, 2016 or (B) who is a subject of a case record or acting on behalf of a subject of a case record filed at any time may advise the custodian in writing whether any part of the case record is not subject to inspection. The custodian is not bound by that ~~determination~~ assertion and may refer the matter to a judge for consideration. The custodian shall make a reasonable effort, as time and circumstances allow, to shield from those case records any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian. The duty under this

subsection is subordinate to all other official duties of the custodian.

Committee note: In subsections (a)(1) and (b)(2) of this Rule, the requirement that a custodian be notified "in writing" is satisfied by an electronic filing if permitted by Rule 1-322 or required by the Rules in Title 20.

Source: This Rule is derived from former Rule 16-913 (2019).

REPORTER'S NOTE

Proposed amendments to Rule 16-916 implement Chapters 887/888, 2024 Laws of Maryland (HB 458/SB 111). The law prohibits the court or a party in a criminal or juvenile delinquency proceeding from disclosing or allowing inspection of a filing that could identify a minor victim involved in the proceeding to a non-party without redaction of that information. The statute provides specifically that "identifying information" includes the name of the minor victim or "information that reasonably could be expected to identify" the minor victim. See the Reporter's note to Rule 4-211.

Proposed amendments to Rule 16-915 state that this information is not subject to public inspection. The statute requires compliance when the court is placed on notice of the presence of the identifying information. For records later discovered to contain information identifying a minor victim, Rule 16-916 (b) is updated and expanded to allow clerks to respond to the presence of non-public information. Subsection (b)(2) currently permits a filer to advise the custodian of a case record that was filed prior to July 1, 2016 that part of the record should be shielded from public access. Proposed amendments would permit the subject of a case record or someone acting on behalf of the subject of a case record to alert the clerk of non-public information contained in the record. This provision applies regardless of when the record was filed. An additional amendment permits the clerk to refer the matter to a judge for determination.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-108 by updating the cross reference following subsection (a)(2) and by making a stylistic amendment, as follows:

Rule 10-108. ORDERS

(a) Order Appointing Guardian

(1) Generally

An order appointing a guardian shall:

(A) state whether the guardianship is of the property, the person, or both;

(B) state the name, sex, and date of birth of the minor or the disabled person;

(C) state the name, address, telephone number, and e-mail address, if available, of the guardian;

(D) state whether the appointment of a guardian is solely due to a physical disability, and if not, the reason for the guardianship;

(E) state (i) the amount of the guardian's bond or that bond is waived and (ii) the date by which proof of any bond shall be filed with the court;

Cross reference: See Rule 10-702 (a), requiring the bond to be filed before the guardian commences the performance of any fiduciary duties.

(F) state the date by which any annual report of the guardian shall be filed; and

Cross reference: See Rule 10-706 (b).

(G) state the specific powers and duties of the guardian and any limitations on those powers or duties either expressly or by referring to the specific sections or subsections of an applicable statute containing those powers and duties; and

(H) except as to a public guardian, unless the guardian has already satisfied the requirement or the court orders otherwise, direct the guardian to complete an orientation program and training in conformance with the applicable Guidelines for Court-Appointed Guardians attached as an Appendix to the Rules in this Title.

Committee note: An example of an appointment as to which waiver of the orientation and training requirements of subsection (a)(1)(H) of this Rule may be appropriate is the appointment of a temporary guardian for a limited purpose or specific transaction.

Cross reference: Code, Estates and Trusts Article, §§ 13-201(b) and (c), 13-213, 13-214, 13-705(b), 13-708, and 15-102 and Title 15, Subtitle 6 (Maryland Fiduciary Access to Digital Assets Act).

(2) Confidential Information

Information in the order or in papers filed by the guardian that is subject to being shielded pursuant to the Rules in Title 16, Chapter 900 shall remain confidential, but, in its order, the court may permit the guardian to disclose that information when necessary to the administration of the guardianship, subject to a requirement that the information not be further disclosed without the consent of the guardian or the court.

Committee note: Disclosure of identifying information to financial institutions and health care providers, for example, may be necessary to further the purposes of the guardianship.

Cross reference: See Rule 16-914 (e) and (i) and Rule 16-915 ~~(e)~~(f).

. . .

REPORTER'S NOTE

A conforming amendment to Rule 10-108 is necessitated by the proposed amendments to Rule 16-915. Section (e) of that Rule is now (f). The cross reference after subsection (a)(2) of Rule 10-108 is updated.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 – STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1302 by updating the cross reference following subsection (c)(1)(F), as follows:

Rule 15-1302. PETITION FOR APPROVAL

. . .

(c) Contents of Petition

In addition to any other necessary averments, the petition shall:

(1) subject to section (d) of this Rule, include as exhibits:

(A) a copy of the structured settlement agreement;

(B) a copy of any order of a court or other governmental authority approving the structured settlement;

(C) a copy of each annuity contract that provides for payments under the structured settlement agreement or, if any such annuity contract is not available, a copy of a document from the annuity issuer or obligor evidencing the payments payable under the annuity policy;

(D) a copy of the transfer agreement;

(E) a copy of any disclosure statement provided to the payee by the transferee;

(F) a written Consent by the payee substantially in the form specified in Rule 15-1303;

Cross reference: For shielding requirements applicable to identifying information contained in the payee's Consent, see Rule 16-915 ~~(h)~~(i).

