STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Eleventh Report to the Court of Appeals, recommending proposed new Rules 11-420.1 and 15-902 and new Title 14, Chapter 600, Division 2, containing new Rules 14-611, 14-612, 14-613, 14-614, 14-615, and 14-616; amendments to current Rules 1-102, 1-202, 2-402, 2-652, 3-113, 3-306, 3-533, 3-534, 4-217, 7-102, 7-104, 8-202, 9-105, 9-205, 9-205.3, 11-112, 11-204, 11-219, 11-220, 11-404, 11-405, 11-406, 11-419, 11-422, 11-423, 11-424, 11-502, 14-601, 14-602, 14-604, 14-606, 15-901, 16-702, 16-110, 19-303.8, and 19-501; and rescission of current Rule 16-805.

The Committee's Two Hundred and Eleventh 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 August 10, 2022 any written comments they may wish to make to:

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

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July 11, 2022

The Honorable Matthew J. Fader,
Chief Judge
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Brynja M. Booth
The Honorable Jonathan Biran
The Honorable Steven B. Gould
The Honorable Angela M. Eaves,
Judges

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

Your Honors:

The Rules Committee submits this, its Two Hundred and Eleventh Report, and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The proposed changes fall into thirteen categories, some of which emanate, at least in part, from legislation enacted at the 2022 Session of the General Assembly.

CATEGORY ONE: Rule 2-402

Rule 2-402 is the Rule on discovery in civil cases, which mostly follows the comparable Federal Rule of Civil Procedure 26.

In 2010, the Federal Rule was amended to preclude from discovery two categories of information: (1) information in **draft** reports of experts and (2) communications between a party's attorney and an expert witness, except to the extent that the communication (i) relates to compensation for the expert's study or testimony, (ii) identifies facts or data that the attorney provided and the expert considered in forming the opinion to be expressed, or (iii) identifies assumptions that the party's attorney provided and the expert relied on in

forming the opinions to be expressed. *See* Fed. R. Civ. P. 26 (b)(4).

The Federal Rules Committee's explanation for the change was that routine discovery into attorney-expert communications and draft reports had "undesirable effects." Costs had risen as "[a]ttorneys may employ two sets of experts – one for purposes of consultation and another to testify at trial – because disclosure of their collaborative interactions with expert consultants would reveal their most sensitive and confidential case analyses." *See* Fed. R. Civ. P. 26 advisory committee's note to 2010 amendment.

The Rules Committee found merit in that concern and, with some style changes, recommends adopting the Federal approach.

CATEGORY TWO: Rules 3-113 and 3-306

Rule 3-113 keeps a District Court summons effective if served within 60 days. The Committee was informed that it is becoming more difficult to serve those summonses on out-of-State defendants within that period because of delays at the post office and the refusal of some sheriffs to accept electronic filings. The Committee recommends extending the life of the summons to 60 days, which is the time period for serving Circuit Court summonses.

Rule 3-306 governs judgments on affidavit in the District Court, including claims by plaintiffs who were not the "original creditor" but acquired a "consumer debt" from an original creditor. Under Code, Courts Article, § 5-1203, creditors who fall within the statutory definition of "debt buyer" must produce certain evidence in order to obtain a judgment in a consumer debt action. The Committee recently became aware that the definition of "debt buyer" in Code, Courts Article, § 5-1201(i) is not harmonious with the definition of "original creditor" in Rule 3-306. The Committee recommends amending the Rule to reconcile the definitions.

CATEGORY THREE: Rules 3-533, 3-534, 7-102, and 7-104

The amendments to these Rules are an attempt to clarify the impact of statutes that require certain appeals from District Court judgments to be filed sooner than what is allowed by Rule.

Rules 3-533 and 3-534 require, respectively, that a motion for **new trial** or to **alter or amend** a judgment be filed within

ten days after entry of the judgment. Those proceedings remain in the District Court. Rule 7-104 requires that an **appeal** from a District Court judgment be filed within 30 days after entry of the judgment but, if a motion under Rule 3-533 or 3-534 was filed, the 30-day period begins to run when the motion is withdrawn or denied. *See* Rule 7-104 (c). Those Rules can be read as permitting the appellant to seek post-judgment remedies in both the District and Circuit Courts.

The problem arises from a slew of statutes in the Real Property Article that require an appeal from a District Court judgment to be filed within a much shorter time. *See* Code, Real Property Article, §§ 8-332(a) (14 days), 8-401(h) (four days), 8-402(b)(2)(ii) (ten days), 4-402.1(b)(2) (ten days), 8A-1701(f) (two days), 8A-1702 (b)(2) (ten days), 8A-1703(b) (ten days), 14-109(b) (ten days), 14-120(n) (ten days), and 14-132(h) (ten days).

Whether or how those statutes and the Rules can be read harmoniously reached the Court of Appeals in *Lee v. Winncompanies, Inc.* (Case No. 24-C-20-001242AR (2020)), but the Court denied the *certiorari* petition as improvidently granted and referred the issue to the Rules Committee.

The Committee proposes to retain the general provisions in Rules 3-533 (a) and 3-534 (a) that a motion for new trial or to alter or amend the judgment may be filed within ten days, but, in a new section (b) in both Rules, provide that, if a statute provides an appeal time of less than ten days after entry of judgment, such a motion, even if timely filed, does not toll the time for appeal **unless the motion was filed within the statutory period for appeal**. That gives the aggrieved party a choice of pursing an early appeal, which may be difficult or near impossible for unrepresented parties, or pursuing only what he or she can get from a post-judgment motion in the District Court.

Rule 7-104 (a) requires **generally** that a notice of appeal be filed within 30 days after entry of a judgment, unless otherwise provided by Rule or by law. Sections (b) and (c) deal with the situation in which a post-trial motion for relief in the District Court has been filed. Section (b) deals with the situation in which a timely motion for new trial has been filed in a criminal case pursuant to Rule 4-331 (a). In that event, the notice of appeal must be filed within 30 days after the later of (1) entry of the judgment or (2) entry of a notice withdrawing the motion or an order denying the motion. Section

(c) deals generally with the time to appeal when a Rule 3-533 or 3-534 motion has been filed in a civil case. In that situation, any appeal must be filed within 30 days after entry of a notice withdrawing the motion or an order denying or otherwise disposing of it.

In order to address the problem of different statutory appeal periods, such as those in the Real Property Article, a new subsection (c)(2) is proposed to deal specifically with the case in which the time for filing an appeal is shorter than 30 days. Where the statutory period is **between ten and 29 days**, and a timely motion has been filed pursuant to Rule 3-533 or 3-534, the notice of appeal must be filed within the time allowed by the statute after (1) a notice withdrawing the motion or (2) an order denying or disposing of the motion. Where the statutory period is less than ten days, the notice of appeal must be filed within ten days after a notice withdrawing the motion or an order denying a Rule 3-533 motion or disposing of a Rule 3-534 motion. A Committee note explains that, to comport with the legislative objective, the motions must be filed within the statutory times allowed for an appeal in order to toll the time for appeal.

The proposed amendment to Rule 7-102 is merely a cross reference to two decisions of the Court of Appeals.

CATEGORY FOUR: Rule 9-205

Rule 9-205 governs the mediation of child custody and visitation disputes. Subsection (b)(1) of the Rule requires the court, promptly after an action subject to the Rule is at issue, to determine whether mediation of the dispute is appropriate. Subsection (b)(2) adds, however, that, if a party or the child represents to the court in good faith that there is a genuine issue of **abuse, as defined in Code, Family Law Article, § 4-501** of the party or child and that, as a result, mediation would be inappropriate, the court may not order mediation. "Abuse," as so defined in the Family Law Article, includes such things as rape, sexual offense, assault in any degree, false imprisonment, stalking, and any act that causes or puts the victim in fear of imminent serious bodily harm, and conduct defined as abuse in § 5-701 of the Family Law Article.

In putting together the 209th Report, the Committee was asked to consider, and did consider, whether there was other harmful conduct, not falling within the scope of "abuse," as so defined, that also should make mediation inappropriate. The

conduct in question was referred to as "coercive control" of the child or party, which was defined as "a pattern of emotional or psychological manipulation, maltreatment, or intimidation to compel an individual **by force or threat of force** to engage in conduct from which the individual has a right to abstain or to abstain from conduct in which the individual has a right to engage."

The addition of that language was supported by the House of Ruth, but an objection was made by Child Justice, Inc., a legal services organization, to the requirement that the intimidation involve "force or threat of force," which that organization argued would be construed "to exclude some of the most damaging types of coercive control." They cited their experience that survivors of coercive control would likely deny that coercive control is present if force or threat of force was included in the definition. In light of that concern, the Court remanded the issue to the Committee for further consideration.

Upon the remand, the Committee, with the additional assistance of the Family Mediation and Abuse Screening Workgroup of the Domestic Law Committee, developed a new definition of "coercive control" as "a pattern of emotional or psychological manipulation, maltreatment, threat of force, or intimidation used to compel an individual to act, or refrain from acting, against the individual's will." "Threat of force" can be an element in producing that result but is not a required one.

CATEGORY FIVE: Rules 15-901, 15-902, and 9-105

Rule 15-901 is the Rule governing petitions to change the name of a person. A revision of the Rule was approved by the Committee and transmitted to the Court in the Committee's 209th Report. At the open meeting on the Report, several issues surfaced regarding that Rule, centering on privacy and security concerns arising from the publicity given to petitions to change the names of children. The Court remanded the Rule to the Committee to deal with those issues, which the Committee has attempted to do.

In the Rule as currently proposed, if the petition seeks to change the name of a minor, it must explain why that is in the child's best interest and attach the consent of (1) the child, if ten years old or older, and (2) each parent, guardian, or custodian of the child, or explain its absence and allow the person to file an objection within 30 days. In a Committee note, the Rule takes account of the concern that a petition on

behalf of a minor may contain confidential information, and, if it does, allows the petitioner to request the court to seal or otherwise limit access to that information. The court may rule on the petition without a hearing if the written consents and no objections have been filed. Otherwise, the court must hold a hearing.

Rule 15-902 is new. It was recommended by the Judicial Council Domestic Law Committee's LGBTQ+ Family Law Work Group to provide a procedure for individuals to exercise their equitable right to declare their gender identity, which may be necessary to alter the gender designation on their birth certificate or on other documents. It sets forth the required venue, permits the action on behalf of a minor to be brought by an adult, states the requirements of a petition, and, if the individual is a minor, provides for notice to non-consenting parents, guardians, or custodians of the child and for those persons to object. Rule 15-902 also includes provisions for a name change in conjunction with the action for judicial declaration of gender identity.

A conforming amendment is proposed to Rule 9-105.

CATEGORY SIX: Title 14, Chapter 600

The current Rules in Chapter 600 of Title 14 deal with the foreclosure of local government tax liens by the local governments. The proposed amendments implement a 2021 statute (2021 Laws of Maryland, Ch. 382) that permits those liens to be foreclosed as well by the State. *See* Code, Tax-Property Article, §§ 14-883 through 14-891. That is implemented by splitting the Chapter into two divisions – retaining, with some conforming amendments, current Rules 14-601 through 14-606 as Division One, and adding new Rules 14-611 through 14-616 as Division Two.

CATEGORY SEVEN: Rules 2-652 and 19-303.8

The amendment to Rule 2-652 repeals an attorney's common law retaining lien on his or her client's papers that are in the possession of the attorney until the client's debt for legal services provided by the attorney have been paid. As explained in the Reporter's note to Rule 2-652, that old common law lien appears to conflict with Rule 19-301.16 (d) which, under Art. IV, § 18 of the Maryland Constitution has "the force of law" and requires that, "upon termination of representation," the attorney is responsible for "surrendering papers and property to

which the client is entitled" and that Virginia and the District of Columbia have eliminated or significantly limited an attorney's right to retain such papers, at least when they are requested by the former client.

Rule 19-303.8 lists some special responsibilities of a prosecutor. In a Comment to the current Rule, the point is made that "[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate." Section (d) of the Rule already implements that responsibility in part, by requiring a prosecutor to "make **timely disclosure** to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in addition, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor . . ."

In *Attorney Grievance v. Cassilly,* 476 Md. 309 (2021), the Court noted that, in 2008, the comparable ABA Rule was amended to add new sections (g) and (h) extending the prosecutor's disclosure obligation to situations in which the exculpatory information comes to light **after** the defendant has been convicted and that, although an opportunity had been presented in 2016 for similar changes to be made to the Maryland Rule, no such changes were made at that time. In footnote 21, the Court declared it "prudent that a similar amendment of [Maryland] Rule 3.8 be considered by our Rules Committee . . ." 476 Md. at 384.

The Committee has complied with that request and recommends that the ABA provisions be added as well to the Maryland Rule as new sections (f) and (g), together with new Comments (6) (7), and (8).

CATEGORY EIGHT: Rules 11-406, 11-422, 11-423, 11-424, 11-420.1, and 11-502

The Rules in this Category implement 2022 Md. Laws, Chapters 41 and 42 - the Juvenile Justice Reform Act - which alter the jurisdiction of the Juvenile Court, the juvenile intake procedure, the dispositional authority of the courts, and the authority of those courts to place a child in detention and on probation.

Rule 11-406 deals with detention, community detention, and shelter care. Proposed amendments add new requirements for placing and keeping a child in detention that are explained in the Reporter's note to the Rule. Rule 11-422 deals with

delinquency and citation proceedings. Amendments make some stylistic changes and add cross-references to applicable Statutes. Rule 11-423 also deals with delinquency and citation proceedings. The proposed amendment would repeal section (b) of the Rule, which requires a hearing for a child who has been held in detention for more than 25 days, in light of the new statutory requirement (and that of Rule 11-406 (f)) that continued detention hearings be held every 14 days.

The amendments to Rule 11-424 are, in part, stylistic or conforming ones. New section (d) is derived from Code, Courts Article, § 3-8A-19.6.

New Rule 11-420.1 provides for implementation of the process, created by Chapters 41 and 42, permitting the court to stay proceedings and refer a matter to the Department of Juvenile Services for informal adjustment.

Rule 11-502 governs Child in Need of Supervision proceedings. The amendment to subsection (q)(1) permits the court to refer the case to informal adjustment in lieu of conducting an adjudicatory hearing.

CATEGORY NINE: Rules 11-404, 11-405, and 11-419

These Rules implement 2022 Md. Laws, Chapter 50, which governs the taking of children into custody, the interrogation of children, and the admissibility of statements made by children during a custodial interrogation. The amendments to Rules 11-404, 11-405, and 11-419 add references to Code, Courts Article, § 3-8A-14.2, the new statute.

CATEGORY TEN: Rules 11-219 and 11-220

Rule 11-219 governs post-disposition review and modification in a CINA proceeding. One amendment deletes a statutory reference. Two others require the court to take certain actions when, (1) at a review hearing, the court is presented with a permanency plan that is another planned permanent living arrangement, or (2) the review hearing pertains to a child who has been placed in a qualified residential treatment program.

The amendment to Rule 11-220, which governs termination of CINA proceedings, updates a statutory reference.

CATEGORY ELEVEN: Rules 11-112 and 11-204

Rule 11-112 deals with the provision of papers in a foreign language to participants who are not fluent in English. The amendments to that Rule were requested by the Access to Justice Department.

The amendment to Rule 11-204 clarifies that, if immediate review of a magistrate's order is desired, the request must be made no later than the next day after entry of the order.

CATEGORY TWELVE: Rules 16-702, 16-110, and 19-501

Rule 16-702 reconstitutes the current Conference of Circuit Court Judges. The revision of that Conference was requested by the State Court Administrator. The new Conference will be known as the Conference of Circuit Court Administrative Judges and will consist of the County Administrative Judge of each Circuit Court. The amendments to Rules 16-110 and 19-501 are conforming ones.

CATEGORY THIRTEEN: Rules 1-102, 1-202, 4-217, 8-202, 9-205.3, and 16-805

The amendments to Rules 1-102, 1-202, 4-217, 8-202, and 9-205.3 and the rescission of Rule 16-805 are in the nature of housekeeping amendments.

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

Alan M. Wilner
Chair

AMW:sdm
cc: Suzanne C. Johnson, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 – DISCOVERY

AMEND Rule 2-402 by adding new subsection (g)(1)(C) concerning the protection of draft reports and disclosures of expert witnesses, by adding new subsection (g)(1)(D) regarding the protection of certain communications with an expert witness, and by adding a Committee note after the new subsections, as follows:

Rule 2-402. SCOPE OF DISCOVERY

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(a) Generally

A party may obtain discovery regarding any matter that is not privileged, including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, and tangible things and the identity and location of persons having knowledge of any discoverable matter, if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim

or defense of any other party. It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery or that the information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. An interrogatory or deposition question otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact.

(b) Limitations and Modifications; Electronically Stored Information Not Reasonably Accessible

(1) Generally

In a particular case, the court, on motion or on its own initiative and after consultation with the parties, by order may limit or modify these rules on the length and number of depositions, the number of interrogatories, the number of requests for production of documents, and the number of requests for admissions. The court shall limit the frequency or extent of use of the discovery methods otherwise permitted under these rules if it determines that (A) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information

sought; or (C) the burden or cost of the proposed discovery outweighs its likely benefit, taking into account the complexity of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

(2) Electronically Stored Information Not Reasonably Accessible

A party may decline to provide discovery of electronically stored information on the ground that the sources are not reasonably accessible because of undue burden or cost. A party who declines to provide discovery on this ground shall identify the sources alleged to be not reasonably accessible and state the reasons why production from each identified source would cause undue burden or cost. The statement of reasons shall provide enough detail to enable the requesting party to evaluate the burdens and costs of providing the discovery and the likelihood of finding responsive information in the identified sources. On a motion to compel discovery, the party from whom discovery is sought shall first establish that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the party requesting discovery shall establish that its need for the discovery outweighs the burden and cost of locating, retrieving, and producing the information. If persuaded that the need for

discovery does outweigh the burden and cost, the court may order discovery and specify conditions, including an assessment of costs.

Committee note: The term "electronically stored information" has the same broad meaning in this Rule that it has in Rule 2-422, encompassing, without exception, whatever is stored electronically. Subsection (b)(2) addresses the difficulties that may be associated with locating, retrieving, and providing discovery of some electronically stored information. Ordinarily, the reasonable costs of retrieving and reviewing electronically stored information are borne by the responding party. At times, however, the information sought is not reasonably available to the responding party in the ordinary course of business. For example, restoring deleted data, disaster recovery tapes, residual data, or legacy systems may involve extraordinary effort or resources to restore the data to an accessible format. This subsection empowers the court, after considering the factors listed in subsection (b)(1), to shift or share costs if the demand is unduly burdensome because of the nature of the effort involved to comply and the requesting party has demonstrated substantial need or justification. *See, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production,* (2d ed. 2007), Principle 13 and related Comment.

(c) Insurance Agreement

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For

purposes of this section, an application for insurance shall not be treated as part of an insurance agreement.

(d) Work Product

Subject to the provisions of sections (f) and (g) of this Rule, a party may obtain discovery of documents, electronically stored information, and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the materials are discoverable under section (a) of this Rule and that the party seeking discovery has substantial need for the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of these materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(e) Claims of Privilege or Protection

(1) Information Withheld

A party who withholds information on the ground that it is privileged or subject to protection shall describe the nature of the documents, electronically stored information,

communications, or things not produced or disclosed in a manner that, without revealing the privileged or protected information, will enable other parties to assess the applicability of the privilege or protection.

(2) Duty of Recipient

A party who receives a document, electronically stored information, or other property that the party knows or reasonably should know was inadvertently sent shall promptly notify the sender.

(3) Information Produced

Within a reasonable time after information is produced in discovery that is subject to a claim of privilege or of protection, the party who produced the information shall notify each party who received the information of the claim and the basis for it. A party who wishes to determine the validity of a claim of privilege or protection that is not controlled by a court order or a disclosure agreement entered into pursuant to subsection (e)(5) of this Rule shall promptly file a motion under seal requesting that the court determine the validity of the claim. A party in possession of information that is the subject of the motion shall appropriately preserve the information pending a ruling. A receiving party may not use or disclose the information until the claim is resolved and shall

take reasonable steps to retrieve any information the receiving party disclosed before being notified.

Cross reference: Rule 19-304.4 (b) of the Maryland Attorneys' Rules of Professional Conduct.

Committee note: Subsection (e)(3) allows a producing party to assert a claim of privilege or protection after production because it is increasingly costly and time-consuming to review all electronically stored information in advance. Unlike the corresponding federal rule, a party must raise a claim of privilege or protection within a "reasonable time." *See Elkton Care Center Associates v. Quality Care Management, Inc.*, 145 Md. App. 532 (2002).

(4) Effect of Inadvertent Disclosure

A disclosure of a communication or information covered by a privilege or protection does not operate as a waiver if the holder of the privilege or work product protection (A) made the disclosure inadvertently, (B) took reasonable precautions to prevent disclosure, and (C) took reasonably prompt measures to rectify the error once the holder knew or should have known of the disclosure.

Committee note: Courts in other jurisdictions are in conflict over whether an inadvertent disclosure of privileged or protected information constitutes a waiver. A few courts find that a disclosure must be intentional to be a waiver. Most courts find a waiver only if the disclosing party acted carelessly in disclosing the communication or information and failed to request its return in a timely manner. A few other courts hold that any mistaken disclosure of protected information constitutes waiver without regard to the protections taken to avoid such a disclosure. *See generally Hopson v. City of Baltimore*, 232 F.R.D. 228 (D. Md. 2005) for a discussion of this case law.

This subsection opts for the middle ground: inadvertent disclosure of privileged or protected information in connection

with a state or federal proceeding constitutes a waiver only if the party did not take reasonable precautions to prevent disclosure and did not make reasonable and prompt efforts to rectify the error. This position is in accord with Maryland common law, *see, e.g., Elkton Care Center Associates v. Quality Care Management, Inc.*, 145 Md. App. 532 (2002), and the majority view on whether inadvertent disclosure is a waiver. *See, e.g., Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576-77 (D. Kan. 1997) (work product); *Hydraflow, Inc. v. Enidine, Inc.*, 145 F.R.D. 626, 637 (W.D.N.Y. 1993) (attorney-client privilege); *Edwards v. Whitaker*, 868 F.Supp. 226, 229 (M.D. Tenn. 1994) (attorney-client privilege).

(5) Controlling Effect of Court Orders and Agreements

Unless incorporated into a court order, an agreement as to the effect of disclosure of a communication or information covered by a privilege or protection is binding on the parties to the agreement but not on other persons. If the agreement is incorporated into a court order, the order governs all persons or entities, whether or not they are or were parties.

Committee note: Parties may agree to certain protocols to minimize the risk of waiver of a claim of privilege or protection. One example is a "clawback" agreement, meaning an agreement that production will occur without a waiver of privilege or protection as long as the producing party promptly identifies the privileged or protected documents that have been produced. *See The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production*, (2d ed. 2007), Comment 10.a. Another example is a "quick peek" agreement, meaning that the responding party provides certain requested materials for initial examination without waiving any privilege or protection. The requesting party then designates the documents it wishes to have actually produced, and the producing party may assert any privilege or protection. *Id.*, Comment 10.d.

