COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judicial Education and Training Center, 2011 Commerce Park Drive, Annapolis, Maryland on September 18, 2014.

Members present:

Hon. Alan M. Wilner, Chair
Hon. Robert A. Zarnoch, Vice Chair

James E. Carbine, Esq.
Mary Anne Day, Esq.
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Hon. JoAnn M. Ellinghaus-Jones
Alvin I. Frederick, Esq.
Ms. Pamela Q. Harris
Hon. Joseph H. H. Kaplan
Derrick William Lowe, Esq., Clerk
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Hon. Paula A. Price
Sen. Norman R. Stone, Jr.
Steven M. Sullivan, Esq.
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Mary G. Bodley, Esq., Assistant Reporter
Craig J. Little, Esq.
Claire Rossmark, Esq., Counsel, House Judiciary Committee
David R. Durfee, Jr., Esq., Director, Legal Affairs
Ms. Janet Moss, Director, Client Protection Fund
Kendall Ruffato, Esq., Attorney Grievance Commission
Jeffrey C. Shipley, Esq., Director, State Board of Law Examiners
Hon. C. Phillip Nichols, Jr., Circuit Court for Prince George's County
Raymond Hein, Esq., Attorney Grievance Commission
Ronald Jarashow, Esq.
E. Regine Francois, Esq., Maryland Professionalism Center, Inc.
Glenn Grossman, Esq., Bar Counsel, Attorney Grievance Commission
Linda H. Lamone, Esq., Chair, Attorney Grievance Commission
Kathleen E. Wherthey, Esq., Assistant Administrator, Legal Affairs
Karl Pothier, Esq.
Sarah Kaplan, Esq., Child and Family Services Program, Administrative Office of the Courts

The Chair convened the meeting. He welcomed the Rules Committee members back for a new term. He introduced two new members of the Committee, the Honorable JoAnn M. Ellinghaus-Jones, a District Court judge from Carroll County, who is also the District Administrative Judge, and Thurman W. Zollicoffer, Esq., who is with the firm of Whiteford, Taylor, and Preston, and had served a term previously as Baltimore City Solicitor.

The Chair announced that the 185th Report of the Rules Committee pertaining to voir dire had been filed with the Court of Appeals. It contained no rules, but only the report that the Court had asked for. He had heard that there was some spirited discussion about it at the Conference of Circuit Court Judges meeting the previous Monday. He also announced that, at the Committee's request, the Court of Appeals repealed Rule 1-322.2, Certificate of Exclusion of Personal Identifier Information.

The Chair said that he and the Reporter are now working on the 186th Report, which contains many Rules, including some items that are on the agenda for the meeting today. There had been a request to withdraw one item from that Report, which had been previously approved by the Committee and otherwise would have gone into the 186th Report. This pertained to permitting the State Court Administrator to exempt certain categories of actions from the Maryland Electronic Courts initiative ("MDEC"). It had been concluded that the State Court Administrator does not need another rule to do this. It is allowed by the MDEC Rules. If the Committee approves, this Rule would be withdrawn. There

being no comment, the Committee approved the withdrawal of the Rule by consensus.

Agenda Item 1. Reconsideration of proposed amendments to Rule 4-601 (Search Warrants)

The Chair presented Rule 4-601, Search Warrants, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

Rule 4-601. SEARCH WARRANTS

(a) ~~Issuance -~~ Authority to Issue; Title 5 Inapplicable

A search warrant may issue only as authorized by law. Title 5 of these Rules does not apply to the issuance of a search warrant.

~~Cross reference: Code, Criminal Procedure Article, §1-203.~~

(b) Submission of Application

(1) Method of Submission

An applicant may submit an application for a search warrant by (A) ~~in-person~~ delivery of three copies of (i) the application, ~~the~~ (ii) a supporting affidavit, and (iii) a proposed search warrant in-person or ~~(B)~~ by secure facsimile; or ~~secure electronic mail, if a complete and printable image of the application, the supporting affidavit, and the proposed search warrant are also submitted~~ (B) transmission of these

documents to the judge by secure and reliable electronic mail that permits the judge to print the complete text of the documents. If the documents are transmitted electronically (a) the proposed warrant shall be sent in editable form, and (b) the judge shall print and retain a copy of the documents.

(2) Request for Sealing Affidavit

The application may include a request that the affidavit be sealed pursuant to Code, Criminal Procedure Article, §1-203 (e).

~~(2)~~ (3) Discussion about Application

Upon receipt of the application, the judge may discuss it with the applicant in person, by telephone, or by video conferencing.

Committee note: A discussion between the applicant and the judge may be explanatory in nature but may not be for the purpose of adding or changing any statement in the affidavit that is material to the determination of probable cause. Probable cause must be determined from the four corners of the affidavit. *See Abeokuto v. State*, 391 Md. 289, 338 (2006); *Valdez v. State*, 300 Md. 160, 168 (1984) (The four-corners rule "prevents consideration of evidence that seeks to supplement or controvert the truth of grounds stated in the affidavit.")

(c) Issuance of Search Warrant

The judge may issue a search warrant ~~either~~ by (1) ~~physically delivering the warrant, which the judge has signed and dated, the application, and the supporting affidavit to the applicant or (2) sending the complete and printable images of the documents to the applicant by secure facsimile or secure electronic mail~~ signing the warrant and recording on it the date and time of issuance, and (2) delivering the signed and dated warrant, along with a copy of the application and affidavit, to the applicant in-person, by secure facsimile, or

by transmission of those documents by secure and reliable electronic mail that permits the applicant to print the complete text of the documents.

(d) Retention of Application and Affidavits - Secrecy

~~A judge issuing a search warrant shall file a copy of the signed and dated search warrant, the application, and the supporting affidavit with the court and shall retain a copy of these documents.~~

(1) ~~The~~ A search warrant shall be issued with all practicable secrecy. ~~A~~ The judge may seal a supporting affidavit ~~may be sealed for not more than~~ for up to 30 days, subject to one 30-day extension as provided by Code, Criminal Procedure Article, §1-203 (e).

(2) A judge who issues a search warrant shall retain a copy of the application, affidavit, and warrant until the warrant is returned, executed or unexecuted, pursuant to section (g) or (h) of this Rule. Upon return of an executed warrant, the judge shall comply with section (g). If the signed and dated warrant was transmitted to the applicant by electronic mail, the printed copy retained by the judge, upon its filing pursuant to section (g), shall be the original. A warrant, application, or affidavit shall not be filed with the clerk prior to its return to the judge pursuant to section (g) or (h).

(e) Executed Warrant - Inventory; Copy

(1) An officer shall make, verify, and sign a written inventory of all property seized under a search warrant, including a general description of electronically stored information received pursuant to the warrant in electronic, disk, paper, or other form.

(2) At the time the ~~search~~ warrant is executed, ~~a copy of the inventory together with a copy of the search warrant, application, and supporting affidavit, except an affidavit that has been sealed by order of~~

~~court,~~ the officer executing the warrant shall ~~be left~~ leave with the person from whom the property ~~is~~ was taken or, if ~~the~~ that person ~~is present or, if that person~~ is not present, ~~with~~ an authorized occupant of the premises from which the property ~~is~~ was taken~~. If neither of those persons is present at the time the search warrant is executed, the copies shall be left in a conspicuous place at the premises from which the property is taken. The officer preparing the inventory shall verify it before making the return. Upon the expiration of the order sealing an affidavit, the affidavit shall be unsealed and delivered within 15 days to the person from whom the property was taken or, if that person is not present, an authorized occupant of the premises from which the property was taken.~~ (A) a copy of the search warrant and application, (B) a copy of the supporting affidavit, except an affidavit that has been sealed pursuant to section (d) of this Rule, and (C) a copy of the inventory.

(3) If the person from whom the property was taken and an authorized occupant of the premises from which the property was taken are not present at the time the search warrant is executed, the copies shall be left in a conspicuous place at the premises from which the property was taken.

(4) If a copy of the supporting affidavit was not left because it was under seal, a copy shall be delivered to the person from which the property was taken or, if that person is not present, to an authorized occupant of the premises from which the property was taken within 15 days after the affidavit is unsealed.

(f) Executed Warrant - Return

(1) ~~The~~ An officer ~~executing the~~ who executes a search warrant shall prepare a detailed search warrant return, which shall include the date and time of the execution of the ~~search~~ warrant and a verified inventory.

(2) The officer shall ~~give a copy of the~~

~~search warrant return to an authorized occupant of the premises searched and file a copy of the search warrant return with the court in person, by secure facsimile, or by secure electronic mail. An executed warrant shall be returned~~ deliver the return to the ~~issuing~~ judge who issued the warrant, or if that judge is not immediately available, to another judge of the same circuit, if the warrant was issued by a Circuit Court judge, or of the same district, if the warrant was issued by ~~the~~ a District Court judge, as promptly as possible and, in any event, (A) within ten days after ~~the date the search~~ warrant ~~is~~ was executed, or (B) within any earlier time set forth in the ~~search~~ warrant ~~for its return~~. The return shall be accompanied by the executed warrant and the verified inventory. ~~A search warrant unexecuted within 15 days after its issuance shall be returned promptly to the issuing judge.~~

(3) Delivery of the return, warrant, and verified inventory may be in-person, by secure facsimile, or by secure electronic mail that permits the judge to print the complete text of the documents. If the delivery is by electronic mail, the officer shall sign the return and inventory as required by Rule 20-107 (e) and, not later than the next business day, deliver to the judge the original signed and dated return and inventory and the warrant that was executed.

(4) If the return is made to a judge other than the judge who issued the warrant, the officer shall notify the issuing judge of when and to whom the return was made, unless it is impracticable to give such notice.

(5) The officer shall deliver a copy of the return to an authorized occupant of the premises searched or, if such a person is not present, leave a copy of the return at the premises searched.

(g) Executed ~~Search~~ Warrant~~s~~ - Filing with Clerk

The judge to whom an executed search warrant is returned shall attach to the ~~search~~ warrant ~~copies of~~ the return, the verified inventory, and all other papers in connection with the issuance, execution, and return, including the copies retained by the ~~issuing~~ judge, and shall file them with the clerk of the court for the county in which the property was seized. The papers filed with the clerk shall be sealed and shall be opened for inspection only upon order of the court. The clerk shall maintain a confidential index of the search warrants.

(h) Unexecuted ~~Search~~ Warrants

(1) A search warrant is valid for 15 days from the date it was issued and must be served within that time. After the expiration of 15 days, the warrant is void.

Cross reference: See Code, Criminal Procedure Article, §1-203 (a)(4).

(2) A search warrant that become void under subsection (h)(1) of this Rule shall be returned to the judge who issued it. The judge ~~to whom an unexecuted search warrant is returned~~ may destroy the ~~search~~ warrant and related papers or make any other disposition the judge deems proper.

(i) Inspection of Warrant, Inventory, and Other Papers

(1) The following persons may file an application under this section:

~~Upon application filed by a~~ (A) a person from whom or from whose premises property is taken under a search warrant; ~~or by~~

(B) a person having an interest in the property taken; and ~~or by~~

(C) a person aggrieved by ~~a~~ the search or seizure~~, the court of the county in which the search warrant is filed~~.

(2) Upon the filing of the application,

the clerk shall send a copy of the application to the State's Attorney.

(3) Except for papers then under deal or subject to a protective order, upon application filed under subsection (i)(1), the court shall order that the warrant, inventory, and other related papers filed with the clerk be made available to the person or ~~to~~ that person's attorney for inspection and copying. ~~Upon the filing of the application, the court may order that notice thereof be given to the State's Attorney.~~

(j) Prohibited Disclosures; Contempt

(1) Except for disclosures required for the execution of a search warrant or directed by this Rule or ~~by~~ an order of court issued pursuant to this Rule~~,~~:

(A) ~~a person who discloses before~~ No person may disclose; prior to its execution, that a search warrant has been applied for or issued~~,~~; and

(B) ~~or a~~ A public officer or employee, ~~who discloses~~ after its execution, may not disclose the contents of a search warrant or the contents of any other paper filed with ~~it,~~ the warrant.

(2) Any person who violates this section may be prosecuted for criminal contempt of court.

Source: This Rule is in part derived from former Rule 780 and M.D.R. 780 and is in part new.

The Chair explained that the Committee had received three different versions of Rule 4-601. The reason is for transparency, so that the Committee could see (1) what the Rule would look like without the underlining and strike-throughs, (2) the amendments to the version of the Rule that was approved at

the June, 2014 Rules Committee meeting, and (3) what the Rule would look like when the current Rule is amended. Rule 4-601 is back for consideration in light of concerns that had surfaced just a few weeks ago and that should have been recognized earlier but were not. The amendments to Rule 4-601 are made necessary by the enactment of Chapter 107, Laws of 2014 (HB 1109). This statute permits judges to receive applications for search warrants and to issue search warrants by electronic means, either fax or e-mail. The Criminal Subcommittee looked at House Bill 1109 and concluded that all that was needed was to add to Rule 4-601 a restatement of the statutory language. The Subcommittee recommended the Rule with the statutory language added, and the Rules Committee had approved it.

Unfortunately, upon further examination, it became clear that insufficient attention was given to how this electronic process actually would work or to some of the statutory language that on closer examination is at best ambiguous and could create problems. Several weeks ago, some of the circuit court clerks picked up on at least one of those provisions in House Bill 1109 and raised their concerns about it. One of the provisions would delete from Rule 4-601 a section that precluded the filing of search warrant documents with the clerk prior to the execution of the warrant. An analysis of this concern showed that it was valid, and even worse, it revealed several problems with the other parts of the statute.

The Chair commented that, upon this realization he and the

Reporter gave further study to the bill and Rule and had spoken to one of the co-sponsors of the bill and also to Committee Counsel for the House Judiciary Committee. They had obtained the relevant legislative documents and they had spoken to a federal judge and a federal magistrate as to how the federal courts address this. They discussed their concerns with the Conference of Circuit Court Judges, which had met the previous Monday. Judge John Morrissey, Chief Judge of the District Court, had been present, and all of the judges at the meeting agreed that Rule 4-601 needed some further amendments to resolve ambiguities and to provide better guidance to the police and judges on how to deal with electronic search warrants.

The Chair noted that the trial judges present at the Rules Committee meeting were familiar with the warrant process, but he was not sure whether the other members understood the process. Understanding the process provides a basis for understanding the problems associated with the statute and Rule.

Under Code, Criminal Procedure Article, §1-203, when a law enforcement officer applies for a search warrant, the judge gets three documents. One is the application for a search warrant. The second document is an affidavit, which sets out the factual basis for the determination of probable cause. The warrant is the third document. The judge keeps one copy of all three documents. He or she gives two copies back to the officer, one for service, and one for the officer to keep and then return to the judge once the warrant has been executed.

The Chair said that the law requires that when, executing the warrant, the officer ordinarily must leave a copy of these documents with the owner of the property seized or the occupant of the premises. There is one exception to that requirement. The law expressly permits the judge to place the affidavit under deal usually to protect a cooperating witness or the integrity of an ongoing investigation. If that event, the officer does not leave a copy of the affidavit, at that time. Unfortunately, House Bill 1109 can be read to delete that exception. The statute provides that the executing law enforcement officer must leave a copy of the affidavit at the premises searched. It does not provide that it should only be left if it is unsealed. It is not a good idea to leave a sealed document with the person whose property is being taken.

The Chair pointed out that another issue with the changes to Rule 4-601 pertains to the filing of the warrant documents. Subsection (a)(2)(V) of the statute provides that the judge shall file a copy of the signed and dated search warrant, the application, and the affidavit with the court. It does not say when it should be filed. From the structure of the bill, it could be construed to mean that the filing occurs when the judge issues the warrant. The Subcommittee had construed it that way and, in deference to the Legislature, they recommended and the Committee approved deleting the part of the Rule that provided that those documents were not to be filed until the warrant has been executed. That needs to be rethought.

The Chair commented that there were some other ambiguities, not from what the statute had provided, but from what it did not provide and from what Rule 4-601 does not provide.

The Chair's understanding was that most applications for search warrants are presented to a judge during ordinary business hours. However, a number of them involve the police seeking a warrant after hours, either on weekends or after 4:30 p.m. The judges have warrant duty. One or more judges are designated as the ones the officer would come to if the officer wants a search warrant when court is not in session. In a county, such as Somerset, where Judge Price is the only District Court judge, she has warrant duty all of the time. In Baltimore City and the other metropolitan counties, the judges rotate warrant duty for a period of about a week. With the appropriate documents, the officer may seek out a judge at 2 o'clock a.m. at the judge's home. It is basically the same process as if the officer had come to the courthouse except that a District Court commissioner calls the judge in advance to inform him or her that an officer is on the way.

The Chair inquired how this would work if the request for a warrant is made electronically. Does this request go to the judge's personal computer, which may have various social media sites on it, such as Facebook and Twitter? Judges in Maryland will be getting State i-pads. It has to be clear that the social media sites should not be put on the State i-pads, and that the judge's children should not be able to access the i-pad, although

this cannot be done by Rule. The search warrant applications must be secure, and the computer should not be subject to corruption.

The Chair noted that although this is not a Rules issue, the issue of where the electronic transmission is going to go needs to be considered. If the request for a warrant is transmitted electronically, and the judge signs the warrant and transmits it back to the officer, what will be the original copy of the warrant? What will be the official record? One of the magistrate judges in the U.S. District Court in Maryland had advised the Chair that the federal courts deal with sophisticated federal agencies such as the Federal Bureau of Investigation, the Secret Service, the Drug Enforcement Administration, and they require paper. They will accept an electronic application and they will issue a warrant electronically, when there is a time exigency, but it is backed up with paper the next day.

The Chair suggested that some language should be added to Rule 4-601 to make clear that what is received by electronic transmission should be printed out by the judge as the official document. The true warrant should not be what the officer prints out.

The Chair told the Committee that these were some of the issues that were addressed in the version of Rule 4-601 that was before them today. Section (b) of the Rule, Submission of Application, makes clear that the application may be submitted in paper form, by fax, or by electronic mail. If the application is

submitted by fax or e-mail, the transmission must be secure. When House Bill 1109 was pending in the House Judiciary Committee, the Judiciary of Maryland filed a response pointing out that unless the electronic transmission was done under MDEC, the Judiciary could not attest that the transmission was secure.

The Chair commented that the Judiciary had noted that MDEC is not going to be fully operational for several years, and the Judiciary suggested that electronic transmission should not be done until MDEC is fully operational. The legislature did not pay any attention to this, but what they did was to add the word "secure" before the nouns "fax" or "electronic mail." The Chair asked what the word "secure" meant. In whose judgment is the process deemed "secure"?

