STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Sixty-Eighth Report to the Court of Appeals, transmitting thereby proposed new Rules 4-281, 4-332, 9-205.2, 12-701, 12-702, 12-703, 12-704 and proposed amendments to Rules 1-202, 1-311, 1-326, 1-351, 2-131, 2-221, 2-311, 2-331, 2-332, 3-131, 3-221, 3-331, 3-332, 4-247, 4-248, 4-251, 4-263, 4-312, 4-314, 4-327, 4-403, 4-705, 4-706, 5-605, 6-208, 6-411, 6-416, 9-107, 9-202, 10-710, 13-201, 14-210, 15-306, 15-309, 15-901, 15-1103, 16-110, 16-204, 16-401, 16-808, 16-813, 16-815, 17-101, 17-105, and Rules 8.2 and 8.4 of the Maryland Lawyers' Rules of Professional Conduct.

The Committee's One Hundred Sixty-Eighth Report and the proposed new Rules and amendments are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before May 9, 2011 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
2011-D Commerce Park Drive
Annapolis, Maryland 21401

Bessie M. Decker
Clerk
Court of Appeals of Maryland

March 16, 2011

The Honorable Robert M. Bell,
Chief Judge
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Joseph F. Murphy, Jr.
The Honorable Sally D. Adkins
The Honorable Mary Ellen Barbera,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Sixty-Eighth Report and recommends that the Court adopt the new Rules and the amendments to existing Rules transmitted with this Report. The Report consists of eleven categories.

Category One consists of an addition to Rule 1-202 (Definitions) that would define the term "newspaper of general circulation" and conforming amendments to Rules 2-131, 2-221, 3-131, 3-221, 6-208, 9-107, 9-202, 14-210, 15-901, and 16-401.

Code, Article 1, §28 provides generally that, in any law, resolution, or court order that refers to publishing a legal advertisement or legal notice, words such as "paper," "newspaper," or "newspaper in general circulation," mean a publication that meets the criteria set forth in §28. Among those criteria are the requirements that the newspaper be published and distributed "by sale" and that it be entitled to be entered as second-class matter in the United States mail. The effect of those requirements is to exclude from the statutory

definition newspapers and periodicals that are distributed free – that are not sold and do not require a subscription by the recipient.

Prior to the rewriting of the mortgage foreclosure Rules in 2009, pursuant to the Committee's One Hundred Sixtieth Report, Rule 14-206 defined "newspaper of general circulation," for purposes of advertising notices of sale, as one that satisfied the criteria set forth in Code, Article 1, §28. Notices of foreclosure sales thus had to be published in newspapers that were distributed by sale or subscription. During the process of rewriting the foreclosure Rules, the Committee was urged to permit the publication of notices of sale in newspapers that were distributed free and without subscription. Representatives of newspapers meeting the criteria of §28 objected to that proposal and pointed out that that very issue had only recently been considered by the General Assembly.

The Committee was aware that there were other Rules requiring other kinds of notices to be published in newspapers of general circulation, but its immediate focus was on the comprehensive rewriting of the foreclosure Rules, which it regarded as a matter of considerable urgency, and it did not have the time then to investigate the full implications of changing the statutory criteria. The Committee thus opted to retain the existing definition with respect to notices of foreclosure sales but, as a temporary measure, to move the definition from the text of the Rule to a Committee note in new Rule 14-210. At the Court's open hearing on the 160th Report, the Committee noted that it intended to take a broader look at the issue and consider the addition of a general definition to Title 1 of the Rules.

The Committee later held several open meetings on the matter, at which representatives from both the paid and the free press presented written material and made oral presentations. Some members of the Committee were of the view that, at some point, it might suffice simply to post legal notices on the Judiciary's website and avoid publication costs altogether, but the Committee agreed that a change of that magnitude ought not to be made at this time. After weighing the evidence and aware that recent efforts to amend §28 had failed in the General Assembly, the Committee decided not to recommend superseding the statutory criteria. Accordingly, it proposes to add a new section (r) to Rule 1-202 that adopts the definition of "newspaper of general circulation" stated in Code, Article 1, §28. As noted, the amendments to the other Rules in this **Category 1** are conforming ones.

Category 2 consists of proposed new Rule 4-332 (Writ of Actual Innocence), intended to implement Code, Criminal Procedure Article, §8-301, a statute first enacted in 2009 and amended in

2010. Unfortunately, even with the 2010 amendments, there are a number of ambiguities in the statute that may require either further legislation or judicial construction to resolve, but the Committee has tried to fill in the gaps as best it can. Essentially, a petition under §8-301 seeks either a new trial, an outright striking of the judgment of conviction, or a re-sentencing, based on newly discovered evidence that (1) could not have been discovered in time to move for a new trial under Rule 4-331, and (2) creates a substantial or significant possibility that the result would have been different had it been presented at trial.