. . .

REPORTER'S NOTE

A conforming amendment to Rule 15-1302 is necessitated by the proposed amendments to Rule 16-915. Section (h) of that Rule is now (i). The cross reference after subsection (c)(1)(F) of Rule 15-1302 is updated.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 4 – RESOLUTION OF DISPUTES

AMEND Rule 16-933 by updating the tagline of subsection (a)(1), by adding new subsection (a)(2) pertaining to the ability of the State Court Administrator or custodian to seek declaratory and injunctive relief in certain circumstances, by adding "or requester" to sections (b) and (c) to clarify that these sections cover both requesters and custodians, by adding a reference to subsection (a)(1) in subsections (e)(1) and (g)(1), by adding new subsection (e)(2) pertaining to the burden the custodian or State Court Administrator must meet, by adding new subsection (g)(2) pertaining to the contents of an order entered in response to a request under section (a)(2) of this Rule, and by making stylistic changes, as follows:

Rule 16-933. DECLARATORY AND INJUNCTIVE RELIEF

(a) Generally

(1) Right to File <u>– Requester</u>

If a custodian or SCA denies a request for inspection of a judicial record or for the creation of a new judicial record, fails to respond to such a request within the time allowed by these Rules for a response, or proposes to charge a fee for the inspection or creation of judicial records that the requester believes

is inappropriate, the requester may file a complaint for declaratory and injunctive relief pursuant to the Maryland Declaratory Judgment Act.

(2) Right to File – Custodian or SCA

A custodian or SCA may file a complaint for declaratory and injunctive relief pursuant to the Maryland Declaratory Judgment Act alleging that a request for inspection of a judicial record or pattern of requests is frivolous, vexatious, or in bad faith.

~~(2)~~(3) Waiver of Court Costs

Court costs for the action shall be waived.

~~(3)~~(4) Exhaustion of Administrative Remedies Not Required

Failure to seek administrative review under Rule 16-932 shall not be grounds to dismiss the action.

(b) Where Filed; Service

The complaint shall be filed in the circuit court for the county in which the custodian is employed and shall be served on the custodian or requester in accordance with Rule 2-121.

(c) Response

The custodian or requester shall file a response within 30 days after service of the complaint and summons.

(d) Expedited Treatment

The court shall schedule a hearing promptly, if one is requested, and give expedited treatment to the action.

(e) Burden

(1) Complaint Filed by Requester

~~The~~ For a complaint filed pursuant to subsection (a)(1) of this Rule, the custodian or SCA shall have the burden of ~~(1)~~(A) sustaining the decision that the custodian or SCA made to deny inspection or production of the requested information or judicial record, or to delay a decision on the request, and ~~(2)~~(B) justifying the proposed fee, if that is in dispute.

(2) Complaint Filed by Custodian or SCA

For a complaint filed pursuant to subsection (a)(2) of this Rule, the custodian or SCA shall have the burden of demonstrating that a request or pattern of requests is frivolous, vexatious, or in bad faith.

(f) In Camera Inspection

The court may direct the custodian to produce a copy of the judicial record at issue for in camera inspection to determine whether the record or any part of it may be withheld pursuant to these Rules.

(g) Order

(1) Complaint Filed by Requester

~~If~~ For a complaint filed pursuant to subsection (a)(1) of this Rule, if the court finds that the requester has a right to inspect all or any of the record or to have a new judicial record created, it shall enter an order ~~(1)~~(A) directing the custodian to produce or create the record or the part of the record subject to inspection for inspection by the requester within a specified time, and ~~(2)~~(B) if in issue, determine the appropriate fee for producing or creating the record. Otherwise, the court shall dismiss the complaint.

(2) Complaint Filed by Custodian or SCA

For a complaint filed pursuant to subsection (a)(2) of this Rule, if the court finds that the custodian or SCA has met the burden of proof set forth in subsection (e)(2) of this Rule, the court shall enter an order granting appropriate relief. Otherwise, the court shall dismiss the complaint.

(3) Enforcement

Willful disobedience of an order issued under this Rule may be enforced by contempt. No money damages or attorneys' fees may be awarded to any party.

Source: This Rule is in part derived from former Rule 16-914 (2019) and is in part new.

REPORTER'S NOTE

The Rules Committee proposes amendments to Rule 16-933 to add to the Court Access Rules provisions concerning vexatious requests. The State Court Administrator requested these amendments to address increasing instances of frivolous and repetitious requests for judicial records. The proposed revisions are similar to provisions contained in subtitle 1A of the Maryland Public Information Act, Code, General Provisions Article, § 4-101 et seq.

New subsection (a)(2) is proposed to establish that a custodian or the State Court Administrator may seek relief pursuant to the Maryland Declaratory Judgment Act when a request for inspection of a judicial record or pattern of requests is frivolous, vexatious, or in bad faith.

Conforming amendments are proposed to sections (b) and (c) to clarify that these sections apply to both requesters and the custodian.

New subsection (e)(2) indicates that a custodian or the State Court Administrator must show the court that a request is "frivolous, vexatious, or in bad faith" to meet their burden.