Subsection (e)(5) codifies the well-established proposition that parties can enter into an agreement to limit the effect of waiver by disclosure between or among them. *See, e.g., Dowd v. Calabrese*, 101 F.R.D. 427, 439 (D.D.C. 1984) (no waiver where

the parties stipulated in advance that certain testimony at a deposition "would not be deemed to constitute a waiver of the attorney-client or work product privileges"); *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 290 (S.D.N.Y. 2003) (noting that parties may enter into "so-called 'claw-back' agreements that allow the parties to forego privilege review altogether in favor of an agreement to return inadvertently produced privileged documents"). Of course, such an agreement can bind only the parties to the agreement. The subsection makes clear that if parties want protection from a finding of waiver by disclosure in separate litigation, the agreement must be made part of a court order. Confidentiality orders are important in limiting the costs of privilege review and retention, especially in cases involving electronic discovery. The utility of a confidentiality order is substantially diminished if it provides no protection outside the particular litigation in which the order is entered. Parties are unlikely to be able to reduce the costs of preproduction review for privilege or protection if the consequence of disclosure is that the information can be used by nonparties to the litigation.

Subsection (e)(5) provides that an agreement of the parties governing confidentiality of disclosures is enforceable against nonparties only if it is incorporated in a court order, but there can be no assurance that this enforceability will be recognized by courts other than those of this State. There is some dispute as to whether a confidentiality order entered in one case can bind nonparties from asserting waiver by disclosure in separate litigation. *See generally Hopson v. City of Baltimore*, 232 F.R.D. 228 (D. Md. 2005), for a discussion of this case law.

(f) Trial Preparation - Party's or Witness' Own Statement

A party may obtain a statement concerning the action or its subject matter previously made by that party without the showing required under section (d) of this Rule. A person who is not a party may obtain, or may authorize in writing a party to obtain, a statement concerning the action or its subject matter previously made by that person without the showing required under section (d) of this Rule. For purposes of this

section, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(g) Trial Preparation - Experts

(1) Expected to be Called at Trial

(A) Generally

Subject to subsection (g)(1)(C) of this Rule, a party by interrogatories may require any other party to identify each person, other than a party, whom the other party expects to call as an expert witness at trial; to state the subject matter on which the expert is expected to testify; to state 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; and to produce any written report made by the expert concerning those findings and opinions. A party also may take the deposition of the expert.

Committee note: This subsection requires a party to disclose the name and address of any witness who may give an expert opinion at trial, whether or not that person was retained in anticipation of litigation or for trial. *Cf. Dorsey v. Nold*, 362 Md. 241 (2001). See Rule 104.10 of the Rules of the U.S. District Court for the District of Maryland. The subsection does not require, however, that a party name himself or herself as an expert. See *Turgut v. Levin*, 79 Md. App. 279 (1989).

(B) Additional Disclosure with Respect to Experts Retained in Anticipation of Litigation or for Trial

In addition to the discovery permitted under subsection (g)(1)(A) of this Rule, a party by interrogatories may require the other party to summarize the qualifications of a person expected to be called as an expert witness at trial and whose findings and opinions were acquired or obtained in anticipation of litigation or for trial, to produce any available list of publications written by that expert, and to state the terms of the expert's compensation.

(C) Protection for Draft Reports or Disclosures

A party is not entitled to the discovery of drafts of any report or disclosure required under subsection (g)(1)(A) of this Rule regardless of the form in which the draft is recorded.

(D) Protection for Communications Between a Party's Attorney and Expert Witnesses

A party is not entitled to the discovery of communications between another party's attorney and an expert witness, regardless of the form of the communication, except to the extent that the communication (i) relates to compensation for the expert's study or testimony, (ii) identifies facts or data that the attorney provided and the expert considered in forming the opinion to be expressed, or (iii) identifies

assumptions that the party's attorney provided and the expert relied on in forming the opinions to be expressed.

Committee note: Subsections (g)(1)(C) and (g)(1)(D) are derived from Fed. R. Civ. P. 26 (b)(4). See the Advisory Committee notes for the 2010 amendment attached to the federal provisions for discussion of how these provisions are intended to operate.

(2) Not Expected to Be Called at Trial

When an expert has been retained by a party in anticipation of litigation or preparation for trial but is not expected to be called as a witness at trial, discovery of the identity, findings, and opinions of the expert may be obtained only if a showing of the kind required by section (d) of this Rule is made.

(3) Fees and Expenses of Deposition

Unless the court orders otherwise on the ground of manifest injustice, the party seeking discovery: (A) shall pay each expert a reasonable fee, at a rate not exceeding the rate charged by the expert for time spent preparing for a deposition, for the time spent in attending a deposition and for the time and expenses reasonably incurred in travel to and from the deposition; and (B) when obtaining discovery under subsection (g)(2) of this Rule, shall pay each expert a reasonable fee for preparing for the deposition.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 400 c and the 1980 version of Fed. R. Civ. P. 33 (b).

Section (b) is new and is derived from the 2000 version of Fed. R. Civ. P. 26 (b)(2), except that subsection (b)(2) is derived from the 2006 Fed. R. Civ. P. 26 (b)(2)(B).
Section (c) is new and is in part derived from the 1980 version of Fed. R. Civ. P. 26 (b)(2).
Section (d) is derived from former Rule 400 d.
Section (e) is new and is derived from the 2006 version of Fed. R. Civ. P. 26 (b)(5).
Section (f) is derived from former Rule 400 e.
Subsections (g)(1)(A) and (B) ~~is~~ are derived in part from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule 400 f and is in part new. Subsections (g)(1)(C) and (D) are derived from the 2010 version of Fed. R. Civ. P. 26 (b)(4).
Subsection (g)(2) is derived from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and former Rule U12 b.
Subsection (g)(3) is derived in part from the 1980 version of Fed. R. Civ. P. 26 (b)(4) and is in part new.

REPORTER'S NOTE

Rule 2-402 addresses the scope of discovery for civil cases in a circuit court, including the ability to discover documents pertaining to experts. In the Federal Rules of Civil Procedure, Rule 26 addresses certain aspects of civil discovery, including disclosures relating to experts. In 2010, Rule 26 (b)(4)(B) was amended to provide that draft reports of experts are considered work-product and are therefore protected from disclosure. Rule 26 (b)(4)(C) was also added to provide work-product protection to communications between attorneys and experts, with certain exceptions. Proposed changes to Maryland Rule 2-402 mirror the 2010 amendments to Federal Rule of Civil Procedure 26.

Subsection (g)(1) of Rule 2-402 addresses the extent of discovery related to experts retained for trial. Proposed new subsection (g)(1)(C) provides that a party may not discover drafts of any reports or disclosures required by subsection (g)(1)(A).

Proposed new subsection (g)(1)(D) prohibits discovery of communications between attorneys and experts, with some exceptions. The subsection clarifies that some communications are discoverable, including those relating to compensation, facts and data provided to and considered by the expert, and assumptions provided to and relied on by the expert. Protecting

certain attorney communications with an expert witness encourages open communication and concentrates discovery on the communications that contributed to the expert's opinion.

A Committee note after the new subsections states that the subsections are derived from Fed. R. Civ. P. 26 and refers to the guidance provided in the relevant federal Advisory Committee notes. The language of the proposed Committee note is modeled after the first paragraph of the Committee note at the end of Rule 5-902.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 100 – COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-113 by changing the time a summons is effective for service after the date of issuance, as follows:

Rule 3-113. PROCESS – DURATION, DORMANCY, AND RENEWAL OF SUMMONS

A summons is effective for service only if served within ~~30~~ 60 days after the date it is issued. A summons not served within that time shall be dormant, renewable only on written request of the plaintiff.

Committee note: See *Neel v. Webb Fly Screen Mfg. Co.*, 187 Md. 34, 48 A.2d 331 (1946).

Source: This Rule is new and replaces former M.D.R. 103 d 2.

REPORTER'S NOTE

Rule 3-113 addresses the duration, dormancy, and renewal of a summons issued in the District Court. The Rules Committee was informed that it is becoming more difficult to complete timely service on out-of-state defendants. Problems include delays at the post office and refusals by sheriffs to accept electronic filings. A practicing attorney notified the Committee that his firm has seen growing difficulties obtaining service on defendants, especially out-of-state defendants, within the 30-day period.

To address the concerns, proposed amendments to Rule 3-113 alter the time within which to effectuate service from 30 days to 60 days after the summons is issued. This change mirrors the time permitted to effectuate service in the circuit courts.

Instead of requiring a different service period based on whether the defendant is in Maryland or out-of-state, the Rules Committee recommends changing the general timeframe for any summons issued pursuant to Rule 3-113. The Committee was advised that this change may impact case time standards and will alter some current scheduling practices, but fewer requests to renew a summons may offset the initial delays.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 300 – PLEADINGS AND MOTIONS

AMEND Rule 3-306 by revising the definition of "original creditor" in subsection (a)(5), as follows:

Rule 3-306. JUDGMENT ON AFFIDAVIT

(a) Definitions

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

(1) Charge-Off

"Charge-off" means the act of a creditor that treats an account receivable or other debt as a loss or expense because payment is unlikely.

(2) Charge-Off Balance

"Charge-off balance" means the amount due on the account or debt at the time of charge-off.

(3) Consumer Debt

"Consumer debt" means a secured or unsecured debt that is for money owed or alleged to be owed and arises from a consumer transaction.

(4) Consumer Transaction

"Consumer transaction" means a transaction involving an individual seeking or acquiring real or personal property, services, future services, money, or credit for personal, family, or household purposes.

(5) Original Creditor

"Original creditor" means the lender, provider, or other person to whom a consumer originally was alleged to owe money pursuant to a consumer transaction. "Original creditor" includes a creditor excluded from the definition of "debt buyer" in Code, Courts Article, § 5-1201(i)(2) and the Central Collection Unit, a unit within the State Department of Budget and Management.

(6) Original Consumer Debt

"Original consumer debt" means the total of the consumer debt alleged to be owed to the original creditor, consisting of principal, interest, fees, and any other charges.

Committee note: If there has been a charge-off, the amount of the "original consumer debt" is the same as the "charge-off balance."

(7) Principal

"Principal" means the unpaid balance of the funds borrowed, the credit utilized, the sales price of goods or services obtained, or the capital sum of any other debt or obligation arising from a consumer transaction, alleged to be owed to the original creditor. It does not include interest,

fees, or charges added to the debt or obligation by the original creditor or any subsequent assignees of the consumer debt.

(8) Future Services

"Future services" means one or more services that will be delivered at a future time.

(9) Future Services Contract

"Future services contract" means an agreement that obligates a consumer to purchase a future service from a provider.

(10) Provider

"Provider" means any person who sells a service or future service to a consumer.

(b) Demand for Judgment by Affidavit

In an action for money damages a plaintiff may file a demand for judgment on affidavit at the time of filing the complaint commencing the action. The complaint shall be supported by an affidavit showing that the plaintiff is entitled to judgment as a matter of law in the amount claimed.

(c) Affidavit and Attachments - General Requirements

The affidavit shall:

(1) be made on personal knowledge;

(2) set forth such facts as would be admissible in evidence;

(3) show affirmatively that the affiant is competent to testify to the matters stated in the affidavit; and

(4) include or be accompanied by:

(A) supporting documents or statements containing sufficient detail as to liability and damages, including the precise amount of the claim and any interest claimed;

(B) if interest is claimed, an interest worksheet substantially in the form prescribed by the Chief Judge of the District Court;

(C) if attorneys' fees are claimed, sufficient proof evidencing that the plaintiff is entitled to an award of attorneys' fees and that the fees are reasonable; and

(D) if the claim is founded upon a note, security agreement, or other instrument, the original or a photocopy of the executed instrument, or a sworn or certified copy, unless the absence thereof is explained in the affidavit.

(d) If Claim Arises From Assigned Consumer Debt

If the claim arises from consumer debt and the plaintiff is not the original creditor, the affidavit also shall include or be accompanied by (i) the items listed in this section, and (ii) an Assigned Consumer Debt Checklist, substantially in the form prescribed by the Chief Judge of the District Court, listing the items and information supplied in or with the affidavit in conformance with this Rule. Each document that accompanies the affidavit shall be clearly numbered as an exhibit and referenced by number in the Checklist.

(1) Proof of the Existence of the Debt or Account

Proof of the existence of the debt or account shall be made by a certified or otherwise properly authenticated photocopy or original of at least one of the following:

(A) a document signed by the defendant evidencing the debt or the opening of the account;

(B) a bill or other record reflecting purchases, payments, or other actual use of a credit card or account by the defendant; or

(C) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant.

(2) Proof of Terms and Conditions

(A) Except as provided in subsection (d)(2)(B) of this Rule, if there was a document evidencing the terms and conditions to which the consumer debt was subject, a certified or otherwise properly authenticated photocopy or original of the document actually applicable to the consumer debt at issue shall accompany the affidavit.

(B) Subsection (d)(2)(A) of this Rule does not apply if (i) the consumer debt is an unpaid balance due on a credit card; (ii) the original creditor is or was a financial institution subject to regulation by the Federal Financial Institutions

Examination Council or a constituent federal agency of that Council; and (iii) the claim does not include a demand or request for attorneys' fees or interest on the charge-off balance in excess of the Maryland Constitutional rate of six percent per annum.

Committee note: This Rule is procedural only, and subsection (d)(2)(B)(iii) is not intended to address the substantive issue of whether interest in any amount may be charged on a part of the charge-off balance that, under applicable and enforceable Maryland law, may be regarded as interest.

Cross reference: See Federal Financial Institutions Examination Council Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36903-36906 (June 12, 2000).

(3) Proof of Plaintiff's Ownership

The affidavit shall contain a statement that the plaintiff owns the consumer debt. It shall include or be accompanied by:

(A) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and

(B) a certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to each successive owner, including the plaintiff.

Committee note: If a bill of sale or other document transferred debts in addition to the consumer debt upon which the action is based, the documentation required by subsection (d)(3)(B) of this Rule may be in the form of a redacted document that provides the general terms of the bill of sale or other document and the document's specific reference to the debt sued upon.

(4) Identification and Nature of Debt or Account

The affidavit shall include the following information:

(A) the name of the original creditor;

(B) the full name of the defendant as it appears on the original account;

(C) the last four digits of the social security number for the defendant appearing on the original account, if known;

(D) the last four digits of the original account number; and

(E) the nature of the consumer transaction, such as utility, credit card, consumer loan, retail installment sales agreement, service, or future services.

(5) Future Services Contract Information

If the claim is based on a future services contract, the affidavit shall contain facts evidencing that the plaintiff currently is entitled to an award of damages under that contract.

(6) Account Charge-Off Information

If there has been a charge-off of the account, the affidavit shall contain the following information:

(A) the date of the charge-off;

(B) the charge-off balance;

(C) an itemization of any fees or charges claimed by the plaintiff in addition to the charge-off balance;

(D) an itemization of all post-charge-off payments received and other credits to which the defendant is entitled; and

(E) the date of the last payment on the consumer debt or of the last transaction giving rise to the consumer debt.

(7) Information for Debts and Accounts Not Charged Off

If there has been no charge-off, the affidavit shall contain:

(A) an itemization of all money claimed by the plaintiff, (i) including principal, interest, finance charges, service charges, late fees, and any other fees or charges added to the principal by the original creditor and, if applicable, by subsequent assignees of the consumer debt and (ii) accounting for any reduction in the amount of the claim by virtue of any payment made or other credit to which the defendant is entitled;

(B) a statement of the amount and date of the consumer transaction giving rise to the consumer debt, or in instances of multiple transactions, the amount and date of the last transaction; and

(C) a statement of the amount and date of the last payment on the consumer debt.

(8) Licensing Information

The affidavit shall include a list of all Maryland collection agency licenses that the plaintiff currently holds and provide the following information as to each:

(A) license number,

(B) name appearing on the license, and

(C) date of issue.

Cross reference: See Code, Courts Article, § 5-1203(b)(2), concerning the plaintiff's requirements if a judgment on affidavit under section (d) of this Rule is denied.

(e) Subsequent Proceedings

(1) When Notice of Intention to Defend Filed

If the defendant files a timely notice of intention to defend pursuant to Rule 3-307, the plaintiff shall appear in court on the trial date prepared for a trial on the merits. If the defendant fails to appear in court on the trial date, the court may proceed as if the defendant failed to file a timely notice of intention to defend.

(2) When No Notice of Intention to Defend Filed

(A) If the defendant fails to file a timely notice of intention to defend, the plaintiff need not appear in court on the trial date and the court may determine liability and damages on the basis of the complaint, affidavit, and supporting documents filed pursuant to this Rule. If the defendant fails to appear in court on the trial date and the court determines that the pleading and documentary evidence are sufficient to

entitle the plaintiff to judgment, the court shall grant the demand for judgment on affidavit.

(B) If the court determines that the pleading and documentary evidence are insufficient to entitle the plaintiff to judgment on affidavit, the court may deny the demand for judgment on affidavit or may grant a continuance to permit the plaintiff to supplement the documentary evidence filed with the demand. If the defendant appears in court at the time set for trial and it is established to the court's satisfaction that the defendant may have a meritorious defense, the court shall deny the demand for judgment on affidavit. If the demand for judgment on affidavit is denied or the court grants a continuance pursuant to this section, the clerk shall set a new trial date and mail notice of the reassignment to the parties, unless the plaintiff is in court and requests the court to proceed with trial.

Cross reference: Rule 3-509.

(f) Reduction in Amount of Damages

Before entry of judgment, the plaintiff shall inform the court of any reduction in the amount of the claim by virtue of any payment or other credit.

(g) Notice of Judgment on Affidavit

When a demand for judgment on affidavit is granted, the clerk shall mail notice of the judgment promptly after its entry

to each party at the latest address stated in the pleadings. The notice shall inform (1) the plaintiff of the right to obtain a lien on real property pursuant to Rule 3-621, and (2) the defendant of the right to file a motion to vacate the judgment within 30 days after its entry pursuant to Rule 3-535 (a). The clerk shall ensure that the docket or file reflects compliance with this section.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former M.D.R. 610 a.
Section (c) is derived from former M.D.R. 610 a.
Section (d) is new.
Section (e) is derived from former M.D.R. 610 b, c, and d.
Section (f) is derived from former M.D.R. 610 e.
Section (g) is derived from former M.D.R. 610 d.

REPORTER'S NOTE

Rule 3-306 addresses affidavit judgments, including claims based on assigned consumer debt. A plaintiff seeking an affidavit judgment with a claim that arises from consumer debt pursuant to section (d) of Rule 3-306 is not the original creditor. Rule 3-306 (d) requires plaintiffs to submit certain documentation when seeking an affidavit judgment. Code, Courts Article, § 5-1201 *et seq.* also addresses consumer debt collection actions. A plaintiff in § 5-1203 is a debt buyer or collector acting on behalf of a debt buyer in a consumer debt collection action. § 5-1203(b)(2) requires certain documentary evidence before a court may enter judgment in favor of a debt buyer. § 5-1201(i)(2) excludes several types of companies and entities from the definition of "debt buyer."

It was recently brought to the attention of the Rules Committee that the definition of "original creditor" in Rule 3-306 (a)(5) conflicts with the definition of "debt buyer" in Code, Courts Article, § 5-1201. While all plaintiffs under Code, Courts Article, § 5-1203(b)(2) qualify as plaintiffs under

Rule 3-306 (d), not all plaintiffs under the Rule qualify as plaintiffs under the Code section.

For example, consider a plaintiff sales finance company that provides financing for a vehicle. The plaintiff is not the original creditor and, therefore, the requirements of Rule 3-306 (d) apply if an affidavit judgment is requested. However, the plaintiff may be excluded from the definition of "debt buyer" in Code, Courts Article, § 5-1201(i)(2), if certain requirements are met, because it is "[a] sales finance company or any other person that acquires consumer debt arising from a retail installment sale agreement." As a result, although the documentary requirements of Rule 3-306 (d) apply to a request for an affidavit judgment from the plaintiff, the documentary requirements of Code, Courts Article, § 5-1203(b)(2) do not apply if a judgment on affidavit is denied.

To address this inconsistency, the definition of "original creditor" in Rule 3-306 is proposed to be amended to include those entities excluded from the definition of "debt buyer" in the Code. As a result, the requirements of Rule 3-306 (d) no longer will apply to plaintiffs excluded from the definition of "debt buyer."

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-533 by adding new subsection (a)(2) pertaining to the effect of a shortened appeal time by statute, by adding a cross reference after section (a), and by making stylistic changes, as follows:

Rule 3-533. MOTION FOR NEW TRIAL

(a) Time for Filing

(1) Generally

Subject to subsection (a)(2) of this Rule, any ~~Any~~ party may file a motion for new trial within ten days after entry of judgment. A party whose judgment has been amended on a motion to amend the judgment may file a motion for new trial within ten days after entry of the amended judgment.

(2) Appeal Time of Less than Ten Days Provided by Statute

If a statute provides for an appeal time of less than ten days after entry of judgment, a motion under this Rule, even if timely filed, does not toll the time to appeal unless the motion is filed within the statutory time period allowed for an appeal.

Cross reference: For shorter appeal times provided by statute, see Code, Real Property Article, §§ 8-401 and 8A-1701. See Rule

7-104 (c) concerning the time for filing a notice of appeal when a motion has been filed under this Rule.

. . .

REPORTER'S NOTE

Proposed amendments to Rules 3-533 and 3-534 conform them to amendments made to Rule 7-104 relating to the impact of filing post-judgment motions in proceedings where a statute requires an appeal to be noted less than ten days after entry of judgment. See the Reporter's note following Rule 7-104 for more information.

The Rules Committee was informed that practitioners opposed requiring a timely motion in these cases to be filed within the shorter appeal time because parties may learn of the judgment against them too late to appeal but do still want to file post-judgment motions. An order denying those motions is appealable and subject to an abuse of discretion review.

Proposed new subsection (a)(2) is derived from the Committee note following section (c) in Rule 7-104. It clarifies that for a statutory appeal time of less than ten days, a timely post-judgment motion does not toll the time to appeal unless the motion is filed within the statutory time allowed for an appeal.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 500 – TRIAL

AMEND Rule 3-534 by adding new section (b) pertaining to the effect of a shortened appeal time by statute, by adding a cross reference after section (b), and by making stylistic changes, as follows:

Rule 3-534. MOTION TO ALTER OR AMEND JUDGMENT

(a) Generally

Subject to section (b) of this Rule, on ~~On~~ motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial.

(b) Appeal Time of Less than Ten Days Provided by Statute

If a statute provides for an appeal time of less than ten days after entry of judgment, a motion under this Rule, even if timely filed, does not toll the time to appeal unless the motion is filed within the statutory time period allowed for an appeal.

Cross reference: For shorter appeal times provided by statute, see Code, Real Property Article, §§ 8-401 and 8A-1701. See Rule 7-104 (c) concerning the time for filing a notice of appeal when a motion has been filed under this Rule.

Source: This Rule is derived from the 1983 version of Fed. R. Civ. P. 52 (b) and the 1966 version of Fed. R. Civ. P. 59 (a).

