COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms UL6 and 7 of the Judicial Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on March 10, 2017.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Hon. Yvette M. Bryant
Hon. John P. Davey
Mary Anne Day, Esq.
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Hon. JoAnn M. Ellinghaus-Jones
Ms. Pamela Q. Harris
Victor J. Laws, III, Esq.
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Hon. Paula A. Price
Scott D. Shellenberger, Esq.
Dennis J. Weaver, Clerk
Robert Zarbin, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
David R. Durfee, Jr., Esq., Assistant Reporter
Sherie B. Libber, Esq., Assistant Reporter
Linda B. Mack, Esq., President, Global Investigative Services, Inc.
Jessica Cohen Taubman, Compliance Manager, Employment Background Investigations, Inc.
Carla Jones, Judicial Information Systems, Court Business Office
Merissa Hall, Esq., Judicial Information Systems, Court Business Office
Janet Hartge, Esq., Assistant Attorney General, Dept. of Human Resources
Thomas J. Dolina, Esq., Bodie, Dolina, Hoggs, Friddell & Grenzer, P.C.
Emanuel J. Turnbull, Esq., The Holland Law Firm, P.C.
Allan J. Gibber, Esq., Neuberger, Quinn, Gielen, Rubin & Gibber
Maxwell R. Collins, II, Esq.
Scott T. Whiteman, Esq., Midland Credit Management, Inc.
Mark Forrester, Esq.

H. Scott Curtis, Esq., Office of the Attorney General
Kalea Clark, Esq., Washington Post
Margaret H. Phipps, Register of Wills for Calvert County
Kelley O'Connor, Government Relations, Administrative Office of the Courts
Hon. John P. Morrissey, Chief Judge, District Court of Maryland
Del. Kathleen M. Dumais, House of Delegates
P. Gregory Hilton, Esq., Clerk, Court of Special Appeals
Michele J. McDonald, Esq., Chief Counsel, Office of the Attorney General
Mark Bittner, Judicial Information Systems
Delegate Erek Barron
Mary Hutchins, Judicial Information Systems, Enterprise Project
Philip Tyson Bennett, Esq.

The Chair convened the meeting. He told the Committee that the agenda for the meeting was full. He announced that the Court of Appeals had adopted, with amendments, the Rules pertaining to bail that the Committee had sent to them in the 192nd Report. The Rules will take effect on July 1, 2017 unless the legislature passes any legislation that impacts the Rules. Many bills are in the legislature reflecting various viewpoints on this issue. Some would codify the Rules or parts of them; others are looking to repeal the Rules. Depending on what, if anything, the legislature does, it may be necessary to redraft a whole new set of Rules.

Agenda Item 1. Consideration of proposed amendments to Rule 8-102 (Term of Court)

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The Chair presented Rule 8-102, Term of Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 8-102 by adding language indicating that the term of each appellate court is stated for accounting and statistical reporting purposes; by changing the beginning date of the term to September 1; by providing August 31 as the end date of the term; by adding language providing that the expiration of a term does not affect the jurisdiction or authority of the court with respect to pending actions and matters; and by making stylistic changes, as follows:

Rule 8-102. TERM OF COURT

(a) For accounting and statistical reporting purposes, ~~Each~~ each appellate court shall have one term annually, beginning on ~~the second Monday in~~ September 1 of each year and continuing until the ~~beginning of the next term~~ following August 31.

(b) The expiration of a term does not affect the jurisdiction or authority of the court with respect to actions and matters then pending.

Source: This Rule is derived from former Rules 1003 and 803.

Rule 8-102 was accompanied by the following Reporter's note.

In response to a request by the Court of Appeals, Rule 8-102 is proposed to be

amended by changing the date of the term of each appellate court from the second Monday in September to September 1 through August 31 of the next year. The Rule clarifies the expiration of a term does not affect the jurisdiction or authority of the court with respect to actions and matters then pending.

The Chair said that the proposed changes to Rule 8-102 are not in the nature of a request. The Court of Appeals has already made this change, and they asked for the Rules Committee to state it in a rule. The language for accounting and statistical reporting matches the language in the Rule for trial courts, which is Rule 16-301, Term of Court and Grand Jury. However, the term of the two appellate courts will start September 1 rather than the first Monday in September. Section (b) of Rule 8-102 is a clarification that the mere expiration of the term does not preclude the appellate courts from addressing matters then pending.

The Chair asked for comments. None were forthcoming. The Chair noted that since Rule 8-102 had not been sent to a Subcommittee, it will take a motion to approve it. Judge Davey moved to approve Rule 8-102, the motion was seconded, and it passed on a unanimous vote.

Agenda Item 2. Consideration of proposed amendments to Rule 9-205.3 (Custody and Visitation-Related Assessments)

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The Chair presented Rule 9-205.3, Custody and Visitation-Related Assessments, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-205.3 (d) to add two categories of professionals to the list of individuals qualified to be custody evaluators, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

. . .

(d) Qualifications of Custody Evaluator

(1) Education and Licensing

A custody evaluator shall be:

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

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

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

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

(E) (i) a Maryland licensed graduate social worker with at least two years of experience in (a) one or more of the areas listed in subsection (d)(2) of this Rule, (b) performing custody evaluations, or (c) any combination of subsections (a) and (b); or (ii) a graduate social worker with an equivalent level of licensure and experience in any other state; or

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

(2) Training and Experience

In addition to complying with the continuing requirements of his or her field, a custody evaluator shall have training or experience in observing or performing custody evaluations and shall have current knowledge in the following areas:

(A) domestic violence;

(B) child neglect and abuse;

(C) family conflict and dynamics;

(D) child and adult development; and

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

(3) Waiver of Requirements

If a court employee has been performing custody evaluations on a regular basis as an employee of, or under contract with, the court for at least five years prior to January 1, 2016, the court may

> waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual participates in at least 20 hours per year of continuing education relevant to the performance of custody evaluations, including course work in one or more of the areas listed in subsection (d)(2) of this Rule.
>
> . . .

Rule 9-205.3 was accompanied by the following Reporter's note.

> A circuit court judge requested a change to Rule 9-205.3 to include another category of professionals who would qualify to be custody evaluators, licensed clinical professional counselors (LCPC). She noted that LCPC's have the requisite education and training to qualify. When this request was discussed with other judges, one of them pointed out that licensed graduate social workers (LGSW) with two years of experience in family issues would also qualify to be custody evaluators. The Family/Domestic Subcommittee recommends the addition of both of these types of professionals to the list of those who qualify to be custody evaluators in subsection (d)(1) of the Rule.

The Chair said that the proposed change to Rule 9-205.3 emanated from a request from the Honorable Sheila R. Tillerson Adams, the County Administrative Judge for Prince George's County, to add two new categories of professionals who can serve as custody evaluators. The proposal was disseminated to family law judges. The Honorable Cynthia Callahan, of the Circuit

Court for Montgomery County, who handles these kinds of cases, had approved the proposed change.

The Chair asked whether Rule 9-205.3 had been sent to the Family and Domestic Subcommittee. Ms. Libber, an Assistant Reporter, replied that she had sent the Rule to the Subcommittee. The Reporter commented that there had been some debate as to which categories of professionals should be included as custody evaluators. Ms. Libber clarified that the consultants had debated this issue, but not the members of the Subcommittee, who had approved the change. The Chair remarked that it would be a good idea for the Committee to vote on the Rule.

Mr. Marcus moved to approve the change to Rule 9-205.3, the motion was seconded, and it passed unanimously.

Agenda Item 3. Reconsideration of proposed amendments to: Rule 6-125 (Service), Rule 6-210 (Notice to Interested Persons), Rule 6-302 (Proceedings for Judicial Probate), and Rule 6-317 (Notice to Interested Persons)

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The Chair explained that Agenda Item 3 was a reconsideration of several Probate Rules. The issue was whether the registers of wills had to continue to send notices by certified mail. The Rules Committee had decided that notices should be sent by certified mail and also by first class mail at the same time. The matter went to the Court of Appeals. The

registers who had requested the change altered their position, and agreed to sending notices by first class mail, return service requested. The Court of Appeals approved that approach. The Rules are back in front of the Committee to conform them to the way that the Court of Appeals had approved them.

Mr. Laws presented Rules 6-125, Service; 6-210, Notice to Interested Persons; 6-302, Proceedings for Judicial Probate; and 6-317, Notice to Interested Persons, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 6-125 by replacing "certified mail" with "first class mail, return service requested" in section (a), by collapsing the forms in subsection (b)(2) and (b)(3) into one form that includes "first class mail, return service requested," and by adding language to section (d) to conform with the changes to the rest of the Rule, as follows:

Rule 6-125. SERVICE

(a) Method of Service – Generally

Except where these rules specifically require that service shall be made by ~~certified mail~~ first class mail, return service requested, service may be made by (1) personal delivery, ~~or~~ (2) certified mail, ~~by~~ or (3) first class mail. Service by certified mail is complete upon delivery.

Service by first class mail, including first class mail, return service requested, is complete upon mailing. If a person is represented by an attorney of record, service shall be made on the attorney pursuant to Rule 1-321. Service need not be made on any person who has filed a waiver of notice pursuant to Rule 6-126.

Cross reference: For service on a person under disability, see Code, Estates and Trusts Article, §1-103 (d).

(b) Certificate of Service

(1) When Required

A certificate of service shall be filed for every paper that is required to be served.

(2) ~~Service by Certified Mail~~ Form of Certificate of Service

~~If the paper is served by certified mail, the certificate shall be in the following form:~~

~~CERTIFICATE OF SERVICE~~

~~I hereby certify that on this ____ day of _____, (month) _____ (year) I mailed by certified mail a copy of this paper to the following persons:~~

~~_____~~

~~(name and address)~~

~~_____~~

~~Signature~~

~~(3) Service by Personal Delivery or First Class Mail~~

~~If the paper is served by personal delivery or first class mail, the certificate shall be in the following form:~~

CERTIFICATE OF SERVICE

FOR:

[ ] personally delivered mail

[ ] certified mail

[ ] first class mail, postage prepaid

[ ] first class mail, postage prepaid, return service requested

I hereby certify that on the ____ day of _____, (month)

_____ I delivered or mailed, postage prepaid, a copy of (year)

this paper to the following persons:

_____.
(name and address)

_____
Signature

(c) Affidavit of Attempts to Contact, Locate, and Identify Interested Persons

An affidavit of attempts to contact, locate, and identify interested persons shall be substantially in the following form:

[CAPTION]

AFFIDAVIT OF ATTEMPTS TO CONTACT, LOCATE, AND IDENTIFY INTERESTED PERSONS

I, _____ am: (check one)

[ ] a party

[ ] a person interested in the above-captioned matter

[ ] an attorney.

I have reason to believe that the persons listed below are persons interested in the estate of _____

_____

(Provide any information you have)

| Name | Relationship | Addresses |
|---|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

I have made a good faith effort to contact, locate, or identify the persons listed above by the following means:

_____

_____

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

_____ _____

Signature Date

(d) Proof

If there is no proof of actual notice, and (1) first class mail is returned as undeliverable, (2) first class mail, return service requested, is returned as undeliverable with no forwarding address, or (3) certified mail is sent and no return receipt is received apparently signed by the addressee, ~~and there is no proof of actual notice,~~ no action taken in a proceeding may prejudice the rights of the person entitled to notice unless proof is made by verified writing to the satisfaction of the court or register that reasonable efforts have been made to locate and warn the addressee of the pendency of the proceeding.

Cross reference: Code, Estates and Trusts Article, §1-103 (c).

Rule 6-125 was accompanied by the following Reporter's note.

Rule 6-125 is proposed to be changed to conform to the changes recommended for Rules 6-210, 6-302, and 6-317 regarding how notices in probate proceedings are sent. The two certificates of service in subsections (b)(2) and (b)(3) have been collapsed into one certificate applying to any of the four methods of service.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 – SMALL ESTATE

AMEND Rule 6-210 by deleting language referring to a certain obligation of the estate and by replacing service by certified mail with service by "first class mail, return service requested," as follows:

Rule 6-210. NOTICE TO INTERESTED PERSONS

Promptly after the personal representative files a notice of appointment pursuant to Rule 6-209, ~~at the expense of the estate~~ the register shall send by ~~certified~~ first class mail, return service requested, to each interested person a copy of that notice and a notice in the following form:

NOTICE TO INTERESTED PERSONS

In accordance with Maryland law, you are hereby given legal notice of the proceedings in a decedent's estate as more fully set forth in the enclosed copy of the newspaper publication or Notice of Appointment.

This notice is sent to all persons who might inherit if there is no will or who are persons designated to inherit under a will.

This notice does not necessarily mean that you will inherit under this estate.

Further information can be obtained by reviewing the estate file in this office or by contacting the personal representative or the attorney.

Any subsequent notices regarding this estate will be sent to you at the address to which this notice was sent. If you wish notice sent to a different address, you must notify me in writing.

_____

Register of Wills

_____

Address

_____

Cross reference: Code, Estates and Trusts Article, §§2-210 and 5-603 (b).

Rule 6-210 was accompanied by the following Reporter's note.

A group of registers of wills had requested that the requirement of sending notices in probate proceedings by certified mail be replaced by sending notices by first class mail, wherever "certified mail" appears in the Rules in Title 6. The registers said that certified mail is often returned, marked "unclaimed," or the return receipt is not returned to them. Some probate practitioners did not agree with this, citing due process concerns. The Rules Committee recommended that initial notices be sent by both certified and first class mail, and subsequent notices could be sent by first class mail.

At the hearing on the 191st Report, some registers of wills objected to the fact that Rules 6-210, 6-302, and 6-317 required both notice by certified mail and also by first class mail. The Court deferred action on those Rules as well as on Rule 6-125, which had been recommended to be amended to conform to the proposed changes to the other Rules. The Court asked for a redraft of the

four Rules. The registers of wills have agreed that whenever certified mail is required in the current Rules, first class mail, return service requested, can be substituted when anyone does not wish to use certified mail. This means that mail that is undeliverable is returned to the sender by the United States Postal Service with either a new address or the reason for nondelivery. At a minimum, any initial notice in a probate proceeding would have to be served by first class mail, return service requested. This would affect Rules 6-210, 6-302, and 6-317. Subsequent notice may be made by first class mail.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 – OPENING ESTATES

AMEND Rule 6-302 (b) by deleting a certain time period and adding the word "promptly," by deleting language referring to a certain obligation of the estate, by replacing service by certified mail with service by "first class mail, return service requested," and by making stylistic changes, as follows:

Rule 6-302. PROCEEDINGS FOR JUDICIAL PROBATE

(a) Service of Petition

A copy of a petition for judicial probate (Rule 6-301 (a)) shall be served by the petitioner on the personal representative, if any.

Cross reference: Code, Estates and Trusts Article, §5-401.

(b) Notice of Judicial Probate

~~Within five days~~ Promptly after receiving the names and addresses of the interested persons, ~~at the expense of the estate~~ the register shall ~~serve on the interested persons~~ send by ~~certified mail~~ first class mail, return service requested, to each interested person a Notice of Judicial Probate. The register shall publish the notice once a week for two successive weeks in a newspaper of general circulation in the county where judicial probate is requested. The notice shall be in the following form:

[CAPTION]

NOTICE OF JUDICIAL PROBATE

To all Persons Interested in the above estate:

You are hereby notified that a petition has been filed by _____ for judicial probate of the will dated _____ (and codicils, if any, dated _____) and for the appointment of a personal representative. A hearing will be held _____ on
(place)

_____ at _____.
(date) (time)

This hearing may be transferred or postponed to a subsequent time. Further information may be obtained by reviewing the estate file in the office of the Register of

Wills.

_____

Register of Wills

Cross reference: Code, Estates and Trusts Article, §§1-103 (a) and 5-403.

(c) Hearing

The court shall hold a hearing on the petition for judicial probate and shall take any appropriate action.

Cross reference: Code, Estates and Trusts Article, §5-404.

(d) Notice of Appointment

After a personal representative has been appointed and if no Notice of Appointment has been published, notice shall be in the form as set forth in Rule 6-311 and published as set forth in Rule 6-331 (a).

Cross reference: Code, Estates and Trusts Article, §5-403.

Rule 6-302 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 6-210.

MARYLAND RULES OF PROCEDURE

TITLE 6 – SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 – OPENING ESTATES

AMEND Rule 6-317 by deleting language referring to a certain obligation of the estate and replacing service by certified mail with service by "first class mail, return service requested," as follows:

Rule 6-317. NOTICE TO INTERESTED PERSONS

~~At the expense of the estate, the~~ The register shall send by ~~certified~~ first class mail, return service requested, to each interested person a copy of the published Notice of Appointment as required by Rule 6-331 (b) and a notice in the following form:

NOTICE TO INTERESTED PERSONS

In accordance with Maryland law, you are hereby given legal notice of the proceedings in a decedent's estate as more fully set forth in the enclosed copy of the newspaper publication or Notice of Appointment.

This notice is sent to all persons who might inherit if there is no will or who are persons designated to inherit under a will.

This notice does not necessarily mean that you will inherit under this estate.

Further information can be obtained by reviewing the estate file in this office or by contacting the personal representative or the attorney.

Any subsequent notices regarding this estate will be sent to you at the address to

which this notice was sent. If you wish notice sent to a different address, you must notify me in writing.

_____
Register of Wills

_____
Address

_____

Cross reference: Code, Estates and Trusts Article, §2-210.

Rule 6-317 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 6-210.

Mr. Laws pointed out that Code, Estates and Trusts Article, §1-103 provides in subsection (a)(1) that unless the Maryland Rules otherwise require, the first notice in a probate proceeding can be made by first class mail, postage prepaid. Subsection (a)(2) provides that the Orphans' Court may require, or the personal representative may elect, to use certified mail, return receipt requested. Certified mail is not required by the law, even though it had been required by the Rules. The registers do not want to use certified mail, because often it is not even picked up. It may signal bad news for recipients who deliberately do not pick it up.

Mr. Laws commented that the registers have their reasons for going back to notice sent by ordinary mail. The latest version before the Committee provides for first class mail, return service requested. The website of the U.S. Postal Service explains that "return service requested" means that the mail would not be forwarded to the recipient's new address, but notification of a new address will be provided to the sender, who in this case is the register of wills. There is no additional charge. Rules 6-210, 6-302, and 6-317 would replace notice by certified mail with notice by first class mail, return service requested. The Chair reiterated that this is the change to the Rules that the Court of Appeals had approved.

Mr. Gibber referred to the Certificate of Service form in Rule 6-125, which is intended to allow for personally delivered mail; certified mail; first class mail, postage prepaid; and first class mail, postage prepaid, return service requested, yet the certificate itself only has the language "...I delivered or mailed, postage prepaid, a copy of this paper...". Mailing something postage prepaid does not satisfy the requirements. Mailing an item with "return service requested" needs to be made part of the certificate itself. By consensus, the Committee approved this suggestion.

Mr. Gibber referred to the language of section (d) of Rule 6-125 that read "[i]f ...(2) first class mail, return service

requested, is returned as undeliverable with no forwarding address...". Mr. Gibber pointed out that the mail could be returned with a forwarding address, because by definition, return service requested can include a situation where there is a forwarding address, but instead of forwarding it on, it comes back to the register. What should be addressed is what happens if first class mail return service requested comes back as undeliverable with a forwarding address. The registers have an obligation to send it again.

The Chair asked Mr. Gibber whether his suggestion was that if first class mail, return service requested, is returned undeliverable, with a forwarding address, there is an affirmative duty of the register to send it out again, which needs to be included in section (d). Mr. Gibber answered affirmatively. The Chair asked Mr. Gibber to submit a written proposal of the changes that he was requesting, and he agreed to do so. Rules 6-125, 6-210, 6-302, and 6-317 will be considered at the next meeting of the Committee.

Agenda Item 4. Consideration of proposed new Rule 16-911 (CaseSearch)

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The Chair presented proposed new Rule 16-911, CaseSearch, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

ADD new Rule 16-911, as follows:

Rule 16-911. CASESEARCH ACCESS TO CASE RECORDS

(a) Definition

"CaseSearch" means the program that provides access through the Internet to certain case record information. It does not include access through the Rules in Title 20 (MDEC).

(b) In General

CaseSearch access shall be provided to the public through a website maintained by the Administrative Office of the Courts.

(c) Information Accessible to the Public Through CaseSearch

Except as otherwise restricted by the Rules in this Title or other applicable law, the information set forth in sections (d), (e), and (f) of this Rule shall be accessible to the public through CaseSearch.

(d) Civil Cases

(1) In General

The following information in civil cases shall be accessible through CaseSearch:

(A) the court in which the case is pending and the case number assigned to the case;

(B) the case type, case status, and filing date of the complaint;

(C) the name of each party as recorded in the case caption;

Committee note: In certain cases involving a child, the caption may refer to the child and the child's parent by initials rather than a full name.

(D) the name and mailing address of each attorney who has entered an appearance for a party and, unless otherwise restricted, of each self-represented litigant;

(E) the docket entries in the case; and

(F) calendar information.

(2) Method of Search

Civil cases may be searched by party name, case number, filing date, or other methods determined by the State Court Administrator.

(e) Criminal and Incarcerable Traffic Offense Cases

(1) In General

Subject to section (c) of this Rule, the following information in criminal and incarcerable traffic offense cases shall be accessible by CaseSearch:

(A) the court in which the case is pending and the case number assigned to the case;

(B) the nature and date of filing of the charging document;

(C) the name of each defendant as recorded in the charging document, and the defendant's address, date of birth, race, sex, height, and weight, if and as recorded in the charging document;

(D) the charges contained in the charging document;

(E) arrest warrant information that is open to inspection;

Cross reference: See Rule 4-212 (d)(3).

(F) the name and address of each attorney who has entered an appearance for a defendant;

(G) the last names, badge numbers, and employing agency of arresting officers;

(H) the penalty sum of any bail bond, the name of the bail bondsman and the name and address of any bail bond company with which the bail bondsman is associated;

(I) the plea to and disposition of each charge;

(J) the docket entries in the case;

(K) calendar information; and

(L) sentencing information.

(2) Method of Search

Criminal cases may be searched by defendant's name, case number, filing date, or other methods determined by the State Court Administrator.

(f) Non-incarcerable Traffic Cases

(1) In General

Subject to section (c) of this Rule, in non-incarcerable traffic cases, all information on the citation shall be accessible on CaseSearch except:

(A) the defendant's driver's license number, telephone number, and e-mail address shall not be accessible; and

(B) the month and year, but not the day, of the defendant's date of birth shall be accessible.

(2) Method of Search

Traffic offense cases may be searched in the same manner as criminal cases.

(g) Exceptions

(1) In General

In addition to any other restrictions imposed by the Rules in this Title or other applicable law, the names, personal addresses, and other personal identifying information of witnesses and victims shall not be accessible by CaseSearch.

(2) Government Agencies and Officials

Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional information contained in case records to government agencies and officials (A) who are approved for such access by the Chief Judge of the Court of Appeals, upon a recommendation by the State Court Administrator, and (B) when those agencies or officials seek such access solely in their official capacity, subject to such

conditions regarding the dissemination of such information imposed by the Chief Judge.

(h) Removal from CaseSearch

(1) Generally

A case record shall be removed from CaseSearch five years after the case is concluded, unless it is removed sooner pursuant to subsection (h)(2) of this Rule. For purposes of this Rule, an action is concluded when (A) final judgment has been entered in the action, (B) there are no motions, other requests for relief, or charges pending, and (c) the time for filing an appeal or application for leave to appeal has expired or, if an appeal or application for leave to appeal was filed, all appellate proceedings have ended.

(2) Criminal and Incarcerable Traffic Cases

Subject to any other applicable law, information regarding crimes, including incarcerable traffic offenses, charged in a charging document shall be removed from CaseSearch upon the earliest of (A) the entry of a nol pros or other dismissal of all charges in that case, (B) the entry of a verdict of not guilty on all charges in the case, or (C) a reversal without remand of all convictions in that case by an appellate court or vacation of a all convictions in that case by a court exercising collateral review of the conviction.

Committee note: (1) Retention and disposition schedules adopted pursuant to State statutes and Rules may require that certain case records be retained, either permanently or for specific periods, or disposed of at specific times. The Administrative Office of the Courts may conform access through CaseSearch to those schedules.

(2) A judgment of conviction is entered when sentence is imposed.

An index to money judgments is available from CaseSearch. That index will be available after the case record is removed from CaseSearch.

(3) Non-incarcerable Traffic Case

Information regarding a non-incarcerable traffic case shall be removed from CaseSearch upon the expiration of three years from the entry of judgment.

(i) Disclaimer

The information on CaseSearch is taken from the electronic version of case records filed in the district, circuit, and appellate courts. It may not always be immediately up-to-date and will not always show other information in the case file that may reflect on the currency and reliability of the limited information on CaseSearch. Access to CaseSearch may be subject to a disclaimer by the Administrative Office of the Courts. Any person who believes that a statement on CaseSearch is inaccurate may file a request to correct the case record pursuant to Rule _____.

Source: This Rule is new.

Rule 16-911 was accompanied by the following Reporter's note.

A new Rule providing for the procedures applicable to CaseSearch is proposed to be added, because no Rule had been in existence previously.

The Chair explained that part of the reason for drafting proposed Rule 16-911 was the general updating of the Access to

Judicial Records Rules, which will be considered later as Agenda Item 6. Rule 16-911 had been pulled out for a separate discussion, because it has some special issues. In the past two days, many e-mails have been received, mostly from attorneys, but also from the news media and one or two other organizations complaining about the five-year automatic removal of information from CaseSearch. The Chair had distributed to the Committee all of the comments that he had received, including 30 more sent directly to the Reporter. All of the comments that the Chair had read focused solely on the five-year automatic removal, with one exception. The attorneys in the Maryland Department of Human Resources had also requested that material not be removed after a proceeding is nol prossed, but that is a separate issue.

The Chair told the Committee that he wanted to give them some background information on this subject. The proposed changes did not come totally out of the blue. Neither CaseSearch nor MDEC (Maryland Electronic Courts Initiative) existed when the Access to Court Records Rules were adopted in 2004. The Court of Appeals did not consider the prospect of remote access to case records by the public or anyone else, because at that time, it was not possible. CaseSearch was created in 2006 without the benefit of any authorizing rule and therefore without the benefit of any discussion about any of these issues. The Chair said that he assumed that the General

Assembly was aware of CaseSearch, because it had to be funded. Since then it has become the predominant means of public access to case information. This is especially true for attorneys, employers, landlords, insurance companies, vendors, etc. who are able to easily access the limited information that is on CaseSearch.

