THE SUPREME COURT STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms 132-133 of the Maryland Judicial Center, 187 Harry S. Truman Parkway, Annapolis, Maryland on Thursday, June 22, 2023.

Members present:

Hon. Alan M. Wilner, Chair
Hon. Douglas R.M. Nazarian, Vice Chair

Hon. Tiffany Anderson
H. Kenneth Armstrong, Esq.
Julia Doyle Bernhardt, Esq.
Hon. Pamila J. Brown
Hon. Yvette Bryant
Arthur J. Horne, Esq.
Victor H. Laws, Esq.
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Stephen S. McCloskey, Esq.
Hon. Paula A. Price
Judy Rupp, State Court Administrator
Scott D. Shellenberger, Esq.
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Deputy Reporter
Heather Cobun, Esq., Assistant Reporter
Meredith A. Drummond, Esq., Assistant Reporter

Jenna Clothier, Esq.
Shantell Davenport, Esq.
Greg Hilton, Esq., Clerk of the Supreme Court of Maryland
Hon. John Morrissey, Chief Judge, District Court
Dawn Musgrave, Esq.
Andrea Parks, Trust Clerk Supervisor, Trust and Adoption Department, Circuit Court for Anne Arundel County
Catelyn Slattery, Esq.
Nisa Subasinghe, Esq., Domestic and Guardianship Program Manager
Gillian Tonkin, Esq., Staff Attorney to Chief Judge, District Court
Kevin Tucker, Clerk of the Court, Washington County
Hon. Brett R. Wilson, Washington County Circuit Court

The Chair convened the meeting. He informed the Committee that Norman R. Stone, Jr., a former legislator and longtime member of the Rules Committee, passed away on June 16. He said that Mr. Stone was a valued member of both the legislature and the Committee. He expressed his condolences to Mr. Stone's family, including Judge Norman R. Stone, III, who routinely collaborates with the Committee in his role as Chair of the Forms Subcommittee.

The Chair announced that Item 10 on the agenda will be deferred to address concerns raised by Brian Zavin from the Maryland Office of the Public Defender. The Reporter advised that the meeting was being recorded and speaking will be treated as consent to being recorded. She also informed the Committee that there are handouts and comments pertaining to the first few agenda items, which should have been shared with the Committee members electronically already. She advised that the meeting is the final one for several members and thanked them for their time serving on the Committee. She also reminded members that subcommittee assignments for the next fiscal year have been circulated and any Committee members with questions should contact staff.

Agenda Item 1. Reconsideration of proposed amendments to Rule 9-112 (Court Records); amendments to Rule 9-103 (Petition), Rule

9-105 (Show Cause Order; Disability of a Party; Other Notice), Rule 9-107 (Objection).

Judge Bryant presented Rule 9-112, Court Records, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-112 by adding new section (a) clarifying who is considered a party the purpose of access to records; by adding a Committee note following new section (a); by re-lettering current sections (a) and (b) as (b) and (c), respectively; by altering a provision in new section (b) pertaining to docket entries; by adding language to the tagline of new section (c); by creating new subsection (c)(1) containing updated provisions pertaining to shielding of records and access by a person filing a notice of objection; by adding a cross reference following subsection (c)(1); by creating new subsection (c)(2)(A) pertaining to sealing of records in guardianship proceedings; by creating new subsection (c)(2)(B) pertaining to sealing of records in adoption proceedings; by relocating a provision pertaining to adoption records prior to June 1, 1947 to new subsection (c)(3); by adding new subsection (c)(4) pertaining to inspection of sealed records; by adding a cross reference following subsection (c)(4); and by making stylistic changes, as follows:

Rule 9-112. COURT RECORDS

(a) Party

For purposes of this Rule, "party" includes (1) a petitioner, (2) the prospective adoptee, (3) in a Private Agency Guardianship or Private Agency Adoption, the agency, and (4) in a Public Agency Adoption after TPR or Public Agency Adoption without Prior TPR, the local department to which the prospective adoptee is committed.

Committee note: The prospective adoptee's parent, unless the parent is also a petitioner, is not a party to a proceeding under this Chapter except as provided by Code, Family Law Article, § 5-301 in a Private Agency Adoption without Prior TPR.

~~(a)~~(b) Dockets and Indices

The clerk shall keep separate dockets for (1) adoption and guardianship proceedings and (2) revocations of consent to adoption or guardianship for which there are no pending adoption or guardianship proceedings in that county. These dockets are not open to inspection by any person~~, including the parents,~~ except upon order of court, but docket entries in a proceeding shall be open to inspection by the parties to the proceeding. If the index to a docket is kept apart from the docket itself, the index is open to public inspection.

~~(b)~~(c) Shielding and Sealing of Records

(1) Shielding of Records

All pleadings and other papers in adoption and guardianship proceedings shall be ~~sealed~~ confidential and shielded from public inspection when they are filed. Unless otherwise ordered by the court, and subject to **[Rule 9-103 (e) and]** subsection (c)(2) of this Rule, pleadings and other papers shall be open to inspection by parties to a proceeding. If a person files

a notice of objection pursuant to Rule 9-107, the person's access to pleadings and papers filed in the proceeding is governed by the court's order entered pursuant to Rule 9-107 (f).

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

(2) Sealing of Records

(A) Guardianship Records

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

(B) Adoption Records

Except as otherwise provided in subsections (b)(3) and (b)(4) of this Rule, all pleadings and other papers in an adoption proceeding shall be sealed and ~~are~~ not open to inspection by any person, including ~~the parents, except upon an order of court~~ the parties, upon the later of (i) 30 days after entry of a judgment of adoption or, (ii) if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. ~~If a final decree of adoption was entered before June 1, 1947 and the record is not already sealed, the record may be sealed only on motion of a party. The~~ When an adoption is finalized, the clerk shall ~~notify~~ send notice of the finalization to each person entitled to notice ~~that the adoption has been finalized~~.

Cross reference: See Code, Health – General

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

(3) Adoption Records Prior to June 1, 1947

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

(4) Inspection of Sealed Records

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

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

Source: This Rule is derived from former Rule D80 a and c and is in part new.

Rule 9-112 was accompanied by the following Reporter's note:

By Rules Order dated May 8, 2023, the Supreme Court of Maryland remanded to the Rules Committee proposed amendments to Rule 9-112 submitted to the Court as a part of the Two Hundred and Sixteenth Report. The proposed amendments to Rules 9-112 and 11-319 contained in that Report were transmitted on an emergency basis to address programming changes that had been made as a result of analysis by the Major Projects Committee ("the MPC") of the operation of the Rules with respect to remote access by parties and attorneys to Title 9 and Title

11 adoption and guardianship proceedings in the MDEC system.

The proposed amendments to both Rules attempted to address the MPC's belief that the Rules, as written, prohibit remote MDEC access to adoption and guardianship cases by any person, including access by a party or attorney in a pending case. Effective February 23, 2023, the Office of Information Technology in the Administrative Office of the Courts established new document security types for adoption and guardianship matters. These documents are now sealed except to judges and certain courthouse personnel. The Rules Committee was informed that the programming changes had an immediate impact on the ability of attorneys in adoption and guardianship cases to carry out their duties to their clients.

Shortly before its open meeting on the Two Hundred and Sixteenth Report, the Rules Committee received and transmitted to the Court a comment from a clerk in the Office of the Clerk of the Circuit Court for Anne Arundel County raising concerns with the proposed amendments to Rule 9-112. The primary concern expressed by the clerk was that, as amended, the Rule could permit petitioners and biological parents to access sensitive information about each other that they could not access previously and do not need, such as personal identifying information, health statements, and financial documents.

At its open meeting on the 216th Report, the Court heard additional comment from the Anne Arundel County clerk who had raised the concerns, and the Court discussed the issues raised. The Court voted to adopt the amendments to Rule 11-319, with an immediate effective date, and remand Rule 9-112 to the Rules Committee for further study.

Practitioners who were consulted after the remand advised the Committee that

private agency guardianships and all other adoption types are "ex parte," with only the petitioner(s) and the child as parties to the proceeding. The child placement agency is also generally treated as a party, but is not one by statute unless it files the petition.

Parents, however, are not parties to any Title 9 proceedings except a public agency guardianship without prior termination of parental rights (Code, Family Law, § 5-301). A parent or other individual who is not a party but whose consent is required may file a notice of objection. If the notice of objection is timely filed, and the filer has standing, the court is responsible for giving the objector access to the case file with reasonable conditions pursuant to Rule 9-107 (f).

Practitioners informed the Committee that after the programming change went into effect, they have not had access to their own filings and, in some cases, do not receive documents from the court, including court orders. One practitioner reported not being able to verify what documents the child placement agency had submitted and what documents were missing, resulting in an adoption being delayed. Another reported not receiving a notice of objection, leading her to mistakenly inform her clients that the case could proceed as an uncontested matter. Attorneys uniformly reported that even prior to the programming change, practices differed between different Clerk's offices and child placement agencies.

Proposed amendments to Rule 9-112 and related amendments to Rules 9-103 and 9-107 clarify and standardize practices pertaining to access to records in Title 9, Chapter 100 proceedings.

In Rule 9-112, proposed new section (a) clarifies who is considered a party for the purpose of access to case records. "Party"

is a defined term only in public agency guardianships and adoptions (Code, Family Law, § 5-301). The public agency is a party only to the guardianship, which is governed by the Rules Title 11, Chapter 300, or an adoption after termination of parental rights under certain circumstances. The child's parent is a party by statute only to a public agency adoption without prior termination of parental rights. New section (a) states that a "party" includes a petitioner, the prospective adoptee, and the agency, if applicable. A Committee note clarifies the circumstances where a parent who is not a petitioner is a party.

Current sections (a) and (b) are re-lettered as (b) and (c), respectively.

Proposed amendments to relettered section (b) ensure that parties can view docket entries in a proceeding and become aware of the existence of each document in the court's file even if the document is under seal as contemplated by proposed amendments to Rule 9-103 (e).

Proposed amendments to relettered section (c) generally require that pleadings and papers in adoption and guardianship proceedings be shielded when filed and then sealed when the case is concluded. Subsection (c)(1) provides that, with some exceptions, pleadings and papers are open to inspection by parties to a proceeding. Access to records by a person who files a notice of objection is governed by the court's order entered pursuant to Rule 9-107 (f). A cross reference following subsection (c)(1) directs the reader to Rule 16-914 (a), which prohibits public inspection of these records, and Rule 20-109, which governs remote access to records.

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

30 days after termination of the proceeding or, if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. Subsection (c)(2)(B) contains similar provisions pertaining to sealing adoption records.

The existing language governing adoption records for final decrees entered before June 1, 1947 is relocated to new subsection (c)(3).

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

Judge Bryant informed the Committee that Rule 9-112 was remanded by the Supreme Court for further consideration after questions were raised regarding the procedure for access to Title 9 guardianship and adoption records. She noted that several adoption practitioners were present at the current meeting to answer questions and invited them to speak about their experiences with the operation of Rule 9-112.

Catelyn Slattery, an attorney with Jennifer Fairfax LLC in Silver Spring, addressed the Committee. Ms. Slattery said that she handles adoption cases in Maryland, Virginia, and the District of Columbia. She explained that she had conversations with Committee staff regarding the changes implemented this year to the level of MDEC access attorneys have to their cases. She said that the programming change has generally resulted in

attorneys not being able to access some or all parts of their active cases, but the change has been interpreted differently across the State. In some counties, she can still see documents in a case, while in others, she cannot see the case at all. Ms. Slattery further informed the Committee that sometimes court orders are not being served and she cannot verify what has been filed in a case. She explained that adoptions are typically *ex parte* cases and those filing into the case could see the case records.

Judge Bryant asked Ms. Slattery who is considered a party with access to the MDEC record in an adoption proceeding. Ms. Slattery replied that there seems to be a difference of opinion as to who is a party to a guardianship or adoption proceeding and expressed that, in her experience with private agency and independent adoptions, the parties are the petitioners and the child, not the parents. If a public or private agency is involved, that agency is also a party.

The Chair asked Ms. Slattery if it is her understanding that only one county expressed the opinion that a biological parent is a party to the case, which would be tantamount to a local Rule. Ms. Slattery replied that this was her understanding. Mr. Laws asked if a parent is a party if the parent has not consented to the guardianship or adoption. Ms. Slattery answered that if a parent consents, the consent is

filed with the petition. If a parent does not consent, the parent receives notice of the petition and an opportunity to object to the guardianship or adoption. She noted that the Rules permit the court to order access to certain documents in the case file if an objecting parent is found to have standing.

Andrea Parks, a clerk in the Anne Arundel County Circuit Court Clerk's Office, addressed the Committee. Ms. Parks informed the Committee that she was speaking at the meeting in her capacity as a private citizen and not in her capacity as an employee of the Anne Arundel County Circuit Court Clerk's Office. She indicated that she has a different view on the role of a biological parent in an adoption proceeding. She explained that Rule 9-112 currently states that filings are sealed upon submission and cannot be view by anyone, even the parents. She also noted that Rule 9-105 requires a biological or other legal parent to have the opportunity to object to the guardianship or adoption and permits the court to appoint an attorney for a disabled party, which may occur with a parent. She also stated that the pre-set parties in the Odyssey case management system include the petitioners, prospective adoptee, and biological parents. She added that if the biological parent withholds consent and fights an adoption but loses, the parent has the right to appeal.

Ms. Slattery informed the Committee that a parent is considered a party to a public agency guardianship because it is an involuntary placement where the parent's rights are being terminated by the State. Private agency guardianships and adoptions and independent adoptions are voluntary placements.

Judge Bryant said that proposed amendments to Rule 9-112 address some of the concerns raised by the commenters. She informed the Committee that the Family/Domestic Subcommittee did not have a quorum when considering these Rules, so each one will require a motion to approve. She noted several stylistic errors that were identified in the drafts: in line two of the amend clause, the word "for" is missing; in the Committee note following new section (a), the last line should refer to a "Public Agency Adoption without Prior TPR"; and in the cross reference at the end of the Rule, the first citation should be to Code, Family Law Article, Title 5, Subtitle 3, Part V. She thanked Judge Anderson and Ms. Parks for bringing these errors to the Committee's attention.

Judge Bryant said that proposed new section (a) defines "party" for the purposes of access to records. "Party" in Rule 9-112 means a petitioner, the prospective adoptee, and the agency, if any. A Committee note explains that the prospective adoptee's parent is not a party except when the parent is also a petitioner or if the case involves a Public Agency Adoption

without Prior TPR. She explained that section (b) is amended to ensure that docket entries are open to inspection by parties. She added that a stylistic amendment is proposed in the last sentence to state that the index "shall be" open to public inspection.

Judge Bryant said that section (c) governs shielding and sealing of records. Subsection (c)(1) states that records are shielded from public inspection while the case is ongoing to allow parties to access them. She drew the Committee's attention to bracketed language related to Rule 9-103 (e) in the subsection. Assistant Reporter Cobun informed the Committee that a proposed amendment to Rule 9-103 (e) would allow documents to be submitted to the court under seal by agreement or on motion, which would restrict access by parties. She explained that the practitioners and stakeholders consulted on these Rules said that certain documents required by Rule 9-103 contain sensitive information or identifying details about the parties that the other parties do not need to see. The purpose of the proposed amendments to Rule 9-103 is to allow the parties to agree that some documents or information will be submitted to the court under seal for the court's review only. The amendment to Rule 9-112 (b) relating to docket entries ensures that any documents filed in this manner can still be identified. This allows attorneys to know what has been submitted even if the

document itself is under seal. Judge Bryant replied that the bracketed language will be presumed to be included in the amendments. She also informed the Committee that the word "public" is proposed to be added to the new cross reference following subsection (c)(1) so that it reads "See Rule 16-914 (a), requiring denial of public inspection of case records."

Judge Bryant said that subsection (c)(2) addresses sealing of records once the case is concluded. She said that subsections (c)(2)(A) and (c)(2)(B) state that "all pleadings and other papers" in both case types shall be sealed at specified times. She informed the Committee that Chief Judge Morrissey suggested that the provision be amended to state that "the entire case file" is sealed. She explained that Chief Judge Morrissey was of the opinion that the phrase "all pleadings and other papers" could be confusing. Judge Bryant informed the Committee that Ms. Lindsey could not attend the meeting but asked Kevin Tucker, the Washington County Circuit Court Clerk, to attend to answer any questions. Judge Bryant asked Mr. Tucker if Chief Judge Morrissey's suggestion would work from the clerk's perspective. Mr. Tucker replied that he believes sealing "the entire case file" is a clear instruction, but he noted that when the entire case is sealed rather than the individual documents within the case, it is not visible on the index. He expressed that some clerks are reluctant to use that

option in the case management system because it not only seals all of the documents within the case but hides the existence of the case entirely. He said that in Washington County, the clerk seals each individual document. Chief Judge Morrissey responded that what Mr. Tucker described is a manual process subject to human error if a clerk misses something. Ms. Rupp added that it could be burdensome to larger jurisdictions to have the clerk seal each individual document.

