COURT OF APPEALS STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms LL 11 and 12 of the Judicial Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on May 10, 2019.

Members present:

Hon. Alan M. Wilner, Chair

Robert R. Bowie, Jr., Esq.
Hon. Yvette M. Bryant
Sen. Robert G. Cassilly
Hon. John P. Davey
Mary Anne Day, Esq.
Del. Kathleen Dumais
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Pamela A. Harris, SCA
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Bruce L. Marcus, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Hon. Paula A. Price
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Shantell K. Davenport, Esq., Assistant Reporter
Hon. Cynthia Callahan, Circuit Court for Montgomery County
Hon. John P. Morrissey, Chief Judge, District Court of Maryland
Hon. Richard Sandy, Circuit Court for Frederick County
Del. Luke Clippinger, Esq., District 46, Maryland House of Delegates
Nisa C. Subasinghe, Esq., Juvenile and Family Services, Administrative Office of the Courts
Keith Schiszik, Esq., Offit Kurman
Thomas B. Stahl, Esq., Spencer & Stahl, P.C.

The Chair convened the meeting. He announced that the Court of Appeals will hold its second open meeting on the 199th

Report and first open meeting on the 200th Report on May 15. He noted that interested persons may wish to read the Supplement to the 199th Report that is currently posted on the Judiciary website.

Agenda Item 1. Consideration of proposed Rules changes pertaining to Parenting Plans: New Rule 9-204.1 (Parenting Plans) and new Rule 9-204.2 (Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time); proposed amendments to Rule 9-204 (Educational Seminar) and Rule 9-205 (Mediation of Child Custody and Visitation Disputes)

Judge Eaves informed the Committee that the development of the Rules in Item 1 was a lengthy process spanning 11 years. She said that the Reporter's note that follows new Rule 9-204.1 provides background information about the work of the Court Process Workgroup, established by the Domestic Law Committee of the Judicial Council, to develop the parenting plan Rules that are being presented today.

Judge Eaves said that many custody cases filed in the circuit court are litigated by unrepresented parties. She explained that the proposed parenting plan Rules are intended to assist unrepresented parties as well as attorneys in understanding what a parenting plan is and how to develop one. Judge Eaves said that she is hopeful that parenting plans will be helpful to the parties and to the court in navigating disputed custody cases.

Judge Eaves invited Judge Callahan and other members of the Domestic Law Committee to provide further information about the proposed parenting plan Rules to the Committee. Judge Callahan said that she is present to explain the background of the parenting plan development process and answer any questions.

Judge Callahan explained that the Rules before the Committee instruct parents and individuals seeking parental authority on how to file parenting plans with the court. Judge Callahan compared the proposed Rules to Rule 9-207 (Joint Statement of Marital and Nonmarital Property), which was developed to help parties better understand the process of allowing the court to make decisions about their wealth, to the extent that the parties had marital property.

Judge Callahan stated that the goal in developing the parenting plan process is to help parties in disputed custody cases to understand how custody issues are litigated. In developing a parenting plan, parties can agree on where their children will live and when the children will see each parent. Some parties will be able to come to an agreement on all custody and access issues, while others may reach an agreement on a limited number of those issues. Encouraging parties to submit proposed parenting plans to the court serves two important purposes: ensuring that the parties feel like they have a voice in the matter and assisting the court in obtaining information

from the parents, who presumably know their children better than the judge presiding over the case.

Judge Callahan explained that the proposed parenting plan Rules will help the parties think about what is in the best interests of their children. She said that the most significant change to custody litigation that she has observed over the past 15 years is that many parties are not represented by counsel, even parties who could afford attorneys. The parenting plan rules will help focus the parties on the facts that the court considers when making custody determinations. The hope is that once the parties are focused on the important facts, they will be able to resolve their custody disputes amongst themselves.

Judge Callahan commented that the development of Maryland parenting plan Rules is long overdue. She noted that Maryland is one of about ten jurisdictions in the country that does not have a parenting plan process. She said that the Court Process Workgroup has developed a well-thought-out process with help from many stakeholders. The Workgroup has not met any opposition to the proposed process, only suggestions about how to edit the proposed Rules, instructions, and forms. The initial drafts of the proposed documents were twice the size of the versions presented today. Judge Callahan said that the Chair and the Rules Committee staff provided considerable assistance with scaling down the length of the proposed

documents. She noted that since the parenting plan process is expected to be navigated by unrepresented litigants, the hope is that the documents will be translated into other languages so that they can be easily used by the public.

Judge Eaves presented Rules 9-204.1, Parenting Plans; 9-204.2., Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time; 9-204, Educational Seminar; and 9-205, Mediation of Child Custody and Visitation Disputes, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

ADD new Rule 9-204.1, as follows:

Rule 9-204.1. PARENTING PLANS

(a) Definitions

The following definitions apply, except as expressly otherwise provided or as necessary implication requires:

(1) Decision-Making Authority

Decision-Making Authority, also called legal custody, means how major long-term decisions about a child's medical care, mental health, education, religious training, and extracurricular activities are made.

(2) Parenting Plan

Parenting Plan means a written agreement about how parties will work together to take care of a child.

(3) Parenting Time

Parenting Time, also called physical custody, refers to where a child lives and the amount of time he or she spends with each party.

(b) Introduction of Parenting Plan

At the parties' first appearance in court on a decision-making authority or parenting time matter, the court shall provide to each party a paper copy of the Maryland Parenting Plan Instructions and Maryland Parenting Plan Too and direct them to an electronic version of these documents. The court shall advise the parties that they may work separately, together, or with a mediator to develop a parenting plan they believe is in the best interest of their child.