The Chair remarked that the program has attracted both considerable praise and concern. The concern arises from the impact that this easy remote access has had on people who have gotten caught up in litigation - civil, criminal, domestic, and even traffic. Reports were coming in of people who were unable to attain employment, housing, insurance, and credit because of the limited information that people were getting that was occasionally inaccurate, misleading, and often stale. In that regard, it is important to keep in mind that CaseSearch neither creates nor edits information. Whatever information the clerk enters is what the public gets. If there is an error at that level, that error would ordinarily appear on CaseSearch, and that is contributing to some of the problems. Some of the information had been accurate, but it became stale. These concerns and some others caught the attention of members of the Legislature, which so far has responded mostly with bills to expand the expungement laws to get rid of the stale information totally, and that created some other problems.

The Chair commented that last year during the 2016 session, he had met with a number of legislators to try to find a way collaboratively to address the issues that legislators were getting from their constituents, possibly by some tinkering with CaseSearch through rule-making rather than relying on expungement laws. The legislators were receptive to trying this. Since then, there have been several meetings with representatives from the Judicial Information Systems ("JIS"), which operates the CaseSearch program, along with members of the legislature and with other consultants. Much of the discussion was very technical. They found one or two items that should never have been on CaseSearch, and the JIS employees promised to delete them. One related to identifying victims who had asked for warrants. The issue was what capabilities JIS had to be able to make adjustments to CaseSearch and what resources would be needed to expand current capabilities.

The Chair remarked that one of the particular problems that came out was removing from CaseSearch criminal charges that had been nol prossed, which happens in a huge number of cases, because of plea bargains. Count one may be dropped by the State, but there is a conviction on Count 4, or there may be cases that resulted in acquittals or that are reversed on appeal. These were the three major problems. CaseSearch can show that a charge was nol prossed or that there was an

acquittal or a reversal. But CaseSearch is incapable of deleting only that charge unless the entire case had been dismissed or nol prossed. They were not able to drill down to take out specific charges. What happened to the charges can be shown, but they still appear on CaseSearch. This is an accurate description of what actually happened but was creating a problem.

The Chair noted that the legislature was looking for ways to address the problem. The Chair and the Reporter also looked for alternatives that could keep CaseSearch as a viable source of remote public access but taper it in some way to deal with these kinds of concerns. JIS advised that it is at least theoretically possible to revise the CaseSearch structure so it could delete individual charges that are dismissed in some way or result in acquittals, but the system is not geared to do that now nor in the foreseeable future.

The Chair said that the only solution that came to mind was some form of sunset provision. Civil money judgments are not a problem, because there is a judgment index that would be unaffected by any sunset provision, according to JIS. CaseSearch has an index of those judgments. The Subcommittee considered what kind of sunset provision would be appropriate. Should it be three years or 10 years? They settled on five years for general civil and criminal cases and three years for

traffic cases. The time period would begin when the case is concluded, which is a defined term. If the case is reopened, it comes back onto CaseSearch.

The Chair remarked that the Subcommittee tried to look for a fair balance. Part of that balance is the fact that CaseSearch is not the only source of public access. Through MDEC pursuant to Rule 16-902 (k), which is on the agenda for discussion today, anybody will be able to access unshielded information from any courthouse in the State. It will not be necessary to go to the courthouse where the record is located. Arizona has a sunset provision in their version of CaseSearch that is based on their retention schedule. The Subcommittee had considered this, also.

The Chair noted that what was before the Committee today was a compromise, because the other options that had been explored were not viable. Rule 16-911 addresses three basic issues – (1) what is available on CaseSearch, (2) how that information can be accessed, and (3) how long the information will remain on CaseSearch. What is on CaseSearch now, with one exception, will remain. The exception is getting rid of the name of the complainant. When this was looked into, it turned out that the complainant is often a victim. JIS promised to remove the name of the complainant from CaseSearch.

The Chair said that if Rule 16-911 is adopted, what will be included in CaseSearch is the information pertaining to civil cases that is in section (d) of the Rule, the information pertaining to criminal and incarcerable traffic offense cases that is in section (e), and the information pertaining to non-incarcerable traffic cases that is in section (f). The search method is included in sections (d), (e), and (f). Section (g) of the Rule pertains to exceptions. The Chair told the Committee that they have been given all of the e-mails in opposition, and they are substantial.

The Chair remarked that several consultants were present to discuss this issue, one of whom was Delegate Kathleen M. Dumais. Delegate Dumais said that she would explain what the legislature is doing concerning this matter. For the past eight to 10 years, they have been addressing domestic violence. A constituent of Senate President Thomas V. Mike Miller, Jr. had been a respondent in a domestic violence case that had been dismissed. It caused problems with his employment and security clearance, because the information was available online. The fact that such information is so available was the issue. The legislature then created the term “shieldable.” In the past few years “shieldable” information has been removed from CaseSearch. It is not an expungement. It is removing the records from public view. The case files were moved to some place in the

courthouse where law enforcement, the Judiciary, and State's Attorneys could see them, but they are out of the public view. For domestic violence cases, the term "shieldable" is more expansive than the records simply being removed from CaseSearch.

Delegate Dumais commented that from the victim's perspective in a domestic violence case, the petitioner does not want his or her address available to the public. This can never go onto CaseSearch. Sometimes the victim does not want any information on CaseSearch. As it has progressed, the legislators have heard not just from respondents but from petitioners (victims) that having that information available online affected their ability to get jobs. If a prospective employer goes online to find out about a candidate, which is what most prospective employers do, even if the candidate is a petitioner, the employer may feel that this situation involving the petitioner is too dramatic and may decide not to hire the individual. The legislators have also heard from people with criminal convictions that might be old or might have been nol prossed who have had problems finding employment. Many people do not understand what it means when a case is nol prossed. The legislature has created "shieldable" offenses in the criminal area where a case can be shielded from CaseSearch, but this does not mean that it is not available to the public by going to the courthouse to see case records. This is a problem from an

employment perspective, but the information is being used for credit background searches as well. The legislature is struggling with this. Delegate Erek Barron can speak to more about this from an expungement perspective.

Delegate Dumais said that what the legislature has been doing with “shieldable” offenses and blocking information in domestic violence cases is not necessarily the best way to go about solving these problems. She and her colleagues appreciate the Rules Committee looking at this issue. She hears from people who have criminal offenses on the record that are not expungeable and not “shieldable.” A 10-year-old conviction should not necessarily be that easy to find, because it does affect people who are seeking employment. The legislature has been handling this piecemeal for about 10 years, so if there is a rule in place, it would be very helpful.

Delegate Barron told the Committee that the stated goal of Maryland is to give people second chances. This is in the Code. One example is Code, Criminal Procedure Article, §1-209, Employment of Nonviolent Ex-offenders. It is important to remove unnecessary barriers to employment and housing. There is an expectation that once people have been involved with the justice system and paid their price, they can move on and get a job, get an education, and be a good citizen. A number of unnecessary barriers to this exist. The State has to start

putting theory into practice. This is what the Rules Committee is now working on.

Delegate Barron remarked that an example of something called the “unit rule” would be a situation where someone is charged with several crimes, a unit of crimes, and the person pleads guilty to one of the crimes, such as obstructing and hindering. Yet a first-degree assault, a second-degree assault and other crimes are part of the “unit.” Because the person pled or was found guilty of one of that set of charges, the rest of the charges cannot be expunged. It is ludicrous that non-convictions cannot be expunged, and people are outraged. Delegate Barron said that he is working on changing this. There is no good reason to continue to punish people for a crime that they have not been convicted of.

Delegate Barron reiterated that it is the goal of the State that people should have the opportunity to move on from their past criminal history. Among the unnecessary barriers to this is CaseSearch, which has become a huge problem for many of the State’s citizens. What the Rules Committee is working on would be a significant help to many of the people of Maryland. This may be somewhat of an inconvenience to some members of the bar. There are other interests to balance besides the attorneys’ own interests.

Delegate Barron said that he is an attorney, practicing civil and criminal law, both State and federal. If necessary, he would have to go to the courthouse to get a case file. He is willing to be inconvenienced this way for the broader interest in making sure people have employment, housing, and other opportunities and are not unnecessarily penalized for something on CaseSearch that may not even be correct. Every legislative session, this problem is approached in a piecemeal fashion, making it difficult for the Judiciary and for others. What the Committee is working on is appropriate. It will never be perfect. Delegate Barron thanked the Committee for the time they are devoting to this.

The Chair thanked Delegates Dumais and Barron for coming to speak to the Committee. Mr. Dolina told the Committee that he represents the Maryland State Bar Association ("MSBA"). The MSBA has not taken an official position on this matter, but along with the Committee, they also have heard a deluge of comments. Mr. Dolina remarked that he wanted to address what Delegate Barron had said. Mr. Dolina said that he recognized the problem with the stigma that affects many people when there are criminal background searches. However, limiting technology is not the way to remove that stigma. The courthouse records still exist, and a potential employer can still go to the courthouse and get the records. CaseSearch is a technology tool

for attorneys that has become extraordinarily valuable. Every attorney that he has heard from indicated that they use CaseSearch on a regular basis.

Mr. Dolina said that for example, the rule now for a non-incarcerable traffic offense is that these offenses would be removed from CaseSearch three years after the entry of judgment. A solo practitioner handling a negligent entrustment case can only look at non-incarcerable offenses. For purposes of impeachment in civil proceedings, five years of available records is not long enough. Others are concerned about the limitation of the availability of records and the limitation of technology. Mr. Dolina and his colleagues appreciate the controversy concerning Rule 16-911, and he expressed doubt that the problems would be resolved today. The hope is that if everyone who is objecting can express their view, possibly the issue can be studied further to find legislative solutions in conjunction with the rule change that would satisfy everyone. Mr. Dolina introduced Mr. Menendez, who had been very vocal on this issue.

Mr. Menendez told the Committee that he had looked at the agenda of the Committee meeting the previous Monday night. The general issue is that removal of information from CaseSearch would not shield it, expunge it, or make it private. It could still be obtained through a Public Information Act (Code,

General Provisions Article, §4-101 et. seq.) request. He expressed the concern that the information removed would be taken from the public view, and it would be privatized. It could be used for background checks and for credit checks. Businesses would still have access to the information although at a greater cost.

Mr. Forrester said that he wanted to address some specific aspects of the Rule. One was the five-year general limitation. In civil cases, the judgment can have an impact for much longer than five years. He had recently seen money judgments resurrected more than five years after they were entered. It is important to be able to look at the CaseSearch history and see how the judgments were initially entered, because there may be underlying problems. He had recently seen a case of mistaken identity where the wrong person's wages were garnished. In Maryland, a money judgment can be renewed indefinitely provided that renewal is sought within 12 years. As long as the judgment is active, one should be able to see how that judgment got there.

Mr. Forrester noted that non-money judgments are a concern, also. A judgment of divorce lasts forever. Some other kinds of judgments can be subject to requests for alteration or modification more than five years after entry. For example, in a child custody case, if there is a change in circumstances, an

individual may ask an attorney to have the order modified. In order to procure an answer that question, under Rule 16-911, the attorney would have to go to the courthouse and obtain the case file. This is a not an inconsiderable cost.

Mr. Forrester remarked that his understanding of proposed Rule 16-911 was to maintain on CaseSearch the information that is currently there for cases that are less than five years old. He expressed the view that in that regard there are problems with the Rule as currently written. For example, section (g) would remove the names and personal identifying information of witnesses. A witness could be any sort of person. In Baltimore City, in rent escrow cases, a housing inspector will almost always be involved in the proceedings, and he or she could be considered as a witness. The Chair asked whether in criminal cases, witnesses to crimes who may be subject to retaliation should be listed on CaseSearch. Mr. Forrester replied that he did not think that criminal witnesses should be listed there. He expressed the opinion that the Rule requires a little more finesse in that area. It depends on the kind of witness. This could cover a very broad range of people. It could even cover process servers.

Mr. Forrester remarked that another issue with Rule 16-911 is judgment information. There is an index of civil money judgments. The Rule does not cover District Court judgments

that have not been recorded in the circuit court. He expressed the concern that the index does not record when plaintiffs or other creditors lose. Mr. Forrester had defended someone in District Court, and she had won. It would be helpful if she could go to CaseSearch to prove that she had won and did not owe the money. The Rule as written does not cover information about judgments. He had included some other issues in his list of comments. The Chair said that Mr. Forrester's written comments had been given to the Committee.

Ms. Hartge told the Committee that she is an Assistant Attorney General from the Department of Human Resources. The Department's child protective service workers go on to CaseSearch every day to assess the past civil and criminal history of a potential foster parent. Last year there were 53,533 reports to the Department of Social Services of child abuse and child neglect. Of those, there were 21,346 investigations and 9,327 alternative responses. When there is a low risk of problems, instead of doing investigations and making a finding, the Department goes out and tries to develop a plan. This involves 589.9 investigations per week. This does not include drug-exposed newborns, of which there were 1,776 for fiscal year 2014. Sometimes the assessment has to be made within a 24-hour period. The workers require CaseSearch as a quick and easy method to check the history. Individuals need a

second chance, but it is not a good idea to put children at risk when individuals are being given a second chance. Requiring the attorneys to go to the courthouse takes up a great amount of time and takes them away from going out to assess the child's situation.

The Chair asked whether the findings are expunged after five years when the Department of Social Services in investigating a child abuse case includes as a finding "ruled out" or "unsubstantiated." Ms. Hartge answered that the expungement is two years for a finding of "ruled out" and five years for a finding of "unsubstantiated." When there is an alternative response, the findings are expunged after three years.

The Chair inquired what the difference is, in terms of policy, between eliminating a finding of "ruled out" after two years and eliminating a finding of "unsubstantiated" after five years, but allowing a nol pros or an acquittal to stay on forever. Ms. Hartge answered that there could be a new individual. If the person was not a caretaker, he or she would never come into the system of child welfare. There must be a caretaker in order for there to be a child investigation. There could be a nol pros of a child abuse charge, but there may also be an assault charge under a plea bargain. That person is now at home and poses a risk to the child. The worker needs to know

this in assessing the risk and assessing whether the child can remain at home. The Chair noted that this could be found in the case record itself. Ms. Hartge acknowledged this, but she said that considering that there are 30,000 cases per year, or 589 per week, if the workers had to go to the courthouse to see all of the records for these cases, it would become burdensome. It would take time away from the time that the workers should spend out in the field doing risk assessments.

Judge Morrissey pointed out that subsection (g)(2) of Rule 16-911 is an exception for government agencies and officials. He commented that part of the problem is that no mechanism exists for allowing governmental agencies to access records that they need in performance of their jobs. Judge Morrissey and his colleagues recognize that as important as the Attorney General's Office statement is, this applies to both CaseSearch and MDEC. If the Rule is approved by the Court of Appeals, the hope is to develop a mechanism for the State's Attorney, the Attorney General, the Child Support Enforcement Agency, or other governmental agency to have appropriate access. An application will be submitted, it will be reviewed, and access by the agency will be given in writing with a memorandum of understanding attached to it. The agencies will have the access that they need to accomplish their job. Ms. Hartge responded that she had explained this in her letter to the Committee. Her agency would

like to be assured that this procedure would apply to the line workers. There are 1,209 line workers, including Child Protective Services staff, in-house staff, and court staff.

The Chair said that section (g) of Rule 16-911 is somewhat broad. It deals with Secure CaseSearch. The Department should have the same access that it has now for all of the line workers. The Chair inquired whether Ms. Hartge would still be objecting to the Rule if the line workers had that type of access. She asked whether they would still be able to see the nol prossed cases. One of the things that they look at on CaseSearch is incarcerations. They look at when parents may have been incarcerated for a specific period of time. Currently, this information is available on CaseSearch. This is important in CINA proceedings in terms of how long the parent has been parenting the child. Time spent in prison means that the parent was not parenting the child.

Judge Morrissey pointed out that access will be given to the governmental agencies based on their needs. This is already done in MDEC, including access for the State's Attorney's office. There is a procedure where the State's Attorneys have to register, so that they and other individuals who use the system have the necessary access to it.

Judge Price asked whether the information would be available to attorneys if it is available to government

agencies. The Chair responded that the Rule can provide whatever the Committee and the Court of Appeals would like it to provide. The governmental agency is kind of special. It includes not only social services agencies but also law enforcement. He added that Mr. Shellenberger, as well as other State's Attorneys, have not only attorneys, but investigators also, in their offices. Mr. Shellenberger remarked that paralegals and secretaries need access to Secure CaseSearch or Secure MDEC.

Ms. Harris noted that access to Secure CaseSearch is provided for by statute (Code, Courts Article, §3-8A-27; Code, Criminal Procedure Article, §10-302). There is a list of people who can do this. CaseSearch is being redesigned. The legislature had been consulted, and once the Court of Appeals approves it, so that the computer programmers have the framework to make the necessary changes, it can go forward. It is extremely complicated to pull data from 10 different systems and bring it into one system, CaseSearch, and have many different parameters allowing and not allowing access.

Ms. Harris noted that CaseSearch originally had the documentation from the 10 systems in the counties which are part of MDEC. To reprogram this, a clear roadmap is needed, because the programming is very expensive, and it will take a long time to do. It also requires MDEC to be fully operational, and this

will not happen for several years. Then it will be one system that is available to whomever the Judiciary decides. The Chair inquired whether Ms. Harris was referring to "Secure CaseSearch." Ms. Harris answered that this is what is complicated. Currently only attorneys on MDEC are allowed to see the documents and the docket entries for the cases that they have filed an appearance in. They do not get to see everything on MDEC. In CaseSearch, no documents are available. When MDEC is in effect all over the State, what will this do to CaseSearch? Will an attorney have access to MDEC? Will CaseSearch be accessible to the public?

The Chair commented that when the MDEC Rules were being drafted, the issue of remote access surfaced, because federal courts through their PACER (Public Access to Court Electronic Records) program had such a system. It was by subscription only, and there was a modest fee for what was obtained. This issue was taken to the Court of Appeals as one of several core issues presented to the Court before any drafting of the Rules was done. The Court was asked "what kind of remote access, if any, do you want MDEC to provide to the public?" The answer was "none" other than CaseSearch, which was in effect then. At that time, they did not want the PACER program, which was relatively new in the federal courts.

The Chair noted that the Court of Appeals took a "wait and see" attitude as to how that played out. They did say that they would be willing to reconsider that policy once MDEC was functioning and there was some experience with it. They did not say that it would never happen; their response was that remote access to documents via MDEC would not be allowed now. This is still the current policy. This response was four years ago. Until recently, MDEC was only working in one county, and now is it is in 10 counties. The issue of what kind of remote access should be allowed and to whom is ripe.

Ms. Hartge remarked that as an attorney, the difficulty that she has had with MDEC and access was that when she represents the local department on an appeal of a child welfare probation, if the case is in MDEC, she cannot see that option. At times, she has entered her appearance in the circuit court, which granted the access. In one case, it took two days to get the access in Anne Arundel County, which she never received. It requires a great amount of time to get access. When it comes to MDEC in the Court of Special Appeals, the documents are not accessible.

The Chair noted that other than the request about a nol prossed charge being accessible, the only request being raised today is how long the information should be accessible. The Rule is not addressing shrinking what is already on CaseSearch.

Should there be a sunset? Ms. Hartge said that her other concern was helping the people she represents to understand the civil histories in terms of what has happened with child support, prior custody orders, etc. She added that she was also concerned about access in terms of children's attorneys, the Department attorneys, and the parents' attorneys, who also need to be able to access the records.

Ms. Clark told the Committee that she is at the meeting on behalf of The Washington Post. Their concern is with the general five-year removal provision and the removal provision in certain criminal cases. Their view is that the courts should be transparent, and CaseSearch is an important tool for their users in terms of reporting on matters of public interest and verifying the accuracy of the information that they receive. Although the information older than five years would still be available at the courthouses, it would be very difficult to get. The practical effect would be making it more difficult to obtain accurate information. Although they are sympathetic to the need for protecting people, Ms. Clark and her colleagues feel that Rule 16-911 is too broad. They would like to see a compromise, such as extending the sunset provision or some guidelines for docket entries. It might be useful to see what other jurisdictions are doing.

Mr. Dunn asked whether The Post considers CaseSearch as the official record. Ms. Clark replied that it is used to verify whether a case has been dismissed, and whether charges have been brought. Although she is not a reporter, she is an attorney representing the newspaper. She said that giving access remotely to court files instead of requiring people to go to courthouses to pull the files would further the accuracy of reporting. The reporter could see which charges were dismissed, whether the case was settled, etc. It is not a replacement for normal news reporting. It is a navigational tool. The point had been raised earlier that possibly some of the information would be available on Lexis-Nexis or other research tools. The Post researchers and reporters go to CaseSearch for viewing dockets or seeing if charges are still pending. There is a stigma associated with reporting incorrectly. It is important for reporters to make sure that their reports are accurate and complete. The reporters have come to rely on the federal PACER system. The ability to get accurate information has been available for a long time, and Ms. Clark expressed concern about restricting it.

Ms. Clark commented that the point that the information that was on CaseSearch is still available is good, but to the extent that there is an employer or a landlord who needs to know

someone’s background, the fact that the person can go to the courthouse may not necessarily solve the problems raised today.

Ms. Taubman told the Committee that she is with EBI Background Investigations in Owings Mills, Maryland. She is there with Linda Mack, the President of Global Investigative Services in Rockville, Maryland. Both companies are Maryland-based companies that provide services both in Maryland and across the United State. They are also members of the National Association of Professional Background Screeners. This is the only profession dedicated to screening and to excellence in the screening profession. Their companies legally are defined in that regard under the Fair Credit Reporting Act (15 U.S.C. §1681), as reporting agencies and are regulated by the Federal Trade Commission. They are dedicated to providing the public safe places to live and to work. With the consumer’s permission, they always have a valid authorization. Background screeners use personal identifiers to compare background screening that often includes components such as a nationwide check of criminal records, including statewide and local jurisdictions, motor vehicle reports, sex offender registries, and other items.

Ms. Taubman commented that background screeners and their clients depend on systems such as CaseSearch to provide a comprehensive criminal history and other information. By

limiting information to five years on CaseSearch, Maryland court clerks will be overwhelmed with requests for archived records, if the employee who was cleared required more than five years of information. In many regulated industries, including finance, health care, transportation, food service, and child care, employers are required to search beyond five years. The limited information will result in increased workloads on court clerks with lengthy requests for archived records. It will take longer times to complete background reports, which will result in longer times for applicants to be placed in a position.

Ms. Taubman noted that there is no way to even know at this point how many records the background screeners look at in a year. It could be hundreds of thousands, because generally the standard in their industry is seven years. The Federal Fair Credit Reporting Act provides that a criminal conviction can be reported for an unlimited period of time. Any company that is going to be doing a background screen through a reporting agency is probably going to go to the court to make sure that they have valid information beyond five years.

Ms. Taubman remarked that proposed Rule 16-911 seems to remove dates of birth for non-incarcerable traffic infractions and violations. Without the date of birth, individuals may share the same name, and background reports cannot be as complete. For employers who hire individuals to drive, a

complete date of birth is critical to allow the employers to get an accurate driving history of those being considered as drivers. Under the Fair Credit Reporting Act, Ms. Taubman and her colleagues have an obligation to assure maximum accuracy. They would have to go to the courthouse in every scenario. They are very sensitive to those people who need a second chance. The proposed change to the Rule may not necessarily achieve those goals.

Ms. Taubman said that second chance ordinances have been enacted across the country, even in Maryland in Prince George's and Montgomery Counties and in Baltimore City, and some states have laws that apply to private employers of a certain size. Perhaps, someone should take a look at these in light of offering a second chance. On behalf of EBI and the National Association of Professional Background Screeners, Ms. Taubman requested that the removal of the partial date of birth be reconsidered for certain non-incarcerable traffic offenses and the removal of criminal history older than five years also be reconsidered.

Mr. Shellenberger inquired how much a typical background check costs. Ms. Taubman answered that there are many variables. It depends on what is being ordered, which jurisdiction, and how complete the background check is.

Mr. Whiteman told the Committee that he has been a practicing attorney in Maryland for about 13 years and is a member of the creditors' bar. He concentrates on a civil practice. He and his colleagues appear mostly post judgment. He asked how the money judgment recordation impacts the five-year limitation. He noted that every garnishment is its own judgment. How would this impact the five-year limitation? He and his colleagues are looking for the ability to see the records clearly, so that they do not over-garnish someone or garnish someone when there is opposition or a motion filed to dispute it. The attorney may wait to see the outcome of this. The Chair asked whether it would be better to go to the courthouse and see the documents for someone who is planning to file a garnishment. Mr. Whiteman replied that he files about 50,000 cases a year, and he relies very heavily on CaseSearch for his information. The Chair inquired how Mr. Whiteman would know whether any of the money is exempt, such as a product of Social Security. Mr. Whiteman responded that this is a separate issue. He would not know whether the money is exempt, but access to CaseSearch is not going to change that variable. He would draw up the garnishment first and then find out what is exempt or exemptible.

Judge Morrissey said that his understanding of the way that Rule 16-911 would work is that if a case is concluded, and there

has been no action for five years, the case is removed from CaseSearch. However, if someone were to file a garnishment, that would reactivate the case. He assumed that most people who are going to file a garnishment already have the file. Or, if a new client was coming to the attorney, the attorney would necessarily by due diligence have to take some action other than looking at CaseSearch before the attorney entered his or her appearance. As a practicing attorney for 17 years, Judge Morrissey added that he would have done this. He said that some of the concerns that were being expressed are not a recognition of how this system would be implemented.

The Chair remarked that he thought that with respect to civil money judgments, they would remain available. Mr. Weaver responded that they would be available for at least 12 years, although not necessarily permanently. The Chair added that if the judgment was renewed, it would be another 12 years. Mr. Weaver noted that if the case gets to the point that there is a judgment on a garnishment that is a new judgment, that would stay open for 12 years. If it is renewed, there would be another 12-year period. The Chair asked whether the money judgments would be available remotely. Mr. Weaver answered affirmatively.

Mr. Zarbin observed that what he was hearing was that this is a situation where the Committee is trying to help people and

give them a second chance. He said that he was sympathetic when he heard the speakers at the meeting. He also heard that it would be inconvenient to make the proposed changes to the Rule. As a small solo practice litigator, he views CaseSearch as an important tool, because it allows him to run background searches on defendants and on his own clients. Sometimes, even his own client has a memory lapse as to what happened a long time ago, which may only be three years ago.