Section (g) is proposed to be amended to provide guidance to a trial court when entering an order for a complaint filed by a custodian or the State Court Administrator.

Stylistic changes are also proposed.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO JUDICIAL RECORDS

DIVISION 4 – RESOLUTION OF DISPUTES

AMEND Rule 16-934 by adding new subsection (d)(2) pertaining to ruling on a motion without a hearing; by renumbering current subsections (d)(2) through (d)(5) as (d)(3) through (d)(6), respectively; by clarifying in renumbered subsections (d)(4) and (d)(5) that a hearing is pursuant to section (f) of the Rule; and by updating internal references in renumbered subsection (d)(6); as follows:

Rule 16-934. CASE RECORDS – COURT ORDER DENYING OR PERMITTING INSPECTION NOT OTHERWISE AUTHORIZED BY RULE

(a) Purpose; Scope

(1) Generally

This Rule is intended to authorize a court to permit inspection of a case record that is not otherwise subject to inspection, or to deny inspection of a case record that otherwise would be subject to inspection, if the court finds, by clear and convincing evidence, (1) a compelling reason under the particular circumstances to enter such an order, and (2) that no substantial harm will come from such an order.

(2) Exception

This Rule does not apply to, and does not authorize a court to permit inspection of, a case record where inspection would be contrary to the United States or Maryland Constitution, a Federal statute or regulation that has the force of law, a Maryland statute other than the PIA, or to a judicial record that is not subject to inspection under Rule 16-911 (c), (d), (e), or (f).

(b) Petition

(1) A party to an action in which a case record is filed, and a person who is the subject of or is specifically identified in a case record may file in the action a petition:

(A) to seal or otherwise limit inspection of a case record filed in that action that is not otherwise shielded from inspection under the Rules in this Chapter or Title 20 or other applicable law; or

(B) subject to subsection (a)(2) of this Rule, to permit inspection of a case record filed in that action that is not otherwise subject to inspection under the Rules in this Chapter or Title 20 or other applicable law.

(2) Except as provided in subsection (b)(3) of this Rule, the petition shall be filed with the court in which the case record is filed and shall be served on:

(A) all parties to the action in which the case record was filed; and

(B) if the petition is to permit inspection of a case record filed in that action that is not otherwise subject to inspection, each identifiable person who is a subject of the case record.

(3) A petition to shield a judicial record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 shall be filed in the county where the

judgment of conviction was entered and shall state that the petition is filed pursuant to this Rule and that it should be shielded. The petition shall be shielded, subject to further order of the court. Service shall be made, and proceedings shall be held as directed in that Subtitle.

(4) The petition shall be under oath and shall state with particularity the circumstances that justify an order under this Rule. Unless the court orders otherwise, the petition and any response to it shall be shielded.

(c) Shielding of Record Upon Petition

(1) Section (c) of this Rule does not apply to a petition filed pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 or a submission pursuant to Rule 20-201.1 (d).

(2) Upon the filing of a petition to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue. Immediately upon docketing, a petition to seal or otherwise limit inspection of a case record shall be delivered to a judge for consideration.

(d) Temporary Order Precluding or Limiting Inspection

(1) The court shall consider a petition to preclude or limit inspection filed under this Rule on an expedited basis.

(2) If it does not appear clearly from specific facts shown by affidavit or other statement under oath that there is a substantial basis to believe that the case

record is properly subject to an order precluding or limiting inspection pursuant to this Rule, the court may, without a hearing, deny the petition. If the court denies the petition pursuant to this subsection, the petitioner may file a motion for reconsideration no later than 15 days after the date of denial of the petition. The court may reconsider the denial only if the petitioner provides additional facts shown by affidavit or other statement under oath demonstrating a substantial basis to believe that the case record is subject to an order precluding or limiting inspection pursuant to this Rule.

~~(2)~~(3) The court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other statement under oath that (A) there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection pursuant to this Rule, and (B) immediate, substantial, and irreparable harm will result to the person seeking the relief or on whose behalf the relief is sought if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.

~~(3)~~(4) If a petition to preclude or limit inspection is filed by a plaintiff prior to service of the original pleading, the petition to preclude or limit inspection shall be served on the defendant with the original pleading. ~~The~~ Unless the petition is denied pursuant to subsection (d)(2) of this Rule, the court shall hold a hearing under section (f) of this Rule on the petition to preclude or limit

inspection within 15 days after the earlier of (A) filing of proof of service of the original pleading or (B) filing of the first responsive pleading by the defendant.

~~(4)~~(5) If a petition to preclude or limit inspection is filed after all parties have been served in the underlying action, the court shall hold a hearing under section (f) of this Rule on the petition within 15 days after the petition to preclude or limit inspection is filed, unless the petition is denied pursuant to subsection (d)(2) of this Rule.

~~(5)~~(6) For good cause shown, a temporary order precluding or limiting inspection may be extended for up to 30 days after service under subsection ~~(d)(3)~~(d)(4) or filing under subsection ~~(d)(4)~~(d)(5) of this Rule.