Assistant Reporter Cobun pointed out that the process described by Chief Judge Morrissey and Mr. Tucker would conflict with the last sentence of Rule 9-112 (b), as amended, which provides that the index listing adoption proceedings is public. Ms. Parks commented that certain clerks have the authority to view sealed case files. The case-level protection prevents a clerk without those permissions from even finding the case in the case management system. She explained that Chief Judge Morrissey's proposal would make the case disappear for almost everyone. She suggested that the document security type created earlier this year that is the cause of the current complaints could be used at the close of the case, perhaps automatically, to seal the documents but leave the case visible in the index. She also said that the clerk can check a box in the case management system to mark all documents and change their classification.

Ms. Rupp expressed concern about requiring documents to be sealed one by one. Assistant Reporter Cobun asked how documents were sealed prior to the business process change. Ms. Parks replied that it depended on the court. She said that some courts marked documents as confidential, but that level of security allowed more access than some thought was appropriate by individuals involved in the case. She said that she still believes a level of protection is required for certain documents in the case which contain identifying information. She acknowledged that different clerk's offices handle things differently.

The Chair asked if there was a proposal to amend the drafts currently before the Committee. He said that the Rule is before the Committee because attorneys are not able to access their pending cases through MDEC. Chief Judge Morrissey informed the Committee that Judicial Information Systems brought the language of Rule 9-112 and Rule 11-319 to the attention of the Major Projects Committee ("the MPC") and questioned whether the security settings in place were in compliance with the Rules. He said that the MPC follows the Rules to the letter and determined that the only option was to institute new document security types to seal filings in the cases subject to Rules 9-112 and 11-319. He said that it was clear that courts were

operating differently and attorneys who previously had access were going to complain when they lost it.

Chief Judge Morrissey said that the real issue before the Committee is what certain people should see or need to see in an adoption case file or on an index. He said that the guidance in the Rule suggests that once a case is over, it is locked down and no one should be able to find any evidence of it. Judge Bryant responded that the indices were always public. Chief Judge Morrissey said that the proposed amendments could be interpreted to mean that the index is public while the case is pending but not public once it is closed. Ms. Parks asked what is considered an "index" as opposed to the "docket." She said that the index used to be a record book, prior to MDEC.

The Reporter asked whether there would be any negative impact on post-adoption reunion services run by the state for adoptees and birth parents if the index is not public. Ms. Parks responded that there is guidance in statutes for that program, which is run by the Department of Human Services. A parent or adoptee may apply for a confidential intermediary to conduct the search, including seeking information from court records through a clerk with permission to access sealed records.

The Chair emphasized that the treatment of these case files must be uniform across the state. He called for further comment

on the draft before the Committee. Ms. Rupp moved to amend Rule 9-112 (c)(2)(B) to strike "all pleadings and other papers" and replace it with "the case shall be sealed." The motion was seconded. The Chair called for comment on the motion. Ms. Parks asked if the proposed amendment would mean selecting the option in a case management system that seals the entire case, not individual documents. Ms. Rupp responded that it would. The Reporter reiterated that there can be information in an adoption file that, through statute or a court order, a person can have a right to see. She expressed concern that with no public record of even the case caption, it will be harder to find the case later to grant this access. Ms. Parks replied that the statute governing post-adoption reunion services sets forth the procedure. She said that if an adoptee comes to the court and knows roughly when and where the adoption took place and the name of the petitioner, the adoptee can give that information along with a birth date and other details to the clerk to find and verify the existence of the case. Disclosure of anything in the case file is governed by statutes and court orders. Assistant Reporter Cobun asked if Ms. Rupp's proposed amendment should only be in subsection (c)(2)(B), Adoption Records, or subsection (c)(2)(A), Guardianship Records, as well. Ms. Rupp amended her motion to include subsection (c)(2)(A).

Judge Bryant asked if the practitioners present had any comments. Ms. Slattery said that after a case concludes, nothing is visible and she informs her clients that the case is locked down. She said that she has no need to access the case after it is closed. When an adoptee or parent approaches her to seek access to their records, she said that she gathers information from the seeker and then files a motion with the court to break the seal. The motion goes to a judge who determines whether the seal should be broken and what information the requester is seeking.

Mr. Laws asked for the motion to be restated. Judge Bryant stated that the motion is to amend subsections (c)(2)(A) and (c)(2)(B) to state that "the entire case file ... shall be sealed." By consensus, the Committee approved the amendment.

Judge Bryant noted additional stylistic amendments in the draft of Rule 9-112. In subsection (c)(2)(B), "When an adoption is finalized, the clerk shall send notice of the finalization to each person entitled to notice" is proposed to be changed to "When an adoption becomes final, the clerk shall send notice of that event to each person entitled to notice." She also noted two typos in the cross reference at the end of the Rule: "Title V" should be "Title 5" and "Part IV" should be "Part V." Judge Bryant moved to approve Rule 9-112 as amended. The motion was seconded and approved by consensus.

Judge Bryant presented Rule 9-103, Petition, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-103 by altering a provision in section (d) pertaining to filing a document after the petition is filed; by adding to the tagline of section (e); by adding new subsection (e)(1) containing the current provisions of section (e), with amendments; by adding to new subsection (e)(1) a provision for submitting a document under seal; by adding new subsection (e)(2) governing sealing by agreement or request; by adding new subsection (e)(3) requiring the clerk to make a docket entry regarding the filing; and by making stylistic changes, as follows:

RULE 9-103. PETITION

(a) Titling of Case

A proceeding shall be titled "In re Adoption/Guardianship of _____ (first name and first initial of last name of prospective adoptee or ward)."

(b) Petition for Adoption

(1) Contents

A petition for adoption shall be signed and verified by each petitioner and shall contain the following information:

(A) The name, address, age, business or employment, and employer of each petitioner;

(B) The name, sex, and date and place of birth of the person to be adopted;

(C) The name, address, and age of each parent of the person to be adopted;

(D) Any relationship of the person to be adopted to each petitioner;

(E) The name, address, and age of each child of each petitioner;

(F) A statement of how the person to be adopted was located (including names and addresses of all intermediaries or surrogates), attaching a copy of all advertisements used to locate the person, and a copy of any surrogacy contract;

Committee note: If the text of an advertisement was used verbatim more than once, the requirement that a copy of all advertisements be attached to the petition may be satisfied by attaching a single copy of the advertisement, together with a list of the publications in which the advertisement appeared and the dates on which it appeared.

(G) If the person to be adopted is a minor, the names and addresses of all persons who have had legal or physical care, custody, or control of the minor since the minor's birth and the period of time during which each of those persons has had care, custody, or control, but it is not necessary to identify the names and addresses of foster parents, other than a petitioner, who have taken care of the minor only while the minor has been committed to the custody of a child placement agency;

(H) If the person to be adopted is a minor who has been transported from another state to this State for purposes of placement for adoption, a statement of

whether there has been compliance with the Interstate Compact on the Placement of Children (ICPC);

(I) If applicable, the reason why the spouse of the petitioner is not joining in the petition;

(J) If there is a guardian with the right to consent to adoption for the person to be adopted, the name and address of the guardian and a reference to the proceeding in which the guardian was appointed;

(K) Facts known to each petitioner that may indicate that a party has a disability that makes the party incapable of consenting or participating effectively in the proceedings, or, if no such facts are known to the petitioner, a statement to that effect;

(L) Facts known to each petitioner that may entitle the person to be adopted or a parent of that person to the appointment of an attorney by the court;

(M) If a petitioner desires to change the name of the person to be adopted, the name that is desired;

(N) As to each petitioner, a statement whether the petitioner has ever been convicted of a crime other than a minor traffic violation and, if so, the offense and the date and place of the conviction;

(O) That the petitioner is not aware that any required consent has been revoked; and

(P) If placement pending final action on the petition is sought in accordance with Code, Family Law Article, § 5-3B-12, a request that the court approve the proposed placement.

(2) Exhibits

(A) Except for an adoption pursuant to Code, Family Law Article, § 5-3B-27, the

following documents shall accompany the petition as exhibits:

(i) A certified copy of the birth certificate or "proof of live birth" of the person to be adopted;

(ii) A certified copy of the marriage certificate of each married petitioner;

(iii) A certified copy of all judgments of divorce of each petitioner;

(iv) A certified copy of any death certificate of a person whose consent would be required if that person were living;

(v) A certified copy of all orders concerning temporary custody or guardianship of the person to be adopted;

(vi) A copy of any existing adoption home study by a licensed child placement agency concerning a petitioner, criminal background reports, or child abuse clearances;

(vii) A document evidencing the annual income of each petitioner;

(viii) The original of all consents to the adoption, any required affidavits of translators or attorneys, and, if available, a copy of any written statement by the consenting person indicating a desire to revoke the consent, whether or not that statement constitutes a valid revocation;

Cross reference: See Code, Family Law Article, §§ 5-331, 5-338, and 5-339 as to a Public Agency Adoption without Prior TPR; 5-345, 5-350, and 5-351 as to a Public Agency Adoption after TPR; 5-3A-13, 5-3A-18, and 5-3A-19 as to a Private Agency Guardianship; 5-3A-35 as to a Private Agency Adoption; and 5-3B-20 and 5-3B-21 as to an Independent Adoption.

(ix) If applicable, proof of guardianship or relinquishment of parental

rights granted by an administrative, executive, or judicial body of a state or other jurisdiction; a certification that the guardianship or relinquishment was granted in compliance with the jurisdiction's laws; and any appropriate translation of documents required to allow the child to enter the United States;

Cross reference: See, Code, Family Law Article, §§ 5-305, 5-331, and 5-338 as to a Public Agency Adoption without Prior TPR; 5-305 and 5-345 as to a Public Agency Adoption after TPR; 5-3A-05, 5-3A-13, and 5-3A-18 as to a Private Agency Guardianship; 5-3A-05 as to a Private Agency Adoption; and 5-3B-04 and 5-3B-20 as to an Independent Adoption.

(x) If a parent of the person to be adopted cannot be identified or located, an affidavit of each petitioner and the other parent describing the attempts to identify and locate the unknown or missing parent;

Cross reference: See Code, Family Law Article, §§ 5-331 and 5-334 as to a Public Agency Adoption without Prior TPR and 5-3B-15 as to an Independent Adoption.

(xi) A copy of any agreement between a parent of the person to be adopted and a petitioner relating to the proposed adoption with any required redaction;

Cross reference: See Code, Family Law Article, §§ 5-308 and 5-331 as to a Public Agency Adoption without Prior TPR; 5-308 and 5-345 as to a Public Agency Adoption after TPR; 5-3A-08 as to a Private Agency Adoption; and 5-3B-07 as to an Independent Adoption.

(xii) If the adoption is subject to the Interstate Compact on the Placement of Children, the appropriate ICPC approval forms;

Cross reference: Code, Family Law Article, § 5-601.

(xiii) A brief statement of the health of each petitioner signed by a physician or other health care provider if applicable; and

(xiv) If required, a notice of filing as prescribed by Code, Family Law Article:

(1) § 5-331 in a Public Agency Adoption without Prior TPR; or

(2) § 5-345 in a Public Agency Adoption after TPR.

(B) If the petition is filed pursuant to Code, Family Law Article, § 5-3B-27 by the spouse of the prospective adoptee's mother or an individual who consented to the prospective adoptee's conception by means of assisted reproduction, the following documents shall accompany the petition as exhibits:

(i) A certified copy of the petitioner's and prospective adoptee's mother's marriage certificate or evidence of the parties' shared express intent to become parents of the child by means of assisted reproduction, including a copy of any written agreement consenting to the conception of the prospective adoptee by means of assisted reproduction;

(ii) A certified copy of the prospective adoptee's birth certificate;

(iii) A statement explaining the circumstances of the prospective adoptee's conception in detail sufficient to identify any individual who may be entitled to notice or whose consent may be required under this subtitle;

(iv) The original of all consents to the adoption, any required affidavits of translators or attorneys, and, if available, a copy of any written statement by the consenting person indicating a desire to revoke the consent, whether or not that

statement constitutes a valid revocation; and

(v) An affidavit of counsel for a child, if the child is represented;

Cross reference: Code, Family Law Article, § 5-3B-27.

(C) The following documents shall be filed before a judgment of adoption is entered:

(i) Any post-placement report relating to the adoption, if applicable;

Cross reference: See Code, Family Law Article, §§ 5-337 as to a Public Agency Adoption without Prior TPR; 5-349 as to a Public Agency Adoption after TPR; 5-3A-31 and 5-3A-34 as to a Private Agency Adoption; and 5-3B-16 as to an Independent Adoption.

(ii) A brief statement of the health of the child by a physician or other health care provider;

(iii) If required by law, an accounting of all payments and disbursements of any money or item of value made by or on behalf of each petitioner in connection with the adoption;

Cross reference: Code, Family Law Article, § 5-3B-24 as to an Independent Adoption.

(iv) An affidavit of counsel for a parent, if required by Code, Family Law Article:

(1) §§ 5-307 and 5-339 in a Public Agency Adoption without Prior TPR;

(2) §§ 5-3A-07 and 5-3A-19 in a Private Agency Guardianship; or

(3) §§ 5-3B-06 and 5-3B-21 in an Independent Adoption.

(v) An affidavit of counsel for a child, if the child is represented;

Cross reference: See Code, Family Law Article, §§ 5-307 and 5-338 as to a Public Agency Adoption without Prior TPR; 5-307 and 5-350 as to a Public Agency Adoption after TPR; 5-3A-07 and 5-3A-35 as to a Private Agency Adoption; and 5-3B-06 and 5-3B-20 as to an Independent Adoption.

(vi) If the adoption is subject to the Interstate Compact on the Placement of Children, the required post-placement form;

(vii) A proposed judgment of adoption; and

(viii) A Maryland Department of Health Certificate of Adoption Form.

Cross reference: Code, Health-General Article, § 4-211 (f).

(c) Petition for Guardianship

A petition for guardianship shall state all facts required by subsection (b)(1) of this Rule, to the extent that the requirements are applicable and known to the petition. It shall be accompanied by all documents required to be filed as exhibits by subsection (b)(2) of this Rule, to the extent the documents are applicable. The petition shall also state the license number of the child placement agency.

Cross reference: See, Code, Family Law Article, § 5-3A-13 as to a Private Agency Guardianship.

(d) If Facts Unknown or Documents Unavailable

If a fact required by subsection (b)(1) or section (c) of this Rule is unknown to a petitioner or if a document required by subsection (b)(2) or section (c) is unavailable, the petitioner shall so state and give the reason in the petition or in a subsequent affidavit. If a document required to be submitted with the petition becomes available after the petition is filed, the petitioner shall ~~file it~~ ensure

that the document is filed as soon as it becomes available.

(e) Disclosure of Facts Known or Documents Available to Child Placement Agency

(1) Filing by Agency

If any fact required by subsection (b)(1) of this Rule to be stated is known to a child placement agency, and the agency declines to disclose it to a petitioner, the agency shall disclose the fact to the court in writing and under seal at the time the petition is filed. If any document required to be submitted with the petition under subsection (b)(2) of this Rule is available to the child placement agency, and the agency declines to provide the document to the petitioner, the agency shall provide the document to the court under seal.

(2) Agreement or Request

A submission under this subsection shall be accompanied either by (A) a written agreement by the agency and the parties to seal the submission or (B) a request to seal.

Committee note: Parties may agree at the outset of a proceeding that certain information and documents will be filed under seal.

(3) Docketing

The clerk shall make a docket entry of a filing under this section.

Source: This Rule is derived in part from former Rule D72, in part from former Rule D80, and is in part new.

Rule 9-103 was accompanied by the following Reporter's note:

Proposed amendments to Rule 9-103 update and expand provisions related to information and documents required to be submitted with a petition for guardianship or adoption that may be submitted separate from the petition itself or by someone other than the petitioner. See the Reporter's note to Rule 9-112 for more information.