Mr. Zarbin expressed the view that this is a question of courthouse access. The information that he seeks is used for his own knowledge. What is important is that the public does not have a need for that information for more than three to five years. This has been made clear in other areas such as driving records. What might be considered is having a public access of three to five years or whatever is reasonable, and then having a different access, for example, an attorney access where an attorney would use his or her bar number and a password to sign in. Similar to the way the Workers' Compensation Commission works, the access would be to the attorney's computer. The general public can get certain information but not detailed information unless the person has the ability to sign in.

Mr. Zarbin said that much like the procedure in the Office of the State's Attorney, he would apply to have a proxy who gets an identification number with the ability to sign in, and the

proxy would be granted the same information. Mr. Zarbin was not very sympathetic to the Office of the Attorney General, the largest law firm in the State of Maryland, which is asking for access for everyone in that Office. This is not a convenience factor; it is a balancing between protecting people and granting forgiveness, allowing people to be able to get jobs and to get access to credit as opposed to being able to get this information, which sometimes is not correct. Mr. Zarbin commented that he would be shocked if the press relied on this information as the basis for an article. He understood all of the concerns that had been expressed. He expressed the opinion that Rule 16-911 as it is written now is going to cause problems. If attorneys are allowed access, the proxies and the legal community would be served as well as the community that needs to be protected.

Mr. Shellenberger remarked that if Mr. Zarbin's approach is followed, then the attorneys would get access, but the shop owner who would like to check a potential employee's background would not. An employer who is hiring would want to know whether a potential employee has four theft convictions from seven years ago. The employer would want to know that without having to hire the company that does background searches and paying that company a fee to find out that information. Mr. Shellenberger added that he understood that this information would still be

available, but he asked whether a business owner in Ocean City would have to drive to every jurisdiction to look at the circuit court and District Court files to see whether a potential employee has criminal convictions on his or her record. Mr. Zarbin replied that the potential employer could file a CJIS request for a background check to find out if someone has criminal convictions. They do not have to go to every courthouse; they just have to go to a centralized location.

Mr. Shellenberger remarked that one of the problems with JIS is that the ability to charge people by way of citations has been expanded, and often that information does not make its way into JIS. Another issue is expungement. Mr. Shellenberger said that he had been the expungement law clerk when he was 23 years old. For 20 plus years, the expungement laws had not been changed. Two years ago, the legislature passed, Chapter 313, Laws of 2015 (House Bill 244), the "Second Chance Act," which allows individuals who have guilty findings on low-level crimes to get expungements. Last year in the Justice Reinvestment Act, Chapter 515, Laws of 2016, (HB 1312), about 114 crimes that previously could not be expunged were listed as crimes that now can be. Senator Norman has filed a bill that provides that expungement for a nolle prosequi can happen immediately without a request and without paying a fee. The bill seems to be moving along in the legislature. The only impediment to Delegate

Barron's idea of a partial expungement is the technology. Judge Morrissey has testified several times that he believes that when MDEC is completely up and running, the concept of partial expungement will be able to be advanced.

Mr. Shellenberger said that he is balancing what can be accomplished with partial expungement as opposed to the shop owner in Ocean City who might not want to go through that other process. He added that he understood the concept of "second chance." Many laws offering second chances have been passed. However, some people have a right to know about this kind of information that is able to be easily found without having to go to many different jurisdictions.

The Chair said that in light of Mr. Shellenberger's comments, the legislature had looked at expungement as the solution to the concerns that were being expressed by their constituents. If some other actions are not taken, expungement will be the solution chosen by the legislature. No information will be available, because it is all going to be expunged. It will not be available remotely or at the courthouse.

Mr. Shellenberger said that he did not believe that there was a move afoot in the legislature for robbery or theft convictions ever to be expunged. The Chair responded that this may or may not be true. When expungements were first started, they were only for nolle prosequis and acquittals. Now

expungement has moved into convictions for many different crimes. This will be the route if the concerns that the public has expressed are not resolved in some other way. Mr. Shellenberger remarked that just because the concerns are expressed does not mean that expungement will be adopted. He commented that he would be very concerned if someone could get a robbery conviction expunged.

Mr. Weaver remarked that every armed robbery case has five or six charges, including theft and assault. If all of the nol pros counts are expunged, and only the convictions are left, no one will know the history. Mr. Shellenberger said that as a business owner, he would want to know the full history. If the court administrator is able to do a partial expungement, that is what the person would find out. Mr. Zarbin remarked that is not fair for a record to state that someone was charged with robbery when the person was actually convicted of stealing cigarettes. Mr. Shellenberger asked whether this would be corrected. Mr. Zarbin answered that it might be. Part of the equation is that people have to be proactive. If someone was charged with robbery but what was stolen was a pack of cigarettes, then it is incumbent upon the defendant to ask that the robbery charge be expunged. Ms. Day asked whether it could be expunged. Ms. Harris replied that the case can be expunged, but the individual charges cannot be. Ms. Day inquired whether this would be

changed in the foreseeable future. The Chair responded that he had been told that if the entire case is dismissed, or there is an acquittal, it disappears from CaseSearch. If there is a nol pros on count one, and someone is convicted on count two, CaseSearch will show a conviction on count two, and it will show count one with a nol pros.

The Chair said that he had asked the people at JIS whether CaseSearch can do what Delegate Barron would like done for expungements. Can the charges that were nol prossed be taken off the record? JIS employees had answered that this could not be done. The Chair had then asked JIS if they would ever be able to do that, and the answer was "probably yes." The technology is not available to do this now. Mr. Bittner had said that it can be done, but it would take time and money.

Ms. Harris pointed out that guidelines are needed to determine who gets access and what will happen with the records. It is a mistake to redraft the Rules until MDEC is fully in effect. The Administrative Office of the Courts is waiting for MDEC to be effective statewide, and they are waiting to see what needs to be done to CaseSearch and to see if any legislation affecting this is passed. The Chair said that the opponents are focusing on sunset of the record. He had not heard any other complaints about the remainder of the Rule. Either the sunset provisions are deleted, so that there are none, or the date of

sunset would be changed from five years to 10 or 12 years, etc. An overlay is the third option, which Mr. Zarbin had mentioned. Should this apply to the public, except for the government? Or should segments of the public be moved in effect into some kind of secured CaseSearch? How would this be accomplished? How complex would it be to set this up? Could a CaseSearch record be eliminated after five years except for access by attorneys?

Ms. Harris answered that the system needs to be redesigned. Currently, CaseSearch is one big database that does not have levels of access. Secure CaseSearch is separate. A system is needed that has different levels of access, so that different types of information would be available to different users. The Chair said that this cannot be done now. Ms. Harris confirmed this.

Mr. Bittner told the Committee that he would try to explain the system. It is not a perfect analogy, but it would be helpful to think of the current CaseSearch system as similar to the public library as it used to be. To find a book in the public library, someone would go to the index file, and in that card file, the person could look up something with a limited amount of information on the card. It pointed to where to go to find the book. This is how CaseSearch works. The different systems from which JIS gets all their data are like the different sections of a library -- non-fiction, fiction,

children’s books, etc. When someone does a search on CaseSearch, it is like going to the card file to look up a specific author. What is listed are all the different books that the author wrote. The person can go to that particular section, and when CaseSearch grabs that, it pulls that book back. This is how CaseSearch functions. Partial expungements would only show one part of a record. What is being sought is being able to go to the book, but a certain part of the book, such as Chapter 3, not being available. The other chapters would be renumbered, so that the person does not see that one of the chapters is missing. This technology is not in place yet. This is why CaseSearch has to be redesigned.

Mr. Bittner said that with public CaseSearch, the person goes to the book, but certain information is not shown to anyone. If it is a criminal book, information about victims and witnesses is not shown. This is automatically taken out before anyone gets to see the book. With Secure CaseSearch, the entire book is able to be seen. There are no different versions of the book, and the technology is not available to show the book to a teacher, who would get to see certain portions of the book, but a student would not get to see the answers. Secure CaseSearch gives access to the entire book; Public CaseSearch gives someone a predefined set of information. This is how CaseSearch works.

Mr. Bittner remarked that what Ms. Harris had said was that before the library is recreated, JIS has to have a really good idea as to what all of the characteristics, parameters, and rules about this library are going to be, or the system will not work properly, and it will have to be redesigned. A new library will have to be rebuilt. JIS needs to know how the library should be designed. Mr. Zarbin expressed the opinion that none of the information should be wiped out, but who is able to access it should be limited. There should be a public access, an attorney access, and a court access, so that JIS does not have to be pressured to expunge various convictions. If something has been expunged, and the information is not accessible, then the public does not need to know about a robbery charge that was expunged. They only need to know about a conviction. A system similar to what exists now would be appropriate. Mr. Zarbin noted that he did not have access to Secure CaseSearch. Should a criminal defense attorney not have access to that?

Mr. Weaver remarked that from a convenience standpoint, Washington County is just preparing to be part of MDEC. He had heard that when MDEC is up and running all over the State, a person will be able to go to any courthouse or any Judiciary kiosk and look at the records in the entire State, including documents in the files that are not blocked due to

confidentiality. The concern about having to go to different courthouses disappears eventually, because all of the data in the current 10 systems will be available at any courthouse. Ms. Harris pointed out that the data would be available for a certain period of time, such as five or six years, unless the case is reopened. Mr. Zarbin said that the person seeking the information could see the docket entries. This is why he was not sympathetic to the scenario of the Ocean City shop owner, because he or she could go to the courthouse in Snow Hill to get the information about a potential employee from another county.

The Chair commented that there had been a proposal to change MDEC to permit access statewide at any courthouse as an intermediate step. When he had spoken to the Court of Appeals about this issue, the thought was that at some point, access to court records may be available at public libraries. At that time, the Court had not wished to have that access, and the Chair was not sure that the Court was willing to do this now. Access at any courthouse is an intermediate step, since it is a public judicial facility. This does not mean that access will stop there.

The Chair said that proposed Rule 16-911 is a Subcommittee recommendation that is before the full Committee. If anyone wishes to amend the Rule or to reject it, it would take a motion. Ms. McBride inquired whether there was a pressing

reason why the Rule has to be approved now. The Chair replied that this Rule has been worked on for a year. It emanated partly from legislative concerns and concerns that the Judiciary had about the way that the legislature had chosen to address those concerns, which was, for the most part, through expungement statutes, some of which could not be effected anyway, because the technology was not available. The Chair was not sure whether any more information would be available than had already been given. Does this Rule have to be decided upon today? The answer is "no." However, no further information is likely to be provided.

Mr. Armstrong asked how MDEC is going to look if the goal is to figure out how to remodel the CaseSearch "library" as Mr. Bittner had described it, so that the two can be married. Are the two systems supposed to be providing the same information? Mr. Bittner answered affirmatively. He said that what they need to know is what data out of MDEC is going to be available. What information out of the MDEC book is needed to be accessible? As far as CaseSearch is concerned, the MDEC system is just a new data source.

Mr. Armstrong inquired whether, in theory, MDEC is supposed to be a master data source. Mr. Bittner responded that it will be when all of the counties in Maryland are part of the system. Mr. Armstrong remarked that CaseSearch is supposed to be a

subset of MDEC. Judge Morrissey noted that MDEC is a case management system that is used by the court. CaseSearch is the outward view to the public of whatever would be decided. Mr. Armstrong said that what he was asking was whether the master source of all information when MDEC is completed is supposed to be MDEC. Judge Morrissey responded that this is correct. MDEC is not a communication device; it is a case management system. It is not designed to notify people or send out notices or put information publicly out on the web. It is an internal case management system.

Mr. Armstrong asked whether CaseSearch and MDEC would ever be married. Ms. Harris replied negatively, explaining that they are totally different. Mr. Bittner added that CaseSearch is the index file that points someone to the MDEC book. They are two different systems, but obviously CaseSearch has to get data from somewhere. It gets its data from MDEC. Mr. Shellenberger said that if someone in Anne Arundel County is indicted by using MDEC, that information, including the defendant's name and the charges, will show up in CaseSearch. Mr. Bittner remarked that whatever is seen on CaseSearch for Anne Arundel County is coming from the MDEC database. Mr. Shellenberger commented that if it is put into MDEC, it will still appear in CaseSearch. The Chair said that it is the same principle in Baltimore County. Judge Morrissey noted that the legislature is saying that records will

have to be erased by expungements if the Judiciary cannot do it another way. It is necessary to change CaseSearch to do so.

Mr. Marcus commented that he was very uncomfortable, in making a decision about Rule 16-911 because he was not totally grasping the issues being discussed. He did not think that the Committee should abdicate its responsibility to do work in a way that is timely, but it should be done in a thorough manner. He could see merit in almost every argument that had been put forth at the meeting. He saw the merit in technology even though he was not an expert in that. The information needed should be available at a place where people can access it, and it should be available in the most convenient, expeditious way possible to anyone who has a computer. It does not make sense that to get the information, someone has to go to a courthouse.

Mr. Marcus said that he was also mindful of the fact that as an attorney, he takes seriously the obligation to safeguard information so that information cannot be misused or abused. This is a sacred trust that attorneys have. The flip side of this is that attorneys should not be given preferential treatment over the general public on matters related to public information, but there should be a difference in the quality of the information that is accessible.

Mr. Marcus pointed out that there are different solutions to this problem. Attorneys use CaseSearch all the time. Rule

5-609, Impeachment by Evidence of Conviction of Crime, allows someone to be impeached by evidence of convictions of a crime that happened up to 15 years ago. If the decision is made to use a five-year window before records are deleted in Rule 16-911, and Rule 5-609 allows impeachment by evidence of convictions that are 15 years old, the two Rules cannot be reconciled. The federal system is different, because someone can be impeached by convictions that are 10 years old. A whole series of arguments tip the scale back and forth.

Mr. Marcus moved that the matter be sent back to the Subcommittee. He commented that he did not have enough information to vote on this, either to amend it or to reject it. Because it is late in the 2017 legislative session, whatever the Committee does is not going to affect any changes made by the legislature. Mr. Marcus asked the Chair to designate this matter to a subcommittee. The Chair noted that Rule 16-911 came from the General Court Administration Subcommittee. Mr. Marcus reiterated that he did not have enough information to be able to make an intelligent decision. The Rule should go back to the Subcommittee, and people can submit proposals as to the best way to change Rule 16-911. The motion was seconded.

Mr. Armstrong asked whether it is urgent that Rule 16-911 be addressed immediately. Ms. Harris responded that it would be helpful for a decision to be made today. The Judiciary needs

time to get the programming done. Delegate Barron and others would like to see a decision made. Ms. Harris said that she did not have strong feelings about this, but she wanted to see the appropriate changes made.

Mr. Zarbin commented that the longer the wait for any changes to Rule 16-911, the better the chance for the legislature to take action. The legislature is addressing the sunset issue on a piecemeal basis. This creates a problem for the court system. The legislature keeps adding expungement of various items in court records. The Committee has to lead on this issue and make recommendations to the Court of Appeals on how to handle this. It is the bailiwick of the Court of Appeals, not the legislature. Once the decision on Rule 16-911 is made, the legislature may step back, because it is clear that the Court of Appeals is responsible. Mr. Zarbin disagreed with Mr. Marcus about waiting to make a decision about Rule 16-911. The only objections that were made today were from people who have continued access, attorneys. It would be good to give attorneys one kind of access and the public another kind of access.

Mr. Shellenberger commented that seven bills related to this are before the legislature. Mr. Zarbin responded that it is more difficult to pass a bill than to kill one. He predicted that nothing will happen in the legislature. The Chair said

that he had done a search on this issue. Even the name, CaseSearch, appears only once in the Code of Maryland. The legislature has not made any changes to this. The one place the reference appears is in a local bill for Anne Arundel County, which has a statutory commission to recommend to the Governor the names of people to be appointed to the Anne Arundel County School Board. In that statute, Code, Education Article, §3-110, there is a provision that in investigating these names to make these recommendations, the commission must look at CaseSearch. This is the only reference to CaseSearch that the Chair could find. The reason that he mentioned it was that if the Judiciary does not take command of this, it is a judicial product, and the legislature will start legislating about CaseSearch. This may turn out to be problematic. Rule 16-911 does not have to be decided today.

The Chair said that this is why he was asking what more information pertaining to Rule 16-911 is available. If the Rule is sent back to the Subcommittee, other interested parties, such as landlords, creditors, and the insurance companies can be invited to the meeting. They are not likely to provide information that is not already known. They are all against limiting the time that the records are maintained. They do not want any limits on the information in the records now, and they

would prefer to have more information. The press will have the same viewpoint.

Ms. McBride said that her concern was the issue of the time frame. She added that she agreed with Mr. Marcus about setting up an arbitrary time frame at this point. She would like to be further educated. She expressed the view that a 12-year time limitation may not solve many of the problems expressed. The Chair commented that at the Subcommittee meeting, they had looked at whether there should be a distinction between felonies and misdemeanors. Should there be a distinction between District Court convictions and circuit court convictions? Should certain kinds of crimes be excepted from the sunset provisions? Should there be some relationship between a cutoff and retention schedules, which will mostly disappear when MDEC is running in all counties? All of this was thrashed out at the meeting. None of these questions were able to be answered easily.

The Chair noted that for a while, the draft of the Rule made a distinction between circuit court and District Court, between felonies and misdemeanors, and between certain kinds of civil judgments and other kinds of civil judgments. If the Rule goes back to the Subcommittee, all of this will be rehashed, but the Chair said that he was not sure what direction the Rule will take. If attorneys are excluded from the sunset provisions,

then people will ask for other kinds of agencies or professions to be excluded. The Rule will come back to the Committee with many more options.

Judge Nazarian noted that the answer to the question of what would be available later as further information may be a matter of what technology is available, what it will cost, etc. What should the goal of the system be? Judge Nazarian said that what he was struggling with was a series or system of libraries and books that document the work of the courts. The questions about what should be available or not available on CaseSearch are an effort to shape the information that is available out of this documentation to achieve some kind of policy goal. As much as Judge Nazarian believes in those policy goals, he did not feel that this is what should be done.

Judge Nazarian expressed the view that the sunset provision should be deleted. This is not because he thought that this was good policy, but because he thought that it would be very difficult to achieve a policy goal in this manner. Expungement solves the problem by taking the information out, not because it is wrong, but because there has been a decision that this information, such as a conviction or a proceeding, no longer exists. Judge Nazarian noted that he struggled with the alternative realities about what the court system did or did not

do. If the goal is to document accurately what courts have done and are doing, it is a policy decision.

The Chair said that the motion on the floor was to recommit Rule 16-911 to the Subcommittee. Judge Morrissey pointed out that there is a very real tension between transparency and the harm that this system may be causing for certain individuals. He remarked that he was hopeful that the Committee would be able to reach some balance. What that balance is in the province of the Committee. It is within the province of the Judiciary to set this one way or the other. The problem is that when trying to develop software projects over time to start the process, the issues have to be identified to develop a cost method, a time frame. This could require a year to 18 months' worth of development, then another six months to a year of testing, before a new program can be rolled out. He agreed with Ms. Harris that although he did not have a personal interest in this, something needs to be done soon, because CaseSearch must be fixed. The quicker the Committee can make a decision, the quicker the implementation of the new software.

The Chair called for a vote on the motion to recommit Rule 16-911 to the Subcommittee. The motion passed, on a vote of nine in favor, seven opposed.

Mr. Marcus remarked that Judge Nazarian's comments about moving this matter forward were appropriate. Mr. Marcus said

that his idea to postpone a decision on Rule 16-911 was not to extend the decision indefinitely. The idea was to further refine this issue. The Chair explained that the Subcommittee can meet whenever, but the motion was to meet to get more information. People may attend the meeting and say exactly what was said at today's meeting. Mr. Zarbin agreed that nothing new will be presented at the Subcommittee meeting. The Chair pointed out that the motion carried, so the meeting can be held as soon as possible.

The Reporter observed that the work on this issue has been going on for quite a while. If anyone knows of another state who has addressed this or knows whether the National Center for State Courts has looked at this, or knows of anyone who has thought about this and balanced the competing interests, all of which are valid, this information would be very helpful to the Subcommittee. The Chair commented that Mr. Durfee, an Assistant Reporter, had found a rule in Arizona in which there is a sunset provision. It is based on their retention schedule. More research on other states can be done to see if they have something similar. It would be helpful to see how it works and how long it took to develop.

Ms. Harris remarked that other states are in the same conundrum. They are making decisions, then changing because of public outcry. Court records have always been perceived as open

to the public. Then the age of technology arrives where someone can open a court record in his or her home. Being required to go to the courthouse to see a record is called "practical obscurity." It was difficult for people to do that. Now the records are all online. Another aspect of this is MDEC. People are going to want to see the documents. Currently, someone is not allowed to see the documents unless he or she is a party to the case. Ms. Harris said that she sees that changing in the future as well. If there is one type of access for attorneys, are pro se parties going to want the same access? Right now self-represented litigants have access to the documents in their case. Other people are going to want access in the future. Will CaseSearch become nothing, and will everyone get access to MDEC? This is complicated. There are many "if" statements in the programming world. If more time is needed to work on Rule 16-911, Ms. Harris requested that it be done quickly. It is important not to have to redo the Rule, because it is expensive to change the system.

The Chair said that Rule 16-911 would be recommitted to the General Court Administration Subcommittee.

Agenda Item 5. Consideration of proposed Rules changes pertaining to MDEC – Amendments to:

Rule 20-101 (Definitions)
Rule 20-102 (Application of Title)
Rule 20-103 (Administration of MDEC)

Rule 20-104 (User Registration)
Rule 20-105 (Judges; Judicial Appointees; Clerks; Judicial Personnel)
Rule 20-106 (When Electronic Filing Required; Exceptions)
Rule 20-107 (Electronic Signatures)
Rule 20-109 (Access to Electronic Records in MDEC Actions)
Rule 20-201 (Requirements for Electronic Filing)
Rule 20-203 (Review by Clerk; Striking of Submission; Deficiency Notice; Correction; Enforcement)
Rule 20-402 (Transmittal of Record)
Rule 20-501 (MDEC System Outage)

Conforming amendments to:

Rule 1-324 (Notification of Orders, Rulings, and Court Proceedings)
Rule 7-206.1 (Record, Judicial Review of Decision of the Workers' Compensation Commission)

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The Chair told the Committee that he had tried to lay out the major features of the proposals for the MDEC Rules. There have been a number of proposals that came from the Honorable John P. Morrissey, Chief Judge of the District Court; Ms. Harris, and the Honorable Gary Everngam, of the District Court in Montgomery County. There are only three or four issues involved. It will take a motion to approve the Rules. The Chair said that he had considered the suggestions, but Judge Morrissey's suggestions had not been incorporated into the Rules. Most of the changes are stylistic, but some are clarifications. The language that is in the suggestions will

take a motion to approve, because it had not been considered by the Subcommittee.

The Chair presented Rule 20-101 Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-101, as follows:

Rule 20-101. DEFINITIONS

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

(a) Affected Action

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

Cross reference: For the definition of an "action" see Rule 1-202.

(b) (a) Appellate Court

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

(c) Applicable County

"Applicable county" means each county in which, pursuant to an administrative order of the Chief Judge of the Court of

Appeals posted on the Judiciary website, MDEC has been implemented.

Committee note: The MDEC Program was implemented in Anne Arundel County on October 14, 2014. It will be installed sequentially in other counties over a period of time by administrative order of the Chief Judge of the Court of Appeals.

(d) Applicable Date

"Applicable date" means the date, specified in an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, from and after which a county is an applicable county.

(e) (b) Business Day

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

(f) (c) Clerk

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

(g) (d) Concluded

An action is "concluded" when

(1) there are no pending issues, requests for relief, charges, or outstanding motions in the action or the jurisdiction of the court has ended final judgment has been entered in the action;

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

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

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

(h) (e) Digital Signature

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

(i) (f) Facsimile Signature

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

(j) (g) Filer

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

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

(k) (h) Hand-Signed or Handwritten Signature

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

(l) (i) Hyperlink

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

(m) (j) Judge

"Judge" means a judge of the Court of Appeals, Court of Special Appeals, a circuit court, or the District Court of Maryland and includes a former senior judge of any of those courts recalled pursuant to Code, Courts Article, §1-302 and when designated to sit in one of those courts.

(n) (k) Judicial Appointee

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

(o) (l) Judicial Personnel

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

(p) (m) MDEC or MDEC System

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

Committee note: "MDEC" is an acronym for Maryland Electronic Courts. The MDEC system has two components. The electronic filing system permits users to file submissions electronically through a primary electronic service provider (PESP) subject to clerk

review under Rule 20-203. The PESP transmits registered users' submissions directly into the MDEC electronic filing system and collects, accounts for, and transmits any fees payable for the submission. The PESP also accepts submissions from approved secondary electronic service providers (SESP) that filers may use as an intermediary. This component is sometimes referred to as the File and Serve system. The second component – the electronic case management system – accepts submissions filed through the PESP and maintains the official electronic record in an MDEC county. That component is sometimes referred to as the Odyssey© system.

(n) MDEC Action

"MDEC action" means an action to which this Title is made applicable by Rule 20-202.

(o) MDEC County

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

(p) MDEC Start Date

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

(q) MDEC System Outage

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

receive submissions by means of the MDEC electronic filing system.

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

(q) (r) Redact

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

(r) (s) Registered User

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

(s) (t) Restricted Information

"Restricted information" means information (1) prohibited by Rule or other law from being included in a court record, (2) required by Rule or other law to be redacted from a court record, (3) placed under seal by a court order, or (4) otherwise required to be excluded from the court record by court order.

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

(t) (u) Scan

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

(u) (v) Submission

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

Cross reference: See Rule 20-402.

(v) (w) Tangible Item

"Tangible item" means an item that is not required to be filed electronically. A tangible item by itself is not a submission; it may either accompany a submission or be offered in open court.

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

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

(w) (x) Trial Court

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

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

(x) (y) Typographical Signature

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

Source: This Rule is new.

The Chair said that the changes to Rule 20-101 were not significant. Worth mentioning is a new definition of "MDEC System Outage," which is mostly a clarification. Mr. Weaver referred to the definition of section (w) "Tangible Item." The language at the end of the term "or offered in open court" is not consistent with the language at the end of the definition of the word "submission" in section (v), which is "offered or admitted into evidence." Judge Price remarked that some evidence is not admitted, but it is part of the record. The Chair commented that the evidence does not have to be admitted. The thought was that if it is admitted, it must have been offered.