(e) Referral for Evidentiary Hearing

If a petition to preclude or limit inspection is filed in an appellate court and the appellate court determines that an evidentiary hearing is needed pursuant to this Rule, the appellate court may refer the matter to a judge of a circuit court to conduct the evidentiary hearing.

(f) Hearing; Final Order

(1) A court may not enter an order permitting inspection of a case record that is not otherwise subject to inspection under the Rules in this Chapter in the absence of an opportunity for a full adversary hearing.

(2) After an opportunity for a full adversary hearing, the court shall enter a final order:

(A) precluding or limiting inspection of a case record that is not otherwise shielded from inspection under the Rules in this Chapter;

(B) permitting inspection, under such conditions and limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under the Rules in this Chapter; or

(C) denying the petition.

(3) A final order shall include or be accompanied by findings regarding the interest sought to be protected by the order.

(4) A final order that precludes or limits inspection of a case record shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected by the order.

(5) A final order granting relief under Code, Criminal Procedure Article, Title 10, Subtitle 3 shall include the applicable provisions of the statute. If the order pertains to a judgment of conviction in (A) an appeal from a judgment of the District Court or (B) an action that was removed pursuant to Rule 4-254, the order shall apply to the records of each court in which there is a record of the action, and the clerk shall transmit a copy of the order to each such court.

(6) In determining whether to permit or deny inspection, the court shall determine, upon clear and convincing evidence:

(A) whether a special and compelling reason exists to preclude, limit, or permit inspection of the particular case record, and, if so, a description of that reason;

(B) whether any substantial harm is likely to come from the order and, if so, the nature of that harm; and

(C) if the petition seeks to permit inspection of a case record that has been previously sealed by court order under subsection (f)(2)(A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections (f)(3), (4), and (6)(A) of this Rule.

(7) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order within 30 days after a hearing was held or waived.

(g) Filing of Order

A copy of any temporary or final order shall be filed in the action in which the case record in question was filed and, except as otherwise provided by law, shall be subject to public inspection.

(h) Non-Exclusive Remedy

This Rule does not preclude a court from exercising its authority under other law to enter an appropriate order that seals, shields, or limits inspection of a case record or that makes a case record subject to inspection.

(i) Request to Shield Certain Information

(1) Section (i) of this Rule applies to a request, filed by an individual entitled to make it, (A) to shield information in a case record that is subject to shielding under Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) or (B) in a criminal or juvenile delinquency action, to shield the address or telephone number of a victim, victim's representative or witness.

(2) The request shall be in writing and filed with the person having custody of the record.

(3) If the request is granted, the custodian shall deny inspection of the shielded information. The shield shall remain in effect until terminated or modified by order of court. Any person aggrieved by the custodian's decision may file a petition under section (b) of this Rule.

Committee note: If a court or District Court Commissioner grants a request to shield information under section (h) of this Rule, no adversary hearing is held unless a hearing is required by statute or a person seeking inspection of the shielded information files a petition under section (b) of this Rule.

Source: This Rule is derived from former Rule 16-912 (2019).

REPORTER'S NOTE

Proposed amendments to Rule 16-934 were requested by the Chief Judge of the District Court to establish a procedure for a judge to rule without a hearing on a motion to preclude or limit inspection of a case record where on the face of the motion it appears that there is no basis to grant it. The Chief Judge informed the Rules Committee that the Court sees a significant volume of motions to limit inspection of records, but most are not meritorious and can be ruled on without a hearing.

Proposed amendments to section (d) add new subsection (d)(2) to permit the court to find that the specific facts provided do not provide a substantial basis to believe that the record is properly subject to an order precluding or limiting inspection. In such cases, the court may deny the motion without a hearing; however, the petitioner may file a motion for reconsideration within 15 days after the denial and provide additional facts for the court to consider.

Subsequent subsections are renumbered, and internal references are updated. Additionally, clarifying amendments to renumbered subsections (d)(4) and (d)(5) state that the hearing referenced in those subsections refers to a hearing pursuant to section (f) of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 700 – SPECIAL PROCEEDINGS

AMEND Rule 3-711 by creating section (a) consisting of the current language of the Rule and by adding new section (b) pertaining to the required notice of intent in an action for summary ejectment, as follows:

Rule 3-711. LANDLORD-TENANT AND GRANTEE ACTIONS

(a) Generally

Landlord-tenant and grantee actions shall be governed by (1) the procedural provisions of all applicable general statutes, public local laws, and municipal and county ordinances, and (2) unless inconsistent with the applicable laws, the rules of this Title, except that no pretrial discovery under Chapter 400 of this Title shall be permitted in a grantee action, or an action for summary ejectment, wrongful detainer, or distress for rent, or an action involving tenants holding over.

(b) Summary Ejectment – Required Notice of Intent

Before filing a complaint for summary ejectment pursuant to Code, Real Property Article, § 8-401, the landlord shall provide to the tenant a written notice of the landlord's intent to file the complaint in accordance with Code, Real Property Article, § 8-401(c). The notice shall be in the form approved by the State Court Administrator, as posted on the Judiciary website and available in the offices of the clerks of the District Court, including the portion of the

form that provides information pertaining to resources available to tenants and landlords.

Source: This Rule is derived from former M.D.R. 1 b and 401 a. Section (b) is new.