Proposed amendments to section (d) clarify that the petitioner is responsible for ensuring that a document that becomes available after the petition is filed is submitted to the court. The Committee was informed that in proceedings involving a child placement agency, the agency may not be the petitioner but could be the source of documents submitted to the court. The amendment allows for situations where the petitioner is not submitting the document but is coordinating with the agency or any other source of a document that is necessary.

Current section (e) permits a child placement agency to disclose certain information directly to the court if the agency does not want to disclose a fact required by subsection (b)(1) to the petitioner. This provision is amended to require the disclosure to be made under seal. A new provision allows the same practice to occur for documents required by subsection (b)(2). The Committee was informed that despite their nonpublic nature, some Title 9, Chapter 100 proceedings involve documents that are not disclosed to all parties. Practices differ between counties depending on the case type and parties and agencies involved. Proposed new subsection (e)(2) permits these practices to continue by agreement where the parties decide that certain documents will be submitted under seal. If there is no agreement, the filer must request a seal. A Committee note permits the agreement between the parties to be made at the start of the proceeding. New subsection (e)(3) requires

> the clerk to docket the filing so that the parties are aware of what sealed documents are in the court file.

Judge Bryant informed the Committee that proposed amendments to Rule 9-103 are located in sections (d) and (e) of the Rule. She explained that in subsection (e)(2), it was suggested that "request" be changed to "motion." She explained that the proposed amendments in general permit a child placement agency to file certain documents under seal if the agency does not want to share the documents with the petitioner. Subsection (e)(2) permits the parties to agree to the seal or make a motion if there is not agreement. Mr. Laws pointed out a typo in section (c). The first sentence should end with "petitioner," not "petition."

The Chair called for comments on the proposed amendments. Dawn Musgrave, an attorney for Adoptions Together, addressed the Committee. She said that subsection (b)(1)(K) should be amended to refer to a person rather than a party, given the conversations today pertaining to a birth parent's role in the proceeding. The Reporter suggested using "individual" instead of "person." A motion to change "party" to "individual" in subsection (b)(1)(K) was made and seconded. By consensus, the Committee approved the amendment.

Judge Bryant called for a motion to approve Rule 9-103 as amended. A motion was made and seconded. By consensus, the Committee approved Rule 9-103 as amended.

Judge Bryant presented Rule 9-105, Show Cause Order; Disability of a Party; Other Notice, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-105 by making stylistic changes in subsection (c)(2), as follows:

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

. . .

(c) Service of Show Cause Order

(1) Method of Service

The show cause order shall be served on those persons and in the manner required by Code, Family Law Article:

(A) § 5-334 in a Public Agency Adoption without Prior TPR;

(B) § 5-3A-15 in a Private Agency Guardianship; or

(C) § 5-3B-15 in an Independent Adoption.

(2) Time for Service

Unless the court orders otherwise, a show cause order shall be ~~service~~ served

within 90 days after the date it is issued. If service is not made within the period, a new show cause order shall be issued at the request of the ~~petition~~ petitioner.

(3) Notice of Objection

A show cause order shall be served with two copies of a pre-captioned notice of objection form in substantially the form set forth in section (f) of this Rule. In a public agency adoption, a copy of the petition shall be attached.

. . .

Rule 9-105 was accompanied by the following Reporter's note:

Proposed amendments to Rule 9-105 correct typographical errors identified in the Rule.

Judge Bryant informed the Committee that the amendments to Rule 9-105 correct typos in section (c). By consensus, the Committee approved the Rule as presented.

Judge Bryant presented Rule 9-107, Objection, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 100 – ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-107 by adding to section (a) a provision pertaining to a request for

access to records; by adding to sections (c), (d), and (f) a reference to a child placement agency; by adding to section (c) a requirement that the clerk serve a request for access to case records; by adding new subsection (d)(1) containing the current provisions of section (d); by adding new subsection (d)(2) pertaining to a response to a request for access to records; by adding a Committee note following subsection (d)(2); by adding to section (f) a provision that the court may not enter an order under that section until after the time for filing a response under section (d) has expired; by clarifying in section (f) that an order under that section may restrict or place conditions on access to certain papers filed in the proceeding; and by making stylistic changes, as follows:

RULE 9-107. OBJECTION

(a) In General

Any person having a right to participate in a proceeding for adoption or guardianship may file a notice of objection to the adoption or guardianship. The notice may include a statement of the reasons for the objection and a request for the appointment of an attorney. The notice may be accompanied by a request for access to case records.

Cross reference: See Rule 9-105 for Form of Notice of Objection.

(b) Time for Filing Objection

(1) In General

Except as provided by subsections (b)(2) and (b)(3) of this Rule, any notice of objection to an adoption or guardianship shall be filed within 30 days after the show cause order is served.

(2) Service Outside of the State

If the show cause order is served outside the State but within the United States, the time for filing a notice of objection shall be within 60 days after service.

(3) Service Outside of the United States

If the show cause order is served outside the United States, the time for filing a notice of objection shall be within 90 days after service.

(4) Service by Publication in a Newspaper and on Website

If the court orders service by publication, the deadline for filing a notice of objection shall be not less than 30 days from the later of (A) the date that the notice is published in a newspaper of general circulation or (B) the last day that the notice is published on the Maryland Department of Human Services website.

(c) Service

The clerk shall serve a copy of any notice of objection and any request for access to case records on all parties and, if applicable, the child placement agency, in the manner provided by Rule 1-321.

(d) Response

(1) Standing and Timeliness

Within 10 days after being served with a notice of objection, any party or, if applicable, the child placement agency, may file a response challenging the standing of the person to file the notice or the timeliness of the filing of notice.

(2) Access to Records

Within 10 days after being served with a request for access to case records, any party or, if applicable, the child placement agency, may file a response

identifying papers in the proceeding as to which the party requests that the court deny access or place conditions on access in an order entered pursuant to section (f) of this Rule.

Committee note: Examples of papers as to which the court may deny access or impose conditions regarding access that is granted, such as redaction, include financial records, personal identifying information, and a home study conducted by a child placement agency.

(e) Hearing

If any party files a response, the court shall hold a hearing promptly on the issues raised in the response.

(f) Access to Records

After expiration of the time to file any response under section (d), if ~~If~~ the court determines that the person filing the notice of objection has standing to do so and that the notice is timely filed, it shall enter an order permitting the person to inspect ~~the~~ all or certain specified papers filed in the proceeding ~~subject to~~ and may include in the order reasonable conditions imposed ~~in the order~~ on access to papers as to which inspection is permitted. The court may amend an order entered pursuant to this section at any time on its own initiative or on request of a party.

Source: This Rule is derived in part from former Rule D76 and is in part new.

Rule 9-107 was accompanied by the following Reporter's note:

Proposed amendments to Rule 9-107 update and clarify the procedure for access to case records by an individual filing a notice of objection in a guardianship or

adoption proceeding. See the Reporter's note to Rule 9-112 for more information.

Section (a) is amended to add that a notice of objection may be accompanied by a request for access to case records.

Proposed amendments to sections (c), (d), and (f) add reference to a child placement agency, where applicable, to account for situations where the agency may not be a party to the proceeding but is a participant.

Section (c) is amended to provide that the clerk shall notify the parties and, if applicable, the child placement agency, of a request for access to court records in addition to any notice of objection.

Proposed new subsection (d)(2) adds a mechanism for the parties or agency to respond to a request for access to records by an objector. The Committee was informed that many attorneys for the parties submit a request for restricted access to the court when an objector requests access, but it is not expressly provided for in the Rules. A Committee note after subsection (d)(1) provides examples of information and documents that may be subject to restrictions on access.

Proposed amendments to section (f) provide that the court may not enter an order under that section until the time for filing a response under section (d) has expired. Additional amendments clarify that the order may permit access only to certain papers and may place conditions on access.

Judge Bryant said that the proposed amendments update and clarify certain procedures when an objection is filed in a

guardianship or adoption proceeding. By consensus, the Committee approved the Rule as presented.

Agenda Item 2. Consideration of proposed amendments to Rule 9-208 (Referral of Matters to Standing Magistrates) and Rule 2-541 (Magistrates).

Judge Bryant presented a handout version of Rule 9-208, Referral of Matters to Standing Magistrates, for consideration.

HANDOUT

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-208 by adding and deleting certain language in subsection (e)(1) to clarify the service of a magistrate's recommendations and proposed order; by adding a Committee note after subsection (e)(1); by deleting current section (h); by re-lettering current section (i) as section (h); by updating a cross reference after re-lettered section (h); by adding new section (i) using the language of current section (h), with a stylistic change; and by making stylistic changes, as follows:

Rule 9-208. REFERRAL OF MATTERS TO STANDING MAGISTRATES

(a) Referral

(1) As of Course

If a court has a full-time or part-time standing magistrate for domestic relations matters and a hearing has been requested or is required by law, the following matters arising under this Chapter shall be referred to the standing magistrate as of course, unless, in a specific case, the court directs that the matter be heard by a judge:

(A) uncontested divorce, annulment, or alimony;

(B) alimony pendente lite;

(C) child support pendente lite;

(D) support of dependents;

(E) preliminary or pendente lite possession or use of the family home or family-use personal property;

(F) subject to Rule 9-205, pendente lite custody of or visitation with children or modification of an existing order or judgment as to custody or visitation;

(G) subject to Rule 9-205 as to child access disputes, constructive civil contempt by reason of noncompliance with an order or judgment relating to custody of or visitation with a minor child, the payment of alimony or support, or the possession or use of the family home or family-use personal property, following service of a show cause order upon the person alleged to be in contempt;

(H) modification of an existing order or judgment as to the payment of alimony or support or as to the possession or use of the family home or family-use personal property;

(I) counsel fees and assessment of court costs in any matter referred to a magistrate under this Rule;

(J) stay of an earnings withholding order; and

(K) such other matters arising under this Chapter and set forth in the court's case management plan filed pursuant to Rule 16-302 (b).

Cross reference: See Rule 16-807.

Committee note: Examples of matters that a court may include in its case management plan for referral to a standing magistrate under subsection (a)(1)(K) of this Rule include scheduling conferences, settlement conferences, uncontested matters in addition to the uncontested matters listed in subsection (a)(1)(A) of this Rule, and the application of methods of alternative dispute resolution.

(2) By Order on Agreement of the Parties

By agreement of the parties, any other matter or issue arising under this Chapter may be referred to the magistrate by order of the court.

(b) Powers

Subject to the provisions of an order referring a matter or issue to a magistrate, the magistrate has the power to regulate all proceedings in the hearing, including the power to:

(1) direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;

(2) administer oaths to witnesses;

(3) rule on the admissibility of evidence;

(4) examine witnesses;

(5) convene, continue, and adjourn the hearing, as required;

(6) recommend contempt proceedings or other sanctions to the court; and

(7) recommend findings of fact and conclusions of law.

(c) Hearing

(1) Notice

A written notice of the time and place of the hearing shall be sent to all parties.

(2) Attendance of Witnesses

A party may procure by subpoena the attendance of witnesses and the production of documents or other tangible things at the hearing.

(3) Record

All proceedings before a magistrate shall be recorded either stenographically or electronically, unless the making of the record is waived in writing by all parties. A waiver of the making of a record is also a waiver of the right to file exceptions that would require review of the record for their determination.

(d) Contempt Proceedings; Referral for De Novo Hearing

If, at any time during a hearing on a party's alleged constructive civil contempt, the magistrate concludes that there are reasonable grounds to believe that the party is in contempt and that incarceration may be an appropriate sanction, the magistrate shall (1) set a de novo hearing before a judge of the circuit court, (2) cause the alleged contemnor to be served with a summons to that hearing, and (3) terminate the magistrate's hearing without making a recommendation. If the alleged contemnor is not represented by an attorney, the date of the hearing before the judge shall be at least 20 days after the date of the magistrate's hearing and, before the magistrate terminates the magistrate's hearing, the magistrate shall advise the alleged contemnor on the record of the

contents of the notice set forth in Rule 15-206 (c)(2).

(e) Findings and Recommendations

(1) Generally

Except as otherwise provided in section (d) of this Rule, the magistrate shall prepare written recommendations, which shall include a brief statement of the magistrate's findings and shall be accompanied by a proposed order. The magistrate shall ~~notify each party~~ provide notice of the recommendations and contents of the proposed order to each party, either (A) on the record at the conclusion of the hearing or ~~by written notice served pursuant to Rule 1-321~~ (B) within ten days after the conclusion of the hearing in a matter referred pursuant to subsection (a)(1) of this Rule or within 30 days after the conclusion of the hearing in a matter referred pursuant to subsection (a)(2) of this Rule, by filing the written recommendations and proposed order with the clerk, who promptly shall serve the recommendations and proposed order on each party as provided by Rule 20-205 in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county. If the parties were notified by the magistrate on the record, the magistrate shall file the written recommendations and proposed order with the clerk promptly after the hearing. The clerk shall make a docket entry notation of the date and method of notification. ~~In a matter referred pursuant to subsection (a)(1) of this Rule, the written notice shall be given within ten days after the conclusion of the hearing. In a matter referred pursuant to subsection (a)(2) of this Rule, the written notice shall be given within 30 days after the conclusion of the hearing. Promptly after notifying the parties, the magistrate shall file the recommendations and proposed order with the court.~~

Committee note: Rule 20-205 (c) requires that the clerk in a MDEC county serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

(2) Supplementary Report

The magistrate may issue a supplementary report and recommendations on the magistrate's own initiative before the court enters an order or judgment. A party may file exceptions to new matters contained in the supplementary report and recommendations in accordance with section (f) of this Rule.

(f) Exceptions

Within ten days after recommendations are placed on the record or served pursuant to ~~section (e)~~ subsection (e)(1)(B) of this Rule, a party may file exceptions with the clerk. Within that period or within ten days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(g) Requirements for Excepting Party

At the time the exceptions are filed, the excepting party shall do one of the following: (1) order a transcript of so much of the testimony as is necessary to rule on the exceptions, make an agreement for payment to ensure preparation of the transcript, and file a certificate of compliance stating that the transcript has been ordered and the agreement has been made; (2) file a certification that no transcript is necessary to rule on the exceptions; (3) file an agreed statement of facts in lieu of the transcript; or (4) file an affidavit of indigency and motion

requesting that the court accept an electronic recording of the proceedings as the transcript. Within ten days after the entry of an order denying a motion under subsection (g)(4) of this ~~section~~ Rule, the excepting party shall comply with subsection (g)(1) of this Rule. The transcript shall be filed within 30 days after compliance with subsection (g)(1) of this Rule or within such longer time, not exceeding 60 days after the exceptions are filed, as the magistrate may allow. For good cause shown, the court may shorten or extend the time for the filing of the transcript. The excepting party shall serve a copy of the transcript on the other party. The court may dismiss the exceptions of a party who has not complied with this section.

Cross reference: For the shortening or extension of time requirements, see Rule 1-204.

~~(h) Entry of Orders~~

~~(1) In General~~

~~Except as provided in subsections (2) and (3) of this section,~~

~~(A) the court shall not direct the entry of an order or judgment based upon the magistrate's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions; and~~

~~(B) if exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate.~~

~~(2) Immediate Orders~~

~~This subsection does not apply to the entry of orders in contempt proceedings. If a magistrate finds that extraordinary circumstances exist and recommends that an order be entered immediately, the court~~

~~shall review the file and any exhibits and the magistrate's findings and recommendations and shall afford the parties an opportunity for oral argument. The court may accept, reject, or modify the magistrate's recommendations and issue an immediate order. An order entered under this subsection remains subject to a later determination by the court on exceptions.~~

~~(3) Contempt Orders~~

~~(A) On Recommendation by the Magistrate~~

~~On the recommendation by the magistrate that an individual be found in contempt, the court may hold a hearing and direct the entry of an order at any time. The order may not include a sanction of incarceration.~~

~~(B) Following a De Novo Hearing~~

~~Upon a referral from the magistrate pursuant to section (d) of this Rule, the court shall hold a de novo hearing and enter any appropriate order.~~

~~(i)~~(h) Hearing on Exceptions

(1) Generally

The court may decide exceptions without a hearing, unless a request for a hearing is filed with the exceptions or by an opposing party within ten days after service of the exceptions. The exceptions shall be decided on the evidence presented to the magistrate unless: (A) the excepting party sets forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the magistrate, and (B) the court determines that the additional evidence should be considered. If additional evidence is to be considered, the court may remand the matter to the magistrate to hear and consider the additional evidence or conduct a de novo hearing.