(c) Best Interest of the Child

In determining what decision-making authority and parenting time arrangement is in the best interest of the child, the parties may consider the following factors:

(1) Stability and the foreseeable health and welfare of the child;

(2) Frequent, regular, and continuing contact with parties who can act in their best interest;

(3) Whether and how parties who do not live together will share the rights and responsibilities of raising the child;

(4) The child's relationship with each party, siblings, other relatives, and important adults in their lives;

(5) The child's physical and emotional security and protection from conflict and violence;

(6) The child's developmental needs, including physical safety, emotional security, positive self-image, interpersonal skills, and intellectual and cognitive growth;

(7) Whether the plan meets the day-to-day needs of the child, including education, socialization, culture and religion, food, shelter, clothing, and mental and physical health;

(8) Whether the plan:

(A) places the child's needs above the parties;

(B) protects the child from the negative effects of any conflict between the parties; and

(c) maintains the child's relationship with the parties, siblings, other relatives, or other individuals who have a significant relationship with the child;

(9) Age of the child;

(10) Any military deployment of a party and its effect, if any, on the parent-child relationship;

(11) Any prior court orders or agreements;

(12) Each party's role and tasks related to the child and how, if at all, those roles and tasks have changed;

(13) The location of each party's home as it relates to their ability to coordinate parenting time, school, and activities;

(14) The parties' relationship with each other, including:

(A) how they communicate with each other; and

(B) whether they can co-parent without disrupting the child's social and school life.

(15) The child's preference, if age appropriate; and

(16) Any other factor deemed appropriate by the parties.

(d) No Agreement Reached

If the parties do not reach a comprehensive parenting plan, they shall complete a joint statement concerning decision-making authority and parenting time pursuant to Md. Rule 9-204.2.

Query to the Rules Committee: Should a joint statement be filed even if there is no disagreement? See Rule 9-204.2 (a).

Source: This Rule is new.

Rule 9-204.1 was accompanied by the following Reporter's Note.

The Court Process Workgroup, established by the Domestic Law Committee of the Judicial Council, has recommended a three-part framework to facilitate statewide use of parenting plans in custody cases. The framework includes (1) proposals for two new Rules and amendments to existing Rules in Title 9 Chapter 200, (2) comprehensive Maryland Parenting Plan Instructions and a Maryland Parenting Plan Tool to assist parties in developing their own parenting plan, and (3) a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time form to assist courts in identifying areas of dispute when parties are unable to agree on a parenting plan.

As Part I of the Workgroup's recommendations, the Family/Domestic

Subcommittee proposes the addition of two Rules to Title 9 Chapter 200. The first is Rule 9-204.1, which governs parenting plans. The goal in recommending Rule 9-204.1 is to facilitate an agreement between parties on how to handle child-related custody issues. Some of the issues sought to be addressed by parenting plans include when the child spends time with each party (physical custody or parenting time), how important decisions regarding the child will be made (legal custody or decision-making authority), and how potential conflicts will be resolved. If the parties develop a parenting plan, it may be incorporated into a court order upon a determination by the court that the plan serves the best interest of the child.

Section (a) of Rule 9-204.1 contains definitions of key terms that appear on the Parenting Plan Instructions and Parenting Plan Tool developed as Part II of the Workgroup's framework.

Section (b) sets forth when the court shall provide the parties with the Parenting Plan Instructions and Parenting Plan Tool, and directs the court to advise the parties that they may work together, separately, or with a mediator to develop their parenting plan.

Section (c) contains a list of factors the parties may consider in determining what decision-making authority and parenting time arrangement is in the best interest of the child. The list is intended to provide modern, child-focused factors that empower the parties to decide what is in the best interest of their child, while encouraging the parties to consider and anticipate their child's unique needs.

Section (d) of Rule 9-204.1 directs parties who are unable to reach a

comprehensive parenting plan to file a joint statement Concerning Decision-Making Authority and Parenting Time pursuant to proposed new Rule 9-204.2.

The addition of Rule 9-204.2 is the second proposal under Part I of the Workgroup's framework. The Rule is modeled after current Rule 9-207, which governs joint statements of marital and non-marital property. In proposing Rule 9-204.2, the Workgroup sought to establish a way for parties to better inform the court of what custody arrangement they believe is in the best interest of their child, while assisting the court in gauging each of the parties' respective positions and identifying areas of dispute.

Section (a) of Rule 9-204.2 requires parties to file a Joint Statement of the Parties Concerning Decision Making Authority and Parenting Time if the parties are unable to reach a comprehensive parenting plan.

Section (b) governs the form of the Joint Statement, which was developed as Part III of the Workgroup's framework. Section (b) provides that the Joint Statement shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

Section (c) governs the procedure by which the parties are to complete and serve their proposed Joint Statements on the other party, and sets forth the time for filing the Joint Statement with the court.

Section (d) requires the court to consider the entire Joint Statement prior to rendering its decision and provides that the court may consider the best interest factors set forth in Rule 9-204.1 (c).

Section (e) authorizes the court, on motion or its own initiative, to sanction a party who willfully fails to comply with Rule 9-204.2, provided that there is an opportunity for a hearing on the noncompliance.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY,

CHILD SUPPORT, AND CHILD CUSTODY

ADD new Rule 9-204.2, as follows:

Rule 9-204.2. JOINT STATEMENT OF THE PARTIES CONCERNING DECISION-MAKING AUTHORITY AND PARENTING TIME

(a) When Required

If the parties are not able to reach a comprehensive parenting plan, the parties shall file a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time.

Cross reference: For the authority of a mediator to assist the parties with the completion of a Joint Statement, see Rule 9-205.

(b) Form of Joint Statement

The statement shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

(c) Time for Filing; Procedure

The Joint Statement shall be filed at least ten days before any scheduled settlement conference or if none, 20 days before the scheduled trial date or by any other date fixed by the court. At least 30 days before the Joint Statement is due to be filed, each party shall prepare and serve on the other party a proposed Joint Statement in the form set forth in section (b) of this Rule. At least 15 days before the Joint Statement is due, the plaintiff shall sign and serve on the defendant for approval and signature a proposed Joint Statement that fairly reflects the positions of the parties. The defendant shall timely file the Joint Statement, which shall be signed by the defendant or shall be accompanied by a written statement of the specific reasons why the defendant did not sign.