Mr. Weaver asked why the language of the two sections was different. The Chair noted that this is the language of the current Rule. A submission is filed with the clerk, and it has to be electronic. If it is offered in evidence, it does not have to be electronic, and in most cases, it will not be. Mr. Weaver said that he was not sure why the language in sections (v) and (w) was different. The Chair responded that it was to make clear that a submission that is presented in court is not a submission, but a tangible item is a tangible item.

Ms. Harris asked why the definition of "typographical signature" in section (y) was added. The Chair responded that

this is in the Rule now. Judge Everngam had wanted to delete it. Judge Morrissey said that he had discussed this issue with Judge Everngam recently, and Judge Everngam had clarified that he did want this included.

By consensus, the Committee approved Rule 20-101 as presented.

The Chair presented Rule 20-102, Application of Title, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-102, as follows:

Rule 20-102. APPLICATION OF TITLE

(a) Trial Courts

(1) New Actions and Submissions

On and after the ~~applicable~~ MDEC start date, this Title applies to (A) new actions filed in a trial court for an ~~applicable~~ MDEC county, (B) new submissions in actions then pending in that court, (C) new submissions in actions in that court that were concluded as of the ~~applicable~~ MDEC start date but were reopened on or after that date, (D) new submissions in actions remanded to that court by a higher court or the United States District Court,

and (E) new submissions in actions transferred or removed to that court.

(2) Existing Documents; Pending and Reopened Cases

With the approval of the State Court Administrator, (A) the County Administrative Judge of the circuit court for an ~~applicable~~ MDEC county, by order, may direct that all or some of the documents that were filed prior to the ~~applicable~~ MDEC start date in a pending or reopened action in that court be converted to electronic form by the clerk, and (B) the Chief Judge of the District Court, by order, may direct that all or some of the documents that were filed prior to the ~~applicable~~ MDEC start date in a pending or reopened action in the District Court be converted to electronic form by the clerk. Any such order by the County Administrative Judge or the Chief Judge of the District Court shall include provisions to ensure that converted documents comply with the redaction provisions applicable to new submissions.

(b) Appellate Courts

This Title applies to appeals and other proceedings in the Court of Special Appeals or Court of Appeals seeking the review of a judgment or order entered in any action to which section (a) of this Rule applies. If so ordered by the Court of Appeals in a particular matter or action, the Title also applies to (1) a question certified to the Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act, Code, Courts Article, §§12-601 - 12-613; and (2) an original action in the Court of Appeals allowed by law.

(c) Applicability of Other Rules

Except to the extent of any inconsistency with the Rules in this Title, all of the other applicable Maryland Rules continue to apply. To the extent there is any inconsistency, the Rules in this Title prevail.

Source: This Rule is new.

The Chair told the Committee that the changes to Rule 20-102 were stylistic.

By consensus, the Committee approved Rule 20-102 as presented.

The Chair presented Rule 20-103, Administration of MDEC, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-103, as follows:

Rule 20-103. ADMINISTRATION OF MDEC

(a) General Authority of State Court Administrator

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

(b) Policies and Procedures

(1) Authority to Adopt

The State Court Administrator shall adopt policies and procedures that are (A) necessary or useful for the proper and efficient implementation of the MDEC System and (B) consistent with (i) the Rules in this Title, (ii) other provisions in the Maryland Rules that are not superseded by the Rules in this Title, and (iii) other applicable law. With the approval of the Chief Judge of the Court of Appeals, the policies and procedures may include the approval of pilot projects and programs in one or more courts to test the fiscal and operational efficacy of those projects or programs.

(2) Publication of Policies and Procedures

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

Source: This Rule is new.

The Chair said that the changes to Rule 20-103 were not controversial.

By consensus, the Committee approved Rule 20-103 as presented.

The Chair presented Rule 20-104, User Registration, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-104, as follows:

Rule 20-104. USER REGISTRATION

(a) Eligibility and Necessity

(1) Any individual may apply to become a registered user in accordance with this Rule.

(2) Only a registered user may file submissions electronically in an MDEC action.

(b) On-line Application

(1) An individual seeking to become a registered user shall complete an on-line application in the form prescribed by the State Court Administrator.

(2) The form may require information the State Court Administrator finds necessary to identify the applicant with particularity and shall include (A) an agreement by the applicant to comply with MDEC policies and procedures and the Rules in this Title, ~~and~~ (B) a statement as to whether the applicant is an attorney and, if so, is a member of the Maryland Bar in good standing, and (C) whether the applicant has ever previously registered and, if so, information regarding that registration, including whether it remains in effect and why the applicant is seeking another registration.
Committee note: One of the purposes of registration is to help ensure that

electronic submissions are not filed in MDEC actions by persons who are not authorized to file them. See Rule 20-201 (b). It is important for the MDEC system to know, to the extent possible, whether a person seeking to file a submission or to access, through MDEC, documents in an MDEC action, is who he or she purports to be.

This is particularly important with respect to attorneys, who have greater ability to file submissions and access case records than other members of the public. As part of the registration process, attorney-applicants are required to supply a unique attorney number so that MDEC will know they are attorneys. Other kinds of information may be necessary to identify non-attorneys. See section (e) of this Rule with respect to multiple registrations.

(c) ~~Identification Number,~~ Username~~,~~ and Password

Upon successful completion of the registration process in accordance with section (b) of this Rule and any verification that the State Court Administrator may require, the individual becomes a registered user. The State Court Administrator shall issue to the registered user ~~a unique user identification number,~~ a username~~,~~ and a password, which together shall ~~entitle~~ enable the registered user to file submissions electronically in an ~~affected~~ MDEC action to which the registered user is a party or is otherwise entitled to file the submission and have the access provided by Rule 20-109. The registered user ~~may not change the unique identification number issued by the State Court Administrator but~~ may change the assigned username and password in conformance with the policies and procedures published by the State Court Administrator.

(d) Effect of Registration

By registering with the State Court Administrator as a registered user, an individual agrees to comply with the Rules in this Title and the MDEC policies and procedures established and published by the State Court Administrator.

(e) Multiple ~~User Identification Numbers Prohibited~~ Registrations

~~(1) Cancellation of User Registration~~

~~A registered user may not have more than one user identification number at a time. If the State Court Administrator believes that an individual has more than one user identification number, the State Court Administrator shall notify the individual, at the individual's most recent e-mail address provided to the State Court Administrator, that all of the individual's identification numbers will be cancelled unless the individual shows good cause to the contrary within 30 days after the date of the notice. If the individual fails to make that showing, the State Court Administrator shall cancel all of the individual's identification numbers and revoke the user's registration. The individual may seek review of the State Court Administrator's action pursuant to the Rules in Title 7, Chapter 200 of the Maryland Rules.~~

~~(2) Re-application for User Registration~~

~~An individual whose user registration has been cancelled may reapply for user registration, but the State Court Administrator may reject the application unless reasonably satisfied that the individual will comply with the Rules in this Title and with all policies and procedures adopted by the State Court Administrator~~. An individual who may lawfully intend or be required to file submissions in different capacities may

become a registered user in each of those capacities.

Committee note: Some attorneys may be part-time employees of a public agency and be registered through that agency to file submissions on behalf of the agency but also may wish to file submissions on behalf of private clients or on behalf of themselves as parties to their own litigation. In those situations, the individual will need to have more than one registration – one when acting for the public agency and one when acting in a private capacity. There may be individuals other than attorneys who may need to have more than one registration.

(f) Revocation, Suspension, Reinstatement of Attorney User Registration

(1) Duty of Clerk of Court of Appeals

The Clerk of the Court of Appeals shall promptly notify the State Court Administrator of each attorney (A) who, by order of the Court, becomes disbarred, suspended, placed on inactive status, or decertified or who has resigned from the Maryland Bar or (B) who, following a disbarment, suspension, placement on inactive status, decertification, or resignation, has been reinstated to the practice of law in Maryland.

(2) Duty of State Court Administrator

Promptly upon receipt of such notice, the State Court Administrator shall (A) revoke the user registration of each attorney who has been disbarred or placed in inactive status or who has resigned, (B) suspend the user registration of each attorney who has been suspended or decertified, (C) reinstate the user registration of an attorney who has been reinstated, and (D) take any necessary steps to be reasonably satisfied that the MDEC

system does not accept any electronic filings from an attorney whose user registration has been revoked or suspended and not reinstated.

(3) Further Submissions

An attorney whose registration has been suspended or revoked under this section shall file any submissions required by the Rules of Professional Conduct in paper form.

(4) Application for User Registration as a Non-attorney

An attorney whose user registration has been suspended or revoked under this section may apply for user registration as a non-attorney. The State Court Administrator may reject the application unless reasonably satisfied that the individual will comply with the Rules in this Title and with all policies and procedures adopted by the State Court Administrator.

Source: This Rule is new.

The Chair explained that in Rule 20-104, a Committee note has been added after subsection (b)(2). When MDEC was first designed, it was intended that each registered user would be given a unique number, and that number could not be changed. That has never been implemented. MDEC does not give out unique numbers to anyone. They have user names and passwords but not this unique number system. Attorneys will have to provide their Client Protection Fund ("CPF") number to MDEC. In the three to four years that MDEC has been in existence, there have been only two non-attorney user registrants. One of the high-level

officials in MDEC has addressed this by asking for a Soundex number and a Social Security number. She has done this on her own, but nothing in writing requires it. The Rule states that the application for non-attorney users would allow a mechanism for identification. This is a change, and it matches what the procedure is.

The Chair noted that when MDEC was first envisioned, someone could only register once. This is in the current Rules. Attorneys who worked part-time for a public agency but also had a private practice could only register once, but they would use different e-mail addresses if they were filing something in their public capacity or in their private capacity. The request has been made to change the Rule to provide that if someone wants to file something in different capacities, the person has to register in the different capacities. It comes out the same way in the end.

By consensus, the Committee approved Rule 20-104 as presented.

The Chair presented Rule 20-105, Judges; Judicial Appointees: Clerks; Judicial Personnel, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-105, as follows:

Rule 20-105. JUDGES; JUDICIAL APPOINTEES; CLERKS; JUDICIAL PERSONNEL

(a) Assignment of Username and Password

The State Court Administrator shall assign to each judge, judicial appointee, clerk, and judicial personnel a username and password that will allow ~~the judge, judicial appointee, clerk, or judicial personnel~~ that person to access the MDEC System to the extent necessary to the performance of his or her official duties.

Committee note: The access permitted under section (a) of this Rule is limited to that necessary to the performance of official duties. A judicial official or employee who desires access for personal reasons, such as to file submissions as a self-represented litigant, must become a registered user and proceed as such. [The State Court Administrator may permit a senior judge to continue to use the username and password the senior judge used while an incumbent judge so long as he or she remains a senior judge.]

(b) Revocation

~~Upon~~ Subject to section (a) of this Rule, upon notice that a judge, senior judge, judicial appointee, clerk, or judicial personnel has retired, resigned, or otherwise left office and, as a result, ~~is~~ no longer ~~entitled~~ has a need to access the

MDEC System to perform official duties under this Rule, the State Court Administrator shall revoke the individual's username and password, terminate the right of access allowed thereby, and inform the judge, senior judge, judicial appointee, clerk or judicial personnel of the right to apply for user registration under Rule 20-104.

Source: This Rule is new.

The Chair said that Rule 20-105 had no significant changes in it.

By consensus, the Committee approved Rule 20-105 as presented.

The Chair presented Rule 20-106, When Electronic Filing Required; Exceptions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-106, as follows:

Rule 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

(a) Filers - Generally

(1) Attorneys

Except as otherwise provided in section (b) of this Rule, an attorney who

enters an appearance in an ~~affected~~ MDEC action shall file electronically the attorney's entry of appearance and all subsequent submissions in the ~~affected~~ action.

(2) Judges, Judicial Appointees, Clerks, and Judicial Personnel

Except as otherwise provided in section (b) of this Rule, judges, judicial appointees, clerks, and judicial personnel, shall file electronically all submissions in an ~~affected~~ MDEC action.

(3) Self-represented Litigants

(A) Except as otherwise provided in section (b) of this Rule, a self-represented litigant in an affected action who is a registered user shall file electronically all submissions in the affected action.

(B) A self-represented litigant in an affected action who is not a registered user may not file submissions electronically.

(4) Other Persons

Except as otherwise provided in the Rules in this Title, a registered user who is required or permitted to file a submission in an affected action shall file the submission electronically. A person who is not a registered user shall file a submission in paper form.

Committee note: Examples of persons included under subsection (a)(4) of this Rule are government agencies or other persons who are not parties to the affected action but are required or permitted by law or court order to file a record, report, or other submission with the court in the action and a person filing a motion to intervene in an affected action.

(b) Exceptions

(1) MDEC System Outage

Registered users, judges, judicial appointees, clerks, and judicial personnel are excused from the requirement of filing submissions electronically during an MDEC system outage in accordance with Rule 20-501.

(2) Other Unexpected Event

If an unexpected event other than an MDEC system outage prevents a registered user, judge, judicial appointee, clerk, or judicial personnel from filing submissions electronically, the registered user, judge, judicial appointee, clerk, or judicial personnel may file submissions in paper form until the ability to file electronically is restored. With each submission filed in paper form, a registered user shall submit to the clerk an affidavit describing the event that prevents the registered user from filing the submission electronically and when, to the registered user's best knowledge, information, and belief, the ability to file electronically will be restored.

Committee note: This subsection is intended to apply to events such as an unexpected loss of power, a computer failure, or other unexpected event that prevents the filer from using the equipment necessary to effect an electronic filing.

(3) Other Good Cause

For other good cause shown, the administrative judge having direct administrative supervision over the court in which an affected action is pending may permit a registered user, on a temporary basis, to file submissions in paper form. Satisfactory proof that, due to

circumstances beyond the registered user's control, the registered user is temporarily unable to file submissions electronically shall constitute good cause.

(c) Submissions

(1) Generally

Except as otherwise provided in subsection (c)(2) of this Rule, the requirement of electronic filing in section (a) applies to all submissions that are capable of being converted into electronic format and that, in electronic form, may be converted into a legible paper document.

(2) Exceptions

Except with court approval, the following submissions shall not be filed electronically:

(A) A single document comprising more than 300 pages;

Committee note: A single document comprising more than 300 pages may be submitted electronically by dividing the document into shorter segments.

(B) Oversized documents, such as blueprints, maps, and plats;

(C) Documents offered as evidence in open court at a trial or other judicial proceeding pursuant to section (e) of this Rule;

(D) An item that is impracticable to be filed electronically because of the item's physical characteristics; and

(E) Any other category of submissions that the State Court Administrator exempts from the requirement of electronic filing.

(3) Required Retention of Certain Original Documents

Original wills and codicils, property instruments that have been or are subject to being recorded, and original public records, such as birth certificates, that contain an official seal may be scanned and filed electronically so long as the original document is maintained by the filer pursuant to Rule 20-302.

Cross reference: See Rule 20-204, which requires a registered user to file a "Notice of Filing Tangible Item" under certain circumstances.

(d) Paper Submissions

(1) Compliance with MDEC Rules

A paper submission shall comply with Rule 20-201 ~~(f)~~ (h) and ~~(i)~~ (l). If applicable, a paper submission also shall comply with Rule 20-201 ~~(g)~~ (j).

(2) Review by Clerk; Scanning

(A) Except as provided in subsection (d)(2)(B) of this Rule, upon receipt of a submission in paper form, the clerk shall review the submission for the presence of a signature and for compliance with Rule 20-107 (a)(1) and Rule 20-201 ~~(e)~~ (g), ~~(f)(1)(B),~~ and ~~(i)~~ (l). If the submission is in compliance, the clerk shall scan it into the MDEC system, verify that the electronic version of the submission is legible, and docket the submission. If the submission is not in compliance, the clerk shall decline to scan it and promptly notify the filer in person or by first class mail that the submission was rejected and the reason for the rejection.

Committee note: The clerk's pre-scanning review is a ministerial function, limited to

ascertaining whether any required fee has been paid (Rule 20-201 ~~(i)~~ (l)) and the presence of the filer's signature; a certificate of service if one is required (Rule 20-201 ~~(e)~~ (g)); and a certificate as to the absence or redaction of restricted information ~~(Rule 20-201 (f)(1)(B))~~.

(B) Upon receipt of a submission in paper form that is required by the Rules in this Title to be filed electronically, the clerk shall (i) decline to scan the submission, (ii) notify the filer electronically that the submission was rejected because it was required to be filed electronically, and (iii) enter on the docket that the submission was received and that it was not entered into the MDEC system because of non-compliance with Rule 20-106. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

Committee note: Subsection (d)(2)(B) of this Rule is necessary to enforce the electronic filing requirement of Rule 20-106. It is intended to be used only when it is clear that the filer is a registered user who is required to file submissions electronically and that none of the exceptions in sections (b) or (c) of this Rule appear to be applicable.

(3) Destruction of Paper Submission

Subject to subsections (d)(4) and (e)(2) of this Rule, the clerk may destroy a paper submission after scanning it and verifying the legibility of the electronic version of it.

(4) Optional Return of Paper Document

The State Court Administrator may approve procedures for identifying and, where feasible, returning paper documents

that must be preserved in their original form.

(5) Public Notice

The State Court Administrator shall provide public notice alerting the public to the procedure set forth in subsections (d)(2), (3), and (4) of this Rule.

Committee note: If submissions properly filed in paper form are to be destroyed by the clerk following their being scanned into MDEC, the public must be given reasonable notice of that policy. Notice may be given in a variety of ways, including on the Judiciary website, on on-line and pre-printed forms prepared by the Judiciary, on summonses or other notices issued by the clerks, and by postings in the clerks' offices.

(e) Exhibits and Other Documents Offered in Open Court

(1) Generally

Unless otherwise approved by the court, a document offered into evidence or otherwise for inclusion in the record in open court shall be offered in paper form. If the document is offered as an exhibit, it shall be appropriately marked.

Committee note: Examples of documents other than exhibits offered for inclusion in the record are written motions made in open court, proposed voir dire questions, proposed jury instructions, communications from a jury, and special verdict sheets.

(2) Scanning and Return of Document

As soon as practicable, the clerk shall scan the document into the MDEC system and return the document to the party who offered it at the conclusion of the proceeding, unless the court orders

> otherwise. If immediate scanning is not feasible, the clerk shall scan the document as soon as practicable and notify the person who offered it when and where the document may be retrieved.
>
> Source: This Rule is new.

The Chair told the Committee that Rule 20-106 has a change in it, which the Chair had referred to in his memorandum. It pertains to the certificate of redaction. It also appears in Rule 20-203. It is important to make clear that no one is going to need a separate certificate of redaction. However, for registered users who want to file something, there is currently a box in one of the last screens that is a certificate of redaction, and at present, unless the box is checked, the person cannot file the paper. The Chair was not sure whether JIS was going to make a change to the box. Currently, no one has to file a separate certificate of redaction, but registered users have to check the box in order to file, so they are going to certify that the file does not contain restricted information.

Ms. Harris inquired about the language in subsection (d)(2)(B)(ii) that read “the clerk shall...(ii) notify the filer electronically...”. The Chair responded that as a result of Judge Morrissey’s suggestion, the wording was now “notify the filer electronically, if possible, or otherwise by first class

mail." It did not appear in the version of Rule 20-106 that was in the meeting materials.

By consensus, the Committee approved Rule 20-106 as amended.

The Chair presented Rule 20-107, Electronic Signatures, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-107, as follows:

Rule 20-107. ELECTRONIC SIGNATURES

(a) Signature by Filer; Generally

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

(2) The filer shall insert the electronic signature above the filer's typed ~~name,~~ address, e-mail address, and telephone number and, if the filer is an attorney, the attorney's Client Protection Fund ID number. An electronic signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

(b) Signature by Judge or Judicial Appointee

A judge or judicial appointee shall sign a submission electronically by (1) personally affixing the judge's or judicial appointee's digital signature or (2) hand-signing a paper version of the submission and scanning or directing an assistant to scan the hand-signed submission to convert the handwritten signature to a facsimile signature in preparation for electronic filing.

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

(c) Signature by Clerk

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

(d) Multiple Signatures on a Single Document

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

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

When a person is required to sign a document under oath, affirmation, or with verification, the signer shall hand-sign the

document. The filer shall scan the hand-signed document, converting the signer's handwritten signature to a facsimile signature, and file the scanned document electronically. The filer shall retain the original hand-signed document until the action is concluded or for such longer period ordered by the court. At any time prior to the conclusion of the action, the court may order the filer to produce the original hand-signed document.

(f) Verified Submissions

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

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

Source: This Rule is new.

The Chair told the Committee that Rule 20-107 had no substantive changes.

By consensus, the Committee approved Rule 20-107 as presented.

The Chair presented Rule 20-109, Access to Electronic Records in MDEC Actions, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-109, as follows:

Rule 20-109. ACCESS TO ELECTRONIC ~~COURT~~ RECORDS IN MDEC ACTIONS

(a) Generally

Except as otherwise provided in this Rule, access to ~~court~~ judicial records in an ~~affected~~ MDEC action is governed by the Rules in Title 16, Chapter 900.

(b) Parties and Attorneys of Record

Subject to any protective order issued by the court, parties to and attorneys of record in an ~~affected~~ MDEC action shall have full access, including remote access, to all case records in that ~~affected~~ action.

(c) Judges and Judicial Appointees

Judges and judicial appointees shall have full access, including remote access, to ~~all court~~ judicial records to the extent that such access is necessary to the performance of their official duties. The Chief Judge of the Court of Appeals, by Administrative Order, may further define the scope of remote access by judges and judicial appointees.

(d) Clerks and Judicial Personnel

Clerks and judicial personnel shall have full access from their respective work

stations to ~~all court~~ judicial records to the extent such access is necessary to the performance of their official duties. The State Court Administrator, by written directive, may further define the scope of such access by clerks and judicial personnel.

(e) Public Access

(1) ~~Names of Litigants and Docket Entries~~ Access through CaseSearch

Members of the public shall have free access~~, including remote access, to unshielded docket information made available pursuant to Rule 16-909 (c)~~ to information posted on CaseSearch pursuant to the Rules in Title 16, Chapter 900.

(2) Unshielded Documents

Subject to any protective order issued by the court, members of the public shall have free access to unshielded case records and unshielded parts of case records from computer terminals or kiosks that the ~~court makes~~ courts make available for that purpose. Each ~~clerk's office~~ court shall provide a reasonable number of terminals or kiosks for use by the public. The terminals or kiosks shall not permit the user to download, alter, or forward the information, but the user is entitled to a copy of or printout of a case record in accordance with ~~Rules 16-902 (d)(4) and 16-903~~ Rule 16-903 (d).

Committee note: The intent of subsection (e)(2) of this Rule is that members of the public be able to access unshielded electronic case records in any MDEC action from a computer terminal or kiosk in any courthouse of the State, regardless of where the action was filed or is pending.

(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 the 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.

(g) Government Agencies and Officials

Nothing in this Rule precludes the Administrative Office of the Courts from providing remote electronic access to additional information contained in case records to government agencies and officials (1) who are approved for such access by the Chief Judge of the Court of Appeals, upon a recommendation by the State Court Administrator, and (2) when those agencies or officials seek such access solely in their official capacity, subject to such conditions regarding the dissemination of such information imposed by the Chief Judge.

Source: This Rule is new.

The Chair pointed out that in section (e) of Rule 20-109, there is a reference to "CaseSearch." It can be left in, because CaseSearch still exists. Mr. Weaver referred to section (b) of Rule 20-109. This had been brought up at the Subcommittee meeting. The same principle of access to case records applies in the paper world. Attorneys and parties have access to everything in a file. The Chair added that this is subject to court order. Mr. Weaver asked about Code, Courts Article, §3-8A-27, which lists the persons who can have access

to the files. The Chair suggested adding "or other law," so that section (b) would read "[s]ubject to any protective order issued by the court or other law, parties...". By consensus, the Committee approved this change.

The Chair noted that section (g) of Rule 20-109 has the same language as Rule 16-911, CaseSearch.

By consensus, the Committee approved Rule 20-109 as amended.

The Chair presented 20-201, Requirements for Electronic Filing, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-201, as follows:

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

(a) Scope

~~Sections~~ Subject to section (m) of this Rule, sections (b) and (c) **[(e)]** of this Rule apply to all filers. Sections (d), **[(e)]**, (f), (g), (h), ~~and~~ (i), (k), (l), and (m) of this Rule do not apply to judges, judicial appointees, clerks, and judicial personnel.

(b) Authorization to File

A person may not file a submission in an affected action unless authorized by law to do so.

(c) Policies of State Court Administrator

A filer shall comply with all published policies and procedures adopted by the State Court Administrator pursuant to Rule 20-103.

(d) Signature

If, under Rule 1-311, the signature of the filer is required, the submission shall be signed in accordance with Rule 20-107.

(e) Multiple Submissions Filed Together

All submissions related to a particular MDEC action that are filed together at one time shall be included in a single electronic folder, sometimes referred to as an envelope.

Committee note: As an example, an answer to a complaint, a counter-claim, a cross-claim, and a motion for summary judgment, all filed at the same time in the same action, must be filed in a single electronic folder.

(f) Service Contact Information

Unless previously provided, a registered user who files a submission and who will be entitled to service of subsequent submissions in the action shall include in the submission accurate information as to where such service may be made upon the registered user.

~~(e)~~ (g) Certificate of Service

(1) Generally

Other than an original pleading that is served by original process, each submission that is required to be served pursuant to Rule 20-205 (d) shall contain a certificate of service signed by the filer.

(2) Non-electronic Service

If service is not to be made electronically on one or more persons entitled to service, service on such persons shall be made in accordance with the applicable procedures established by other Titles of the Maryland Rules, and the submission shall include a certificate of service that complies with Rule 1-323 as to those persons and states that all other persons, if any, entitled to service were served by the MDEC system.

(3) Electronic Service

If service is made electronically by the MDEC system on all persons entitled to service, the certificate shall so state.

~~(f)~~ (h) Restricted Information

(1) Generally

Except as provided in subsection ~~(f)(2)~~ (h)(2) of this Rule, a submission filed by a filer ~~(A)~~ shall not contain any restricted information~~, and (B) shall contain a certificate by the filer that the submission does not contain any restricted information or, if it does contain restricted information, a redacted submission has been filed contemporaneously pursuant to subsection (f)(2) of this Rule~~.