The Chair said that section (b) of Rule 4-601 provides that a search warrant application is submitted by delivery of a application, supporting affidavit, and proposed search warrant (1) in paper form, (2) secure facsimile, or (3) secure electronic mail, if the electronic transmission provides a complete and printable image of the application, the supporting affidavit, and the proposed search warrant. The proposed warrant the officer is sending must be in editable form, so the judge can change it if he or she so chooses. This is taken from the current MDEC rule, Rule 20-201, Requirements for Electronic Filing, which requires that proposed orders be in editable form. Another suggestion was that if the applicant also wants the affidavit sealed, such a request should be put into the application.

The Chair noted that there had been a question about any discussion of the application between the officer and the judge. The judge may have questions about any or all of the three documents. It has to be clear is that any oral or electronic discussion cannot change anything that is in the affidavit, because the law is clear that probable cause is determined solely from the four corners of the affidavit and nothing else. A Committee note is being proposed that is simply prophylactic. The judge can talk to the officer to get some explanations, but that conversation cannot be to the point of altering in any way what is in the affidavit. The federal courts take applications over the telephone. The Maryland legislature did not permit this. The federal rule requires that the telephone conversation about the application be recorded and that the officer be placed under oath. This is the equivalent of the affidavit.

The Chair drew the Committee's attention to section (c) of Rule 4-601, Issuance of Search Warrant. This section provides the same three methods for transmitting the documents back to the officer, by paper, fax, or e-mail. Section (d), Retention of Application and Affidavits - Secrecy, makes clear that the judge has to retain his or her copy of the documents until the warrant is returned and then, but not before then, file those documents with the clerk. Section (d) also makes clear that the printed copy of the warrant obtained by the judge is the original.

The Chair said that section (e) of Rule 4-601, Executed Warrant - Inventory; Copy, addresses the executed warrant. It

adds a requirement that the inventory include a general description of any electronically stored information received pursuant to the warrant. At the Conference of Circuit Court Judges meeting, the Chair had found out that in some counties, if the warrant is used to obtain electronic information, for example telephone records, what is received is not described in the return prepared by the officer, but in other counties, it is described. The focus in section (e) is that there should be a record made of it, because otherwise, it is invisible. This is a policy issue for the Committee and ultimately, the Court of Appeals to determine. The proposal is that the inventory should include a description of everything that the officer got under warrant. For phone records, the phone numbers or other details would not need to be included, but simply a general description of what was obtained.

The Chair pointed out that section (e) also makes clear that the officer does not leave a copy of the affidavit with the owner or occupant if the affidavit has been sealed. The seal is only good for 30 days subject to one extension for 30 days, so the judge can seal the affidavit for up to 60 days. Once the seal expires, then Rule 4-601 requires that the owner or occupant can get a copy of the affidavit.

The Chair said that section (g), Executed Warrant - Return, requires that if the return is made to the judge electronically, the officer shall also deliver the original signed and dated return and inventory and the executed warrant to the judge not

later than the next business day. Section (h), Unexecuted Warrants, puts into Rule 4-601 the statutory provision that a search warrant is good for only 15 days. If it is not served within that time, it expires, and the petitioner has to get a new one. This was added to the Rule, so that everyone understands it. If the warrant is unexecuted within this time, the petitioner is required to return it to the judge. The judge can make any disposition of it that the judge chooses.

Mr. Sullivan noted a typographical error in subsection (h)(2) of Rule 4-601. The word "become" should be the word "becomes." By consensus, the Committee agreed to make this change.

The Honorable C. Philip Nichols, Jr., a judge of the Circuit Court for Prince George's County, commented that there had been some changes to the statute to which no one had objected. Delegate Vallario had asked five legislative interns to research how search warrants are handled in the various states. Delegate Vallario then picked the method used in Oregon. Judge Nichols remarked that the world moves by e-mail. The issue of a secure fax had been raised by someone, but no one could define what a "secure" fax is. His view was that there is no such thing as a "secure" fax. The Judiciary Committee of the House of Delegates defined it as "password protected." In Judge Nichols' county, the judges have i-pads, which are similar to a personal computer. Prince George's County had had trouble with search warrants. The search warrant is often a critical piece of evidence. With

electronic transmission, time and distance factors are addressed.

The Chair said that he did not think that there was any objection to authorizing electronic transmission of search warrant applications. Some questions had arisen about how this process would actually work. Judge Nichols remarked that the 7-word change to the statute would allow the Rules Committee to put the process into Rule 4-601. It would not be necessary for the legislature to revisit this procedure if the technology changes. The Chair noted that about 30 states allow electronic transmission of search warrants. Some of the transmissions are telephonic. The Maryland legislature did not approve this.

Judge Nichols asked how a telephonic transmission would operate. He could understand how a call to a judge in the middle of the night would work. Requests for a search warrant are a heavy burden in Baltimore City. Calls can come in at night every two hours. The Chair explained that no suggestions were being made that would discourage the use of electronic search warrants.

Judge Nichols asked about section (j), which provides that after a warrant is executed, a public officer or employee may disclose the contents of a search warrant. Judge Nichols had had instances where the contents needed to be kept secret for more than 30 days. Sometimes, the information in the warrant should not be disclosed for a while. The Chair noted that this is one part of House Bill 1109 that needs to be changed.

The Chair asked Ms. Rossmark, who is counsel to the House Judiciary Committee, if she had any comment. She replied that

Rule 4-601, as amended, incorporated the provisions of the bill.

The Chair said that the changes to Rule 4-601 had not been approved by the Criminal Subcommittee, so a motion would be needed to approve it. Mr. Frederick moved to approve the changes to Rule 4-601, and the motion was seconded.

The Chair asked the judges present about their experiences with search warrants. Judge Mosley replied that she had issued search warrants in the middle of the night. Ms. McBride inquired if there was a requirement for an in-person search warrant for the police officer and the judge to meet in person. Could a judge execute a search warrant electronically from another state?

The Chair responded that his understanding was that District Court judges have statewide jurisdiction. A District Court judge in any county can issue a search warrant to be executed in any other county. The circuit court judges are limited to their circuit. Judge Eaves confirmed that the circuit court judges are limited to issuing search warrants in their circuit. Her circuit includes Baltimore and Harford Counties, and she had never been asked to issue a search warrant for Baltimore County. In response to Ms. McBride's question, if a judge is away on vacation, he or she is likely not to be the duty judge who will handle the warrants. That judge will be someone who remains in the jurisdiction.

Ms. McBride noted that before electronic transmission of search warrants, the warrants had to be applied for in person. The Chair was not sure of the answer to whether a judge can issue

a search warrant electronically while not in the judge's jurisdiction. Judge Ellinghaus-Jones remarked that she did not think that the judge's physical location mattered. What is important is whether the judge has jurisdiction over the area where the warrant is to be executed. Judge Nichols commented that early cases required the judge to be in his or her jurisdiction, but later cases have modified this. If a search warrant is issued electronically, it would not be known where the issuing judge is located. The Chair said that this issue will be resolved judicially if it arises.

The Chair called for a vote on the motion to approve Rule 4-601. The motion passed with a unanimous vote.

Agenda Item 2. Consideration of proposed amendments to Rule 16-101 (Administrative Responsibility)

The Chair presented Rule 16-101, Administrative Responsibility, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL DUTIES, ETC.

AMEND Rule 16-101 to add a new section (e) pertaining to compliance with certain fiscal, procurement, and personnel standards, as follows:

Rule 16-101. ADMINISTRATIVE RESPONSIBILITY

a. Chief Judge of the Court of Appeals

1. Generally

The Chief Judge of the Court of Appeals has overall responsibility for the administration of the courts of this State. In the execution of that responsibility, the Chief Judge:

(A) may exercise the authority granted by the Rules in this Chapter or otherwise by law;

(B) shall appoint a State Court Administrator to serve at the pleasure of the Chief Judge;

(C) may delegate administrative duties to other persons within the judicial system, including retired judges recalled pursuant to Md. Constitution, Article IV, §3A; and

(D) may assign a judge of any court other than an Orphans' Court to sit temporarily in any other court.

2. Pretrial Proceeding in Certain Criminal Cases

The Chief Judge of the Court of Appeals may, by Administrative Order, require in any county a pretrial proceeding in the District Court for an offense within the jurisdiction of the District Court punishable by imprisonment for a period in excess of 90 days.

b. Chief Judge of the Court of Special Appeals

The Chief Judge of the Court of Special Appeals, subject to the direction of the Chief Judge of the Court of Appeals and pursuant to the provisions of this Title, shall be responsible for the administration of the Court of Special Appeals. In fulfilling that responsibility, the Chief Judge of the Court of Special Appeals shall possess, to the extent applicable, the

authority granted to a County Administrative Judge in section d of this Rule. In the absence of the Chief Judge of the Court of Special Appeals, the provisions of this Rule shall be applicable to the senior judge present in the Court of Special Appeals.

c. Circuit Administrative Judge

1. Designation

In each judicial circuit there shall be a Circuit Administrative Judge, who shall be appointed by order and serve at the pleasure of the Chief Judge of the Court of Appeals. In the absence of any such appointment, the Chief Judge of the judicial circuit shall be the Circuit Administrative Judge.

2. Duties

Each Circuit Administrative Judge shall be generally responsible for the administration of the several courts within the judicial circuit, pursuant to these Rules and subject to the direction of the Chief Judge of the Court of Appeals. Each Circuit Administrative Judge shall also be responsible for the supervision of the County Administrative Judges within the judicial circuit and may perform any of the duties of a County Administrative Judge. The Circuit Administrative Judge shall also call a meeting of all judges of the judicial circuit at least once every six months.

Cross reference: For more detailed provisions pertaining to the duties of Circuit Administrative Judges, see section (d) of Rule 4-344 (Sentencing - Review); Rule 16-103 (Assignment of Judges); and Rule 16-104 (Judicial Leave).

d. County Administrative Judge

1. Appointment

After considering the recommendation of the Circuit Administrative Judge, the Chief Judge of the Court of Appeals shall

appoint a County Administrative Judge for each circuit court, to serve in that capacity at the pleasure of the Chief Judge. Except as permitted by subsection c. 2. of this Rule, the County Administrative Judge shall be a judge of that circuit court.

2. Duties

Subject to the provisions of this Chapter, the general supervision of the Chief Judge of the Court of Appeals, and the general supervision of the Circuit Administrative Judge, the County Administrative Judge is responsible for the administration of the circuit court, including:

(A) supervision of the judges, officials, and employees of the court;

(B) assignment of judges within the court pursuant to Rule 16-202 (Assignment of Actions for Trial);

(C) supervision and expeditious disposition of cases filed in the court, control over the trial and other calendars of the court, assignment of cases for trial and hearing pursuant to Rule 16-102 (Chambers Judge) and Rule 16-202 (Assignment of Actions for Trial), and scheduling of court sessions;

(D) preparation of the court's budget;

(E) preparation of a case management plan for the court pursuant to Rule 16-202 b.;

(F) preparation of a continuity of operations plan for the court;

(G) preparation of a jury plan for the court pursuant to Code, Courts Article, Title 8, Subtitle 2;

(H) preparation of any plan to create a problem-solving court program for the court pursuant to Rule 16-206;

(I) ordering the purchase of all

equipment and supplies for (i) the court, and (ii) the ancillary services and officials of the court, including masters, auditors, examiners, court administrators, court reporters, jury commissioner, staff of the medical offices, and all other court personnel except personnel comprising the Clerk of Court's office;

(J) supervision of and responsibility for the employment, discharge, and classification of court personnel and personnel of its ancillary services and the maintenance of personnel files, unless a majority of the judges of the court disapproves of a specific action. Each judge, however, has the exclusive right, subject to budget limitations, any applicable administrative order pertaining to the judiciary's anti-nepotism policy, and any applicable personnel plan, to employ and discharge the judge's personal secretary and law clerk;

Committee note: Article IV, §9, of the Constitution gives the judges of any court the power to appoint officers and, thus, requires joint exercise of the personnel power.

(K) implementation and enforcement of all administrative policies, rules, orders, and directives of the Court of Appeals, the Chief Judge of the Court of Appeals, the State Court Administrator, and the Circuit Administrative Judge of the judicial circuit; and

(L) performance of any other administrative duties necessary to the effective administration of the internal management of the court and the prompt disposition of litigation in it.

Cross reference: See *St. Joseph Medical Ctr. v. Hon. Turnbull*, 432 Md. 259 (2013) for authority of the county administrative judge to assign and reassign cases but not to countermand judicial decisions made by a judge to whom a case has been assigned.

3. Delegation of Authority

(A) With the approval of the Circuit Administrative Judge or in accordance with a continuity of operations plan adopted by the court, a County Administrative Judge may delegate one or more of the administrative duties and functions imposed by this Rule to (i) another judge or a committee of judges of the court, or (ii) one or more other officials or employees of the court.

(B) Except as provided in subsection d. 3. (C) of this Rule, in the implementation of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), a County Administrative Judge may (i) with the approval of the Chief Judge of the Court of Appeals, authorize one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for jury trial, and (ii) authorize not more than one judge at a time to postpone all other criminal cases.

(C) The administrative judge of the Circuit Court for Baltimore City may authorize one judge sitting in the Clarence M. Mitchell courthouse to postpone criminal cases set for trial in that courthouse and one judge sitting in Courthouse East to postpone criminal cases set for trial in that courthouse.

e. Compliance with Certain Fiscal, Procurement, and Personnel Standards

1. Section e. of this Rule applies to units, other than courts, that are not part of the Executive or Legislative Branch of the State; and

(A) that are funded, in whole or in part, through appropriations to the Judicial Branch;

(B) whose budgets are subject to approval by the Court of Appeals or the Chief Judge of that Court; or

(C) that are subject to audit by the

Court of Appeals, the Administrative Office of the Courts, or the State Court Administrator.

2. Units to which this section applies shall prepare their proposed budgets and exercise procurement and personnel decisions in conformance with standards and guidelines promulgated by the State Court Administrator.

3. This section is not intended to limit any other supervisory or approval authority of the Court of Appeals, the Chief Judge of that Court, the State Court Administrator, or the Administrative Office of the Courts over units subject to that authority.

Source: This Rule is in part derived from former Rule 1200 and is in part new.

Rule 16-101 was accompanied by the following Reporter's note.

The proposed amendments to Rule 16-101 add a new section e., requiring compliance by various units of the Judicial Branch with fiscal, procurement, and personnel standards and guidelines promulgated by the State Court Administrator.

Section e. covers units that: (1) are funded in whole or in part through Judicial Branch appropriations; (2) have budgets subject to approval by the Court of Appeals or by the Chief Judge of that Court; or (3) are subject to audit by the Court of Appeals, the Administrative Office of the Courts, or the State Court Administrator. It is not applicable to courts or any unit of the Executive or Legislative Branch of State government.

The Rule is intended to promote increased transparency and uniformity of fiscal, procurement, and personnel standards, while preserving the autonomy needed for the routine daily operation of the covered units.

The Chair explained that the amendment to Rule 16-101 requires that units in the judicial branch (1) that are funded through appropriations to the judicial branch, (2) whose budgets are subject to approval by the Court of Appeals or the Chief Judge of that Court or (3) are subject to audit by the Court of Appeals, the Administrative Office of the Courts, or the State Court Administrator, must prepare their budgets and exercise procurement and personnel decisions in conformance with standards and guidelines promulgated by the State Court Administrator. The intent of this change is to avoid problems that could arise later when the Court, the Chief Judge, or the State Court Administrator are called upon to approve expenditures that are not consistent with either personnel or procurement policy. The addition to Rule 16-101 is more of a prophylactic measure with no new grant of authority, because the actions of procurement and personnel require the expenditure of money, and if the Court of Appeals looks at the budget and disapproves it, the unit will not be able to spend the money.

The Chair commented that Bar Counsel had raised some concerns about the application of Rule 16-101 to the Attorney Grievance Commission. Mr. Grossman said that at the General Court Administration Subcommittee meeting, he had expressed some concerns over questions about administrative autonomy of the Office of Bar Counsel and the Attorney Grievance Commission because of the proposed amendment to Rule 16-101. He and his colleagues hoped that the productive discussion at the

Subcommittee meeting would result in a Rule change that would address the concern of the Court of Appeals but maintain the autonomy of the Office of Bar Counsel and the Attorney Grievance Commission. The Reporter asked whether Mr. Grossman was speaking about the version of Rule 16-101 that had been handed out at the meeting. He replied affirmatively. Ms. Lamone told the Committee that she was the Chair of the Attorney Grievance Commission. She said that the Commission wholeheartedly supported the latest amendment to Rule 16-101.

Ms. Harris suggested that section (f) be changed to subsection (e)(3), and subsection (e)(3) would then become subsection (e)(4). The Chair drew the Committee's attention to current subsection (e)(3). It read: "This section is not intended to limit any other supervisory or approval authority of the Court of Appeals, the Chief Judge of that Court, the State Court Administrator, or the Administrative Office of the Courts over units subject to that authority." If the new language is put into section (e), it would be subject to what subsection (e)(3) provides. Section (f) should be moved to become new subsection (e)(3), and subsection (e)(3) would become subsection (e)(4). By consensus, the Committee approved this change.

Mr. Jarashow told the Committee that he was the treasurer of the Maryland Professionalism Center and with him was Regine Francois, Esq., the Executive Director of the Center. They are one of the groups that would be subject to the proposed change to Rule 16-101. They support the amended Rule to the extent that

they currently comply with it. Rule 16-407, Maryland Professionalism Center, created the Center. It provides that a judge of the Court of Appeals is the Chair of the Center. Currently, the Chair is the Honorable Lynne Battaglia. The Center is subject to the review and supervision of the Court of Appeals. Their budget is currently submitted to the Court of Appeals, and they are audited by the Judiciary auditors, so the amendment to Rule 16-101 is unnecessary. However, they have no opposition to it.

Ms. Francois said that the concern of the Maryland Professionalism Center was that their budget is very unpredictable, and they were concerned that Rule 16-101 may affect some of their programs. They need fluidity for their budget. Mr. Jarashow added that they are supposed to undertake eight or ten activities. They have undertaken three or four of them, including the course for new admittees to the bar, some other training, and a mentoring program. There are some other activities pending, including outreach to judges, the public, and other attorneys that they have yet to plan the programs for. If they submit a budget, and the budget is fixed, they may have trouble undertaking some of those activities.

Ms. Harris commented that it was not the Judiciary's intention to micromanage the activities of the various departments and organizations of the Judiciary. The change to Rule 16-101 had been requested by the Court of Appeals. Mr. Grossman pointed out that subsection (e)(1) has language that has

been added that excludes the Attorney Grievance Commission from the scope of section (e). If section (f) becomes subsection (e)(3), then new subsection (e)(4) would not apply to the Attorney Grievance Commission. The Chair told the Committee that the Style Subcommittee would address this issue and redraft the Rule so that new subsection (e)(4) applies to the Attorney Grievance Commission.