REPORTER'S NOTE

Proposed amendments to Rules 3-533 and 3-534 conform them to amendments made to Rule 7-104 relating to the impact of filing post-judgment motions in proceedings where a statute requires an appeal to be noted less than ten days after entry of judgment. See the Reporter's notes following Rules 7-104 and 3-533 for more information.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT

TO THE CIRCUIT COURT

AMEND Rule 7-102 by adding a cross reference after subsection (b)(1), as follows:

Rule 7-102. MODES OF APPEAL

(a) De Novo

Except as provided in section (b) of this Rule, an appeal shall be tried de novo in all civil and criminal actions.

Cross reference: For examples of appeals to the circuit court that are tried de novo, see Code, Courts Article, § 12-401(f), concerning a criminal action in which sentence has been imposed or suspended following a plea of guilty or nolo contendere and an appeal in a municipal infraction or Code violation case; Code, Courts Article, § 3-1506, concerning an appeal from the grant or denial of a petition seeking a peace order; and Code, Family Law Article, § 4-507, concerning an appeal from the grant or denial of a petition seeking relief from abuse.

(b) On the Record

An appeal shall be heard on the record made in the District Court in the following cases:

(1) a civil action in which the amount in controversy exceeds $5,000 exclusive of interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

Cross reference: For computation of the amount in controversy in an action involving a claim for possession or repossession of

property, see *Velicky v. The Copycat Building LLC*, 476 Md. 435 (2021) and *Purvis v. Forest Street Apartments*, 286 Md. 398 (1979).

(2) any matter arising under § 4-401(7)(ii) of the Courts Article;

(3) any civil or criminal action in which the parties so agree;

(4) an appeal from an order or judgment of direct criminal contempt if the sentence imposed by the District Court was less than 90 days' imprisonment; and

(5) an appeal by the State from a judgment quashing or dismissing a charging document or granting a motion to dismiss in a criminal case.

Source: This Rule is new but is derived in part from Code, Courts Article, § 12-401(b), (c), and (f).

REPORTER'S NOTE

On November 29, 2021, *Velicky v. The Copycat Building LLC,* 476 Md. 435 (2021) was filed. In *Velicky*, the Court held that the value of the right to repossession of property must be considered when determining the mode of an appeal from the District Court to a circuit court. Accordingly, a cross reference to *Velicky* addressing the computation of the amount in controversy in actions involving claims for possession or repossession of property is added after Rule 7-102 (b)(1). The proposed cross reference also cites *Purvis v. Forest Street Apartments*, 286 Md. 398 (1979), which contains the analysis relied upon by the Court in *Velicky*.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 – APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-104 by adding to the cross reference following section (a), by adding new subsection (c)(2) pertaining to the time for filing an appeal under certain circumstances, by expanding the Committee note following section (c) to clarify the time for filing certain motions, and by making stylistic changes, as follows:

Rule 7-104. NOTICE OF APPEAL – TIMES FOR FILING

(a) Generally

Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.

Cross reference: For shorter appeal times provided by statute, see Code, Real Property Article, §§ 8-332, 8-401, 8-402, 8-402.1, 8A-1701, 8A-1702, 8A-1703, 14-109, ~~and~~ 14-120, and 14-132.

(b) Criminal Action – Motion for New Trial

In a criminal action, when a timely motion for a new trial is filed pursuant to Rule 4-331 (a), the notice of appeal shall be filed within 30 days after the later of (1) entry of

the judgment or (2) entry of a notice withdrawing the motion or an order denying the motion.

(c) Civil Action – Post Judgment Motions

(1) Generally

~~In~~ Except as provided in subsection (c)(2) of this Rule, in a civil action, when a timely motion is filed pursuant to Rule 3-533 or Rule 3-534, the notice of appeal shall be filed within 30 days after entry of ~~(1)~~ (A) a notice withdrawing the motion or ~~(2)~~ (B) an order denying a motion pursuant to Rule 3-533 or disposing of a motion pursuant to Rule 3-534. A notice of appeal filed before the withdrawal or disposition of either of these motions does not deprive the District Court of jurisdiction to dispose of the motion.

(2) Shorter Appeal Time Provided by Statute

(A) Between Ten and 29 Days

If a statute provides for an appeal time between ten and 29 days, inclusive, and a timely motion is filed pursuant to Rule 3-533 or Rule 3-534, the notice of appeal shall be filed within the time stated in the statute for an appeal after (i) a notice withdrawing the motion or (ii) an order denying a motion pursuant to Rule 3-533 or disposing of a motion pursuant to Rule 3-534.

(B) Less than Ten Days

If a statute provides for an appeal time of less than ten days and a motion pursuant to Rule 3-533 or Rule 3-534 is filed within the time to appeal stated in the statute, the notice of appeal shall be filed within ten days after (i) a notice withdrawing the motion or (ii) an order denying a motion pursuant to Rule 3-533 or disposing of a motion pursuant to Rule 3-534.

Committee note: In cases involving a statutory appeal time that is shorter than the time to file a motion under Rule 3-533 or Rule 3-534 (e.g., Code, Real Property Article, §§ 8-401 and 8A-1701), such motions must be filed within the statutory appeal time in order to toll the time to appeal pursuant to subsection (c)(2)(B) of this Rule. A motion filed under Rule 3-533 or Rule 3-534 that is not filed within the statutory appeal time may still be timely if filed within the time permitted by those Rules, but it does not toll the time to appeal.

A motion filed pursuant to Rule 3-535, if filed within ten days or, if applicable, in the time stated in subsection (c)(2)(B) of this Rule after entry of judgment, will have the same effect as a motion filed pursuant to Rule 3-534, for purposes of this Rule. *Unnamed Attorney v. Attorney Grievance Commission*, 303 Md. 473, 494 A.2d 940 (1985); *Sieck v. Sieck*, 66 Md.App. 37, 502 A.2d 528 (1986).

(d) Appeals by Other Party – Within Ten Days

If one party files a timely notice of appeal, any other party may file a notice of appeal within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by this Rule.

(e) Date of Entry

"Entry" as used in this Rule occurs on the day when the District Court enters a record on the docket of the electronic case management system used by that court.

Source: This Rule is in part derived from former Rule 1312 and in part new.

REPORTER'S NOTE

Proposed amendments to Rule 7-104 address an issue raised in a recent Court of Appeals case, *Lee v. WinnCompanies LLC*, 473 Md. 457 (dismissing cert. petition), regarding the appropriate time to appeal a District Court summary ejectment decision where timely post-trial motions have been filed pursuant to Rules 3-533 and 3-534. The Court of Appeals referred the matter to the Rules Committee for consideration.

Proposed amendments to the cross reference following section (a) add an additional statute which requires an appeal to be noted in less than the default time of 30 days.

Proposed amendments to section (c) create a new subsection (c)(2). The new subsection announces an exception to the general rule that, where motions pursuant to Rules 3-533 and 3-534 are timely filed, the time to appeal a civil decision is tolled until the motions are withdrawn or disposed of, at which time the parties have 30 days to appeal.

Subsection (c)(2)(A) applies to cases if the time to appeal, by statute, is at least ten days but less than 30 days. In those matters, the time to appeal following the withdrawal or disposition of motions is the time to appeal stated in the statute.

Subsection (c)(2)(B) applies to cases if the time to appeal, by statute, is less than ten days. In such cases, where post-judgment motions are filed within the statutory appeal period, the time to appeal is tolled. Once the motions are ruled on, the parties have ten days to note an appeal.

Code, Real Property Article, § 8-401, the summary ejectment law at issue in *Lee*, requires an appeal to be filed within four

days of the rendition of judgment. Similarly, a mobile home park repossession judgment pursuant to Code, Real Property Article, § 8A-1701 must be appealed within two days. The Rules Committee was advised that it is impractical to apply these statutory appeal times to the time to appeal following the disposition of post-judgment motions. These cases are not electronically filed and frequently involve unrepresented parties. If a judge denies post-judgment motions in chambers and the decision is mailed, the parties will not receive the ruling in time to note an appeal. It was agreed that ten days is a practical time to permit parties to receive notice of the ruling while still expediting the appeal timeline.

Practitioners opposed restricting timely motions under Rules 3-533 and 3-534 to the statutory appeal time if that time is less than ten days because parties may learn of the judgment against them too late to appeal but do still want to file post-judgment motions. An order denying those motions is appealable and subject to an abuse of discretion review. The proposed new language in the Committee note following section (c) emphasizes that subsection (c)(2)(B) will only apply if post-judgment motions are filed during the statutory time to appeal, but such motions can still be filed timely and are ripe for consideration even if the time to appeal the underlying judgment has passed. The existing Committee note is amended to extend its concept to circumstances outlined in subsection (c)(2)(B).

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205 by modifying the tagline of section (a), by making stylistic changes to section (a), by adding new subsection (a)(2)(A) defining "abuse," by adding new subsection (a)(2)(B) defining "coercive control," and by deleting a reference to Code, Family Law Article, § 4-501 and adding a reference to coercive control in subsection (b)(2), as follows:

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

(a) ~~Scope of Rule~~ Applicability; Definitions

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

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

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

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

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

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

(B) "Coercive control" means a pattern of emotional or psychological manipulation, maltreatment, threat of force, or intimidation used to compel an individual to act, or refrain from acting, against the individual's will.

(b) Duty of Court

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

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

(B) a mediator possessing the qualifications set forth in section (c) of this Rule is available to mediate the dispute.

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

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

the action pending the mediation on terms and conditions set forth in the order.

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

. . .

REPORTER'S NOTE

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

Proposed amendments to Rule 9-205 were initially submitted to the Court for consideration in the 209th Report of the Rules Committee. At the open meeting on the 209th Report, the Court discussed comments received concerning the proposed amendments, including a letter from Child Justice, Inc. requesting revision of the proposed definition of "coercive control." The definition proposed for the term in the 209th Report was "a pattern of emotional or psychological manipulation, maltreatment, or intimidation to compel an individual by force or threat of force to engage in conduct from which the individual has a right to abstain or to abstain from conduct in which the individual has a right to engage." The comments requested that the qualifying phrase "by force or threat of force" be removed because coercive control may not always involve violence or threat of violence. Pursuant to the Rules Order issued on February 9, 2022, Rule 9-205 was remanded to the Committee for further study.

The tagline of section (a) is amended to reference both the applicability and definitions of the Rule. Stylistic changes to section (a) include re-lettering the subsections.

New subsection (a)(2) provides definitions that apply in the Rule, including definitions of "abuse" and "coercive control" in subsections (a)(2)(A) and (a)(2)(B), respectively. The definition of "coercive control" proposed in the 209th Report has been amended. The revised definition, suggested by the House of Ruth and supported by the Family Mediation and Abuse Screening Workgroup, more clearly distinguishes between abuse and coercive control by removing the requirement that an individual be compelled by force or threat of force for coercive control. Threat of force, however, remains in the definition as a behavior that may be used to compel an individual to act or refrain from acting, against the individual's will.

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

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 900 – ~~NAME –~~ CHANGE OF NAME; JUDICIAL DECLARATION OF GENDER IDENTITY

AMEND Rule 15-901 by changing the Chapter title; by revising the applicability section of the Rule; by deleting language pertaining to venue from section (b); by adding new subsections (b)(1) and (b)(2) pertaining to venue for petitions by an adult and on behalf of a minor, respectively; by adding new subsection (c)(1)(B) pertaining to venue; by re-lettering the subsequent subsections in subsection (c)(1); by altering subsection (c)(1)(G) to address certain consents to the name change of a minor; by adding a Committee note pertaining to confidential information in petitions on behalf of minors; by altering a cross reference following subsection (c)(1); by clarifying and adding to the information required by subsection (c)(1)(H); by adding new subsection (c)(2)(B) pertaining to written consents to the name change of a minor; by moving current section (e) to new section (d); by re-captioning section (d) to pertain to notice to parents, guardians, and custodians who do not consent to a petition on behalf of a minor; by adding new subsection (d)(1) pertaining to notice generally; by adding new subsection (d)(2) pertaining to notice in a language other

than English; by adding new subsection (d)(3) pertaining to documents to be served; by deleting certain provisions in current section (d) so that service must comply with Rule 2-121; by deleting current subsection (e)(2) pertaining to publication; by re-lettering current section (f) as section (e) pertaining to an objection to a petition; by modifying section (e) pertaining to failure by a parent, guardian, or custodian to object to a petition on behalf of a minor; by adding a Committee note following new section (e) regarding the right to object to a petition by an adult; by re-lettering current section (g) as section (f) pertaining to action by the court and hearings; by creating new subsection (f)(1) with language from current section (g) pertaining to court action on a petition by an adult; by adding a Committee note following subsection (f)(1) regarding the 30-day delay before the court may enter an order on a petition for a name change for an adult; by adding new subsection (f)(2) pertaining to court action and hearing requirements for a petition on behalf of a minor; and by making stylistic changes, as follows:

Rule 15-901. ACTION FOR CHANGE OF NAME

(a) Applicability

This Rule applies to actions for change of name other than in connection with an adoption, ~~or~~ divorce, or declaration of gender identity.

(b) Venue

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

(1) Change of Name of an Adult

An action for change of name of an adult shall be brought in the county where the adult resides, carries on a regular business, is employed, habitually engages in a vocation, or was born.

(2) Change of Name of a Minor

An action for change of name of a minor shall be brought by an adult petitioner on behalf of the minor in the county where the minor resides or where a parent, guardian, or custodian of the minor resides.

(c) Petition

(1) Contents

~~The~~ An action for change of name shall be commenced by filing a petition captioned "In the Matter of ..." [stating the name of the ~~person~~ individual whose name is sought to be changed] "for change of name to ..." [stating the change of name

desired]. The petition shall be under oath and shall contain ~~at least~~ the following information:

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

(B) a statement as to why venue is appropriate;

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

~~(C)~~(D) the change of name desired;

~~(D)~~(E) all reasons for the requested change;

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

~~(F)~~(G) if the ~~person~~ individual whose name is sought to be changed is a minor, (i) a statement explaining why the petitioner believes that the name change is in the best interest of the minor; (ii) ~~the names and addresses of that person's parents~~ the name and address of each parent and any guardian or custodian of the minor; (iii) whether each of those persons consents to the name change; (iv) whether the petitioner has reason to believe that any parent, guardian, or custodian is unfamiliar with the English language and, if so, the language the petitioner reasonably believes the individual can

understand; (v) if the minor is at least ten years old, whether the minor consents to the name change; and (vi) if the minor is younger than ten years old, whether the minor objects to the name change; and

Committee note: If a petition filed on behalf of a minor contains confidential information pertaining to the minor, the petitioner may request that the court seal or otherwise limit inspection of a case record as provided in Rule 16-934.

~~(C)~~ (H) whether the ~~person~~ individual whose name is sought to be changed has ever registered or been required to register as a sexual offender and, if so, ~~the~~ each full ~~name(s)~~ name, ~~(~~including ~~suffixes)~~ any suffix, under which the ~~person~~ individual was registered and each state where the registration requirement originated.

Cross reference: See Code, Criminal Procedure Article, § 11-705, which requires a registered sexual offender whose name has been changed by order of court to send written notice of the change to ~~the Department of Public Safety and Correctional Services~~ each law enforcement unit where the registrant resides or habitually lives within ~~seven~~ three days after the order is entered.

(2) Documents to Be Attached to Petition

The petitioner shall attach to the petition:

(A) a copy of a birth certificate or other documentary evidence from which the court can find that the current name of the ~~person~~ individual whose name is sought to be changed is as alleged; and

(B) if the individual whose name is sought to be changed is a minor, (i) the written consent of each parent, guardian, and custodian of the minor or an explanation why the consent is not attached, and (ii) the written consent of the minor, if the minor is at least ten years old.

~~(d) Service of Petition – When Required~~

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

~~(e) Notice~~

~~(1) Issued by Clerk~~

(d) Minors – Notice to Nonconsenting Parent, Guardian, or Custodian

(1) Generally

Upon the filing of ~~the~~ a petition for change of name of a minor, if the written consent of each parent, guardian, and custodian of the minor was not filed pursuant to subsection (c)(2)(B) of this Rule, the clerk shall sign and issue a ~~notice~~ Notice in a form approved by the State Court Administrator that (A) includes the caption of the action, (B) describes the substance of the petition and the relief sought, and (C) states ~~the latest date by which an objection to the petition may be filed~~ that any objection to the name change shall be filed no later than 30 days after service of the petition.

(2) Notice or Advisement in Language Other Than English

If the petition states that a nonconsenting parent, guardian, or custodian may be unfamiliar with the English language, the clerk also shall either issue the Notice in the language indicated in the petition or, if the Notice is not available in the indicated language, attach a Multilingual Advisement Form approved by the State Court Administrator to the Notice that was issued in English.

(3) Documents to Be Served

A copy of the following documents shall be served upon each nonconsenting parent, guardian, or custodian in the manner provided by Rule 2-121:

(A) the Notice,

(B) the petition,

(C) each attachment to the petition, and

(D) if the petition indicates that the individual to be served is unfamiliar with the English language, either the Notice in the indicated language or a Multilingual Advisement Form attached to the Notice.

~~(2) Publication~~

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

~~(f)~~(e) Objection to Petition

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

minor who does not file an objection within 30 days after being served in accordance with section (d) of this Rule shall be deemed to have consented to the name change of the minor. ~~A person desiring a hearing shall so request in the objection or response under the heading "Request for Hearing."~~

Committee note: Nothing in this Rule is intended to abrogate the right of a person who learns of a requested name change to object to the name change where there is personal knowledge of an illegal or fraudulent purpose or harm to the rights of others.

~~(g)~~ (f) Action by Court; Hearing

(1) Name Change of Adult

~~After the time for filing objections and responses has expired, the~~ The court may hold a hearing or may rule on ~~the~~ a petition to change the name of an adult without a hearing and shall enter an appropriate order, except that the court shall not deny the petition without a hearing ~~if one was requested by the petitioner~~. The court may not enter an order earlier than 30 days after the petition was filed.

Committee note: Although there is no publication or other required notice of a requested name change of an adult, if a person learns of a requested name change, the 30-day delay in the entry of an order after the petition is filed affords a period of time within which an objection could be filed.

(2) Name Change of Minor

The court may hold a hearing or may rule on a petition to change the name of a minor without a hearing and enter an appropriate order if (A) the written consent of the minor, if

required, has been filed, and (B) each parent, guardian, and custodian (i) has filed a written consent pursuant to subsection (c)(2)(B) of this Rule, or (ii) having been served pursuant to section (d) of this Rule, did not timely file an objection. In all other cases in which a name change of a minor is requested, the court shall hold a hearing and enter an appropriate order no earlier than 30 days after all nonconsenting parents, guardians, or custodians have been served in accordance with section (d) of this Rule.

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

REPORTER'S NOTE

Proposed changes to Rule 15-901 were transmitted to the Court of Appeals by the 209th Report of the Rules Committee. At the open meeting on that Report, a concern was raised about potentially sensitive information relating to minors that might be included in a petition on behalf of a minor. For example, subsection (c)(1)(G) requires statements about the petitioner's belief that the name change is in the best interest of the minor and the minor's own support or opposition to the name change. These statements could be pro forma but could contain details that are more private. The Court remanded Rule 15-901 to the Rules Committee to consider whether any of the information pertaining to minors should be subject to shielding or redaction. No current Rules would specifically shield any of this information from public inspection.

To address the Court's concern, a proposed Committee note following subsection (c)(1)(G) has been drafted. The Committee note informs a petitioner that there may be confidential information in a petition on behalf of a minor and directs the filer to Rule 16-934 (Case Records – Court Order Denying or Permitting Inspection Not Otherwise Authorized by Rule) to

request that the court limit inspection of this information. By permitting a request to limit inspection, the proposal gives the petitioner flexibility to ask for the court to exercise its authority without putting a redaction burden on the petitioner when one may not be necessary.

Proposed amendments previously approved by the Rules Committee conform the Rule to a recent statutory change and address recommendations by the Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Work Group. The title of the Chapter is amended to include actions for judicial declaration of gender identity, which are addressed in proposed new Rule 15-902.

Section (a), Applicability, is amended in light of proposed new Rule 15-902.

Section (b) is amended to strike the current language related to venue and add new subsections (b)(1) and (b)(2). Subsection (b)(1) governs venue for a petition by an adult. It is derived in part from Code, Courts Article, § 6-201. The Rules Committee was advised that certain circumstances may exist where an individual born in Maryland but now living in another state or country may need to seek a name change in Maryland. In response, the Committee recommends allowing an adult to file a petition under Rule 15-901 in the county where the adult was born. Subsection (b)(2) governs venue for a petition on behalf of a minor. It is derived from Code, Courts Article, § 6-202 (5), which applies to certain family law actions related to a child.

Section (c) is amended to add additional required information in a petition. New subsection (c)(1)(B) requires a statement regarding venue in light of the provision permitting a petition to be filed in the county where the adult petitioner was born. The remaining subsections in (c)(1) are re-lettered. Subsection (c)(1)(G) requires a petition on behalf of a minor to state why the petitioner believes the name change is in the minor's best interest and whether parents, guardians, and custodians of the minor consent to the name change. Subsection (c)(1)(G) also requires a statement if the petitioner has reason to believe that a parent, guardian, or custodian may be unfamiliar with the English language. This information is used when the clerk generates the Notice in section (d). If the minor is at least ten years old, the consent of the minor is also required. If the minor is younger, the requirement is that the minor does not object to the name change. This language is

derived from the adoption statutes, including Code, Family Law Article, §§ 5-338, 5-3A-35, and 5-3B-20. The Committee note following subsection (c)(1)(G) refers to a petition to limit public inspection of potentially sensitive information pertaining to a minor, as discussed above. The cross reference following subsection (c)(1) is amended to conform with current law. Subsection (c)(2) is amended to add subsection (c)(2)(B), which requires the consents mentioned in subsection (c)(1)(G) to be attached to the petition. Subsection (c)(1)(H) is amended to require a petitioner who has ever registered as a sex offender to include the state where that registration requirement originated.

Section (d) is deleted. New section (d) applies only to Notice to nonconsenting parents, guardians, and custodians of a minor. New subsection (d)(1) generally requires the clerk to issue a Notice to inform the parent, guardian, or custodian of the filing of the action and the right to object. Subsection (d)(2) provides for issuance of the Notice in a language other than English, if it is available, when the petition indicates that the recipient may be unfamiliar with English. If the Notice is not available in the language indicated, the clerk should attach an approved Multilingual Advisement Form. The Access to Justice Department of the Administrative Office of the Courts informed the Committee that it is working to develop a standard advisement containing multiple languages informing the recipient of translation and interpreter options. Subsection (d)(3) lists the documents required to be served in the manner provided in Rule 2-121.

Former subsection (e)(2), publication, is deleted. Code, Courts Article, § 3-2201 requires the court to waive the publication requirement on motion by the petitioner. The Work Group informed the Committee that after consultation with the Maryland State Police and a representative for various credit reporting agencies, it was determined that publication is an antiquated method of providing notice and is not used by those entities to track name changes. An increasing number of states have eliminated the publication requirement without any substitute notice method, including New York (by statute) and New Jersey (by court rule) in 2020. Other states that do not require publication sometimes require specific notice to interested persons, such as creditors and law enforcement, or require additional documentation, such as a background check. The Committee considered the necessity of public notice for an adult name change and what, if any, standing another individual may have to object. Currently, there will be a public record of

the name change through court records, although no notice will be published if the petitioner requests publication waiver, as is now permitted by law. Unless the file is shielded or sealed due to safety concerns or other good cause, the name change action can be located in court records, including Maryland Judiciary Case Search.