Although the statute contains a number of procedural provisions, the Committee believes that an implementing Rule is necessary. The proposed Rule adds a number of required averments in the petition designed to assist in determining (1) whether the new evidence could have been discovered earlier, and (2) whether that issue had been raised or decided in an earlier proceeding. There is no provision in the statute for the appointment of counsel for a petitioner, and it appears that the current Public Defender law does not require representation by a public defender in this kind of proceeding. The Committee opted to track some of the procedure approved by the Court with respect to a petition for post-conviction DNA testing – sending a copy of the petition and the State's answer to the Public Defender's Office for its review and allowing the court to appoint counsel if (1) the petitioner is indigent and has requested but does not have counsel, and (2) the court does not deny the petition as a matter of law.

The Committee is undertaking a review of the whole panoply of post-verdict and post-judgment proceedings authorized by the Federal or State Constitution, statute, or Rule, of which there are more than a dozen, to see if there is a feasible way to consolidate some or all of them, but, pending any further recommendation in that regard, a Rule implementing Code, Criminal Procedure Article, §8-301 is recommended.

Category Three consists of proposed amendments to Rules 4-312 (Jury Selection) and a conforming amendment to Rule 4-314 (Defense of Not Criminally Responsible). The proposed amendments to Rule 4-312 are designed to protect the privacy and safety of jurors in criminal cases. Section (b) is amended to require that, in open court, jurors be referred to by juror number rather than by name. That appears to be the general practice now and is not regarded as a significant change. The major change is in new section (d), which permits the court to limit the disclosure of

jurors' names and city or town of residence[1] upon a finding, made from clear and convincing evidence or information, that such disclosure would create a substantial danger that (1) the safety and security of one or more jurors would likely be imperiled, or (2) one or more jurors would likely be subjected to coercion, inducement, other improper influence, or undue harassment.

In cases where those kinds of findings have been made based on credible evidence or information, nondisclosure of jurors' names and places of residence has been permitted under fairly consistent Federal case law and, increasingly, by State courts as well. The Committee note that follows section (d) of the Rule cites some of the Federal cases. Although the Federal case law has permitted nondisclosure of that information even to counsel in certain cases, the Rules Committee voted not to permit that information to be withheld from counsel in the case, subject to a direction to counsel, where appropriate, not to disclose it to the defendant.

Category Four consists of proposed new Rule 9-205.2, permitting a court, in a high-conflict child access case, to appoint a parenting coordinator to assist the parties in resolving, or at least lessening the level of, conflicts involving the child, and conforming amendments to Rules 16-204 and 17-101.

Parenting coordination is a relatively new calling or profession. It is defined in section (b) of the Rule. Although parenting coordinators use various ADR techniques when working with the parents, they regard themselves as more than just mediators, arbitrators, or neutral evaluators. Maryland Circuit Courts are already appointing parenting coordinators, without any uniform guidance as to qualifications, responsibilities, or permissible fees, and both existing coordinators and judges asked the Committee to develop some standards in those areas.

Section (c) sets forth the minimum qualifications that a person must possess in order to be designated or approved by the court as a parenting coordinator. They are generally comparable, but not identical, to those required of court-designated mediators. Pursuant to section (d), applicants possessing those qualifications would be placed on a court list which, along with the information supplied by the applicant, would be available to the public.

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[1] The county of residence or, in the case of Baltimore City, the city, would have to be disclosed, as residence there is a qualification for jury service and would necessarily be assumed in any event. What would be subject to exclusion is a town or city within a county, as disclosure of that, coupled with other information required to be disclosed, could lead to discovery of the identity of the juror and the juror's family.

Sections (e) and (f) provide for the actual employment or designation of parenting coordinators. Section (e) permits the parties to employ a parenting coordinator on their own, without court approval or intervention, in which event they may choose anyone they like, whether or not the person possesses the minimum qualifications. They may agree on a parenting coordinator and ask the court to approve that choice, but in that event, the court may not approve the choice unless the coordinator possesses the minimum qualifications and the court is satisfied that the agreement satisfies the criteria set forth in section (e). A person selected by the parties, with or without court approval, is not subject to the maximum fee schedule that would apply with respect to a person designated by the court.