The Chair added that another change to Rule 16-101 may be needed to accommodate the proposed amendment. Subsection (e)(1) provides that it applies to units that are not part of the Executive or Legislative Branch of the State. The reason that this language had been chosen was because of the historic disagreement between the legislature and the Court of Appeals as to what the Attorney Grievance Commission is. The Commission had been created by a Rule of the Court of Appeals, so it is clearly a judicial agency. The debate is about the money. Is it State money, or is it the attorneys' money? A concern had been expressed that the Commission might not be part of the judicial branch of the government, at least fiscally. The Chair expressed the view that it would be appropriate to leave the Rule the way it was presented.

Mr. Sullivan referred to subsection (f)(3) of Rule 16-101 as it was presented. He asked if the reports have some substance to them, or if they simply have one pro forma sentence that reads "we operate in a manner consistent with the State's established procurement and personnel standards and guidelines." Mr.

Grossman said that the intent of the report is just one more level of assurance to the State Court Administrator.

The Chair said that what was before the Committee was a proposed amendment to a Subcommittee recommendation, so it would take a motion to approve it. Mr. Frederick moved to approve Rule 16-101 as it had been amended at the meeting, the motion was seconded, and it carried by a majority. The amended Rule will be subject to clarification by the Style Subcommittee.

Agenda Item 3. Consideration of proposed new Title 17, Chapter 500 (Collaborative Law Process) and amendments to: Rule 1-101 (Applicability), Rule 17-101 (Applicability), Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer) of the Maryland Lawyers' Rules of Professional Conduct

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The Chair presented Rules 1-101, Applicability; 17-101, Applicability; 17-501, Applicability; 17-502, Definitions; 17-503, Informed Consent; Contents of Agreement; 17-504, Stay; 17-505, Termination of Collaborative Law Process; Withdrawal of Appearance; 17-506, Scope of Representation; 17-507, Confidentiality; Privilege; and Rule 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 100 – APPLICABILITY AND CITATION

AMEND Rule 1-101 (q) to add

collaborative law processes to the applicability of Title 17, as follows:

Rule 1-101. APPLICABILITY

. . .

(q) Title 17

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

. . .

Rule 1-101 was accompanied by the following Reporter's note.

The proposed amendment to Rule 1-101 (q) adds collaborative law processes under the Maryland Uniform Collaborative Law Act to the applicability of Title 17.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 17-101 by adding a new section (f) pertaining to the applicability of Chapter 500 and by making conforming amendments to section (a) and to the committee note following section (a), as follows:

Rule 17-101. APPLICABILITY

(a) General Applicability of Title

Except as provided in sections (b) and (f) of this Rule, the Rules in this Title apply when a court refers all or part of a civil action or proceeding to ADR.
Committee note: The Rules in this Title other than the Rules in Chapter 500 do not apply to an ADR process in which the parties participate without a court order of referral to that process.

(b) Exceptions

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

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

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

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

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

(c) Applicability of Chapter 200

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

(d) Applicability of Chapter 300

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

(e) Applicability of Chapter 400

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

Appeals.

(f) Applicability of Chapter 500

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

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

Rule 17-101 was accompanied by the following Reporter's note.

Rule 17-101 is amended by the addition of new section (f), pertaining to the applicability of Chapter 500. Proposed new Chapter 500 contains Rules applicable to collaborative law processes under the Maryland Uniform Collaborative Law Act, regardless of whether an action or proceeding is pending in a court. Section (a) and the Committee note following section (a) are amended to conform to the addition of section (f).

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 - COLLABORATIVE LAW PROCESS

ADD new Rule 17-501, as follows:

Rule 17-501. APPLICABILITY

This Chapter applies to a collaborative law process under Code, Courts Article, Title 3, Subtitle 19 (Maryland Uniform Collaborative Law Act).

Source: This Rule is new.

Rule 17-501 was accompanied by the following Reporter's note.

Rule 17-501 sets forth the applicability of proposed new Chapter 500.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-502, as follows:

Rule 17-502. DEFINITIONS

In this Chapter, the definitions in Code, Courts Article §3-1901 apply except as expressly otherwise provided or as necessary implication requires, and the term "collaborative attorney" has the meaning stated in Code, Courts Article, §3-1901 (e) for "collaborative lawyer."

Committee note: Code, Courts Article, §3-1901 contains definitions of "person" and "proceeding" that differ from the definition in Rule 1-202. In this Chapter, the statutory definitions supersede the definitions of "person" and "proceeding" in Rule 1-202.

Source: This Rule is new.

Rule 17-502 was accompanied by the following Reporter's note.

Rule 17-502 incorporates by reference definitions in the Uniform Collaborative Law Act, except that the term "collaborative lawyer" in the Act is replaced by the term

"collaborative attorney." The definitions of "person" and "proceeding" in the Act supersede the definitions of these words in Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-503 as follows:

Rule 17-503. INFORMED CONSENT; CONTENTS OF AGREEMENT

(a) Requirements Before a Collaborative Law Process Begins

Before beginning a collaborative law process, an attorney shall:

(1) discuss with the client factors the attorney reasonably believes relate to whether a collaborative law process is appropriate;

(2) provide the client with information that the attorney reasonably believes is sufficient for the client to make an informed decision about the material benefits and risks of a collaborative law process;

(3) advise the client that participation in a collaborative law process is voluntary and any party has the right unilaterally to terminate a collaborative law process with or without cause;

(4) explain to the client that if the collaborative law proceeding terminates prior to full resolution of all collaborative matters, the client will need to obtain another attorney or proceed without an

attorney; and

(5) make a reasonable effort to determine whether the client has a history of a coercive or violent relationship with another prospective party, and if such circumstances exist, to determine whether a collaborative law process is appropriate.

(b) Certification and Acknowledgment

In addition to complying with the requirements of Code, Courts Article, §3-1902, a collaborative law participation agreement shall contain a certification by each collaborative attorney that the collaborative attorney has complied with section (a) of this Rule and an acknowledgment by all parties of the requirements under Rule 17-506 applicable to the party's attorney and to each other attorney who will participate in the collaborative law process.

Source: This Rule is new.

Rule 17-503 was accompanied by the following Reporter's note.

Rule 17-503 sets forth the requirements for informed consent and the contents of an agreement in a collaborative law process.

Section (a) covers the issues that an attorney must discuss with a client considering a collaborative law process. The intent of this section is to ensure that prior to entering into a collaborative law participation agreement, a client has sufficient information to decide whether the process meets the client's needs.

Subsections (a)(1) – (4) list the topics the collaborative attorney must discuss with the client before the agreement is signed. In addition, subsection (a)(5) requires the attorney to consider any history of a coercive or violent relationship and, if such history exists, make a reasonable effort to determine whether a collaborative law process

is appropriate.

Section (b) requires that a collaborative law agreement contain a certification that the attorney has complied with section (a) and an acknowledgment by all parties as to limitations of the scope of representation applicable to each attorney who will participate in the collaborative law process.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-504, as follows:

Rule 17-504. STAY

(a) Motion

The parties to a pending court action may file a joint motion to stay court proceedings during a collaborative law process. The motion shall include a certification that a collaborative law participation agreement that complies with the requirements of Code, Courts Article, §3-1902 and Rule 17-503 has been signed by all parties and their attorneys.

(b) Order; Extension of Stay

Subject to sections (c) and (d) of this Rule, upon the filing of a joint motion by all parties, the court shall stay court proceedings for a reasonable period of time during the collaborative law process, unless the court finds the existence of extraordinary circumstances requiring denial of the motion. On motion of the parties, for

good cause shown, the court may enter an order to extend a stay. An order to stay court proceedings and an order to extend a stay shall specify the date on which the stay terminates, subject to an earlier lifting of the stay in accordance with section (d) of this Rule.

(c) Proceedings during Stay.

During a stay, a party and the party's attorney may appear before a court to:

(1) request or defend against a request for an emergency order to protect the health, safety, welfare, or interest of a party or party eligible for relief; or

(2) request approval of a full or partial settlement of a collaborative law matter.

Cross reference: See Code, Courts Article, §§3-1904 and 3-1905.

(d) Lift of Stay

A court shall lift a stay:

(1) upon request of any party;

(2) on the date stated in an order for stay or for extension of the stay entered pursuant to section (b) of this Rule;

(3) for lack of prosecution under Rule 2-507 or 3-507; or

(4) as necessary to comply with statutory time requirements for proceedings in an orphans' court or before a register of wills relating to the settlement of decedents' estates under Title 6 of the Maryland Rules.

Committee note: Time elapsed during a stay under this Rule is not included in the computation of time under any applicable case management time standards or guidelines.

Source: This Rule is new.

Rule 17-504 was accompanied by the following Reporter's note.

> Rule 17-504 requires the court to stay a pending court case for a reasonable period of time during a collaborative law process upon a joint motion by all parties, unless the court finds that extraordinary circumstances require denial of the motion.
>
> Section (b) requires that the order for stay contain a termination date and permits the court to extend the stay for good cause shown.
>
> Section (c) comports with the requirements of Code, Courts Article, §§3-1904 and 3-1905, permitting certain court proceedings during a stay.
>
> Section (d) provides for the lifting of the stay upon the occurrence of any of the four circumstances listed.
>
> A Committee note at the end of the Rule notes that a stay order under Rule 17-504 does not adversely impact a court's compliance with any applicable case management time standards or guidelines.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-505, as follows:

Rule 17-505. TERMINATION OF COLLABORATIVE LAW PROCESS; WITHDRAWAL OF APPEARANCE

(a) If All Collaborative Matters Resolved

At the conclusion of a collaborative

law process that resolves all collaborative matters and all other issues in an action pending in a court, the parties shall file:

(1) a stipulation of dismissal;

(2) a consent judgment; or

(3) a request for other appropriate relief necessary or desirable to implement the parties' agreement resulting from the collaborative law process.

(b) Unresolved Collaborative Matters

If a collaborative matter or other issue remains unresolved at the conclusion of a collaborative law process pertaining to an action pending in a court, a collaborative law attorney shall:

(1) notify the court that the collaborative law process has terminated and, if a stay is in effect, request that it be lifted;

(2) if the parties agreed to a resolution of any collaborative matter that requires court action for implementation of the parties' agreement, request such action from the court; and

(3) file a notice or a motion, as appropriate, to withdraw.

Cross reference: See Rules 2-132 and 3-132.

(c) Motion to Require Compliance

If a collaborative attorney who is required to file a notice or motion to withdraw has not done so within a reasonable time after termination of the collaborative law process, a party may file a motion to require the collaborative law attorney to comply with subsection (b)(3) of this Rule.

Source: This Rule is new.

Rule 17-505 was accompanied by the following Reporter's note.

Rule 17-505 sets forth the procedures for the termination of a collaborative law process and the withdrawal of an attorney's appearance.

Section (a) contains provisions to remove a stayed case from the court's docket when the collaborative law process has resolved all issues in the pending action. If all issues are resolved, the parties are required to file a stipulation of dismissal, a consent judgment, or a request for appropriate relief to implement the parties' agreement resulting from the collaborative law process.

If the collaborative law process has concluded without resolving all issues, section (b) requires a collaborative law attorney to (1) notify the court and request that any stay be lifted, (2) advise the court of the resolution of any collaborative matter that requires court action and request such action, and (3) file a notice or a motion to withdraw.

If an attorney does not file a required notice or motion to withdraw after termination of the collaborative law process, section (c) permits a party to file a motion to require compliance by the attorney.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-506, as follows:

Rule 17-506. SCOPE OF REPRESENTATION

(a) Definitions

In this Rule, "firm" and "screened" have the meanings stated in **[**Rule 1.0 of the Maryland Lawyers' Rules of Professional Conduct**]** **[**the Maryland Attorneys' Rules of Professional Conduct, Rule 19-301.0**]**.

(b) Generally

Except as otherwise provided in section (c) of this Rule:

(1) a collaborative attorney who represents a client in a collaborative law process pursuant to a collaborative law participation agreement may not represent a party in a proceeding related to the collaborative matter, notwithstanding any subsequent agreement between the client and the attorney; and

(2) an attorney associated with a firm with which the collaborative attorney is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative attorney is prohibited from doing so under this section.

(c) Exceptions

(1) If the collaborative attorney is associated with a firm that is (A) a legal services organization providing legal services to indigent individuals or (B) the legal department of a government, another attorney in the firm may represent the collaborative attorney's client in a proceeding, provided that the collaborative attorney is timely screened from participation in the subsequent representative and full disclosure of this exception is made and acknowledged in the collaborative law participation agreement.

Cross reference: See Rule 17-503 (b).

(2) A collaborative attorney may represent a party in connection with the filing of a stipulation, consent judgment, or request for court action to implement an agreement resolving a collaborative matter.

Cross reference: See Rule 17-505 (a) and (b)(2).

Source: This Rule is new.

Rule 17-506 was accompanied by the following Reporter's note.

Rule 17-506 sets forth the scope of representation in a collaborative law process. Subject to two exceptions, the Rule provides that after a collaborative law process ends, a collaborative attorney or an attorney associated with a firm with which the collaborative attorney is associated may not represent any party to the collaborative law process in a proceeding related to the collaborative matter.

One exception is that if a collaborative attorney is associated with the legal department of a government or with a legal services organization serving indigent individuals, another attorney associated with the legal department or organization may represent the client, provided that there was full disclosure of this exception in the collaborative law participation agreement and there is appropriate screening of the collaborative attorney from the subsequent representation.

A second exception permits continued representation if needed to implement an agreement resolving a collaborative matter.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 500 – COLLABORATIVE LAW PROCESS

ADD new Rule 17-507, as follows:

Rule 17-507. CONFIDENTIALITY; PRIVILEGE

Code, Courts Article, §§3-1908 through 3-1911 govern confidentiality of collaborative law communications and the privilege against disclosure of information.

Source: This Rule is new.

Rule 17-507 was accompanied by the following Reporter's note.

Rule 17-507 incorporates by reference the confidentiality and privilege provisions set forth in Code, Courts Article, §§3-1908 through 3-1911.

MARYLAND RULES OF PROCECURE

APPENDIX: THE MARYLAND **[**LAWYERS'**]** **[**ATTORNEYS'**]** RULES OF PROFESSIONAL CONDUCT

AMEND Rule 1.2 to add a new Comment [8], as follows:

[Rule 1.2.**]** **[**Rule 19-301.2.**]** SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND **[**LAWYER**]** **[**ATTORNEY**]**

. . .

COMMENT

. . .

[8] Representation of a client in a collaborative law process is a type of permissible limited representation. It requires a collaborative law participation agreement that complies with the requirements of Code, Courts Article, §3-1902 and Rule 17-503 (b) and is signed by all parties after informed consent.

~~[8]~~ [9] All agreements concerning a lawyer's representation of a client must accord with the Maryland Lawyers' Rules of Professional Conduct and other law. See, e.g., Rule 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions. - ~~[9]~~ [10] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

~~[10]~~ [11] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In some cases withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rules 1.6, 4.1.

~~[11]~~ [12] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

~~[12]~~ [13] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not

participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

~~[13]~~ [14] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Maryland Lawyers' Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4 (a)(4).

Model Rules Comparison - Rule 1.2 is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for wording changes in Rule 1.2 (a) and the retention of existing Maryland language in Comment [1].

Rule 1.2 was accompanied by the following Reporter's note.

New Comment [8] recognizes a collaborative law process as a type of permissible limited representation. References to the required contents of a collaborative law participation agreement are included in the Comment.

The Chair explained that the Rules being discussed pertained to collaborative law. Most of the Rules were in a new Chapter 500 of Title 17. These are intended to implement the Maryland Uniform Collaborative Law Act, Code, Courts and Judicial Proceedings Article, §§3-1901 - 3-1915, enacted in 2014 as Chapter 342, Laws of 2014 (SB 805). The Chair said that Craig

Little, Esq., who was a collaborative law attorney, was present to address the Committee.

Mr. Little said that on the advice of the Maryland State Bar Association and on the advice of the legislature, he and his colleagues withdrew some of the provisions of the Maryland Uniform Collaborative Law Act that would have been difficult to pass. The suggestion was to put these provisions into a Rule. The Rules before the Committee today implement the Act by going into more detail in some of the provisions that are important to collaborative law.

Mr. Little noted that the most important provision is Rule 17-503, which addresses informed consent. This is a critical piece of the Collaborative Law Rules. It suggests that an attorney go through all of the different scenarios that a particular client could have in terms of alternate dispute resolution and then help that client to make a decision as to which process is better for him or her.

Mr. Little commented that the attorney also does a screening for domestic violence or a history of violence to make sure that the two parties can meet in the same room together. The most important part of the process is that the attorney has to discuss with the client the fact that the collaborative law process is voluntary. An important feature of collaborative law is that, if the parties are not able to settle all of the issues in a particular matter, the attorneys are prohibited from continuing to represent the clients in further litigation. The clients must

obtain new attorneys or proceed *pro se*. It is important to put into the Rules what items the attorney has to discuss with his or her client before the collaborative law process is undertaken.

The point of the process is to make collaborative law and the use of collaborative law consistent and uniform, not only within the State, which is very important, but also across states. Eight states have passed a Uniform Collaborative Law Act in some form, and several states, including Texas and New Jersey, have enacted definitive rules as to how to implement the Act.

Mr. Little remarked that back in April, all of the Legal Aid Bureau attorneys, and all of the attorneys who participate in any of the volunteer service organizations participated in a three-day collaborative law training session. This is important because it means the process is becoming more accessible to people of limited means. They are able to tap into this process, which Mr. Little and his colleagues have found to be tremendously successful, but even more than that, when the responsibility, the authority, or the opportunity is given to the clients to become more involved in discussing how to resolve their issues, the agreements last longer, and the clients do not come back to court as often. This is an important step for Maryland, which leads the way in the collaborative law process. The state is setting new precedents. Mr. Little thanked the Committee for its consideration of this matter.

Mr. Frederick referred to Rule 17-503. He noted that Rule

17-506 incorporates definitions from the current Maryland Lawyers' Rules of Professional Conduct. Section (f) of Rule 1.0, Terminology, has the following definition: "'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Mr. Frederick said that he did not see in Rule 17-503 the last part of the definition of "informed consent" in Rule 1.0 (f) pertaining to the reasonably available alternatives. He expressed the view that this is confusing and suggested that the definition be incorporated by reference in Rule 17-503.

Mr. Little responded that he had no problem with this suggestion. The Chair checked the statute to see if it had a definition of the term "informed consent," but it did not. He remarked that the alternative to the collaborative law process would be litigation.

Ms. Harris asked about the limited period of time for a case that is filed. The case is somewhat in limbo. Once the limit is reached, the case has to be dismissed. What happens to the case? Ms. Bodley, an Assistant Reporter, referred to Rule 17-504, which addresses this. The Reporter observed that some time triggers had been included in the collaborative law process. Mr. Little noted that section (b) of Rule 17-504 provides that the court shall stay court proceedings for a reasonable period of time during the collaborative law process. Ms. Harris commented that

this could work from the viewpoint of the clerks and the computer, but the Honorable Mary Ellen Barbera, Chief Judge of the Court of Appeals, is very cognizant of time standards both for the trial courts and for the appellate courts as well.