Section (e), derived from former section (f), applicable to the name change of an adult or a minor, states that any person may file an objection to the petition. A Committee note following the section states that a person with knowledge of any fraud, illegal purpose, or harm to the rights of others may object. A parent, guardian, or custodian of a minor who fails to file an objection within 30 days of service is deemed to have consented to the name change of the minor.

Section (f) governs action by the court on a petition. New subsection (f)(1) pertains to the name change of an adult. It permits the court to hold a hearing or rule without a hearing and enter an appropriate order. The court may not deny a petition without a hearing and may not enter an order earlier than 30 days after the petition is filed. A Committee note explains that the 30-day waiting period is to permit a person who learns of the name change to object if there is cause.

New subsection (f)(2) applies to petitions on behalf of a minor. After the notices issued pursuant to section (d) have been served, the court may hold a hearing or rule without a hearing and enter an appropriate order so long as the minor consents to the name change, if required, and the required consents have been filed or a nonconsenting parent, guardian, or custodian has been served and has not timely objected. Where a parent, guardian, or custodian objects, the court must hold a hearing. The hearing cannot be held earlier than 30 days after all nonconsenting parents, guardians, and custodians have been served.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 900 – ~~NAME –~~ CHANGE OF NAME; JUDICIAL DECLARATION OF GENDER IDENTITY

ADD new Rule 15-902, as follows:

Rule 15-902. ACTION FOR JUDICIAL DECLARATION OF GENDER IDENTITY

(a) Applicability

This Rule applies to actions for judicial declaration of gender identity, with or without a name change.

Committee note: Under certain circumstances, a judicial declaration of gender identity may be necessary to change an individual's gender designation on a birth certificate or to affirm the individual's gender identity in legal, administrative, and other contexts.

Cross reference: See Rule 16-914 (p) concerning inspection of a case record in an action filed under this Rule. For a change of name without a judicial declaration of gender identity, see Rule 15-901.

(b) Venue

(1) Declaration of Gender Identity of an Adult

An action for judicial declaration of gender identity shall be brought in the county where the adult resides, carries on a regular business, is employed, habitually engages in a vocation, or was born.

(2) Declaration of Gender Identity of a Minor

An action for judicial declaration of gender identity of a minor shall be brought by an adult petitioner on behalf of the minor in the county where the minor resides or where a parent, guardian, or custodian of the minor resides, or where the minor was born.

(c) Petition

(1) Contents

An action for judicial declaration of gender identity shall be commenced by filing a petition captioned "In the Matter of ..." [stating the name of the individual for whom the declaration is sought] "for judicial declaration of gender identity as..." [stating the gender designation desired]. The petition shall be under oath and shall contain the following information:

(A) the name, address, and date and place of birth of the individual for whom the relief requested is sought;

(B) a statement as to why venue is appropriate;

(C) the gender identity declaration desired;

(D) all reasons for the relief requested;

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

(F) if the individual for whom the declaration is sought is a minor, (i) a statement explaining why the petitioner believes that the relief requested is in the best interest of

the minor; (ii) the name and address of each parent and any guardian or custodian of the minor; (iii) whether each of those individuals consents to the relief requested; (iv) whether the petitioner has reason to believe that any parent, guardian, or custodian is unfamiliar with the English language and, if so, the language the petitioner reasonably believes the individual can understand; (v) if the minor is at least ten years old, whether the minor consents to the relief requested; and (vi) if the minor is younger than 10 years old, whether the minor objects to the relief requested.

(2) Change of Name

If the petitioner also requests a name change, the petition shall include the following information:

(A) whether the individual whose name is sought to be changed has ever been known by any other name and, if so, each name and the circumstances under which the name was used;

(B) the change of name desired; and

(C) whether the individual whose name is sought to be changed has ever registered or been required to register as a sexual offender and, if so, each full name, including any suffix, under which the individual was registered and each state where the registration requirement originated.

Cross reference: See Code, Criminal Procedure Article, § 11-705, which requires a registered sexual offender whose name has been changed by order of court to send written notice of the

change to each law enforcement unit where the registrant resides or habitually lives within three days after the order is entered.

(3) Documents to Be Attached to the Petition

The petitioner shall attach to the petition:

(A) if the individual for whom relief is sought is a minor, (i) the written consents of each parent, guardian, or custodian of the minor or an explanation why the consent is not attached, and (ii) the written consent of the minor, if the minor is at least 10 years old;

(B) any documentation in support of the requested declaration of gender identity; and

(C) if the petitioner requests a name change, a copy of a birth certificate or other documentary evidence from which the court can find that the current name of the person whose name is sought to be changed is as alleged.

(d) Minors – Notice to Nonconsenting Parent, Guardian, or Custodian

(1) Generally

Upon the filing of a petition under this Rule on behalf of a minor, if the written consent of each parent, guardian, and custodian of the minor was not filed pursuant to subsection (c)(2)(B) of this Rule, the clerk shall sign and issue a Notice in a form approved by the State Court Administrator that (A) includes the caption of the action, (B) describes the substance

of the petition and the relief sought, and (C) states that any objection to the relief requested shall be filed no later than 30 days after service of the petition.

(2) Notice or Advisement in Language Other Than English

If the petition states that a nonconsenting parent, guardian, or custodian may be unfamiliar with the English language, the clerk also shall either issue the Notice in the language indicated in the petition or, if the Notice is not available in the indicated language, attach a Multilingual Advisement Form approved by the State Court Administrator to the Notice that was issued in English.

(3) Documents to Be Served

A copy of the following documents shall be served upon each nonconsenting parent, guardian, or custodian in the manner provided by Rule 2-121:

(A) the Notice,

(B) the petition,

(C) each attachment to the petition, and

(D) if the petition indicates that the individual to be served is unfamiliar with the English language, either the Notice in the indicated language or a Multilingual Advisement Form attached to the Notice.

(4) Objection to Petition

A parent, guardian, or custodian of a minor who does not consent to the relief requested may file an objection no later than 30 days after being served in accordance with subsection (d)(1) of this Rule. The objection shall be supported by an affidavit that sets forth the reasons for the objection. The affidavit shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The objection and affidavit shall be served upon the petitioner in accordance with Rule 1-321. The petitioner may file a response within 15 days after being served with the objection and affidavit. A parent, guardian, or custodian of a minor who does not file an objection within 30 days after being served in accordance with subsection (d)(1) of this Rule shall be deemed to have consented to the relief requested.

(e) Action by Court; Hearing

(1) Petition Seeking Declaration of Gender Identity of an Adult

The court may hold a hearing on a petition seeking a declaration of gender identity of an adult, or may grant the relief requested without a hearing, and shall enter an appropriate order, except that the court may not deny any of the relief requested without a hearing.

(2) Petition Filed on Behalf of a Minor

The court may hold a hearing or may grant the relief requested on a petition filed on behalf of a minor without a hearing and enter an appropriate order if (A) the written consent of the minor, if required, has been filed, and (B) each parent, guardian, and custodian (i) has filed a written consent pursuant to subsection (c)(3)(A) of this Rule, or (ii) having been served pursuant to subsection (d)(1) of this Rule, did not timely file an objection. In all other cases, the court shall hold a hearing no earlier than 30 days after all nonconsenting parents, guardians, or custodians have been served in accordance with subsection (d)(1) of this Rule and enter an appropriate order. To aid the court in evaluating the best interests of the minor, the court may order further proceedings, which may include a specific issue evaluation using the procedure set forth in Rule 9-205.3. The court may not deny any of the relief requested without a hearing.

Committee note: Not all individuals identify as cisgender or transgender or on a binary of male or female. See *In re K.L.*, 252 Md.App. 148 (2021), citing *Grimm v. Gloucester County School Board*, 972 F. 3d 586 (4th Cir. 2020).

Cross reference: See *In re K.L.*, 252 Md.App. 148 (2021); *In re Heilig*, 372 Md. 692 (2003); Code, Health General Article, § 4-211; and Code, Transportation Article, § 12-305.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 15-902 is recommended by the Maryland Judicial Council Domestic Law Committee's LGBTQ+ Family Law Work Group. Maryland courts may, under their equitable power, issue a declaration of gender identity for an individual. *See In re Heilig*, 372 Md. 692 (2003); *In re K.L.*, 252 Md.App. 148 (2021). Petitions by transgender and gender nonconforming individuals are currently filed and ruled on, but there is no standard process and no Rule restricting access to court records relating to the petitions.

Proposed new Rule 15-902 applies to actions seeking a judicial declaration of gender identity, with or without a name change. The Rules Committee recommends permitting a name change in conjunction with a judicial declaration of gender identity to allow a petitioner seeking both to file one action and pay one filing fee. A Committee note following section (a) explains the purposes of a judicial declaration of gender identity. A cross reference to Rule 16-914 (p), pertaining to inspection of a case record in an action under this Rule, and to Rule 15-901, pertaining to a change of name without a judicial declaration of gender identity, also follows section (a).

Section (b) governs venue. It is largely modeled after Rule 15-901 (b), as that Rule is proposed to be amended. See the Reporter's note to Rule 15-901. The only provision that is different from its counterpart in Rule 15-901 is subsection (b)(2), which permits filing in the jurisdiction where a minor was born. The Committee was informed that the provision is proposed for cases involving minors living outside of Maryland who cannot access a judicial declaration of gender identity in their home states.

Section (c) is also largely modeled after the same section in Rule 15-901, as amended. Subsection (c)(1) contains provisions from Rule 15-901 that apply to both a name change and a judicial declaration of gender identity, as well as a statement about the gender identity declaration that is desired. Subsection (c)(2) contains additional required information if the petitioner is also seeking a change of name. Subsection (c)(3)(A) is borrowed from Rule 15-901 regarding attachments to a petition on behalf of a minor. Subsection (c)(3)(B) requires the petitioner to attach "any other documentation in support of the requested gender identity." The LGBTQ+ Family Law Work Group recommended against requiring any specific documentation

from a petitioner, but case law and administrative statutes cited at the end of the Rule direct a petitioner to possible documents that may be provided to assist the court. Subsection (c)(3)(C) addresses the documents required to be attached when the petitioner also requests a name change.

Section (d) is modeled after Rule 15-901 (d) and (e). Subsection (d)(4) permits an objection only by a nonconsenting parent, guardian, or custodian of a minor. Because actions under Rule 15-902 are shielded from public view, and due to the personal nature of the requested relief, only the parents, guardians, and custodians of the minors will receive notice of the action and have standing to object.

Section (e) is modeled after Rule 15-901 (f). Subsection (e)(2), pertaining to a minor, adds a provision for the court to order further proceedings, which may include a specific issue evaluation, to aid in determining the best interests of a minor. To address concerns that a parent may file a petition for judicial declaration of gender identity on behalf of a minor who is apathetic or unsure about gender identity, particularly for a minor under the age of 10 who must only "not object," a provision was added permitting the court to order further investigation to determine the minor's feelings on the issue and assist the court in determining if the declaration is in the minor's best interest.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-105 by deleting section (d) and by re-lettering sections (e) through (g) as (d) through (f), as follows:

Rule 9-105. SHOW CAUSE ORDER; DISABILITY OF A PARTY; OTHER NOTICE

. . .

~~(d) Notice of Name Change~~

~~If the person to be adopted is an adult and the petitioner desires to change the name of the person to be adopted to a surname other than that of the petitioner, notice of a proposed change of name shall also be given in the manner provided in Rule 15-901.~~

. . .

~~(e)~~ (d) Form of Show Cause Order

. . .

~~(f)~~ (e) Form of Notice of Objection

. . .

~~(g)~~ (f) Form of Notice for Service by Publication and Posting

. . .

Source: This Rule is in part derived from former Rule D74 and is in part new.

REPORTER'S NOTE

The proposed deletion of section (d) in Rule 9-105 is a conforming amendment necessitated by the proposed amendments to Rule 15-901. Section (d) required a petitioner adopting an adult who seeks a name change other than to the surname of the petitioner to comply with the notice requirements of Rule 15-901. The proposed amendments to Rule 15-901 delete the notice and publication requirement for adult name change petitions.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

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MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 1 – FORECLOSURE BY COUNTY OR MUNICIPAL CORPORATION

AMEND Rule 14-601 by replacing the term "Chapter" with "Division 1 of Chapter 600," as follows:

Rule 14-601. APPLICABILITY

The Rules in ~~this Chapter~~ Division 1 of Chapter 600 govern in rem foreclosure actions filed by a county or municipal corporation to satisfy delinquent taxes pursuant to Code, Tax--Property Article, §§ 14-873 - 14-876.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 382, 2021 Laws of Maryland (HB 852) authorizes the State Department of Assessments and Taxation, in certain circumstances, to file a complaint seeking in rem foreclosure of local government tax liens.

In order to implement these changes, it is proposed that Chapter 600 of Title 14 be divided into two divisions.

Division 1 consists of existing Rules 14-601 through 14-606, and covers in rem foreclosures filed by a county or municipal corporation. Division 2 consists of proposed new Rules 14-611 through 14-616, and covers in rem foreclosures filed by or on behalf of the State Department of Assessments and Taxation.

A conforming amendment in Rule 14-601 updates the reference to "this Chapter" to the appropriate Division.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 1 – FORECLOSURE BY COUNTY OR MUNICIPAL CORPORATION

AMEND Rule 14-602 by replacing the term "Chapter" with "Division 1," as follows:

Rule 14-602. DEFINITIONS

In the Rules in this ~~Chapter~~ Division 1, the following definitions apply except as otherwise expressly provided or as necessary implication requires:

...

REPORTER'S NOTE

See the Reporter's Note to Rule 14-601.

NO AMENDMENTS TO RULE 14-603 ARE PROPOSED

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 1 – FORECLOSURE BY COUNTY OR MUNICIPAL CORPORATION

Rule 14-603. VENUE

A complaint for in rem foreclosure shall be commenced in the circuit court for the county in which the real property is located.

Source: This Rule is new.

REPORTER'S NOTE

No amendments to Rule 14-603 are proposed.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 1 – FORECLOSURE BY COUNTY OR MUNICIPAL CORPORATION

AMEND Rule 14-604 by revising the title of the Rule and by making stylistic changes to section (a), as follows:

Rule 14-604. ~~IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS –~~ COMPLAINT

(a) Contents

In an in rem foreclosure, the complaint, in addition to complying with Rules 2-303 through 2-305, shall set forth:

(1) the identity of the county or municipal corporation seeking foreclosure, including its address;

(2) a description of the real property as it appears in the county land records;

(3) the tax identification number of the real property;

(4) an averment that the taxes are at least six months delinquent at the time of filing;

(5) the amount of ~~taxes that are delinquent~~ the tax delinquency as of the date of filing;

Committee note: A complaint may be amended to include any taxes that become delinquent after commencement of the in rem foreclosure action. See Code, Tax--Property Article, § 14-875(f).

(6) the ~~names~~ name and last known ~~addresses~~ address of each interested party;

(7) an averment that the real property is either

(A) a vacant lot, or

(B) improved property cited as

(i) vacant and unsafe, or

(ii) unfit for human habitation or other authorized use;

(8) an averment that the value of the real property as determined in accordance with Code, Tax--Property Article, § 14-874(a)(2) is less than the total amount of liens for unpaid taxes;

(9) a request that the circuit court not schedule a hearing on the complaint until at least 30 days after the date the complaint is accepted for filing by the clerk; and

(10) a request for judgment

(A) foreclosing the existing interest of all interested parties in the real property and

(B) ordering the transfer of ownership of the real property to the county or municipal corporation.

Cross reference: See Code, Tax--Property Article, §§ 14-874(a), 14-875(e).

(b) Exhibits to be Filed

The complaint shall be accompanied by:

(1) a certificate of the collector showing the total amount of tax due with all penalties and interest;

Cross reference: See Code, Tax--Property Article, §§ 1-101(e) and 14-869(b).

(2) a copy of a document establishing the value of the real property in compliance with Code, Tax--Property Article, § 14-874(a)(2); and

(3) if applicable, a copy of each violation notice pertaining to an averment in the complaint that is referenced in subsection (a)(7)(B) of this Rule.

Cross reference: See Code, Tax--Property Article, § 14-875(e)(9).

REPORTER'S NOTE

Title 14, Chapter 600 applies to the in rem foreclosure of local government tax liens. The title of Rule 14-604 repeats the information contained in the Chapter title. As a result, the title of Rule 14-604 is repetitive. Proposed amendments streamline the title and avoid possible confusion between the Rules in Division 1 and Division 2.

Stylistic changes are made to section (a).

NO AMENDMENTS TO RULE 14-605 ARE PROPOSED

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 1 – FORECLOSURE BY COUNTY OR MUNICIPAL CORPORATION

Rule 14-605. PROCESS

Within five days after the complaint is accepted by the clerk for filing, the county or municipal corporation shall (a) in compliance with Rule 2-122 (a)(3), cause notice to be posted in a conspicuous place on the real property subject to the in rem foreclosure that at a minimum sets forth (1) the name of the court in which the in rem foreclosure action has been filed and the case number of the action, (2) that the property is subject to an action seeking foreclosure, and (3) that further information about the foreclosure action may be obtained from the clerk's office, and (b) send notice and a copy of the complaint to each interested party by first-class mail and certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service.

Cross reference: See Code, Tax--Property Article, § 14-875(d)(2).

Source: This Rule is new.

REPORTER'S NOTE

No amendments to Rule 14-605 are proposed.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 1 – FORECLOSURE BY COUNTY OR MUNICIPAL CORPORATION

AMEND Rule 14-606 by deleting the word "circuit" from section (a) and by replacing the word "state" with the phrase "include a finding" in subsections (e)(1) and (e)(2), as follows:

Rule 14-606. HEARING

(a) Timing

The ~~circuit~~ court shall schedule a hearing for a date no earlier than 30 days after the date the complaint is accepted for filing by the clerk.

Cross reference: Code, Tax--Property Article, § 14-876.

(b) Right to Cure

Until a judgment foreclosing the tax lien is entered in favor of the county or municipal corporation, any interested party may cure the tax lien by paying all past due taxes, including penalties and interest.

Cross reference: See Code, Tax--Property Article, § 14-804 (unpaid taxes on real property are tax liens) and Code, Tax--Property Article, § 14-875(g).

(c) Conduct of Hearing

Any interested party shall have the right to be heard, to contest the delinquency of the taxes, and to contest the adequacy of the proceedings.

Cross reference: See Code, Tax--Property Article, § 14-876(b).

(d) Finding

If the court finds by a preponderance of the evidence that (1) notice has been provided to all interested parties pursuant to Rule 14-605 and (2) the information set forth in the complaint is accurate and in compliance with Rule 14-604, the court shall enter a judgment in favor of the county or municipal corporation.

Cross reference: See Code, Tax--Property Article, § 14-876(c).

(e) Judgment

The judgment shall:

(1) ~~state~~ include a finding that notice has been provided to all interested parties;

(2) ~~state~~ include a finding that the real property is a vacant lot or an improved property cited as vacant and unsafe or unfit for human habitation or other authorized use and that the value of the real property is shown to be less than the amount of the unpaid taxes; and

(3) order that ownership of the real property be transferred to the county or municipal corporation on behalf of which the complaint was filed.

Cross reference: See Code, Tax--Property Article, §§ 14-876(c)(1)-(2).

Source: This Rule is new.

REPORTER'S NOTE

Sections (a) and (e) are proposed to be amended to conform to the style of proposed new Rule 14-616.

In section (a), the word "circuit" is proposed to be removed as the Rules in Division 1 limit venue to a circuit court only.

In section (e), the word "state" is proposed to be deleted from subsections (1) and (2) and replaced with the words "include a finding."

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 2 – FORECLOSURE BY STATE GOVERNMENT

ADD new Rule 14-611, as follows:

Rule 14-611. APPLICABILITY

The Rules in Division 2 of Chapter 600 govern in rem foreclosure actions filed by or on behalf of the State Department of Assessments and Taxation to satisfy delinquent taxes pursuant to Code, Tax--Property Article, § 14-890.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 382, 2021 Laws of Maryland (HB 852) authorizes the State Department of Assessments and Taxation, in certain circumstances, to file a complaint seeking in rem foreclosure of local government tax liens.

In order to implement these changes, it is proposed that Chapter 600 of Title 14 be divided into two divisions.

Division 1 consists of existing Rules 14-601 through 14-606, and covers in rem foreclosures filed by a county or municipal corporation. Division 2 consists of proposed new Rules 14-611 through 14-616, and covers in rem foreclosures filed by or on behalf of the State Department of Assessments and Taxation.

Rule 14-611 sets forth the applicability of Division 2.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 2 – FORECLOSURE BY STATE GOVERNMENT

ADD new Rule 14-612, as follows:

Rule 14-612. DEFINITIONS

In the Rules in Division 2, the following definitions apply except as otherwise expressly provided or as necessary implication requires:

(a) Department

"Department" means the State Department of Assessments and Taxation.

Cross reference: See Code, Tax--Property Article, § 1-101.

(b) Dwelling

(1) "Dwelling" means:

(A) a house that is:

(i) used as the principal residence of the homeowner; and

(ii) actually occupied or expected to be actually occupied by the homeowner for more than six months of a 12-month period as set forth in Code, Tax--Property Article, § 9-105; and

(B) the lot or curtilage on which the house is erected.

(2) "Dwelling" includes:

(A) a condominium unit that is occupied by an individual who has a legal interest in the condominium;

(B) an apartment in a cooperative apartment corporation that is occupied by an individual who has a legal interest in the apartment; and

(C) a part of real property used other than primarily for residential purposes, if the real property is used as a principal residence by an individual who has a legal interest in the real property.

Cross reference: See Code, Tax--Property Article, § 9-105.

(c) Interested Party

"Interested Party" means:

(1) The person who last appears as owner of the dwelling on the collector's tax roll;

(2) A mortgagee of the property or an assignee of a mortgagee of record;

(3) A holder of a beneficial interest in a deed of trust recorded against the dwelling;

(4) A taxing agency that has the authority to collect tax on the dwelling; or

(5) Any person having a current interest in the real property whose identity and address are (A) reasonably

ascertainable from the county land records or (B) revealed by a full title search consisting of at least 50 years.

Cross reference: See Code, Tax--Property Article, § 14-889.

(d) Ombudsman

"Ombudsman" means the State Tax Sale Ombudsman established under Code, Tax--Property Article, § 2-112.

(e) Program

"Program" means the Homeowner Protection Program established under Code, Tax--Property Article, § 14-883, et seq.

(f) Tax

"Tax" means any tax or charge of any kind due to the State or any of its political subdivisions, or to any other taxing agency, that by law is a lien against the dwelling on which it is imposed or assessed. "Tax" includes applicable interest.

Cross reference: See Code, Tax--Property Article, § 14-801(d). For the fees and costs permitted to be imposed on a homeowner, see Code, Tax--Property Article, § 14-889. For the definition of "other taxing agency," see Code, Tax--Property Article, § 14-801(b).