REPORTER'S NOTE

The proposed amendment to Rule 3-711 addresses a concern raised by the Access to Counsel in Evictions Task Force (established by Chapter 746, 2021 Laws of Maryland (HB 18)). The law provides that tenants are required to be notified of the ability to speak with an attorney provided by a legal services organization when facing an eviction proceeding. The law requires a landlord contemplating filing a complaint for summary ejectment pursuant to Code, Real Property, § 8-401 to notify the tenant of the intent to file 10 days in advance using a form developed by the Judiciary.

The form notice was developed, but the Task Force has observed that there are ongoing concerns from service providers that landlords are not using the court's form. The Court Access Committee of the Judicial Council considered this concern and recommended that Rule 3-711 be amended to require the landlord to include a copy of the notice provided to the tenant with the complaint for summary ejectment. A similar provision was proposed to be added to the statute in the 2024 legislative session, but it was removed prior to the passage of Chapter 124, 2024 Laws of Maryland (HB 693).

The District Court Subcommittee discussed the recommendation of the Task Force and the Court Access Committee, but ultimately decided not to recommend an additional requirement that the legislature opted not to include in the governing statute. Representatives from the Task Force informed the Subcommittee that landlord filers sometimes use their own version of the form. These custom forms (1) make it difficult for the in-court attorneys to quickly ascertain whether the landlord has complied with the notice requirement, and (2) sometimes omit the information contained on the Judiciary form that refers both landlords and tenants to resources for mediation and to the Maryland Court Help Center. The Subcommittee recommended adding new section (b) to Rule 3-711 requiring the use of a notice "substantially in the form approved by the State Court Administrator," as contemplated by the statute and requiring that the notice include the information on resources.

Representatives from the Task Force asked the Rules Committee to remove the word "substantially," arguing that the statute requires strict

compliance by using the Judiciary-issued form, and reiterating the issues attorneys have observed with customized forms. The Rules frequently authorize substantial compliance with forms, particularly in the District Court where litigation is forms-heavy. The Committee was informed that law firms digitize Judiciary forms to use with their own case management systems, which may involve reformatting. The Committee ultimately struck "substantially" from the new language, deferring to the apparent intent of the legislature to require use of the Judiciary form alone.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 – SMALL ESTATE

AMEND Rule 6-209 by updating the language in the form notice in section (a) pertaining to objection to the appointment, as follows:

Rule 6-209. NOTICE OF APPOINTMENT

(a) Notice

When notice of appointment is required to be published by the order of the register, the personal representative shall file the notice in duplicate in the following form:

(FILE IN DUPLICATE)

_____
_____
_____
(name and address of attorney)

SMALL ESTATE

NOTICE OF APPOINTMENT

Estate No. _____

NOTICE TO CREDITORS

NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____.

Notice is given that _____ (name & address) was on _____ (date) appointed personal representative of the small estate of _____ who died on _____ (date) (with) (without) a will.

Further information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the personal representative or the attorney.

All interested persons or unpaid claimants having any objection to the appointment shall file their objections with the Register of Wills within 30 days after the date of publication of this notice. All persons having an objection to the probate of the will shall file their objections with the Register of Wills within six months after the date of publication of this Notice.

All persons having claims against the decedent must serve their claims on the undersigned personal representative or file them with the Register of Wills with a copy to the undersigned on or before the earlier of the following dates:

(1) Six months from the date of the decedent's death, or

(2) Thirty days after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that the claims will be barred unless the creditor presents the claim within thirty days from the mailing or other delivery of the notice. Any claim not served or filed within that time, or any extension provided by law, is unenforceable thereafter.

_____

_____

_____

Personal Representative(s)

True Test Copy

Name and Address of Register of Wills for _____

_____

Name of newspaper designated by personal representative _____

_____

(b) Modification of Form

If the initial appointment is made under judicial probate, this form may be modified to delete reference to the notice of the right to object to the appointment of the personal representative or to the probate of the decedent's will, as applicable.

(c) Publication

The register shall cause the notice to be published once in a newspaper of general circulation in the county of appointment.

(d) Certificate of Publication

Within 60 days after publication, the personal representative shall cause to be filed with the register a certification that the required newspaper notice has been published.

Cross reference: Code, Estates and Trusts Article, §§ 7-103 and 5-604(b); Rule 6-401.

REPORTER'S NOTE

The proposed amendment to Rule 6-209 implements Chapters 318/319, 2024 Laws of Maryland (SB 80/HB 326). The bill alters a provision in the notice of appointment of the personal representative, limiting who may object to the appointment to "all interested persons and unpaid claimants." The form in the amended statute (Code, Estates and Trusts Article, § 7-103) is referenced in the small estate title (Code, Estates and Trusts Article, § 5-603(b)), and a version of it is included in Rule 6-209. The proposed amendment to the form in section (a) updates the provision relating to objections to conform it to the comparable provision in the notice of appointment in a regular estate.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 – OPENING ESTATES

AMEND Rule 6-311 by replacing certain language in the form notice in section (a) pertaining to objection to the appointment, as follows:

Rule 6-311. NOTICE OF APPOINTMENT

(a) Notice

The petitioner shall file with the register, in duplicate, a notice of appointment in the following form:

(FILE IN DUPLICATE)

_____

_____

_____

(name and address of attorney)

NOTICE OF APPOINTMENT

NOTICE TO CREDITORS

NOTICE TO UNKNOWN HEIRS

Estate No. _____

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____.