The Reporter explained that when the Rules had been drafted, specific requirements had been added. The judge cannot indefinitely extend or grant a stay; there has to be a fixed date. The parties can come back and ask for an extension of the date. This is an affirmative action in that case where the parties have to come back to the judge. If everything goes wrong in the case, Rules 2-507 or 3-507, Dismissal for Lack of Jurisdiction or Prosecution, are triggered, and the case can be terminated pursuant to those Rules. The proponents of the Collaborative Law Rules wanted to have enough flexibility to do what is necessary to work out a resolution of the case.

The Chair suggested that the objective is to get the collaborative law process working before litigation is filed, but it is possible that there could be a pending case, and then the parties decide that they would rather try the collaborative law process to resolve the conflict. Mr. Little suggested that a specific time frame, such as a six-month review, could be added as a provision in Rule 17-504 to bring the parties back to court after they had chosen to participate in the collaborative law process. The judge could call for a status conference to see where the parties are in their attempt to resolve the case. Judge Ellinghaus-Jones commented that in the District Court, all

matters have a date assigned. No case is pending without a date to hear it. If a case is stayed, the clerk will set a date to hear it later.

Mr. Little suggested that the type of litigation usually heard in the collaborative law process would rarely be filed in the District Court. The Chair noted that Rule 17-504 provides that when the court stays court proceedings, a date must be specified on which the stay terminates. The court could have a conference as that date approaches. One of the parties would have to make a request to extend the stay. Judge Mosley noted that Rule 3-507 provides that an action is subject to dismissal for lack of prosecution at the expiration of one year from the last docket entry.

Ms. McBride suggested that language could be added to section (b) of Rule 17-504, so that it would read "...the court shall stay court proceedings for a reasonable period of time, not to exceed 180 days...". She added that any other time frame that is appropriate could be used. Mr. Little responded that the 180 days should not be a termination of the process. This would pressure the parties. Ms. McBride suggested that the language "without good cause shown" could be added. Mr. Little suggested that it be "without review by the court." The Chair pointed out that the Rule provides for review by the court. Mr. Little added that the last sentence of section (b) read: "An order to stay court proceedings and an order to extend a stay shall specify the date on which the stay terminates...".

The Reporter pointed out that this may vary for different types of cases. A flat limitation of 180 days may not always be appropriate. A 30-day stay may be appropriate in a particular case. When the Rule was drafted, the goal was flexibility. If this does not work, the Rule could be revisited, or Ms. Harris could do an administrative communication to the judges to let them know they have to rein in the length of time that is being granted.

Mr. Little agreed that the length of the stays would depend on the complexity of the case. Some cases take longer than six months under normal circumstances. He expressed the view that the concern about the length of the stay was covered by the fact that the stay would have a specific date by which time it either terminates, or the court allows an extension for it to go on.

The Chair said that approval of the set of Rules would not require a motion, because it is a proposal of the General Court Administration Subcommittee. The Reporter asked if the Rules of Professional Conduct are being incorporated by reference. Mr. Sullivan inquired if this means that a cross reference to Rule 1.0 is being added. The Reporter responded that the definition of the term "informed consent" is short. Rule 17-503 lays out a great amount of detail as to what a person is told about the collaborative law process. The last item is subsection (a)(5), which is not about informed consent, but it refers to determining whether a client has a history of a coercive or violent relationship with another party. All of the items in section (a)

flesh out the informed consent plus more. She asked Mr. Frederick to explain what he intended for a change to the Rule. Mr. Frederick answered that it is intended that the attorney is going to comply with the requirements for informed consent, and then the requirements are set out. By consensus, the Committee agreed to modify Rule 17-503, so that it is consistent with the definition of "informed consent" in Rule 1.0.

By consensus, the Committee approved Rules 1-101,17-101, 17-501, 17-502, 17-504, 17-505, 17-506, 17-507, and 1.2 as presented and Rule 17-503, as amended.

Agenda Item 4. Consideration of proposed new Rule 11-601 (Expungement of Juvenile Records) and Forms

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Judge Eaves presented new Rule 11-601, Expungement of Juvenile Records, and new forms entitled "Petition for Expungement of Juvenile Records"; "Order for Expungement of Juvenile Records"; and "Certificate of Compliance" as well as Rules 1-101, Applicability; 4-101, Applicability; and 4-501, Applicability, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

ADD new Rule 11-601, as follows:

Rule 11-601. EXPUNGEMENT OF JUVENILE RECORDS

(a) Applicability

This Rule applies to petitions for expungement of records under Code, Courts Article, §3-8A-27.1.

(b) Definitions

In this Rule, the following definitions apply:

(1) Expungement

"Expungement" means the removal of court or police records from public inspection:

(A) by obliteration;

(B) by removal to a separate secure area to which the public and other persons having no legitimate reason for being there are denied access; or

(C) if access to a court or police record can be obtained only by reference to another court or police record, by the expungement of that record or the part of that record providing the access.

(2) Juvenile Record

"Juvenile record" means a court or police record concerning a child alleged or adjudicated delinquent or in need of supervision or who has received a citation for a violation. A juvenile record does not include records maintained under Code, Criminal Procedure Article, Title 11, Subtitle 7 or by a law enforcement agency for the sole purpose of collecting statistical information concerning juvenile delinquency and that do not contain any information that would reveal the identity of a person.

(3) Petition

"Petition" means a petition for expungement of juvenile records in accordance with this Rule.

(4) Petitioner

"Petitioner" means the person who files a petition for expungement of juvenile records in accordance with this Rule.

(5) Victim

"Victim" means a person against whom a delinquent act has been committed or attempted.

Cross reference: See Code, Courts Article, §3-801 for other definitions.

(c) Venue

A petitioner may file a petition for expungement of the juvenile record in the court in which the juvenile petition or citation was filed.

(d) Service

The clerk shall have a copy of the petition for expungement served by certified mail or delivered to:

(1) all listed victims in the case in which the petitioner is seeking expungement at the address listed in the court file in that case;

(2) all family members of a victim listed in subsection (d)(1) of this Rule, who are listed in the court file as having attended the adjudication for the case in which the petitioner is seeking expungement; and

(3) the State's Attorney.

(e) Contents

The petition shall be substantially in the form set forth in Form _____.

(f) Objection

A person entitled to service pursuant to section (d) of this Rule may file an objection to the petition.

(g) Hearing

(1) On Own Initiative

The court may hold a hearing on its own initiative, whether or not an objection is filed.

(2) If Objection Filed

Except as provided in subsection (g)(4) of this Rule, the court shall hold a hearing if an objection is filed within 30 days after the petition is served.

(3) If No Objection Filed

The court may grant the petition without a hearing if no timely objection is filed.

(4) Facially Deficient Petition

The court may deny the petition without a hearing if the court finds that the petition, on its face, fails to meet the requirements of Code, Courts Article, §3-8A-27.1 (c).

(h) Grant or Denial of Petition Following a Hearing

(1) Expungement Granted

If, after a hearing, the court finds that the petitioner is entitled to expungement, it shall grant the petition and order the expungement of all court and police records relating to the delinquency or the child in need of supervision petition or citation. An order for expungement shall be substantially in the form set forth in Form _____.

(2) Expungement Denied

If, after a hearing, the court finds that the petitioner is not entitled to expungement, it shall deny the petition.

(i) Service of Order and Compliance Form

Upon entry of a court order granting or

denying expungement, the clerk shall serve a copy of the order and any stay of the order on all parties to the proceeding. Upon entry of an order granting expungement, the clerk shall serve on the custodian of juvenile records, a true copy of the order and a blank form of the Certificate of Compliance set forth in Form _____.

(j) Appeal

The petitioner or the State's Attorney may appeal an order granting or denying the petition within 30 days after entry of the order by filing a notice of appeal with the clerk of the court from which the appeal is taken and by serving a copy on the opposing parties or attorneys.

Cross reference: A victim may appeal to the Court of Special Appeals from a final order that denies or fails to consider a right secured to the victim by law. See Code, Criminal Procedure Article, §11-103.

(k) Stay Pending Appeal

(1) Entry

If the court, over the objection of the State's Attorney, enters an order granting expungement, the order is stayed for 30 days after entry and thereafter if a timely notice of appeal is filed, pending the disposition of the appeal and further order of court.

(2) Lifting

The court shall lift a stay upon disposition of any appeal or, if no notice of appeal was timely filed, upon expiration of the time prescribed for filing a notice of appeal. If an order for expungement has been stayed and no appeal is pending, the stay may be lifted upon written consent of the State's Attorney.

(3) Notice

Promptly upon the lifting of a stay,

the clerk shall send notice of the lifting of the stay to the parties and to the custodian of records, including the Central Repository, to which an order for expungement and a compliance form are required to be sent pursuant to section (i) of this Rule.

(l) Advice of Compliance

Unless an order is stayed pending an appeal, each custodian of juvenile records subject to the order of expungement shall advise, in writing, the court, the petitioner, and all parties to the petition for expungement proceeding of compliance with the order within 60 days after entry of the order.

Source: This Rule is new.

Rule 11-601 was accompanied by the following Reporter's note.

Chapter 213, Laws of 2014 (HB 79) provides a new procedure for expungement of juvenile court records. There has been an increasing demand by government and private employers, including the military, educational institutions, and licensing authorities, for individuals to consent to the release of juvenile court records. Former juvenile respondents have been forced to waive their rights to confidentiality and have been petitioning the courts to open the sealed records. Approximately 30 states have statutes authorizing some type of expungement or destruction of juvenile delinquency records, either automatically once specified events occur or on petition.

The Juvenile Subcommittee recommends the addition of a rule setting out the specific procedure for petitioning for expungement of juvenile records and the addition of a petition form, a form for an order for expungement, and a form for a certificate of compliance similar to the forms for expungement of criminal records.

MARYLAND RULES OF PROCEDURE

FORMS FOR EXPUNGEMENT OF RECORDS

ADD new Form _____, as follows:

Form _____. ORDER FOR EXPUNGEMENT OF JUVENILE RECORDS

(Caption)

ORDER FOR EXPUNGEMENT OF JUVENILE RECORDS

Having found that _____
(Name)

of _____
(Address)

is entitled to expungement of the juvenile records and the court records in this action, it is by the _____ Court for _____ City/County, Maryland, this _____ day of _____, _____.
(Month) (Year)

ORDERED that the clerk forthwith shall have a copy of this Order served by certified mail on or delivered to all listed victims in the case in which the person is seeking expungement; and it is further

ORDERED that the clerk forthwith shall have a copy of this Order served by certified mail on or delivered to all family members of the victim, who are designated in the court file as having attended the adjudication for the case in which the person is seeking expungement; and it is further

ORDERED that the clerk forthwith shall have a copy of this

Order served by certified mail on or delivered to the State's Attorney; and it is further

ORDERED that within 60 days after the entry of this Order or, if this Order is stayed, 30 days after the stay is lifted, the clerk and the following custodians of court and police records relating to the delinquency or Child in Need of Supervision petition or citation shall (1) expunge all court and police records relating to the delinquency or Child in Need of Supervision petition, or citation in their custody, (2) file an executed Certificate of Compliance, and (3) serve a copy of the Certificate of Compliance on the petitioner; and it is further

ORDERED that the clerk and other custodians of records forthwith upon receipt of this Order, if it is not stayed, or the stay has been lifted, shall expunge and remove the records from public inspection; and it is further

ORDERED that this Order

[ ] is stayed pending further order of the court.

[ ] is not stayed.

_____ _____

(Custodian) (Address)

_____

_____

_____

_____

_____

Date Judge

NOTICE TO PETITIONER: Until a custodian of records has received a copy of this Order AND filed a Certificate of Compliance, expungement of the records in the custody of that custodian is not complete and may not be relied upon.

Source: Form ____ is new.

REPORTER'S NOTE

See the Reporter's note to Rule 11-601.

MARYLAND RULES OF PROCEDURE

FORMS FOR EXPUNGEMENT OF RECORDS

ADD new Form _____, as follows:

Form _____. CERTIFICATE OF COMPLIANCE

(CAPTION)

CERTIFICATE OF COMPLIANCE

On this ..... day of ....., ..., I have
(month) (year)

complied with the Order for Expungement of Records dated

..... entered in the above-captioned case.

.....
Custodian

.....
Signature

.....
Title

Source: Form ____ is new.

REPORTER'S NOTE

See the Reporter's note to Rule 11-601.

MARYLAND RULES OF PROCEDURE

FORMS FOR EXPUNGEMENT OF RECORDS

ADD new Form _____, as follows:

Form _____. PETITION FOR EXPUNGEMENT OF JUVENILE RECORDS

(Caption)

PETITION FOR EXPUNGEMENT OF JUVENILE RECORDS
(Code, Courts Article, §3-8A-27.1)

1. (Check one of the following boxes) On or about _____, I was [ ] arrested or [ ] served
(Date)
with a citation by an officer of the _____
(Law Enforcement Agency)
at _____, Maryland, as a result of the following incident _____
_____
_____.

2. I was charged with the offense of _____

_____.

3. On or about _____, the charge was
(Date)

disposed of as follows (check one of the following boxes):

a. [ ] The State's Attorney entered a nolle prosequi.

b. [ ] The delinquency or Child in Need of Supervision petition or the citation was dismissed.

c. [ ] The court, in an adjudicatory hearing, did not find that the allegations in the delinquency or Child in Need of Supervision petition or citation were true.

d. [ ] The adjudicatory hearing was not held within two years after the delinquency or Child in Need of Supervision petition or citation was filed.

e. [ ] The court, in a disposition hearing, found that I did not require guidance, treatment, or rehabilitation.

f. [ ] The court, in a disposition hearing, found that I did require guidance, treatment, or rehabilitation.

4. Each of the following statements are true (check each true statement):

a. [ ] I am at least 18 years old.

b. [ ] At least two years have elapsed since the last official action in my juvenile record.

c. [ ] I have never been adjudicated delinquent, or, I was only adjudicated delinquent one time.

d. [ ] I have not subsequently been convicted of any offense.

e. [ ] No delinquency petition or criminal charge is pending

against me.

f. [ ] I have not been adjudicated delinquent for an offense that, if committed by an adult, would constitute: a crime of violence (as defined in Code, Criminal Law Article, §14-101); a violation of Code, Criminal Law Article, §3-308; or a felony.

g. [ ] I have not been required to register as a sex offender under Code, Criminal Procedure Article, §11-704.

h. [ ] I have not been adjudicated delinquent for an offense involving the use of a firearm, (as defined in Code, Public Safety Article, §5-101) in the commission of a crime of violence (as defined in Code, Criminal Law Article, §14-101).

i. [ ] I have fully paid any monetary restitution ordered by the court in the delinquency proceeding.

j. [ ] I understand that the court shall consider my best interests, my stability in the community, and the safety of the public in its consideration of this petition.

WHEREFORE, I request the court to enter an Order for Expungement of my juvenile record pertaining to the above action.

I solemnly affirm under the penalties of perjury that the contents of this petition are true to the best of my knowledge, information, and belief.

_____ _____
(Date) (Signature)

_____
(Address)

_____

_____
(Telephone No.)

Source: Form _____ is new.

REPORTER'S NOTE

See the Reporter's note to Rule 11-601.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 to add language to section (k) referring to expungement of juvenile records, as follows:

Rule 1-101. APPLICABILITY

. . .

(k) Title 11

Title 11 applies to juvenile causes and expungement of juvenile records under Code, Courts Article, Title 3, Subtitles 8 and 8A.

. . .

Rule 1-101 was accompanied by the following Reporter's note.

The legislature enacted Chapter 213, Laws of 2014, (HB 79) providing a procedure

for the expungement of juvenile records. In light of this new procedure, the Juvenile Subcommittee has recommended the addition of new Rule 11-601, Expungement of Juvenile Charges. The Subcommittee recommends amending Rule 1-101 (k) to make clear that Title 11 applies to the expungement of juvenile records. The Subcommittee also recommends amending Rules 4-101 and 4-501 to make clear that those rules do not apply to the expungement of juvenile records.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 100 - GENERAL

AMEND Rule 4-101 by adding a cross reference to a certain juvenile rule, as follows:

Rule 4-101. APPLICABILITY

The rules in this Title govern procedure in all criminal matters, post conviction procedures, and expungement of records in both the circuit courts and the District Court, except as otherwise specifically provided.

Cross reference: See Rules 4-501 and 11-601 concerning expungement of juvenile records.

Source: This Rule is derived from former Rule 701 and M.D.R. 701.

Rule 4-101 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-101.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-501 by adding a certain exception, as follows:

Rule 4-501. APPLICABILITY

The procedure provided by this Chapter is exclusive and mandatory for use in all judicial proceedings for expungement of records whether pursuant to Code, Criminal Procedure Article, §§10-102 through 10-109 or otherwise, except that expungement of juvenile records is governed by Rule 11-601.

Source: This Rule is derived from former Rule EX2.

Rule 4-501 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-101.

Judge Eaves explained that Rule 11-601 is a new Rule addressing expungement of juvenile records. Included in the meeting materials is a new statute, Chapter 213, Laws of 2014, (HB 79), which added a new provision, Code, Courts and Judicial Proceedings Article, §3-8A-27.1. This lays out the basis for the Rule. The Reporter's note at the end of Rule 11-601 summarizes what the Subcommittee has done. The juveniles' records should not follow them around. Once juveniles get older, they would like to have their juvenile record expunged. Rule 11-601 sets out the process for getting a juvenile record expunged. The

Reporter commented that some forms accompanied Rule 11-601. Several conforming amendments to other Rules had been handed out at the meeting, including conforming amendments to Rules 1-101, 4-101, and 4-501. These make clear how the Rules all fit together.

Judge Ellinghaus-Jones pointed out that section (d) of Rule 11-601 requires the clerk to serve a copy of the petition for expungement by certified mail. The statute does not require certified mail; it simply requires that the petition be served. Much of the certified mail sent out by the District Court in her jurisdiction gets returned unclaimed. If the petition is mailed by regular mail, then service is accomplished upon mailing. She asked whether return receipts from the recipients are required if certified mail is required. If service is not made, how would this affect the rest of Rule 11-601?

Judge Ellinghaus-Jones referred to section (g) of Rule 11-601, which provides that the court shall hold a hearing if an objection is filed within 30 days after the petition is served. If multiple people are being served, they may not all be served at the same time if the service is by certified mail. She asked how the timing would work. When she and her colleagues do expungements, the petitions are not served by certified mail.