(2) When Hearing to Be Held

A hearing on exceptions, if timely requested, shall be held within 60 days after the filing of the exceptions unless the parties otherwise agree in writing. If a transcript cannot be completed in time for the scheduled hearing and the parties cannot agree to an extension of time or to a statement of facts, the court may use the electronic recording in lieu of the transcript at the hearing or continue the hearing until the transcript is completed.

Cross reference: See~~,~~ Code, Family Law Article, § ~~10-131~~ 10-133~~,~~ prescribing certain time limits when a stay of an earnings withholding order is requested.

(i) Entry of Orders

(1) In General

Except as provided in subsections (i)(2) and (3) of this Rule:

(A) the court shall not direct the entry of an order or judgment based upon the magistrate's recommendations until the expiration of the time for filing exceptions and, if exceptions are timely filed, until the court rules on the exceptions; and

(B) if exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate.

(2) Immediate Orders

This subsection does not apply to the entry of orders in contempt proceedings. If a magistrate finds that extraordinary circumstances exist and recommends that an order be entered immediately, the court shall review the file, any exhibits, and the magistrate's findings and recommendations and shall afford the parties an opportunity for oral argument. After the opportunity for oral argument has been provided, the court may accept, reject, or modify the

magistrate's recommendations and issue an immediate order. An order entered under this subsection remains subject to a later determination by the court on exceptions.

(3) Contempt Orders

(A) On Recommendation by the Magistrate

On the recommendation by the magistrate that an individual be found in contempt, the court may hold a hearing and direct the entry of an order at any time. The order may not include a sanction of incarceration.

(B) Following a De Novo Hearing

Upon a referral from the magistrate pursuant to section (d) of this Rule, the court shall hold a de novo hearing and enter any appropriate order.

Source: This Rule is derived in part from Rule 2-541 and former Rule S74A and is in part new.

Rule 9-208 was accompanied by the following Reporter's note:

Rule 9-208 addresses the referral of matters to magistrates in family law actions. Several amendments are proposed to Rule 9-208 to address stylistic and substantive concerns with the Rule.

Section (e) addresses the findings and recommendations of a magistrate, including service of those recommendations. The Rules Committee received a request from the County Administrative Judges to amend Rule 9-208 (e)(1) and Rule 2-541 (e)(3) to reconcile the service provisions with Rule 20-205 (c) concerning the electronic service of magistrates' recommendations and reports. Rule 9-208 (e)(1) currently states, "The

magistrate shall notify each party of the recommendations, either on the record at the conclusion of the hearing or by written notice served pursuant to Rule 1-321." The current language contemplates that magistrates are responsible for service instead of clerks. However, in MDEC jurisdictions, Rule 20-205 (c) explicitly states, "The clerk is responsible for serving writs, notices, official communications, court orders, and other dispositions, in the manner set forth in Rule 1-321..." Proposed amendments to subsection (e)(1) clarify that the clerk, not the magistrate, is responsible for serving the recommendations and proposed order as provided by Rule 20-205 in MDEC counties or Rule 1-321 in Baltimore City. New language requires the clerk to note on the docket the date and method of notification of the recommendations.

Additional language in subsection (e)(1) clarifies when written recommendations and a proposed order shall be filed after a hearing and when service of the written documents must occur. A proposed Committee note following the subsection highlights that Rule 20-205 (c) requires service in the manner set forth in Rule 1-321 for certain individuals, even in a MDEC county.

Additional stylistic changes are proposed to Rule 9-208. Current section (h) concerning entry of orders is deleted, current section (i) is re-lettered as section (h), and the content of current section (h), with a stylistic change, is added as new section (i). A cross reference after new section (h) is updated also.

Judge Bryant explained that the proposed amendments generally deal with service of a magistrate's report and

recommendations. Assistant Reporter Drummond informed the Committee that a handout version of Rule 9-208 was circulated via email and paper copies were made available at the meeting. She explained that the handout version contains revisions to subsection (e)(1) based on comments received from court clerks.

Judge Bryant said that the proposed amendments to Rule 9-208 address concerns over how time could be interpreted in terms of action by the clerk. The changes are designed to address timeliness from the clerk's perspective if a magistrate does not promptly file a report and recommendations. A motion to approve the handout version of Rule 9-208 was made and seconded. By consensus, the Committee approved the handout version of the Rule.

Judge Bryant presented Rule 2-541, Magistrates, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-541 by adding taglines to subsections (b)(1) and (b)(2); by clarifying the tagline of section (e); by replacing the current tagline of subsection (e)(1); by adding and deleting certain language in subsection (e)(1) to clarify the service of a magistrate's recommendations and proposed order; by adding a Committee note after subsection (e)(1); by creating new

subsection (e)(2) with language in current subsection (e)(1), with some additions and deletions; by creating new subsection (e)(3) with language in current subsection (e)(1), with some additions and deletions; by renumbering current subsection (e)(2) as (e)(4) and adding language to the tagline; by renumbering current subsection (e)(3) as (e)(5), adding language to clarify the tagline, deleting the current language of the subsection, and adding language to clarify the service of a magistrate's report; by adding a Committee note at the end of section (e); by deleting current section (f); by re-lettering current sections (g) and (h) as (f) and (g), respectively; and by adding new section (h) using the language of current section (f), with stylistic changes, as follows:

Rule 2-541. MAGISTRATES

(a) Appointment--Compensation

The appointment and compensation of standing and special magistrates shall be governed by Rule 16-807.

(b) Referral of Cases

(1) Domestic Relations Matters

Referral of domestic relations matters to a magistrate shall be in accordance with Rule 9-208 and shall proceed only in accordance with that Rule.

(2) Other Matters

On motion of any party or on its own initiative, the court, by order, may refer to a magistrate any other matter or issue not triable of right before a jury.

(c) Powers

Subject to the provisions of any order of reference, a magistrate has the

power to regulate all proceedings in the hearing, including the powers to:

(1) Direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;

(2) Administer oaths to witnesses;

(3) Rule upon the admissibility of evidence;

(4) Examine witnesses;

(5) Convene, continue, and adjourn the hearing, as required;

(6) Recommend contempt proceedings or other sanctions to the court; and

(7) Recommend findings of fact and conclusions of law.

(d) Hearing

(1) Notice

The magistrate shall fix the time and place for the hearing and shall send written notice to all parties.

(2) Attendance of Witnesses

A party may procure by subpoena the attendance of witnesses and the production of documents or other tangible things at the hearing.

(3) Record

All proceedings before a magistrate shall be recorded either stenographically or by an electronic recording device, unless the making of a record is waived in writing by all parties. A waiver of the making of a record is also a waiver of the right to file any exceptions that would require review of the record for their determination.

(e) Recommendations and Report

(1) ~~When Filed~~ Notification of Recommendations

The magistrate shall notify each party of the ~~proposed recommendation~~ recommendations and contents of the proposed order, either ~~orally~~ (A) on the record at the conclusion of the hearing or (B) thereafter ~~by written notice served pursuant to Rule 1-321~~ in writing filed with the clerk, who shall serve the recommendations and proposed order on each party as provided by Rule 20-205 in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county. The clerk shall make a docket entry notation of the date and method of the notification.

Committee note: Rule 20-205 (c) requires that the clerk in a MDEC county serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

(2) Notice of Intent to File Exceptions

Within five days from ~~an oral notice or from service of a written~~ notice of the recommendations pursuant to subsection (e)(1) of this Rule, a party intending to file exceptions shall file a notice of intent to do so ~~and within that time shall deliver a copy to the magistrate~~ with the clerk. The clerk promptly shall notify the magistrate of the filing. The failure to file a timely notice of intent to file exceptions is a waiver of the right to file exceptions.

(3) Filing of Report

~~If~~ Only the recommendations in the form of a proposed order or judgment need be filed unless the court has directed the magistrate to file a report or if a notice of intent to file exceptions is filed~~,~~. If the court directed that a report be filed, the magistrate shall file a written report with the ~~recommendation~~ recommendations. ~~Otherwise, only the recommendation need be filed. The~~ If a notice of intent to filed

exception is filed, the report shall be filed within 30 days after the notice of intent to file exceptions is filed or within such other time as the court directs. ~~The failure to file and deliver a timely notice is a waiver of the right to file exceptions.~~

~~(2)~~ (4) Contents of Report

Unless otherwise ordered, the report shall include findings of fact and conclusions of law and ~~a recommendation~~ recommendations in the form of a proposed order or judgment, and shall be accompanied by the original exhibits. A transcript of the proceedings before the magistrate need not be prepared prior to the report unless the magistrate directs, but, if prepared, shall be filed with the report.

~~(3)~~ (5) Service of Report

~~The magistrate shall serve a copy of the recommendation and any written report on each party pursuant to Rule 1-321.~~ Unless service has been made in open court pursuant to subsection (e)(1) of this Rule, the clerk shall serve a copy of any written report, together with the recommendations in the form of a proposed order or judgment, on each party as provided by Rule 20-205 in MDEC counties or Rule 1-321 in Baltimore City until it becomes an MDEC county.

Committee note: Rule 20-205 (c) requires that the clerk in a MDEC county serve certain individuals, including persons entitled to service who are not registered users of MDEC, in the manner set forth in Rule 1-321.

~~(f) Entry of Order~~

~~(1) The court shall not direct the entry of an order or judgment based upon the magistrate's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions.~~

~~(2) If exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate.~~

~~(g)~~(f) Exceptions

(1) How Taken

Within ten days after the filing of the magistrate's written report, a party may file exceptions with the clerk. Within that period or within three days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) Transcript

Unless a transcript has already been filed, a party who has filed exceptions shall cause to be prepared and transmitted to the court a transcript of so much of the testimony as is necessary to rule on the exceptions. The transcript shall be ordered at the time the exceptions are filed, and the transcript shall be filed within 30 days thereafter or within such longer time, not exceeding 60 days after the exceptions are filed, as the magistrate may allow. The court may further extend the time for the filing of the transcript for good cause shown. The excepting party shall serve a copy of the transcript on the other party. Instead of a transcript, the parties may agree to a statement of facts or the court by order may accept an electronic recording of the proceedings as the transcript. The court may dismiss the exceptions of a party who has not complied with this section.

~~(h)~~(g) Hearing on Exceptions

The court may decide exceptions without a hearing, unless a hearing is requested with the exceptions or by an

opposing party within five days after service of the exceptions. The exceptions shall be decided on the evidence presented to the magistrate unless: (1) the excepting party sets forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the magistrate, and (2) the court determines that the additional evidence should be considered. If additional evidence is to be considered, the court may remand the matter to the magistrate to hear the additional evidence and to make appropriate findings or conclusions, or the court may hear and consider the additional evidence or conduct a de novo hearing.

(h) Entry of Order or Judgment

(1) When Notice of Intent to File Exceptions Filed

If a notice of intent to file exceptions was timely filed, the court shall not enter an order or judgment until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions.

(2) When No Timely Notice of Intent or Exceptions Filed

If no notice of intent to file exceptions was timely filed, or if no exceptions were timely filed after the filing of a notice of intent to file exceptions, the court may enter an appropriate order or judgment.

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is derived in part from former Rule 596 c.

Section (c) is derived in part from former Rule 596 d.

Subsections (6) and (7) are new but are consistent with former Rule 596 f 1 and g 2.

Section (d) is in part new and in part derived from former Rule 596 e.

Section (e) is in part new and in part derived from former Rule 596 f.

~~Section (f) is new.~~

Section ~~(g)~~ (f) is derived from former Rule 596 h 1, 2, 3, 4 and 7 except that subsection 3 (b) of section h of the former Rule is replaced.

Section ~~(h)~~ (g) is derived from former Rule 596 h 5 and 6.

Section (h) is new.

Rule 2-541 was accompanied by the following Reporter's note:

Rule 2-541 contains provisions regarding magistrates in circuit court. Proposed amendments to Rule 2-541 aim to improve the organization of the Rule and address certain substantive concerns.

Taglines are added to subsections (b)(1) and (b)(2) provide clarity on the content of each subsection. Language is also added to the current tagline of section (e) to clarify the topic of the section.

Proposed amendments to subsection (e)(1) clarify that the clerk, not the magistrate, is responsible for serving the recommendations and proposed order as provided by Rule 20-205 in MDEC counties or Rule 1-321 in Baltimore City. For further discussion, see the Reporter's note to Rule 9-208.

A proposed Committee note following subsection (e)(1) highlights that Rule 20-205 (c) requires service in the manner set

forth in Rule 1-321 for certain individuals, even in a MDEC county.

New subsections (e)(2) and (e)(3) are created with the current language of section (e), with certain statements re-organized or updated stylistically. Additional language is also added to delete the requirement that the party deliver a copy of a notice of intent to file exceptions to the magistrate. Instead, subsection (e)(2) now requires the notice to be filed with the clerk, who will promptly notify the magistrate.

Current subsection (e)(2) is renumbered as subsection (e)(4) and the tagline is updated for clarity. A stylistic change is proposed in the subsection. Current subsection (e)(3) is renumbered as subsection (e)(5). The tagline is updated and the language of the subsection is replaced to provide that the clerk, not the magistrate, shall complete service of the report. A proposed Committee note following the subsection again highlights the service provisions of Rule 20-205 (c).

Current section (f) concerning entry of an order is deleted and, with some additions and stylistic changes, is moved to new section (h). Current sections (g) and (h) are re-lettered as sections (f) and (g), respectively.

The Reporter stated that Ms. Lindsey sent a comment about Rule 2-541 pertaining to subsection (e)(2). Ms. Lindsey suggested that the second sentence of the subsection should also require the clerk to make a docket entry stating the date and method of the notice given to the magistrate. The Reporter commented that the suggestion is mostly a style matter but wanted to bring it to the Committee's attention.

The Chair asked whether the Committee wanted to consider imposing a time requirement in subsection (e)(1)(B) which states that the magistrate must notify each party of the recommendations and contents of the proposed order either at the hearing or "thereafter," which could be any time after the hearing concludes. Assistant Reporter Drummond pointed out that there is a time limit in Rule 9-208, which was in the current Rule, but Rule 2-541 did not have one. Judge Bryant suggested that Rule 9-208 instructs the magistrate on the time requirements. By consensus, the Committee approved Rule 2-541 as amended.

Agenda Item 3. Consideration of proposed amendments to Rule 3-202 (Capacity), Rule 3-731 (Peace Orders), Rule 2-202 (Capacity), and Rule 7-112 (Appeals Heard De Novo).

The Reporter informed the Committee that Judge Ada Clark-Edwards was present and ready to assist the Committee with Agenda Item 3. Judge Bryant presented Rule 3-731, Peace Orders, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 700 – SPECIAL PROCEEDINGS

AMEND Rule 3-731 by adding new section (c) concerning service of peace orders and by re-lettering former section (c) as new section (d), as follows:

Rule 3-731. PEACE ORDERS

(a) Generally

Proceedings for a peace order are governed by Code, Courts Article, Title 3, Subtitle 15.

(b) Form of Petition

A petition for relief under the statute shall be substantially in the form approved by the State Court Administrator and the Chief Judge of the Court of Appeals, posted on the Judiciary website, and available in the offices of the clerks of the District Court.

(c) Service

(1) Generally

Service of an interim, temporary, or final peace order shall be made in accordance with Code, Courts Article, § 3-1503.1, § 3-1504, or § 3-1505, as applicable.

(2) Service on Custodial Parent

In addition to the service required by subsection (c)(1) of this Rule, if a petition is filed by a non-custodial parent on behalf of a minor pursuant to Rule 3-202 (c), service of an interim, temporary, or final peace order shall be made in the same manner on the custodial parent. If a petition is filed by a guardian on behalf of a minor pursuant to Rule 3-202 (c), service of an interim, temporary, or final peace order shall be made on each parent in the same manner required by subsection (c)(1).

(d) Modification; Rescission; Extension

Upon the filing of a motion, a judge may modify, rescind, or extend a peace order. Modification, rescission, and extension of peace orders are governed by Code, Courts and Judicial Proceedings Article, § 3-1506(a). If a motion to extend a final peace order is filed before the original expiration date of the peace order, and the hearing is not held by that date, the peace order shall be automatically extended until the hearing is held. The motion shall be presented to a judge forthwith.

Committee note: Although Code, Courts and Judicial Proceedings Article, § 3-1506(a) automatically extends a peace order under certain circumstances, judges are encouraged to issue an order even when the automatic extension is applicable.

Source: This Rule is new.

