

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Sixteenth Report to the Supreme Court of Maryland, recommending adoption, on an emergency basis, of proposed amendments to Rules 9-112 and 11-319.

The Committee's Two Hundred and Sixteenth Report containing the proposed Rules changes is set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before May 3, 2023 any written comments they may wish to make to

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cases (Sealed-TPR and Sealed-Adoption), access to which is limited to judges and court personnel. That limitation is being applied retroactively. The result of that change, as noted by Ms. Hill, is that "attorneys are - suddenly and without warning - losing remote access to their own active cases."

The sole purpose of the proposed amendments submitted in this Report is to restore the right of attorneys and self-represented parties to have access to the documents in their cases while the case is still open, *i.e.*, until 30 days after judgment is entered or, if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. When the case is closed, the records then will be sealed and not open to inspection by any person, except upon order of court.

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

Respectfully Submitted,

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Alan M. Wilner
Chair

AMW:sdm

cc: Gregory Hilton, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-112 by altering a provision in section (a) pertaining to confidentiality of dockets, by adding language to the tagline of section (b), by creating new subsection (b)(1) pertaining to shielding of records in adoption and guardianship proceedings, by adding a cross reference following subsection (b)(1), by creating new subsection (b)(2)(A) pertaining to sealing of records in guardianship proceedings, by creating new subsection (b)(2)(B) pertaining to sealing of records in adoption proceedings, by relocating a provision pertaining to adoption records prior to June 1, 1947 to new subsection (b)(3), by adding new subsection (b)(4) pertaining to inspection of sealed records, by adding a cross reference following subsection (b)(4), and by making stylistic changes, as follows:

Rule 9-112. COURT RECORDS

(a) Dockets

The clerk shall keep separate dockets for (1) adoption and guardianship proceedings and (2) revocations of consent to adoption or guardianship for which there are no pending adoption or guardianship proceedings in that county. These dockets ~~are~~

~~not open to inspection by any person, including the parents, except upon order of court~~ shall be confidential and shielded from public inspection. If the index to a docket is kept apart from the docket itself, the index ~~is~~ shall be open to inspection.

(b) Shielding and Sealing of Records

(1) Shielding of Records

All pleadings and other papers in adoption and guardianship proceedings shall be ~~sealed when they are filed~~ confidential and shielded from public inspection upon filing.

Cross reference: See Rule 16-914 (a), requiring denial of inspection of case records in actions for adoption, guardianship, or revocation of consent to adoption or guardianship filed under this Chapter, and Rule 20-109, concerning remote access.

(2) Sealing of Records

(A) Guardianship Records

All pleadings and other papers in a guardianship proceeding shall be sealed and not open to inspection by any person, including a parent, upon the latter of (i) 30 days after termination of the proceeding pursuant to Code, Family Law Article, § 5-3A-25 or, (ii) if an appeal is taken, dismissal of the appeal or exhaustion of appellate review.

(B) Adoption Records

Except as otherwise provided in subsection (b) (3) of this Rule, all pleadings and other papers in an adoption

proceeding shall be sealed and are not open to inspection by any person, including the parents, except upon an order of court a parent, upon the latter of (i) 30 days after entry of a judgment of adoption or, (ii) if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. If a final decree of adoption was entered before June 1, 1947 and the record is not already sealed, the record may be sealed only on motion of a party. ~~The~~ When an adoption becomes final, the clerk shall notify send notice of that event to each person entitled to notice that the adoption has been finalized.

Cross reference: See Code, Health - General Article, § 4-211, concerning the amendment and replacement of birth certificates following adoption and the requirement that the clerk transmit to the Maryland Department of Health a report of adoption or revocation of adoption.

(3) Adoption Records Prior to June 1, 1947

If a final decree of adoption was entered before June 1, 1947 and the record is not already sealed, the record may be sealed only on motion of a party.

(4) Inspection of Sealed Records

Sealed records of guardianship and adoption proceedings shall remain sealed and not be opened for inspection except upon order of court.

Cross reference: See Code, Family Law Article, Title V, Subtitle 3, Part IV; Subtitle 3A, Part IV; and Subtitle 3B, Part III, concerning access to records relating to an adoptee.

Source: This Rule is derived from former Rule D80 a and c and

is in part new.

REPORTER'S NOTE

Proposed amendments to Rules 9-112 and 11-319 address concerns raised by the Major Projects Committee ("the MPC") about the operation of the Rules with respect to remote access by parties and attorneys to adoption and guardianship terminating parental rights ("TPR") proceedings in the MDEC system. The MPC stated that the Rules as written prohibit remote MDEC access to these cases by any person, including access by a party or attorney in a pending case. Effective February 23, the Office of Information Technology in the Administrative Office of the Courts established new case types for adoption and TPR matters that are sealed except to judges and courthouse personnel.