(2) Where Restricted Information is Necessary

If the filer believes that restricted information is necessary to be included, the filer shall (A) state the reason and a legal

basis for including the restricted information, and (B) file both an unredacted version of the document, noting prominently in the caption that the document is unredacted, and a redacted version of the document that excludes the restricted information, noting prominently in the caption that the document is redacted.

(i) Electronic File Names

The electronic file name for each submission shall relate to the title of the submission. If a submission relates to another submission, the file name and the title of the submission shall refer make reference to the submission to which it relates.

~~(g)~~ (j) Sealed Submissions

If the filer desires the submission to be under court seal, the submission shall (1) state prominently in the caption that the document is to be under seal, ~~and~~ (2) have a file name that includes the word "sealed," and (3) state whether there is already in effect a court order to seal the document and, if so, identify that order. If there is no such order, the submission shall include a motion and proposed order to seal the document.

**DRAFTER'S NOTE: Is this change necessary?**

~~(h)~~ (k) Proposed Orders

A proposed order to be signed by a judge or judicial appointee shall be (1) in an electronic text format specified by the State Court Administrator and (2) filed as a separate document identified as relating to the motion or other request for court action to which the order pertains. The file name of the proposed order shall indicate that it is a proposed order.

Committee note: As originally adopted, section ~~(h)~~ (k) of this Rule required that a proposed order be submitted in "an editable text form." Because at the time of initial implementation, the MDEC system could only accept pdf documents, amendments to section ~~(h)~~ (k) were made in 2015 to give the State Court Administrator the flexibility to specify the electronic format of the proposed order. The filer should consult the MDEC policies and procedures posted on the Judiciary website for any changes to the required format.

~~(i)~~ (l) Fee

(1) Generally

A submission shall be accompanied, in a manner allowed by the published policies and procedures adopted by the State Court Administrator, by any fee required to be paid in connection with the filing.

(2) Waiver - Civil Action

(A) A filer in a civil action who (i) desires to file electronically a submission that requires a prepaid fee, (ii) has not previously obtained and had docketed a waiver of prepayment of the fee, and (iii) seeks a waiver of such prepayment, shall file a request for a waiver pursuant to Rule 1-325 or Rule 1-325.1, as applicable.

(B) The request shall be accompanied by (i) the documents required by Rule 1-325 or Rule 1-325.1, as applicable, (ii) the submission for which a waiver of the prepaid fee is requested, and (iii) if applicable, a proposed order granting the request.

(C) No fee shall be charged for the filing of the waiver request.

(D) The clerk shall docket the request for waiver. If the clerk waives prepayment

of the prepaid fee pursuant to Rule 1-325 (d) or the applicable provision of Rule 1-325.1, the clerk also shall docket the attached submission. If prepayment is not waived by the clerk, the clerk and the court shall proceed in accordance with Rule 1-325 (e) or Rule 1-325.1 (c), as applicable.

(3) Waiver - Criminal Action

A fee waiver in a criminal action is governed by Rule 7-103 (c)(2), 8-201 (b)(2), or 8-303 (a)(2), as applicable.

(m) Filings by Certain Judicial Officers and Employees

(1) District Court Commissioners

(A) Filings in District Court

In accordance with policies and procedures approved by the Chief Judge of the District Court and the State Court Administrator, District Court commissioners shall file electronically with the District Court reports of **[pretrial]** release proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-216, 4-216.1, 4-217, or 4-267. Those filings shall be entered directly into the MDEC system, subject to post-filing review **and correction of clerical errors in the form or language of the docket entry for the filing** by a District Court clerk.

**Committee note: The intent of the last sentence of subsection (m)(1)(A), as well as subsection (m)(1)(B) and subsection (m)(2) is to provide the same obligation to review and correct post-filing docket entries that the clerk has with respect to filings under Rule 20-203 (b)(1).**

(B) Filings in Circuit Court

Subject to approval by the Chief Judge of the Court of Appeals, the State Court Administrator may adopt policies and procedures for one or more pilot programs permitting District Court Commissioners to file electronically with a circuit court reports of **[pretrial]** release proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-216, 4-216.1, 4-217, or 4-267. A pilot program shall permit District Court Commissioners to enter those filings directly into the MDEC system, subject to post-filing review **and correction of clerical errors in the form or language of the docket entry for the filing** by a circuit court clerk.

(2) Circuit Court Employees

In addition to authorized employees of the clerk's office and with the approval of the county administrative judge, the clerk of a circuit court may authorize other employees of the circuit court to enter filings directly into the MDEC system, subject to post-filing review **and correction of clerical errors in the form or language of the docket entry for the filing** by a circuit court clerk.

Committee note: In some counties, there are circuit court employees who are not employees in the clerk's office but who perform duties that, in other counties, are performed by employees in the clerk's office. Those employees are at-will employees who serve at the pleasure of the court or the county administrative judge. The intent of subsection (m)(2) is to permit the clerk, with the approval of the county administrative judge, to authorize those employees to enter filings directly into the MDEC system as part of the performance of their official duties, subject to post-filing review by the clerk. It is not the intent that this authority apply to judges' secretaries, law clerks, or administrative

assistants. Rule 20-108 (b) authorizes judges and judicial appointees in MDEC counties to delegate to law clerks, secretaries, and administrative assistants authority to file submissions on behalf of the judge or judicial appointee. That delegated authority is a ministerial one, to act on behalf of and for the convenience of the judge or judicial appointee and not an authority covered by subsection (m)(2).

Source: This Rule is new.

The Chair said that he had a question about section (a) of Rule 20-201. The reference to section (e) that appears in section (a) is in brackets. Is section (e) of Rule 20-201 intended to apply to judges, magistrates, clerks, and other judicial officials? Section (e) pertains to multiple submissions filed together. Ms. McBride remarked that a filing could be 300 pages, and it would be impossible to file. It would have to be separated. The Chair said that section (e) applies to filing multiple submissions in the same case at the same time. Ms. Harris answered that section (e) can be included. Judge Morrissey commented that this is the preferred practice. An attorney should not be getting nine different notifications of a filing when he or she should only be getting one.

The Chair pointed out that the reference to section (e) should be deleted from Rule 20-201 (a). Judge Morrissey noted that section (e) should apply to all filers. The Chair noted

that section (e) is important, because it is not in the current Rule, but it is a fiscal item for the State.

Judge Nazarian inquired what happens if people do not file the submissions together. What if someone files five separate envelopes instead of one? Ms. Harris said that the charge is $6.00 per envelope. Judge Nazarian asked whether the clerks would reject several filings made separately at the same time. Ms. Harris responded that the filer would be charged for each filing. Judge Morrissey remarked that he had spoken with members of the bar, and they think this an improvement to the MDEC Rules. The Chair remarked that the clerk can change docket entries. If the clerk does this and the change alters the amount of the fee, the clerk can ask the filer for more money. This is not referred to in Rule 20-201. Judge Morrissey added that this is different. Judge Nazarian noted that this can be rejected. Judge Morrissey said that there is no need for the clerk to reject the filing. Under the existing Rules, clerks have the ability to impose the correct fee and charge it to the credit card on file.

Ms. McBride commented that since section (e) is mandatory, she was concerned that pleadings could be filed in different envelopes, and there could be a motion to strike filed. The Chair said that he did not think that a violation of section (e) would be remedied by a motion to strike. The other party is not

hurt. It hurts the State, which has to pay a fee for each envelope. To provide that the submissions "may" be included in a single electronic folder is meaningless.

The Chair pointed out that section (m) of Rule 20-201 is new. Subsection (m)(1)(A) codifies what the practice now is in the District Court. The commissioners file reports subject to the clerks' authority to review and correct any clerical errors in docket entries. They have that authority for ordinary filings, pursuant to Rule 20-203, and this gives them the same authority and obligation to do this for the District Court direct filings. This provision was just added two days ago as a result of discussions with an Assistant Attorney General. Subsection (m)(1)(A) will have the following language after the word "review" in the second sentence: "and correction of clerical errors in the form or language of the docket entry for the filing." A new Committee note has been added after subsection (m)(1)(A) that reads: "The intent of the last sentence of subsections (m)(1)(A), (m)(1)(B), and (m)(2) is to provide the same obligation to review and correct post-filing docket entries that the clerk has with respect to filings under Rule 20-203 (b)(1)." By consensus, the Committee approved this change.

Mr. Weaver asked about section (j) of Rule 20-201. He referred to the language "state prominently in the caption that

the document is to be under seal...". Is the clerk to seal that? Subsection (3) of section (j) provides that if there is already an order to seal, the clerk would state that. Subsection (j)(3) goes on to state that if there is no such order, the submission shall include a motion and proposed order to seal the document. When this comes in, is the court to seal the document until that motion is ruled on? Ms. McDonald, an Assistant Attorney General, answered affirmatively.

Mr. Weaver asked whether the Rule should state this. Ms. McDonald replied affirmatively. If the file is not under seal, and the motion is pending, it still has to be treated as confidential. If the court denies the motion, then the file can be unsealed. Mr. Weaver suggested that there could be a cross reference to Rule 16-910, Court Order Denying or Permitting Inspection of Case Record, which is the corresponding Rule for paper records.

The Chair commented that subsection (m)(1)(B) is a step toward commissioners being able to file with the circuit court reports of pretrial release proceedings, but rather than put in a parallel provision at this point, the Administrative Office of the Courts would like to do a pilot project to test this out. There is a difference because the clerks in the circuit court are elected and not under the same kind of supervision as there is with the District Court clerks.

The Chair inquired whether the word “pretrial” should be in subsection (m)(1)(B). Many of these references, including the reference to Rule 4-267, Body Attachment of Material Witness, are to pretrial release proceedings. Rule 4-267 pertains to material witnesses, but it is still pretrial. The Chair suggested that the word “pretrial” should remain in the Rule, because it is descriptive. By consensus, the Committee agreed with this suggestion.

The Chair said that subsection (m)(2) is different. Circuit courts, where there are employees who are not in the clerk’s office, are a part of this. This would include assignment commissioners or others who serve at the pleasure of the Administrative Judge. These employees may perform tasks that in other counties are done in the clerk’s office. In those situations, subsection (m)(2) would allow the clerk, with the approval of the Administrative Judge, to authorize the other employees to enter filings directly into the MDEC system. This is subject to the correction of the docket entries. The clerk authorizes these outside employees to do this. The clerk can choose the people provided that the County Administrative Judge approves. This is because these employees serve at the pleasure of the County Administrative Judge. Subsection (m)(2) is new. A new Committee note has been added to make clear that this does not apply to law clerks, judges’ secretaries, etc.

By consensus, the Committee approved Rule 20-201 as amended.

The Chair presented Rule 20-203, Review by Clerk; Striking of Submission; Deficiency Notice; Correction; Enforcement, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-203, as follows:

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

(a) Time and Scope of Review

As soon as practicable, the clerk shall review a submission, other than a submission filed by a judge or subject to Rule 20-201 (m), a judicial appointee, for compliance with Rule 20-106, 20-107 (a)(1), 20-201 (d), ~~(e)~~ (g), ~~(f)(1)(B),~~ and ~~(i)~~ (l) and the published policies and procedures for acceptance established by the State Court Administrator. Until the submission is accepted by the clerk, it remains in the clerk's queue and shall not be docketed.

(b) Docketing

(1) Generally

The clerk shall promptly correct errors of non-compliance that apply to the form and language of the proposed docket entry for the submission. The docket entry as described by the filer and corrected by the clerk shall become the official docket entry for the submission. If a corrected docket entry requires a different fee than the fee required for the original docket entry, the clerk shall electronically advise the filer of the new fee and the reasons for the change.

(2) Submission Signed by Judge or Judicial Appointee

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

(3) Submission Generated by Clerk

The clerk shall enter each writ, notice, or other submission generated by the clerk into the MDEC system for docketing in the manner required by Rule 16-404.

(c) Striking of Certain Non-Compliant Submissions

If, upon review pursuant to section (a) of this Rule, the clerk determines that a submission, other than a submission filed by a judge or, subject to Rule 20-201 (m), by a judicial appointee, fails to comply with the requirements of Rule 20-107 (a)(1) or Rule 20-201 ~~(e)~~ (g) ~~or (f)(1)(B)~~, the clerk shall (1) strike the submission, (2) notify the filer and all other parties of the striking and the reason for it, and (3) enter on the docket that the submission was received, that it was stricken for non-compliance with the applicable section of Rule 20-107 (a)(1) or Rule 20-201 ~~(e)~~ (g) ~~or (f)(1)(B)~~, and that notice pursuant to this section was sent. The filer may seek review of the clerk's action by filing a motion

with the administrative judge having direct administrative supervision over the court.

(d) Deficiency Notice

(1) Issuance of Notice

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

(2) Correction; Enforcement

Unless the court orders otherwise, the court will take no further action on the submission until the deficiency is corrected or withdrawn.

(3) Judicial Review

The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice.

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

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

(2) Shielding of Unredacted Version of Submission

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

(3) Shielding on Motion of Party

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

Source: This Rule is new.

The Chair noted that there is a change to subsection (b)(1), which is similar to language in Rule 20-106 (d)(2)(B)(ii): "the clerk shall electronically advise the filer, if possible, or otherwise by first class mail of the new fee and the reasons for the change." There is a change in subsection (d)(2). The last time this had been discussed, Mr. Carbine had suggested that the concept of the clerk rejecting the filings should be eliminated. The grand scheme was "unless the court orders otherwise, the court will take no further action" on a filing that is not in compliance, instead of having the clerk reject it.

The Chair said that a change has been suggested because of a dispute among several clerks about this. The Administrative

Judge in one of the circuits has issued an administrative order that may be an invalid local rule that states that if the filing is not corrected in 10 days, the Administrative Judge will strike it. The amended procedure could be provided for by amending subsection (d)(2). Ms. Harris asked what the language would be. The Chair answered that it would read: "Unless the court orders otherwise, the court will strike the submission after 10 days unless the deficiency is corrected or withdrawn."

Mr. Weaver noted that in section (a), there should be commas after the word "judge" and after the word "or." He referred to the new language in subsection (b)(1) providing that the clerk shall advise the filer electronically, if possible, or otherwise by first class mail of the new fee and the reasons for the change. Mr. Weaver observed that there may be other reasons that the clerk can change something. The filer has the option of asking the court to review the clerk's action. He or she might want to ask the judge to review an increase in the fee. The last sentence of section (c) reads: "The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court." Should this same concept be in subsection (b)(1) where the clerk changes the fee? The filer picks the document and the filing charge, but the clerk disagrees and changes the filing code to one with a higher fee. By consensus,

the Committee agreed to put a similar provision in subsection (b)(1) allowing the filer to seek review by the court of a change in the fee.

Mr. Weaver pointed out that subsection (b)(2) reads: "[t]he clerk shall enter on the docket each judgment...," but subsection (b)(3) reads: "[t]he clerk shall enter each writ, notice, or other submission...". He suggested that both should be parallel. By consensus, the Committee agreed to add the words "on the docket" after the word "enter" and delete the words "for docketing" in subsection (b)(3).

By consensus, the Committee approved Rule 20-203 as amended.

The Chair presented Rule 20-402, Transmittal of Record, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 – APPELLATE REVIEW

AMEND Rule 20-402, as follows:

Rule 20-402. TRANSMITTAL OF RECORD

(a) ~~Preference~~ Certification and Transmittal

~~If possible under MDEC, the clerk of the trial court shall transmit in an electronic format that portion of the record that is in electronic format.~~

~~(b) Alternative~~

~~(1) This section applies only if it is not possible under MDEC for the clerk of the trial court to transmit the electronic part of the record to the clerk of the appellate court in an electronic format.~~

~~(2)~~ (1) Certification

Upon the filing of a notice of appeal, ~~notice that the Court of Special Appeals has granted an~~ application for leave to appeal, or notice that the Court of Appeals has issued a writ of certiorari directed to the trial court, the clerk of the trial court shall comply with the requirements of Title 8 of the Maryland Rules and [~~assemble, index, and~~] prepare a certification of the record.

(2) Transmittal

~~The clerk shall transmit that part of the record not in electronic format to the clerk of the appellate court as required under Title 8 and shall enter on the docket a notice that (A) the non-electronic part of the record was so transmitted, and (B) from and after the date of the notice, the entire record so certified is in the custody and jurisdiction of the appellate court.~~

For purposes of Rule 8-412, the record is deemed transmitted to the appellate court when the lower court dockets and transmit to the appellate court through the MDEC system a certified copy of the docket entries ("Case Summary") along with a statement of the cost of preparing and certifying the record, the costs traced against each party prior to the transmission

of the record, and the cost of all transcripts and of copies, if any, of the transcripts for each of the parties.

(3) Transmission of the Record to the Lower Court

For purposes of Rule 8-606 (d), the record is deemed transmitted to the lower court when the appellate court's mandate is transmitted to the lower court through the MDEC system.

~~(3)~~ (b) Custody of Trial Court Submissions

Upon the docketing ~~of the notice~~ and transmittal provided for in subsection ~~(b)(2)~~ (a)(2) of this Rule, the record of all submissions filed on or prior to the date of the notice shall be deemed to be in the custody ~~and jurisdiction~~ of the appellate court. ~~Subject to order of~~ Except as otherwise ordered by the appellate court, ~~any~~ submissions filed in the trial court after the date of the notice shall not be part of the appellate record but shall be within the custody and jurisdiction of the trial court.

Committee note: Under MDEC, the electronic part of the record is not physically transmitted to the appellate court. It remains where it is but, upon entry of the notice referred to in sections (a) and (b), is regarded as within the custody of the appellate court, and the judges, clerks, and other authorized employees of the appellate court have full remote electronic access to it. See section (d) of this Rule.

~~(4)~~ (c) Appellate Submissions During Pendency of Appeal

Subject to ~~subsection (b)(6)~~ section (e) of this Rule and unless otherwise ordered by the appellate court, submissions

filed with or by the appellate court ~~shall~~ during the pendency of the appeal ~~not be made part of the record certified by the clerk of the trial court but~~ after the date of the docketing and transmittal pursuant to subsection (a)(2) of this Rule shall be part of the appellate court record.

~~(5)~~ (d) Remote Access by Appellate Judges and Personnel

During the pendency of the appeal, the judges, law clerks, clerks, and staff attorneys of the appellate court shall have free remote access to the certified record.

~~(6)~~ (e) Procedure Upon Completion of Appeal

Upon completion of the appeal, the clerk of the appellate court shall add to the record certified by the clerk of the trial court any opinion, order, or mandate of the appellate court disposing of the appeal~~,~~ and a notice that, subject to the court's mandate and any further order of the appellate court, from and after the date of the notice, the record is returned to the custody ~~and jurisdiction~~ of the trial court.

Source: This Rule is new.

The Chair explained that sections (a) and (b) in Rule 20-402 have been deleted, and new language has been added as subsections (a)(1) and (a)(2). When MDEC was first designed, it was anticipated that if an appeal of an MDEC circuit court case was filed, the circuit court would actually transmit the electronic part of the record electronically to the appellate court. After the MDEC Rules were almost in place, the then-

State Court Administrator said that MDEC could not do that. Another way had to be found to deal with transmittal of the record. At the time, the MDEC administrators thought that eventually this would be able to be done, so Rule 20-402 was drafted with alternatives. It now appears that this is not going to happen. The Rule provides that the record stays exactly where it is, but the clerk makes a docket entry stating that the record henceforth is within the custody of the appellate court. Anything that is not electronic is sent to the appellate court just as it is now. The electronic record stays exactly where it is. The clerk makes a docket entry that provides that from that date the record is in the custody of the appellate court. The appellate court, the judges, clerks, and law clerks as well as the attorneys, have unlimited electronic access to the record. The Chair said that Rule 20-402 authorizes what the current practice is.

By consensus, the Committee approved Rule 20-402 as presented.

The Chair presented Rule 20-501, MDEC System Outage, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

## CHAPTER 500 – MISCELLANEOUS RULES

AMEND Rule 20-501, as follows:

### Rule 20-501. MDEC SYSTEM OUTAGE

(a) Posting of Notices

(1) ~~System Failure~~ Outage Onset Notice

~~If a court in an applicable county is unable to accept electronic filings because of an MDEC system failure~~ In the event of an MDEC system outage, the State Court Administrator shall immediately notify each registered user by posting ~~a system failure~~ an MDEC outage notice on the Judiciary website or by other electronic means. The ~~system failure~~ notice shall state the date and time of the ~~system failure and list the courts affected by the system failure~~ onset of the outage.

(2) ~~System Resumption~~ Outage Termination Notice

~~When a court's capability of accepting electronically filed submissions resumes,~~ Upon the termination of the MDEC system outage, the State Court Administrator shall immediately notify each registered user by posting ~~a system resumption~~ an MDEC outage termination notice on the Judiciary website or by other electronic means. The ~~system resumption~~ outage termination notice shall state the date and time ~~that the capability of accepting electronically filed submissions resumed in each court~~ of the termination of the outage.

(b) Effect of Notice

(1) Electronic Submissions - Expiring Time Extended

~~While a court is listed in a system failure notice as unable to accept electronic filings, the affected court is deemed inaccessible to electronic filers. If a court is inaccessible under this Rule~~ If an MDEC system outage is posted for any portion of the same day that the time for filing a submission expires, the time to file the submission electronically is automatically extended until the first full day, other than a Saturday, Sunday, or legal holiday, that ~~the system is able to accept electronic filings~~ an outage termination notice is posted.

(2) Paper Submissions – Accepted

If, ~~a court is listed as unable to accept electronic filings in a system failure notice but~~ during an MDEC system outage, the courthouse is otherwise open for business, a registered user may elect to timely file the submission in paper form.

Committee note: There may be circumstances in which the courthouse where an MDEC action is pending is closed or otherwise unable to accept electronic submissions. In that situation, a filer is still able to transmit a submission through the primary electronic service provider in the normal way, even though the court may be temporarily unable to act on it.

Cross reference: See Rule 20-106 (b) for exceptions to required electronic filing.

Source: This Rule is new.

The Chair explained that Rule 20-501 contained changes suggested by Ms. Harris and Judge Morrissey. There were no substantive changes to the Rule.

By consensus, the Committee approved Rule 20-501 as presented.

The Chair presented Rules 1-324, Notification of Orders, Rulings, and Court Proceedings, and 7-206.1, Record – Judicial Review of Decision of the Workers' Compensation Commission, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-324 to correct an internal reference, as follows:

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

. . .

(b) Notification When Attorney Has Entered Limited Appearance

If, in an action that is not an ~~affected~~ MDEC action as defined in Rule 20-101 ~~(a)~~ (n), 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.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 200 – JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-206.1 to correct an internal reference, as follows:

Rule 7-206.1. RECORD – JUDICIAL REVIEW OF DECISION OF THE WORKERS' COMPENSATION COMMISSION

. . .

(d) Electronic Transmission

If the Commission is required by section (b) of this Rule or by order of court to transmit all or part of the record to the court, the Commission shall file electronically if the court to which the record is transmitted is the circuit court for an "~~applicable~~ MDEC county" as defined in Rule 20-101 ~~(c)~~ (o).

. . .

The Chair said that Rules 1-324 and 7-206.1 contain conforming amendments to the changes to the Title 20 Rules. Mr. Curtis, an Assistant Attorney General, who represents the Workers' Compensation Commission, told the Committee that the Commission had put forth the promise that there would be electronic transfer from the Commission to the circuit court. At the same time, they had asked the Rules Committee to restrict the number of transmissions that they would be doing. At the current time, there is no ability to be able to transmit the record electronically. The solution given by Tyler Technologies, the vendor for MDEC, was for Mr. Curtis to enter his appearance and transmit the records physically. There is a theoretical solution, but Mr. Curtis said that his request was to change the word "shall" in section (d) of Rule 7-206.1 to the word "may." As soon as Mr. Curtis gets the ability to transmit the record electronically, the Rule can be changed back.

Mr. Zarbin moved to change the word "shall" to the word "may" in section (d) of Rule 7-206.1. The motion was seconded, and it passed unanimously.

By consensus, the Committee approved Rule 1-324 as presented and Rule 7-206.1 as amended.

Agenda Item 6. Consideration of proposed amendments to Title 16, Chapter 900 (Access to Judicial Records)

Conforming amendments to:

Rule 1-322.1 (Exclusion of Personal Identifier Information in Court Filings)
Rule 2-512 (Jury Selection)
Rule 4-263 (Discovery in Circuit Court)
Rule 4-312 (Jury Selection)
Rule 9-203 (Financial Statements)
Rule 9-205.2 (Parenting Coordination)
Rule 15-1103 (Initiation of Proceeding to Contest Isolation or Quarantine)
Rule 16-203 (Electronic Filing of Pleadings, Papers, and Real Property Instruments)
Rule 16-204 (Reporting of Criminal and Motor Vehicle Information)
Rule 16-505 (Administration of Circuit Court Recording Process)
Rule 19-104 (Subpoena Power)
Rule 20-504 (Agreements with Vendors)

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The Chair said that one more agenda item remained, the updating of the Access to Judicial Records Rules, minus Rule 16-911, CaseSearch, which had already been discussed. He added that he would point out what changes have been made to the Rules.

Mr. Laws noted that there was an error in the Table of Contents. “Special Judicial Unit” is no longer part of section (g) of Rule 16-902. It has been moved and is now section (l).

By consensus, that was corrected.

The Chair presented Rule 16-901, Scope of Chapter, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

ADD new Rule 16-901, as follows:

Rule 16-901. SCOPE OF CHAPTER

(a) Generally

Except as expressly provided or limited by other Rules, the Rules in this Chapter govern public access to judicial records, whether in paper or electronic form.

Cross references: (1) See Rule 16-504 governing access to electronic recordings of court proceedings and Rule 20-109 governing access to electronic records under the system of electronic filing and case management established by the Court of Appeals (MDEC). (2) See Rule 16-902 (h) defining "judicial record." (3) The Public Information Act (Code, General Provisions Article, §§4-101 through 4-601) deals generally with public access to public records, as defined in §4-101 (h). See Code, General Provisions Article, §4-301 (2)(iii), requiring a custodian of a public record to deny inspection if the inspection would be contrary to the rules adopted by the Court of Appeals.

(b) Access by Judicial Employees, Parties, Attorneys of Record, and Certain Government Agencies

The Rules in this Chapter do not limit access to judicial records by judicial officials or employees in the performance of

their official duties, to a case record by a party or attorney of record in the action, or to government agencies or officials pursuant to Rule 16-911.
Source: This Rule is new.