Mr. Lowe said that in Cecil County, they deliver many of the expungement petitions to the director of the arresting agency. He was not sure whether victims get service by certified mail. Judge Ellinghaus-Jones remarked that victims and witnesses are

not listed on the District Court orders. They would be more people who would have to be notified. The Chair inquired whether victims are actually served or just notified. They are not parties. Judge Price commented that she had never heard of victims being notified of expungements. The Chair asked who gets served. Mr. Lowe answered that it is the arresting agency and the State's Attorney. Judge Eaves noted that the bill requires service on victims.

The Reporter asked Judge Ellinghaus-Jones whether she would propose that the language in section (d) of Rule 11-601 that read "served by certified mail or delivered to" be changed to the language "mailed or delivered to." Judge Price reiterated that the statute requires only that the petition be served. The Reporter suggested that the word "certified" be taken out, so that section (d) would read: "The clerk shall have a copy of the petition for expungement served by mail or delivered to...". People are actually more likely to receive the petition if it is sent by regular mail. The Chair asked Judge Ellinghaus-Jones whether she was making a motion to drop the word "certified" in section (d). She replied that it was a motion, the motion was seconded, and it carried by a majority vote.

By consensus, the Committee approved Rule 11-601 as amended and approved the accompanying forms and Rules 1-101, 4-101, and 4-501, which were distributed at the meeting, as presented.

Agenda Item 5. Consideration of proposed new Rule 1-501 (Family Magistrate)

The Reporter presented new Rule 1-501, Family Magistrate, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 500 - FAMILY MAGISTRATES

ADD new Rule 1-501, as follows:

Rule 1-501. FAMILY MAGISTRATE

(a) Designation

The Administrative Judge of a county **[**may**]** **[**shall**]** designate as "family magistrates" for that county the masters for juvenile causes and masters in chancery assigned to hear actions and matters in the categories listed in Rule **[**16-204 (b)**]** **[**16-307 (a)(2)**]**. An order designating a family magistrate shall state whether the individual is to perform the functions of a master in chancery, a master for juvenile causes, or both.

(b) Effect of Designation

The powers, duties, salary, benefits, and pension of a master are not affected by the individual's designation as a family magistrate. A master serving as a family magistrate shall comply with **[**Rule 16-814**]** **[**the Rules in Title 18, Chapter 200**]**, Maryland Code of Conduct for Judicial Appointees, and is required to file a financial disclosure statement in accordance with **[**Rule 16-816**]** **[**Rule 18-704**]**.

(c) Rules of Construction

Rules and statutes that refer to a master in chancery, master for juvenile causes, or master apply to a family magistrate, as appropriate. Statutes and

provisions in the Constitution of Maryland that refer to a magistrate shall not be construed as referring to a family magistrate.

Cross reference: For references to "master" see Code, Business, Occupations & Professions Article, §10-603; Code, Courts Article, §§2-102, 2-501, 3-8A-04, 3-807, 3-1802; Code, Family Law Article, §1-203; Code, Land Use Article, §4-402; Code, State Government Article, §19-102; Code, State Personnel and Pensions Article, §§21-307, 21-309, 23-201, 27-201, 27-304, and 27-402; and Rules 1-325, 2-504.1, 2-510, 2-541, 2-603, 9-208, 9-209, 11-110, 11-111, 11-114, 11-115, 14-207.1, 15-206, 15-207, 16-202, 16-306, 16-814, 16-816, and 17-206. For references to "magistrate," see Maryland Constitution, §41-I; Code, Courts Article, §2-607; Code, Criminal Procedure Article, §9-103, Code, Health-General Article, §§10-1301 and 10-1303; Code, Natural Resources Article, §10-1201; and Code, State Government Article, §§16-104 and 16-105.

Source: This Rule is new.

Rule 1-501 was accompanied by the following Reporter's note.

At its April 10, 2014 meeting the Judicial Cabinet approved the following recommendation of the Conference of Circuit Judges' Masters' Governance Committee:

3. The name of a master should be changed to Family Magistrate, Special Magistrate, or Standing Magistrate, depending on the area of practice. This naming convention is consistent with how the Maryland Rules designate masters.

The Minutes of the Cabinet meeting also state:

After some discussion, the Cabinet ... with respect to Recommendation No. 3, approved the name Family Magistrate, adding that if the master does not handle family matters, then he or she would not fall within

> the group of masters for which this name has been approved.
>
> By correspondence dated April 25, 2014, the Chair of the Conference of Circuit Judges notified the Circuit and County Administrative Judges of the Cabinet's decision. The judges and masters in at least one county would like the change to "family magistrate" to occur as quickly as possible, and implementation procedures have been initiated in that county.
>
> New Rule 1-501 is proposed to implement the decision of the Judicial Cabinet.

The Reporter explained that the reason for proposed Rule 1-501 stems from events that happened some time ago. The Honorable Julia Weatherly, Chair of the Family and Domestic Subcommittee, was not able to attend today's meeting, because the September meeting of the Rules Committee had to be changed to a different date than originally scheduled. Judge Weatherly had been unable to change her schedule. She had asked the Reporter to present proposed Rule 1-501. Prince George's County is very anxious to get this change done.

The Reporter reiterated that the change had been requested a long time ago. There had even been a Judiciary contest to find a new name for the term "master." The way that the proposed change came about was that the Conference of Circuit Judges had a Masters Governance Committee, who had discussed different changes that should be made. They came up with the concept of the term "family magistrate" to apply to masters who currently hear domestic relations cases and juvenile cases. They had taken this

proposed change to the Judicial Cabinet, which approved it in those limited circumstances. The Reporter had started investigating what is involved in this change and came up with surprising results. There are masters in Baltimore City who are "general equity masters," and they would not be included in this particular change to the term "family magistrate," because the general equity masters do not hear domestic relations and juvenile cases.

The Reporter told the Committee that she had sent out to them "Attachment 1," which had been previously sent to the Family and Domestic Subcommittee. This was the memorandum of the Conference of Circuit Judges. Attachment 2 is the research done by the staff at the Rules Committee, locating all of the references to the words "master" and "magistrate" in the Maryland Rules of Procedure, statutes, and the Maryland Constitution. Attachment 3 is information from the various circuit courts as to who is doing what and where.

The Reporter commented that it became apparent that particularly with respect to the masters' pensions and salaries, which are governed by some of the statutes, including Code, State Personnel and Pensions Article, §27-201, each Rule should not be changed and should be left the way it reads now, using the word "master," so as not to disturb pensions and powers of the masters. Instead, a Title 1 Rule was drafted, which basically provides that the people who are doing the family law domestic relations master's function and the juvenile master's function,

will be known as "family magistrates" in accordance with the decision of the Judicial Cabinet.

The Reporter said that when she had drafted Rule 1-501 she was not sure whether the first sentence should read that the Administrative Judge of a county "may" or "shall" designate as family magistrates for that county the masters for juvenile causes and masters in chancery assigned to hear certain actions and matters. The Chair expressed the view that the word should be "shall," because this is what the Cabinet had decided. The Reporter explained that her hesitation was because of the implementation date and what happens in counties other than Prince George's, which has already changed its designation.

Mr. Sullivan inquired why public policy dictated this change. The Reporter answered that the problem is that instead of using the terms "master in chancery" or "juvenile master" which are the correct designations, everyone uses the term "master." Especially in counties with a large African-American population, the terminology is politically incorrect and insensitive. The Chair pointed out that this change in terminology had been approved by the Judicial Cabinet. Most of the push for this came from Prince George's County, but not exclusively. It is a demeaning term for African-Americans.

Mr. Carbine expressed his concern over the law of unintended consequences. He was satisfied that this change was being made to be politically correct. There may be no other compelling reason for this change. He wanted to make sure that although

everyone is comfortable with the idea of doing something that is politically correct, there are not unintended consequences. The Chair reiterated that the proper name for a master is "master in chancery." This is the old English term, but no one is using it any more. The term used is "master." What is that person the master of? Judge Eaves remarked that some masters have expressed the view that some of the people who appear in front of them seem to be confused as to the master's role. The term "magistrate" is a more appropriate designation of the function of the master.

Mr. Carbine asked if anyone had considered changing the term "master" to the term "magistrate" across the board. The Chair replied that this had been considered. The decision was that it refers only to those masters who are conducting proceedings, taking testimony, and making determinations, but not the general equity masters. In Baltimore City, those general equity masters are very important, because they have handled significant equity cases. But the Judicial Cabinet wanted to limit the change to those masters who actually conducted hearings and made findings, subject to review by a judge.

The Chair reiterated that the Judicial Cabinet had approved this change. Ms. McBride referred to the choice between the words "may" and "shall" in the first sentence of proposed Rule 1-501. She asked if there were any counties that do not have masters. The Chair answered that he thought that every county has masters. In some of the counties on the Eastern Shore, the masters are shared. The Reporter suggested that the language of

the first sentence of Rule 1-501 could read: "The Administrative Judge of a county may/shall designate as a family magistrate for that county, each master for juvenile causes and each master in chancery...". The Chair noted that there is a list of all of these masters. The Reporter asked if every county has a master, and Ms. Harris replied affirmatively.

The Chair said that it is important to avoid the situation where some counties use different names for the same position. The Reporter said that some concerns include the timing of the change, the changing of judicial stationery, and the changing of the forms. Some MDEC forms will need to be changed. Prince George's County would like the change made immediately, while other counties may prefer to use up their current stationery and forms first.

The Reporter asked if the word in the first sentence of Rule 1-501 should be "may" or "shall". By consensus, the Committee approved the word "shall." By consensus, the Committee approved Rule 1-501 as presented with the word "shall" in the first sentence.

Agenda Item 6. Consideration of proposed amendments to: Rule 9-206 (Child Support Guidelines) and Rule 9-207 (Joint Statement of Marital and Non-marital Property)

The Reporter presented Rules 9-206, Child Support Guidelines and 9-207, Joint Statement of Marital and Non-marital Property, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT AND ALIMONY

AMEND Rule 9-206 by replacing references to "mother" and "father" with references to "plaintiff," "defendant," and "parent," as follows:

Rule 9-206. CHILD SUPPORT GUIDELINES

(a) Definitions

The following definitions apply in this Rule:

(1) Shared Physical Custody

"Shared physical custody" has the meaning stated in Code, Family Law Article, §12-201 (i).

(2) Worksheet

"Worksheet" means a document to compute child support under the guidelines set forth in Code, Family Law Article, Title 12, Subtitle 2.

(b) Filing of Worksheet

In an action involving the establishment or modification of child support, each party shall file a worksheet in the form set forth in section (c) or (d) of this Rule. Unless the court directs otherwise, the worksheet shall be filed not later than the date of the hearing on the issue of child support.

Cross reference: See Code, Family Law Article, §12-203 (a) and *Walsh v. Walsh*, 333 Md. 492 (1994).

(c) Primary Physical Custody

Except in cases of shared physical custody, the worksheet shall be in substantially the following form:

_____ In the

Circuit Court for _____

v.

_____ No. _____

WORKSHEET A - CHILD SUPPORT OBLIGATION: PRIMARY PHYSICAL CUSTODY

_____	_____	_____	_____
Name of Child	Date of Birth	Name of Child	Date of Birth
_____	_____	_____	_____
Name of Child	Date of Birth	Name of Child	Date of Birth
_____	_____	_____	_____
Name of Child	Date of Birth	Name of Child	Date of Birth

	~~Mother~~ Plaintiff	~~Father~~ Defendant	Combined
1. MONTHLY ACTUAL INCOME (Before taxes) (Code, Family Law Article, §12-201 (b))	$	$	/////// ///////
a. Minus preexisting child support payment actually paid	-	-	/////// ///////
b. Minus alimony actually paid	-	-	///////
c. Plus/minus alimony awarded in this case	+/-	+/-	/////// ///////
2. MONTHLY ADJUSTED ACTUAL INCOME	$	$	$

3. PERCENTAGE SHARE OF INCOME Divide each parent's income on line 2 by the combined income on line 2.)	%	%	//////// //////// //////// ////////
4. BASIC CHILD SUPPORT OBLIGATION (Apply line 2 Combined Income to Child Support Schedule.)	////// ////// //////	////// ////// //////	$
a. Work-Related Child Care Expenses (Code, Family Law Article, §12-204 (g))	$	$	+
b. Health Insurance Expenses (Code, Family Law Article, §12-204 (h)(1))	$	$	+
c. Extraordinary Medical Expenses (Code, Family Law Article, §12-204 (h)(2))	$	$	+
d. Cash Medical Support (Code, Family Law Article, §12-102 (c) - applies only to a child support order under Title IV, Part D of the Social Security Act)	$	$	+
e. Additional Expenses (Code, Family Law Article, §12-204 (i))	$	$	+
5. TOTAL CHILD SUPPORT OBLIGATION (Add lines 4, 4 a, 4 b, 4 c, 4 d, and 4 e).	////// ////// //////	////// ////// //////	$
6. EACH PARENT'S CHILD SUPPORT OBLIGATION (Multiply line 5 by line 3 for each parent.)	$	$	////// ////// //////
7. TOTAL DIRECT PAY BY EACH PARENT			//////

(Add the expenses shown on lines 4 a, 4 b, 4 c, 4 d, and 4 e paid by each parent.)	$	$	////// ////// //////
8. RECOMMENDED CHILD SUPPORT AMOUNT (Subtract line 7 from line 6 for each parent.)	$	$	////// ////// //////
9. RECOMMENDED CHILD SUPPORT ORDER (Bring down amount from line 8 for the non-custodial parent only. If this is a negative number, see Comment (2), below.)	$	$	////// ////// ////// ////// //////

Comments or special adjustments, such as (1) any adjustment for certain third party benefits paid to or for the child of an obligor who is disabled, retired, or receiving benefits as a result of a compensable claim (see Code, Family Law Article, §12-204 (j) or (2) that there is a negative dollar amount on line 9, which indicates a recommended child support order directing the custodial parent to reimburse the non-custodial parent this amount for "direct pay" expenses):

PREPARED BY: DATE:

(d) Shared Physical Custody

In cases of shared physical custody, the worksheet shall be in substantially the following form:

_____ In the
Circuit Court for _____

v.

_____ No. _____

WORKSHEET B - CHILD SUPPORT OBLIGATION: SHARED PHYSICAL CUSTODY

Name of Child	Date of Birth	Name of Child	Date of Birth
Name of Child	Date of Birth	Name of Child	Date of Birth
Name of Child	Date of Birth	Name of Child	Date of Birth

	~~Mother~~ Plaintiff	~~Father~~ Defendant	Combined
1. MONTHLY ACTUAL INCOME (Before taxes) (Code, Family Law Article, §12-201 (b))	$	$	////// //////
a. Minus preexisting child support payment actually paid	-	-	////// //////
b. Minus alimony actually paid	-	-	//////
c. Plus/minus alimony awarded in this case	+/-	+/-	////// //////
2. MONTHLY ADJUSTED ACTUAL INCOME	$	$	$
3. PERCENTAGE SHARE OF INCOME (Divide each parent's income on line 2 by the combined income on line 2.)	%	%	////// ////// ////// //////
4. BASIC CHILD SUPPORT OBLIGATION (Apply line 2 Combined Income to Child Support Schedule.)	////// ////// //////	////// ////// //////	$
5. ADJUSTED BASIC CHILD SUPPORT OBLIGATION (Multiply Line 4 by 1.5)	////// ////// //////	////// ////// //////	$
6. OVERNIGHTS with each parent (must total 365)			365

7. PERCENTAGE WITH EACH PARENT (Line 6 divided by 365)	A	%	B	%	//////
STOP HERE IF Line 7 is less than 35% for either parent. Shared physical custody does not apply. (Use Worksheet A, instead.)	//////		//////		//////
8. EACH PARENT'S THEORETICAL CHILD SUPPORT OBLIGATION (Multiply line 5 by line 3 for each parent.)	A$		B$		//////
9. BASIC CHILD SUPPORT OBLIGATION FOR TIME WITH OTHER PARENT (Multiply line 8A by line 7B and put answer on Line 9A.) (Multiply line 8B by line 7A and put answer on line 9B.)	A$		B$		//////
10. NET BASIC CHILD SUPPORT OBLIGATION (Subtract lesser amount from greater amount in line 9 and place answer here under column with greater amount in Line 9.)	$		$		//////
11. EXPENSES:	//////		//////		
a. Work-Related Child Care Expenses (Code, Family Law Article, §12-204 (g))	//////		//////		+
b. Health Insurance Expenses (Code, Family Law Article §12-204 (h)(1))	//////		//////		+
c. Extraordinary Medical Expenses (Code, Family Law Article, §12-204 (h)(2))	//////		//////		+
d. Cash Medical Support	//////		//////		

(Code, Family Law Article, §12-102 (c) - applies only to a child support order under Title IV, Part D of the Social Security Act)	//////	//////	+
e. Additional Expenses (Code, Family Law Article, §12-204 (i))	//////	//////	+
12. NET ADJUSTMENT FROM WORKSHEET C. Enter amount from line l, WORKSHEET C, if applicable. If not, continue to Line 13.	$	$	//////
13. NET BASIC CHILD SUPPORT OBLIGATION (From Line 10, WORKSHEET B)	$	$	//////
14. RECOMMENDED CHILD SUPPORT ORDER (If the same parent owes money under Lines 12 and 13, add these two figures to obtain the amount owed by that parent. If one parent owes money under Line 12 and the other owes money under Line 13, subtract the lesser amount from the greater amount to obtain the difference. The parent owing the greater of the two amounts on Lines 12 and 13 will owe that difference as the child support obligation. NOTE: The amount owed in a shared custody arrangement may not exceed the amount that would be owed if the obligor parent were a non-custodial parent. See WORKSHEET A).	$	$	//////

Comments or special adjustments, such as any adjustment for certain third party benefits paid to or for the child of an obligor who is disabled, retired, or receiving benefits as a

result of a compensable claim (see Code, Family Law Article, §12-

204 (j)):

PREPARED BY: DATE:

INSTRUCTIONS FOR WORKSHEET C: Use Worksheet C ONLY if any of the Expenses listed in lines 11 a, 11 b, 11 c, 11 d, or 11 e is directly paid out or received by the parents in a different proportion than the percentage share of income entered on line 3 of Worksheet B. Example: If ~~the mother~~ one parent pays all of the day care, or parents split education/medical costs 50/50 and line 3 is other than 50/50. If there is more than one 11 e expense, the calculations on lines i and j below must be made for each expense.