Section (f) authorizes the court to designate a parenting coordinator from the list, either during the pendency of the action or following the entry of judgment. A *pendente lite* designation, if warranted, is usually made early in the proceeding, either at the request of one or both parties or on the court's own initiative. Any such designation ends upon the entry of judgment. A post-judgment designation may be made only with the consent of the parties and, unless the parties agree to an extension in writing, may not last longer than two years. A court-designated parenting coordinator is subject to the maximum fee schedule set forth in section (k) of the Rule.

Two areas that received particular attention by the Committee were the duties and authority of parenting coordinators and their access to, and handling of, confidential records and information. Permitted services are set forth in section (g), and services that are not permitted are set forth in section (h). There was considerable discussion regarding the authority in subsection (g)(9) to make temporary modifications to access provisions embodied in a court order, but, with the limitations and conditions set forth in that subsection and the explanation in the Committee note that follows it, the Committee was convinced that that authority was useful, for the purposes of encouraging discussion and collaboration between the parents and, to the extent possible, keeping those kinds of disputes out of court.

Section (i) of the Rule deals with the confidentiality issues. Finally, termination of a parenting coordinator's designation or employment is provided for in section (j), and the maximum fee schedule is provided for in section (k).

As noted, conforming amendments are proposed to Rules 16-204 and 17-101.

Category Five consists of four new Rules, 12-701 through 12-704, designed to implement a 2010 statute (Code, Environment Article, §§15-1201 through 15-1206), dealing with severed mineral interests. A copy of the statute is attached to this Report as Appendix A.

As the Court most recently recognized in *Calvert Joint v. Snider*, 373 Md. 18 (2003), where land contains subsurface minerals, it is permissible under Maryland property law to create a separate estate in the subsurface minerals and to sever that estate from the estate embodying the surface of the land. That has, in fact, been done in various areas of the State; the owner of the land has conveyed title to subsurface minerals to one or more other persons or entities and retained the surface estate, or has conveyed the surface estate to another and reserved title to the subsurface minerals. What led to the new statute (and to similar kinds of statutes in many other States) is the fact that (1) many of those severances occurred years ago, (2) there has been no recent interest on the part of the owners of the mineral estate in extracting the minerals, (3) some of those owners are now unknown or their whereabouts are unknown, and (4) economics and technology have made it feasible to extract the minerals, including, of particular relevance in Maryland, natural gas from the portion of the Marcellus shale formation located in the western part of the State.

In these circumstances, surface owners have looked for ways to terminate severed mineral interests that have become dormant, so that the two estates can be reunified and the subsurface minerals harvested. Several approaches have been tried. One approach centers on a statute that provides for a dormant interest to be terminated after a specified period of inactivity, usually through a court proceeding. A second statutory approach permits a court to put the mineral interest of an unknown or missing owner in trust for a limited period of time so that it can be made immediately productive. Eventually, the trust is terminated and the mineral interest is conveyed to the surface owner. Most States that have dealt with the matter have followed the former approach, by adopting a version of the Uniform Dormant Mineral Interests Act, proposed by the National Conference of Commissioners on Uniform State Laws in 1986. The Maryland statute combines both approaches.

Code, Environment Article, §§15-1203 through 15-1205 follow, in general, the Uniform Act. Section 15-1203 permits the surface owner, on or after October 1, 2011, to file an action to terminate a dormant mineral interest. It declares a mineral interest to be dormant when (1) the interest has remained unused for a period of 20 years preceding commencement of the termination of the interest, and (2) notice of an intent to preserve the mineral interest was not recorded during that

period. The action is in the nature of an action to quiet title, and it may be maintained whether the mineral interest owners are known or unknown. A mineral interest may not be regarded as unused if the owner or the owner's agent takes certain actions specified in §§15-1203 (c) or 15-1204. The statute anticipates that, if the court finds the mineral interest to be dormant, the court must enter an order terminating the interest, which has the effect of merging the terminated interest with the surface estate.

Section 15-1206 adds the alternative approach of allowing the court, on petition by the surface owner and after notice and a hearing, to place the mineral interest of any unknown or missing owner in trust, to appoint a trustee for the unknown or missing owner, and to authorize the trustee to lease the interest to the surface owner (but not to anyone else). Section 15-1206 (c) provides that, if the unknown or missing owner does not contest the trust within five years after its creation, the trustee must file a petition to terminate the trust and convey title to the severed interest to the surface owner. If the unknown or missing owner does not contest the petition and the court finds that the alleged surface owner is the surface owner, it must enter an order requiring the trustee to convey the mineral interest to the surface owner. There is no requirement in §15-1206 that the mineral interest be dormant.