(d) Review of Joint Statement

Prior to rendering its decision, the court shall consider the entire Joint Statement. As to the provisions upon which the parties agree as well as those upon which the court must decide, the court may consider the factors listed in Md. Rule 9-204.1(c).

(e) Sanctions

If a party willfully fails to comply with this Rule, the court, on motion or on its own initiative, after the opportunity for a hearing, may enter any appropriate order in regard to the noncompliance.

Source: This Rule is new.

Rule 19-204.2 was accompanied by the following Reporter's Note.

See Reporter's Note following Rule 9-204.1.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY,

CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-204 by replacing language contained in subsection (c)(6)(H), which references "developing constructive parenting arrangements" with language regarding the use of the Maryland Parenting Plan Tool and development of a parenting plan, as follows:

Rule 9-204. EDUCATIONAL SEMINAR

(a) Applicability

This Rule applies in an action in which child support, custody, or visitation is involved and the court determines to send the parties to an educational seminar designed to minimize disruptive effects of separation and divorce on the lives of children.

Cross reference: Code, Family Law Article, § 7-103.2.

(b) Order to Attend Seminar

(1) Subject to subsection (b)(2) of this Rule and as allowed or required by the county's case management plan required by Rule 16-302 (b), the court may order the parties to attend an educational seminar within the time set forth in the plan. The content of the seminar shall be as prescribed in section (c) of this Rule. If a party who has been ordered to attend a seminar fails to do so, the court may not use its contempt powers to compel attendance or to punish the party for failure to

attend, but may consider the failure as a factor in determining custody and visitation.

(2) A party who (A) is incarcerated, (B) lives outside the State in a jurisdiction where a comparable seminar or course is not available, or (C) establishes good cause for exemption may not be ordered to attend the seminar.

Committee note: Code, Family Law Article, § 7-103.2 (c)(2)(v) prohibits exemption based on evidence of domestic violence, child abuse, or neglect.

(c) Content

The seminar shall consist of one or two sessions, totaling six hours. Topics shall include:

(1) the emotional impact of divorce on children and parents;

(2) developmental stages of children and the effects of divorce on children at different stages;

(3) changes in the parent-child relationship;

(4) discipline;

(5) transitions between households;

(6) skill-building in

(A) parental communication with children and with each other,

(B) explaining divorce to children,

(C) problem-solving and decision-making techniques,

(D) conflict resolution,

(E) coping strategies,

(F) helping children adjust to family changes,

(G) avoiding inappropriate interactions with the children, and

(H) ~~developing constructive parenting arrangements~~ use of the Maryland Parenting Plan Tool and development of a parenting plan; and

(7) resources available in cases of domestic violence, child abuse, and neglect.

(d) Scheduling

The provider of the seminar shall establish scheduling procedures so that parties in actions where domestic violence, child abuse, or neglect is alleged do not attend the seminar at the same time and so that any party who does not wish to attend a seminar at the same time as the opposing party does not have to do so.

(e) Costs

The fee for the seminar shall be set in accordance with Code, Courts Article, § 7-202. Payment may be compelled by order of court and assessed among the parties as the court may direct. For good cause, the court may waive payment of the fee.

Source: This Rule is new.

Rule 9-204 was accompanied by the following Reporter's Note.

The amendment to Rule 9-204 (c)(6)(H) is proposed in conjunction with the Court Process Workgroup's development of the Maryland Parenting Plan Instructions and Maryland Parenting Plan Tool. The proposed amendment makes clear that use of the Parenting Plan Tool and development of a parenting plan will be included as a skill-building topic discussed at court-ordered educational seminars.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY,

CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-205 by adding language in section (i) to provide that a mediator may assist parties in the completion of a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting time, as follows:

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

. . .

(i) If No Agreement

If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall so advise the court but shall not state the reasons. The mediator may assist the parties in the completion of a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time, as required by Rule 9-204.2. If the court does not order mediation or the case is returned to the court after mediation without an agreement as to all issues in the case, the court promptly shall schedule the case for hearing on any pendente lite or other appropriate relief not covered by a mediation agreement.

. . .

Rule 9-205 was accompanied by the following Reporter's Note.

> The amendment to Rule 9-205 is proposed in conformity with the Family/Domestic Subcommittee's recommendation to add Rule 9-204.2, which requires the filing of a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time. The proposed amendment to subsection (i) makes clear that if the parties are unable to reach a mediation agreement regarding child custody and visitation disputes, the mediator may assist the parties in the completion of a Joint Statement as required by Rule 9-204.2.

Judge Eaves said that new Rule 9-204.1 addresses parenting plans generally. She explained that section (c) sets forth the best interest factors for the parties to consider when developing a parenting plan. Included in the list of factors are some of the factors articulated in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977). However, additional factors included in section (c) provide a modern approach to determining what is in the child's best interest. Judge Eaves said that she believes the updated factors contained in Rule 9-204.1 will be helpful to parents and the court.

Judge Eaves noted there is one typo that was brought to her attention. The letter "l" is missing in the word "tool" on the fourth line under section (b). That typo will be corrected. The Chair commented that he believes another correction should be made under subsection (c)(8)(A). The Chair suggested that an

apostrophe be added to the end of the word "parties" to show the possessive form of the word. Judge Bryant suggested adding the word "needs" at the end of the line to add clarity. The Chair agreed with that suggestion.

Judge Sandy addressed the Committee. He said that there are two documents referenced in Rule 9-204.1 that he wants to discuss. Section (b) sets forth that parties will be provided with the Maryland Parenting Plan Instructions and the Parenting Plan Tool "at the parties' first appearance in court on a decision-making authority or parenting time matter." It is important that the parties have access to these documents very early in the litigation process. The Instructions explain what a parenting plan is and provide guidance on how parties can develop their own parenting plan. The Tool allows the parties to detail what physical custody and legal custody arrangement they want. However, the Tool does not explicitly refer to the terms "physical custody" and "legal custody." He explained that the Workgroup felt that it was important to move away from antiquated terms; the terms "decision-making authority" and "parenting time" were used instead.