Rule 3-731 was accompanied by the following Reporter's note:

Proposed amendments to Rule 3-731 address concerns about the ability of a non-custodial parent or a guardian to file a petition for a peace order on behalf of a minor. For further discussion, see the Reporter's note to Rule 3-202. Rule 3-731 is amended to ensure that a custodial parent is informed if a non-custodial parent files a peace order petition on behalf of the minor child and that each parent is informed if a guardian files a peace order petition on behalf of the minor.

Proposed amendments to Rule 3-731 add new section (c) addressing service of peace orders. Subsection (c)(1) concerns service generally and cites to the relevant statutory sections. Subsection (c)(2) provides that if a petition is filed by a non-custodial parent on behalf of a minor, a

> custodial parent should be served in the same manner as described in subsection (c)(1). Similarly, if a petition is filed by a guardian on behalf of a minor, each parent is required to be served in the same manner.

Judge Bryant invited Judge Clark-Edwards to address the Committee. Judge Clark-Edwards informed the Committee that the proposed amendments to Rules 3-202 and 3-731 were discussed and recommended by the Domestic Law Committee's Domestic Violence and Peace Order Subcommittee to address a concern raised by Chief Justice Fader regarding the ability of a non-custodial parent to file for a peace order on behalf of a child, which is currently authorized one year after the cause of action accrues if the custodial parent does not act. The proposed amendments permit the non-custodial parent to file for a peace order under certain circumstances and require notice to the custodial parent in the same manner as notice to the respondent.

Judge Clark-Edwards explained that Judge Stone raised a concern about the requirement of service on the custodial parent in new subsection (c)(2) of Rule 3-731, which could delay peace order proceedings and cause the temporary peace order to expire before the custodial parent is served. She said that Judge Stone suggested notice of the filing by mail. Judge Clark-Edwards said that meaningful notice to the custodial parent is important and she is concerned that mailing the notice is not

sufficient. She said that the typical situation contemplated is a non-custodial parent seeking a peace order on behalf of the child against a significant other of the custodial parent. In that instance, the custodial parent will likely learn of the peace order. However, she pointed out that the respondent may not be in the custodial parent's household where the parent is likely to be notified. Judge Clark-Edwards said that she believes that service is the only way to ensure that the custodial parent receives actual notice and can participate.

The Chair asked Judge Clark-Edwards what she suggests. She responded that she believes the recommended amendments before the Committee are sufficient. Judge Wilson said that she shares Judge Stone's concerns. She said that service is done by law enforcement and there is great difficulty just getting the respondent served, much less adding service on the custodial parent. Judge Price suggested adding something to the Rule that wouldn't prevent the court from acting on a temporary basis if the custodial parent is not promptly served. Judge Clark-Edwards responded that an interim peace order is entered by a commissioner, the hearing on a temporary order is held two days later, and the final order must be done within 30 days. Judge Brown said that the short time frame is the problem. She said that the Committee needs to determine if the regular service methods are appropriate given the possible delays.

Judge Morrissey commented that there are 16,000 peace orders statewide every year and this will add considerable delay to some portion of them. He said that personal service at each stage will add a lot of frustration and suggested only requiring personal service of the final order. Judge Anderson commented that notice to a custodial parent may be unnecessary. She said that if the non-custodial parent believes that there is danger to the child, that parent has the option of seeking an emergency custody order, which would be served on the custodial parent. Judge Clark-Edwards reminded the Committee that the respondent might not always be a significant other of the custodial parent but the custodial parent needs to know about the peace order if it affects the child's life at school or in the neighborhood.

The Chair called for a motion on Rule 3-731. Mr. Laws moved to delete "interim" and "temporary" from Rule 3-731 (c)(2) and only require service of the final peace order when the petition is filed by a non-custodial parent. Judge Price remarked that once the final peace order is entered, the case has concluded and there is no opportunity for the custodial parent who only receives the final order to participate. Mr. Laws amended his motion to strike "interim" and require service of the temporary and final orders. The Reporter asked Judge Clark-Edwards for her thoughts on the motion. Judge Clark-

Edwards said that she was fine with the proposal. The motion was seconded and approved by consensus.

Judge Bryant informed the Committee that the Family/Domestic Subcommittee lacked a quorum when discussing these Rules and it will require a motion to approve the proposed amendments. A motion to approve the Rule as amended was made and seconded. By consensus, the Committee approved Rule 3-731, as amended.

Judge Bryant presented Rule 3-202, Capacity, Rule 2-202, Capacity, and Rule 7-112 Appeals Heard De Novo, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 200 – PARTIES

AMEND Rule 3-202 by creating new subsection (b)(1) with the language of current section (b), with stylistic changes, and by adding new subsection (b)(2) concerning a peace order filed on behalf of a minor, as follows:

Rule 3-202. CAPACITY

(a) Generally

Applicable substantive law governs the capacity to sue or be sued of an

individual, a corporation, a person acting in a representative capacity, an association, or any other entity.

(b) Suits by Individuals Under Disability

(1) Generally

An individual under disability to sue may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the individual under disability. ~~When~~ Except as provided in subsection (b)(2) of this Rule, when a minor is in the sole custody of one of ~~it's~~ the minor's parents, that parent has the exclusive right to sue on behalf of the minor for a period of one year following the accrual of the cause of action~~,~~. ~~and if~~ If the custodial parent fails to institute suit within the ~~one year~~ one-year period, any person interested in the minor shall have the right to institute suit on behalf of the minor as next friend upon first mailing notice to the last known address of the custodial parent.

(2) Peace Order Filed on Behalf of a Minor

Notwithstanding the provisions in subsection (b)(1) of this Rule regarding the exclusive right to sue on behalf of a minor for a period of one year following the accrual of the cause of action, a parent, whether or not the custodial parent, or the minor's guardian may petition the court for a peace order on behalf of a minor child.

(c) Settlement of Suits on Behalf of Minors

(1) Generally

Subject to subsection (c)(2) of this Rule, a next friend who files an action for the benefit of a minor may settle the claim on behalf of the minor.

(2) Approval of Court

(A) If the next friend is the only living parent of the minor, the settlement need not be approved by a court.

(B) If the next friend is not the only living parent of the minor, the settlement must be approved (i) by each living parent of the minor, or (ii) after a reasonable attempt at notice to each living parent and an opportunity for a hearing, by a court.

(C) If there are no living parents of the minor, the settlement must be approved by a court.

(D) A motion for court approval shall be filed in the court where the action is pending.

Cross reference: For settlement of suits on behalf of minors, see Code, Courts Article, § 6-405. For settlement of a claim not in suit asserted by a parent or person in loco parentis under a liability insurance policy, see Code, Insurance Article, § 19-113.

(d) Suits Against Individuals Under Disability

In a suit against an individual under disability, the guardian or other like fiduciary, if any, shall defend the action. The court shall order any guardian or other fiduciary in its jurisdiction who fails to comply with this section to defend the individual as required. If there is no such guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is derived from former M.D.R. 205 c and d.

Section (c) is new.

Section (d) is derived from former M.D.R. 205 e.

Rule 3-202 was accompanied by the following Reporter's note:

> The Rules Committee was recently alerted to a potential issue concerning peace and protective orders for minor child victims. In certain circumstances, the alleged abuse may not qualify as "child abuse" and the child may not qualify as a "person eligible for relief" under the protective order statute. *See* Code, Family Law Article, § 4-501. In such situations, a peace order would need to be sought instead of a protective order. For example, a child may report to the non-custodial parent that a new significant other of the custodial parent threatened the child. However, the peace order statutes do not contain any express authority for another individual to file a petition on behalf of a minor. As a result, Rule 3-202 concerning capacity governs who may file a suit on behalf of a minor in the District Court. The current Rule requires a non-custodial parent to wait one year before filing if the custodial parent does not file.
>
> To address this issue, the Domestic Law Committee's Domestic Violence and Peace Order Subcommittee drafted proposed amendments to Rule 3-202. The Family/Domestic Subcommittee of the Rules Committee reviewed and updated the proposed amendments.
>
> Proposed amendments to Rule 3-202 create subsection (b)(1) with the language of current section (b) to address generally the filing of suits by an individual under disability. Several stylistic amendments are made to the subsection.
>
> Proposed new subsection (b)(2) addresses the filing of peace orders on behalf of a minor. The subsection notes

that subsection (b)(1) contains provisions regarding the exclusive right of a parent with sole custody to sue on behalf of a child for a period of one year following the accrual of a cause of action. However, the subsection further clarifies that, notwithstanding those provisions, a parent, whether or not the custodial parent, or a guardian may petition for a peace order on behalf of a minor.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 200 – PARTIES

AMEND Rule 2-202 by making stylistic changes in section (b), as follows:

Rule 2-202. CAPACITY

(a) Generally

Applicable substantive law governs the capacity to sue or be sued of an individual, a corporation, a person acting in a representative capacity, an association, or any other entity.

(b) Suits by Individuals Under Disability

An individual under disability to sue may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the individual under disability. When a minor is in the sole custody of one of ~~it's~~ the minor's parents, that parent has the exclusive right to sue on behalf of the minor for a period of one year following the accrual of the cause of

action~~,~~. ~~and if~~ If the custodial parent fails to institute suit within the ~~one year~~ one-year period, any person interested in the minor shall have the right to institute suit on behalf of the minor as next friend upon first mailing notice to the last known address of the custodial parent.

(c) Settlement of Suits on Behalf of Minors

(1) Generally

Subject to subsection (c)(2) of this Rule, a next friend who files an action for the benefit of a minor may settle the claim on behalf of the minor.

(2) Approval of Court

(A) If the next friend is the only living parent of the minor, the settlement need not be approved by a court.

(B) If the next friend is not the only living parent of the minor, the settlement must be approved (i) by each living parent of the minor, or (ii) after a reasonable attempt at notice to each living parent and an opportunity for a hearing, by a court.

(C) If there are no living parents of the minor, the settlement must be approved by a court.

(D) A motion for court approval shall be filed in the court where the action is pending.

Cross reference: For settlement of suits on behalf of minors, see Code, Courts Article, § 6-405. For settlement of a claim not in suit asserted by a parent or person in loco parentis under a liability insurance policy, see Code, Insurance Article, § 19-113.

(d) Suits Against Individuals Under Disability

In a suit against an individual under disability, the guardian or other like fiduciary, if any, shall defend the action.

The court shall order any guardian or other fiduciary in its jurisdiction who fails to comply with this section to defend the individual as required. If there is no such guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is derived from former Rule 205 c and d.

Section (c) is new.

Section (d) is derived from former Rule 205 e 1 and 2.

Rule 2-202 was accompanied by the following Reporter's note:

Stylistic amendments are proposed in section (b) of Rule 2-202.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

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

AMEND Rule 7-112 by adding language to subsection (d)(1), as follows:

Rule 7-112. APPEALS HEARD DE NOVO

...

(d) Procedure in Circuit Court

(1) The form and sufficiency of pleadings and the capacity requirements in an appeal to be heard de novo are governed by the rules applicable in the District Court. A charging document may be amended pursuant to Rule 4-204.

(2) If the action in the District Court was tried under Rule 3-701, there shall be no pretrial discovery under Chapter 400 of Title 2, the circuit court shall conduct the trial de novo in an informal manner, and Title 5 of these rules does not apply to the proceedings.

(3) Except as otherwise provided in this section, the appeal shall proceed in accordance with the rules governing cases instituted in the circuit court.

Cross reference: See Rule 2-327 concerning the waiver of a jury trial on appeal from certain judgments entered in the District Court in civil actions.

...

Rule 7-112 was accompanied by the following Reporter's note:

Proposed amendments to Rule 3-202 address concerns about the capacity requirements for filing a peace order petition on behalf of a minor. For more information, see the Reporter's note to Rule 3-202.

To ensure that a de novo appeal of a peace order petition originally filed by a non-custodial parent or guardian on behalf of a minor is not dismissed because the individual would not have the capacity to file suit in the circuit court on behalf of

the minor, a proposed amendment to Rule 7-112 (d)(1) clarifies that the capacity requirements of a de novo appeal are governed by the applicable Rules of the District Court.

Judge Bryant informed the Committee that proposed amendments to Rules 3-202 and 2-202 make stylistic changes. Rule 3-202 is also amended to address the capacity of a non-custodial parent to file a peace order on behalf of a minor child. Rule 7-112 is amended to ensure that a *de novo* appeal of a peace order petition filed by a non-custodial parent is not dismissed because of confusion over capacity. Mr. Wells moved to approve Rules 3-202, 2-202, and 7-112 as presented. The motion was seconded and passed by a majority vote.

Agenda Item 4. Consideration of proposed amendments to Rule 9-211 (Restoration of Former Name After Judgment of Absolute Divorce).

Judge Bryant presented Rule 9-211, Restoration of Former Name After Judgment of Absolute Divorce, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-211 by deleting and adding language to section (d) establishing that service is not required and by making a stylistic change to section (e), as follows:

Rule 9-211. RESTORATION OF FORMER NAME AFTER JUDGMENT OF ABSOLUTE DIVORCE

(a) Applicability

This Rule applies to a post-judgment motion for a change of name pursuant to Code, Family Law Article, § 7-105.

Committee note: A motion under Code, Family Law Article, § 7-105 must be filed within 18 months after the judgment of absolute divorce was entered. Instead of proceeding under § 7-105 and this Rule, a party may file a petition for change of name at any time under Rule 15-901.

(b) Motion

The motion shall be filed under oath in the action in which the judgment of absolute divorce was entered and shall state:

(1) the change of name desired and the fact that the party formerly used the name;

(2) that the party took a new name upon marriage and no longer wishes to use it; and

(3) that the party is not requesting the name change for any illegal, fraudulent, or immoral purpose.

(c) No Fee for Filing Motion

No filing fee shall be charged for the filing of the motion for change of name pursuant to Code, Family Law Article, § 7-105.

(d) Service

A motion filed ~~within 30 days after the entry of the judgment of absolute divorce shall be served in the manner provided in Rule 1-321. If more than 30 days have passed since the entry of the judgment, the motion shall be served in the manner described in Rule 2-121, and proof of service shall be filed in accordance with the method described in Rule 2-126~~ pursuant to this Rule is not required to be served on any party unless otherwise ordered by the court.

(e) Action by Court

Notwithstanding Rule 2-311 (f), the court may hold a hearing or may rule on the motion without a hearing even if ~~one~~ a hearing was requested. The court shall not deny the motion without a hearing, regardless of whether a hearing was requested.

Source: This Rule is new.

Rule 9-211 was accompanied by the following Reporter's note:

The Rules Committee was contacted by the Domestic Law Committee regarding Rule 9-211 (d). The Domestic Law Committee received a request to reconsider the service provisions of Rule 9-211 requiring litigants to serve their former spouse if they decide to restore their maiden name within 18 months after entry of a divorce decree as permitted by Code, Family Law Article, § 7-105. The statute provides that "the court shall change the name of the requesting party" if certain conditions are met, rendering the position of the spouse unnecessary. Eliminating the need to serve a motion filed pursuant to Rule 9-211 mirrors the lack of service required if the party instead pursues a name change under Rule 15-901.

> Proposed amendments to Rule 9-211 (d) delete the requirement that a motion filed under this Rule be served on the opposing party. The section currently states that a motion filed within 30 days after the entry of the judgment of absolute divorce shall be served in the manner provided in Rule 1-321 and a motion filed after that time period shall be personally served pursuant to Rule 2-121. Proposed amendments delete these service requirements and add language to section (d) clarifying that a motion filed pursuant to Rule 9-211 is not required to be served on any party unless otherwise ordered by the court.
>
> A stylistic change is proposed in section (e).

Judge Bryant explained that the proposed amendment is in response to an inquiry about why a divorced person is required to notify a former spouse of a change of name. The amendment removes the requirement of service in section (d). A motion to approve Rule 9-211 was made, seconded, and passed by majority vote.

Agenda Item 5. Consideration of proposed Rules changes recommended by the Family/Domestic Subcommittee related to 2023 Legislation.

Judge Bryant presented Rule 9-202, Pleading, for consideration.

TITLE 9 – FAMILY LAW ACTIONS

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

AMEND Rule 9-202, by adding the requirement that an e-mail address be provided in section (a), by deleting a reference to a judgment of limited divorce in section (c), by adding language to the tagline of section (d), by adding and deleting language from section (d) concerning judgments of limited divorce, and by adding a Committee note after section (d), as follows:

Rule 9-202. PLEADING

(a) Signing - Telephone Number - E-mail Address

A party shall personally sign each pleading filed by that party and, if the party is not represented by an attorney, shall state in the pleading a telephone number at which the party may be reached during ordinary business hours and an e-mail address, if any, through which the party may be contacted.