Source: This Rule is new.

REPORTER'S NOTE

The definitions in proposed new Rule 14-612 are taken almost verbatim from Code, Tax--Property Article, §§ 1-101, 2-112, 9-105, 14-801, 14-883, and 14-889.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 2 – FORECLOSURE BY STATE GOVERNMENT

ADD new Rule 14-613, as follows:

Rule 14-613. VENUE

A complaint for in rem foreclosure shall be commenced in the circuit court for the county in which the dwelling is located.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 14-613 is derived from Code, Tax--Property Article, § 14-890(d)(1).

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 2 – FORECLOSURE BY STATE GOVERNMENT

ADD new Rule 14-614, as follows:

Rule 14-614. COMPLAINT

In an in rem foreclosure filed by or on behalf of the Department, the complaint, in addition to complying with Rules 2-303 through 2-305, shall set forth:

(a) the name and address of the Department;

(b) a description of the dwelling as it appears in the county land records;

(c) the tax identification number of the dwelling;

(d) an averment from the Ombudsman that:

(1) at least three years have elapsed since the homeowner first enrolled in the Program;

(2) all reasonable efforts to assist the homeowner to pay the taxes owed to the Department have failed; and

(3) the homeowner's enrollment in the program was not cancelled under Code, Tax--Property Article, § 14-886(d);

(e) the amount of delinquent taxes as of the date of filing;

(f) the name and last known address of each interested party and, if applicable, a statement that the address of a particular interested party is unknown;

(g) a request that the court not schedule a hearing on the complaint until at least 30 days after the date the complaint is accepted for filing by the clerk; and

(h) a request for judgment:

(1) foreclosing the existing interests of all interested parties in the dwelling; and

(2) ordering the dwelling to be sold at public auction.

Cross reference: See Code, Tax--Property Article, § 14-890(f).

Committee note: A complaint may be amended to include any taxes that become delinquent after commencement of the in rem foreclosure action. See Code, Tax--Property Article, § 14-890(g).

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 14-614 sets forth the required contents of a complaint for an in rem foreclosure filed by or on behalf of the Department. The Rule is derived from Code, Tax--Property Article, § 14-890(f).

The language of Rule 14-614 primarily follows the language of the statute with a few procedural additions and stylistic changes. Section (d) is added to ensure that the complaint includes sufficient information to determine that the Department is permitted to foreclose on the dwelling pursuant to Code, Tax--Property Article, §§ 14-887(e) and 14-890(c).

Subsections (f)(4) and (5) of Code, Tax--Property Article, §14-890 require that the complaint include "a statement that the

taxes are delinquent at the time of the filing" and "the amount of taxes that are delinquent as of the date of the filing." The Rules Committee determined that providing the amount of taxes that are delinquent at the time of filing necessarily implies that taxes are delinquent at the time of filing. Accordingly, Rule 14-614 (e) streamlines these two requirements to avoid redundancy.

The addition of section (g) in Rule 14-614 ensures that the appropriate statutory timeline is followed by requiring the complaint to include a request that a hearing on the complaint not be scheduled until at least 30 days after the date the complaint is accepted for filing.

A Committee note at the end of the Rule provides that a complaint may be amended to include taxes that become delinquent after commencement of the action, as permitted by Code, Tax--Property Article, § 14-890(g).

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 2 – FORECLOSURE BY STATE GOVERNMENT

ADD new Rule 14-615, as follows:

Rule 14-615. PROCESS

Within five days after the complaint is accepted by the clerk for filing, the Department or its representative shall (a) in compliance with Rule 2-122 (a)(3), cause notice to be posted in a conspicuous place on the dwelling subject to the in rem foreclosure that sets forth (1) the name of the court in which the in rem foreclosure action has been filed and the case number of the action, (2) that the dwelling is subject to an action seeking foreclosure, and (3) that further information about the foreclosure action may be obtained from the clerk's office, and (b) send notice and a copy of the complaint to each interested party by first-class mail and certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service.

Cross reference: See Code, Tax--Property Article, § 14-890(d)(2).

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 14-615 is derived in part from Code, Tax--Property Article, § 14-890 and Rule 2-122 (a)(3).

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 600 – IN REM FORECLOSURE OF LOCAL GOVERNMENT TAX LIENS

DIVISION 2 – FORECLOSURE BY STATE GOVERNMENT

ADD new Rule 14-616, as follows:

Rule 14-616. HEARING; JUDGMENT

(a) Timing

The court shall schedule a hearing for a date no earlier than 30 days after the date the complaint is accepted for filing by the clerk.

Cross reference: Code, Tax--Property Article, § 14-890(i).

(b) Right to Cure

Until a judgment foreclosing the tax lien is entered, any interested party may cure the tax lien by paying all past due taxes, including applicable interest.

Cross reference: See Code, Tax--Property Article, § 14-890(h).

(c) Conduct of Hearing

Any interested party shall have the right to be heard, to contest the delinquency of the taxes, and to contest the adequacy of the proceedings.

Cross reference: See Code, Tax--Property Article, § 14-890(j).

(d) Finding

If the court finds by a preponderance of the evidence that (1) notice has been provided to all interested parties pursuant to Rule 14-615 and (2) the information set forth in the complaint is accurate and in compliance with Rule 14-614, the court shall enter judgment.

(e) Judgment

The judgment shall:

(1) include a finding that notice has been provided to all interested parties; and

(2) order that the dwelling be sold at public auction.

Cross reference: See Code, Tax--Property Article, § 14-890(k).

(f) Post-Judgment Sale

After entry of a judgment ordering the sale of a dwelling pursuant to this Division, the sale shall be conducted in accordance with Chapter 300 of this Title.

Cross reference: See Code, Tax--Property Article, § 14-890(l)-(p).

Source: This Rule is new.

REPORTER'S NOTE

In proposed new Rule 14-616, section (a) is based on the language in Code, Tax--Property Article, § 14-890(i), which states that "[a] circuit court may not set a hearing for an in rem foreclosure until 30 days after the complaint for an in rem foreclosure is filed." Section (a) differs from the statute in that time runs from after the acceptance of the filing by the

clerk, rather than from when the complaint is filed. This is to minimize any disputes that may arise as to timing in the event that a complaint is not accepted through MDEC on the same day it was filed. The date the complaint is accepted for filing serves as a bright-line rule that all parties involved in these matters can easily understand, and that does not result in less time being provided than was contemplated in the statute.

Section (b) references the statutory right of an interested party to cure the tax lien. Pursuant to Code, Tax--Property Article, § 14-890(h), any interested party may cure the tax lien "by paying all past due taxes at any time before the entry of the judgment." Although "tax" is defined to include applicable interest, the proposed language of section (b) references the need to pay interest with the taxes. The Rules Committee determined that referencing applicable interest clarifies the amount needed to cure the lien, mirroring the reference to penalties and interest in Rule 14-606 (b) addressing the right to cure in Division 1.

Section (c) is based on Code, Tax--Property Article, § 14-890(j).

Section (d) closely follows Code, Tax--Property Article, § 14-890(k). The main difference is that section (d) includes a "preponderance of the evidence" burden of proof. The statute is silent on this issue.

Section (e) incorporates the language used in Code, Tax--Property Article, §§ 14-890(k)(1)-(2) and requires a finding in the judgment that proper notice has been provided to all interested parties.

Section (f) is based on Code, Tax--Property Article, § 14-890(l)-(p), and clarifies which specific Rules apply to sales conducted pursuant to a judgment issued under this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-652 by deleting section (a) and the related cross reference, and by re-lettering and conforming subsequent sections to account for the deletion, as follows:

Rule 2-652. ENFORCEMENT OF ATTORNEY'S LIENS

~~(a) Retaining Lien~~

~~Except as otherwise provided by the Maryland Attorneys' Rules of Professional Conduct, an attorney who has a common-law retaining lien for legal services rendered to a client may assert the lien by retaining the papers of the client in the possession of the attorney until the attorney's claim is satisfied.~~

~~Cross reference: Maryland Attorneys' Rules of Professional Conduct 19-301.8, 19-301.15, and 19-301.16.~~

~~(b)~~ (a) Statutory Lien

An attorney who has a lien under Code, Business Occupations and Professions Article, § 10-501, may assert the lien by serving a written notice by certified mail or personal delivery upon the client and upon each person against whom the lien is to be enforced. The notice shall claim the lien, state the attorney's interest in the action, proceeding, settlement,

judgment, or award, and inform the client or other person to hold any money payable or property passing to the client relating to the action, proceeding, settlement, judgment, or award.

Cross reference: Code, Business Occupations and Professions Article, § 10-501(d).

~~(c)~~ (b) Adjudication of Rights and Lien Disputes

(1) When a Circuit Court Action Has Been Filed

If a lien asserted pursuant to this Rule relates to an action that has been filed in a circuit court of this State, on motion filed by the attorney, the attorney's client in the action, or any person who has received a notice pursuant to section ~~(b)~~ (a) of this Rule, the court shall adjudicate the rights of the parties in relation to the lien, including the attorney's entitlement to a lien~~, any dispute as to the papers subject to a lien under section (a) of this Rule,~~ and the amount of the attorney's claim.

(2) When No Circuit Court Action Has Been Filed

If a lien is asserted pursuant to this Rule and a related action has not been filed in a circuit court of this State, the attorney, the attorney's client, or any person who has received a notice pursuant to section ~~(b)~~ (a) of this Rule may file a complaint with a circuit court to adjudicate the rights of the parties in relation to the lien, including the

attorney's entitlement to a lien~~, any dispute as to the papers subject to a lien under section (a) of this Rule,~~ and the amount of the attorney's claim.

Cross reference: For venue of a complaint filed pursuant to this section, see Code, Courts Article, §§ 6-201 - 203.

Source: This Rule is new.

REPORTER'S NOTE

Rule 2-652 addresses two types of attorney's liens: retaining and statutory, also known as charging, liens. The retaining lien originated in common law and permits an attorney to retain papers of the client until the attorney's claim is satisfied. In practice, however, enforcing a retaining lien often conflicts with an attorney's ethical obligations. For example, Rule 19-301.15 (d) (1.15) requires that an attorney "deliver promptly to the client or third person any funds or other property that the client or third person is entitled to receive..." In addition, Rule 19-301.16 (d) (1.16) provides that, "[u]pon termination of representation, an attorney shall take steps to the extent reasonably practicable to protect a client's interests such as...surrendering papers and property to which the client is entitled..." In other words, if the client requires the papers to protect his or her interests, the attorney risks sanctions for professional misconduct by asserting a retaining lien. In the alternative, if the papers being retained have no impact on the client's interests, the assertion of a retaining lien will likely have limited coercive effect on the client. As a result, it appears that an attorney's retaining lien has limited utility in practice.

Other states have limited or eliminated the common law retaining lien by Rule. For example, Rule 1.8 (i) of the Rules Governing the District of Columbia Bar provides that an attorney may only impose a lien upon his or her work product to the extent that payment has not been received for the product. However, "[t]his work product exception shall not apply when the client has become unable to pay, or when withholding the lawyer's work product would present a significant risk to the client or irreparable harm." D.C. R. Rrof. Conduct 1.8(i). Similarly, the Virginia Rules of Professional Conduct appear to

eliminate the attorney retaining lien by requiring certain documents from the attorney's file to be provided to the client upon request, "whether or not the client has paid the fees and costs owed the lawyer." Va. R. Prof. Conduct 1.16(e). Accordingly, it appears that other jurisdictions have recognized and acted upon the issues associated with an attorney's retaining lien.

Upon consideration of the above, proposed amendments to Rule 2-652 delete section (a) concerning retaining liens. The cross reference following the section is also deleted. Subsequent sections are re-lettered and updated in conformance with the amendments.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORNEYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-303.8 to adopt sections (g) and (h) of American Bar Association Model Rule 3.8 as sections (f) and (g), to add the relevant Model Rule Comments with minor changes to mirror existing language, and to make stylistic changes, as follows:

Rule 19-303.8. SPECIAL RESPONSIBILITIES OF A PROSECUTOR (3.8)

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, an attorney and has been given reasonable opportunity to obtain an attorney;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in

connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; ~~and~~

(e) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent an employee or other person under the control of the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 19-303.6 (3.6) or this Rule~~.~~;

(f) when a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority; and

(2) if the conviction was obtained in the prosecutor's jurisdiction:

(i) promptly disclose that evidence to the defendant unless a court authorizes delay; and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit; and

(g) when a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by attorneys experienced in both criminal prosecution and defense. See also Rule 19-303.3 (d) (3.3), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those

obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 19-308.4 (8.4).

[2] Section (c) of this Rule does not apply to an accused appearing self-represented with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to an attorney and silence.

[3] The exception in section (d) of this Rule recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Section (e) of this Rule supplements Rule 19-303.6 (3.6), which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 19-303.6 (b) (3.6) or 19-303.6 (c) (3.6).

[5] Like other attorneys, prosecutors are subject to Rules 19-305.1 (5.1) and 19-305.3 (5.3), which relate to responsibilities regarding attorneys and non-attorneys who work for or are associated with the attorney's office. Section (e) of this Rule reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, section (e) of this Rule requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[6] When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, section (f) of this Rule requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, section (f) of this Rule requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make

reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 19-304.2 (4.2) and 19-304.3 (4.3), disclosure to a represented defendant must be made through the defendant's attorney, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of an attorney to assist the defendant in taking such legal measures as may be appropriate.

[7] Under section (g) of this Rule, once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint an attorney for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[8] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (f) and (g) of this Rule, though

subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Model Rules Comparison: Rule 19-303.8 (3.8) has been rewritten to retain elements of existing Maryland language and to incorporate some changes from the Ethics 2000 Amendments to the ABA Model Rules and from the 2008 amendments to ABA Model Rule 3.8. ABA Model Rule 3.8 (e) has not been adopted.

REPORTER'S NOTE

In *Attorney Grievance Commission of Maryland v. Cassilly*, 476 Md. 309 (2021), the Court of Appeals considered several Attorneys' Rules of Professional Conduct, including Rule 19-303.8 (3.8). The Court noted that the American Bar Association ("ABA") Model Rule 3.8 was amended in 2008 to add paragraphs (g) and (h) expressly addressing a prosecutor's ethical obligations after a conviction. In a footnote, the Court referred Rule 19-303.8 to the Committee to consider whether a similar amendment should be made to the Maryland Rule. *See id.* at 384 n.21.

Proposed amendments to Rule 19-303.8 add sections (g) and (h) of ABA Model Rule 3.8 as sections (f) and (g), respectively. Stylistic changes are made to this Rule to account for the addition of the new sections. The relevant Comments from the Model Rule, including Comments [7], [8], and [9] have also been added to Rule 19-303.8 as Comments [6], [7], and [8], with stylistic changes. The Model Rules Comparison is updated in accordance with the proposed amendments.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 400 - DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-406 by updating a cross reference following section (a); by updating a statutory reference in subsection (c)(2); by adding new subsection (c)(4)(A) pertaining to a petition for continued detention, community detention, or shelter care; by adding new subsection (c)(4)(B) pertaining to a petition for continued detention; by adding new subsections (c)(4)(B)(i) and (c)(4)(B)(ii) containing the current provisions of subsection (c)(4); by adding new subsection (c)(4)(B)(iii) pertaining to statutory provisions governing detention; by adding new subsection (c)(4)(B)(iv) pertaining to a risk scoring instrument; by adding new subsection (c)(4)(C) pertaining to a petition for continued shelter care; by updating a cross reference following section (c); by adding a sentence to subsection (e)(1)(A) pertaining to statutory provisions governing detention; by updating a statutory reference in subsection (e)(2); by adding new section (f) governing requirements when a child is in detention; by adding a cross reference following section (f); by re-lettering current section (f) as section (g); and by making stylistic changes, as follows:

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

(a) Placement in Detention, Community Detention, or Shelter Care

(1) Who May Authorize

Only the court or an intake officer may authorize detention, community detention, or shelter care for a child alleged to be a delinquent child.

(2) Limitation on Place of Detention

A child alleged to be a delinquent child may not be detained in a jail or other facility for the detention of adults.

Cross reference: See Code, Courts Article, § 3-8A-15(a) and ~~(h)~~ (g).

(b) Emergency Placement Prior to Hearing

(1) Emergency Detention

A child taken into custody may be placed in emergency detention prior to a hearing under the conditions set forth in Code, Courts Article, § 3-8A-15(b).

(2) Emergency Shelter Care

A child taken into custody may be placed in emergency shelter care prior to a hearing under the conditions set forth in Code, Courts Article, § 3-8A-15(c).

(3) Emergency Community Detention

A child may be placed in emergency community detention prior to a hearing under the conditions set forth in Code, Courts Article, § 3-8A-15(b) or (c).

(c) Continued Detention, Community Detention, or Shelter Care

(1) Who May Authorize

Only a judge or a magistrate may order continued detention, community detention, or shelter care.

(2) Basis, Conditions, and Limitations

Continued detention, community detention, and shelter care may be ordered subject to the conditions and limitations set forth in Code, Courts Article, § 3-8A-15(d) through ~~(g)~~ (f).

(3) Requirement of Petition

Unless a child placed in emergency detention, community detention, or shelter care has been released, an intake officer, on or before the next day after the placement, shall file a petition to authorize continued detention, community detention, or shelter care.

(4) Contents of Petition

(A) Generally

A petition to authorize continued detention, community detention, or shelter care shall state ~~include:~~

~~(A) The~~ the allegations supporting the relief sought.~~;~~

(B) Detention

~~For~~ If continued detention ~~based on allegations that the juvenile has committed a delinquent act,~~ is sought, the petitioner shall:

(i) ~~Sufficient~~ state sufficient details of the alleged ~~offense~~ delinquent act for the court to make a determination as to whether there is probable cause to believe that the juvenile committed the act; ~~, which shall include the allegations and~~

(ii) state the reasons for the emergency detention; ~~and~~

(iii) state sufficient information for the court to make a determination that the detention is permitted by Code, Courts Article, §§ 3-8A-15(b)(3) and 3-8A-19.7; and

(iv) attach to the petition a copy of the results of a risk scoring instrument as defined by Code, Courts Article, § 3-8A-15(b)(2).

(C) Shelter Care

~~For~~ If continued shelter care~~, a statement that~~ is sought, the petition shall state:

(i) ~~Continuation~~ that continuation of the child in the child's home is contrary to the welfare of the child and removal of the child from the child's home is reasonable under the circumstances due to an alleged emergency situation and in order to provide for the safety of the child; or

(ii) ~~Reasonable~~ that reasonable but unsuccessful efforts have been made to prevent or eliminate the need for removal from

the child's home and, as appropriate, reasonable efforts are being made to return the child to the child's home.

Cross reference: See Code, Courts Article, § 3-8A-15~~(f)~~(e) concerning the grounds for continued detention or community detention and Code, Courts Article, § 3-8A-15~~(g)~~(f) concerning the grounds for continued shelter care.

(d) Notice

The petitioner shall give reasonable notice, oral or written, of the time, place, and purpose of the hearing to the child and to the child's parent, guardian, or custodian, if that person can be found.

(e) Grounds for Continued Detention, Community Detention, or Shelter Care

(1) Detention or Community Detention

(A) Generally

Detention or community detention may not be continued unless, in an order entered at or after a hearing, the court finds that (i) there was probable cause for the detention or community detention and (ii) there are reasonable grounds to find either (a) that continued detention or community detention is required to protect the child or others or (b) that the child is likely to leave the jurisdiction of the court. For a child in detention, the court also shall make a finding that the detention is permitted by Code, Courts Article, §§ 3-8A-15(b)(3) and 3-8A-19.7.

(B) Release on Conditions

If the time requirements of Code, Courts Article, § 3-8A-15(d)(6)(i) are not met, the court shall release the child from detention or community detention on such terms and conditions as the court deems appropriate for the protection of the child and the safety of the community.

(2) Shelter Care

Shelter care may not be continued unless, in an order entered at or after a hearing, the court makes the findings set forth in Code, Courts Article, § 3-8A-15~~(g)~~ (f).

(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 hearing before the court with the child to explain the reasons for continued detention.

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

~~(f)~~ (g) Review of Magistrate's Continued Detention, Community Detention, or Shelter Care Determination

(1) Request

If a hearing under this Rule was conducted by a magistrate, a party may request immediate review of an order orally at the hearing or in writing.

(2) Review by Judge

Not later than the next day following a request for immediate review, a judge of the court shall review the file, any exhibits, and the magistrate's findings and order and shall afford the parties an opportunity for a hearing on the record or de novo review.

Cross reference: See Code, Courts Article, § 3-8A-04 and § 3-807(d).

Source: This Rule is derived in part from former Rule 11-112 (2021) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 11-406 implement Chapters 41/42, 2022 Laws of Maryland (SB 691/HB 459). The bill generally alters provisions in Code, Courts Article, Title 3, Subtitle 8A pertaining to delinquency proceedings. Amendments to Code, Courts Article, § 3-8A-15 place certain restrictions on detention of a child. Section letters in the Code section have also changed.

Subsection (c)(4) of Rule 11-406, which governs contents of a petition for continued detention, community detention, or shelter care, is restructured. Subsection (c)(4)(A) applies generally and requires the petition to state the allegations supporting the relief. Subsection (c)(4)(B) applies to a petition for continued detention. Subsections (c)(4)(B)(i) and

(c)(4)(B)(ii) contain the current provisions from subsection (c)(4) pertaining to contents of the petition. New subsection (c)(4)(A)(iii) requires information for the court to make a determination that detention is permitted by certain statutory provisions. Code, Courts Article, § 3-8A-15(b)(3) prohibits placing certain juvenile respondents in detention based on the severity of the offense and the respondent's delinquency history. Code, Courts Article, § 3-8A-19.7 prohibits detention for a technical violation of probation. New subsection (c)(4)(A)(iv) of Rule 11-406 requires the petitioner to attach a copy of a risk scoring instrument, which is defined by a new Code section and must be consulted prior to the detention determination. Subsection (c)(4)(C) governs a petition for continued shelter care and contains the current Rule language for those petitions.

Proposed amendments to subsection (e)(1)(A) require a court to make a finding that detention of a child is permitted by Code, Courts Article, §§ 3-8A-15(b)(3) and 3-8A-19.7.

Proposed new section (f) is derived from Code, Courts Article, § 3-8A-15(k) and (l). Section (k) of the statute requires the Department of Juvenile Services to appear before the court with the child "within 14 days after the child's initial detention" and every 14 days afterward to explain the continued detention. Section (l) of the statute requires the Department to submit a plan to the court for releasing the child "within 10 days after a decision to detain a child" under the subtitle. The Rules Committee considered alternate versions of proposed new section (f) with different detention events acting as triggers for the 10- and 14-day requirements (the first emergency detention of the child or the court's entry of an order to detain a child).

The Committee recommends that the timing provisions begin to run when the court enters an order to detain a child. In the case of a child detained by an intake officer, the hearing and entry of the court order will occur on the next court day, but entry of the order could occur later than the next calendar day due to weekends and holidays. The Committee determined that the Department of Juvenile Services should have the benefit of any extra time that may be gained over a weekend or holiday to prepare and submit the most complete plan for releasing the child. The Committee also considered that the court may order the child to be released from detention after a hearing, negating the requirements of the statutory provisions. Subsection (f)(1) governs the plan for release and includes a

cross reference to Code, Courts Article, § 3-8A-15(l). Subsection (f)(2) governs the 14-day review hearings and includes a cross reference to Code, Courts Article, § 3-8A-15(k).