WORKSHEET C - FOR ADJUSTMENTS, LINE 12, WORKSHEET B

	~~Mother~~ Plaintiff	~~Father~~ Defendant
a. Total amount of direct payments made for Line 11 a expenses multiplied by each parent's percentage of income (Line 3, WORKSHEET B) (Proportionate share)	$	$
b. The excess amount of direct payments made by the parent who pays more than the amount calculated in Line a, above. (The difference between amount paid and proportionate share)	$	$
c. Total amount of direct payments made for Line 11 b expenses multiplied by each parent's percentage of income (Line 3, WORKSHEET B)	$	$
d. The excess amount of direct payments made by the parent who pays more than the amount calculated in Line c, above.	$	$
e. Total amount of direct payments made		

for Line 11 c expenses multiplied by each parent's percentage of income (Line 3, WORKSHEET B)	$	$
f. The excess amount of direct payments made by the parent who pays more than the amount calculated in Line e, above.	$	$
g. Total amount of direct payments made for Line 11 d expenses multiplied by each parent's percentage of income (Line 3, WORKSHEET B)	$	$
h. The excess amount of direct payments made by the parent who pays more than the amount calculated in line g, above.	$	$
i. Total amount of direct payments made for Line 11 e expenses multiplied by each parent's percentage of income (Line 3, WORKSHEET B)	$	$
j. The excess amount of direct payments made by the parent who pays more than the amount calculated in line i, above.	$	$
k. For each parent, add lines b, d, f, h, and j	$	$
l. Subtract lesser amount from greater amount in Line k, above. Place the answer on this line under the lesser amount in Line k. Also enter this answer on Line 12 of WORKSHEET B, in the same parent's column.	$	$

Source: This Rule is new.

REPORTER'S NOTE

An individual who writes proprietary computer programs that assist in the preparation of the forms and computations required by Rules 9-206 and 9-207 observed that the text of the forms does not provide for same-sex parents or same-sex spouses. He suggested that the forms be modified so that the first party to file would be "Parent 1" or "Spouse 1," while the defendant or second to file would be "Parent 2" or "Spouse 2."

The Family/Domestic Subcommittee considered the suggested terminology and recommends instead that the forms in the Rules be amended to use the terms, "plaintiff" and "defendant," to avoid potential disputes between the parties in a high-conflict case as to which party is "Parent 1" or "Spouse 1."

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

AMEND Rule 9-207 by replacing references to "Husband" and "Wife" with "Plaintiff" and "Defendant," as follows:

Rule 9-207. JOINT STATEMENT OF MARITAL AND NON-MARITAL PROPERTY

(a) When Required

When a monetary award or other relief pursuant to Code, Family Law Article, §8-205 is an issue, the parties shall file a joint statement listing all property owned by one or both of them.

(b) Form of Property Statement

The joint statement shall be in substantially the following form:

JOINT STATEMENT OF PARTIES CONCERNING
MARITAL AND NON-MARITAL PROPERTY

1. The parties agree that the following property is "marital property" as defined by Maryland Annotated Code, Family Law Article, §8-201:

Description of Property	How Titled	Fair Market Value		Liens, Encumbrances, or Debt Directly Attributable	
~~Husband's~~ Plaintiff's Assertion	~~Wife's~~ Defendant's Assertion	~~Husband's~~ Plaintiff's Assertion	~~Wife's~~ Defendant's Assertion	~~Husband's~~ Plaintiff's Assertion	~~Wife's~~ Defendant's Assertion
_____					
_____					

2. The parties agree that the following property is not marital property because the property (a) was acquired by one party before marriage, (b) was acquired by one party by inheritance or gift from a third person, (c) has been excluded by valid agreement, or (d) is directly traceable to any of those sources:

Description of Property	How Titled	Fair Market Value		Liens, Encumbrances, or Debt Directly Attributable	
~~Husband's~~ Plaintiff's Assertion	~~Wife's~~ Defendant's Assertion	~~Husband's~~ Plaintiff's Assertion	~~Wife's~~ Defendant's Assertion	~~Husband's~~ Plaintiff's Assertion	~~Wife's~~ Defendant's Assertion
_____					

_____

3. The parties are not in agreement as to whether the following property is marital or non-marital:

Description of Property	How Titled	Fair Market Value		Liens, Encumbrances, or Debt Directly Attributable	
~~Husband's~~ Plaintiff's Assertion	~~Wife's~~ Defendant's Assertion	~~Husband's~~ Plaintiff's Assertion	~~Wife's~~ Defendant's Assertion	~~Husband's~~ Plaintiff's Assertion	~~Wife's~~ Defendant's Assertion

_____

_____

Date _____ _____
Plaintiff or Attorney

Date _____ _____
Defendant or Attorney

INSTRUCTIONS:

1. If the parties do not agree about the title or value of any property, the parties shall set forth in the appropriate column a statement that the title or value is in dispute and each party's assertion as to how the property is titled or the fair market value.

2. In listing property that the parties agree is non-marital because the property is directly traceable to any of the listed sources of non-marital property, the parties shall specify the source to which the property is traceable.

(c) Time for Filing; Procedure

The joint statement shall be filed at least ten days before the scheduled trial date or by any earlier date fixed by the court. At least 30 days before the joint statement is due to be filed, each party shall prepare and serve on the other party a proposed statement in the form set forth in section (b) of this Rule. At least 15 days before the joint statement is due, the plaintiff shall sign and serve on the defendant for approval and signature a proposed joint statement that fairly reflects the positions of the parties. The defendant shall timely file the joint statement, which shall be signed by the defendant or shall be accompanied by a written statement of the specific reasons why the defendant did not sign.

(d) Sanctions

If a party fails to comply with this Rule, the court, on motion or on its own initiative, may enter any orders in regard to the noncompliance that are just, including:

(1) an order that property shall be classified as marital or non-marital in accordance with the statement filed by the complying party;

(2) an order refusing to allow the noncomplying party to oppose designated assertions on the complying party's statement filed pursuant to this Rule, or prohibiting the noncomplying party from introducing designated matters in evidence.

Instead of or in addition to any order, the court, after opportunity for hearing, shall require the noncomplying party or

the attorney advising the noncompliance or both of them to pay the reasonable expenses, including attorney's fees, caused by the noncompliance, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

Committee note: The Joint Statement of Marital and Non-Marital Property is not intended as a substitute for discovery in domestic relations cases.

Source: This Rule is derived from former Rule S74.

REPORTER'S NOTE

See the Reporter's note to Rule 9-206.

The Reporter explained that she was presenting Rules 9-206 and 9-207 on behalf of Judge Weatherly, who is the Chair of the Family and Domestic Subcommittee and was unable to attend the meeting. The forms in Rules 9-206 and 9-207 refer to the words "Mother" and "Father" as well as "Husband" and "Wife." It had been pointed out by Stuart Grozbean, Esq., who writes proprietary computer programs that assist in the preparation of the forms and computations required by these Rules, that these designations were no longer appropriate. When the Reporter consulted the statutes, Code Family Law Article, §§8-201 et seq. and §§12-201 et. seq., she found that they avoid using any of these designations. The word "parent" or the word "spouse" is used. Clearly, the terms "mother and father" and "husband and wife" do not work in the context of a same-sex relationship.

The Reporter said that the Subcommittee had looked at

several potential choices. One possibility was to use the terms "Spouse 1" and "Spouse 2" as well as "Parent 1" and "Parent 2." This could be either mandatory or discretionary in how the form is done. They had thought about using the names of the individuals in the forms, which is very confusing when the forms are shown in the Rule book that way. The Subcommittee had finally decided on the terms "Plaintiff" and "Defendant." Joseph Spillman, Esq., an Assistant Attorney General had sent in a comment, which stated that those terms are not appropriate, particularly when the Child Support Enforcement Agency is involved. They would be the plaintiff in a child support case. For example, if a grandmother has custody, the mother and father would be the people who have the responsibility to pay for the child. One suggestion that the Subcommittee had made was that the form would continue to use the terms "Mother" and "Father," but the Rule would provide that the worksheet or joint statement shall be substantially in the form attached, except in the same-sex situation where it could be "Spouse 1" and "Spouse 2" or "Parent 1" and "Parent 2." What was in front of the Committee was the Subcommittee recommendation showing the actual change in the forms to "Plaintiff" and "Defendant." The Committee could approve or modify it.

Judge Price asked whether the language could be "Person Seeking Child Support" or "Person Responsible for Child Support." It could be "Name of Person Seeking..." or "Name of Person Responsible...". The parties' names could be used, because that

is how a judge will identify the person. If they are coming in every few months and changing whether they are the plaintiff, defendant, counterplaintiff, counterdefendant, or child support enforcer, the name would be helpful. Judge Eaves noted that with a same-sex couple, the person who filed for support is still going to be the plaintiff. Even if someone files later for a modification, the person is still either the plaintiff or the defendant. Whoever is doing the worksheet will know this. Even if a cross-complaint is filed, the caption of the case would not necessarily change. It would still use the names of the original plaintiff and defendant.

Judge Price remarked that the circuit court can deal with this. The Reporter responded that it is a problem when the Child Support Enforcement Agency is the plaintiff. Judge Ellinghaus-Jones suggested using the term "use plaintiff" meaning "to the use of." The Reporter pointed out that it could be to the use of the grandmother.

Mr. Sullivan inquired if it is difficult to insert names in the form. Judge Eaves replied that it is not difficult. Even on the Department of Human Resources form, there is a place to insert the name as to how the case is styled. Typically, if it is the Office of Child Support Enforcement ("OCSE") which is the plaintiff, the party who is going to receive it may be filing for it on behalf of the mother, for example, and the mother's name is also part of the action. Mr. Sullivan suggested that the Rule could provide that the name would be inserted in each of the

columns on the form. The Reporter pointed out that the second page of the form in Rule 9-207 gets somewhat confusing with "Plaintiff's Assertion" and "Defendant's Assertion" intermingled on the form.

As a domestic relations practitioner, Ms. Day expressed the view that only the joint statement should contain the parties' names, because otherwise the judge will be so confused. The joint statement will be useless. The practitioner would have to create his or her own spreadsheet to make the situation clear. It will not matter how the Rule reads. The Reporter noted that there could be a directive in the Rule that would ask for the name of Spouse 1 and the name of Spouse 2. Ms. Day suggested that it could ask for the name of Party 1 and Party 2. It would be the practical way to do this. Using "Party 1" and "Party 2" may work in the Child Support Guidelines, because that is not as complicated as the Joint Statement Concerning Marital and Non-marital Property. In this form, the parties must be designated, or the judge will be confused.

Judge Kaplan pointed out that there had been a change to the adoption forms in Baltimore City. Two males or two females may be adopting a child. The adoption form had previously used the terms "mother" and "father." Judge Kaplan had requested that the forms be changed to read "Parent 1" and "Parent 2." The adoption form in Baltimore City were changed accordingly. The Reporter asked whether Judge Kaplan's recommendation was that the Child Support Guidelines and Joint Statement Concerning Marital and

Non-marital Property forms should ask for "Name of Parent 1 and Parent 2" and name of "Spouse 1 and Spouse 2." Judge Kaplan answered that this has worked well in Baltimore City.

Mr. Carbine commented that the columns in the Child Support Guidelines should be labeled. Terms of art are being created on the forms. It has to be very clear who "Party 1" and "Party 2", or "Parent 1" and "Parent 2," or "Spouse 1" and "Spouse 2" are. The Chair noted that when marital property is involved, the form would list only spouses. The form would designate "Spouse 1" and "Spouse 2." The Reporter suggested that the Child Support Guidelines form would state: "name of Parent 1" and "name of Parent 2," because they are often the only two people who are responsible for supporting this child whether the parents are male-female, male-male, or female-female. Whoever is suing for support would be the client of the Bureau of Support Enforcement or whichever enforcement agency. Judge Eaves remarked that even if a grandparent is seeking support, it could be OCSE who is the plaintiff.

The Chair asked the Committee what they would recommend. The designations would not necessarily have to be the same for both forms. Judge Eaves said that it should be "Parent 1" and "Parent 2" for the Child Support Guidelines form and "Spouse 1" and "Spouse 2" for the Joint Statement of Marital and Non-marital Property form. The Reporter observed that this is what Mr. Grozbean is already doing.

By consensus the Committee agreed to the suggested

designations on the forms. By consensus the Committee approved the forms as amended.

Agenda Item 7. Consideration of proposed amendments to Rule 20-109 (Access to Electronic Court Records)

The Chair presented Rule 20-109, Access to Electronic Court Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-109 to authorize remote electronic access under certain circumstances for registered users acting on behalf of the Department of Juvenile Services, as follows:

Rule 20-109. ACCESS TO ELECTRONIC COURT RECORDS

. . .

(f) Department of Juvenile Services

Subject to any protective order issued by the court, a registered user authorized by the Department of Juvenile Services to act on its behalf shall have full access, including remote access, to all case records in an affected action to the extent such access is (1) authorized by Code, Courts Article, §3-8A-27 and (2) necessary to the performance of the individual's official duties on behalf of the Department.

. . .

Rule 20-109 was accompanied by the following Reporter's note.

> The Department of Juvenile Services is required to participate in certain proceedings, such as delinquency and Child in Need of Supervision actions, in which the Department is not a party. Code, Courts Article, §3-8A-27 permits the Department to have access to case records in such proceedings that otherwise are confidential and not subject to inspection by nonparties.
>
> Currently, the case records are in paper form. Under MDEC, case records will be electronic. Because the Department is not a party, the remote access afforded by Rule 20-109 (b) to parties and their attorneys is inapplicable to the Department, and the Department would have to view the electronic case records at the courthouse, on courthouse computer terminals.
>
> The Department has requested an amendment to Rule 20-109 that would permit it to have remote access to the electronic case records to the same extent the Department currently has access to those records in paper form. To provide that access, a new section (f) is proposed to be added to Rule 20-109.

The Chair told the Committee that the proposed change to Rule 20-109 had been a request by the Department of Juvenile Services ("DJS") to be permitted access to all case records to the extent such access is authorized by Code, Courts Article, §3-8A-27 and is necessary to the performance of official duties on behalf of the Department. The Code provision covers delinquency and Child in Need of Supervision ("CINS") and all other juvenile causes except for Child in Need of Assistance and Termination of Parental Rights cases. The DJS is not a party to those cases;

the State's Attorney files a petition and is a party.

The Chair commented that the DJS is almost always called to court in the delinquency and CINS cases, and they may have ongoing responsibilities if the child is found to be delinquent or a CINS. They may be filing and would like access to the records even though they are not a party to the case. This is limited to only those cases in which the DJS has some duty that requires access to those records. The DJS may need to look at other cases. If it is the same juvenile who has been adjudicated before, they may need to look at the records in the earlier case in connection with a report that they are required to make in a second case.

The Chair said that the Subcommittee had already approved the change to Rule 20-109, so it did not need a motion. By consensus, the Committee approved the change to Rule 20-109.

Agenda Item 8. Consideration of proposed amendments to Revised Rule 16-908 (Conversion of Paper Records) [current Rule 16-1008] and proposed new Rule 16-908.1 (Access to Electronic Records)

The Chair told the Committee that at the request of the Administrative Office of the Courts, consideration of Agenda Item 8, Rule 16-908, Conversion of Paper Records, would be postponed until the Rules Committee meeting in October.

Agenda Item 9. Consideration of proposed amendments to: Rule 2-510 (Subpoenas), Rule 3-510 (Subpoenas), Rule 4-265 (Subpoena for Hearing or Trial), and Rule 4-266 (Subpoenas - Generally)

The Chair presented Rules 2-510 and 3-510, Subpoenas, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-510 to reorganize the Rule, to provide for a uniform subpoena form approved by the State Court Administrator, to add certain provisions concerning the use and copying of subpoena forms, to add a date of issuance and expiration date to a subpoena form, to prohibit serving or attempting to serve a subpoena after its expiration date, to add a Committee note following section (c), to permit electronic issuance of a blank form fo subpoena under certain circumstances, and to make stylistic changes, as follows:

Rule 2-510. SUBPOENAS

(a) Required, Permissive, and Non-permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents, electronically stored information, or tangible things at a court proceeding, including proceedings before a master, auditor, or examiner~~.~~; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(2) A subpoena ~~is also required~~ may be used to compel a ~~nonparty and may be used to compel~~ a party over whom the court has

acquired jurisdiction to attend, give testimony, and produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things at a deposition.

(3) A subpoena ~~shall~~ may not be used for any other purpose. If the court, on motion of a party ~~alleging a violation of this section~~ or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a ~~party or attorney~~ person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than ~~a purpose~~ one allowed under this ~~section~~ Rule, the court may impose an appropriate sanction, ~~upon the party or attorney,~~ including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained ~~by the subpoena~~ as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manners:

(1) On the request of ~~a~~ any person entitled to the issuance of a subpoena, the clerk shall (A) issue a completed subpoena, or (B) provide to the person a blank form of subpoena, which the person shall ~~be filled in and returned~~ fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of ~~an attorney or other officer of the court~~ a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed ~~but otherwise in blank~~ by the clerk, which the attorney shall ~~be filled~~ fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through

MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena. A violation of this section shall constitute a violation of subsection (a)(3) of this Rule.

(c) Form

Except as otherwise permitted by the court for good cause, ~~Every~~ every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents, electronically stored information, or tangible things to be produced and if testing or sampling is to occur, a description of the proposed testing or sampling procedure, ~~and~~ (6) when required by Rule 2-412 (d), a notice to designate the person to testify, and (7) the date of issuance and an expiration date which shall be 45 days after the date of issuance. A subpoena may specify the form in which electronically stored information is to be produced.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 45 days after the date of issuance. The "expiration date" to which sections (c) and (d) of this Rule refer is the date by which the subpoena must be served before its validity ends. The existence of an expiration date does not preclude reissuance of the subpoena with a new expiration date if timely service of the original subpoena cannot be made.

(d) Service

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

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

. . .

Rule 2-510 was accompanied by the following Reporter's note.

An issue arose regarding the availability and use of a blank form subpoena with no expiration date. The concern was having a blank, undated subpoena form available in electronic form, with no expiration date or restriction on copying. The General Provisions Subcommittee recommends changes to the subpoena rules to address these concerns and the potential for misuse of a form subpoena.

These recommendations include a uniform form of subpoena approved by the State Court Administrator, with an issue and expiration date to be printed on each subpoena form. The uniform form must be used, unless otherwise permitted by the court for good cause.

Amendments to Rules 2-510, 3-510, 4-265, and 4-266 are proposed.

The amendments prohibit the copying or reproduction of a subpoena form for a purpose other than one permitted by the Rules. The amendments also prohibit service of a subpoena after it expires. The proposals restrict the issuance of an electronic subpoena form to attorneys who are registered MDEC users. An attorney who is a "registered user" may download the form, fill it in, and print a completed subpoena for service.

The proposals do not change the procedures the clerk to issue a completed subpoena, except for the required addition of issue and expiration dates.

Under current procedure, on the request of a person entitled to the issuance of a subpoena, the clerk issues a completed subpoena, or provides a blank form subpoena, which must be filled in and returned to the clerk to be signed and sealed before service. Currently, these subpoenas forms have no issue or expiration date printed on them.