Judge Sandy noted that there are sections included in the Parenting Plan Tool that address topics such as schooling decisions, extracurricular activities, a holiday schedule, transportation, and exchange of the children. The goal in

including those sections is to get the parties thinking and discussing all of the details that should be included in a custody agreement, rather than being focused on who wants primary physical custody. Ultimately, if the parties reach an agreement through mediation and develop a parenting plan that is signed, the parenting plan can be submitted to the court to be incorporated into a court order.

Judge Sandy explained that if the parties are unable to create a comprehensive parenting plan, they will be required under Rule 9-204.1 (d) to complete a Joint Statement Concerning Decision-Making Authority and Parenting Time ("Joint Statement"). A Joint Statement form has been developed by the Workgroup. The form allows parties to detail what custody arrangement they want and any areas of agreement. The parties and the court, in reviewing the Joint Statement, can focus on the areas in dispute. The process set forth for completing and filing the Joint Statement is similar to the process set forth in Rule 9-207 regarding the filing of a joint property statement. Judge Sandy stated that Rule 9-204.2 (d) requires the court to consider the entire Joint Statement before rendering its decision. When custody is at issue, judges are required to determine what is in the best interest of the child. He opined that the Joint Statement will not only help the litigants, but it also will be a tremendous help to the bench

because it will focus contested trials on the areas of contention. Having a completed Joint Statement may shorten the length of a hearing that originally was scheduled to last for three days to one day. Judge Sandy said that another goal of the parenting plan Rules is to reduce the number of post-trial motions that are filed. In some instances, judges listen to three days' of testimony about which party should have sole custody, but neither party discusses a proposed holiday schedule or vacation times. The result is that the parties file motions for reconsideration or motions to modify the custody order.

Judge Wilner stated that he has a few questions for the Workgroup. Judge Wilner noted that the Parenting Plan Tool was developed to assist the parties and will be filled out by the parties. He asked who will be shown the parties' completed Parenting Plan Tools and whether the parties will see each other's completed Parenting Plan Tool. Judge Sandy responded that the parties will not necessarily have copies of each other's completed Parenting Plan Tools. The hope is that the parties will go into mediation or negotiations with their completed Parenting Plan Tools to help focus the mediation or negotiation process.

Judge Eaves commented that the parties will be provided with the Parenting Plan Instructions and the Parenting Plan Tool at the first court hearing, which is held before a magistrate or

a judge for the purpose of creating a scheduling order or scheduling a pre-trial settlement conference. At that initial stage, the parties will be provided with either a hardcopy of the Parenting Plan Instructions and the Parenting Plan Tool or directed to electronic versions of the documents.

Judge Wilner stated that his question is in part prompted by an option included under the biographical information section of the Parenting Plan Tool. The parties have the option to check a box indicating that they are participating in the Maryland Safe at Home Address Confidentiality Program ("The ACP"). Code, Family Law Article, §4-520, *et. seq.* governs the ACP, which permits victims of domestic violence who have moved or are about to move to a new location unknown by their abuser to keep their actual address confidential by using a substitute address. If a party is participating in the ACP, then that individual has access to a free, confidential mail-forwarding service for first class mail and legal papers. Judge Wilner said that he wonders whether a party who is participating in the ACP would want the other party to know that fact. Judge Eaves responded that she is unsure whether most parties would know that the ACP exists.

Judge Bryant commented that if the Parenting Plan Tool did not include an option for parties to indicate their participation in the ACP, then a participant may inadvertently

list his or her home address on the form. Judge Callahan noted that in some jurisdictions, the alternate address is not a location where anyone resides but rather a mailing address for purposes of receiving court papers. An alternate address under the ACP may be a local fire department or any other location. Judge Callahan said that the Workgroup hopes the Parenting Plan Tool will be a document that parties will be able to use on their own. However, the Workgroup also expects that many of the self-help centers and mediators will be working with the parties to complete the Parenting Plan Tool. With those resources available to help guide the parties in completing the form, the parties will be less likely to include information, such as a confidential address, on the form.

Judge Wilner commented that in cases where the parties have been the subject of domestic violence, usually mediation is contraindicated. Judge Callahan agreed. She said that in a situation where domestic violence is alleged, the parties would each fill out their own Parenting Plan Tool form. Ultimately, if the parties can come up with a parenting plan, the agreement is what will be submitted to the court and included in the case file.

Judge Wilner said the second question he has is about Rule 9-204.2 (e), which permits the court to impose sanctions on a party that willfully fails to comply with the requirements of

Rule 9-204.2. He said that he had a concern that a judge may take the position that if a party fails to comply with this Rule, a proper sanction could be to deny that parent time with the child. He questioned whether it may be useful to add language in section (e) stating, "the court's decision regarding the parties' decision-making authority or parenting time may not be based on a failure to comply with this Rule." He added that a judge can take the parties' non-compliance into account when determining what is in the best interest of the child.

Mr. Bowie questioned whether the sanctions section in Rule 9-204.2 is necessary. He asked whether the Rules themselves address consequences for a party's failure to comply with the Rules. Judge Eaves responded that typically, one party would file a motion for sanctions against the non-compliant party, asking the court to compel the non-compliant party to comply with the requirements of the Rule. Judge Wilner responded that Judge Eaves is correct; filing a motion for sanctions would be the proper procedural step to take in response to a party's non-compliance. However, he said that his concern is that a judge may sanction a party for the non-compliance by limiting that party's parenting time with the child.