Proposed amendments to current section (f) re-letter it as section (g).

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 400 - DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-422 by adding a statutory reference to subsections (d)(1) and (d)(2), by adding a cross reference following section (d), and by making stylistic changes, as follows:

Rule 11-422. DISPOSITION HEARING AND ORDER

(a) Generally

Upon a finding that the allegations of the delinquency petition that the child committed one or more delinquent acts or citation have been proven beyond a reasonable doubt, the court shall hold a separate disposition hearing, unless such hearing is waived in writing by all of the parties.

(b) Time for Hearing

(1) Citation

In a citation proceeding, the disposition hearing shall be held on the same day as the adjudicatory hearing unless the court, for good cause, orders otherwise.

(2) Delinquency Petition

In a delinquency petition proceeding, the disposition hearing may be held on the same day as the adjudicatory hearing

if notice of the disposition hearing is waived on the record by all parties.

(3) If Not Held on Same Day

(A) If the disposition hearing is not held on the same day as the adjudicatory hearing and the respondent is not in detention or community detention, the disposition hearing shall be held not later than 30 days after the conclusion of the adjudicatory hearing.

(B) If the respondent is in detention or community detention, the disposition hearing shall be held no later than 14 days after the conclusion of the adjudicatory hearing, unless the detention is extended in conformance with Code, Courts Article, § 3-8A-15(d)(6).

(c) Priorities in Disposition

The priorities in making a disposition shall be consistent with the purposes set forth in Code, Courts Article, § 3 -8A-02.

(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: Code, Courts Article, § 3-8A-19(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 ~~the~~ 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, 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.

(2) Probation with Stay of Delinquency Finding

In addition to the dispositions permitted in subsection (d)(1) of this ~~section~~ Rule, the court may, subject to Code, Courts Article, § 3-8A-19.6, enter a disposition of probation with stay of delinquency finding, which is a status created by a court order in which the court, with the consent of the respondent, places the respondent in a probationary status with appropriate conditions after the court has made a finding that the respondent committed a delinquent act, but without making a finding that the respondent is a delinquent child.

Cross reference: See Code, Courts Article, § 3-8A-19.6 for limitations on the term of probation that may be imposed by the court.

(e) Permitted Disposition - Citation

In a proceeding based on a citation, the court may enter a disposition authorized by Code, Courts Article, § 3-8A-19(e),

subject to the conditions and limitations set forth in that section.

(f) Procedure

(1) Disposition Hearing Conducted by Judge

If a judge conducts the disposition hearing, the judge shall enter a written disposition order and shall either file or announce and dictate into the record (A) a statement of reasons for any order that includes placement of the respondent outside the respondent's home, and (B) a statement of each condition for any probation.

(2) Disposition Hearing Conducted by Magistrate

If a magistrate conducts the disposition hearing, the proceeding shall be in accordance with Rule 11-103. A commitment recommended by a magistrate is subject to approval by the court in accordance with Rule 11-103 but may be implemented in advance of court approval, subject to a stay if requested by a party, pending a hearing on exceptions.

Cross reference: See Rule 11-101 (b) concerning application of the Rules in Title 5 to a disposition hearing.

(g) Restitution

(1) Generally

As part of a disposition, the court may order that the respondent, the respondent's parents, or both pay restitution to a victim subject to the conditions and limitations as set forth

in Code, Criminal Procedure Article, Title 11, Subtitle 6. Restitution may not be ordered unless:

(A) the individual ordered to pay is given reasonable notice that restitution is being sought and of the amount that is being requested;

(B) the individual is given a fair opportunity to defend against the request;

(C) sufficient evidence is admitted to prove: (i) the amount of loss or expense incurred for which restitution is allowed and (ii) that such loss or expense was the direct result of the respondent's delinquent act; and

(D) sufficient evidence is admitted of the individual's ability to comply with the restitution order.

Cross reference: Under Code, Courts Article, § 3-8A-28 the court may enter restitution against the child's parent, the child, or both, as provided by Code, Criminal Procedure Article, Title 11, Subtitle 6. That subtitle sets out the process for restitution orders. See also *In re Ramont K.*, 305 Md. 482 (1986) and cases cited therein.

(2) Evidence; Burden of Proof

In a hearing to determine whether restitution should be ordered, a written statement or bill for medical, dental, hospital, counseling, funeral, or burial expenses is sufficient evidence of the amount, fairness, and reasonableness of the charges and the necessity for the services or materials provided. An individual who challenges the fairness or

reasonableness of the charges or necessity for the services or materials has the burden of proving that the amount is not fair and reasonable.

Source: This Rule is derived in part from former Rule 11-115 (2021) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 11-422 implement Chapters 41/42, 2022 Laws of Maryland (SB 691/HB 459). Code, Courts Article, § 3-8A-19.6 creates guidelines and parameters for placing a juvenile on probation.

Subsection (d)(1), which addresses permitted dispositions, is amended to add § 3-8A-19.6 to the list of statutes with "conditions and limitations" on dispositions. Subsection (d)(2), which authorizes probation with a stay of delinquency finding, is amended to also make it subject to the new Code section.

Stylistic changes are made to the cross reference following subsection (d)(1), to subsection (d)(2), and to the cross reference following subsection (g)(1)(D).

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 400 - DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-423 by recaptioning section (a); by deleting the caption to subsection (a)(1); by deleting current section (b); by adding new section (b); by renumbering subsections (a)(2) though (a)(4) as (b)(1) though (b)(3), respectively; by recaptioning subsection (a)(5) as section (c); and by making stylistic changes, as follows:

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

(a) ~~Revisory Power~~ Generally

~~(1) Authority~~

The court may modify or vacate an order if the court finds that action to be in the best interest of the respondent or the public.

(b) On Motion, Own Initiative, or Recommendation

~~(2)~~(1) On Motion

The court may exercise its authority under ~~subsection (a)(1) of~~ this Rule on motion of any party. A motion shall state with particularity the grounds on which the relief is requested. The court may grant or deny the relief, in whole or in part, without a hearing.

~~(3)~~(2) Own Initiative

The court may exercise its authority under ~~subsection (a)(1) of~~ this Rule on its own initiative. If it proposes to do so, the court shall notify the parties of its intent and inform them of the right to respond and request a hearing within 10 days. The court may not modify or vacate an order earlier than 10 days after the issuance of the notice. If a timely request for a hearing is made, the court shall conduct a hearing.

~~(4)~~(3) On Recommendation

The court may exercise its authority under ~~subsection (a)(1) of~~ this Rule on written recommendation to the court by the appropriate governmental agency exercising supervision or custody of the respondent. The governmental agency making the recommendation shall (A) notify the parties of the recommendation and provide a copy of the recommendation to the parties, (B) inform the parties of the right to respond and request a hearing within 10 days from the date the notice was sent, and (C) provide a copy of the notice and recommendation to the court, accompanied by a statement of the date that notice was sent. A response or request for a hearing shall be filed with the clerk. The court may not act on the recommendation earlier than 10 days from the date that notice is issued, unless the parties consent in writing to the entry of an order

implementing the recommendation. If a timely request for a hearing is made, the court shall conduct a hearing.

Committee note: This Rule is not intended to preclude a governmental agency from making a recommendation in writing in advance of a scheduled hearing or on the record in a court proceeding.

~~(5)~~ (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: Code, Courts Article, § 3-8A-19(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. 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.

~~(b) Child in Detention~~

~~If a child remains in a detention facility for the act for which the child has been adjudicated delinquent for more than 25 days after the court has made a disposition pursuant to Code, Courts Article, §3-8A-19, (1) the court shall conduct a hearing on the first available court date after the 25th day and (2) the Department of Juvenile Services shall appear with the child to explain the reasons for the continued detention. A~~

~~hearing shall be conducted every 25 days thereafter as long as the child remains in a facility used for detention.~~

Source: This Rule is derived in part from former Rule 11-116 (2021) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 11-423 implement Chapters 41/42, 2022 Laws of Maryland (SB 691/HB 459).

Section (b) is deleted. Amendments to Code, Courts Article, § 3-8A-15 remove the requirement of a post-disposition review for a child adjudicated delinquent who remains in a detention facility for more than 25 days. As amended, the statute requires a hearing within 14 days of the initial detention of the child. This provision has been placed in Rule 11-406, which governs detention.

Subsection (a)(1) is retitled as "Generally." Subsection (a)(2) is retitled as new section (b), with the subsequent subsections renumbered. Subsection (a)(5) is recaptioned as section (c).

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 400 - DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-424 by amending section (a) to apply to proceedings concerning alleged violations of probation, by deleting a provision in section (c) related to the conduct of hearings, and by adding new section (d) pertaining to extension of probation, as follows:

Rule 11-424. VIOLATION OF PROBATION

(a) How Initiated

Proceedings ~~for revocation~~ concerning an alleged violation of probation may be initiated by the court on its own initiative or by motion. A motion shall state each condition of probation that the respondent is alleged to have violated, the nature of the violation, and the requested relief.

(b) Show Cause Order

The court shall enter an order directing the respondent to show cause why the relief should not be granted and setting a time and date for a hearing. The clerk shall cause a copy of the motion, if any, and the show cause order to be served on the parties. If the show cause order is issued on the court's initiative, the order shall state each condition of probation

that the respondent is alleged to have violated and the nature of the violation.

(c) Hearing

The court shall hold a hearing to determine whether a violation has occurred and, if so, whether the probation should be revoked or modified. ~~The court may conduct the hearing in an informal manner.~~ The respondent shall be given the opportunity to admit or deny the alleged violations, to testify, to present witnesses, and to cross-examine the witnesses testifying against the respondent. If the respondent is found to be in violation of any condition of probation, the court shall (1) specify the condition violated and (2) afford the respondent the opportunity, personally and through counsel, to make a statement and to present information in support of or in opposition to any modification of the existing order.

(d) Extension of Probation

If the respondent is found to be in violation of a condition of probation, the court may extend the probation as permitted by Code, Courts Article, § 3-8A-19.6.

Source: This Rule is derived in part from Rule 4-347 and former Rule 11-116 (2021) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 11-424 implement Chapters 41/42, 2022 Laws of Maryland (SB 691/HB 459).

Section (a) is amended to apply to proceedings for an alleged violation of probation.

Section (c) is amended to delete a statement permitting the court to conduct the hearing informally, because Rule 11-108 requires the court to conduct all proceedings under the Title in an informal manner.

New section (d) is derived from Code, Courts Article, § 3-8A-19.6, which governs extension of probation for a juvenile found to be in violation.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 400 - DELINQUENCY AND CITATION PROCEEDINGS

ADD new Rule 11-420.1, as follows:

Rule 11-420.1. INFORMAL ADJUSTMENT

(a) Generally

At any time prior to the commencement of an adjudicatory hearing, with the consent of the State's Attorney, the child, and the child's attorney, the court may hold proceedings in abeyance and order the matter referred to the Department of Juvenile Services for informal adjustment.

Committee note: Informal adjustment is a process by which the Department of Juvenile Services attempts to resolve a complaint made pursuant to Code, Courts Article, § 3-8A-10(a) without court involvement. See Code, Courts Article, § 3-8A-10(n) authorizing the court to refer a matter for informal adjustment and Code, Courts Article, § 3-8A-10(e) and (f) pertaining to the informal adjustment process.

(b) Report

No later than 30 days following an order referring a matter for informal adjustment, the Department of Juvenile Services shall provide to the court and the parties a status report regarding the progress of the child in the informal adjustment process.

(c) Disposition

At the conclusion of the informal adjustment process, the Department of Juvenile Services shall inform the court and the parties in writing or on the record whether the child successfully completed the process. If the child successfully completed the informal adjustment process, the court shall dismiss the delinquency petition. If the child did not successfully complete the informal adjustment process, the court shall resume the delinquency proceedings.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 11-420.1 implements Chapters 41/42, 2022 Laws of Maryland (SB 691/HB 459). The statute creates a new process by which the court may stay proceedings and refer a matter for informal adjustment with the consent of the parties. Informal adjustment, governed by Code, Courts Article, § 3-8A-10, is a process through which the Department of Juvenile Services attempts to resolve a matter outside of court. New section (n) of the statute permits the court to refer a matter for informal adjustment before an adjudicatory hearing.

Section (a) of Rule 11-420.1 permits the court to hold proceedings in abeyance and refer a matter to the Department of Juvenile Services for informal adjustment prior to the commencement of an adjudicatory hearing with the consent of the parties. Because "informal adjustment" is not a defined term in the Code and is not used elsewhere in the Rules, section (a) also contains a brief description of informal adjustment and a reference to the relevant Code sections. A cross reference following the section identifies the new statutory provision and the portions of the statute addressing the informal adjustment process.

Section (b) requires a status report to the court and the parties no later than 30 days following an order referring a

matter for informal adjustment. Generally, informal adjustment should not last longer than 90 days unless certain conditions exist. Section (b) allows the court to be updated regarding the initial progress of the child and the Department in the initial stages of the process.

Section (c) is derived from the statute and requires the Department to inform the court and the parties whether the child successfully completes the informal adjustment process. If the child was successful, the court must dismiss the delinquency petition. If the child was not successful, the court must resume delinquency proceedings.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 500 – OTHER PROCEEDINGS

AMEND Rule 11-502 by adding a statement permitting referral for informal adjustment to subsection (q)(1)(A) and by altering a reference to Rule 11-423 in section (t), as follows:

Rule 11-502. CHILD IN NEED OF SUPERVISION

(a) Applicability

This Rule governs child in need of supervision proceedings conducted pursuant to Code, Courts Article, Title 3, Subtitle 8A.

(b) Definitions

(1) The definitions stated in Code, Courts Article, § 3-8A-01 apply to this Rule, to the extent relevant.

(2) "CINS petition" means the pleading filed with the court under Code, Courts Article, § 3-8A-13 alleging that a child is in need of supervision.

(c) Confidentiality of Records

The confidentiality provisions stated in Code, Courts Article, § 3-8A-27 and Title 16, Chapter 900 of the Maryland Rules apply to court records pertaining to a child who is or

was the subject of a proceeding under this Rule.

(d) Attorney

Rule 11-404 applies with respect to the right to representation by an attorney at a proceeding under this Rule.

Cross reference: See Code, Courts Article, § 3-8A-20(a).

(e) Taking Child into Custody

Rule 11-405 applies with respect to taking a child into custody, except that a child alleged to be in need of supervision may not be placed in detention or community detention.

(f) Shelter Care

A child alleged to be in need of supervision may be placed in shelter care in accordance with the applicable provisions of Code, Courts Article, § 3-8A-15 and Rule 11-406.

(g) Emergency Medical Treatment

The court may order emergency medical, dental, or surgical treatment for a child alleged to be in need of supervision in conformance with Code, Courts Article, § 3-8A-21 and Rule 11-417.

(h) CINS Petition

(1) Who May File

A CINS petition may be filed only by an intake officer.

Cross reference: See Code, Courts Article, § 3-8A-13(b).

(2) Where Filed

The CINS petition shall be filed in the county where the child resides.

Cross reference: See Code, Courts Article, § 3-8A-08(a).

(3) When Filed

The CINS petition shall be filed within the applicable time limits set forth in Code, Courts Article, § 3-8A-10.

Committee note: For administrative proceedings and requirements prior to the filing of a CINS petition, see Code, Courts Article, §§ 3-8A-10 and 3-8A-13. A court may dismiss a petition for failure to comply with the requirements of § 3-8A-10 only if the child demonstrates actual prejudice. See also *In re Keith G.*, 325 Md. 538 (1992).

(4) Form and Content

The CINS petition shall be captioned "In the Matter of . . . . . ." and shall state:

(A) the name and address of the petitioner and the basis of the petitioner's authority to file the petition;

(B) the child's name, address, and date of birth, and the name and address of the child's parent, guardian, or custodian;

(C) that the child is alleged to be in need of supervision;

(D) in clear, simple, and concise language but with particularity, the facts which constitute the alleged need for supervision, including the date of the alleged act(s) and, as

applicable, any law(s) allegedly violated by the child;

(E) the name of each witness, known at the time the petition is filed, whom the petitioner intends to call to testify in support of the petition; and

(F) whether the child is in shelter care and, if so, (i) when that placement commenced, (ii) whether the child's parent, guardian, or custodian has been notified, and (iii) whether the petitioner is seeking continued shelter care.

(5) Copies

The intake officer shall file with the clerk a sufficient number of copies of the CINS petition to provide for service on the parties.

(i) Summons; Service

Unless the court orders otherwise, the clerk, upon the filing of the CINS petition, shall promptly issue a summons, substantially in the form approved by the State Court Administrator and posted on the Judiciary website, for each party other than the petitioner. The summons, together with a copy of the CINS petition, shall be served in accordance with Rule 11-107 and shall be returnable as provided in Rule 2-126.

(j) Subpoenas

The clerk shall issue a subpoena for each witness requested by a party pursuant to Rule 11-105.

(k) Initial Appearance Hearing

The court may hold an initial hearing to ensure service and provide notice of the right to counsel in accordance with Rule 11-412.

(l) Response to CINS Petition; Admission

A party served with a CINS petition under this Rule may file a response in conformance with Rule 11-413.

(m) Amendments

A petition, a motion, or any other paper filed under this Rule may be amended in accordance with Rule 11-414.

(n) Study; Examination

The court may direct the Department of Juvenile Services or another qualified agency to make a study concerning the child, the child's family, the child's environment, and other matters relevant to the disposition of the case, in accordance with the applicable provisions of Code, Courts Article, § 3-8A-17.

(o) Discovery

(1) Generally

Without the necessity of a request, the petitioner shall furnish to the defense (A) all material or information in any form, whether or not admissible, that is possessed by or is in the control of the Department of Juvenile Services and that (i) the petitioner intends to offer into evidence or (ii) tends to negate the allegations of the petition or mitigate the severity

of a disposition, and (B) all written and oral statements of the child that relate to the allegations of the petition and all material and information that relate to the acquisition of such statements. For good cause, the court may require such other disclosures and inspections as justice may require.

(2) Matters Not Required to Be Disclosed

Notwithstanding any other provision of this Rule, the Department of Juvenile Services is not required to disclose (A) 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 of disclosure.

(3) Time for Completion

To the extent practicable, the disclosure and inspection of all matters and information required or permitted by this Rule shall be completed in time to permit its beneficial use at a hearing in which the material or information may be relevant. If the material or information is not so disclosed, the court may grant a continuance or postponement of the hearing to permit the disclosure or inspection.

(4) Disclosures Not to Be Filed with the Court

Unless otherwise ordered by the court, disclosures made pursuant to this Rule shall not be filed with the court but may

be used at a hearing or as an exhibit to support or oppose a motion.

(5) Failure to Comply

The failure of a party to comply with a disclosure obligation does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness, disqualification is within the discretion of the court.

(p) Hearings – Generally

The court shall conduct all hearings in an informal manner. The court may exclude the general public from a hearing and admit only those persons having a direct interest in the proceeding and their representatives.

Cross reference: See Code, Courts Article, § 3-8A-13(f)(1) and (2).

(q) Adjudicatory Hearing

(1) Requirement; Purpose

(A) After a CINS petition is filed, the court shall hold an adjudicatory hearing, unless the court refers the matter for informal adjustment in accordance with Rule 11-420.1. If the court refers the matter for informal adjustment, "delinquency petition" as used in Rule 11-420.1 shall be construed to refer to a "CINS petition" under this Rule.

(B) The purpose of the hearing is to determine whether the allegations of the petition, other than allegations that the

child requires guidance, treatment, or rehabilitation, are true.

(2) Timing

(A) Unless the parties agree to an earlier date, an adjudicatory hearing may not be held earlier than 15 days after the filing of the CINS petition.

(B) If the child is not in shelter care, the hearing shall be commenced within 60 days after the later of service of the petition or the entry of appearance of counsel for the child.

(C) If the child remains in shelter care, the hearing shall be commenced within 30 days after the date on which the court ordered continued shelter care. If the hearing is not held within that time, the child shall be released from shelter care on reasonable conditions set by the court pending an adjudicatory hearing.

(D) Once commenced, an adjudicatory hearing shall be completed with a reasonable degree of continuity.

(3) Evidence; Standard of Proof

The petitioner shall present the evidence in support of the petition and has the burden of proving the allegations of the petition by a preponderance of the evidence.

(r) Adjudication; Adjudicatory Order

If the adjudicatory hearing is conducted by a judge, the judge shall prepare and file a written adjudicatory order accompanied by a written statement or an oral statement dictated

into the record stating (1) a finding whether or to what extent the petitioner has proved the allegations of the petition, and (2) the grounds on which the finding is based. If the hearing is conducted by a magistrate, the magistrate shall prepare and file a report in accordance with Rule 11-103 (c) or (d).

(s) Disposition Hearing and Order

(1) Generally

Unless a CINS petition is dismissed, the court shall conduct a separate disposition hearing to determine whether the child is in need of supervision as defined in Code, Courts Article, § 3-8A-01(e).

(2) Scheduling

The disposition hearing may be held on the same day as the adjudicatory hearing if notice of the disposition hearing is waived on the record by all parties. If the disposition hearing is not held on the same day as the adjudicatory hearing and the child is not in shelter care, the disposition hearing shall be held no later than 30 days after the conclusion of the adjudicatory hearing. If the child is in shelter care, the disposition hearing shall be held no later than 14 days after the conclusion of the adjudicatory hearing, unless shelter care is extended in conformance with Code, Courts Article, § 3-8A-15(d)(6). If shelter care is extended, the disposition hearing shall be held before expiration of the extended shelter care.

(3) Priorities in Disposition

The priorities in making a disposition shall be consistent with the purposes set forth in Code, Courts Article, § 3-8A-02.

(4) Procedure

If a judge conducts the hearing, the judge shall enter a written disposition order and shall either file or announce and dictate into the record (A) a statement of reasons for any order that includes placement of the child outside the child's home, and (B) a statement of each condition for any probation. If a magistrate conducts the hearing, the proceeding shall be in accordance with Rule 11-103.

(t) Modification or Vacation of Order

The court may modify or vacate an order if the court finds that action to be in the best interest of the child or the public. The provisions of Rule 11-423 (a) and (b) ~~(b)(1), (b)(2), (b)(3)(A), and (b)(3)(B)~~ shall apply to a proceeding under this section.

(u) Termination of Jurisdiction

The court may enter a final termination of its jurisdiction in accordance with Rule 11-425.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 11-502 implement Chapters 41/42, 2022 Laws of Maryland (SB 691/HB 459). See the Reporter's note to Rule 11-420.1 for more information.

Proposed amendments to subsection (q)(1)(A) permit the court to refer a matter for informal adjustment in accordance with the procedures set forth in new Rule 11-420.1, except that the term "delinquency petition" in that Rule means "CINS petition" in the context of Rule 11-502.