Additionally, the Rules are reorganized, and stylistic changes are made.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 500 - TRIAL

AMEND Rule 3-510 to reorganize the Rule, to provide for a uniform subpoena form approved by the State Court Administrator, to add certain provisions concerning the use and copying of subpoena forms, to add a date of issuance and expiration date to a subpoena form, to prohibit serving or attempting to serve a subpoena after its expiration date, to add a Committee note following section (c), to permit electronic issuance of a blank form fo subpoena under certain circumstances, and to make stylistic changes, as follows:

Rule 3-510. SUBPOENAS

(a) Required, Permissive, and Non-permissive Use

(1) A subpoena is required:

(A) to compel the person to whom it is directed to attend, give testimony, and produce designated documents or other tangible things at a court proceeding, including proceedings before an examiner.; and

(B) to compel a nonparty to attend, give testimony, and produce and permit inspection and copying of designated documents or other tangible things at a deposition taken pursuant to Rule 3-401 or 3-431.

(2) A subpoena ~~is also required~~ may be used to compel a ~~nonparty and may be used to compel~~ a party over whom the court has acquired jurisdiction to attend, give testimony, and produce and permit inspection and copying of designated documents or other tangible things at a deposition taken pursuant to Rule 3-401 or 3-431.

(3) A subpoena ~~shall~~ may not be used for any other purpose. If the court, on motion of a party ~~alleging a violation of this section~~ or on its own initiative, after affording the alleged violator an opportunity for a hearing, finds that a ~~party or attorney~~

person has used or attempted to use a subpoena or a copy or reproduction of a subpoena form for a purpose other than ~~a purpose~~ one allowed under this ~~section~~ Rule, the court may impose an appropriate sanction~~, upon the party or attorney,~~ including an award of a reasonable attorney's fee and costs, the exclusion of evidence obtained ~~by the subpoena~~ as a result of the violation, and reimbursement of any person inconvenienced for time and expenses incurred.

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manners:

(1) On the request of ~~a~~ any person entitled to the issuance of a subpoena, the clerk shall (A) issue a completed subpoena, or (B) provide to the person a blank form of subpoena, which the person shall ~~be filled in and returned~~ fill in and return to the clerk to be signed and sealed by the clerk before service.

(2) On the request of ~~an attorney or other officer of the court~~ a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed ~~but otherwise in blank~~ by the clerk, which the attorney shall ~~be filled~~ fill in before service.

(3) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(4) Except as provided in subsections (b)(2) and (b)(3) of this Rule, a person may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena. A violation of this section shall constitute a violation of subsection (a)(3)

of this Rule.

(c) Form

Except as otherwise permitted by the court for good cause, ~~Every~~ every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, (5) a description of any documents or other tangible things to be produced, and (6) the date of issuance and an expiration date which shall be 45 days after the date of issuance.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 45 days after the date of issuance. The "expiration date" to which sections (c) and (d) of this Rule refer is the date by which the subpoena must be served before its validity ends. The existence of an expiration date does not preclude reissuance of the subpoena with a new expiration date if timely service of the original subpoena cannot be made.

(d) Service

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

of subsection (a)(3) of this Rule.

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

. . .

Rule 3-510 was accompanied by the following Reporter's note.

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

The Chair explained that the proposed changes to Rules 2-510 and 3-510 are the culmination of a long debate over (1) who can get blank subpoena forms from the clerk, (2) whether the blank forms can be copied and used for any cases, (3) the extent to which parties can download subpoena forms electronically, and (4) what a subpoena form would look like. The General Assembly got involved in some of this, but no legislation was actually enacted. To some extent, addressing who can get the blank forms and what can be done with them was an intent to forestall legislation.

The Chair said that Rules 2-510 and 3-510 include language providing that a subpoena is required to compel a nonparty to attend or produce documents at a deposition and also to compel anyone to appear and produce items at a court proceeding. A subpoena also may be used to compel a party to attend a

deposition. Subsection (a)(3) of both Rules makes clear that a subpoena may not be used for any other purpose.

The Chair noted that section (b) clarifies how subpoenas may be issued. It provides four methods. One is that the clerk can issue a completed subpoena for anyone who has a right to a subpoena. The clerk will fill out the subpoena, sign it, and put a seal on it for anyone who has a right to it. The person gets a completed one. Also, anyone can go to the clerk and get a blank, unsigned, and unsealed subpoena, which the applicant can then fill out and bring back to the clerk, so the clerk can add a signature and seal. In either of those situations, the clerk knows what he or she is signing and sealing. At the request of a Maryland attorney, the clerk can issue a blank form of subpoena, signed and sealed, which the attorney can then fill out and serve. An attorney of record in a pending action, who is a registered user under MDEC, can obtain from the clerk through MDEC an electronic version of a blank, signed, and sealed subpoena, which the attorney can then download, fill out, and print before service.

The Chair explained that the changes to Rules 2-510 and 3-510 accomplish what the legislation was intended to do, which is to permit attorneys who are officers of the court, and who are under some control of the court if they misuse a subpoena to get a blank form signed and sealed. This obviously treats Maryland attorneys differently than the general public. The proposed changes to Rules 2-510 and 3-510 were a product of a great deal

of discussion and ultimately, a policy decision. What the drafters did not want and what the proposed legislation would have permitted was attorneys getting blank forms, which they could copy, making as many copies as they wished, and then use in whatever cases they chose to and never have to go back to the clerk to get anything more. There had been a question of trying to balance the convenience of the attorneys. If there needed to be a subpoena of 22 witnesses at the trial, instead of having to obtain 22 pieces of paper from the clerk, the attorney could get one and then copy it and use it for the 22 witnesses at the trial.

The Chair said that the proposal was made that the subpoena would have an issue date on it. It would expire 45 days later unless served within that period of time. If the subpoena is not served within 45 days, it would no longer be valid, and the person would have to come back and get another one. This was intended to prevent blank subpoenas from being totally available, and the people who need them never having to go back to the clerk.

The Chair observed that the second part of section (c) was to try to get a uniform subpoena form. Various different forms were being used. The circuit court had a committee working on a uniform form. The District Court had a different forms committee. Neither committee communicated with the other and could not agree on a single form. It was difficult to figure out why the District Court subpoena was different from the circuit

court subpoena. Finally, the two committees did get together and came up with two versions of the uniform form, which were in the meeting materials.

The Chair said that Version 1 is a one-page form with the footer at the bottom that reads "Joint Subpoena v. 1," and Version 2 is a two-page form with the footer at the bottom that reads "Joint Subpoena v. 2." The difference between the two is three extra check boxes in the two-page form that refer to the specific Rules under which the subpoena is being requested. The Chair was not sure if the extra boxes in Version 2 were necessary.

Ms. Wherthey told the Committee that she was the Assistant Administrator of Internal Affairs for the Administrative Office of the Courts. She referred to the two different versions of the subpoena form. In the District Court, one school of thought is that because of the high volume of cases, more information would be helpful. Another school of thought is that a one-page form with a central check box is preferable. The Chair said that both forms would have an issue date and an expiration date. Version 2 refers to Rules 2-510 and 3-510 as well as to Rule 4-265, Subpoena for Hearing or Trial, which is the criminal rule.

Mr. Carbine commented that he preferred the short form, which is Version 1. If someone checks the wrong box, then the subpoena is invalid. The short form is similar to the one used currently. If someone involved in a District Court case who barely speaks English looks at Version 2 and reads that he or she

must comply with Rule 3-510 (a) or Rule 4-264, how meaningful would it be? What if the person checks the wrong box?

Mr. Lowe pointed out that one of the provisions that is similar on both forms is the sentence that reads: "This subpoena expires 45 days after the issue date above unless served prior to that time." He and several other clerks were concerned with the use of the word "expires." They get many questions from the public regarding expiration of licenses, such as marriage licenses. The Chair noted that this is a problem, so the language "unless served prior to that time" had been added. Subpoenas should not be served on people two years later.

Judge Price inquired concerning a rule that provides that original process expires in 60 days if not served. The Reporter stated that it is Rule 2-113, Process -- Duration, Dormancy, and Renewal of Summons. The Chair added that search warrants work that way, also. Judge Price asked whether the time period for the subpoena could be 60 days, so that there are not varying time frames. The Chair said that a 60-day time period for subpoenas had been considered. Any date is arbitrary. Some expiration date needs to be included.

Mr. Lowe suggested that instead of the sentence providing for a 45-day expiration date, the following could be substituted: "Service deadline: 45 or 60 days after issue date." There should be no reference to the fact that it expires. Judge Price noted that the District Court form could provide that the subpoena must be served by a certain date, including a blank with the date

filled in. The Reporter remarked that the computer could automatically generate this. Judge Price noted that the form asks for the name, address, and telephone number of the person requesting the subpoena. However, Rules 2-510 (c) and 3-510 (c) provide that the form shall contain the name of the person requesting. Should the Rule also refer to the address and telephone number of the person requesting? Otherwise, the clerk will get all of the questions about the subpoena instead of the attorney who requested the subpoena.

The Chair asked about the part of the form that refers to "Special Message." Ms. Wherthey answered that some of the older forms had been consolidated. The idea of including a telephone number is so that the recipient of the subpoena form can call the attorney who requested the subpoena if the recipient has questions. The special message was to allow for anything that needed to be added.

The Chair asked Mr. Lowe if his suggestion was that instead of the form stating that the subpoena expires, it would use the language "must be served...". Mr. Lowe responded that the word "expire" or the term "expiration date" should not be used. Mr. Carbine suggested that the language should be "...must be served by _____." The date would be filled in.

Mr. Carbine inquired what someone who uses this form will get. Does the person have to type over the place where it asks for name and address, or will the person have to go to the clerk to issue a blank form? The Chair replied that an attorney can

get a blank form and fill it out himself or herself. Mr. Carbine commented that he keeps a form file with forms from the various circuits. He retains them for a long time. The only way this new system would work is if the attorney is not allowed to fill in the date. The Chair noted that the issue date is key. Mr. Lowe added that once the form is printed, it automatically populates that field. Mr. Carbine observed that it seems that the attorney would have to go to the appropriate circuit court and ask the clerk to print out a blank subpoena form which the attorney would fill out.

The Reporter questioned whether this is supposed to be a separate portal from MDEC. The subpoena form comes from a different program. It is not being obtained from MDEC. The Chair noted that the form would have to be obtained from a particular court to have that court's seal on the form. Mr. Lowe explained that if the attorney would like a form from Harford County, the attorney simply clicks on "Harford County" in the computer program, and the form will print with the court's seal and the clerk's signature at the bottom of the form.

Mr. Carbine asked whether to access the form he would go to the Judiciary website and search for subpoena forms, then go through the menu of courts. Would he then press the appropriate button and the form is printed, or does he physically need to go the appropriate court? Mr. Lowe answered that he would not physically need to go to the court. The object is for an attorney to be able to be in his or her office and print a

subpoena from the appropriate county. The attorney would fill out the form which already has the court's seal and the clerk's signature on it. This is not part of MDEC.

Mr. Carbine inquired if he can get the form online. The Reporter answered that even if the county has not become an MDEC county yet, a registered user of MDEC can type in his or her assigned number and get the form. Mr. Lowe added that the controlling feature is that the attorneys have to register for MDEC to access this. Mr. Sullivan asked if the attorney has to go into the regular case file, and the Reporter answered that the attorney would not have to. Mr. Carbine questioned whether everyone in the system will be onboard with this. Mr. Lowe explained that at the point where the form is accessed, it does not mean that the county which gives the form is already an MDEC county. The attorney will be a registered user through MDEC. All of the attorneys across the State have now been invited to register for MDEC, although it has not started up yet. The big issue had been how to control this access to subpoena forms so that it is only accessible to attorneys. The solution to that was to do this through the MDEC portal. All attorneys would have to supply their Client Protection Fund number to get an MDEC identification number.

Mr. Carbine hypothesized that he would be a registered user of MDEC by October 14, 2014 when MDEC starts in Anne Arundel County. On the 15th, he needs to issue a subpoena from the Circuit Court of Cecil County. Can he go to MDEC and get this

form? Ms. Harris answered that this is the goal. Mr. Carbine inquired whether he could go to the court to get the form if he cannot access it electronically. Mr. Lowe replied affirmatively. Mr. Carbine commented that hopefully there will be no more carbon copies, where the pink copy must be filed with the court. This requires a manual typewriter. Mr. Lowe remarked that those triplicate forms are no longer used. The Reporter asked what *pro se* litigants do in the District Court. Judge Ellinghaus-Jones responded that the District Court has three or four forms that those people can write on by hand.

The Reporter pointed out that subsection (b)(3) of Rules 2-510 and 3-510 provides that the registered user under Rule 20-101 may obtain from the clerk "through MDEC" an electronic version of a blank subpoena form. Is this the correct terminology, or is the accessibility ancillary to MDEC? Ms. Harris responded that the attorney has to go through the MDEC system, but the Judicial Information Systems (JIS) writes the program for the subpoenas. The Chair remarked that it will not be just for Anne Arundel County. Ms. Harris replied that the Chair was correct. There will be a uniform subpoena. The vendor that is under contract to develop MDEC is not doing the subpoena forms. JIS is doing it, but the forms will be done through the MDEC portal. The Reporter said that Rules 2-510 and 3-510 as drafted are then correct.

The Chair observed that the subpoena form is not done by the Rules Committee. Rules 2-510 and 3-510 provide in section (c) for the subpoena to be on a uniform form approved by the State

Court Administrator. The reason the form was drafted was that before the Rule would be sent to the Court of Appeals, it seemed important to see what the form would look like. The form was done for informational purposes. Ms. Harris commented that she would like the Committee's input on the forms. The Reporter noted that good comments about the form had been made at the meeting.

The Chair pointed out that section (c) of Rules 2-510 and 3-510 has the language "an expiration date" in it. This will have to be changed. The Reporter commented that a service deadline is not the same as an expiration date. She asked if the time frame for service had been changed from 45 days to 60 days. Mr. Carbine expressed the view that it should be 45 days. Judge Price suggested that the time period should be 60 days. This would be consistent with the time frame for original service. By consensus, the Committee agreed to change the time after the issue date by which the subpoena must be served from 45 to 60 days.

Mr. Sullivan suggested that there could be a Committee note explaining what the expiration date means. Mr. Lowe responded that a party who is not an attorney may be confused about what "expired" means. The Reporter expressed the opinion that it is not appropriate for the Rule to use the term "expiration date." Rather, the form could read: "Service deadline: 60 days after issue date." The trial date to which a witness is subpoenaed may be several months after the subpoena is issued. A timely served

subpoena should not "expire" before the date the witness must appear. Mr. Carbine said that some attorney will draw attention to the difference in the language in section (c) and in the Committee note. The Chair stated that the language in the Committee note should refer to "the date of issuance." By consensus, the Committee agreed to the Chair's suggestion.

Judge Price commented that the clerks may not know that they can check the box that reads "To testify in the above case" as well as the box that reads "To produce the following documents, items, and information, not privileged." The form could have a third box that could be checked stating that one could testify and/or produce. The Chair responded that the Rules do not usually use the language "and/or," but the first box might be a place to use it. The box would read "To testify in the above case and/or to produce the following documents ...." By consensus, the Committee approved this change.

The Vice Chair pointed out a typographical error in subsection (a)(2) of Rules 2-510 and 3-510. The word "a" appears twice after the word "compel." Ms. Libber, an Assistant Reporter, noted a typographical error in the next to last line of the "amend" clause at the beginning of Rules 2-510 and 3-510 – the word "fo" should be the word "of." By consensus, the Committee agreed to make these corrections.

By consensus, the Committee approved Rules 2-510 and 3-510 as amended.

The Chair presented Rules 4-265, Subpoena for Hearing or

Trial, and 4-266, Subpoenas - Generally, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-265 to reorganize the Rule, to add certain provisions concerning the use and copying of subpoena forms, to permit electronic issuance of a blank form fo subpoena under certain circumstances, and to make stylistic changes, as follows:

Rule 4-265. SUBPOENA FOR HEARING OR TRIAL

(a) Definitions

(1) Trial

For purposes of this Rule, "trial" includes hearing.

(2) Trial Subpoena

For purposes of this Rule, "trial subpoena" includes hearing subpoena.

(b) Issuance

A subpoena shall be issued by the clerk of the court in which an action is pending in the following manners:

~~(b)~~ (1) ~~Preparation by Clerk~~

On request of a party, the clerk shall prepare and issue a subpoena commanding a witness to appear to testify at trial. The request for subpoena shall state the name, address, and county of the witness to be served, the date and hour when the attendance of the witness is required, and which party has requested the subpoena. If the request

is for a subpoena duces tecum, the request also shall designate the relevant documents, recordings, photographs, or other tangible things, not privileged, that are to be produced by the witness.

~~(c) Preparation by Party or Officer of the Court~~

(2) On request of a party entitled to the issuance of a subpoena, the clerk shall provide a blank form of subpoena which shall be filled in and returned to the clerk to be signed and sealed before service.

(3) On request of ~~an attorney or other officer of the court~~ a member in good standing of the Maryland Bar entitled to the issuance of a subpoena, the clerk shall issue a subpoena signed and sealed ~~but otherwise in blank~~ by the clerk, which the attorney shall ~~be filled~~ fill in before service.

(4) An attorney of record in a pending action who is a registered user under Rule 20-101 may obtain from the clerk through MDEC, for use in that action, an electronic version of a blank form of subpoena containing the clerk's signature and the seal of the court, which the attorney may download, print, and fill in before service.

(5) Except as provided in subsections (b)(3) and (b)(4) of this Rule, a person may not copy and fill in any blank form of subpoena for the purpose of serving the subpoena.

~~(d)~~ (c) Issuance of Subpoena Duces Tecum

A subpoena duces tecum shall include a designation of the documents, recordings, photographs, or other tangible things, not privileged, that are to be produced by the witness.

~~(e)~~ (d) Filing and Service

Unless the court waives the time requirements of this section, a request for subpoena shall be filed at least nine days

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

Cross reference: As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b)(6) and Code, Financial Institutions Article, §1-304.

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

Rule 4-265 was accompanied by the following Reporter's note.

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

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-266 to provide for a uniform subpoena form approved by the State Court Administrator, to add a Committee note following section (a), to add a date of issuance and expiration date to a subpoena form, to prohibit serving or attempting to serve a subpoena after its expiration date, to add a Committee note following section (c), and to make stylistic changes, as follows:

Rule 4-266. SUBPOENAS - GENERALLY

(a) Form

Except as otherwise permitted by the court for good cause, ~~Every~~ every subpoena shall be on a uniform form approved by the State Court Administrator. The form shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, ~~and~~ (5) a description of any documents, recordings, photographs, or other tangible things to be produced, and (6) the date of issuance and an expiration date which shall be 45 days after the date of issuance.