During the Committee's consideration of implementing Rules, a question arose as to whether an equal protection problem is created by the ability of a surface owner to use the trust provision to terminate the mineral interest of an unknown or missing owner that is not dormant, when the mineral interest of a known owner cannot be terminated until after it has become dormant. That issue was not addressed by the Attorney General in his bill review letter to the Governor, and the Committee invited the Attorney General's Office to respond to that concern. The Committee's own research indicated that very few States have statutes creating that disparity, and none of them have ever addressed the question. The 1986 Uniform Act did not contain a trust provision, and the Uniform Law Commissioners recommended against its inclusion. The Attorney General's Office advised the Committee that it did not believe there was an equal protection problem and therefore saw no reason to suggest a legislative change. A copy of the Attorney General's letter is attached to this Report as Appendix B.

In light of the Attorney General's response, the Committee abandoned an effort to craft the Rule to avoid the issue, as it would require adding an element not found in the statute. The proposed Rules simply provide a procedure for implementing the statutory provisions. Rule 12-703 deals with the creation, operation, and termination of the trust, and Rule 12-704 deals

with the judicial procedure for terminating a dormant severed mineral interest.

Category Six presents an issue regarding death penalty litigation that was raised but not resolved when, in September 2009, the Court considered amendments to Rule 4-343 proposed in the Committee's One Hundred Sixty-Second Report. These amendments were in response to 2009 legislative changes to the death penalty law (2009 Md. Laws, ch. 186).

The 2009 Act added two new conditions to imposition of a death sentence – (1) the State must produce DNA or biological evidence linking the defendant to the murder, a videotaped voluntary interrogation and confession of the defendant to the murder, or a video recording that conclusively links the defendant to the murder, and (2) the State must not rely solely on evidence provided by eye witnesses. It was evident to the Committee that, if the State has the kind of evidence that would satisfy those conditions, it would have to be disclosed to the defense in discovery pursuant to Rule 4-263. There was support in the Committee for adding to Rule 4-263 a requirement that, in a death penalty case, the State indicate whether the material disclosed constituted that kind of evidence and, if so, identify the material constituting such evidence.

It was proposed to the Committee as well that, if the State fails to disclose evidence that would satisfy those conditions, the defense could file a motion to strike a notice of intent to seek the death penalty or to preclude the State from filing such a notice. To the extent the motion presents only an issue of law, it could be ruled upon by the court. If the court grants the motion, that would end the ability of the State to seek the death penalty in that case. The only problem noted by the Committee was that, under the Court's decision in *State v. Manck*, 385 Md. 581 (2005), an order striking such a notice, but not going so far as to exclude evidence or dismiss the charging document, may not be subject to appellate review.

Ultimately, the Committee decided that the critical issue at the time was conforming the Rule to the new statute, that this proposal was not necessary to that effort, and that injecting it into the issues that *did* need to be resolved urgently could prove distracting. The Committee therefore decided not to present the issue at that time. The issue was raised by the Public Defender at the Court's open hearing on the One Hundred Sixty-Second Report, but it was deferred.

The issue was presented again to the Committee following adoption of the amendments to Rule 4-343, in the form of amendments to Rules 4-263 and a new Rule 4-281. There was a consensus on the part of both prosecutors and the Public

Defender's Office that the proposed amendment to Rule 4-263 was acceptable, because if the State agrees that it does not possess the required evidence, the death penalty is not available. There was a *partial* consensus regarding a motion to strike a notice of intent to seek the death penalty. Where there is a disagreement between the State and the defense over whether evidence disclosed in discovery suffices to render the defendant eligible for the death penalty, the prosecutors seemed to have no objection to the trial court resolving that issue on motion, provided that the State could appeal an adverse ruling. They objected vigorously to a Rule that would expressly authorize what occurred in *State v. Manck*, permitting a trial judge to abort an effort to seek the death penalty through an interlocutory order from which no appeal could ever be taken.

The Committee considered whether, by Rule, the Court could authorize an appeal under the collateral order doctrine, a matter not expressly considered in *Manck.* Doubt was expressed whether the Court could, or would, adopt such a Rule, but it seemed to the Committee to be an open question. Because the Committee agreed that a Rule authorizing the trial judge to resolve such a dispute through a pretrial ruling could be beneficial, provided there was an opportunity for appellate review of the ruling, the Committee voted to submit proposed Rule 4-281, including the appeal provision in section (c), for the Court's consideration and disposition.

Category Seven consists of housekeeping conforming amendments to Rules 1-326, 1-351, 4-327, 5-605, 16-808, 16-813, 16-815, 17-105, and Maryland Lawyers' Rules of Professional Conduct 8.2 and 8.4, to correct cross references to the 2010 Code of Judicial Conduct.