Proposed amendments to section (t) update references to Rule 11-423.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 400 – DELINQUENCY AND CITATION PROCEEDINGS

AMEND Rule 11-404 by adding a statute to the cross reference following section (a), as follows:

Rule 11-404. RIGHT TO ATTORNEY

(a) Generally

A party is entitled to be represented by an attorney at every stage of all proceedings under this Chapter in accordance with Code, Courts Article, § 3-8A-20.

Cross reference: Code, Courts Article, § 3-8A-20 contains provisions governing the waiver of representation, the court's duties when a child appears without an attorney, and representation by the Public Defender. See also Code, Courts Article, § 3-8A-14.2 for the requirement that a juvenile consult with an attorney retained by the parent, guardian, or custodian of the child or provided by the Office of the Public Defender prior to a custodial interrogation and Code, Courts Article, § 3-8A-32 for special independent representation of a child when the court determines that is necessary.

(b) Striking of Attorney's Appearance

(1) By Motion

An attorney wishing to withdraw an appearance shall file a motion to withdraw. If the attorney's client is a child who is entitled to representation at State expense, the court shall deny the motion unless another attorney has entered an appearance.

(2) Automatic Termination of Appearance

When no appeal has been taken from a final order of termination of the proceeding pursuant to Rule 11-425, the appearance of an attorney is automatically terminated 30 days after the order of termination of the proceeding is entered.

Cross reference: See Code, Courts Article, § 3-8A-20 concerning the right to the assistance of counsel.

Source: This Rule is derived in part from former Rule 11-106 (2021) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 11-404 implement Chapter 50, 2022 Laws of Maryland (SB 53). The chapter alters certain provisions regarding taking a child into custody and creates a new statute governing custodial interrogations of children and admissibility of any statements made by a child during a custodial interrogation.

Code, Courts Article, § 3-8A-14.2(b) prohibits custodial interrogation of a child before the child has consulted with an attorney either retained by a parent, guardian, or custodian or provided by the Office of the Public Defender. There is an exception when the law enforcement officer reasonably believes that the information sought is necessary to protect against a threat to public safety and the questioning is limited to information pertaining to the threat. Proposed amendments to Rule 11-404 add the statute to the cross reference following section (a).

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

(a) Authority

A child may be taken into custody in accordance with Code, Courts Article, § 3-8A-14(a).

(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 3-8A-14.2.

(c) Failure to Bring Child before Court

Subject to Rule 11-412 (c), if a parent, guardian, or custodian fails to bring a child before the court when directed by the court to do so, the court may issue a writ of attachment directing that the child be taken into custody and brought before the court. The court may proceed against the parent, guardian, or custodian for contempt pursuant to the Rules in Title 15, Chapter 200.

Committee note: This section does not preclude the court from the issuance of a writ of attachment for a parent, guardian, or custodian who fails to appear when ordered to do so.

Cross reference: See Title 15, Chapter 200 of these Rules concerning civil and criminal contempt.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 50, 2022 Laws of Maryland (SB 53) alters certain provisions regarding taking a child into custody and creates a new statute governing custodial interrogations of children and admissibility of any statements made by a child during a custodial interrogation.

Code, Courts Article, § 3-8A-14.2 imposes certain requirements on a law enforcement officer who takes a child into custody. Proposed amendments to Rule 11-405 add to section (b) a reference to the new statute.

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)(4), as follows:

Rule 11-419. MOTIONS

(a) Generally

(1) Content

A motion filed pursuant to this Rule shall (A) be in writing, unless the court otherwise directs, (B) state the grounds upon which it is made, and (C) set forth the relief sought. A motion requesting suppression of evidence or a motion alleging an illegal source of information as the basis for probable cause shall be supported by precise and specific factual averments. Every motion shall contain or be accompanied by a statement of points and citation of authorities.

(2) Response

A response, if made, shall be filed within 10 days after service of the motion and contain or be accompanied by a statement of points and citation of authorities.

(3) Determination

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

(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;

(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 of respondents or offenses.

(c) Time for Filing

(1) Mandatory Motions

A motion under section (b) of this Rule shall be filed no later than five business days before the first scheduled adjudicatory hearing, unless the court, for good cause shown, orders otherwise.

(2) Other Motions

A motion asserting failure of the charging document to show jurisdiction in the court or to charge an offense may be raised and determined at any time. Any other defense, objection, or request capable of determination before trial without trial of the general issue shall be raised by motion filed at any time before trial.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 50, 2022 Laws of Maryland (SB 53) alters certain provisions regarding taking a child into custody and creates a new statute, Code, Courts Article, § 3-8A-14.2, governing custodial interrogations of children and admissibility of any statements made by a child during a custodial interrogation. The statute does not set forth how the issue of admissibility of a statement made by a child in a custodial interrogation is generated in a delinquency proceeding or require any specific findings by the court.

The proposed amendment to Rule 11-419 adds a cross reference to the statute following subsection (b)(4), which governs motions raising the issue of "an unlawfully obtained admission, statement, or confession."

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE

AMEND Rule 11-219 by deleting a certain statutory reference from section (b), by adding new subsection (e)(2)(D) pertaining to a permanency plan that is another planned living arrangement, by adding new subsection (e)(2)(E) pertaining to placement in a qualified residential treatment program, and by making stylistic changes, as follows:

Rule 11-219. POST DISPOSITION REVIEW AND MODIFICATION; PERMANENCY PLANS

(a) Status Review

(1) Generally

Except as provided in subsection (a)(2) of this Rule, the court shall conduct a hearing to review the status of a child under its jurisdiction within six months after the filing of the first petition under this subtitle and at least every six months thereafter.

(2) Qualified Residential Treatment Program

If a child has been placed in a qualified residential treatment program, the court shall conduct a hearing to review

the status of the child and determine the appropriateness of the placement within 60 days after the child enters the placement.

Cross reference: See Code, Courts Article, § 3-816.2 regarding considerations at a review hearing under this section.

(b) Review of Custody and Guardianship

After granting custody or guardianship of a child to an individual pursuant to Code, Courts Article, § 3-819.2, the court may order such further reviews as it determines to be in the child's best interests~~, consistent with Code, Courts Article, §3-823 (h)~~.

(c) Review of Commitment to Certain Facilities

(1) In General

If a child has been committed for inpatient care and treatment in a psychiatric facility or facility for developmentally disabled individuals pursuant to Code, Courts Article, § 3-819(h) or (i), the court, on request of any party, the child's custodian, or the facility, shall hold a hearing after the first six months of the commitment and at six month intervals thereafter to determine whether the standards specified in those sections of the Code continue to exist. The court may hold a hearing at any other time for that purpose.

(2) Other Hearings Based on Individualized Treatment Plans

If an individualized treatment plan developed under Code, Health-General Article, § 7-1006 or § 10-706 recommends

that a child no longer meets the requirements of Code, Courts Article, § 3-819(h) or (i), as applicable, the court shall hold a hearing to review the commitment order.

(d) Removal of Child from Court-Ordered Placement

(1) Emergency Hearing

(A) If, after or as part of a CINA disposition, the court orders a specific placement of the child and the local department, acting pursuant to Code, Courts Article, § 3-820(a), removes the child from that placement, gives the notice required by § 3-820(b), and files a motion to authorize a new placement, the court shall hold an emergency review hearing on the motion not later than the next day after the motion is filed.

(B) All parties shall be given reasonable notice of the hearing.

(C) The court may ratify the emergency removal only upon such evidence as would suffice under Code, Courts Article, § 3-815(d) to order shelter care.

(2) Hearing on the Merits

Unless all parties agree to the order entered following an emergency hearing, the court, at that hearing, shall schedule a full review hearing on the merits of the local department's action to be held within 30 days after the date of removal or, if agreed to by the parties or for good cause shown, at a later date.

(e) Permanency Plan Hearings

(1) Determination of Permanency Plan

If the court has ordered an out-of-home placement, as defined in Code, Family Law Article, § 5-501(i), it shall, within the times set forth in Code, Courts Article, § 3-823(b) or (c), hold a hearing to determine a permanency plan for the child. At that hearing, the court shall determine the child's permanency plan in accordance with Code, Courts Article, § 3-823(e), (f), and (g) and make findings in accordance with Code, Courts Article, § 3-816.2(a)(2).

(2) Periodic Reviews

(A) Once a permanency plan has been approved pursuant to subsection (e)(1) of this Rule, the court shall hold periodic hearings at the times set forth in Code, Courts Article, § 3-823(h)(1) to review the current plan.

Committee note: Federal law requires the court to continue to conduct a hearing to review the status of each child under its jurisdiction at least every six months. At that hearing, the court must make the findings required by Code, Courts Article, § 3-816.2(a)(2). See 42 U.S.C. §675 (5)(B).

(B) Notice of the hearing and an opportunity to be heard shall be provided to the parties and other individuals as required by Code, Courts Article, § 3-816.3.

Cross reference: See Code, Courts Article, § 3-816.3 for notice to the child's foster parent, preadoptive parent, or caregiver.

(C) At the review hearing, the court shall consider any written report of a local out-of-home care review board required under Code, Family Law Article, § 5-545 and make the determinations and take the actions required by Code, Courts Article, § 3-823(h)(2) and make the findings required by Code, Courts Article, § 3-816.2(a)(2).

(D) If the permanency plan is another planned permanent living arrangement, at the review hearing the court shall make the determinations and take the actions required by Code, Courts Article, § 3-823(h)(3).

(E) For a child placed in a qualified residential treatment program, at the review hearing the court shall make the determinations and take the actions required by Code, Courts Article, § 3-823(h)(4).

~~(D)~~ (F) At least every 12 months, the court, at a review hearing, shall consult on the record with the child, in an age-appropriate manner. If the court determines that the child is medically fragile or that it would be detrimental to the child's physical or mental health to be transported to the place where the consultation would occur, the consultation may occur remotely pursuant to Code, Courts Article, § 3-823(j)(3) and Rules 2-801 through 2-806.

(3) Reasonable Efforts Finding

At each hearing under this section, the court shall make a finding as required by Code, Courts Article, § 3-816.1.

Source: This Rule is derived in part from former Rule 11-115 c (2021) and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 11-219 implement Chapter 228, 2022 Laws of Maryland (SB 203). The legislation alters certain provisions relating to orders granting custody and guardianship in a child in need of assistance (CINA) proceeding.

Proposed amendments to section (b) delete reference to Code, Courts Article, § 3-823(h). Any review hearings once the court grants custody and guardianship are now governed by Code, Courts Article, § 3-819.2.

Proposed new subsection (e)(2)(D) is derived from Code, Courts Article, § 3-823(h)(3), which adds a provision for a permanency plan that is another planned living arrangement.

Proposed new subsection (e)(2)(E) is derived from existing language in Code, Courts Article, § 3-823(h)(4), as amended, which applies to a child placed in a qualified residential treatment program. Subsection (a)(2) of this Rule applies to the initial status review of a child in such a program but does not address review hearings later, which are addressed in Code, Courts Article, § 3-823(h)(4). Current subsection (e)(2)(E) is renumbered as (e)(2)(F).

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 200 – CHILD IN NEED OF ASSISTANCE

AMEND Rule 11-220 by updating a statutory reference in subsection (a)(2), as follows:

Rule 11-220. TERMINATION OF PROCEEDING

(a) Termination of Jurisdiction

(1) Generally

Except as provided in subsection (a)(2), upon termination of the court's jurisdiction over the respondent child, the court shall enter a final order terminating the proceeding.

Cross reference: See Code, Courts Article, § 3-804(b), providing that jurisdiction over a CINA continues until the child is age 21 years, unless the court terminates the case sooner.

(2) Limited Retention of Jurisdiction

If the court enters an order directing the provision of services to a child under Code, Courts Article, § 3-819(c)(3) or ~~§3-823 (h)(2)(vii)~~ § 3-823(h)(2)(viii), the court retains jurisdiction for the limited purpose of enforcement, modification, or termination of the order.

Cross reference: See Code, Courts Article, §§ 3-804(d) and 3-823(k) and *In re Adoption/Guardianship Dustin R.*, 445 Md. 536 (2015) for continuing jurisdiction over a CINA.

(b) Prior to Termination of Jurisdiction

Upon a finding of good cause, the court may enter a final order terminating the proceeding prior to expiration of the court's jurisdiction by operation of law (1) on the court's own initiative, (2) on motion of a party, or (3) on the recommendation of an appropriate governmental agency exercising supervision over the respondent.

Cross reference: See *In re Emileigh F.*, 355 Md. 198 (1999) and *In re Joseph N.*, 407 Md. 278 (2009) precluding the court from terminating the proceeding while an appeal from its decision is pending.

Source: This Rule is derived from former Rule 11-120 (2021).

REPORTER'S NOTE

A proposed amendment to Rule 11-220 (a)(2) updates an internal reference in conformance with Chapter 228, 2022 Laws of Maryland (SB 203).

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 11-112 by deleting references to a unit of the State or local government; by replacing the phrase, "the unit shall serve," with the phrase, "the court shall issue"; by requiring that a certain Multilingual Advisement Form be attached to certain documents; by altering the Committee note to refer to translation of certain documents into priority languages; by altering the Committee note to state that the Access to Justice Department does not translate case-specific documents; by altering the Committee note to state that a provision of the State Government Article applies to "certain State agencies, departments, and programs in the Executive Branch of government"; and by making stylistic changes, as follows:

Rule 11-112. PAPERS IN A FOREIGN LANGUAGE

Whenever the court ~~or a unit of the State or local government~~ has reason to believe that an individual required to be served with a summons, subpoena, notice of hearing or court conference, or other document that requires a decision, action, or response by the individual, by reason of unfamiliarity with

the English language, may be unable to read and understand the document, the court ~~unit~~ shall ~~(1) serve~~ issue the document in English and (1) if the document is available in a language that the court ~~or unit~~ reasonably believes the individual can understand, issue the document in that language, or (2) if the document is not available in a language the court reasonably believes the individual can understand, attach a Multilingual Advisement Form approved by the State Court Administrator. ~~as an attachment to the English version of the document, inform the individual in a language the court or unit reasonably believes the individual can understand that, if the individual, due to unfamiliarity with the English language, is unable to read and understand the document, upon request (A) a copy of the document in a language the individual understands will be made available, or (B) an individual fluent in the language the served individual understands will be made available to translate the document.~~

Committee note: The Access to Justice Department of the Administrative Office of the Courts provides translation services to the Maryland courts and can provide translations of certain forms and materials into priority languages ~~at the court's request~~. The Access to Justice Department does not provide translation of case-specific documents. See Code, State Government Article, § 10-1103 requiring certain State agencies, departments, and programs in the Executive Branch of government, including the Department of Human Services, Department of Juvenile Services, and Attorney General's Office, to provide "the translation of vital documents ordinarily provided to the public into any language spoken by any limited English proficient population that constitutes 3% of the overall

population within the geographic area served by a local office of a State program as measured by the United States Census."

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 11-112 were requested by the Access to Justice Department of the Administrative Office of the Courts. The Department reports that, since Rule 11-112 went into effect on January 1, 2022, the Department has received requests for translation of case-specific documents, a service that the Department does not provide. The Department provides interpretation services in 65 languages and is in the process of translating certain forms and documents used in Title 11 cases into priority languages.

The Department advised that a possible way to provide services to individuals with limited English proficiency is by the use of a Multilingual Advisement Form. The text of the advisement can be drafted once and translated into many languages. The advisement would inform the recipient that an important court document is attached and direct the individual to services already in place for non-English speakers.

Proposed amendments to Rule 11-112 remove references to "a unit of the State or local government" in the body of the Rule. A reference to Code, State Government Article, § 10-1103, which requires certain State agencies, departments, and programs in the Executive Branch of government to provide translation of certain documents, remains in the Committee note. The amendments clarify that the Rule applies to court-issued documents.

The amendments require that the document be served in English and in the language the court reasonably believes the individual can understand, if the document is available in that language. The amendments also provide for the use of a Multilingual Advisement Form approved by the State Court Administrator in lieu of the current procedures that are used when a document in a particular language is not available. This procedure is derived from the procedure recently approved by the Rules Committee in proposed amendments to Rule 15-901 (d) and proposed new Rule 15-902 (d).

The Committee note is amended to clarify that the Access to Justice Department provides translation of certain forms and materials into priority languages. The amendments also state that the Department does not translate case-specific documents. The Committee note is also amended to clarify that the cited State Government Article provision applies to certain agencies, departments, and programs in the Executive Branch of government.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 200 - CHILD IN NEED OF ASSISTANCE

AMEND Rule 11-204 by requiring that a written request pursuant to subsection (d)(4)(A) be made no later than the next day after entry of the magistrate's order, as follows:

Rule 11-204. SHELTER CARE

(a) Placement in Emergency Shelter Care

A local department may place a child in emergency shelter care before a hearing in conformance with Code, Courts Article, § 3-815(b).

Cross reference: See Code, Courts Article, § 3-807 for the authority of a magistrate to order shelter care.

(b) Petition for Continued Shelter Care

Unless a child placed in emergency shelter care pursuant to section (a) of this Rule has been released, the local department shall:

(1) give to the child's parent, guardian, or custodian written notice of the emergency shelter care; and

(2) on the next day file a CINA petition with a request for continued shelter care or a separate petition requesting continued shelter care including the allegations supporting the request for continued shelter care.

(c) Hearing

(1) Timing

The court shall hold a hearing on a request for continued shelter care on the same day that the petition is filed. The hearing may be postponed or continued by the court for good cause shown, but it may not be postponed for more than eight days following the commencement of the respondent's emergency shelter care.

(2) Notice

The petitioner shall give reasonable notice of the time, place, and purpose of the hearing to the child's parent, guardian, and custodian, and to the child's other relatives who may be potential placement resources, if they can be located.

(3) Presence

A respondent shall be present for the hearing, except that the attorney for the respondent may waive the presence of that respondent.

Committee note: If the hearing is conducted by remote electronic means, "present" or "presence" means the ability (1) to observe the proceeding, (2) to communicate with other participants when such communication is permitted, and (3) to be observed by other participants when communicating.

(d) Order for Continued Shelter Care

(1) Limitation on Continued Shelter Care

The court may continue shelter care prior to adjudication if the court has reasonable grounds to find the

criteria in Code, Courts Article, § 3-815(d) have been satisfied.

(2) Duration

The court may not order continued shelter care for more than 30 days, except that it may extend the shelter care for an additional period not exceeding 30 days if it finds, by a preponderance of the evidence, after a hearing held as part of an adjudicatory hearing, that continued shelter care is needed to provide for the safety of the child.

(3) Findings and Order

If the court orders continued shelter care, the court shall make written findings as to the grounds for removal and the efforts that were made to avoid the need for removal as required by Code, Courts Article, § 3-815(d) and (e) and § 3-816.1. If the hearing was conducted by a magistrate, the magistrate also shall make written findings, conclusions, and recommendations. If a magistrate declines to order continued shelter care, the magistrate shall prepare written findings in support of that determination and enter an order denying continued shelter care.

(4) Review of Magistrate's Shelter Care Determination

(A) Request

If a hearing under this Rule was conducted by a magistrate, a party may request immediate review of an order

orally at the hearing or in writing no later than the next day after entry of the magistrate's order pursuant to subsection (d)(3) of this Rule.

(B) Review by Judge

Not later than the next day following a request for immediate review, a judge of the court shall review the file, any exhibits, and the magistrate's findings, conclusions, and recommendations and shall afford the parties an opportunity for a hearing on the record or de novo review.

Source: This Rule is derived in part from former Rule 11-112 (2021) and is in part new.

REPORTER'S NOTE

The proposed amendment to Rule 11-204 addresses a concern raised regarding the promptness of requests for immediate review of a magistrate's shelter care order. Consultants advised that in some cases, a party requests "immediate review" under subsection (d)(4)(A) days or even weeks after the magistrate's order was entered. Subsection (d)(4)(A) is amended to require a request for immediate review, if not made orally at the hearing, to be made in writing no later than the next day after entry of the magistrate's order.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 700 – MISCELLANEOUS JUDICIAL UNITS

AMEND Rule 16-702 by changing the name of the Conference of Circuit Judges to the "Conference of Circuit Court Administrative Judges," by deleting references to the Circuit Administrative Judge, by expanding membership in the Conference to the County Administrative Judge of each circuit court, and by deleting provisions for the election of certain judges to membership in the Conference, as follows:

Rule 16-702. CONFERENCE OF CIRCUIT COURT ADMINISTRATIVE JUDGES

(a) Existence; Membership~~; Terms~~

There is a Conference of Circuit Court Administrative Judges. The Conference consists of the ~~Circuit~~ County Administrative Judge of each circuit court. ~~judicial circuit and one additional circuit court judge from each judicial circuit elected by the incumbent circuit court judges in that circuit. The elected members shall serve for a term of two years. If a vacancy occurs because an elected member resigns from the Conference, leaves judicial office, or is appointed to another judicial office, the incumbent circuit court judges in that~~

~~judge's judicial circuit shall elect a replacement member to serve for the balance of the unexpired term.~~

(b) Chair and Vice Chair

The Conference shall elect from its members a Chair and a Vice Chair. The election shall be held every two years, but an interim election shall be held if necessary because an incumbent chair or vice chair ceases to be a member of the Conference.

(c) Meetings; Quorum

The Conference shall meet at least four times a year. A majority of the authorized members of the Conference shall constitute a quorum.

(d) Duties

(1) Administration Policies

The Conference shall work collaboratively and in consultation with the Judicial Council in developing recommendations affecting the administration of the circuit courts, including:

(A) programs and practices that will enhance the administration of justice in the circuit courts;

(B) the level of operational and judicial resources for the circuit courts to be included in the Judiciary budget;

(C) recommending, opposing, or commenting on legislation or Rules that may affect the circuit courts; and

(D) the compensation and benefits for circuit court judges.

(2) Consultants

With the approval of the Chief Judge of the Court of Appeals, the Conference may retain consultants in matters relating to the circuit courts.

(3) Consultation With Chief Judge of the Court of Appeals

The Conference may nominate to the Chief Judge of the Court of Appeals circuit court judges for membership on committees and bodies of interest to the circuit courts.

(4) Majority Vote

The Conference and the Executive Committee of the Conference each shall carry out its duties pursuant to a majority vote of its authorized membership.

(e) Executive Committee

(1) Appointment; Authority

The Conference may appoint an Executive Committee, which shall have the full authority of the Conference to act when the Conference is not in session. The actions of the Executive Committee shall be reported fully to the Conference at its next meeting.

(2) Quorum

A majority of the authorized membership of the Executive Committee shall constitute a quorum.

(3) Convening the Executive Committee

The Executive Committee shall convene at the call of the Conference Chair. In the absence of the Chair, the Vice Chair may convene the Executive Committee.

(f) Conference Staff

The Administrative Office of the Courts shall serve as staff to the Conference and its Executive Committee.

Source: This Rule is derived from former Rule 16-108 (2016).