Notice is given that _____ (name & address) was on _____ (date) appointed personal representative of the estate of _____ who died on _____ (date) (with) (without) a will.

Further information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the personal representative or the attorney.

~~All persons having any objection to the appointment (or to the probate of the decedent's will) shall file their objections with the Register of Wills on or before the ___ day of _____ (6 months from date of appointment), _____ (year).~~

All interested persons or unpaid claimants having any objection to the appointment of the personal representative shall file their objection with the Register of Wills on or before the ___ day of _____ (6 months from date of appointment), _____ (year).

All persons having any objection to the probate of the will of the decedent shall file their objections with the Register of Wills on or before the ___ day of _____ (6 months from date of appointment), _____ (year).

Any person having a claim against the decedent must present the claim to the undersigned personal representative or file it with the Register of Wills with a copy to the undersigned on or before the earlier of the following dates:

(1) Six months from the date of the decedent's death, or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that the claim will be barred unless the creditor presents the claims within two months from the mailing or other delivery of the notice. A claim not presented or filed on or before that date, or any extension provided by law, is unenforceable thereafter. Claim forms may be obtained from the Register of Wills.

_____
_____
_____
Personal Representative(s)
_____
True Test Copy

Name and Address of Register of Wills for _____
_____

Name of newspaper designated by personal representative _____
_____

(b) Modification of Form

If the initial appointment is made under judicial probate, this form may be modified to delete reference to the notice of the right to object to the appointment of the personal representative or to the probate of the decedent's will, as applicable. If there was a prior small estate proceeding, the form shall be modified to state that fact. If the initial appointment was made more than six months after the decedent's death, the form may be modified to eliminate the reference to persons having a claim against the estate.

Cross reference: Code, Estates and Trusts Article, §§ 7-103 and 8-104; Rule 6-401.

REPORTER'S NOTE

The proposed amendment to Rule 6-311 implements Chapters 318/319, 2024 Laws of Maryland (SB 80/HB 326). The bill alters a provision in the notice of appointment of the personal representative. It limits who the notice states can object to the appointment to "all interested persons and unpaid claimants." The form in section (a) of the Rule is updated to conform to the language in the statute.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 100 – MARYLAND CODE OF JUDICIAL CONDUCT

RULES GOVERNING INTEGRITY AND THE AVOIDANCE OF IMPROPRIETY

AMEND Rule 18-101.2 by adding new section (c) pertaining to avoiding the perception of bias, by adding "or bias" to Comment 1, by adding to Comment 4 encouragement to participate in education and activities that promote awareness of biases, by adding new Comment 6, and by renumbering current Comment 6 as Comment 7, as follows:

Rule 18-101.2. PROMOTING CONFIDENCE IN THE JUDICIARY (ABA RULE 1.2)

(a) Promoting Public Confidence

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

(b) Avoiding Perception of Impropriety

A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

(c) Avoiding Perception of Bias

A judge shall avoid conduct that would create in reasonable minds a perception that the judge is acting with bias based on race, sex, gender,

religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety or bias. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other individuals and must accept the restrictions imposed by this Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities, including training and other educational opportunities, that promote ethical conduct among judges and attorneys, support professionalism within the judiciary and the legal profession, encourage increased awareness of actual and implicit biases, and promote access to justice for all.

[5] Actual improprieties include violations of law, Court Rules, and this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with competence, impartiality, and integrity is impaired.

[6] Members of the public interacting with the judiciary should be treated fairly and impartially both in fact and in appearance. Judges should be mindful that bias may be explicit but also may be implicit, meaning behavior that is largely influenced by subconscious associations and judgments without prompting. If a judge is alerted that the judge's conduct could cause a reasonable person to question the judge's impartiality or otherwise suggest impermissible bias on the part of the court, the judge should evaluate the conduct and, if necessary, take reasonable and lawful steps to correct the conduct.

~~[6]~~[7] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Source: This Rule is derived in part from former Rule 1.2 of Rule 16-813 (2016) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 18-101.2 address a concern raised by the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("the EJC Report"). The suggestion in the EJC Report was to add Committee notes to the Rules in Title 4 reminding judges "of the risk of implicit bias." The Rules Committee discussed and ultimately recommended a new Title 1 Rule (Rule 1-342) and amendments to two Rules in the Code of Judicial Conduct (Rules 18-102.3 and 18-202.3). Rule 1-342 contained a general reminder to judicial personnel (1) of the need to be aware of how participants in judicial proceedings and members of the public may construe the way judicial statements or decisions are expressed and enforced and (2) to avoid making statements or taking actions that others may feel indicate a bias that is not intended. The two Title 18 Rules were amended to add discussion of implicit bias to the Comments.

The Supreme Court considered the proposals at an open meeting on the 221st Report on March 19, 2024. After discussion, the Court remanded the Rules to the Committee for further study. The Court instructed the Committee, on remand, to relocate the substance of Rule 1-342 to Rules 18-101.2 and 18-201.2 – with reconsideration of the language used in light of the Court's discussion – and to contemplate developing a Title 1 Rule that serves as an aspirational policy statement for the Judiciary.