Category Eight consists of proposed amendments to Rules 15-306, 15-309, and 15-1103 to deal with the situation of a person who is confined or restrained under a quarantine or isolation order issued pursuant to a public health or public emergency law. Rules 15-306 and 15-309 are habeas corpus Rules. Rule 15-306 (b) requires the person to whom the writ is directed to bring the confined individual before the court within three days after service of the writ. Given the nature and reason for a quarantine or isolation order, the amendment permits the production of the individual to be by electronic means. The amendments to Rule 15-309, which deals with the hearing, are of a similar nature, permitting the court to conduct the hearing by electronic means and to relax the rules of evidence when the individual or counsel is unable to appear personally.

Rule 15-1103 deals with the initiation of a proceeding under the Catastrophic Health Emergency Law to contest a quarantine or

isolation order. When the Rules dealing with those proceedings were first adopted, it was thought best to require that the petition be filed with the Clerk of the Court of Appeals and thereafter directed by the Chief Judge to an appropriate circuit court. Because counsel must be appointed and a hearing held within three days after the petition is filed, the Director of Emergency Preparedness recommended that the petition be filed directly in the circuit court of the county where the quarantine or isolation is occurring or, if that court is not available, any other circuit court. The Committee concurs in that recommendation.

Category Nine consists of proposed amendments to Rules 1-311 (a), 2-311 (f), 2-331 (c), 2-332 (a), 3-331 (c), 3-332 (a), 4-403, 4-705, 4-706, 6-411 (c), 6-416 (b), and 13-201 (b) and a Committee Note added to Rule 10-710 (f). Those amendments and the reasons for them are explained in the respective Reporter's Notes.

Category Ten consists of proposed amendments to Rules 4-247 (Nolle Prosequi), 4-248 (Stet), and 4-251 (Motions in District Court). The amendments are intended to clarify that notice of (1) a nolle prosequi, (2) a stet, or (3) dismissal of a charging document in open court need be sent to the defendant or defense counsel only if neither of them is in court when the nolle prosequi, stet, or dismissal occurs. Additionally, when the nolle prosequi, stet, or dismissal encompasses more than one charge, the amendments allow the clerk to send only one notice, embodying all of the affected charges.

Category Eleven consists of an amendment to the recently adopted Rule 16-110, dealing with cell phones and other electronic devices. The amendment would delete the requirement in subsection (d)(2) that notice be included in all summonses and other notices of court proceedings that the possession and use of those devices may be limited or prohibited. At one point in its deliberations, the Rules Committee was of the view that the public should not be permitted to bring those devices into the courthouses and that notice of that prohibition should be placed on summonses and other notices of court proceedings. When the Committee ultimately concluded that possession of the devices should be permitted, subject to regulation as to their use, it neglected to reconsider whether the provision in subsection (d)(2) was necessary. That provision has caused some practical problems for circuit court clerks and administrators. The Committee is convinced that because under the Rule adopted by the Court, possession of the devices is permitted and notice of limitations on their use can be provided by signs in the court facilities, subsection (d)(2) it is not necessary and should be deleted.

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

Respectfully submitted,

Alan M. Wilner
Chair

Linda M. Schuett
Vice-Chair

AMW/LMS:cdc

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 to add a definition of "newspaper of general circulation" and to make stylistic changes, as follows:

Rule 1-202. DEFINITIONS

. . .

(r) Newspaper of General Circulation

"Newspaper of general circulation" means a newspaper as defined in Code, Article 1, §28.

~~(r)~~ (s) Original Pleading

. . .

~~(s)~~ (t) Person

. . .

~~(t)~~ (u) Pleading

. . .

~~(u)~~ (v) Proceeding

. . .

~~(v)~~ (w) Process

. . .

~~(w)~~ (x) Property

. . .

~~(x)~~ (y) Return

. . .

~~(y)~~ (z) Sheriff

. . .

~~(z)~~ (aa) Subpoena

. . .

~~(aa)~~ (bb) Summons

. . .

~~(bb)~~ (cc) Writ

. . .

Source: This Rule is derived as follows:

. . .

Section (r) is new.
Section ~~(r)~~ (s) is derived from the last sentence of former Rule 5 v.
Section ~~(s)~~ (t) is derived from former Rule 5 q.
Section ~~(t)~~ (u) is new and adopts the concept of federal practice set forth in the 1963 version of Fed. R. Civ. P. 7 (a).
Section ~~(u)~~ (v) is derived from former Rule 5 w.
Section ~~(v)~~ (w) is derived from former Rule 5 y.
Section ~~(w)~~ (x) is derived from former Rule 5 z.
Section ~~(x)~~ (y) is new.
Section ~~(y)~~ (z) is derived from former Rule 5 cc.
Section ~~(z)~~ (aa) is derived from former Rule 5 ee.
Section ~~(aa)~~ (bb) is new.
Section ~~(bb)~~ (cc) is derived from former Rule 5 ff.