REPORTER'S NOTE

The State Court Administrator has requested changes to the membership of the Conference of Circuit Judges. In light of this request, section (a) of Rule 16-702 is proposed to be amended to change the membership of the Conference from its current format consisting of the Circuit Administrative Judge from each judicial circuit and one judge elected by the sitting judges from each judicial circuit to a new Conference comprised of the County Administrative Judge of each circuit court in the State. To conform to this change to the composition of the Conference, the name of the Conference is proposed to be changed from the "Conference of Circuit Judges" to the "Conference of Circuit Court Administrative Judges," and the name of the Rule is conformed to reflect this change.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 100 – COURT ADMINISTRATIVE STRUCTURE

AMEND Rule 16-110 by changing the name of the Conference of Circuit Judges to the "Conference of Circuit Court Administrative Judges" in subsection (b)(3) and by making a stylistic change, as follows:

Rule 16-110. JUDICIAL COUNCIL

(a) Existence

There is a Judicial Council.

(b) Membership; Chair

The Judicial Council consists of:

(1) the Chief Judge of the Court of Appeals, who is the Chair of the Judicial Council;

(2) the Chief Judge of the Court of Special Appeals;

(3) the Chair and Vice Chair of the Conference of Circuit Court Administrative Judges;

(4) the Chief Judge of the District Court;

(5) the State Court Administrator;

(6) the Chair and Vice Chair of the Conference of Circuit Court Clerks;

(7) the Chair and Vice Chair of the Conference of Circuit Court Administrators;

(8) the Chair of the Court of Appeals Standing Committee on Rules of Practice and Procedure;

(9) the Chief Clerk of the District Court; ~~and~~

(10) the Chair of the Senior Judges Committee; and

(11) three circuit court judges, three District Court judges, and two District Administrative Clerks appointed by the Chief Judge of the Court of Appeals.

Committee note: The Conference of Circuit Court Clerks and the Conference of Circuit Court Administrators are created and exist only by Administrative Order of the Chief Judge of the Court of Appeals. The inclusion of their Chairs or Vice Chairs on the Judicial Council is not intended to affect the authority of the Chief Judge to alter or revoke those Administrative Orders.

. . .

Source: This Rule is derived from former Rule 16-802 (2016).

REPORTER'S NOTE

The proposed amendment to Rule 16-110 (b)(3) conforms the Rule to an amendment to Rule 16-702, which changes the name of the Conference of Circuit Judges to the "Conference of Circuit Court Administrative Judges" and modifies the composition of the Conference. Also, in subsection (b)(9), a stylistic error is corrected.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

AMEND Rule 19-501 by changing the name of the "Conference of Circuit Judges" to the "Conference of Circuit Court Administrative Judges" in subsection (a)(2)(B), as follows:

Rule 19-501. STATE PRO BONO COMMITTEE AND PLAN

(a) Standing Committee on Pro Bono Legal Service

(1) Creation

There is a Standing Committee of the Court of Appeals on Pro Bono Legal Service.

(2) Members

The Standing Committee consists of the following members appointed by the Court of Appeals:

(A) eight members of the Maryland Bar, including one from each appellate judicial circuit and one selected from the State at large;

(B) a maximum of three Circuit Court judges selected from nominees submitted by the Conference of Circuit Court Administrative Judges;

(C) a maximum of three District Court judges selected from nominees submitted by the Chief Judge of the District Court;

(D) the Public Defender or a designee of the Public Defender;

(E) a representative from the Legal Aid Bureau, Maryland Volunteer Lawyers Service, Pro Bono Resource Center of Maryland, and one other pro bono referral organization; and

(F) at least one member of the general public.

(3) Terms

The term of each member is three years. A member may be reappointed to serve one or more additional terms. At the end of a term, a member continues to serve until a successor is appointed. Unless reappointed, a member who is appointed after a term has begun serves only for the rest of the term until a successor is appointed.

(4) Chair

The Court of Appeals shall designate one of the members as chair.

(5) Consultants

The Standing Committee may designate a reasonable number of consultants from among court personnel or representatives of other organizations or agencies concerned with the provision of legal services to persons of limited means.

. . .

Source: This Rule is derived from former Rule 16-901 (2016).

REPORTER'S NOTE

The proposed amendment to Rule 19-501 conforms the Rule to an amendment to Rule 16-702, which changes the name of the Conference of Circuit Judges to the "Conference of Circuit Court Administrative Judges" and modifies the composition of the Conference.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-102 by deleting the provisions pertaining to the appointment of bail bond commissioners and licensing and regulation of bail bondsmen, and by making stylistic changes, as follows:

Rule 1-102. CIRCUIT AND LOCAL RULES

Unless inconsistent with these rules, circuit and local rules regulating (1) court libraries, (2) memorial proceedings, (3) auditors, and (4) compensation of trustees in judicial sales~~, and (5) appointment of bail bond commissioners and licensing and regulation of bail bondsmen,~~ are not repealed. No circuit and local rules, other than ones regulating the matters and subjects listed in this Rule, shall be adopted.

Source: This Rule is derived from former Rule 1 f.

REPORTER'S NOTE

As evidenced by an Administrative Order entered March 28, 2022, the judges of the Seventh Judicial Circuit of Maryland voted to rescind the use of (1) Local Rules 714 and 714A and (2) a bail bond commissioner.

Because the Seventh Judicial Circuit is the only Judicial Circuit in Maryland to make use of a bail bond commissioner and

local rules pertaining to bail bonds, the actions commemorated in the Administrative Order have rendered the language in this Rule pertaining to bail bond commissioners and the regulation of bail bondsmen surplusage. As a result, this language is proposed to be deleted from Rule 1-102.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 by updating a cross reference following section (k), as follows:

Rule 1-202. DEFINITIONS

. . .

(k) Holiday

"Holiday" means an "employee holiday" set forth in Code, State Personnel and Pensions Article, § 9-201.

Committee note: The "employee holidays" listed in Code, State Personnel and Pensions Article are:
(1) January 1, for New Year's Day;
(2) January 15, for Dr. Martin Luther King, Jr.'s Birthday, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;
(3) the third Monday in February, for Presidents' Day;
(4) May 30, for Memorial Day, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;
(5) June 19, for Juneteenth National Independence Day;
~~(5)~~ (6) July 4, for Independence Day;
~~(6)~~ (7) the first Monday in September, for Labor Day;
~~(7)~~ (8) October 12, for Columbus Day, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;
~~(8)~~ (9) November 11, for Veterans' Day;
~~(9)~~ (10) the fourth Thursday in November, for Thanksgiving Day;
~~(10)~~ (11) the Friday after Thanksgiving Day, for American Indian Heritage Day;
~~(11)~~ (12) December 25, for Christmas Day;
~~(12)~~ (13) each statewide general election day in this State; and

~~(13)~~ (14) each other day that the President of the United States or the Governor designates for general cessation of business.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 1-202 implement Chapter 64, 2022 Laws of Maryland (HB 227). The statute adds Juneteenth National Independence Day to the State employee holidays in Maryland. The Committee note following section (k), which defines "holiday" in the Rules, is amended to include Juneteenth.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEEDURES

AMEND Rule 4-217 by deleting subsection (b)(3); by deleting the cross reference following subsection (b)(3); by re-numbering the definitions contained in subsections (b)(4) through (b)(7) as subsections (b)(3) through (b)(6), respectively; by deleting the cross reference following subsection (d)(3)(C); by deleting the provision relating to a bail bond commissioner and the reference to Rule 16-805 from subsection (i)(5)(C); and by making stylistic changes, as follows:

Rule 4-217. CIRCUIT AND LOCAL RULES

(a) Applicability of Rule

This Rule applies to all bail bonds taken pursuant to Rule 4-216, 4-216.1, 4-216.2, or 4-216.3, and to bonds taken pursuant to Rules 4-267, 4-348, and 4-349 to the extent consistent with those rules.

(b) Definitions

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

(1) Bail Bond

"Bail bond" means a written obligation of a defendant, with or without a surety or collateral security, conditioned on the appearance of the defendant as required and providing for the payment of a penalty sum according to its terms.

(2) Bail Bondsman

"Bail bondsman" means an authorized agent of a surety insurer.

~~(3) Bail Bond Commissioner~~

~~"Bail bond commissioner" means any person appointed to administer rules adopted pursuant to Maryland Rule 16-805.~~

~~Cross reference: Code, Criminal Procedure Article, § 5-203.~~

~~(4)~~(3) Clerk

"Clerk" means the clerk of the court and any deputy or administrative clerk.

~~(5)~~(4) Collateral Security

"Collateral security" means any property deposited, pledged, or encumbered to secure the performance of a bail bond.

~~(6)~~(5) Surety

"Surety" means a person other than the defendant who, by executing a bail bond, guarantees the appearance of the defendant, and includes an uncompensated or accommodation surety.

~~(7)~~(6) Surety Insurer

"Surety insurer" means any person in the business of becoming, either directly or through an authorized agent, a surety on a bail bond for compensation.

(c) Authorization to Take Bail Bond

Any clerk, District Court commissioner, or other person authorized by law may take a bail bond. The person who takes a bail bond shall deliver it to the court in which the charges are pending, together with all money or other collateral security deposited or pledged and all documents pertaining to the bail bond.

Cross reference: Code, Criminal Procedure Article, §§ 5-204 and 5-205. See Code, Insurance Article, § 10-309, which requires a signed affidavit of surety by the defendant or the insurer that shall be provided to the court if payment of premiums charged for bail bonds is in installments.

(d) Qualification of Surety

(1) In General

The Chief Clerk of the District Court shall maintain a list containing: (A) the names of all surety insurers who are in default, and have been for a period of 60 days or more, in the payment of any bail bond forfeited in any court in the State~~,~~; (B) the names of all bail bondsmen authorized to write bail bonds in this State~~,~~; and (C) the limit for any one bond specified in the bail bondsman's general power of attorney on file with the Chief Clerk of the District Court. The clerk of each circuit court and the Chief Clerk of the District Court

shall notify the Insurance Commissioner of the name of each surety insurer who has failed to resolve or satisfy bond forfeitures for a period of 60 days or more. The clerk of each circuit court also shall send a copy of the list to the Chief Clerk of the District Court.

Cross reference: For penalties imposed on surety insurers in default, see Code, Insurance Article, § 21-103(a).

(2) Surety Insurer

No bail bond shall be accepted if the surety on the bond is on the current list maintained by the Chief Clerk of the District Court of those in default. No bail bond executed by a surety insurer directly may be accepted unless accompanied by an affidavit reciting that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: For the obligation of the District Court Clerk or a circuit court clerk to notify the Insurance Commissioner concerning a surety insurer who fails to resolve or satisfy bond forfeitures, see Code, Insurance Article, § 21-103(b).

(3) Bail Bondsman

No bail bond executed by a bail bondsman may be accepted unless the bondsman's name appears on the most recent list maintained by the Chief Clerk of the District Court, the bail bond is within the limit specified in the bondsman's general power of attorney as shown on the list or in a special power of

attorney filed with the bond, and the bail bond is accompanied by an affidavit reciting that the bail bondsman:

(A) is duly licensed in the jurisdiction in which the charges are pending, if that jurisdiction licenses bail bondsmen;

(B) is authorized to engage the surety insurer as surety on the bail bond pursuant to a valid general or special power of attorney; and

(C) holds a valid license as an insurance broker or agent in this State, and that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

~~Cross reference: Code, Criminal Procedure Article, § 5-203 and Rule 16-805 (Appointment of Bail Bond Commissioner–Licensing and Regulation of Persons Authorized to Write Bonds).~~

(e) Collateral Security

(1) Authorized Collateral

A defendant or surety required to give collateral security may satisfy the requirement by:

(A) depositing with the person who takes the bond the required amount in cash or certified check, or pledging intangible property approved by the court; or

Cross reference: See Code, Criminal Procedure Article, §§ 5-203 and 5-205, permitting certain persons to post a cash bail or cash bond when an order specifies that the bail or bond may be posted only by the defendant.

(B) encumbering one or more parcels of real estate situated in the State of Maryland, owned by the defendant or surety in fee simple absolute, or as chattel real subject to ground rent. No bail bond to be secured by real estate may be taken unless (i) a Declaration of Trust of a specified parcel of real estate, in the form set forth at the end of this Title as Form 4-217.1, is executed before the person who takes the bond and is filed with the bond, or (ii) the bond is secured by a Deed of Trust to the State or its agent and the defendant or surety furnishes a verified list of all encumbrances on each parcel of real estate subject to the Deed of Trust in the form required for listing encumbrances in a Declaration of Trust.

(2) Value

Collateral security shall be accepted only if the person who takes the bail bond is satisfied that it is worth the required amount.

(3) Additional or Different Collateral Security

Upon a finding that the collateral security originally deposited, pledged, or encumbered is insufficient to ensure collection of the penalty sum of the bond, the court, on motion by the State or on its own initiative and after notice and opportunity for hearing, may require additional or different collateral security.

(f) Condition of Bail Bond

The condition of any bail bond taken pursuant to this Rule shall be that the defendant personally appear as required in any court in which the charges are pending, or in which a charging document may be filed based on the same acts or transactions, or to which the action may be transferred, removed, or if from the District Court, appealed, and that the bail bond shall continue in effect until discharged pursuant to section (j) of this Rule.

(g) Form and Contents of Bond--Execution

Every pretrial bail bond taken shall be in the form of the bail bond set forth at the end of this Title as Form 4-217.2, and, except as provided in Code, Criminal Procedure Article, § 5-214, shall be executed and acknowledged by the defendant and any surety before the person who takes the bond.

(h) Voluntary Surrender of the Defendant by Surety

A surety on a bail bond who has custody of a defendant may procure the discharge of the bail bond at any time before forfeiture by:

(1) delivery of a copy of the bond and the amount of any premium or fee received for the bond to the court in which the charges are pending or to a commissioner in the county in which the charges are pending who shall thereupon issue an order committing the defendant to the custodian of the jail or detention center; and

(2) delivery of the defendant and the commitment order to the custodian of the jail or detention center, who shall thereupon issue a receipt for the defendant to the surety. Unless released on a new bond, the defendant shall be taken forthwith before a judge of the court in which the charges are pending.

On motion of the surety or any person who paid the premium or fee, and after notice and opportunity to be heard, the court may by order award to the surety an allowance for expenses in locating and surrendering the defendant, and refund the balance to the person who paid it.

(i) Forfeiture of Bond

(1) On Defendant's Failure to Appear--Issuance of Warrant

If a defendant fails to appear as required, the court shall order forfeiture of the bail bond and issuance of a warrant for the defendant's arrest and may set a new bond in the action. The clerk shall promptly notify any surety on the defendant's original bond, and the State's Attorney, of the forfeiture of that bond and the issuance of the warrant.

Cross reference: Code, Criminal Procedure Article, § 5-211.

(2) On Defendant's Posting a Bond After Issuance of Warrant

If a new bond is set under subsection (i)(1) of this Rule and the defendant posts the bond:

(A) a judicial officer shall mark the warrant satisfied; and

(B) the court shall reschedule the hearing or trial.

(3) Striking Out Forfeiture for Cause

If the defendant or surety can show reasonable grounds for the defendant's failure to appear, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or in part~~; and~~, (B) set aside any judgment entered thereon pursuant to subsection (5)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (4) of this section.

Cross reference: Code, Criminal Procedure Article, § 5-208(b)(1) and (2) and Allegany Mut. Cas. Co. v. State, 234 Md. 278, 199 A.2d 201 (1964).

(4) Satisfaction of Forfeiture

Within 90 days from the date the defendant fails to appear, which time the court may extend to 180 days upon good cause shown, a surety shall satisfy any order of forfeiture, either by producing the defendant in court or by paying the penalty sum of the bond. If the defendant is produced within such time by the State, the court shall require the surety to pay the expenses of the State in producing the defendant and shall treat the order of forfeiture satisfied with respect to the remainder of the penalty sum.

(5) Enforcement of Forfeiture

If an order of forfeiture has not been stricken or satisfied within 90 days after the defendant's failure to appear, or within 180 days if the time has been extended, the clerk shall forthwith:

(A) enter the order of forfeiture as a judgment in favor of the governmental entity that is entitled by statute to receive the forfeiture and against the defendant and surety, if any, for the amount of the penalty sum of the bail bond, with interest from the date of forfeiture and costs including any costs of recording, less any amount that may have been deposited as collateral security; ~~and~~

(B) cause the judgment to be recorded and indexed among the civil judgment records of the circuit court of the county; and

(C) prepare, attest, and deliver or forward ~~to any bail bond commissioner appointed pursuant to Rule 16-805,~~ to the State's Attorney, to the Chief Clerk of the District Court, and to the surety, if any, a true copy of the docket entries in the cause, showing the entry and recording of the judgment against the defendant and surety, if any.

Enforcement of the judgment shall be by the State's Attorney in accordance with those provisions of the rules relating to the enforcement of judgments.

(6) Subsequent Appearance of Defendant

When the defendant is produced in court after the period allowed under subsection (4) of this section, the surety may apply for the refund of any penalty sum paid in satisfaction of the forfeiture less any expenses permitted by law. The court shall strike out a forfeiture of bail or collateral and deduct only the actual expense incurred for the defendant's arrest, apprehension, or surrender provided that the surety paid the forfeiture of bail or collateral during the period allowed for the return of the defendant under subsection (4) of this section.

(7) Where Defendant Incarcerated Outside This State

(A) If, within the period allowed under subsection (4) of this section, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State and that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, the court shall strike out the forfeiture and shall return the bond or collateral security to the surety.

(B) If, after the expiration of the period allowed under subsection (4) of this section, but within 10 years from the date the bond or collateral was posted, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State, that the State's Attorney is unwilling to issue a detainer and subsequently

extradite the defendant, and that the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with Code, Criminal Procedure Article, § 5-208(c), subject to subsection (C) of this section, the court shall strike out the forfeiture and refund the forfeited bail bond or collateral to the surety provided that the surety paid the forfeiture of bail or collateral within the time limits established under subsection (4) of this section.

(C) On motion of the surety, the court may refund a forfeited bail bond or collateral that was not paid within the time limits established under subsection (4) of this section if the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

(j) Discharge of Bond--Refund of Collateral Security

(1) Discharge

The bail bond shall be discharged when:

(A) all charges to which the bail bond applies have been stetted, unless the bond has been forfeited and 10 years have elapsed since the bond or other security was posted; or

(B) all charges to which the bail bond applies have been disposed of by a nolle prosequi, dismissal, acquittal, or probation before judgment; or

(C) the defendant has been sentenced in the District Court and no timely appeal has been taken, or in the circuit court exercising original jurisdiction, or on appeal or transfer from the District Court; or

(D) the court has revoked the bail bond pursuant to Rule 4-216.3 or the defendant has been convicted and denied bail pending sentencing; or

(E) the defendant has been surrendered by the surety pursuant to section (h) of this Rule.

Cross reference: See Code, Criminal Procedure Article, § 5-208(d) relating to discharge of a bail bond when the charges are stetted. See also Rule 4-349 pursuant to which the District Court judge may deny release on bond pending appeal or may impose different or greater conditions for release after conviction than were imposed for the pretrial release of the defendant pursuant to Rule 4-216, 4-216.1, 4-216.2, or 4-216.3.

(2) Refund of Collateral Security--Release of Lien

Upon the discharge of a bail bond and surrender of the receipt, the clerk shall return any collateral security to the person who deposited or pledged it and shall release any Declaration of Trust that was taken.

Source: This Rule is derived from former Rule 722 and M.D.R. 722.

REPORTER'S NOTE

As evidenced by an Administrative Order entered March 28, 2022, the judges of the Seventh Judicial Circuit of Maryland

voted to rescind the use of (1) Local Rules 714 and 714A and (2) a bail bond commissioner.

Because the Seventh Judicial Circuit is the only Judicial Circuit in Maryland to make use of a bail bond commissioner and local rules pertaining to bail bonds, the actions commemorated in the Administrative Order have rendered Rule 16-805 surplusage. As a result, Rule 16-805 is proposed to be deleted.

The following conforming amendments are proposed to Rule 4-217 as a result of the proposed deletion of Rule 16-805. Subsection (b)(3), which contains the definition "Bail Bond Commissioner," is deleted. The cross reference following this subsection also is deleted. The definitions contained in subsections (b)(4) through (b)(7) are renumbered as subsections (b)(3) through (b)(6), respectively. The cross reference following subsection (d)(3)(C) is deleted. The provision relating to a bail bond commissioner and the reference to Rule 16-805 is proposed to be deleted from subsection (i)(5)(C).

Stylistic changes are made to subsections (d)(1) and (i)(3).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 – OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-202 by correcting a cross reference after section (a), as follows:

Rule 8-202. NOTICE OF APPEAL – TIMES FOR FILING

(a) Generally

Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.

Cross reference: Code, Courts Article, § 12-302(c)~~(3)~~(4).

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REPORTER'S NOTE

The Annual Corrective Bill of 2014, Chapter 45, 2014 Laws of Maryland (SB 184), corrected a perceived tabulation error in the numbering of subsections in Code, Courts Article, § 12-302(c). As a result, former subsection (c)(3) was renumbered as subsection (c)(4) in 2014. Upon review, it was determined that the cross reference to § 12-302(c)(3) in Rule 8-202 was not updated after the renumbering. Accordingly, a proposed amendment to Rule 8-202 updates the cross reference after section (a).

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 correcting references in subsections (f)(2) and (f)(4), as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

...

(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;

(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 he or she 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)(3)~~ (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)(E), (F), or (G)~~ (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.

...

REPORTER'S NOTE

By Rules Order entered on February 9, 2022, Rule 9-205.3 was amended. Changes included adding new subsection (f)(3) and renumbering former subsection (f)(3) as (f)(4). A conforming amendment to subsection (f)(2) updates the internal reference to this subsection.

In addition, the Rules Order entered on February 9, 2022 deleted former subsection (f)(2)(D) of Rule 9-205.3. Accordingly, subsections (f)(2)(E), (F), and (G) were re-lettered as subsections (f)(2)(D), (E), and (F), respectively. Conforming amendments update the internal reference to these subsections in subsection (f)(4).

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 800 – MISCELLANEOUS COURT ADMINISTRATION MATTERS

DELETE Rule 16-805, as follows:

~~Rule 16-805. APPOINTMENT OF BAIL BOND COMMISSIONER – LICENSING AND REGULATION OF PERSONS AUTHORIZED TO WRITE BONDS~~

~~A majority of the judges of the circuit courts in any appellate judicial circuit may appoint a bail bond commissioner, license persons authorized to write bail bonds within the appellate judicial circuit, and regulate acceptance of bail bonds written by those licensees. Each bail bond commissioner appointed pursuant to this Rule shall prepare, maintain, and periodically distribute to all District Court commissioners and clerks within the jurisdiction of the appellate judicial circuit for posting in their respective offices, to the State Court Administrator, and to the Chief Clerk of the District Court, an alphabetical list of licensees within the appellate judicial circuit, showing each licensee's name, business address and telephone number, and any limit on the amount of any one bond, and the aggregate limit on all bonds, each licensee is authorized to write.~~

~~Source: This Rule is derived from former Rule 16-817 (2016).~~

REPORTER'S NOTE

As evidenced by an Administrative Order entered on March 28, 2022, the judges of the Seventh Judicial Circuit of Maryland voted to rescind the use of (1) Local Rules 714 and 714A and (2) a bail bond commissioner.

The actions commemorated in the Administrative Order have rendered Rule 16-805 surplusage, and, as a result, Rule 16-805 is proposed to be deleted in its entirety.