Judge Callahan commented that the intent in providing for sanctions for non-compliance with Rule 9-204.2 is to prevent a "trial-by-surprise" situation. She said that she can foresee a

judge not permitting a non-compliant party to present certain documents at trial as a sanction for not completing the Joint Statement. Judge Wilner said that he believes there has been some discussion, perhaps in a case, explaining that the discovery Rules and sanctions for failure to comply with those Rules do not apply to custody cases. He added that he has not seen a reported opinion on that issue but perhaps a few opinions exist. Judge Callahan replied that a judge presiding over a custody case where a party has failed to comply with the discovery Rules tries to hear from both parties. She said that she is always mindful that one of the parties was compliant with the Rules while the other party was not. When that situation occurs, she said that the non-complying party is usually already in some trouble. Often, those parties are unprepared and expect the court to assist them. Judge Wilner reiterated that he would hate to see a judge deny custody or visitation to a party as a sanction for not complying with Rule 9-204.2. Judge Callahan said that if a judge did so, the case would have "a short path" to the Court of Special Appeals. Judge Wilner agreed.

Judge Jensen stated that the sanctions section is important because the requirement that the parties complete the Joint Statement needs to have "teeth." If the Rule does not authorize the courts to sanction a party for failure to comply with the Rule, litigants are going to think that completing and filing

the Joint Statement is optional. That will eviscerate what the Workgroup is trying to accomplish. Judge Wilner clarified that he is not suggesting removing section (e) from the Rule. Judge Eaves suggested adding a Committee note following section (e) to provide guidance to the court when determining appropriate sanctions. Judge Wilner said that ultimately, the court must determine what is in the best interest of the child when making a custody decision. He noted that judges can draw inferences from a party's refusal to comply with the Rules. Judge Callahan commented that there is a three-day family law training program that new judges are required to complete. After five years, judges are required to complete the training program again. She said that it is possible for a judge to improperly sanction a party, but that concern can be addressed during the training program.

Mr. Davey questioned what an appropriate sanction under 9-204.2 (e) would be. Judge Bryant responded that a judge could impose an economic sanction. She said that in some instances, a judge may order a party who has failed to comply with a requirement to pay costs incurred by the other party because of the non-compliance. She said that in those situations, the non-complying party tends to think twice before failing to comply with the Rules a second time. Judge Bryant said that it is also possible that a party's failure to comply with Rule 9-204.2 will

be one instance of a long practice of that party's failure to comply with any requirements under the Rules. She said that she believes most judges presiding over custody cases take their responsibilities seriously. A judge's decision about when a child will see a parent is important to society at large, and most judges will avoid making a decision that removes a parent from the child's life. Judge Callahan commented that she cannot imagine that a judge who understands the family law process would ever sanction a party for non-compliance with the Rule by prohibiting that parent from having access to his or her child.

Judge Wilson said that if the Committee agrees that adding a Committee note following section (e) is appropriate, then perhaps the Committee note can include some examples of what an appropriate sanction might be. Judge Sandy stated that the Court of Special Appeals in *Rolley v. Sanford*, 126 Md. App. 124 (1999) determined that the trial court erred in dismissing a petition for modification of custody after the petitioner failed to provide her income tax returns, which were discoverable. Ultimately, the Court of Appeals reversed the dismissal on the basis that the discovery violations did not justify the extreme sanction of dismissal of the petitioner's case. The rationale was that, with respect to child support matters, the best interest of the child is paramount, and the trial court should exhaust every available option to enforce discovery compliance

before precluding a party from presenting evidence. Judge Sandy said that while the *Rolley* holding was specific to a child support case, the best interest standard is paramount in custody matters as well. It would make sense in the context of Rule 9-204.2 that a trial judge could err by dismissing a custody case based on a party's failure to complete and file the Joint Statement.

Judge Wilner asked whether the Joint Statement form is anticipated to be available in other languages. Judge Callahan responded that once the Rules are approved, the form will be translated into other languages.

Judge Wilner invited additional questions for the Workgroup from the Committee.

Mr. Laws asked whether the Workgroup anticipates developing a parenting plan form in addition to the Parenting Plan Instructions, the Parenting Plan Tool, and the Joint Statement form. He said that since so many unrepresented litigants are expected to try to develop a parenting plan, it may be challenging for them to draft their own. Judge Callahan responded that the Parenting Plan Instructions are intended to walk parties through the custody litigation process. The goal is to help parties understand what the court considers when making a custody or access determination so that they can try to reach an agreement. The parties are expected to inform the

court of whether they were able to agree on any or all of the issues, either by filing the Joint Statement or by coming to court and telling the judge that they have an agreement. The expectation is that the parties will come to court with their agreement written down on the Parenting Plan Tool and the court will create an order incorporating the agreed-upon terms. It is possible that the parties will have drafted an agreement with help from a mediator, the Self-Help Center, or their attorneys.

Mr. Laws asked whether developing a parenting plan form would be burdensome. Judge Bryant responded that there is currently a parenting plan form available that many mediators use. She said that it is a blank form that the parties fill out with the help of the mediator. The completed form can either be incorporated into a court order or act as the foundation for the court to draft its own order.

Mr. Laws suggested that the Parenting Plan Instructions should clarify what would happen if the parties cannot agree on a parenting plan. He said that the Instructions currently tell parties what needs to be included in the Parenting Plan Tool, but do not explain what happens in the event that there is no agreement. The Instructions themselves do not direct the parties to file a Joint Statement pursuant to Rule 9-204.2 if they do not reach a comprehensive agreement. Judge Callahan responded that the Parenting Plan Tool is designed to help the

parties specify what custody and access schedule they are seeking. She said that it is not uncommon in cases where marital property is involved for parties to be out of compliance with Rule 9-207. The parties may appear in court without having completed or filed their joint marital and non-marital property statement. In those situations, the court will direct the parties to go into the hall to complete their Rule 9-207 statement. Judge Callahan explained that the same process can be used in the event that the parties appear in court without their completed Joint Statement. The benefit to requiring parties to file their Joint Statement is that the parties and the court will understand exactly what custody and access arrangement is sought and where the areas of contention truly exist. Judge Eaves commented that sometimes the parties will vaguely advise the court that they want sole custody but fail to explain the parameters of the custody arrangement they are seeking. The hope is that the parenting plan Rules will help parties understand the custody litigation process and improve the process.