REPORTER'S NOTE

The issue of defining the term "newspaper of general circulation" arose in the context of Rule 14-210, Notice Prior to Sale, addressing publication of a notice in a foreclosure action. In order to clarify the meaning of the term, the Rules Committee recommends (1) adding to Rule 1-202 a definition of the term "newspaper of general circulation," which refers to the definition in Code, Article 1, §28, and (2) amending Rules 6-208, 9-107, and 15-901 to either conform to this term or to clarify the location of circulation of the newspaper that is referred to in the Rule. With the addition of the definition, the Committee

note in Rule 14-210 after section (a) is no longer necessary and is proposed to be deleted. Amendments to Rules 2-131, 2-221, 3-131, 3-221, 9-202, and 16-401 conform cross references in those Rules to the re-lettering of Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 2-131. APPEARANCE

. . .

Cross reference: Rules 1-311, 1-312, 1-313; Rules 14, 15, and 16 of the Rules Governing Admission to the Bar. See also Rule 1-202 ~~(s)~~ (t) for the definition of "person".

Source: This Rule is derived from former Rule 124.

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 200 - PARTIES

AMEND Rule 2-221 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 2-221. INTERPLEADER

(a) Interpleader Action

. . .

Cross reference: For the definition of property, see Rule 1-202 ~~(w)~~ (x).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-131 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 3-131. APPEARANCE

. . .

Cross reference: Rules 1-311, 1-312, 1-313; Rules 14 and 15 of the Rules Governing Admission to the Bar. See also Rule 1-202 ~~(s)~~ (t) for the definition of "person", and Code, Business Occupations and Professions Article, §10-206 (b)(1), (2), and (4) for certain exceptions applicable in the District Court.

Source: This Rule is derived from former Rule 124.

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 200 - PARTIES

AMEND Rule 3-221 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 3-221. INTERPLEADER

(a) Interpleader Action

. . .

Cross reference: For the definition of property, see Rule 1-202 ~~(w)~~ (x).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-208 to add the words "of appointment" to paragraph 5 of the register's order for a small estate, as follows":

Rule 6-208. FORM OF REGISTER'S ORDER

The order entered by the register shall be in the following form:

[CAPTION]

ORDER FOR SMALL ESTATE

Upon the foregoing Petition, it is this ___ day of _____, (month)

_____, by the Register of Wills ordered that:
(year)

1. The estate of _____ shall be administered as a small estate.

2. _____ shall serve as personal representative.

3. The personal representative shall pay fees due the register, expenses of administration, allowable funeral expenses, and statutory family allowances, and, if necessary, sell property of the decedent in order to pay them.

4. The will dated _____ (including codicils, if

any, dated _____) accompanying the petition is:

[ ] admitted to probate; or

[ ] retained on file only.

5. Publication is:

[ ] not required; or

[ ] required and Notice of Appointment shall be published once in a newspaper of general circulation in the county of appointment.

6. When publication is required, the personal representative shall, subject to the statutory order of priorities and the resolution of disputed claims by the parties or by the court: (a) pay all proper claims, expenses, and allowances not previously paid; (b) if necessary, sell property of the estate in order to do so; and (c) distribute the remaining property of the estate in accordance with the will or, if none, with the intestacy laws of this State.

_____
Register of Wills

THIS ORDER DOES NOT CONSTITUTE LETTERS OF ADMINISTRATION AND DOES NOT AUTHORIZE THE TRANSFER OF ASSETS.

Certificate of Service

I hereby certify that on this ___ day of _____ (month), _____ (year), I delivered or mailed, postage prepaid, a copy of the foregoing Order to _____ (name and address), Personal

Representative.

_____
Register of Wills

REPORTER'S NOTE

See the Reporter's Note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; GUARDIANSHIP TERMINATING PARENTAL RIGHTS

AMEND Rule 9-107 (b)(4) to add the language "of general circulation" after the word "newspaper," as follows:

Rule 9-107. OBJECTION

. . .

(b) Time for Filing Objection

. . .

(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 <u>of general circulation</u> or (B) the last day that the notice is published on the Maryland Department of Human Resources website.

. . .

<u>REPORTER'S NOTE</u>

See the Reporter's Note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

AMEND Rule 9-202 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 9-202. PLEADING

(a) Signing-Telephone Number

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.