Cross reference: See Rule 1-202 (v).

(b) Child Custody

When child custody is an issue, each party shall provide in the party's first pleading the information required by Code, Family Law Article, § 9.5-209(a).

(c) Amendment to Complaint

~~Except when a judgment of limited divorce has been entered, a~~ A complaint may be amended pursuant to Rule 2-341 to include a ground for divorce that by reason of the passage of sufficient time has become a

ground for divorce after the filing of the complaint.

(d) Supplemental Complaint for Absolute Divorce After Judgment of Limited Divorce Entered Before October 1, 2023

A party who has obtained a judgment of limited divorce before October 1, 2023 may file a supplemental complaint for an absolute divorce in the same action in which the limited divorce was granted if ~~(1) the sole ground for the absolute divorce is that the basis of the limited divorce by reason of the lapse of sufficient time has become a ground for an absolute divorce and (2)~~ the supplemental complaint is filed not later than two years after the entry of the judgment of limited divorce. Service of the supplemental complaint shall be in accordance with Rule 1-321 if the defendant has an attorney of record in the action at the time the supplemental complaint is filed. Otherwise, service of the supplemental complaint shall be in accordance with Rule 2-121 or in accordance with Rule 2-122.

Cross reference: For automatic termination of an attorney's appearance, see Rule 2-132.

Committee note: Effective October 1, 2023, the authority of a court to enter a judgment of limited divorce was repealed by Chapter 646, 2023 Laws of Maryland.

(e) Financial Statement--Spousal Support

If spousal support is claimed by a party and either party alleges that no agreement regarding support exists, each party shall file a current financial statement in substantially the form set forth in Rule 9-203 (a). The statement shall be filed with the party's pleading making or responding to the claim. If the claim or the denial of an agreement is made in an answer, the other party shall file a financial statement within 15 days after service of the answer.

(f) Financial Statement--Child Support

If establishment or modification of child support is claimed by a party, each party shall file a current financial statement under affidavit. The statement shall be filed with the party's pleading making or responding to the claim. If the establishment or modification of child support in accordance with the guidelines set forth in Code, Family Law Article, §§ 12-201 - 12-204 is the only support issue in the action and no party claims an amount of support outside of the guidelines, the required financial statement shall be in substantially the form set forth in Rule 9-203 (b). Otherwise, the statement shall be in substantially the form set forth in Rule 9-203 (a).

Source: This Rule is derived in part from former Rule S72 a, c, and f and is in part new.

Rule 9-202 was accompanied by the following Reporter's note:

Proposed new language in section (a) requires that an unrepresented party include in the pleading an e-mail address through which the party may be contacted. The court often requires an e-mail address to set up remote electronic proceedings.

Chapters 645/646, 2023 Laws of Maryland (HB 14/SB 36), effective October 1, 2023, repealed the authority of a court to enter a judgment of limited divorce and otherwise altered certain grounds for divorce. As a result of these amendments, changes are proposed to sections (c) and (d) of Rule 9-202.

A reference to a judgment of limited divorce is deleted from section (c). Proposed amendments to section (d) add

language to the tagline and to the section clarifying that the section applies to a judgment of limited divorce entered before October 1, 2023 because no judgment of limited divorce can be entered after that date. Due to the alteration of grounds for absolute divorce in the statute, Rule 9-202 (d) is further amended to remove the requirement that the sole ground in a supplemental complaint for absolute divorce is that the basis of the limited divorce became a ground for absolute divorce by lapse of sufficient time. A new Committee note explains that the court's authority to enter a judgment of limited divorce was repealed by Chapter 646, 2023 Laws of Maryland effective October 1, 2023.

Judge Bryant informed the Committee that a requirement is added to Rule 9-202 to provide an e-mail address to the court for the purpose of scheduling remote proceedings. Additional amendments to the Rule address the change in the law concerning limited divorces, which cannot be obtained beginning October 1, 2023. A motion to approve Rule 9-202 was made, seconded, and approved by a majority vote.

Judge Bryant presented Rule 2-507, Dismissal for Lack of Jurisdiction or Prosecution, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-507 by deleting a reference to limited divorce in section (c), as follows:

Rule 2-507. DISMISSAL FOR LACK OF JURISDICTION OR PROSECUTION

...

(c) For Lack of Prosecution

An action is subject to dismissal for lack of prosecution at the expiration of one year from the last docket entry, other than an entry made under this Rule, Rule 2-131, or Rule 2-132, except that an action for ~~limited divorce or for~~ permanent alimony is subject to dismissal under this section only after two years from the last such docket entry.

...

Rule 2-507 was accompanied by the following Reporter's note:

Chapters 645/646, 2023 Laws of Maryland (HB 14/SB 36), effective October 1, 2023, repealed the authority of a court to enter a judgment of limited divorce and otherwise altered certain grounds for divorce.

As a result of these statutory changes, a reference to limited divorce is proposed to be deleted from Rule 2-507 (c) because complaints for limited divorce should no longer be filed after October 1, 2023.

Judge Bryant informed the Committee that the proposed amendments to Rule 2-507 also deal with the legislation

eliminating limited divorce. A motion to approve the Rule was made, seconded, and approved by a majority vote.

Judge Bryant presented Rule 16-307, Family Division and Support Services, Rule 16-302, Assignment of Actions for Trial; Case Management Plan, and new Rule 9-204.3, Prevention of Child Abduction, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

AMEND Rule 16-307 by adding the Maryland Child Abduction Prevention Act to subsection (a)(2)(B), as follows:

Rule 16-307. FAMILY DIVISION AND SUPPORT SERVICES

(a) Family Division

(1) Established

In each county having more than seven resident judges of the circuit court authorized by law, there shall be a family division in the circuit court.

(2) Actions Assigned

In a court that has a family division, the following categories of actions and matters shall be assigned to that division:

(A) dissolution of marriage, including divorce, annulment, and property distribution;

(B) child custody and visitation, including proceedings governed by the Maryland Uniform Child Custody Jurisdiction and Enforcement Act, Code, Family Law Article, Title 9.5, the Maryland Child Abduction Prevention Act, Code, Family Law Article, Title 9.7, and the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A;

(C) alimony, spousal support, and child support, including proceedings under the Maryland Uniform Interstate Family Support Act, Code, Family Law Article, Title 10, Subtitle 3;

(D) establishment and termination of the parent-child relationship, including paternity, adoption, guardianship that terminates parental rights, and emancipation;

(E) criminal nonsupport and desertion, including proceedings under Code, Family Law Article, Title 10, Subtitle 2 and Code, Family Law Article, Title 13;

(F) name changes;

(G) guardianship of minors and disabled individuals under Code, Estates and Trusts Article, Title 13;

(H) involuntary admission and emergency evaluation under Code, Health General Article, Title 10, Subtitle 6;

(I) family legal-medical issues, including decisions on the withholding or withdrawal of life-sustaining medical procedures;

(J) actions involving domestic violence under Code, Family Law Article, Title 4, Subtitle 5;

(K) juvenile causes under Code, Courts Article, Title 3, Subtitles 8 and 8A;

(L) matters assigned to the family division by the County Administrative Judge

that are related to actions in the family division and appropriate for assignment to the family division; and

(M) civil or criminal contempt arising out of any of the categories of actions and matters set forth in subsection (a)(2)(A) through (a)(2)(L) of this Rule.

Committee note: The jurisdiction of the circuit courts, the District Court, and the Orphans' Court is not affected by section (a) of this Rule. For example, the District Court has concurrent jurisdiction with the circuit court over proceedings under Code, Family Law Article, Title 4, Subtitle 5, and the Orphans' Courts and circuit courts have concurrent jurisdiction over guardianships of the person of a minor and over protective proceedings for minors under Code, Estates and Trusts Article, § 13-105.

...

Rule 16-307 was accompanied by the following Reporter's note:

Chapters 760/761, 2023 Laws of Maryland (HB 267/SB 383), also known as the Maryland Child Abduction Prevention Act, creates new Title 7.5 of the Family Law Article. The new Code sections authorize a court to order abduction prevention measures when there is a credible risk of abduction of a child.

Rule 16-307 provides information about the family division and support services of a court. Subsection (a)(2) sets forth the categories of actions that shall be assigned to the family division of a court. Proposed amendments to Rule 16-307 (a)(2)(B) add actions under the Maryland Child Abduction Prevention Act to the list of case types that should be assigned to a family division.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 300 – CIRCUIT COURTS – ADMINISTRATION AND CASE MANAGEMENT

AMEND Rule 16-302 by adding language to subsection (b)(2)(A) and the subsequent Committee note, as follows:

Rule 16-302. ASSIGNMENT OF ACTIONS FOR TRIAL; CASE MANAGEMENT PLAN

...

(b) Case Management Plan; Information Report

(1) Development and Implementation

(A) The County Administrative Judge shall develop and, upon approval by the Chief Justice of the Supreme Court, implement a case management plan for the prompt and efficient scheduling and disposition of actions in the circuit court. The plan shall include a system of differentiated case management in which actions are classified according to complexity and priority and are assigned to a scheduling category based on that classification and, to the extent practicable, follow any template established by the Chief Justice of the Supreme Court.

(B) The County Administrative Judge shall send a copy of the plan and all amendments to it to the State Court Administrator. The State Court Administrator shall review the plan or amendments and transmit the plan or amendments, together with any recommended

changes, to the Chief Justice of the Supreme Court.

(C) The County Administrative Judge shall monitor the operation of the plan, develop any necessary amendments to it, and, upon approval by the Chief Justice of the Supreme Court, implement the amended plan.

(2) Family Law Actions

(A) The plan shall include appropriate procedures for the granting of emergency relief and expedited case processing in family law actions when there is a credible risk of imminent abduction of a child or a credible prospect of imminent and substantial physical or emotional harm to a child or susceptible or older adult.

Committee note: The intent of this subsection is that the case management plan contain procedures for assuring that the court can and will deal immediately with a credible risk of imminent abduction of a child or a credible prospect of imminent and substantial physical or emotional harm to a child or susceptible or older adult, at least to stabilize the situation pending further expedited proceedings. Circumstances requiring expedited processing include threats to imminently terminate services necessary to the physical or mental health or sustenance of the child or susceptible or older adult or the imminent removal of the child or susceptible or older adult from the jurisdiction of the court.

Cross reference: See Code, Estates and Trust Article, § 13-601 for definitions of the terms "older adult" and "susceptible adult."

(B) In courts that have a family division, the plan shall provide for the implementation of Rule 16-307.

Cross reference: See Rule 9-204 for provisions that may be included in the case management plan concerning an educational

seminar for parties in actions in which child support, custody, or visitation are involved.

...

Rule 16-302 was accompanied by the following Reporter's note:

Chapters 760/761, 2023 Laws of Maryland (HB 267/SB 383), also known as the Maryland Child Abduction Prevention Act, creates new Title 7.5 of the Family Law Article. As part of the Act, a court may issue a warrant to take physical custody of a child to prevent imminent abduction.

Rule 16-302 (b) addresses the development of case management plans. Regarding family law actions, case management plans must include procedures for emergency relief and expedited case processing under certain circumstances. Proposed amendments to Rule 16-307 (b)(2)(A) acknowledge the new emergency relief contemplated by the Maryland Child Abduction Prevention Act by adding that the case management plan shall include appropriate procedures for granting emergency relief and expedited case processing when there is a credible risk of imminent abduction of a child. The Committee note following the subsection is amended accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

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

ADD new Rule 9-204.3, as follows:

Rule 9-204.3. PREVENTION OF CHILD ABDUCTION

(a) Generally

A petition for an abduction prevention order, including a request for an ex parte warrant for physical custody of the child, is governed by the Maryland Child Abduction Prevention Act, Code, Family Law Article, Title 9.7.

Cross reference: For the factors considered in evaluating whether there is a credible risk of abduction, see Code, Family Law Article, § 9.7-107. See also Code, Family Law Article, § 9.5-204 regarding temporary emergency jurisdiction.

(b) Abduction Prevention Order

If, after notice and opportunity for a hearing on a petition pursuant to this Rule or on the court's own motion, the court finds a credible risk of abduction of the child, the court shall enter an abduction prevention order in compliance with Code, Family Law Article, § 9.7-108.

Source: This Rule is new.

Rule 9-204.3 was accompanied by the following Reporter's note:

Chapters 760/761, 2023 Laws of Maryland (HB 267/SB 383), also known as the Maryland Child Abduction Prevention Act, creates new Title 7.5 of the Family Law Article. The new Code sections authorize a court to order abduction prevention measures when there is a credible risk of abduction of a child. Pursuant to new Code, Family Law Article, § 9.7-104, "A party to a child custody

> determination or another individual or entity having a right under the law of a state to seek a child custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this title." The statute further provides, "A prosecutor or public authority under § 9.5-315 of this Article may seek a warrant to take physical custody of a child under § 9.7-109 of this title or take other appropriate prevention measures."
>
> Proposed new Rule 9-204.3 has been drafted to address this new form of petition for relief in regard to child custody. Section (a) provides that a petition for an abduction prevention order is governed by the Maryland Child Abduction Prevention Act, Code, Family Law Article, Title 9.7. A cross reference after the section points to the statutory factors for evaluating whether a credible risk of abduction exists and to the statutory provisions regarding temporary emergency jurisdiction. Section (b) addresses the requirements for an abduction prevention order.

Judge Bryant said that the proposed amendments address the new Maryland Child Abduction Prevention Act. Rule 16-307 adds a reference to the statute. Rule 16-302 adds the standard of "a credible risk of imminent abduction of a child" to the Rule. New Rule 9-204.3 draws attention to the Act and largely refers the court to the statute, which governs the petition. She explained that the Subcommittee discussed creating a comprehensive Rule for the petition and procedure but opted to direct the reader to the statute for guidance. A motion to

approve the Rules was made, seconded, and approved by a majority vote.

Agenda Item 6. Consideration of proposed amendments to Rule 10-106 (Attorney for Minor or Disabled Person).

Mr. Laws presented Rule 10-106, Attorney for Minor or Disabled Person, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 – GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-106 by adding a reference to Code, Estates and Trusts Article, § 13-211 to subsection (b)(2) and to the cross reference following subsection (c)(1); by adding language to subsection (c)(2) citing a fee agreement pursuant to Code, Estates and Trusts Article, § 13-211(b)(3)(ii); and by making stylistic changes, as follows:

Rule 10-106. ATTORNEY FOR MINOR OR DISABLED PERSON

(a) Authority and Duty to Appoint

(1) Minor Persons

Upon the filing of a petition for guardianship of the person, the property, or both, of a minor who is not represented by an attorney, the court may appoint an attorney for the minor.

Committee note: Appointment of an attorney for a minor is discretionary because, in many cases involving minors, the guardian is a parent or other close family member and the circumstances do not indicate a need for an attorney for the minor. The court should scrutinize the petition, however, for circumstances that may warrant the appointment of an attorney for the minor.

(2) Alleged Disabled Persons

Upon the filing of a petition for guardianship of the person, the property, or both, of an alleged disabled person who is not represented by an attorney of the alleged disabled person's own choice, the court shall promptly appoint an attorney for the alleged disabled person.

Cross reference: See Code, Estates and Trusts Article, §§ 13-211(b) and 13-705(d). See also Rule 19-301.14 of the Maryland Attorneys' Rules of Professional Conduct with respect to the attorney's role and obligations.

Committee note: This Rule applies to the appointment and payment of an attorney for a minor or alleged disabled person in proceedings to establish a guardianship for the minor or alleged disabled person, or their property, or both. Attorneys may be appointed in other capacities in guardianship proceedings - as an investigator pursuant to Rule 10-106.2 or as a guardian pursuant to Rule 10-108.

(b) Eligibility for Appointment

(1) To be eligible for appointment, an attorney shall:

(A) be a member in good standing of the Maryland Bar;

(B) provide evidence satisfactory to the court of financial responsibility; and

Committee note: Methods of complying with subsection (b)(1)(B) include maintaining

appropriate insurance, providing an attestation of financial circumstances, or filing a bond.

(C) unless waived by the court for good cause, have been trained in aspects of guardianship law and practice in conformance with the Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons In Guardianship Proceedings attached as an Appendix to the Rules in this Title.