Rule 16-901 was accompanied by the following Reporter's note.

The Access to Court Records Rules went into effect in 2004. Proposed revisions to the Rules include access to electronic records. The term "court records" is changed to "judicial records" throughout because records maintained by the Administrative Office of the Courts and all of its units; by the Judicial Council and its committees, subcommittees, and work groups; and by the Rules Committee, the Professionalism Center, etc. are subject to the Access Rules but would not be considered "court records." The term "judicial record" is more inclusive and descriptive.

As part of the revisions, a new Rule 16-901, Scope of Chapter, is proposed.

Rule 16-901 is new. It is a statement of the scope of the Access Rules.

By consensus, the Committee approved Rule 16-901 as presented.

The Chair presented Rule 16-902, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO ~~COURT~~ JUDICIAL

RECORDS

AMEND Rule 16-902 by changing the term "court record" to "judicial record" throughout the Rule; by adding the word "otherwise", deleting an internal reference, and changing the word "another" to the word "a" in subsection (a)(1); by deleting language in subsection (a)(2) and replacing it with the language "or judicial agency;" by adding the language "magistrates or other judicial personnel" to subsection (a)(2)(D); by adding a new subsection (a)(2)(J) pertaining to policies, procedures, and plans; by adding a new subsection (a)(2)(K) pertaining to judicial work product; by deleting current section (c), by adding language to section (e), by adding a new section (l) a definition of "Special Judicial Unit"; by adding a new definition of "Judicial Record" to section (h); by adding the language "clerk of" to section (i); by adding a subsection (1) to section (k) with language added to and deleted from the definition of "remote access"; by adding a new subsection (2) to section (k) pertaining to a definition of the term "case records"; and by adding clarifying language and making stylistic changes to the Committee note after subsection (k)(2), as follows:

Rule ~~16-901~~ 16-902. DEFINITIONS

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

(a) Administrative Record

(1) Except as otherwise provided in ~~subsection (a)(3) of~~ this Rule, "administrative record" means a record that:

(A) pertains to the administration of a court, ~~another~~ a judicial agency, or the judicial system of the State; and

(B) is not a case record.

(2) "Administrative record" includes:

(A) a rule adopted by a court pursuant to Rule 1-102;

(B) an administrative order, policy, or directive that governs the operation of a court ~~including an order, policy, or directive that determines the assignment of one or more judges to particular divisions of the court, or particular kinds of cases~~ or judicial agency;

(C) an analysis or report, even if derived from ~~court~~ judicial records, that is:

(i) prepared by or for a court or ~~other~~ judicial agency;

(ii) used by the court or ~~other~~ judicial agency for purposes of judicial administration; and

(iii) not filed, and not required to be filed, with the clerk of a court.

(D) judicial education materials prepared by, for, or on behalf of a unit of the Maryland Judiciary for use by Maryland judges, magistrates, or other judicial personnel;

(E) a jury plan adopted by a court;

(F) a case management plan adopted by a court;

(G) a continuity of operations plan;

(H) an electronic filing plan adopted

by a court; ~~and~~

(I) an administrative order issued by the Chief Judge of the Court of Appeals pursuant to Rule ~~16-902~~ 16-903;

(J) policies, procedures, and plans adopted or approved by the State Court Administrator, the Court of Appeals, or the Chief Judge of that Court pursuant to a Maryland Rule or a statute; and

(K) judicial or other professional work product, including drafts of documents, notes, and memoranda prepared by a judge or other Judicial Branch personnel at the direction of a judge or other judicial official and intended for use in the preparation of a decision, order, recommendation, or opinion.

(3) "Administrative record" does not include a document or information gathered, maintained, or stored by a person or entity other than a court or ~~other~~ judicial agency, to which a court or ~~other~~ judicial agency has access but which is not a case record.

(b) Business License Record

(1) "Business license record" means a ~~court~~ judicial record pertaining to an application for a business license issued by the clerk of a court, and includes the application for the license and a copy of the license.

(2) "Business license record" does not include a ~~court~~ judicial record pertaining to a marriage license.

Committee note: A marriage license record is included as a case record under subsection (c)(1)(B) of this Rule. It does not fit neatly within the scope of either a business license record or a case record, but, with respect to issues of public

access, it is better treated in the manner of case records. See Rule 16-907 (b).

(c) Case Record

(1) Except as otherwise provided in this Rule, "case record" means:

(A) ~~a document, information, or other thing that is collected, received, or maintained by a court in connection with one or more specific actions or proceedings~~ all or any portion of a court paper, document, exhibit, order, notice, docket entry, or other record, whether in paper, electronic, or other form, that is made, entered, filed, or maintained by the clerk of a court in connection with an action or proceeding;

(B) a ~~copy~~ record of a marriage license issued and maintained by the court, including, after the license is issued, the application for the license;

(C) a miscellaneous record filed with the clerk of the court pursuant to law that is not a notice record.

(2) "Case record" does not include a document or information described in subsection (a)(3) of this Rule.

(d) Court

"Court" means the Court of Appeals of Maryland, the Court of Special Appeals, a circuit court, the District Court of Maryland, and an orphans' court of Maryland. Custodian

~~(e) Court Record~~

~~"Court record" means a record that is:~~

~~(1) an administrative record;~~

~~(2) a business license record;~~

~~(3) a case record; or~~

~~(4) a notice record.~~

~~(f)~~ (e) Custodian

"Custodian," with respect to a judicial record, means:

(1) ~~the clerk of a court~~ for a case record, notice record, or business license record, the clerk of the court in which the record was filed or the license was issued or, in the absence of the clerk, [an employee of the clerk's office] [a deputy clerk] authorized to act for the clerk in determining administratively whether inspection of the record or any part of the record may be denied; and

(2) ~~any other authorized individual who has physical custody and control of a court record~~ for an administrative record or special judicial unit record, the individual or individuals with legal control over the record and authority to determine administratively whether inspection of the record or any part of the record may be denied.

Committee note: This definition of "custodian" focuses on who has authority to make the administrative decision whether, for purposes of the Rules in this Chapter, inspection of a particular judicial record may be denied. It is not intended to foreclose the application of a different definition that may be relevant for other purposes.

~~(g)~~ (f) Individual

"Individual" means a human being.

~~(h)~~ (g) Judicial Agency

"Judicial agency" means a unit within the Judicial Branch of the Maryland Government other than a special judicial unit.

(h) Judicial Record

"Judicial record" means a record that is:

(1) an administrative record;

(2) a business license record;

(3) a case record;

(4) a notice record; or

(5) a special judicial unit record.

(i) Notice Record

"Notice record" means a record that is filed with the clerk of a court pursuant to statute for the principal purpose of giving public notice of the record. It includes deeds, mortgages, and other documents filed among the land records; financing statements filed pursuant to Code, Commercial Law Article, Title 9; and tax and other liens filed pursuant to statute.

(j) Person

"Person" means an individual, sole proprietorship, partnership, firm, association, corporation, or other entity.

(k) Remote Access

(1) Generally

"Remote access" means the ability to inspect, search, or copy a ~~court~~ judicial record, as defined in section (h) of this Rule, by electronic means from a ~~location other than the location where the record is stored~~ device not under the control of the

Maryland Judiciary. ~~For purposes of this definition, a case record in electronic form is deemed to be stored in the office of the clerk of the court in which the case record was filed~~.

(2) Case Records

Remote access to case records means access through the CaseSearch program provided for in Rule 16-911. Access to electronic case records through a terminal or kiosk located in a courthouse of the District Court or a circuit court does not constitute remote access.

(l) Special Judicial Unit

"Special Judicial Unit" means (1) the State Board of Law Examiners, the Accommodations Review Committee, and the Character Committees; (2) the Attorney Grievance Commission and Bar Counsel; and (3) The Commission on Judicial Disabilities, the Judicial Inquiry Board, and Investigative Counsel.

Cross reference: See Rule 20-109 (c).

Committee note: The Rules in this Chapter recognize that ~~court~~ judicial records can be of ~~four~~ five types: (1) those, like land records, that are filed with the court, not necessarily in connection with any litigation, but for the ~~sole~~ principal purpose of providing public notice of them; (2) those that are essentially administrative in nature - that are created or maintained by the court or judicial agency itself and relate to the ~~internal~~ administration or operation of ~~a~~ the court or ~~other judicial~~ agency ~~as an agency of Government~~; (3) those that are filed or created in connection with business licenses (excluding marriage licenses) issued by the clerk; ~~and~~ (4) those that are filed with the court in connection with a judicial action

or the issuance of a marriage license; and (5) records of three special judicial units that are subject to special rules of confidentiality. The premise of the Rules in this Chapter is that, although the presumption of openness applies to all four kinds of records, they need to be treated differently in some respects.

Land records and other similar kinds of records that are filed with the clerk for the principal purpose of giving public notice of them are ~~court~~ judicial records, but, because the court's only function with respect to those records is to preserve them and make ~~and keep~~ them available for public inspection, there is no justification for shielding them~~, or any part of them,~~ from public inspection. Those kinds of records are defined as "notice records," and it is the intent of the Rules in this Chapter that, except as otherwise required by statute, there be no substantive (content) restrictions on public access to them. One such statute is Code, Real Property Article, §3-111, prohibiting the disclosure of certain identifying information in recordable instruments.

The Rules in this Chapter assume that the kinds of internal administrative records maintained by a court or other ~~Judicial Branch~~ judicial agency, mostly involving personnel, budgetary, and operational management, are similar in nature and purpose to those kinds of administrative records maintained by Executive Branch agencies and that records pertaining to business licenses issued by a court clerk are similar in nature to records kept by Executive Branch agencies that issue licenses of one kind or another. The Rules in this Chapter thus treat those kinds of records more or less the same as comparable Executive Branch records. The Public Information Act ("PIA") provides the most relevant statement of public policy

regarding those kinds of records, and, as a general matter, the Rules in this Chapter apply the PIA to those kinds of records, at least with respect to the substantive issue of access. Rule ~~16-911~~ 16-912 provides the procedure to be used to resolve disputes over access to all ~~court~~ judicial records, including administrative records.

A different approach is taken with respect to access to case records – most of which ~~those that~~ come into the court's possession as the result of their having been filed by or with respect to litigants in judicial actions. As to them, the Rules in this Chapter carve out only those exceptions to public access that are felt particularly applicable. The exceptions, for the most part, are ~~narrower~~ more particular than those provided by the PIA. Categorical exceptions are limited to those that (1) have an existing basis, either by statute other than the PIA, or by specific Rule, or (2) present some compelling need for non-access. In an attempt to remove discretion from clerical personnel to deny public access and require that any dispute over closure be examined by a judge on a case-by-case basis, the Rules in this Chapter require that all other exclusions be by court order.

To achieve the differentiation between these various kinds of court records, ~~four~~ five categories are specifically defined in this Rule - "administrative records," "business license records," "case records," ~~and~~ "notice records," and “records of special judicial units”. Some principles enunciated in the Rules in this Chapter apply to all four categories, and, for that purpose, the term "~~court~~ judicial records," which includes all four categories, is used.

Source: This Rule is derived from former Rule 16-1001 (2016).

Rule 16-902 was accompanied by the following Reporter's note.

> In Rule 16-902, the definition of "administrative record" is proposed to be expanded to include (1) policies, procedures, and plans adopted by the State Court Administrator, the Court of Appeals, or the Chief Judge of the Court of Appeals and (2) judicial or other professional work product. The definition of the term "case record" is expanded to include court papers, documents, exhibits, orders, notices, and docket entries made in both paper and electronic form.
>
> The definition of the term "custodian" now encompasses custodians of case, notice, or business license records. It is broadened to include custodians of administrative or special judicial unit records. A Committee note is added to clarify that for purposes of the Access Rules, the definition of "custodian" focuses on who has authority to make the administrative decision as to whether inspection of a particular judicial record may be denied.
>
> The term "special judicial unit" is added, because the current Access Rules do not clearly cover these units. Their records would constitute administrative records, but the Rules governing these units have their own confidentiality provisions, which should control the extent of public access. Because no special Rule governs the confidentiality of records of the Client Protection Fund of the Bar of Maryland, that body is not treated as a special judicial unit. Its records should be regarded as administrative records, access to which is governed by Rule 16-905 (c) and the Public Information Act, Code, General Provisions Article, Title 4.
>
> A definition of "judicial record" is

added, since that term does not appear in the current Access Rules. The definition of "remote access" is expanded to include a definition of remote access to case records. A Committee note is added to explain the various types of judicial records.

The Chair pointed out that the term "court records" has been changed to the term "Judicial Records" throughout the Title 16, Chapter 900 Rules. The term "Court Records" in the current Rule is defined to include items that are not in the clerk's office. They could be elsewhere in the Administrative Office of the Courts. The term was changed to "Judicial Records" because that is a broader term.

Mr. Weaver referred to the definition of "Case Record" in subsection (c)(1)(B). Instead of the language "a record of a marriage license," Mr. Weaver suggested "a record relating to a marriage license." There are many other documents associated with a marriage license in addition to the application. The Chair suggested the language "a record pertaining to a marriage license." By consensus, the Committee agreed to this change. Mr. Weaver pointed out that in section (e), the definition of the word "Custodian," there was a choice between the language "an employee of the clerk's office" or "a deputy clerk." The Chair asked which one was preferable. Mr. Weaver answered that it is "an employee of the clerk's office."

By consensus, the Committee agreed to this change.

The Chair noted that the definition of “Remote Access” in section (k) has within it a definition of the term “Special Judicial Unit.” This definition carves out the three categories of agencies. Mr. Weaver referred to the last paragraph of the Committee note at the end of Rule 16-902. There are three places where the note references four categories, but another has been added, so it should refer to five categories. By consensus, the Committee agreed to adding the additional category.

By consensus, the Committee approved Rule 16-902 as amended.

The Chair presented Rule 16-903, General Policy, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-903 by changing the term “court record” to “judicial record” throughout the Rule, by adding a new section (a) pertaining to the purpose of the Rule, by adding the language “or by other applicable law” and making stylistic changes to section (b); by adding a reference to Rule 16-910 in the Committee note after section (b); by deleting subsection (2) of section (c) and by making stylistic changes to section (c); by changing certain terminology in and by adding an exception to

section (d); by adding a Committee note after section (d); by adding language to subsection (e)(6)(A) referring to two Maryland counties; by deleting language from subsection (e)(6)(D); by changing an internal reference and deleting a word from subsections (f)(1) and (2), and by moving current section (f) to Rule 16-901, as follows:

Rule ~~16-902~~ 16-903. GENERAL POLICY

(a) Purpose of Rules

The Rules in this Chapter are intended to provide public access to judicial records while protecting the legitimate security and privacy rights of litigants and others who are the subject of those records.

~~(a)~~ (b) Presumption of Openness

~~Court~~ Judicial records ~~maintained by a court or other judicial agency~~ are presumed to be open to the public for inspection. Except as otherwise provided by the Rules in this Chapter or by other applicable law, the custodian of a ~~court~~ judicial record shall permit an individual appearing in person in the office of the custodian during normal business hours to inspect the record.

Committee note: (1) For normal business hours, see Rule 16-403. (2) The definition of "business day" in Rule 20-101 ~~(e)~~ (b) has no application to this Rule. (3) Remote access to case records is provided for by Rule 16-910.

~~(b)~~ (c) Protection of Records

To protect ~~court~~ judicial records and prevent unnecessary interference with the official business and duties of the

custodian and other ~~court~~ judicial personnel,

~~(1)~~ a clerk is not required to permit in-person inspection of a case record filed with the clerk for docketing in a judicial action or a notice record filed for recording and indexing until the document has been docketed or recorded and indexed~~; and~~

~~(2) the Chief Judge of the Court of Appeals, by administrative order, a copy of which shall be posted on the Judiciary's website and filed with and maintained by the clerk of each court, may adopt procedures and conditions, not inconsistent with the Rules in this Chapter, governing the timely production, inspection, and copying of court records~~.

~~(c)~~ (d) Exhibit Pertaining to Motion or Marked for Identification

Unless a judicial ~~action~~ proceeding is not open to the public or the court expressly orders otherwise~~,~~ and except for identifying information shielded pursuant to law, a ~~court~~ case record that consists of an exhibit (1) submitted in support of or in opposition to a motion that has been ruled upon by the court or (2) marked for identification at trial[, whether or not] offered in evidence, [and if offered,] whether or not admitted, is subject to inspection, notwithstanding that the record otherwise would not have been subject to inspection under the Rules in this Chapter.

Cross reference: See Rule 2-516.

Committee note: Section (d) is based on the general principle that the public has a right to know the evidence upon which a court acts in making decisions, except to the extent that a superior privacy interest recognized by law permits particular

evidence, or the evidence in particular cases, to be shielded.

~~(d)~~ (e) Fees

(1) In this Rule, "reasonable fee" means a fee that bears a reasonable relationship to the actual or estimated costs incurred or likely to be incurred in providing the requested access.

(2) Unless otherwise expressly permitted by the Rules in this Chapter, a custodian may not charge a fee for providing access to a ~~court~~ judicial record that can be made available for inspection, in paper form or by electronic access, with less than two hours of effort by the custodian or other judicial employee.

(3) A custodian may charge a reasonable fee if two hours or more of effort are required to provide the requested access.

(4) The custodian may charge a reasonable fee for making or supervising the making of a copy or printout of a ~~court~~ judicial record.

(5) The custodian may waive a fee if, after consideration of the ability of the person requesting access to pay the fee and other relevant factors, the custodian determines that the waiver is in the public interest.

(6) A dispute concerning the assessment of a reasonable fee shall be determined:

(A) if the record is in an appellate court or an orphans' court other than in Harford or Montgomery County, by the chief judge of the court, and in the orphans' court in Harford or Montgomery County, by the County Administrative Judge of the circuit court for that county;

(B) if the record is in a circuit court, by the county administrative judge;

(C) if the record is in the District Court, by the District administrative judge; or

(D) if the record is in a judicial agency ~~other than a court~~, by the State Court Administrator.

~~(e)~~ (f) New ~~Court~~ Judicial Records

(1) Except as expressly required by other law and subject to Rule ~~16-908~~ 16-909, a custodian, ~~a~~ court, or ~~another~~ judicial agency is not required by the Rules in this Chapter to index, compile, re-format, program, or reorganize existing ~~court~~ judicial records or other documents or information to create a new ~~court~~ judicial record not necessary to be maintained in the ordinary course of business. The removal, deletion, or redaction from a ~~court~~ judicial record of information not subject to inspection under the Rules in this Chapter in order to make the ~~court~~ judicial record subject to inspection does not create a new record within the meaning of this Rule.

(2) If a custodian, court, or ~~other~~ judicial agency (A) indexes, compiles, re-formats, programs, or reorganizes existing ~~Court~~ judicial records or other documents or information to create a new ~~court~~ judicial record, or (B) comes into possession of a new ~~court~~ judicial record created by another from the indexing, compilation, re-formatting, programming, or reorganization of other ~~court~~ judicial records, documents, or information, and there is no basis under the Rules in this Chapter to deny inspection of that new ~~court~~ judicial record or some part of that ~~court~~ judicial record, the new ~~court~~ judicial record or a part for which there is no basis to deny inspection shall be subject to inspection.

~~(f) Access by Judicial Employees, Parties, and Attorneys~~

~~The Rules in this Chapter address access to court records by the public at large. The Rules do not limit access to court records by judicial officials or employees in the performance of their official duties, or to a case record by a party or attorney of record in the action.~~

Source: This Rule is derived from former Rule 16-1002 (2016).

Rule 16-903 was accompanied by the following Reporter's note.

In Rule 16-903, a new section (a) is proposed to clarify the purpose of the Access Rules.

Subsection (c)(2) is deleted, because no administrative order governing the production, inspection, and copying or court records exists nor is one planned.

A Committee note is added after section (d) explaining the meaning of that section.

Language is added to subsection (e)(6)(A) to account for the fact that in Harford and Montgomery Counties, Orphans' Court cases are heard in the circuit court.

Provisions contained in section (f) of the current Rule are transferred to Rule 16-901.

The Chair said that no substantive changes had been made to Rule 16-903.

By consensus, the Committee approved Rule 16-903 as presented.

The Chair presented Rule 16-904, Copies, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-904 by changing the term "court record" to "judicial record" throughout the Rule; by changing an internal reference in section (a); by adding language pertaining to a certified copy to and deleting language from section (b); and by adding a new section (c) pertaining to an uncertified copy; as follows:

Rule ~~16-903~~ 16-904. COPIES

(a) Entitlement

Except as otherwise expressly provided by law, a person entitled to inspect a ~~court~~ judicial record is entitled to have a copy or printout of the ~~court~~ record. The copy or printout may be in paper form or, subject to Rule ~~16-908 (c)~~ 16-909 (c) and the Rules in Title 20, in electronic form.

(b) ~~Where Made~~ Certified Copy

To the extent practicable, a certified copy ~~or printout in paper form~~ of the case record shall be made ~~where the court record is kept and while the court record is in the custody of the custodian~~ by any authorized clerk of the District Court, or by the clerk of the circuit court in which the case was filed or to which it was

transferred.

**Query: Should provisions be added re: (1) actions that initially were filed in a circuit court, (2) records in the appellate courts, and (2) fees that the clerk may charge?**

(c) Uncertified Copy

Copies or printouts in paper form that are obtained from a terminal or kiosk located in a courthouse are uncertified.

Source: This Rule is derived from former Rule 16-1003 (2016).

Rule 16-904 was accompanied by the following Reporter's note.

Rule 16-904 is proposed to be amended to address access to certified and uncertified copies of judicial records.

The Chair noted that there was a query at the end of section (b) in Rule 16-904. The Reporter explained that section (b) pertains to obtaining a certified copy of a record. If section (b) is not amended, it would provide that a certified copy or printout in paper form shall be made where the court record is kept and while the court record is in the custody of the custodian. It was changed to provide that the court record is made by any authorized clerk of the District Court or by the clerk of the circuit court in which the case was filed or to which it was transferred. The original language was better,

because it covered the appellate courts and actions that were initially filed in the circuit court, not just actions transferred to the circuit court. There was a second question as to whether any reference back to the previous Rule pertained to fees, because there is a fee for obtaining a certified copy. Mr. Weaver said that he had noticed this. He expressed the view that the Rule should provide that the record shall be made "by any authorized clerk of the court in which the case was filed or to which it was transferred." That would cover all courts.

The Reporter asked whether a cross reference to the fee in the previous Rule was necessary. Mr. Weaver responded that he approved of a cross reference. By consensus, the Committee approved of the changes suggested by Mr. Weaver.

The Chair remarked that the remainder of Rule 16-904 was simply updating and restyling.

By consensus, the Committee approved Rule 16-904 as amended.

The Chair presented Rule 16-905, Access to Notice, Special Judicial Unit, Administrative, and Business License Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 900 – ACCESS TO ~~COURT~~ JUDICIAL

AMEND Rule 16-905 by adding the language "Special Judicial Unit" to the title; by adding the language "except as otherwise provided by statute" to section (a); by adding a cross reference to a certain statute after section (a); by adding a new section (b) pertaining to special judicial unit records, by adding cross references to certain other Rules after section (b); by making a stylistic change and by changing the word "and" to the word "or" in subsection (c)(1)(A); by adding the language "unless otherwise directed in a" before the words "court order" in subsection (c)(2); by replacing the reference to the "Maryland Public Information Act" with its specific Code citation in section (d) and (e); by deleting a word in section (d); by changing the term "court record" to "judicial record" in the Committee note after subsection (d)(9); by changing the term "Board of Directors of the Judicial Institute" to "State Court Administrator" and by adding the language "in the education and training of" before the words "Maryland judges" in subsection (f)(2); and by adding a new subsection (f)(4) pertaining to certain recordings and documents, as follows:

Rule ~~16-904~~ 16-905. ACCESS TO NOTICE, SPECIAL JUDICIAL UNIT, ADMINISTRATIVE, AND BUSINESS LICENSE RECORDS

(a) Notice Records

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

Cross reference: See Code, Real Property

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

(b) Special Judicial Unit Records

Access to judicial records of special judicial units shall be governed by the confidentiality Rules applicable to those particular units.

Cross reference: See Rule 18-409, applicable to records and proceedings of the Judicial Disabilities Commission, the Judicial Inquiry Board, and Investigative Counsel; Rule 19-105, applicable to the Board of Law Examiners, the Accommodation Review Committee, and the Character Committees; and Rule 19-707, applicable to records and proceedings of the Attorney Grievance Commission and Bar Counsel.

~~(b)~~ (c) Administrative and Business License Records

(1) Except as otherwise provided by the Rules in this Chapter, the right to inspect administrative and business license records is governed by the applicable provisions of Code, General Provisions Article, Title 4.

(A) A custodian shall deny inspection of an administrative record used by the jury commissioner in the jury selection process, except (i) as otherwise ordered by a trial judge ~~orders~~ in connection with a challenge under Code, Courts Article, §§8-408 and 8-409; ~~and~~ or (ii) as provided in subsections ~~(b)(2)(B) and (b)(2)(C)~~ (c)(1)(B) and (c)(1)(C) of this Rule.

(B) Upon request, a custodian shall disclose the names and zip codes of the sworn jurors contained on a jury list after the jury has been impaneled and sworn, unless

otherwise ordered by the trial judge.

Cross reference: See Rule 4-312 (d).

(C) After a source pool of qualified jurors has been emptied and re-created in accordance with Code, Courts Article, §8-207, and after every individual selected to serve as a juror from that pool has completed the individual's service, a trial judge ~~shall~~, upon request, shall disclose the name, zip code, age, sex, education, occupation, and spouse's occupation of each person whose name was selected from that pool and placed on a jury list, unless, in the interest of justice, the trial judge determines that this information remain confidential in whole or in part.

(D) A jury commissioner may provide jury lists to the Health Care Alternative Dispute Resolution Office as required by that Office in carrying out its duties, subject to any regulations of that office to ensure against improper dissemination of juror data.

Cross reference: See Rule 4-312 (d).

(E) At intervals acceptable to the jury commissioner, a jury commissioner shall provide to the State Board of Elections and State Motor Vehicle Administration data about prospective, qualified, or sworn jurors needed to correct erroneous or obsolete information, such as that related to a death or change of address, subject to the Board's and Administration's adoption of regulations to ensure against improper dissemination of juror data.

~~(3)~~ (2) ~~Except by~~ Unless otherwise directed in a court order, a custodian shall deny inspection of an administrative record that constitutes all or part of a continuity of operations plan drafted or adopted pursuant to Rule 16-803.