Judge Wilner stated that there are four parenting plan Rules before the Committee for consideration. The main Rules are 9-204.1 and 9-204.2. There also are conforming amendments to Rules 9-204 and 9-205. He invited further comments on any of the four Rules presented.

Ms. Lindsey commented that section (c) of Rule 9-204.2 requires the parties to prepare and serve on the other party the proposed Joint Statement at least 30 days before the it is due to be filed. The Rule further provides that "at least 15 days before the Joint Statement is due, plaintiff shall sign and serve on the defendant for approval and signature a proposed Joint Statement that fairly reflects the positions of the parties." Ms. Lindsey questioned the required method of service under the Rule. Judge Callahan responded that the manner of service implied by Rule 9-204.2 (c) is the same manner of service that applies in Rule 9-207. A Rule 9-207 statement is required to be filed at least ten days before trial. However, the parties often appear for trial and have not completed and filed their 9-207 statement. Since the Joint Statement is intended to be filed as a single document representing both parties' positions, the requirement that the parties "serve" their proposed Joint Statement on each other simply requires that the proposed Joint Statement be exchanged between the parties.

Ms. Lindsey said that the Rule, as presented, explicitly requires the defendant to file the Joint Statement. She said that the implication is that the Joint Statement will be filed with the clerk's office. She questioned whether the Joint Statement must be filed with a certificate of service indicating

that the plaintiff was properly served. Mr. Stahl explained that Rule 9-204.2 mirrors Rule 9-207 in most respects. In complying with Rule 9-207, the parties do not formally serve their proposed statements on the other party. What happens is that the parties exchange proposed 9-207 statements. The parties then combine each of their proposed 9-207 statements into a single 9-207 statement, which is signed by both parties and filed with the court. Similarly, Rule 9-204.2 (c) does not contemplate that the Joint Statement be served on the opposing party and filed with the court with a certificate of service attached. Rather, it is expected that the parties will exchange proposed Joint Statements and file a single Joint Statement with the court. Mr. Stahl suggested replacing the word "serve" in section (c) with the word "exchange" to provide clarity. The Chair asked if there is any objection to that suggestion. By consensus, the Committee approved the amendment.

Judge Bryant noted that there is a query to the Committee note under Rule 9-204.1 (d). The Reporter asked the Workgroup why the parties are required to file the Joint Statement only when the parties are unable to reach a comprehensive parenting plan. She asked whether any consideration was given to requiring the parties to file at least the first page of the Joint Statement with the court even if they have developed a parenting plan. Judge Callahan responded that the Workgroup had

considered when the Joint Statement should be required to be filed. She explained that the goal for parties who have reached a comprehensive parenting plan to advise the court of the agreement either orally, when they appear for trial, or by filing their written agreement with the court. She said that is currently a typical practice. Parties can file their signed agreement with the court and the court can incorporate their agreement into an order or draft an order containing the terms of the party's agreement. Judge Callahan added that requiring parties to complete and file the first page or any portion of the Joint Statement when they already have reached an agreement would be an unnecessary step and potentially burdensome on unrepresented parties who, at that point in the process, will have already completed several forms.

The Chair invited further comment on the Rules presented in Agenda Item 1. He reminded the Committee that a motion is required to add the Committee note in Rule 9-204.2. Judge Eaves moved to add a Committee note following Rule 9-204.2 (e), which will provide some guidance to magistrates and judges when determining an appropriate sanction for violating the Rule.

The Chair invited comments about Judge Eaves' motion. Mr. Bowie commented that the *Rolley* case previously referenced by Judge Sandy involved a discovery issue. He noted that the concern raised by the Chair is that a sanction for violating

Rule 9-204.2 should not affect the court's determination of what is in the best interest of the child. He suggested that it may be helpful to reference the *Rolley* case in the Committee note. Judge Eaves responded that she would not recommend referencing the *Rolley* case in the Committee note but added that it may be best to review the opinion to identify whether there is any instructive language provided by the Court of Special Appeals in discussing withholding access to the child as a sanction. Judge Eaves suggested looking for a case that discusses appropriate sanctions in custody cases that do not result in depriving a party of access to his or her child. The Chair stated that research can be done to identify any cases that discuss that point. He suggested that a Committee note can be drafted by the Style Subcommittee and circulated to the members of the Committee for approval.

The Reporter stated that she began contemplating potential language for the Committee note. She suggested that the Committee note state, "In making a decision regarding parenting time, the court may consider a party's failure to comply with this Rule, but the decision may not be based solely on that failure." She added that the *Rolley* opinion also can be reviewed for any additional instructive language. The Chair commented that the *Rolley* case involves a different issue than what will be addressed in the Committee note. He said that a

failure to comply with discovery is not the same as the failure to comply with Rule 9-204.2. Judge Callahan said that the proposed Committee note will most likely be a combination of the language being discussed. Judge Wilner asked whether Judge Callahan would like to draft a short proposed Committee note. Judge Callahan agreed that she would draft and submit a short Committee note for consideration.

The Chair asked whether there is any objection to the Rule as amended by Judge Eaves' motion. By consensus, the Committee approved Rule 9-204.2 as amended. There being no motion to amend or reject Rule 9-204.1, is was approved as amended. By consensus, the Committee approved Rules 9-204, and 9-205 as presented.

Agenda Item 2. Consideration of proposed amendments to Rule 2-601 (Entry of Judgment).

The Chair presented Rule 2-601, Entry of Judgment, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-601 by adding language to subsection (a)(1) to clarify that each

judgment should include a statement of an allowance of costs and by adding a Committee note following subsection (a)(1), as follows:

Rule 2-601. ENTRY OF JUDGMENT

(a) Separate Document—Prompt Entry

(1) Each judgment shall be set forth on a separate document and should include a statement of an allowance of costs as determined in conformance with Rule 2-603.