Discussions with clerks and practitioners, including individuals in the Office of the Attorney General and Office of the Public Defender, confirmed that attorneys generally have had access, including access through MDEC, to their own case files while the case is ongoing or on appeal. The Juvenile Law Committee within the Judicial Council was consulted and recommended an amendment to the Rules to maintain the status quo prior to the programming change.

In Rule 9-112, amendments to section (a) require dockets for adoption and guardianship proceedings and revocations of consent for which there are no pending proceedings to be confidential and not subject to public inspection.

Amendments to section (b) generally require pleadings and papers in adoption and guardianship proceedings to be shielded when filed and then sealed when the case is concluded. A cross reference following subsection (b)(1) directs the reader to Rule 16-914 (a), which prohibits public inspection of these records, and Rule 20-109, which governs remote access to records.

New subsection (b)(2) dictates when the pleadings and papers must be sealed in each type of proceeding. Subsection (b)(2)(A) requires guardianship records to be sealed 30 days

after termination of the proceeding or, if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. Subsection (b) (2) (B) contains similar provisions pertaining to sealing adoption records. The existing language governing adoption records for final decrees entered before June 1, 1947 is relocated to new subsection (b) (3).

New subsection (b) (4) requires sealed records to remain sealed unless opened for inspection by the court. A cross reference following subsection (b) (4) cites to statutes governing access to records.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 300 - GUARDIANSHIP TERMINATING PARENTAL RIGHTS

AMEND Rule 11-319 by creating new section (a) pertaining to dockets for guardianship proceedings, by adding to section (a) a provision that dockets are confidential and shielded from public inspection, by creating new section (b) pertaining to shielding and sealing of records, by creating new subsection (b) (1) pertaining to shielding of records in guardianship proceedings, by adding a cross reference following subsection (b) (1), by creating new subsection (b) (2) pertaining to sealing of records in guardianship proceedings, by adding a cross reference following subsection (b) (2), by creating new subsection (b) (3) pertaining to inspection of sealed records, by adding a cross reference following subsection (b) (3) to statutes governing access to records relating to an adoptee, and by making stylistic changes, as follows:

Rule 11-319. COURT RECORDS

(a) Dockets

The court shall keep a separate docket for guardianship proceedings, which shall be confidential and shielded from public inspection.

(b) Shielding and Sealing of Records

(1) Shielding of Records

All pleadings and other papers in guardianship proceedings shall be ~~sealed when they are filed~~ confidential and shielded from public inspection upon filing.

Cross reference: See Rule 16-914 (a), requiring denial of inspection of case records in actions for guardianship filed under this Chapter, and Rule 20-109, concerning remote access.

(2) Sealing of Records

All pleadings and other papers shall be sealed and are not open to inspection by any person, including a parent, ~~except upon an order of court~~ upon the latter of (A) 30 days after the guardianship action is closed, or (B) if an appeal is taken, dismissal of the appeal or exhaustion of appellate review.

Cross reference: See Code, Family Law Article, § 5-328 and Rule 11-318, concerning termination of guardianship proceedings and a court order closing the guardianship action.

(3) Inspection of Sealed Records

Sealed records of guardianship proceedings shall remain sealed and not be opened for inspection except upon order of court.

Cross reference: See Code, Family Law Article, Title 5, Subtitle 3, Part V, concerning access to records relating to an adoptee.

Source: This Rule is derived from Rule 9-112 and is in part new.

REPORTER'S NOTE

Proposed amendments to Rules 9-112 and 11-319 address concerns raised by the Major Projects Committee about the operation of the Rules with respect to remote access by parties and attorneys to adoption and guardianship terminating parental rights proceedings in the MDEC system. See the Reporter's note to Rule 9-112 for more information.

In Rule 11-319, amendments to section (a) clarify that dockets for guardianship proceedings are confidential and not subject to public inspection.

Amendments to section (b) generally require that pleadings and papers in guardianship proceedings be shielded when filed and then sealed when the case is concluded. A cross reference following subsection (b)(1) directs the reader to Rule 16-914 (a), which prohibits public inspection of these records, and Rule 20-109, which governs remote access to records.

New subsection (b)(2) requires guardianship records to be sealed 30 days after termination of the proceeding or, if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. A cross reference following subsection (b)(2) identifies the statute and Rule governing termination of guardianship proceedings and closure of the action.

New subsection (b)(3) requires sealed records to remain sealed unless opened for inspection by the court. A cross reference following subsection (b)(3) cites to statutes governing access to records.