Cross reference: See Rule 1-202 ~~(t)~~ (u).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-210 to delete the Committee note following section (a), as follows:

Rule 14-210. NOTICE PRIOR TO SALE

(a) By Publication

Before selling property in an action to foreclose a lien, the individual authorized to make the sale shall publish notice of the time, place, and terms of the sale in a newspaper of general circulation in the county in which the action is pending. Notice of the sale of an interest in real property shall be published at least once a week for three successive weeks, the first publication to be not less than 15 days before the sale and the last publication to be not more than one week before the sale. Notice of the sale of personal property shall be published not less than five days nor more than 12 days before the sale.

~~Committee note: In this Rule, "newspaper of general circulation" is intended to mean a newspaper satisfying the criteria set forth in Code, Article 1, Section 28. A newspaper circulating to a substantial number of subscribers in a county and customarily containing legal notices with respect to property in the county shall be regarded as a newspaper of general circulation in the county, notwithstanding that (1) its readership is not uniform throughout the county, or (2) its content is not directed at all segments of the population.~~

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 900 - NAME - CHANGE OF

AMEND Rule 15-901 (e)(2) to add the language "in which the action was pending," as follows:

Rule 15-901. ACTION FOR CHANGE OF NAME

. . .

(e) Notice

. . .

(2) Publication

Unless the court on motion of the petitioner orders otherwise, the notice shall be published one time in a newspaper of general circulation in the county <u>in which the action was pending</u> at least fifteen days before the date specified in the notice for filing an objection to the petition. The petitioner shall thereafter file a certificate of publication.

. . .

<u>REPORTER'S NOTE</u>

See the Reporter's Note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT, AND OTHER PERSONS

AMEND Rule 16-401 to conform a reference to a section of Rule 1-202 to the relettering of that section, as follows:

Rule 16-401. PROSCRIBED ACTIVITIES - GRATUITIES, ETC.

. . .

b. Receiving Prohibited

No officer or employee of any court, or of any office serving a court, shall accept a gratuity or gift, either directly or indirectly, from a litigant, an attorney or any person regularly doing business with the court, or any compensation related to such officer's or employee's official duties and not expressly authorized by rule or law.

Cross reference: For definition of "person," see Rule 1-202 ~~(s)~~ (t).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

ADD new Rule 4-332, as follows:

Rule 4-332. WRIT OF ACTUAL INNOCENCE

(a) Scope

This Rule applies to an action seeking a writ of actual innocence as provided by Code, Criminal Procedure Article, §8-301.

(b) Filing; Caption

An action for a writ of actual innocence is commenced by the filing of a petition in the court where the conviction took place. The caption of the petition shall state the number of the criminal case to which the petition relates. If practicable, the petition shall be filed in the criminal action.

(c) Timing

A petition under this Rule may be filed at any time.

(d) Content of Petition

The petition shall be in writing, shall be signed and verified by the petitioner, and shall state:

(1) the court in which the indictment or criminal information was filed and the file number of that case;

(2) if the case was removed to another court for trial, the identity of that court;

(3) each offense of which the petitioner was convicted, the

date of the judgment of conviction, and the sentence imposed;

(4) if the judgment was appealed, the case number in the appellate court, a detailed description of the issues raised in the appeal, the result, and the date of the appellate court's mandate;

(5) for each motion or petition for post-judgment relief, the court in which the motion or petition was filed, the case number assigned to each proceeding, a detailed description of the issues raised, the result, and the date of disposition;

(6) that the request for relief is based on newly discovered evidence which, with due diligence, could not have been discovered in time to move for a new trial pursuant to Rule 4-331;

(7) a detailed description of the newly discovered evidence, how and when it was discovered, why it could not have been discovered earlier, and, if the issue of whether due diligence would have revealed the newly discovered evidence in time to move for a new trial pursuant to Rule 4-331 was raised or decided in any earlier appeal or post-judgment proceeding, the identity of the appeal or proceeding and the decision on that issue;

(8) that the evidence creates a substantial or significant possibility that, if it had been admitted at trial, the result may have been different, as that standard has been judicially determined, and the factual and legal basis for that statement;

(9) that the petitioner is actually innocent and did not commit the crime;

(10) if the petitioner is not already represented by counsel, whether the petitioner desires to have counsel appointed by the court and, if so, facts establishing indigency;

(11) that a copy of the petition, together with all attachments, was mailed to the State's Attorney of the county in which the petition was filed;

(12) the relief requested; and

(13) whether a hearing is requested.

(e) Notices

(1) To State's Attorney

The petitioner shall send a copy of the petition with all attachments to the State's Attorney of the county in which the petition was filed.