Committee note: The failure of the separate document to include an allowance or assessment of costs does not preclude the document from constituting a final and appealable judgment. See *Mattison v. Gelber*, 202 Md. App. 44 (2011).

. . .

Rule 2-601 was accompanied by the following Reporter's Note.

The proposed amendments to Rule 2-601 resolve an ambiguity as to whether a document that fails to include a statement of an allowance of costs could constitute a judgment. The addition of the word "should" in subsection (a)(1) and a Committee note that follows this subsection makes clear that the failure of a separate document to include an allowance or assessment costs does not preclude the document from constituting a final and appealable judgment.

The Chair said that the Rules in Agenda Items 2, 3 and 4 were initially going to be presented by Steve Sullivan, however Mr. Sullivan was unable to attend the meeting. The first

amendment to Rule 2-601 is the addition of the word "should" in the second line of section (a) (1). The Chair noted that the word "should" is rarely used in the Rules, but the language seems appropriate in this context. He said that the second amendment is the addition of a Committee note citing to the *Mattison v. Gelber* opinion (202 Md. App. 44 (2011).

The Chair invited comments on the proposed amendments to Rule 2-601. There being no motion to amend or reject the Rule, it was approved as presented.

Agenda Item 3. Consideration of proposed amendments to Rule 2-623 (Recording of Judgment of Another Court and District Court Notice of Lien) and Rule 2-632 (Stay of Enforcement).

The Chair presented Rules 2-623 (Recording of Judgment of Another Court and District Court Notice of Lien) and 2-632 (Stay of Enforcement), for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-623 by making stylistic changes to section (a); by adding a provision to section (a) that implements the affidavit and notice requirements for foreign judgments pursuant to Code, Courts

Article, §11-803; and by expanding the existing cross reference, as follows:

Rule 2-623. RECORDING OF A JUDGMENT OF ANOTHER COURT AND DISTRICT COURT NOTICE OF LIEN

(a) Judgment of Another Court

(1) Generally

Subject to subsection (a)(2) of this Rule, ~~Upon~~ upon receiving a copy of a judgment of another court, certified or authenticated in accordance with these rules or statutes of this State, or of the United States, the clerk shall record and index the judgment if it was entered by ~~(1)~~(A) the Court of Appeals, ~~(2)~~(B) the Court of Special Appeals, ~~(3)~~(C) another circuit court of this State, ~~(4)~~(D) a court of the United States, or ~~(5)~~(E) any other court whose judgments are entitled to full faith and credit in this State. Upon recording a judgment received from a person other than the clerk of the court of entry, the receiving clerk shall notify the clerk of the court of entry.

(2) Foreign Judgment

At the time a foreign judgment as defined in Code, Courts Article, §11-801 is filed, the judgment creditor shall file an affidavit in compliance with Code, Courts Article, §11-803 (a). Upon receipt of the affidavit, the clerk shall mail to the judgment debtor the notice required by Code, Courts Article, §11-803 (b) and make a docket entry notation of the mailing.

Cross reference: For enforcement of foreign judgments, see Code, Courts Article, §§ 11-801 through 11-807. For provisions governing the stay of enforcement of a judgment, see Rule 2-632.

(b) District Court Notice of Lien

Upon receiving a certified copy of a Notice of Lien from the District Court pursuant to Rule 3-621, the clerk shall record and index the notice in the same manner as a judgment.

Source: This Rule is in part derived from former Rule 619 a and in part new.

Rule 2-623 was accompanied by the following Reporter's Note.

Amendments to section (a) of Rule 2-623 implement the affidavit and notice requirements for foreign judgments pursuant to Code, Courts Article, §11-803 of the Uniform Enforcement of Foreign Judgments Act. A practitioner brought to the attention of the Judgments Subcommittee that currently, Rule 2-623 does not address notice to the judgment debtor when a foreign judgment is recorded in the State. However, Code, Courts Article, §11-803 does. The proposed amendments to section (a) of Rule 2-632 resolve any ambiguity regarding the filing and notice requirements for foreign judgments under the statute and the Rule.

Additionally, the cross reference following section (a) is expanded to include a reference to Rule 2-632, which governs stays of enforcing a judgment in Maryland. This amendment is proposed in conjunction with a proposed amendment to Rule 2-632, which makes clear that stays of foreign judgments are governed by Code, Courts Article, §11-804.

AMEND Rule 2-632 by adding new section (g) clarifying that stays of foreign judgments are governed by Code, Courts Article, §11-804; by re-lettering current section (g) as new section (h); and updating the source note, as follows:

Rule 2-632. STAY OF ENFORCEMENT

. . .

(g) Foreign Judgment

A stay of enforcement of a foreign judgment as defined in Code, Courts Article, §11-801 is governed by Code, Courts Article, §11-804.

~~(g)~~ (h) Power of Appellate Court Not Limited

The provisions of this Rule do not limit any power of an appellate court to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Source: This Rule is derived as follows:

. . .

Section (g) is new.

Section ~~(g)~~ (h) is derived from the 1961 version of Fed. R. Civ. P. 62 (g).

Rule 2-632 was accompanied by the following Reporter's Note.

> Proposed amendments to Rule 2-632 make clear that a stay of a foreign judgment, as defined by Code, Courts Article, §11-801 is governed by Code, Courts Article, §11-804. This amendment is proposed in conjunction with proposed amendments to Rule 2-623, which, in part, implement the affidavit and notice requirements for foreign judgments pursuant to Code, Courts Article, §11-803 of the Uniform Enforcement of Foreign Judgments Act.

The Chair noted that the proposed amendments to Rule 2-623 track Code, Courts Article, §11-803 (Uniform Enforcement of Foreign Judgments Act). He explained that the Code includes affidavit and notice provisions that do not currently appear in the Rules. The proposed amendments to Rule 2-623 implement the affidavit and notice requirements currently contained in the Code.