~~(c)~~ (d) Personnel Records – Generally

Except as otherwise permitted by ~~the Maryland Public Information Act~~ Code, General Provisions Article, Title 4 (PIA) or by this Rule, a custodian shall deny to a person, other than the person who is the subject of the record, inspection of the personnel records of an employee of the court or ~~other~~ judicial agency or of an individual who has applied for employment with the court or other judicial agency. The following records or information are not subject to this exclusion and, unless sealed or otherwise shielded pursuant to the Maryland Rules or other law, shall be open to inspection:

(1) the full name of the individual;

(2) the date of the application for employment and the position for which application was made;

(3) the date employment commenced;

(4) the name, location, and telephone number of the court or judicial agency to which the individual has been assigned;

(5) the current and previous job titles and salaries of the individual during employment by the court or judicial agency;

(6) the name of the individual's current supervisor;

(7) the amount of monetary compensation paid to the individual by the court or judicial agency and a description of any health, insurance, or other fringe benefit that the individual is entitled to receive from the court or judicial agency;

(8) unless disclosure is prohibited by law, other information authorized by the individual to be released; and

(9) a record that has become a case record.

Committee note: Although a ~~court~~ judicial record that has become a case record is not subject to the exclusion under section ~~(c)~~ (d) of this Rule, it may be subject to sealing or shielding under other Maryland Rules or law.

~~(d)~~ (e) Personnel Records – Retirement

Unless inspection is permitted under ~~the Maryland Public Information Act~~ Code, General Provisions Article, Title 4 (PIA) or the record has become a case record, a custodian shall deny inspection of a retirement record of an employee of the court or other judicial agency.

~~(e)~~ (f) Certain Administrative Records

A custodian shall deny inspection of the following administrative records:

(1) judicial work product, including drafts of documents, notes, and memoranda prepared by a judge or other court personnel at the direction of a judge and intended for use in the preparation of a decision, order, or opinion;

(2) unless otherwise determined by the ~~Board of Directors of the Judicial Institute~~ State Court Administrator, judicial education materials prepared by, for, or on behalf of a unit of the Maryland Judiciary for use ~~by~~ in the education and training of Maryland judges;

(3) an administrative record that is:

(A) prepared by or for a judge or other judicial personnel;

(B) either (i) purely administrative in nature but not a local rule, policy, or

directive that governs the operation of the court or (ii) a draft of a document intended for consideration by the author or others and not intended to be final in its existing form; and

(C) not filed with the clerk and not required to be filed with the clerk.

Source: This Rule is derived from former Rule 16-1004 (2016).

Rule 16-905 was accompanied by the following Reporter's note.

In Rule 16-905, a proposed amendment to section (a) contains an exception for statutes that may not conform to the provisions of section (a).

Section (b) is new. It addresses access to the records of special judicial units. A cross reference to the Rules applying to these units is added.

Mr. Weaver pointed out that subsection (c)(1)(B) of Rule 16-905 would read better as: "[u]pon request, the trial judge may authorize the custodian to disclose…". As it is worded now, the custodian could provide the information without asking the judge. The Chair noted that this is a change from what is in the current Rule. By consensus, the Committee agreed to that change.

Mr. Weaver said that in subsection (c)(1)(C) of Rule 16-905, in the counties in which the State has provided for a plan

for jury selection, the Jury Committee has added marital status to the list of items to be disclosed on a jury list, even though it is not set out in the statute. The Chair asked whether Mr. Weaver was referring to the new jury plans that the Judicial Council is considering. Mr. Weaver replied affirmatively. The Chair pointed out that those plans have not been approved yet. Mr. Weaver said that the Jury Committee had made a decision to add marital status to the list. However, the statute does not refer to marital status. Mr. Zarbin noted that the statute does refer to spouse's occupation. One cannot have a spouse unless one is married. Mr. Weaver observed that someone may be married, but the spouse may not have an occupation.

The Chair commented that he was not sure what the status was of the suggestion to add marital status to the jury list. If it is an addition being put forth by the Jury Committee of the Judicial Council, it has to go to the Council for approval. Mr. Weaver responded that this has been approved. The jury commissioners got a notice that marital status was being added to the jury list. The Chair remarked that he would check this out. A recommendation or any product from a committee of the Judicial Council has to go before the entire Council. Then that is only a recommendation to the Chief Judge. Judge Morrissey said that he did not think that this had been approved by the

Judicial Council. The Chair noted that the Committee may have approved it but not the Council.

Mr. Zarbin reiterated that adding marital status is not necessary. If a spouse's occupation is listed, it is obvious that the juror is married. Judge Eaves commented that some people will have themselves listed as married, but then under "spouse's occupation," the person will put "not applicable." This does not provide any information that might be necessary. Mr. Zarbin agreed, pointing out that many people do not provide certain information, but if that happens when he is trying a case, he will ask the trial judge to bring the juror up to the bench, because the juror did not answer a certain question. The judge can then ask the juror about the missing information, such as what the spouse's occupation is.

The Chair asked whether this is the jury plan. Mr. Weaver answered that there is software that the Administrative Office of the Courts has purchased for most counties. It prints the list of jurors who appear that day. Marital status was added to that list. The Chair said that he did not have a problem with it, he just did not want to add something to a rule merely because it was approved by a Judicial Council committee that has not been presented to and approved by the Council. A Judicial Council item, in any event, if merely a recommendation to the Chief Judge.

Mr. Laws pointed out that the list being discussed is a list of the individuals that have already served. This is not the list that the attorney and party get before the jury trial, which provides information about the jurors. This list gives information about the composition of the jury pool after jury service has been completed. Mr. Shellenberger remarked that the list is generated using that information. It is similar to the one handed to the attorneys in the courtroom. The Chair reiterated that if this matter has already been approved, it should be added. If it has not been approved, it should not be added until it goes through the approval process. He said that he will check on it.

By consensus, the Committee approved the addition of "marital status" to the jury list referenced in subsection (c)(1)(C) of Rule 16-905, conditioned upon the fact that this had been approved by the Judicial Council and the Chief Judge. Judge Ellinghaus-Jones referred to subsection (f)(2) of Rule 16-905 and asked whether it had been agreed that the language "commissioners and magistrates" would be added after the word "judges." The Chair answered affirmatively, noting that this involves more than magistrates. The wording should be "magistrates and other judicial personnel." By consensus, the Committee agreed with this additional language.

By consensus, the Committee approved Rule 16-905, as amended.

The Chair presented Rule 16-906, Case Records – Required Denial of Inspection – In General, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-906 by changing the term "court record" to the term "judicial record" throughout the Rule and by replacing the reference to the "Maryland Public Information Act" with the Code citation in subsection (a)(3) and section (b), as follows:

Rule ~~16-905~~ 16-906. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - IN GENERAL

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

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

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

(2) The Maryland Constitution;

(3) A provision of ~~the Maryland Public Information Act~~ Code, General Provisions Article, Title 4 (PIA) that is expressly adopted in the Rules in this Chapter;

(4) A rule adopted by the Court of Appeals; or

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

(A) the case record, or

(B) the person seeking inspection of the case record.

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

Unless inspection is otherwise permitted by the Rules in this Chapter, a custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than ~~the Maryland Public Information Act (~~Code, General Provisions Article, Title 4~~)~~ (PIA), that expressly or by necessary implication applies to a ~~court~~ judicial record.

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

Committee note: Subsection (a)(5) of this Rule allows a court to seal a record or otherwise preclude its disclosure. So long as a ~~court~~ judicial record is under seal or subject to an order precluding or limiting disclosure, it may not be disclosed except in conformance with the order. The authority to seal a ~~court~~ judicial record must be exercised in conformance with the

general policy of these Rules and with supervening standards enunciated in decisions of the United States Supreme Court and the Maryland Court of Appeals.

Source: This Rule is derived from former Rule 16-1005 (2016).

Rule 16-906 was accompanied by the following Reporter's note.

Proposed amendments to Rule 16-906 contain only stylistic changes.

The Chair said that no substantive change had been made to Rule 16-906.

By consensus, the Committee approved Rule 16-906 as presented.

The Chair presented Rule 16-907, Access to Judicial Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-907 by deleting language from the title, by adding the words "and truancy" before the word "actions" in subsection (a)(2); by deleting the reference to a certain period of time after the petition is filed and replacing it with the time period "until the petition is served" in section (c); by adding the language "peace orders" and "domestic violence

protection orders” to section (d); by adding the language “fiduciary or a” before the word “guardian,” by adding the words “minor or” before the word “disabled person”; by adding a reference to certain chapters of Title 10; by deleting subsections (f)(1) and (f)(2); by deleting current section (g); by adding the language “except as authorized by a judge under that Rule” to subsection (g)(1)(B); by changing the term “court records” to “judicial records” in the Committee note after subsection (g)(6); by adding the language “Incompetency and Criminal Responsibility” to subsection (g)(7); by adding the language “or other law” to and deleting language from section (h); by adding the language “subject to the Rules in Title 16, Chapter 500” to and deleting language from section (i); by deleting a certain Code reference from subsection (j)(6); by making a style change to section (k); by changing an internal Rule reference in subsection ((l)(2); and by making stylistic changes, as follows:

Rule ~~16-906~~ 16-907. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES ~~OF CASE RECORDS~~

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

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) adoption;

(B) guardianship; or

(C) to revoke a consent to adoption or guardianship for which there is no pending

adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, ~~and~~ child in need of supervision, and truancy actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection unless the record was ordered expunged.

Committee note: In most instances, the "children" referred to in this section will be minors, but, as Juvenile Court jurisdiction extends until a child is 21, in some cases, the children legally may be adults.

(b) The following case records pertaining to a marriage license:

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

(2) Until a license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.
Cross reference: See Code, Family Law Article, §2-402 (f).

(c) Case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, §4-504, which shall be sealed until ~~the earlier of 48 hours after the petition is filed or the court acts on~~ the petition is served.

(d) Case records required to be shielded pursuant to Code, Courts Article, §3-1510 (peace orders) or Code, Family Law Article,

§4-512 (domestic violence protective orders).

(e) In any action or proceeding, a record created or maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

(f) ~~The following papers~~ Papers filed by a fiduciary or a guardian of the property of a minor or disabled ~~adult~~ person pursuant to Title 10, Chapter 200, 400, or 700 of the Maryland Rules that include financial information regarding the minor or disabled person.

~~(1) the annual fiduciary account filed pursuant to Rule 10- 706, and~~

~~(2) the inventory and information report filed pursuant to Rule 10-707~~.

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, Human Services Article, §§1-202 and 1-203 and Code, Family Law Article, §5-707.

~~(g) The following case records in actions or proceedings involving attorneys or judges:~~

~~(1) Records and proceedings in attorney grievance matters declared confidential by Rule 19-707 (b).~~

~~(2) Case records with respect to an investigative subpoena issued by Bar Counsel pursuant to Rule 19-712.~~

~~(3) Subject to the provisions of Rule 19-105 (b), (c), and~~

~~(d) of the Rules Governing Admission to the Bar, case records relating to bar admission proceedings before the Accommodations Review Committee and its panels, a Character Committee, the State Board of Law Examiners, and the Court of Appeals.~~

~~(4) Case records consisting of IOLTA Compliance Reports filed by an attorney pursuant to Rule 19-409 and Pro Bono Legal Service Reports filed by an attorney pursuant to Rule 19-503.~~

~~(5) Case records relating to a motion filed with respect to a subpoena issued by Investigative Counsel for the Commission on Judicial Disabilities pursuant to Rule 18-405.~~

~~(h)~~ (g) The following case records in criminal actions or proceedings:

(1) A case record that has been ordered expunged pursuant to Rule 4-508.

(2) The following case records pertaining to search warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601, except as authorized by a judge under that Rule.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d)(3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, §4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) A case record maintained under Code, Courts Article, §9-106, of the refusal of an individual to testify in a criminal action against the individual's spouse.

(5) A presentence investigation report prepared pursuant to Code, Correctional Services Article, §6-112.

(6) A case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, §15-108, (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, §14-110, or (D) the Attorney General when acting pursuant to Article V, §3 of the Maryland Constitution or other law.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of ~~court~~ judicial records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(7) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3 (Incompetency and Criminal Responsibility).

~~(i)~~ (h) A transcript, ~~tape recording,~~ audio, video, or digital recording of any court proceeding that was closed to the public pursuant to Rule, ~~or~~ order of court, or other law.

~~(j)~~ (i) Subject to the Rules in Title 16, Chapter 500, ~~Backup~~ backup audio recordings ~~made by any means~~, computer disks, and notes of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

~~(k)~~ (j) The following case records

containing medical information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health-General Article, §18-338.1 or §18-338.2.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health-General Article, §5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, §18-201 or §18-202.

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled individual, declared confidential by Code, Health-General Article, §7-1003.

(6) A case record relating to a petition for an emergency evaluation made under Code, Health-General Article, §10-622 and declared confidential under ~~Code, Health-General Article,~~ §10-630 of that Article.

~~(l)~~ (k) A case record that consists of the ~~federal~~ Federal or Maryland income tax return of an individual.

~~(m)~~ (l) A case record that:

(1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or

(2) in accordance with Rule ~~16-910 (b)~~ 16-912 (b) is the subject of a motion to preclude or limit inspection.

~~(n)~~ (m) As provided in Rule 9-203 (d), a case record that consists of a financial statement filed pursuant to Rule 9-202.

~~(o)~~ (n) A document required to be shielded under Rule 20-203 (e)(1).

~~(p)~~ (o) An unredacted document filed pursuant to Rule 1-322.1 or Rule 20-203 (e)(2).

Source: This Rule is derived from former Rule 16-1006 (2016).

Rule 16-907 was accompanied by the following Reporter's note.

In Rule 16-907, subsection (a)(2) contains a proposed addition providing for an exclusion of access to case records in truancy actions. A Committee note is added clarifying the meaning of the term "children" referred to in subsection (a)(2). Section (c) has been changed to ensure that the record is sealed for a sufficient period of time to protect the petitioner. Clarifying language is added to section (f). Section (g) is deleted because of the addition of section (b) of Rule 16-905. Section (i) has a new reference to the Title 16, Chapter 500 Rules, which pertain to the recording of proceedings.

Judge Ellinghaus-Jones referred to section (c) of Rule 16-907. She pointed out that it used to read as follows: "...petitions for relief from abuse...which shall be sealed

until the earlier of 48 hours after the petition is filed or the court acts on the petition...". Now this section reads: "...sealed until the petition is served." What about when the petition is denied? When it is denied, it does not get served. The Chair said that the words "or denied" could be added. The reason for the change was that the delay in service was creating a problem. How could a petition be denied when it was not served? Judge Ellinghaus-Jones responded that the first hearing is ex parte.

The Chair inquired whether Judge Ellinghaus-Jones was referring to the initial two-day hearing before the commissioner. Judge Mosley said that it referred to the interim hearing. Judge Ellinghaus-Jones remarked that if a petition is filed and denied by the court, then it is sealed forever. There is a shielding factor. The Chair pointed out that there is a statute pertaining to shielding, Code, Family Law Article, §4-512. Mr. Shellenberger inquired about a petition being denied after the two-day hearing, and then the parties ask for the petition to be shielded.

Mr. Durfee commented that the earlier language referred to the court acting on the petition. This language was deleted, so the court acting on the petition could be either granting or denying the petition. Mr. Weaver asked whether a Committee note could be added that would provide that a petition denied at the

ex parte hearing having never been served would be sealed permanently. The Chair explained that this change had been made to protect the petitioner until the petition is served. If it became public before service, the respondent could evade service. Judge Mosley remarked that a petition may not be available, but sometimes respondents see something posted on CaseSearch and come to court, anyway. They are then served in open court. The Chair asked whether someone has ever appeared in court without having been served, and Judge Mosley answered affirmatively. Judge Morrissey commented that probably just as many see it on CaseSearch and then hide.

Judge Mosley asked whether Rule 16-907 should be left as it was before the proposed change. Judge Price said that whether a petition is dismissed or denied, people should not have access to the records, anyway. The respondent should be protected at that point. The petitioner is protected until the petition is served. Mr. Shellenberger remarked that it should be treated the same way an arrest warrant is treated. It does not go out to the public until it is served. This is a protection for the people serving it.

The Chair suggested that the language of section (c) of Rule 16-907 read "... sealed until the earlier of service or denial of the petition." By consensus, the Committee agreed to the Chair's suggested language.

By consensus, the Committee approved Rule 16-907 as amended.

The Chair presented Rule 16-908, Case Records – Required Denial of Inspection – Specific Information, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-908 by making a stylistic change to the title; by changing an internal Rule reference in section (c); by making a stylistic change to section (d); and by changing an internal Rule reference in the cross reference after section (f), as follows:

Rule ~~16-907~~ 16-908. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - SPECIFIC INFORMATION ~~IN CASE RECORDS~~

Except as otherwise provided by law, the Rules in this Chapter, or court order, a custodian shall deny inspection of a case record or a part of a case record that would reveal:

(a) The name, address, telephone number, e-mail address, or place of employment of an individual who reports the abuse of a vulnerable adult pursuant to Code, Family Law Article, §14-302.

(b) Except as provided in Code, General Provisions Article, §4-331, the home address, telephone number, and private e-mail address of an employee of the State or a political

subdivision of the State.

(c) The address, telephone number, and e-mail address of a victim or victim's representative in a criminal action, juvenile delinquency action, or an action under Code, Family Law Article, Title 4, Subtitle 5, who has requested that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or motion filed under Rule ~~16-910~~ 16-912.

(d) Any part of the Social Security Number or Federal Identification Number of an individual.

(e) Information about a person who has received a copy of a case record containing information prohibited by Rule 1-322.1.

(f) The address, telephone number, and e-mail address of a payee contained in a Consent by the payee filed pursuant to Rule 15-1302 (c)(1)(G).

Cross reference: See Rule ~~16-910 (g)~~ 16-912 (g) concerning information shielded upon a request authorized by Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence) and in criminal actions.

Source: This Rule is derived from former Rule 16-1007 (2016).

Rule 16-908 was accompanied by the following Reporter's note.

Proposed amendments to Rule 16-908 contain only stylistic changes.

The Chair told the Committee that no substantive changes had been made to Rule 16-908.

By consensus, the Committee approved Rule 16-908 as presented.

The Chair presented Rule 16-909, Conversion of Paper Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-909 by changing the term "court record" to the term "judicial record" throughout the Rule; by adding cross references to certain Rules after section (a); by changing the body who decides on approving changes to electronic access to databases from the Judicial Council to the Chief Judge of the Court of Appeals; by changing the body to which requests for electronic access are made from the Office of Communications and Public Affairs to the State Court Administrator; by making stylistic changes to subsections (f)(1) and (2); by changing the procedure for a requester whose request for access was denied in subsection (f)(3); by changing the reference to the Office of Communications and Public Affairs to the State Court Administrator in subsections (f)(4) and (f)(5); and by deleting subsection (f)(6), as follows:

Rule ~~16-908~~ 16-909. CONVERSION OF PAPER RECORDS

(a) Construction of Rule

This Rule is subject to and shall be construed harmoniously with the other Rules in this Chapter, the Rules in Title 20, other applicable law, and administrative orders of the Chief Judge of the Court of Appeals.

Cross reference: Remote access to case records by the general public is governed predominantly by Rule 16-911. See also Rules 20-102 (a)(2) and 20-106 regarding the conversion of paper records under MDEC.

(b) In General

Subject to the Rules in this Title and Title 20, to other applicable law, and to administrative orders of the Chief Judge of the Court of Appeals, a custodian, court, or other judicial agency, for the purpose of providing public access to ~~court~~ judicial records in electronic form, is authorized but not required:

(1) to convert paper ~~court~~ judicial records into electronic ~~court~~ judicial records;

(2) to create new electronic records, databases, programs, or computer systems;

(3) to create the ability to inspect or copy ~~court~~ judicial records through remote access; or

(4) to convert, supplement, modify, or replace an existing electronic storage or retrieval system.

(c) Limiting Access to ~~Court~~ Judicial Records

A custodian may limit access to ~~court~~ judicial records in electronic form to the manner, form, and program that the

electronic system used by the custodian, without modification, is capable of providing.

(d) Facilitating Access to ~~Court~~ Judicial Records

If a custodian, court, or other judicial agency converts paper ~~court~~ judicial records into electronic ~~court~~ judicial records or otherwise creates new electronic records, databases, or computer systems, it shall, to the extent practicable, design those records, databases, or systems to facilitate access to ~~court~~ judicial records that are open to inspection under the Rules in this Chapter.

(e) Current Programs Providing Electronic Access to Databases

Any electronic access to a database of ~~court~~ judicial records that is provided by a court or other judicial agency and is in effect on July 1, 2016 may continue in effect, subject to review by the Judicial Council for consistency with the Rules in this Chapter. After review, the Council may ~~make or direct~~ recommend to the Chief Judge of the Court of Appeals any changes that it concludes are necessary to make the electronic access consistent with the Rules in this Chapter.

(f) New Requests for Electronic Access to or Information from Databases

(1) A person who desires to obtain electronic access to or information from a database of ~~court~~ judicial records to which electronic access is not then immediately and automatically available shall submit to the ~~Office of Communications and Public Affairs~~ State Court Administrator a written request that describes the ~~court~~ judicial records to which access is desired and the proposed method of achieving that access.

(2) The ~~Office of Communications and Public Affairs~~ State Court Administrator shall review the request and ~~may consult the Judicial Information Systems. Without~~ without undue delay ~~and, unless impracticable, within 30 days after receipt of the request, the Office of Communications and Public Affairs~~ shall take one of the following actions:

(A) ~~It shall approve~~ Approve a request that seeks access to ~~court~~ judicial records subject to inspection under the Rules in this Chapter or Title 20 ~~and~~ that will not directly or indirectly impose significant fiscal or operational burdens on any court or judicial agency.

(B) ~~It shall conditionally~~ Conditionally approve a request that seeks access to ~~court~~ judicial records subject to inspection under the Rules in this Chapter or Title 20 but will directly or indirectly impose significant and reasonably calculable fiscal or operational burdens on a court or judicial agency on condition of the requestor's prepayment in full of all additional expenses reasonably incurred as a result of the approval.

(C) ~~It shall deny~~ Deny the request and state the reason for the denial if:

(i) the request would impose significant and reasonably calculable operational burdens on a court or judicial agency that cannot be overcome merely by prepayment of additional expenses under subsection (f)(2)(B) of this Rule or any other practicable condition;

(ii) the requester fails or refuses to satisfy a condition imposed under subsection (f)(2)(B) of this Rule;

(iii) the request seeks access to ~~court~~ judicial records not subject to

inspection under the Rules in this Chapter or Title 20; or

(iv) the request directly or indirectly imposes a significant but not reasonably calculable fiscal or operational burden on any court or judicial agency.

(3) Upon receipt of a denial, the requester may ~~request a conference with the Office of Communications and Public Affairs to address any basis for denial. If, after a conference the matter is not resolved, the requester may~~ ask for referral of the request or any proposed but rejected amendment to the request to the Judicial Council for its review and recommendation to the Chief Judge of the Court of Appeals.

(4) Upon referral to the Judicial Council, the Council, in accordance with its internal procedures or as otherwise directed by the Chief Judge of the Court of Appeals, shall consider each of the stated grounds for denial of the request by the ~~Office of Communications and Public Affairs~~ State Court Administrator and any previously proposed but rejected amendment thereof, and also consider, to the extent relevant thereto:

(A) whether the data processing system, operational system, electronic filing system, or manual or electronic storage and retrieval system used by or planned for the court or judicial agency that maintains the records can currently provide the access requested in the manner requested and in conformance with Rules 16-901 through ~~16-907~~ 16-908, and, if not, any changes or effort required to enable those systems to provide that access;

(B) whether any changes to the data processing, operational electronic filing, or storage or retrieval systems used by or planned for other courts or judicial

agencies in the State would be required in order to avoid undue disparity in the ability of those courts or agencies to provide equivalent access to ~~court~~ judicial records maintained by them;

(C) any other fiscal, personnel, or operational impact of the proposed program on the court or judicial agency or on the State judicial system as a whole;

(D) whether there is a substantial possibility that information retrieved through the program may be used for any fraudulent or other unlawful purpose or may result in the dissemination of inaccurate or misleading information concerning ~~court~~ judicial records or individuals who are the subject of ~~court~~ judicial records and, if so, whether there are any safeguards to prevent misuse of disseminated information and the dissemination of inaccurate or misleading information; and

(E) any other consideration that the Judicial Council finds relevant.

(5) Upon consideration of the factors set forth in subsection (f)(4) of this Rule and without undue delay, the Judicial Council shall inform the Chief Judge of the Court of Appeals of its recommendations. The Chief Judge shall determine and inform the ~~Office of Communications and Public Affairs~~ State Court Administrator and the requester whether the request is:

(A) approved, because it complies with the requirements of subsection (f)(2)(A) of this Rule;

(B) conditionally approved, because it complies with the requirements of subsection (f)(2)(B) of this Rule and the requester has agreed to comply with the conditions established by the Chief Judge; or

(C) denied under subsection (f)(2)(C) of this Rule.

~~(6) Upon receiving a denial by the Chief Judge, the requester is not barred from resubmitting to the Office of Communications and Public Affairs an amended request that addresses the Chief Judge's stated grounds for denial.~~

Source: This Rule is derived from former Rule 16-1008 (2016).

Rule 16-909 was accompanied by the following Reporter's note.

A cross reference is proposed to be added after section (a) referring to Rule 16-911, the new Rule pertaining to CaseSearch, and to the MDEC Rules pertaining to the conversion of paper records to electronic records. Section (e) is amended to provide that the Judicial Council recommends to the Chief Judge of the Court of Appeals any changes the Council concludes are necessary to make electronic access to records consistent with the Access Rules. Previously, the Council made the changes. This is consistent with current practice.

The role of the Office of Communications and Public Access in responding to requests for electronic access to a database of judicial records is transferred to the State Court Administrator to streamline the process in section (f). Subsection (f)(6) is deleted as unnecessary.

The Chair said that no substantive changes had been made to Rule 16-909.

By consensus, the Committee approved Rule 16-909 as presented.