The proposed amendment to Rule 18-101.2 is modeled after the existing provisions in the Rule but adds an admonishment that judges must avoid conduct that would create in reasonable minds a perception of bias based on the enumerated traits. A new Comment 6 provides guidance to the judge who is alerted to the potential for an appearance of bias. It is derived in part from *Belton v. State*, 483 Md. 523 (2023), and in part from the Supreme Court's comments at the open meeting on the 221st Report.

Additional amendments to the Comments add "or bias" to Comment 1 and expand Comment 4 to reference educational opportunities and encourage increased awareness of bias.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 200 – MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

RULES GOVERNING INTEGRITY AND THE AVOIDANCE OF IMPROPRIETY

AMEND Rule 18-201.2 by adding taglines to sections (a) and (b), by adding new section (c) pertaining to avoiding the perception of bias, by adding "or bias" to Comment 1, by adding to Comment 4 encouragement to participate in education and activities that promote awareness of biases, by adding new Comment 6, by renumbering current Comment 6 as Comment 7, as follows:

Rule 18-201.2. PROMOTING CONFIDENCE IN THE JUDICIARY

(a) Promoting Public Confidence

A judicial appointee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

(b) Avoiding Perception of Impropriety

A judicial appointee shall avoid conduct that would create in reasonable minds a perception of impropriety.

(c) Avoiding Perception of Bias

A judicial appointee shall avoid conduct that would create in reasonable minds a perception that the judicial appointee is acting with bias based on

race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety or bias. This principle applies to both the professional and personal conduct of a judicial appointee.

[2] A judicial appointee should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by this Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judicial appointee undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judicial appointees should participate in activities, including training and other educational opportunities, that promote ethical conduct among judicial appointees and attorneys, support professionalism within the judiciary and the legal profession, encourage increased awareness of actual and implicit biases, and promote access to justice for all.

[5] Actual improprieties include violations of law, Court Rules, and this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judicial appointee's ability to carry out the responsibilities of the judicial appointee's position with competence, impartiality, and integrity is impaired.

[6] Members of the public interacting with the judiciary should be treated fairly and impartially both in fact and in appearance. Judicial appointees should be mindful that bias may be explicit but also may be implicit, meaning behavior that is largely influenced by subconscious associations and judgments without prompting. If a judicial appointee is alerted that the judicial appointee's conduct could cause a reasonable person to question the judicial appointee's impartiality or otherwise suggest impermissible bias on the part of the court, the judicial appointee should evaluate the conduct and, if necessary, take reasonable and lawful steps to correct the conduct.

~~[6]~~[7] A judicial appointee should, where appropriate, initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judicial appointee must act in a manner consistent with this Code.

Source: This Rule is derived in part from former Rule 1.2 of Rule 16-814 (2016) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 18-201.2 address a concern raised by the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("the EJC Report"). See the Reporter's note to Rule 18-102.2.

MARYLAND RULES OF PROCEDURE

PREAMBLE

ADD a Preamble to the Maryland Rules, as follows:

PREAMBLE

The mission of the Maryland Judiciary is to provide fair, efficient, and effective justice for all persons who come before it. The Judiciary is committed to ensuring the integrity and impartiality of the judicial system and to providing court interactions free of bias that interferes with the fair administration of justice and the appearance of such bias. In all court interactions, each judge, judicial officer, employee, and agent acting on behalf of the Maryland Judiciary should refrain from engaging in conduct that exhibits actual or implicit bias based on race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation – whether directed toward counsel, court staff, witnesses, parties, jurors, or any other individual – and are encouraged to take action to discourage others from engaging in such conduct.

REPORTER'S NOTE

The proposed new Preamble to the Maryland Rules addresses a concern raised by the Report and Recommendations of the Committee on Equal Justice Rules Review Subcommittee ("the EJC Report"). The suggestion in the EJC Report was to add Committee notes to the Rules in Title 4 reminding judges "of the risk of implicit bias." The Rules Committee discussed and ultimately recommended a new Title 1 Rule (Rule 1-342) and amendments to two Rules in the Code of Judicial Conduct (Rules 18-102.3 and 18-202.3). Proposed Rule 1-342 contained a general reminder to judicial personnel (1) of the need to be aware of how participants in judicial proceedings and members of the public may construe the manner in which judicial statements or decisions are expressed and enforced and (2) to avoid making statements or taking actions that others may feel indicate a bias that is not intended. The two Title 18 Rules were amended to add discussion of implicit bias to the Comments.

The Supreme Court considered the proposals at an open meeting on the 221st Report on March 19, 2024. After discussion, the Court remanded the Rules to the Committee for further study. The Court instructed the Committee,

on remand, to relocate the substance of Rule 1-342 to Rules 18-101.2 and 18-201.2 – with reconsideration of the language used in light of the Court's discussion – and to contemplate developing a Title 1 Rule that serves as an aspirational policy statement for the Judiciary.