The Chair said that a new section (g) is proposed to be added in Rule 2-632. The definition of "foreign judgment" is in Code, Courts Article, §11-801. The amendment to Rule 2-623 references the definition and clarifies that foreign judgments are governed by Code, Courts Article, §11-804.

The Chair invited comments about the proposed amendments in Rule 2-623 and Rule 2-632.

Mr. Laws asked whether a similar Rule in the District Court exists to govern foreign judgments. The Chair responded that there is not currently a District Court Rule that specifically

addresses foreign judgments. The Reporter noted that Code, Courts Article, §11-802 does provide that certain foreign judgments must be filed in a circuit court and others must be filed in the District Court. Judge Wilson commented that foreign judgments are routinely filed in the District Court. She said that Code, Courts Article, §11-802 (a)(1)(ii) and (iii) provide that certain foreign judgments be filed in the District Court. She expressed the opinion that the language in the Uniform Enforcement of Judgments Act that applies to circuit courts equally applies to the District Court. The Chair agreed that the Code applies to the circuit courts and the District Court. He reiterated that there is currently no District Court Rule that specifically addresses foreign judgments. He questioned whether it would hurt to create a District Court Rule to track the statute in a similar way as proposed in the draft of Rule 2-623.

Judge Wilson noted that there is currently no District Court Rule that mirrors Rule 2-623. She said that because the statute requires that judgments in the amount under $30,000 be filed in the District Court, she often sees cases where a $15,000 judgment is recorded in the District Court. In some cases, the filer is in the military and has relocated to Maryland from another state. The facts of each case are different. The Reporter asked whether the members of the

District Court Subcommittee would like to advise the Assistant Reporter on what the new District Court Rule governing foreign judgments should look like. She said that drafting a new Rule at the meeting is probably not the best course of action.

The Chair stated that there is no reason to delay the approval of Rule 2-623 and Rule 2-632 as presented, since they merely track the existing statue. He said the District Court Subcommittee will work with Rules Committee staff to draft a District Court Rule that is comparable to Rule 2-623 and amendments to current Rule 3-632. He asked whether there is an objection to that idea. By consensus, the Committee referred the issue to the District Court Subcommittee.

The Chair invited further comments about Rules 2-623 and 2-632. There being no motion to amend or reject the Rules, they were approved as presented.

Agenda Item 4. Consideration of proposed amendments to Rule 2-625 (Expiration and Renewal of Money Judgment) and Rule 3-625 (Expiration and Renewal of Money Judgment).

The Chair presented Rules 2-625, Expiration and Renewal of Money Judgment, and Rule 3-625, Expiration and Renewal of Money Judgment, for consideration.

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-625 by adding a Committee note, as follows:

Rule 2-625. EXPIRATION AND RENEWAL OF MONEY JUDGMENT

A money judgment expires 12 years from the date of entry or most recent renewal. At any time before expiration of the judgment, the judgment holder may file a notice of renewal and the clerk shall enter the judgment renewed.

Committee note: This Rule does not extinguish an unrenewed judgment held by the State. *See* Code, Courts Article §5-102; *State v. Shipe*, 221 Md. App. 425 (2015); and *State v. Buckingham*, 214 Md. App. 672 (2013).

Source: This Rule is new.

Rule 2-625 was accompanied by the following Reporter's Note.

The Judgments Subcommittee proposes the addition of a Committee note following Rules 2-625 and 3-625 to make clear that the twelve-year limitations period for judgments does not extinguish unrenewed judgments held by the State. Rules 2-625 and 3-625 implement the twelve-year limitations period found in Code, Courts Article §5-102. Code, Courts Article §5-102 expressly provides that the twelve-year limitation period for action on specialties does not apply to specialties taken for the use of the State.

In *State v. Buckingham*, 214 Md. App. 672 (2013), the Court of Special Appeals was called on to decide whether Rule 2-625 applies to a money judgment held by the State. The Court noted that while the Code, Courts Article §5-102 expressly exempts judgments held by the State from the twelve-year limitations period, Rule 2-625 does not. The Court ultimately held that that Rule 2–625 does not extinguish an unrenewed judgment held by the State after twelve years. That principle was reiterated in *State v. Shipe*, 221 Md. App. 425 (2015). In *State v. Shipe*, the Court of Special Appeals held that a tax lien having the full force and effect of a judgment lien, would exempt the State from the twelve-year limitation period.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-625 by adding a Committee note, as follows:

Rule 3-625. EXPIRATION AND RENEWAL OF MONEY JUDGMENT

A money judgment expires 12 years from the date of entry or most recent renewal. At any time before expiration of the judgment, the judgment holder may file a notice of renewal and the clerk shall enter the judgment renewed. Upon request of the judgment holder, the clerk shall transmit a copy of the notice of renewal to each clerk to whom a certified copy of the judgment was transmitted pursuant to Rules 3-621(c)(1) and 3-622 and to each circuit court clerk to whom a Notice of Lien was transmitted

pursuant to Rule 3-621, and the receiving clerk shall enter the judgment or Notice of Lien renewed.

Committee note: This Rule does not extinguish an unrenewed judgment held by the State. *See* Code, Courts Article §5-102; *State v. Shipe*, 221 Md. App. 425 (2015); and *State v. Buckingham*, 214 Md. App. 672 (2013).

Source: This Rule is new.

Rule 3-625 was accompanied by the following Reporter's Note.

See the Reporter's Note to the proposed amendment to Rule 2-625.

The Chair said that the amendments to both Rule 2-625 and Rule 3-625 are identical. A Committee note has been added to clarify that the Rule does not extinguish an unrenewed judgment held by the State. That premise is provided in Code, Courts Article, §5-102 and discussed in the Court of Special Appeals's decisions in *State v. Shipe*, 221 Md. App. 425 (2015) and *State v. Buckingham*, 214 Md. App. 672 (2013).

The Chair invited comments about Rules 2-625 and 3-625. There being no motion to amend or reject the Rules, they were approved as presented.

There being no further business before the Committee, the meeting adjourned.