The Chair presented Rule 16-910, Access to Electronic Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-910 by changing the term "court record" to "judicial record" throughout the Rule; by deleting current subsection (b)(2)(B); by adding a reference to Rule 16-911 to subsection (b)(2)(B); by adding the words "or kiosks" to section (c); by adding a cross reference at the end of the Rule; and by making stylistic changes, as follows:

Rule ~~16-909~~ 16-910. ACCESS TO ELECTRONIC RECORDS

(a) In General

Subject to the other Rules in this Title and in Title 20 and other applicable law, a ~~court~~ judicial record that is kept in electronic form is open to inspection to the same extent that the record would be open to inspection in paper form.

(b) Denial of Access

(1) Restricted Information

A custodian shall take reasonable steps to prevent access to restricted

information, as defined in Rule 20-101 ~~(s)~~ (t), that the custodian is on notice is included in an electronic ~~court~~ judicial record.

(2) Certain Identifying Information

(A) In General

Except as provided in subsection (b)(2)(B) of this Rule, a custodian shall prevent remote access to the name, address, telephone number, date of birth, e-mail address, and place of employment of a victim or nonparty witness in:

(i) a criminal action,

(ii) a juvenile delinquency action under Code, Courts Article, Title 3, Subtitle 8A,

(iii) an action under Code, Family Law Article, Title 4,

Subtitle 5 (domestic violence), or

(iv) an action under Code, Courts Article, Title 3, Subtitle 15 (peace order).

~~(B) Exception~~

~~Unless shielded by a protective order, the name, office address, office telephone number and office e-mail address, if any, relating to law enforcement officers, other public officials or employees acting in their official capacity, and expert witnesses, may be remotely accessible.~~

~~(C)~~ (B) Notice to Custodian

A person who places in a ~~court~~ judicial record identifying information relating to a witness shall give the custodian written or electronic notice that such information is included in the record,

where in the record that information is contained, and whether that information is not subject to remote access under this Rule, Rule 1-322.1, Rule 16-911, Rule 20-201, or other applicable law. Except as federal law may otherwise provide, in the absence of such notice a custodian is not liable for allowing remote access to the information.

(c) Availability of Computer Terminals

Clerks shall make available at convenient places in the courthouses computer terminals or kiosks that the public may use free of charge in order to access ~~court~~ judicial records and parts of ~~court~~ judicial records that are open to inspection, including ~~court~~ judicial records as to which remote access is otherwise prohibited. To the extent authorized by administrative order of the Chief Judge of the Court of Appeals, computer terminals or kiosks may be made available at other facilities for that purpose.
Cross reference: Rule 20-109.

Source: This Rule is derived from former Rule 16-1008.1 (2016).

Rule 19-610 was accompanied by the following Reporter's note.

Subsection (b)(2)(B) of Rule 16-910 is proposed to be deleted as no longer applicable. In section (c), a reference to "kiosks" is added, because these are present in some courthouses. A cross reference to Rule 20-109 is added at the end of the Rule.

The Chair said that no substantive changes had been made to Rule 16-910.

By consensus, the Committee approved Rule 16-910 as presented.

The Chair presented Rule 16-912, Case Records – Court Order Denying or Permitting Inspection, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-912 by making a stylistic change to the title; by adding the language "or other applicable law" to subsection (a)(1)(A) and (B); by changing the term "court record" to the term "judicial record" in subsection (a)(3); by adding the language "or on whose behalf the relief is sought" to subsection (c)(2); by deleting the word "and" from subsection (d)(5)(A); and by adding the word "and" at the end of subsection (d)(5)(B), as follows:

Rule ~~16-910~~ 16-912. CASE RECORDS - COURT ORDER DENYING OR PERMITTING INSPECTION ~~OF CASE RECORD~~

(a) Motion

(1) A party to an action in which a case record is filed, including a person who has been permitted to intervene as a party, and a person who is the subject of or is specifically identified in a case record may file a motion:

(A) to seal or otherwise limit inspection of a case record filed in that action that is not otherwise shielded from inspection under the Rules in this Chapter or Title 20 or other applicable law; or

(B) to permit inspection of a case record filed in that action that is not otherwise subject to inspection under the Rules in this Chapter or Title 20 or other applicable law.

(2) Except as provided in subsection (a)(3) of this Rule, the motion shall be filed with the court in which the case record is filed and shall be served on:

(A) all parties to the action in which the case record is filed; and

(B) each identifiable person who is the subject of the case record.

(3) A petition to shield a ~~court~~ judicial record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 shall be filed in the county where the judgment of conviction was entered. Service shall be provided and proceedings shall be held as directed in that Subtitle.

(b) Shielding Upon Motion

This section does not apply to a petition filed pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3. Upon the filing of a motion to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an

opportunity to determine whether a temporary order should issue.

(c) Temporary Order Precluding or Limiting Inspection

(1) The court shall consider a motion filed under this Rule on an expedited basis.

(2) In conformance with the provisions of Rule 15-504 (Temporary Restraining Order), the court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other statement under oath that (A) there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection, and (B) immediate, substantial, and irreparable harm will result to the person seeking the relief or on whose behalf the relief is sought if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.

(3) A court may not enter a temporary order permitting inspection of a case record that is not otherwise subject to inspection under the Rules in this Chapter in the absence of an opportunity for a full adversary hearing.

(d) Final Order

(1) After an opportunity for a full adversary hearing, the court shall enter a final order:

(A) precluding or limiting inspection of a case record that is not otherwise shielded from inspection

under the Rules in this Chapter;

(B) permitting inspection, under such conditions and limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under the Rules in this Chapter; or

(C) denying the motion.

(2) A final order shall include findings regarding the interest sought to be protected by the order.

(3) A final order that precludes or limits inspection of a case record shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected by the order.

(4) A final order granting relief under Code, Criminal Procedure Article, Title 10, Subtitle 3 shall include the applicable provisions of the statute. If the order pertains to a judgment of conviction in (A) an appeal from a judgment of the District Court or (B) an action that was removed pursuant to Rule 4-254, the order shall apply to the records of each court in which there is a record of the action, and the clerk shall transmit a copy of the order to each such court.

(5) In determining whether to permit or deny inspection, the court shall consider:

(A) if the motion seeks to preclude or limit inspection of a case record that is otherwise subject to inspection under the Rules in this Chapter, whether a special and compelling reason exists to preclude or limit inspection of the particular case

record; ~~and~~

(B) if the motion seeks to permit inspection of a case record that is otherwise not subject to inspection under the Rules in this Chapter, whether a special and compelling reason exists to permit inspection~~.~~; and

(C) if the motion seeks to permit inspection of a case record that has been previously sealed by court order under subsection (d)(1)(A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections (d)(2), (3), and (5)(A) of this Rule.

(6) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order within 30 days after a hearing was held or waived.

(e) Filing of Order

A copy of any temporary or final order shall be filed in the action in which the case record in question was filed and, except as otherwise provided by law, shall be subject to public inspection.

(f) Non-exclusive Remedy

This Rule does not preclude a court from exercising its authority at any time to enter an appropriate order that seals or limits inspection of a case record or that makes a case record subject to inspection.

(g) Request to Shield Certain Information

(1) This subsection applies to a

request, filed by an individual entitled to make it, (A) to shield information in a case record that is subject to shielding under Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence), or (B) in a criminal action, to shield the address or telephone number of a victim, victim's representative, or witness.

(2) The request shall be in writing and filed with the person having custody of the record.

(3) If the request is granted, the custodian shall deny inspection of the shielded information. The shield shall remain in effect until terminated or modified by order of court. Any person aggrieved by the custodian's decision may file a motion under section (a) of this Rule.

Committee note: If a court or District Court Commissioner grants a request to shield information under section (g) of this Rule, no adversary hearing is held unless a person seeking inspection of the shielded information files a motion under section (a) of this Rule.

Source: This Rule is derived from former Rule 16-1009 (2016).

Rule 16-912 was accompanied by the following Reporter's note.

In subsections (a)(1)(A) and (B) of Rule 16-912, language is proposed to be added providing for shielding case records from inspection as required by other applicable law, because other

laws providing for shielding may exist. In subsection (c)(2), language is added providing for not only a temporary restraining order precluding or limiting inspection of case record if harm will result to the person seeking the relief but also if harm will result to the person on whose behalf the relief is filed, to account for the situation in which a petition is filed by someone else, but it is on behalf of the person in danger.

The Chair noted that no substantive changes had been made to Rule 16-912.

By consensus, the Committee approved Rule 16-912 as presented.

The Chair presented Rule 16-913, Case Records – Procedures for Compliance, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-913 by adding the words "Case Records" to the title, as follows:
Rule ~~16-911~~ 16-913. CASE RECORDS - PROCEDURES FOR COMPLIANCE

(a) Duty of Person Filing Record

(1) A person who files or authorizes the filing of a case record shall inform the custodian, in writing, whether, in the

person's judgment, the case record, any part of the case record, or any information contained in the case record is confidential and not subject to inspection under the Rules in this Chapter.

(2) The custodian is not bound by the person's determination that a case record, any part of a case record, or information contained in a case record is not subject to inspection and shall permit inspection of a case record unless, in the custodian's independent judgment, subject to review as provided in Rule ~~16- 912~~ 16-914, the case record is not subject to inspection.

(3) Notwithstanding subsection (b)(2) of this Rule, a custodian may rely on a person's failure to advise that a case record, part of a case record, or information contained in a case record is not subject to inspection, and, in default of such advice, the custodian is not liable for permitting inspection of the case record, part of the case record, or information, even if the case record, part of the case record, or information in the case record is not subject to inspection under the Rules in this Chapter.

(b) Duty of Clerk

(1) In conformance with procedures established by administrative order of the Chief Judge of the Court of Appeals, the clerk shall make a reasonable effort, promptly upon the filing or creation of a case record, to shield any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian by the person filing or authorizing the filing of the case record.

(2) Persons who filed or authorized the filing of a case record filed prior to July 1, 2016 may advise the custodian in writing

whether any part of the case record is not subject to inspection. The custodian is not bound by that determination. The custodian shall make a reasonable effort, as time and circumstances allow, to shield from those case records any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian. The duty under this subsection is subordinate to all other official duties of the custodian.

Committee note: In subsections (a)(1) and (b)(2) of this Rule, the requirement that a custodian be notified "in writing" is satisfied by an electronic filing if permitted by Rule 1-322 or required by the Rules in Title 20.

Source: This Rule is derived from former Rule 16-1010 (2016).

Rule 16-913 was accompanied by the following Reporter's note.

A proposed amendment to Rule 16-913 contains only a stylistic changes.

The Chair told the Committee that no substantive changes had been made to Rule 16-913.

By consensus, the Committee approved Rule 16-913 as presented.

The Chair presented Rule 16-914, Resolution of Disputes by Administrative or Chief Judge, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO ~~COURT~~ JUDICIAL RECORDS

AMEND Rule 16-914 by changing the term "court record" to "judicial record" throughout the Rule; by adding the language "or other applicable law" and the word "identifiable" to section (a); by adding the language "who is the subject of or is specifically identified in the record" to and by deleting language from sections (a), (b), and (c); by deleting language from the tagline of section (c); and by adding a tagline to section (d), as follows:

Rule ~~16-912~~ 16-914. RESOLUTION OF DISPUTES BY ADMINISTRATIVE OR CHIEF JUDGE

(a) Application by Custodian

If, upon a request for inspection of a ~~court~~ judicial record, a custodian is in doubt whether the record is subject to inspection under the Rules in this Chapter or other applicable law, the custodian, after making a reasonable effort to notify the person seeking inspection and each identifiable person ~~to whom the court record pertains~~ who is the subject of or is specifically identified in the record shall apply in writing for a preliminary judicial determination whether the ~~court~~ judicial record is subject to inspection.

(1) If the record is in an appellate court or an orphans' court other than in Harford or Montgomery County, the application shall be to the chief judge of the court.

(2) If the record is in a circuit court or in the orphans' court for Harford or Montgomery County, the application shall be to the county administrative judge.

(3) If the record is in the District Court, the application shall be to the district administrative judge.

(4) If the record is in a judicial agency other than a court, the application shall be to the Chief Judge of the Court of Appeals, who may refer it to the county administrative judge of a circuit court.

(b) Preliminary Determination

After hearing from or making a reasonable effort to communicate with the person seeking inspection and each person ~~to whom the court record pertains~~ who is the subject of or is specifically identified in the record, the court shall make a preliminary determination of whether the record is subject to inspection. Unless the court extends the time for good cause, the preliminary determination shall be made within 10 days after the court receives the written request.

(c) Order; Stay~~; Action to Enjoin Inspection~~

If the court determines that the record is subject to inspection, the court shall file an order to that effect. If a person ~~to whom the court record pertains~~ who is the subject of or is specifically identified in the record objects, the judge may stay the order for not more than five business days in order to allow the person an opportunity to file an appropriate action to enjoin the inspection.

(d) Action to Enjoin Inspection

An action under section (c) of this

Rule shall be filed within 30 days after the order is filed, and the person who requested inspection of the record shall be made a party. If such an action is timely filed, it shall proceed in accordance with Rules 15-501 through 15-505.

~~(d)~~ (e) Order; Action to Compel Inspection

If the court determines that the ~~court~~ judicial record is not subject to inspection, the court shall file an order to that effect, and the person seeking inspection may file an action under ~~the Public Information Act~~ Code, General Provisions Article, Title 4 (PIA) or on the basis of the Rules in this Chapter to compel the inspection. An action under this section ~~(d) of this Rule~~ shall be filed within thirty days after the order is filed.

~~(e)~~ (f) When Order Becomes Final and Conclusive

If a timely action is filed under section ~~(c) or~~ (d) or (e) of this Rule, the preliminary determination by the court shall not have a preclusive effect under any theory of direct or collateral estoppel or law of the case. If a timely action is not filed, the order shall be final and conclusive.

Source: This Rule is derived from former Rule 16-1011 (2016).

Rule 16-914 was accompanied by the following Reporter's note.

In section (a) of Rule 16-914, language is proposed to be added to provide for the possibility that inspection may not be permitted because of other applicable law to account for any other statutes limiting access that may exist. Language is

added to sections (a) and (b) to clarify that notification of a request for inspection of a record may also be given to anyone identifiable who is the subject of or is specifically identified in the record as a further means of protecting the privacy of individuals. Those persons may also object to an order allowing inspection of the record, which is now provided for in section (c).

The Chair said that no substantive changes had been made to Rule 16-914.

By consensus, the Committee approved Rule 16-914 as presented.

The Chair presented Rules 1-322.1, Exclusion of Personal Identifier Information in Court Filings; 2-512, Jury Selection; 4-263, Discovery in Circuit Court; 4-312, Jury Selection; 9-203, Financial Statements; 9-205.2, Parenting Coordination; 15-1103, Initiation of Proceeding to Contest Isolation or Quarantine; 16-203, Electronic Filing of Pleadings, Papers, and Real Property Instruments; 16-204, Reporting of Criminal and Motor Vehicle Information; 16-505, Administration of Circuit Court Recording Process; 19-104, Subpoena Power; and 20-504, Agreements with Vendors, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-322.1 to correct an internal reference, as follows:

Rule 1-322.1. EXCLUSION OF PERSONAL IDENTIFIER INFORMATION IN COURT FILINGS

(a) Applicability

This Rule applies only to pleadings and other papers filed in an action on or after July 9, 2013 by a person other than a judge or judicial appointee. The Rule does not apply to administrative records, business license records, or notice records, as those terms are defined in Rule ~~16-901 (a)~~ 16-902 (a).

. . .

Rule 1-322.1 was accompanied by the following Reporter's note.

Changes to the Access to Judicial Records Rules require correction of references to those Rules in other Rules.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-512 to correct an internal reference, as follows:

Rule 2-512. JURY SELECTION

. . .

(c) Jury List

. . .

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 2-516, a jury list is not part of the case record.

Cross reference: See Rule ~~16-909~~ 16-910 concerning motions to seal or limit inspection of a case record.

. . .

Rule 2-512 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-322.1.

MARYLAND RULES OF PROCEDURE

TITLE 4- CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-263 to correct an internal reference, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(d) Disclosure by the State's Attorney

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

. . .

(3) State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, §11-205 or Rule ~~16-910 (b)~~ 16-912 (b), the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged;

. . .

Rule 4-263 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-322.1.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-312 to correct internal references, as follows:

Rule 4-312. JURY SELECTION

. . .

(c) Jury List

. . .

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 4-322, a jury list is not part of the case record.

Cross reference: See Rule ~~16-904 (b)(2)(B)~~ 16-905 (c) concerning disclosure of juror information by a custodian of court records.

(d) Nondisclosure of Names and City or Town of Residence

(1) Finding by the Court

If the court finds from clear and convincing evidence or information, after affording the parties an opportunity to be heard, that disclosure of the names or the city or town of residence of prospective jurors will create a substantial danger that (i) the safety and security of one or more jurors will likely be imperiled, or (ii) one

or more jurors will likely be subjected to coercion, inducement, other improper influence, or undue harassment, the court may enter an order as provided in subsection (d)(2) of this Rule. A finding under this section shall be in writing or on the record and shall state the basis for the finding.

(2) Order

Upon the finding required by subsection (d)(1) of this Rule, the court may order that:

(A) the name and, except for prospective jurors residing in Baltimore City, the city or town of residence of prospective jurors not be disclosed in voir dire; and

(B) the name and, except for jurors residing in Baltimore City, the city or town of residence of impaneled jurors not be disclosed (i) until the jury is discharged following completion of the trial, (ii) for a limited period of time following completion of the trial, or (iii) at any time.

Committee note: Nondisclosure of the city or town in which a juror resides is in recognition of the fact that some counties have incorporated cities or towns, the disclosure of which, when coupled with other information on the jury list, may easily lead to discovery of the juror's actual residence. The exception for Baltimore City is to take account of the fact that Baltimore City is both an incorporated city and the equivalent of a county, and because persons are not eligible to serve as jurors in the Circuit Court for Baltimore City unless they reside in that city, their residence there is necessarily assumed.

Cross reference: See Rule ~~16-904 (b)(2)(B)~~ 16-905 (c).

. . .

Rule 4-312 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-322.1.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-203 to correct internal references, as follows:

Rule 9-203. FINANCIAL STATEMENTS

. . .

Cross reference: See Rule ~~16-902 (c)~~ 16-903 (d) and Rule ~~16-909~~ 16-910.

Rule 9-203 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-322.1.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY,

CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-205.2 to correct an internal reference, as follows:

Rule 9-205.2. PARENTING COORDINATION

. . .

(i) Confidential Information

(1) Access to Case Records

Except as otherwise provided in this subsection, the parenting coordinator shall have access to all case records in the action. If a document or any information contained in a case record is not open to public inspection under the Rules in Title 16, Chapter 900, the court shall determine whether the parenting coordinator may have access to it and shall specify any conditions to that access.

Cross reference: See Rule ~~16-901~~ 16-902 for the definition of "case record."

(2) Other Confidential Information

(A) A parenting coordinator may not require or coerce the parties or an attorney for the child to release any confidential information that is not included in the case record

(B) Confidential or privileged information received by the parenting coordinator from a party or from a third person with the consent of a party may be

disclosed by the parenting coordinator to the other party, to an attorney for the child, and in court pursuant to subsections (g)(7) and (8) of this Rule. Unless otherwise required by law, the parenting coordinator may not disclose the information to anyone else without the consent of the party who provided the information or consented to a third person providing it.

. . .

Rule 9-205.2 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-322.1.

MARYLAND RULES OF PROCEDURE

TITLE 15 – OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

AMEND Rule 15-1103 to correct an internal reference, as follows:

Rule 15-1103. INITIATION OF PROCEEDING TO CONTEST ISOLATION OR QUARANTINE

(a) Petition for Relief

An individual or group of individuals required to go to or remain in a place of isolation or quarantine by a directive of the Secretary issued pursuant to Code, Health - General Article, §18-906 or Code, Public Safety Article, §14-3A-05, may

contest the isolation or quarantine by filing a petition for relief in the circuit court for the county in which the isolation or quarantine is occurring or, if that court is not available, in any other circuit court.

Committee note: Motions to seal or limit inspection of a case record are governed by Rule ~~16-909~~ 16-910. The right of a party to proceed anonymously is discussed in *Doe v. Shady Grove Hosp.*, 89 Md. App. 351, 360-66 (1991).

. . .

Rule 15-1103 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-322.1.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-203 to correct an internal reference, as follows:

Rule 16-203. ELECTRONIC FILING OF PLEADINGS, PAPERS, AND REAL PROPERTY INSTRUMENTS

. . .

(c) Criteria for Adoption of Plan

In developing a plan for the electronic filing of pleadings, the County Administrative Judge or the Chief Judge of the District Court, as applicable, shall be satisfied that the following criteria are met:

(1) the proposed electronic filing system is compatible with the data processing systems, operational systems, and electronic filing systems used or expected to be used by the judiciary;

(2) the installation and use of the proposed system does not create an undue financial or operational burden on the court;

(3) the proposed system is reasonably available for use at a reasonable cost, or an efficient and compatible system of manual filing will be maintained;

(4) the proposed system is effective, secure, and not likely to break down;

(5) the proposed system makes appropriate provision for the protection of privacy and for public access to public records in accordance with the Rules in Chapter 900 of this Title; and

(6) the court can discard or replace the system during or at the conclusion of a trial period without undue financial or operational burden.

The State Court Administrator shall review the plan and make a recommendation to the Chief Judge of the Court of Appeals with respect to it.

Cross reference: For the definition of "public record," see Code, General Provisions Article, §4-101 (h). See also

Rules 16-901 - ~~16-912~~ 16-914 (Access to ~~Court~~ Judicial Records).

. . .

Rule 16-203 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-322.1.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-204 to correct internal references, as follows:

Rule 16-204. REPORTING OF CRIMINAL AND MOTOR VEHICLE INFORMATION

. . .

(b) Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings

Criminal history record information contained in court records of public judicial proceedings is subject to inspection in accordance with Rules 16-901 through ~~16-912~~ 16-914.

Cross reference: See Code, Courts Article, §§2-203 and 13-101 (d) and (f), Criminal Procedure Article, §§10-201, 10-214, 10-217, and General Provisions Article, Title 4.

For the definition of "court records" for expungement purposes, see Rule 4-502 (d). For provisions governing access to ~~court~~ judicial records generally, see Title 16, Chapter 900.

. . .

Rule 16-204 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-322.1.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 500 – RECORDING OF PROCEEDINGS

AMEND Rule 16-505 for correct an internal reference, as follows:

Rule 16-505. ADMINISTRATION OF CIRCUIT COURT RECORDING PROCESS

. . .

(c) Supervision of Court Reporters

Subject to the general supervision of the Chief Judge of the Court of Appeals, the County Administrative Judge shall have the supervisory responsibility for the court reporters and persons responsible for recording court proceedings in that county. The County Administrative Judge may delegate supervisory responsibility to the supervisory court reporter or a person

responsible for recording court proceedings, including the assignment of court reporters or other persons responsible for recording court proceedings.

Cross reference: Rule ~~16-906 (j)~~ 16-907 (i) provides that backup audio recordings made by any means, computer disks, and notes of a court reporter that have not been filed with the clerk or are not part of the official court record are not ordinarily subject to public inspection.

Source: This Rule is derived from former Rule 16-404 (2016).

Rule 16-505 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-322.1.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

AMEND Rule 19-104 to delete a cross reference, as follows:

Rule 19-104. SUBPOENA POWER

(a) Subpoena

(1) Issuance

In any proceeding before the Board or a Character Committee pursuant to Rule 19-203 or Rule 19-213, the Board or Committee, on its own initiative or the motion of an applicant, may cause a subpoena to be issued by a clerk pursuant to Rule 2-510. The subpoena shall issue from the Circuit Court for Anne Arundel County if incident to Board proceedings or from the circuit court in the county in which the Character Committee proceeding is pending. The proceedings shall be docketed in the issuing court and shall be sealed and shielded from public inspection.

(2) Name of Applicant

The subpoena shall not divulge the name of the applicant, except to the extent this requirement is impracticable.

(3) Return

The sheriff's return shall be made as directed in the subpoena.

(4) Dockets and Files

The Character Committee or the Board, as applicable, shall maintain dockets and files of all papers filed in the proceedings.

(5) Action to Quash or Enforce

Any action to quash or enforce a subpoena shall be filed under seal and docketed as a miscellaneous action in the court that issued the subpoena.

~~Cross reference: See Rule 16-906 (g)(3).~~

. . .

Rule 19-104 was accompanied by the following Reporter’s note.

See the Reporter's note to Rule 1-322.1.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 500 – MISCELLANEOUS RULES

AMEND Rule 20-504 to correct an internal reference, as follows:

Rule 20-504. AGREEMENTS WITH VENDORS

(a) Definition

In this Rule, "vendor" means a person who provides or offers to provide to registered users or others services that include the filing or service of submissions pursuant to the Rules in this Title or remote access to electronic case records maintained by Maryland courts.

(b) Agreement with Administrative Office of the Courts

As a condition of having the access to MDEC necessary for a person to become a vendor, the person must enter into a written agreement with the Administrative Office of the Courts that, in addition to any other provisions, (1) requires the vendor to abide by all Maryland Rules and other applicable law that limit or preclude access to information contained in case records,

whether or not that information is also stored in the vendor's database, (2) permits the vendor to share information contained in a case record only with a party or attorney of record in that case who is a customer of the vendor, (3) provides that any material violation of that agreement may result in the immediate cessation of remote electronic access to case records by the vendor, and (4) requires the vendor to include notice of the agreement with the Administrative Office of the Courts in all agreements between the vendor and its customers.

Cross reference: See Maryland Rules 20-109 and 16-901 through ~~16-912~~ 16-914.

Source: This Rule is new.

Rule 20-504 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-322.1.

The Chair said that the changes to the Access to Judicial Records Rules require the correction of the references to those Rules in other Rules.

By consensus, the Committee approved Rules 1-322.1, Exclusion of Personal Identifier Information in Court Filings; 2-512, Jury Selection; 4-263, Discovery in Circuit Court; 4-312, Jury Selection; 9-203, Financial Statements; 9-205.2, Parenting Coordination; 15-1103, Initiation of Proceeding to Contest Isolation or Quarantine; 16-203, Electronic Filing of Pleadings, Papers, and Real Property Instruments; 16-204, Reporting of

Criminal and Motor Vehicle Information; 16-505, Administration of Circuit Court Recording Process; 19-104, Subpoena Power; and 20-504, Agreements with Vendors, as presented.

Judge Morrissey thanked the Committee for its consideration of these Rules, which are very important as MDEC matures. It is necessary to keep pace with MDEC.

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