To address the second part of the Court's directive, the Rules Committee recommends adding a "Preamble" to the Maryland Rules. By not locating the provision in Title 1, the Preamble signals that it is separate from the Maryland Rules, which "are not guides to the practice of law but precise rubrics 'established to promote the orderly and efficient administration of justice and (that they) are to be read and followed.'" *Isen v. Phoenix Assurance Co. of New York,* 259 Md. 564, 570 (1970), quoting *Brown v. Fraley*, 222 Md. 480, 483 (1960).

The Preamble is derived from the Judiciary's mission statement, portions of the language previously included in proposed new Rule 1-342, and California Rules of Court Standards of Judicial Administration Standard 10.20. The Preamble sets forth the aspirational goal of the Judiciary to provide court interactions free of bias or the appearance of bias that interferes with the fair administration of justice. It reminds all court personnel to refrain from engaging in conduct that exhibits such bias and encourages Judiciary actors to take steps to ensure that no one around them engages in such conduct. The listed attributes are derived from Rules 18-102.3 and 18-202.3.

The Committee debated what, if any, directive the Preamble should contain for court personnel, particularly regarding behavior they might observe by a colleague that could be rooted in bias. The final sentence of the Preamble, as originally drafted, instructed "each judge, judicial officer, employee, and agent acting on behalf of the Maryland Judiciary" to refrain from engaging in conduct exhibiting actual or implicit bias and concluded that personnel "should take action to prevent others from engaging in such conduct."

The Committee expressed concern about instructing Judiciary employees to confront colleagues – or even members of the public – about actual or perceived acts of bias. The Committee recognized that responding to bias in court interactions is nuanced and dependent on many factors. After discussion, the Committee proposed changing the final clause to "encourage" taking "appropriate action" to discourage others from engaging in biased conduct.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 700 – CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

AMEND Rule 2-705 by deleting an extraneous word in section (a), as follows:

Rule 2-705. ATTORNEYS' FEES TO A PREVAILING PARTY PURSUANT TO CONTRACT

(a) Scope of Rule

This Rule applies to a claim for an award of attorneys' fees ~~to~~ attributable to litigation in a circuit court pursuant to a contractual provision permitting an award of attorneys' fees to the prevailing party in litigation arising out of the contract. It does not apply to a claim for attorneys' fees allowed by contract as an element of damages for breach of the contract or to a claim for attorneys' fees authorized by statute or other law.

Cross reference: See Rules 2-703 and 2-704.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-705 corrects a grammatical error in the Rule by deleting an extraneous "to" in section (a).

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 200 – MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

RULES GOVERNING POLITICAL ACTIVITY

AMEND Rule 18-204.1 by correcting a typographical error in subsection (b)(1), as follows:

Rule 18-204.1. DEFINTIONS

. . .

(b) Candidate for Election

(1) "Candidate for election" means a judicial appointee who seeks initial election to a circuit ~~el;ourt~~ court or an Orphans' Court.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 18-204.1 corrects a typographical error in the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

PUBLIC SERVICE

AMEND Rule 19-306.1 by correcting a typographical error in the title, as follows:

Rule 19-306.1. PRO BONO ~~PUBLIC~~ PUBLICO SERVICE (6.1)

(a) Professional Responsibility

An attorney has a professional responsibility to render pro bono publico legal service.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 19-306.1 (6.1) corrects a typographical error in the title of the Rule. The amended title refers to pro bono "publico" service, consistent with the language used in the Rule and in American Bar Association Model Rule 6.1.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 300 – JUDICIAL ETHICS COMMITTEE

AMEND Rule 18-305 by replacing incorrect references in section (c) to Rule 18-703 and Rule 18-704 with references to Rule 18-603 and Rule 18-604, and by replacing incorrect references in section (d) to Rule 18-703 (e) and 18-704 (e) with references to Rule 18-603 (e) and Rule 18-604 (e), as follows:

Rule 18-305. DUTIES

In addition to its other duties imposed by law, the Committee:

(a) shall give advice, as provided in this Rule, with respect to the application or interpretation of the Maryland Code of Judicial Conduct and the Maryland Code of Conduct for Judicial Appointees;

(b) is designated as the body to give advice with respect to the application or interpretation of any provision of Code, General Provisions Article, § 5-501 et seq. and § 5-601 et seq., to a State official in the Judicial Branch;

(c) shall review timely appeals from the State Court Administrator's decision not to extend, under Rule ~~18-703~~ 18-603 or ~~18-704~~ 18-604, the period for filing a financial disclosure statement;

(d) shall determine, under ~~Rule 18-703 (e)~~ Rule 18-603 (e) or ~~Rule 18-704 (e)~~ Rule 18-604 (e), whether to allow a judge or judicial appointee to correct a deficiency as to a financial disclosure statement or to refer the matter, as to a

judge, to the Commission on Judicial Disabilities or, as to a judicial appointee, to the State Ethics Commission; and

(e) shall submit to the Rules Committee recommendations for necessary or desirable changes in any ethics provision.

Source: This Rule is derived from section (i) of former Rule 16-812.1 (2016).

REPORTER'S NOTE

Housekeeping amendments are proposed to sections (c) and (d) of this Rule to replace incorrect references to Rule 18-703 and Rule 18-704 with the correct references to Rule 18-603 and Rule 18-604.