Committee note: A subpoena may be used to compel attendance at a court proceeding or deposition that will be held more than 45 days after the date of issuance. The "expiration date" to which sections (c) and (d) of this Rule refer is the date by which the subpoena must be served before its validity ends. The existence of an expiration date does not preclude reissuance of the subpoena with a new expiration date if timely service of the original subpoena cannot be made.

(b) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). A subpoena may be served by a sheriff of any county or by a person who is not a party and who is not less than 18 years of age. A subpoena issued by the District Court may be served by first class mail, postage prepaid, if the administrative judge of the district so directs. A person may not serve or attempt to serve a subpoena after its expiration date.

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

. . .

Rule 4-266 was accompanied by the following Reporter's note.

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

The Chair told the Committee that the changes to Rules 4-265 and 4-266 were the same as the ones made to Rules 2-510 and 3-510, except that Russell Butler, Esq., Executive Director of the Maryland Crime Victims' Resource Center, Inc., had submitted a request to add language on behalf of victims. This comment came in the day before the meeting. Mr. Butler pointed out that Fed. R. Crim. Proc. 17 (c)(3) reads as follows: "After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object." Mr. Butler recommended that either this Rule be adopted in Maryland or that the subpoena form contain language to the effect of the federal language. If someone is seeking victim information, the person seeking the information must notify the victim. Mr. Butler had suggested that this should be added to Rule 4-266 (c).

Mr. Butler had alleged in his letter that when defendants seek to obtain by subpoena confidential or other personal material regarding victims of crime, such as what now exists in electronic form in the "cloud" on the internet, that is often protected by law and has been saved by the victim in a "secure" manner. These records can include a victim's electronic diary, daily weight record, clothes sizes, etc. It would include any information that the victim puts on a computer, which he or she thinks is safe.

The Chair said that Mr. Butler was not present to explain his suggestion. It was not clear when this information is being sought and to whom the subpoena is directed. He asked if anyone had any knowledge about this issue. Judge Mosley responded that this is similar to getting telephone records. A company may provide "cloud" storage of information. The company can be subpoenaed, and then the company will provide the requested information. Judge Ellinghaus-Jones remarked that she had seen people subpoena a variety of unusual things. The subpoena may be sent to a physician or to an employer. The court does not find out about it unless the person who is served with the subpoena tells the court. Often the court finds out when the person receiving the subpoena sends all of the requested information to the court, which ends up with a large packet of personal information about someone. Judge Ellinghaus-Jones said that she was pleased to see how subsection (a)(3) of Rules 2-510 and 3-510, the provision for sanctions for improper use of a

subpoena, had been broadened.

The Chair noted that Mr. Butler's comment was addressed only to criminal subpoenas in Rule 4-266. Judge Mosley referred to a recent opinion of the U.S. Supreme Court, *Riley v. California*, 134 S. Ct. 2473 (2014), which addressed looking at what is in the "cloud." The Chair expressed the view that this issue had been discussed in the civil context some time ago, requiring that if medical records are being subpoenaed, the person requesting the records has to give notice to the person whose record is being subpoenaed. He commented that the person whose record is being subpoenaed needs notice, but it is not necessary to get a court order to subpoena the records.

Ms. McBride noted that Code, Health-General Article, Title 4, Subtitle 3 addresses this. The Chair added that this is covered by the Health Insurance Portability and Accountability Act of 1996, PL 104-191 (HIPAA). This issue can be considered, but the comment was received only yesterday. This matter should be deferred until it can be thoroughly reviewed.

Mr. Sullivan pointed out that the Court of Appeals had adopted in the criminal arena with analogs in the civil arena the concept that persons named or depicted in an item specified in a subpoena can file a motion to quash, modify, change the time for compliance with the subpoena, or require the documents, electronically stored information, or tangible things requested to be delivered to the court at or before the proceeding or before the time when they are to be offered into evidence. This

was helpful, because typically those persons would not get notice of the request. In the Attorney General's Office, the most common kind of subpoena is a bulk request for records, and an undetermined number of people are mentioned in the records. Section (f) of Rules 2-510 and 3-510 allow persons served with a subpoena to attend a deposition or persons named or depicted in an item specified in the subpoena to seek a protective order. How could this be made into something other than an illusory right?

The Chair said that since the request from Mr. Butler was so late, the matter should be referred to the Criminal Subcommittee to discuss it. Mr. Butler's proposed change does not affect the changes proposed for Rules 2-510 and 3-510, other than if Mr. Butler's changes are approved at a later time, the subpoena form may need to be changed to conform to the changes requested. The Reporter commented that she was surprised that Mr. Butler had not approached the legislature with this issue. The Health General Article and the financial aspect of it would require a legislative change. There is a cross reference after section (d) of Rules 2-510 and 3-510 to the Health-General Article and the Financial Institutions Article of the Code pertaining to prior notification.

Judge Price observed that if the Committee approves a one-page subpoena form, it would effectively eliminate Mr. Butler's second request that the standard form subpoena include whether the movant has affirmed that no non-public, heretofore

confidential matters related to a victim are being sought, and if not, affirming that the victim or victim's representative has been notified before the request for a subpoena was presented, so that the victim has a reasonable opportunity to respond. By consensus, the Committee agreed to refer Mr. Butler's letter to the Criminal Subcommittee.

The Reporter said that the subpoena form has been changed so that the time period of 45 days to serve the subpoena is now 60 days, and the language will be "the date by which it must be served." Judge Price added that the first set of boxes on the form will be combined, with a conjunction of "and/or." The Reporter responded that since this a change to the form, it will be given to Ms. Wherthey.

Agenda Item 10. Consideration of proposed amendments to: Rule 1-321 (Service of Pleadings and Papers Other Than Original Pleadings), Rule 2-613 (Default Judgment), and Rule 1-324 (Notification of Orders, Rulings, and Court Proceedings)

Mr. Dunn presented Rules 1-321, Service of Pleadings and Papers Other Than Original Pleadings; 2-613, Default Judgment; and 1-324, Notification of Orders, Rulings, and Court Proceedings, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-321 (b) to require service of a request for entry of judgment arising out of an order of default, as follows:

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

(a) Generally

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

(b) Party in Default - Exceptions

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

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

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

(c) Requests to Clerk - Exception

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

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

Rule 1-321 was accompanied by the following Reporter's note.

An order of default under Rule 2-613 is an interlocutory determination of liability. It is not a judgment for a specific amount of money damages or for other relief. In some cases, after an order of default has been entered, it may be necessary for the court to consider additional evidence before entering a judgment. Even after an order of default has been entered, the defendant has the right to participate in any further proceedings in the action on the issue of damages or other relief to be granted. See *Banegura v. Taylor*, 312 Md. 609 (1988) and *Greer v. Inman*, 79 Md. App. 350 (1989).

A circuit court judge has observed that, on occasion, a plaintiff who requests entry of judgment under Rule 2-613 (f) does not serve the request upon the defendant. The plaintiff cites Rule 1-321 (b) as the reason for not serving the defendant. The judge denies the request and insists upon service. The judge suggests that the Rules be amended to make clear that a request for entry of judgment arising out of an order of default under Rule 2-613 is to be served on the defendant.

The General Provisions Subcommittee recommends that Rule 1-321 (b) be amended by the addition of the requirement for service of a request for entry of judgment arising out of an order of default under Rule 2-613. The Subcommittee also recommends that Rule 2-613 be amended by the addition of a cross

reference to the new subsection of Rule 1-321 (b).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-613 by adding a cross reference after section (f), as follows:

Rule 2-613. DEFAULT JUDGMENT

. . .

(f) Entry of Judgment

If a motion was not filed under section (d) of this Rule or was filed and denied, the court, upon request, may enter a judgment by default that includes a determination as to the liability and all relief sought, if it is satisfied (1) that it has jurisdiction to enter the judgment and (2) that the notice required by section (c) of this Rule was mailed. If, in order to enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court, may rely on affidavits, conduct hearings, or order references as appropriate and, if requested, shall preserve to the plaintiff the right to trial by jury.

Cross reference: For the requirement that a request for entry of judgment under section (f) of this Rule be served on the defendant, see Rule 1-321 (b)(2).

. . .

Rule 2-613 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-321.

NOTE TO RULES COMMITTEE: In boldface type are proposed changes to Rule 1-324 drafted after the Committee approved the other changes to the Rule at the March 14, 2014 meeting.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-324 **to change the title of the Rule, to require the clerk to send notices of certain court proceedings, to add a Committee note following section (a),** to provide for the sending of certain notices when an attorney has entered a limited appearance pursuant to Rule 2-131 or Rule 3-131, and to make stylistic changes, as follows:

Rule 1-324. ~~**NOTICE**~~ **NOTIFICATION OF ORDERS, RULINGS, AND COURT PROCEEDINGS**

(a) Notification by Clerk

Upon entry on the docket of (1) any order or ruling of the court not made in the course of a hearing or trial or (2) the scheduling of a hearing, trial, or other court proceeding not announced on the record in the course of a hearing or trial, the clerk shall send a copy of ~~the~~ any order, ~~or~~ ruling, and any notice of the scheduled proceeding to all parties entitled to service under Rule 1-321, unless the record discloses

that such service has already been made.

Committee note: In many counties, the Assignment Office is under the purview of the County Administrative Judge. In those counties, in accordance with the directives of the County Administrative Judge, an employee of the Assignment Office, rather than the Clerk, sends some of the notifications required by this Rule.

(b) Notification When Attorney Has Entered Limited Appearance

If, in an action that is not an affected action as defined in Rule 20-101 (a), an attorney has entered a limited appearance for a party pursuant to Rule 2-131 or Rule 3-131 and the automated operating system of the clerk's office does not permit the sending of notifications to both the party and the attorney, the clerk shall send all notifications required by section (a) of this Rule to the attorney as if the attorney had entered a general appearance. The clerk shall inform the attorney that, until the limited appearance is terminated, all notifications in the action will be sent to the attorney and that it is the attorney's responsibility to forward to the client notifications pertaining to matters not within the scope of the limited appearance. The attorney promptly shall forward to the client all such notifications, including any received after termination of the limited appearance.

Committee note: If an attorney has entered a limited appearance in an affected action, section (a) of this Rule requires the MDEC system or the clerk to send all court notifications to both the party and the party's limited scope attorney prior to termination of the limited appearance.

(c) Inapplicability of Rule

This Rule does not apply to show cause orders and does not abrogate the requirement for notice of a summary judgment set forth in

Rule 2-501 (f).

Source: This Rule is in part derived from former Rule 1219 and is in part new.

Rule 1-324 was accompanied by the following Reporter's note.

Several amendments to Rule 1-324 are proposed.

As a matter of style, the Rule is divided into three sections.

An amendment to section (a) requires the clerk to send a notice of a hearing, trial, or other court proceeding that has been docketed but not announced on the record to all parties entitled to service under Rule 1-321. The Rule currently requires the clerk to send a copy of an "order or ruling" to the parties. It does not include a requirement that the clerk send notice of a hearing, trial, or other court proceeding. The proposed amendment encompasses that requirement.

A Committee note following section (a) notes that in some counties, some notifications that the clerk otherwise would be required to send are, instead, sent by an employee of the Assignment Office, which is under the purview of the County Administrative Judge.

New section (b) applies when an attorney has entered a limited appearance.

Proposed new Rule 1-321 (b) requires that, after entry of an attorney's limited appearance, service of documents is to be made upon both the attorney and the party. Rule 1-324 requires the clerk to send certain court notices to "all parties entitled to service under Rule 1-321." Therefore, in an action in which a limited appearance is entered, the clerk would be required to send notices to both the attorney and the party.

The Committee is informed that the clerks' operating systems currently in use

> throughout the State do not permit notices to be sent to both the attorney and the attorney's client. The Committee also is informed that reprogramming the systems to permit service upon both the attorney and the attorney's client would create an undue fiscal burden and that the new MDEC system, which is scheduled to begin rolling our on a county-by-county basis in the Fall of 2014, can be programmed to permit service on both.
>
> In non-MDEC counties, if the clerk's operating system does not permit the sending of notices to both the attorney and the attorney's client, new Rule 1-324 (b) requires the clerk to send the notice to the attorney, who is then required to forward to the client all notices pertaining to matters not within the scope of the limited appearance, even if the notice is received by the attorney after the limited appearance has terminated.
>
> Section (c), Inapplicability of Rule, carries forward the last sentence of current Rule 1-324, without change.

Mr. Dunn explained that current Rule 1-324 requires the clerk to send a copy of an order or ruling to the parties not made in the course of a hearing or trial. The proposed change is to require the clerk to also send to the parties notice of any scheduled hearing, trial, or other court proceedings not announced on the record in the course of a hearing or trial. The Committee note after section (a) of Rule 1-324 is new. It clarifies that in some counties, the Assignment Office is under the purview of the County Administrative Judge, and in those counties, an employee of the Assignment Office, rather than the clerk, sends some of the notifications required by the Rule.

Judge Ellinghaus-Jones pointed out a typographical error in

the seventh paragraph of the Reporter's note to Rule 1-324. In the second sentence, the word "our" should be the word "out." By consensus, the Committee agreed to correct this mistake.

Mr. Dunn said that under current Rule 1-321, once a party is in default, no other notices are sent to him or her. The General Provisions Subcommittee recommends that a request for entry of judgment arising out of an order for default under Rule 2-613 should be sent to the party in default. A circuit court judge had observed that at times, a plaintiff who requests entry of judgment under Rule 2-613 (f) does not serve the request upon the defendant, citing Rule 1-321 (b) as the reason for not serving the defendant. The judge insists upon service. Even after an order of default has been entered, the defendant has the right to participate in any further proceedings in the action on the issue of damages or other relief to be granted. The judge who had raised this issue suggested that the Rules be amended to make clear that a request for entry of judgment arising out of an order of default under Rule 2-613 is to be served on the defendant.

Mr. Dunn said that Judge Pierson, who was unable to attend the meeting, had proposed a change. He had asked whether section (b) applies only to a party against whom an order of default has been entered or whether it also includes a party who has defaulted by failing to appear but no order of default has been entered. Judge Pierson had recommended that the Rule apply only to a party against whom an order of default has been entered.

The Chair commented that the Reporter had raised an issue. The beginning of section (b) could read: "No pleading or other paper after the original pleading need be served on a party after an order of default has been entered against the party under Rule 2-613...". The Reporter had pointed out that there could be a judgment without a default, such as a summary judgment. The Reporter said that this is pursuant to Rule 2-501, Summary Judgment.

Mr. Carbine asked about a default for a discovery sanction. The Reporter responded that she had looked at the history of Rule 1-321, and it seemed that when there is a default for a discovery sanction, papers still need to be served on the party in default. This refers to the "failure to appear" language in the first sentence of section (b) of Rule 1-321. This language is in the corresponding federal rule, Fed. R. Civ. P. 5, Serving and Filing Pleadings and Other Papers, and it has been in the Maryland Rule since before the 1984 revision. It seems that an exception is being carved out. People with a discovery violation have to be served. It is only when there is an order of default or a judgment of default that no notice has to be served on the defaulting party. However, this is not stated in any rule.

The Chair asked the Committee how they wanted to proceed. Another issue with the language "served on a party in default for failure to appear" is that the other party could say that the first party is in default for failure to take some action, but since there has been no order to that effect, the first party

could allege that he or she is not in default. Mr. Dunn added that the person is not in default unless the court says so. The Chair noted that it makes sense to add the language "after an order of default has been entered." This makes it clear.

Mr. Carbine hypothesized that an attorney has a case on appeal, and a judgment of default had been entered against his or her client, because the client did not show up at a deposition. The attorney files a notice of appeal. At least for the appellee's brief, the attorney would like to get service. Does Rule 1-321 only apply at the trial court level? The Chair answered that it is a Title 1 Rule and applies to all courts. Mr. Carbine said that the attorney could file a notice of appeal, but when the other party files a motion to dismiss, the attorney does not get served a copy of it.

The Chair pointed out that this is all with respect to the stem of section (b) of Rule 1-321. Subsection (b)(2) provides that a request for entry of judgment arising out of an order of default has to be served even after the default. The defendant has a right to contest the amount of damages. Mr. Carbine noted that if there is not a request for an entry of judgment, and it is not a new claim, the attorney of the defaulting defendant is not entitled to service of anything. Is this what is intended by Rule 1-321? The Reporter observed that this is how the federal Rule is. The Chair commented that this may need to be looked at again.

Ms. McBride pointed out that some judges feel that an

attorney is either in the case or is out of the case. She had been unable to find a distinction between an appearance and a limited appearance. How would one enter a limited appearance? The Reporter explained that this is related to proposals suggested by the Access to Justice Commission. The idea is to allow a limited scope representation in certain situations to provide access to justice. Ms. McBride commented that Rule 1-324 refers to a limited appearance pursuant to Rules 2-131 or 3-131. She had looked at those Rules and could not understand how an attorney files a limited appearance.

The Reporter explained that all of the Rules pertaining to limited appearances are going to be in the 186th Report. A limited appearance allows an attorney who is representing an attorney on a single issue, such as alimony or a Qualified Domestic Relations Order (QDRO), to enter his or her appearance for that purpose only. The client is still self-represented for all other purposes. It came to light that JIS is unable at the present time to program the computer to send court notices to both the attorney, who is in the case on a limited appearance, and the self-represented litigant at the same time. The JIS computers, before MDEC is effective, are only programmed to send to one or the other. It would be too expensive to program the current systems used by the Judiciary when everything will be changed to MDEC soon.

The Chair pointed out that the Committee had approved the change to the Rules pertaining to limited appearances. What held

it up for a long time was trying to figure out whether the limited representation is in a judicial proceeding. It does not have to be; it could be limited to Alternate Dispute Resolution proceedings. The issue was when an attorney is in the case for only part of it, the party is *pro se* for the rest, and the clerk is going to send a notice pertaining to the case, the clerk does not know whether the notice pertains to the part of the case that the attorney is handling or the part that the client is handling. The Committee preferred to send the notice to both, but JIS said that they could not do that. The Reporter added that the question was that of the two, the attorney and the client, who is more likely to notify the other? The conclusion was that it would be the attorney who is more likely to notify the self-represented litigant. The Chair noted that JIS had said that they could notify both when MDEC becomes effective.

Mr. Carbine suggested that Rule 1-321 go back to the General Provisions Subcommittee. The Reporter asked whether both aspects of the Rule have to be deferred. She suggested that the limited scope representation aspect be sent to the Court of Appeals. Mr. Carbine asked whether Rules 1-324 and 1-321 are intertwined. The Chair answered that he did not think so. The Reporter said that they involve separate issues.

By consensus, the Committee approved Rule 1-324 as presented, except for a correction of the typographical error. The Reporter said that Rules 1-321 and 2-613 will be remanded to the Subcommittee. Rule 1-324 will be transmitted to the Court of

Appeals.

There being no other business before the Committee, the Chair adjourned the meeting.