(2) Exercise of Discretion

Except in an action in which the selection of a court-appointed attorney is governed by Code, Estates and Trusts Article, § 13-211(b)(3) or § 13-705(d)(2), the court should fairly distribute appointments among eligible attorneys, taking into account the attorney's relevant experience and availability and the complexity of the case.

(c) Fees

(1) Generally

The court shall order payment of reasonable and necessary fees of an appointed attorney. Fees may be paid from the estate of the alleged disabled person or as the court otherwise directs. To the extent the estate is insufficient, the fee of an attorney for an alleged disabled person shall be paid by the State.

Cross reference: See Code, Estates and Trusts Article, §§ 13-211(b)(2) and 13-705 (d)(1), requiring the State to pay a reasonable attorneys' fee where the alleged disabled person is indigent. There is no similar statutory requirement with respect to attorneys appointed for a minor.

(2) Determination of Fee

Unless the attorney has agreed to serve on a pro bono basis, ~~or~~ is serving under a contract with the Department of Human Services, or has agreed to accept the

same fee as an attorney under contract pursuant to Code, Estates and Trusts Article, § 13-211(b)(3)(ii), the court, in determining the reasonableness of the attorney's fee, shall apply the factors set forth in Rule 2-703 (f)(3) and in the Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses, contained in an Appendix to the Rules in Title 2, Chapter 700.

(3) Disabled Person - Security for Payment of Fee

(A) Except as provided in subsection (c)(3)(B) of this Rule, in a proceeding for guardianship of the person, the property, or both, of an alleged disabled person, upon the appointment of an attorney for an alleged disabled person, the court may require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account within 30 days after the order of appointment, subject to further order of the court.

(B) The court shall not exercise its authority under subsection (c)(3)(A) of this Rule if payment for the services of the appointed attorney is the responsibility of (i) a government agency paying benefits to the alleged disabled person, (ii) a local Department of Social Services, or (iii) an agency eligible to serve as the guardian of the alleged disabled person under Code, Estates and Trusts Article, § 13-707.

Cross reference: See Code, Estates and Trusts Article, § 13-705 (d)(1).

(d) Termination or Continuation of Appointment

(1) Generally

If no appeal is taken from a judgment dismissing the petition or appointing a guardian other than a public guardian, the attorney's appointment shall terminate automatically upon expiration of

the time for filing an appeal unless the court orders otherwise.

(2) Other Reason for Termination

A court-appointed attorney who perceives a present or impending conflict of interest or other inability to continue serving as attorney for the minor or disabled person shall immediately notify the court in writing and request that the court take appropriate action with respect to the appointment.

(3) Representation if Public Guardian Appointed

If a public guardian has been appointed for a disabled person, the court shall either continue the attorney's appointment or appoint another attorney to represent the disabled person before the Adult Public Guardianship Review Board.

Cross reference: Code, Family Law Article, § 14-404(c)(2).

(4) Appointment After Establishment of Guardianship

Nothing in this section precludes a court from appointing, reappointing, or continuing the appointment of an attorney for a minor or disabled person after a guardianship has been established if the court finds that such appointment or continuation is in the best interest of the minor or disabled person. An order of appointment after a guardianship has been established shall state the scope of the representation and may include specific duties the attorney is directed to perform.

(e) Reports and Statements

The court may not require an attorney for a minor or an alleged disabled person to file an investigative report, but may require the attorney to file a pre-hearing statement pursuant to Rule 10-106.1.

Committee note: An attorney for a minor or alleged disabled person, whether employed privately or appointed by the court, is an advocate for ~~his or her~~ the attorney's client, not an independent investigator, and needs to be mindful of the attorney-client privilege and an attorney's responsibilities under Rule 19-301.14 (1.14). It is a conflict of interest for the attorney to be both an advocate and an investigator appointed pursuant to Rule 10-106.2. See section 1.2 of the Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship Proceedings.

Cross reference: See Code, Courts Article, § 9-108.

Source: This Rule is derived in part from former Rules R76 and V71 and is in part new.

Rule 10-106 was accompanied by the following Reporter's note:

Pursuant to Chapters 628/629, 2022 Laws of Maryland (HB 990/SB 694), effective October 1, 2023, Code, Estates and Trusts Article, § 13-211 has been amended to provide that the State is required to pay a reasonable attorney's fee to an attorney representing an indigent alleged disabled person in a case involving guardianship of the property. In cases where the State must pay the attorney's fees, the court is required to appoint an attorney who contracted with the Department of Human Services or who agrees to accept the same fee as an attorney under contract with the Department. Before the addition of this language to Code, Estates and Trusts Article, § 13-211 concerning petitions for guardianship of the property, similar provisions regarding payment of attorney's fees by the State were included in § 13-705

concerning petitions for guardianship of the person only.

The Rules already provide for the appointment of an attorney for the disabled person in cases involving guardianship of the person, property, or both. Rule 10-106 (c)(1) provides that attorney's fees for representation of the alleged disabled person are to be paid by the State to the extent the guardianship estate is insufficient. Proposed amendments to Rule 10-106 update references in the Rule to account for amended Code, Estates and Trusts Article, § 13-211 that takes effect on October 1, 2023.

Rule 10-106 (b)(2) requires a court to fairly distribute appointment among eligible attorneys "[e]xcept in an action in which the selection of a court-appointed attorney is governed by Code, Estates and Trusts Article, § 13-705(d)(2)." § 13-705(d)(2) concerns guardianships of the person. Proposed amendments add § 13-211(b)(3), containing the parallel provisions for guardianship of the property cases, to Rule 10-106 (b)(2). Similarly, a reference to § 13-211(b)(2) is added to the cross reference after (c)(1) because new statutory language requires the State to pay a reasonable attorney's fee where the alleged disabled person is indigent in cases involving guardianship of the property.

Rule 10-106 (c)(2) states considerations for the court in determining the reasonableness of attorney's fees, "[u]nless the attorney has agreed to serve on a pro bono basis or is serving under a contract with the Department of Human Services." Code, Estates and Trusts Article, § 13-211 creates an additional situation where the court does not need to determine the reasonableness of the attorney's fees. § 13-211(b)(3)(ii) permits a previously appointed attorney to maintain the attorney's appearance in a case when an

alleged disabled person is indigent if the attorney agrees to accept the same fee as an attorney under contract with the Department of Human Services and if the court does not find a conflict of interest. Accordingly, a reference to § 13-211(b)(3)(ii) is added to Rule 10-106 (c)(2). Conforming stylistic changes are made to the subsection.

Stylistic changes are proposed in the Committee note following section (e).

Mr. Laws said that the proposed amendments to Rule 10-106 were approved by the Probate/Fiduciary Subcommittee. The amendments implement a new statute that provides that counsel fees will be paid by the state for indigent alleged disabled persons when guardianship of the property is concerned. Generally, those attorneys will be contracted by the Department of Human Services, but there is a provision to allow an attorney to continue existing representation if the attorney will accept the same fee as a department-funded attorney. References to the Code are added to the Rule. A new provision is added to subsection (c)(2) pertaining to an attorney accepting the department-approved fee. There being no motion to amend or reject the proposed amendments to Rule 10-106, they were approved as presented.

Agenda Item 7. Consideration of proposed amendments to Rule 19-305.5 (5.5) (Unauthorized Practice of Law; Multi-Jurisdictional Practice of Law).

Mr. Marcus presented Rule 19-305.5 (5.5), Unauthorized Practice of Law; Multi-Jurisdictional Practice of Law, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 300 – MARYLAND ATTORENYS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 19-305.5 by adding language to the stem of section (d), by adding new subsection (d)(3), by updating Comment [15] to conform to the new subsection, by expanding Comment [18] to address the new subsection, and by making stylistic changes, as follows:

Rule 19-305.5. UNAUTHORIZED PRACTICE OF LAW; MULTI-JURISDICTIONAL PRACTICE OF LAW (5.5)

(a) An attorney shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) An attorney who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the attorney is admitted to practice law in this jurisdiction.

(c) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with an attorney who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the attorney, or a person the attorney is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within subsections (c)(2) or (c)(3) of this Rule and arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice.

(d) An attorney admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction ~~that~~ and may establish an office or other systematic or continuous presence in this jurisdiction to provide those services if the legal services:

(1) are provided to the attorney's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; ~~or~~

(2) are services that the attorney is authorized to provide by federal law or other law of this jurisdiction; or

(3) exclusively involve the law of another jurisdiction in which the attorney is licensed to practice law, provided the attorney advises the attorney's client that the attorney is not licensed to practice Maryland law.

...

COMMENT

...

[15] Section (d) of this Rule identifies ~~two~~ three circumstances in which an attorney who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis.

[16] Subsection (d)(1) of this Rule applies to an attorney who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This subsection does not authorize the provision of personal legal services to the employer's officers or employees. The subsection applies to in-house corporate attorneys, government attorneys and others who are employed to render legal services to the employer. The attorney's ability to represent the employer outside the jurisdiction in which the attorney is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the attorney's qualifications and the quality of the attorney's work.

[17] If an employed attorney establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the attorney is governed by Md. Code, Business Occupations and Professions Article, § 1-206(d). In general, the employed attorney is subject to disciplinary proceedings under the Maryland Rules and must comply with Md. Code, Business Occupations and Professions Article, § 10-215 (and Rule 19-214) for authorization to appear before a tribunal. See also Rule 19-215 (as to legal services attorneys).

[18] Subsection (d)(2) of this Rule recognizes that an attorney may provide legal services in a jurisdiction in which the attorney is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Subsection (d)(3) recognizes that an attorney who is not licensed in Maryland may provide legal services in Maryland if the services exclusively involve the law of another jurisdiction in which the attorney is licensed to practice. The attorney must advise the client that the attorney is not licensed to practice Maryland law. *See Attorney Grievance Commission v. Jackson*, 477 Md. 174 (2022).

[19] An attorney who practices law in this jurisdiction pursuant to section (c) or (d) of this Rule or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 19-308.5 (a) (8.5) and Md. Rules 19-701 and 19-711.

[20] In some circumstances, an attorney who practices law in this jurisdiction pursuant to section (c) or (d) of this Rule may have to inform the client that the attorney is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires

knowledge of the law of this jurisdiction. See Rule 19-301.4 (b) (1.4).

[21] Sections (c) and (d) of this Rule do not authorize communications advertising legal services to prospective clients in this jurisdiction by attorneys who are admitted to practice in other jurisdictions. Rules 19-307.1 (7.1) to 19-307.5 (7.5) govern whether and how attorneys may communicate the availability of their services to prospective clients in this jurisdiction.

[22] Section (e) is not intended to permit a foreign attorney to be admitted pro hac vice in any proceeding, but it does not preclude the foreign attorney (1) from being present with a Maryland attorney at a judicial, administrative, or ADR proceeding to provide consultative services to the Maryland attorney during the proceeding, or (2) subject to Rule 5-702, from testifying as an expert witness.

Model Rules Comparison: Rule 19-305.5 (5.5) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, except that subsection (d)(3) and section (e) ~~is~~ are new.

Mr. Marcus informed the Committee that the proposed amendments to Rule 19-305.5 are recommended in light of the Supreme Court's holding in *Attorney Grievance Commission v. Jackson*, 477 Md. 174 (2022). He explained that there has been a great deal of discussion in recent years regarding the unauthorized practice of law based on an attorney's physical presence outside of the jurisdiction where the attorney is authorized to practice. He said that the *Jackson* case involved

the ability of a non-Maryland attorney, who had a law firm with attorneys who were barred in Maryland, to work out of the Maryland office but not practice Maryland law. He informed the Committee that the American Bar Association has been grappling with this issue and is expected to produce recommendations sometime next year. Rule 5.5 was debated in the *Jackson* case and the Supreme Court ultimately referred to the Committee a recommendation that the Rule recognize the virtual practice of the law of another state while physically in Maryland. The court recognized in *Jackson* that the physical presence of an attorney is not the sole criteria for determining whether the attorney is practicing law in the state without authorization. He noted that this issue has become even more immediate since 2020 when the pandemic made virtual work more prevalent.

Mr. Marcus said that the proposed amendments permit an attorney admitted in another jurisdiction to establish an office or other continuous presence in Maryland. Subsections (d)(1) and (d)(2) describing the permitted practice of law by an out-of-state attorney remain the same. New subsection (d)(3) requires the attorney to provide notice to clients that the attorney is not licensed to practice law in Maryland. Mr. Marcus commented that there will be a series of complications that the Committee will have to grapple with later pertaining to escrow accounts of an out-of-state attorney and the authority of

Bar Counsel over those attorneys. He informed the Committee that Bar Counsel was involved in these discussions. Mr. Marcus said that conforming amendments are made to the Comments following the Rule, including a reference to the *Jackson* case.

Mr. Hilton suggested that the notice in subsection (d)(3) should be in writing. Mr. Armstrong moved to amend the Rule to require the notice to be in writing. The motion was seconded and approved by consensus. Ms. Bernhardt pointed out a typo in the Chapter Title. There being no further motion to amend or reject the proposed amendments to Rule 19-305.5, it was approved as amended.

Agenda Item 8. Consideration of proposed amendments to Rule 19-218 (Special Authorization for Out-Of-State Attorneys Affiliated with Programs Providing Legal Services to Low-Income Individuals), Rule 19-505 (List of Pro Bono and Legal Services Programs), and Rule 19-605 (Obligation of Attorneys).

Mr. Marcus said that Agenda Item 8 pertains to the Maryland Center for Legal Assistance ("the MCLA"). The proposed amendments permit the MCLA to recruit out-of-state and inactive Maryland attorneys to provide certain pro bono services to self-represented litigants.

Mr. Marcus presented Rule 19-218, Special Authorization for Out-Of-State Attorneys Affiliated with Programs Providing Legal Services to Low-Income Individuals, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

SPECIAL AUTHORIZATION TO PRACTICE

AMEND Rule 19-218 by expanding the definition of "legal services program" in subsection (a)(3) to apply to a "program" in addition to a "clinic", and by replacing the term "pro bono" with "free" in subsection (a)(3), as follows:

Rule 19-218. SPECIAL AUTHORIZATION FOR OUT-OF-STATE ATTORNEYS AFFILIATED WITH PROGRAMS PROVIDING LEGAL SERVICES TO LOW-INCOME INDIVIDUALS

(a) Definition

As used in this Rule, "legal services program" means a program operated by (1) an entity that provides civil legal services to low-income individuals in Maryland who meet the financial eligibility requirements of the Maryland Legal Services Corporation and is on a list of such programs provided by the Corporation to the State Court Administrator and posted on the Judiciary website pursuant to Rule 19-505; (2) the Maryland Office of the Public Defender; (3) a clinic or program offering free ~~pro bono~~ legal services and operating in a courthouse facility; or (4) a local pro bono committee or bar association affiliated project that provides pro bono legal services.

(b) Eligibility

Pursuant to this Rule, a member of the Bar of another state who is employed by

or associated with a legal services program may practice in this State pursuant to that program if (1) the individual is a graduate of a law school meeting the requirements of Rule 19-201 (a)(2) and (2) the individual will practice under the supervision of a member of the Bar of this State.

Cross reference: For the definition of "State," see Rule 19-101 (l).

(c) Proof of Eligibility

To obtain authorization to practice under this Rule, the out-of-state attorney shall file with the Clerk of the Supreme Court a written request accompanied by (1) evidence of graduation from a law school as defined in Rule 19-201 (a)(2), (2) a certificate of the highest court of another state certifying that the attorney is a member in good standing of the Bar of that state, and (3) a statement signed by the Executive Director of the legal services program that includes (A) a certification that the attorney is currently employed by or associated with the program, (B) a statement as to whether the attorney is receiving any compensation other than reimbursement of reasonable and necessary expenses, and (C) an agreement that, within ten days after cessation of the attorney's employment or association, the Executive Director will file the Notice required by section (e) of this Rule.

(d) Certificate of Authorization to Practice

Upon the filing of the proof of eligibility required by this Rule, the Clerk of the Supreme Court shall issue a certificate under the seal of the Court certifying that the attorney is authorized to practice under this Rule, subject to the automatic termination provision of section (e) of this Rule. The certificate shall state (1) the effective date, (2) whether the attorney (A) is authorized to receive

compensation for the practice of law under this Rule or (B) is authorized to practice exclusively as a pro bono attorney pursuant to Rule 19-504, and (3) any expiration date of the special authorization to practice. If the attorney is receiving compensation for the practice of law under this Rule, the expiration date shall be no later than two years after the effective date. If the attorney is receiving no compensation other than reimbursement of reasonable and necessary expenses, no expiration date shall be stated.

Cross reference: An attorney who intends to practice law in Maryland for compensation for more than two years should apply for admission to the Maryland Bar.

(e) Automatic Termination

Authorization to practice under this Rule is automatically terminated if the attorney ceases to be employed by or associated with the legal services program. Within ten days after cessation of the attorney's employment or association, the Executive Director of the legal services program shall file with the Clerk of the Supreme Court notice of the termination of authorization.

(f) Disciplinary Proceedings in Another Jurisdiction

Promptly upon the filing of a disciplinary proceeding in another jurisdiction, an attorney authorized to practice under this Rule shall notify the Executive Director of the legal services program of the disciplinary matter. An attorney authorized to practice under this Rule who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel and the

Clerk of the Supreme Court promptly of the discipline, resignation, or inactive status.

(g) Revocation or Suspension

At any time, the Court, in its discretion, may revoke or suspend an attorney's authorization to practice under this Rule by written notice to the attorney. By amendment or deletion of this Rule, the Court may modify, suspend, or revoke the special authorizations of all out-of-state attorneys issued pursuant to this Rule.

(h) Special Authorization not Admission

Out-of-state attorneys authorized to practice under this Rule are not, and shall not represent themselves to be, members of the Bar of this State, except in connection with practice that is authorized under this Rule. They are required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund, except that an attorney who is receiving no compensation other than reimbursement of reasonable and necessary expenses is not required to make the payments.

(i) Rules of Professional Conduct

An attorney authorized to practice under this Rule is subject to the Maryland Attorneys' Rules of Professional Conduct.

(j) Reports

Upon request by the Administrative Office of the Courts, an attorney authorized to practice under this Rule shall timely file an IOLTA Compliance Report in accordance with Rule 19-409 and a Pro Bono Legal Service Report in accordance with Rule 19-503.

Source: This Rule is derived from former Rule 19-215 (2018).

Rule 19-218 was accompanied by the following Reporter's note:

> The Attorneys and Judges subcommittee proposes revising subsection (a)(3) of Rule 19-218 so that the definition of "legal services program" applies to the Maryland Center for Legal Assistance ("MCLA"). This change would permit the MCLA to recruit out-of-state and retired attorneys to provide certain pro bono services to self-represented litigants throughout the State.

Mr. Marcus said that Rule 19-218 expands the definition of "legal services program" to apply to the MCLA. There being no motion to amend or reject the proposed amendments to Rule 19-218, they were approved as presented.

Mr. Marcus presented Rule 19-505, List of Pro Bono and Legal Services Programs, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

> AMEND Rule 19-505 by adding a provision requiring notice of court-based pro bono opportunities to be posted on the judiciary website, as follows:

> Rule 19-505. LIST OF PRO BONO AND LEGAL SERVICES PROGRAMS

> At least once a year, the Maryland Legal Services Corporation shall provide to the State Court Administrator a current list of all grantees and other entities recognized by the Corporation that serve low-income individuals who meet the financial eligibility criteria of the Corporation. The State Court Administrator shall post the current list on the Judiciary website <u>along with information about pro bono opportunities in court-based legal services programs</u>.
>
> Cross reference: See Rules 1-325, 1-325.1, and 19-215 and 19-605.
>
> Source: This Rule is derived from former Rule 16-905 (2016).

Rule 19-505 was accompanied by the following Reporter's note:

> The Attorneys and Judges Subcommittee proposes amending Rule 19-505 to require that information concerning court-based pro bono opportunities be posted annually on the judiciary website in an effort to increase public awareness of these services and to assist with the recruitment of pro bono attorneys.

Mr. Marcus said that Rule 19-505 adds a requirement to post certain information about pro bono opportunities to the judiciary website. There being no motion to amend or reject the proposed amendments to Rule 19-505, they were approved as presented.

Mr. Marcus presented Rule 19-605, Obligation of Attorneys, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 600 – CLIENT PROTECTION FUND

AMEND Rule 19-605 by adding a provision to subsection (b)(2) permitting an attorney on inactive/retired status to participate in a court-based pro bono program, as follows:

Rule 19-605. OBLIGATION OF ATTORNEYS

(a) Conditions Precedent to Practice

(1) Generally

Except as otherwise provided in subsection (a)(2) of this Rule or Rule 19-218 (h), each attorney admitted to practice law in Maryland or issued a certificate of special authorization under Rule 19-218 or Rule 19-219, as a condition precedent to the practice of law in Maryland, shall (A) provide to the treasurer of the Fund the attorney's social security number if the social security number has not already been provided to the Board of Law Examiners, (B) provide to the treasurer of the Fund the attorney's federal tax identification number or a statement that the attorney has no such number, and (C) no later than September 10 of each year, pay to the treasurer of the Fund the sum set by the Supreme Court, and in the event of delinquent payment of that sum, pay all applicable late charges, as set by the trustees. Late charges set by the trustees are subject to the approval of the Supreme Court.

(2) Exceptions

An attorney is exempt from payment of the mandatory assessment but may contribute voluntarily to the Fund if:

(A) the attorney is a federal or Maryland judge, including a senior judge, or full-time magistrate and is not permitted to practice law otherwise in Maryland;

(B) the attorney is a full-time federal or Maryland administrative law judge or hearing examiner and is not permitted to practice law otherwise in Maryland;

(C) the attorney is on inactive/retired status pursuant to subsection (b)(2) of this Rule; or

(D) the attorney is a full-time judicial law clerk and is not permitted to practice law otherwise in Maryland.

Cross reference: See Rule 19-705 (Disciplinary Fund).

(3) Method of Payment

Payments of amounts due the Fund shall be (A) by check or money order, or (B) transmitted electronically. Firms, agencies, and other entities with more than one attorney may submit payment for all attorneys by one check or money order, provided that a list of all attorneys for whom payment is made shall be included.

Committee note: AIS currently is unable to accept a single credit card payment applicable to the payment obligations of multiple attorneys.

(b) Attorneys on Inactive/Retired Status

(1) The trustees of the Fund may approve attorneys, other than attorneys on permanent retired status pursuant to Rule 19-717.1, for inactive/retired status, and, by regulation, may provide a uniform deadline date for seeking approval of inactive/retired status.

(2) An attorney on inactive/retired status may engage in the practice of law without payment to the Fund or to the Disciplinary Fund if (A) the attorney is on inactive/retired status solely as a result of having been approved for that status by the trustees of the Fund and not as a result of any action against the attorney pursuant to the Rules in Chapter 700 of this Title, and (B) the attorney's practice is limited to representing clients without compensation, other than reimbursement of reasonable and necessary expenses, as part of the attorney's participation in a legal services or pro bono publico program sponsored or supported by a local bar association, the Maryland State Bar Association, an affiliated bar foundation, ~~or~~ the Maryland Legal Services Corporation, or a clinic or program offering free legal services and operating in a courthouse facility.

(c) Invoice for Assessment or Contribution

On or before July 10 of each year, from information supplied by the Fund, AIS shall generate and send electronically to each attorney who is responsible for an assessment for the next ensuing fiscal year or who has volunteered to contribute to the Fund, an invoice for the amount due, along with notice that (1) payment thereof is due within 60 days, and (2) payment may be made electronically or by check or money order payable to the Fund.

(d) Notice of Payment

AIS shall notify the Fund of all electronic payments received and the Fund shall record in AIS all checks and money orders received.

Source: This Rule is derived in part from former Rule 16-811.5 (2016) and is in part new.

Rule 19-605 was accompanied by the following Reporter's note:

> The Attorneys and Judges Subcommittee proposes expanding subsection (b)(2) of Rule 19-605 so that attorneys on inactive/retired status are eligible to participate in court-based pro bono programs.

Mr. Marcus said that the proposed amendments to Rule 19-605 excuse the inactive or retired attorneys from compliance with the Rule when participating in court-based pro bono programs. There being no motion to amend or reject the proposed amendments to Rule 19-605, they were approved as presented.

Agenda Item 9. Consideration of proposed Rules changes recommended by the Criminal Rules Subcommittee related to 2023 Legislation.

Mr. Marcus presented Rule 4-504, Petition for Expungement When Charges Filed, and Rule 4-329, Advice of Expungement, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 500 – EXPUNGMENT OF RECORDS

> AMEND Rule 4-504 by updating the cross reference after section (a), as follows:

Rule 4-504. PETITION FOR EXPUNGEMENT WHEN CHARGES FILED

(a) Scope and Venue

A petition for expungement of records may be filed by any defendant who has been charged with the commission of a crime and is eligible under Code, Criminal Procedure Article, § 10-105 or Code, Criminal Procedure Article, § 10-110, as applicable, to request expungement. The petition shall be filed in the original action. If that action was commenced in one court and transferred to another, the petition shall be filed in the court to which the action was transferred, except that for criminal proceedings that began in a circuit court or the District Court and were transferred to a juvenile court under Code, Criminal Procedure Article, §§ 4-202 or 4-202.2, the petition shall be filed in the court that issued the order of transfer. If the proceeding in a court of original jurisdiction was appealed to a court exercising appellate jurisdiction, the petition shall be filed in the appellate court.

Cross reference: See Code, Criminal Procedure Article, § 10-104, which permits the District Court on its own initiative to order expungement when the State has entered a nolle prosequi as to all charges in a case in which the defendant has not been served. See Code, Criminal Procedure Article, § 10-105, which allows an individual's attorney or personal representative to file a petition for expungement if the individual died before disposition of the charge by nolle prosequi or dismissal. See also Criminal Procedure Article, § 10-105(a)(11), which permits a person who has been convicted of a crime to file a petition for expungement when the act on which the

conviction is based no longer is a crime, and Criminal Procedure Article, § 10-105(e)(4), which permits a person to petition for an expungement for an act on which a probation before judgment was based no longer is a crime. See Code, Criminal Procedure Article, § 10-110 regarding petitions for expungement of certain ~~misdemeanor~~ convictions.

...

Rule 4-504 was accompanied by the following Reporter's note:

Chapter 683, 2023 Laws of Maryland (SB 37) made several changes to the Criminal Procedure Article, including providing that unpaid court fees or costs are not a bar to certain expungement and altering the list of convictions that may be expunged under Code, Criminal Procedure Article, § 10-110. Upon review, it was determined that the cross reference in Rule 4-504 may be updated to reflect that Code, Criminal Procedure Article, § 10-110 permits the filing of a petition for expungement if a person is convicted of certain misdemeanors *and* felonies. A proposed amendment deletes the word "misdemeanor" from the last sentence of the cross reference.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-329 by deleting and replacing language in subsection (a)(1) and

by making a stylistic change in subsection (a)(3), as follows:

Rule 4-329. ADVICE OF EXPUNGEMENT

(a) Notice Pursuant to Code, Criminal Procedure Article, § 10-105.2

(1) Generally

When all of the charges in a case involving ~~a criminal offense or~~ a civil offense under Code, Criminal Law Article, § 5-601(c)(2)(ii) or a criminal offense other than a violation of the Transportation Article for which the defendant is not required to appear are disposed of by (A) acquittal, including an acquittal based on a verdict of not guilty, (B) dismissal, or (C) nolle prosequi other than nolle prosequi with a requirement of drug or alcohol treatment, the court shall provide written notice to the defendant of the defendant's right to expungement in accordance with and subject to the conditions of Code, Criminal Procedure Article, § 10-105.2.

(2) Form and Content of Notice

The notice shall be on a form approved by the State Court Administrator and shall notify the defendant of (A) the defendant's entitlement under Code, Criminal Procedure Article, § 10-105.1 to expungement by operation of law three years after the disposition and (B) the right to file a petition for expungement in accordance with Code, Criminal Procedure Article, Title 10, Subtitle 1 and Title 4, Chapter 500 of these Rules within three years after the disposition if accompanied by a completed General Waiver and Release form approved by the State Court Administrator. The notice shall include or be accompanied by a blank General Waiver and Release form for all tort claims relating to the charge or charges

eligible for expungement under Code, Criminal Procedure Article, § 10-105.

(3) Method of Delivery

If the defendant is in court when the disposition occurs, the written notice may be handed to the defendant in court. If the defendant does not receive the notice at that time, the court shall send the notice to the defendant by ~~first class mail~~ first-class mail to the defendant's last known address.

...

Rule 4-329 was accompanied by the following Reporter's note:

Chapters 684/685, 2023 Laws of Maryland (HB 189/SB 173) clarified language in Code, Criminal Law, §§ 10-105.1 and 10-105.2. Upon review of the relevant Rules concerning expungement, a proposed amendment to Rule 4-329 modifies the language of subsection (a)(1) to mirror the clarified language of § 10-105.2.

A stylistic change in subsection (a)(3) corrects the placement of the hyphen in the phrase "first-class mail."

Mr. Marcus explained that the proposed amendments to Rules 4-504 and 4-329 involve legislation related to expungements. Rule 4-504, which refers to "misdemeanor convictions," is amended to reflect that certain felony convictions are eligible for expungement. Rule 4-329 makes the defendant aware of the availability of expungement permitted by statute. He noted that the language added to Rule 4-329 was copied from the statute.

Additionally, a stylistic change is made to subsection (a)(3). There being no motion to amend or reject the proposed Rules, they were approved as presented.

Agenda Item 11. Consideration of proposed amendments to Rule 14-503 (Process).

The Chair reminded the Committee that Agenda Item 10 was withdrawn from consideration after concerns were raised by Mr. Zavin and the Office of the Public Defender.

Mr. McCloskey presented Rule 14-503, Process, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 – SALES OF PROPERTY

CHAPTER 500 – TAX SALES

AMEND Rule 14-503 to add a provision to section (d) requiring certain documents to be provided to a municipal corporation in certain circumstances, and by making stylistic changes, as follows:

Rule 14-503. PROCESS

(a) Notice to defendants whose whereabouts are known

Upon the filing of the complaint, the clerk shall issue a summons as in any other civil action. The summons, complaint, and

exhibits, including the notice prescribed by Rule 14-502 (c)(3), shall be served in accordance with Rule 2-121 on each defendant named in the complaint whose whereabouts are known.

(b) Notice to defendants whose whereabouts are unknown, unknown owners, and unnamed interested persons

When the complaint includes named defendants whose whereabouts are unknown, unknown owners, or unnamed persons having or claiming to have an interest in the property, the notice filed in accordance with Rule 14-502 (c)(3), after being issued and signed by the clerk, shall be served in accordance with Rule 2-122.

(c) Posting of Property

Upon the filing of the complaint, the plaintiff shall cause a notice containing the information required by Rule 14-502 (c)(3) to be posted in a conspicuous place on the property. The posting may be made either by the sheriff or by a competent private person, appointed by the plaintiff, who is 18 years of age or older, including an attorney of record, but not a party to the action. A private person who posts the notice shall file with the court an affidavit setting forth the name and address of the affiant, the caption of the case, the date and time of the posting, and a description of the location of the posting and shall attach a photograph of the location showing the posted notice.

(d) Notice to collector and municipal corporation

Upon the filing of the complaint, the plaintiff shall mail a copy of the complaint and exhibits to the collector of taxes in the county in which the property is located and, if the property is located in a municipal corporation as authorized by Article XI-E of the Maryland Constitution,

to the registered agent of the municipal corporation.

Cross reference: For due process requirements, see *St. George Church v. Aggarwal*, 326 Md. 90 (1992).

Source: This Rule is new. Section (a) is derived in part from Code, Tax-Property Article, § 14-839 (a). Section (b)is derived in part from Code, Tax-Property Article, § 14-840. Section (c) is new. Section (d) is derived from Code, Tax-Property Article, § 14-839 (c).

Rule 14-503 was accompanied by the following Reporter's note:

Existing section (d) of Rule 14-503 requires the plaintiff to provide a copy of the complaint and exhibits to the tax collector of the county in which the property is located. Because there are 157 municipal corporations in Maryland and the plaintiff is not currently required to provide a copy of the complaint or exhibits to these entities, the Property Subcommittee proposes that section (d) be amended to add a provision requiring the plaintiff to provide a copy of the complaint and exhibits to the municipal corporation in which the subject property is located, if the subject property is located within a municipal corporation.

Mr. McCloskey informed the Committee that the proposed amendments alter provisions pertaining to service requirements when a complaint has been filed to foreclose the right of redemption for property sold at a tax sale. The new provision in section (d) requires additional notice of the complaint to a

municipal corporation, if the property is located in one. There being no motion to amend or reject the proposed Rule, it was approved as presented.

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