(2) To Victim or Victim's Representative

Upon receipt of the petition, the State's Attorney shall notify any victim or victim's representative of the filing of the petition, as provided by Code, Criminal Procedure Article, §11-104 or §11-503.

(3) To Public Defender

If the petitioner has requested an attorney and has alleged inability to employ one, the court shall send a copy of the petition and attachments to the Office of the Public Defender.

(f) Response by State's Attorney

Within 90 days after receipt of the petition and attachments, the State's Attorney shall file a response, serve a

copy on the petitioner, and, if indigency is alleged, send a copy to the Office of the Public Defender.

(g) Response by Public Defender

Within 30 days after receipt of the petition and attachments, the Office of the Public Defender shall enter its appearance or notify the court in writing that it declines to provide representation to the petitioner.

(h) Amendments

Amendments to the petition shall be freely allowed in order to do substantial justice. If an amendment is made, the court shall allow the State a reasonable opportunity to respond to the amendment.

(i) Denial of Petition; Appointment of Counsel

(1) Denial of Petition

Upon consideration of the petition and the State's response, the court may (A) deny the petition if it finds as a matter of law that the petition fails to comply with the requirements of section (d) of this Rule or otherwise fails to assert grounds on which relief may be granted or (B) grant leave to amend the petition to correct the deficiency. If the court finds a lack of proper venue, the court shall transfer the petition to the court with proper venue.

(2) Appointment of Counsel

If the court finds that a petitioner who has requested the appointment of counsel is indigent and the Office of the Public Defender has declined to provide representation, the court

may appoint counsel after the State has filed its response unless (A) the court denies the petition as a matter of law or (B) counsel has already filed an appearance to represent the petitioner.

(j) Hearing

(1) When Required

Except as provided in subsection (i)(1) of this Rule, the court shall hold a hearing on the petition if the petition complies with the requirements of sections (b) and (d) of this Rule and a hearing was requested.

(2) Right of Victim or Victim's Representative to Attend

A victim or victim's representative has the right to attend a hearing on the petition as provided under Code, Criminal Procedure Article, §11-102.

(k) Burden of Proof

The petitioner has the burden of proof to establish a right to relief.

(l) Ruling

(1) Actions of Court

If the court finds that the petitioner is entitled to relief, it may set aside the verdict or judgment of conviction, grant a new trial, re-sentence the petitioner, or correct the sentence.

(2) Reasons for Ruling

The court shall state the reasons for its ruling on the record.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 4-332 implements the provisions of Code, Criminal procedure Article, §8-301, which, under certain circumstances, allows a person convicted of a crime to petition the court for a writ of actual innocence. The Rule includes provisions from the statute and language borrowed from the Rules in Title 4, Chapter 400 (Post Conviction Procedure); Title 4, Chapter 700 (Post Conviction DNA Testing); and Title 15, Chapter 1200 (Coram Nobis).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-312 to require that jurors be addressed by number, to provide for nondisclosure of jurors' names and their cities or towns of residence under certain circumstances, to correct a cross reference, to add a cross reference, to add three Committee notes, and to make stylistic changes, as follows:

Rule 4-312. JURY SELECTION

. . .

(b) General Requirements

(1) Uniform Method of Impaneling

All individuals to be ~~impanelled~~ impaneled on the jury, including any alternates, shall be selected in the same manner, have the same qualifications, and be subject to the same examination.

(2) Jurors Not to be Addressed by Name

In any proceeding conducted in the courtroom or in chambers, a juror shall be referred to by juror number and not by name.

Committee note: The judge should advise prospective jurors and remind impaneled jurors that (1) it is standard procedure for jurors to be referred to in open court only by juror number and not by name, and (2) they may disclose their names to each other if they wish and, when not in open court, refer to each other by name, but they may not specifically disclose the names of other jurors to anyone else unless authorized by the judge.

(c) Jury List

(1) Contents

Subject to section (d) of this Rule, ~~Before~~ before the examination of qualified jurors, each party shall be provided with a list that includes each juror's name, ~~address~~ city or town of residence, zip code, age, ~~sex~~ gender, education, occupation, and spouse's occupation~~, and any other information required by Rule~~. Unless the trial judge orders otherwise, ~~the address shall be limited to the city or town and zip code and shall not include~~ the juror's street address or box number shall not be provided.

(2) Dissemination

(A) Allowed

A party may provide the jury list to any person employed by the party to assist in jury selection. With permission of the trial judge, the list may be disseminated to other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.

(B) Prohibited

Unless the trial judge orders otherwise, a party and any other person to whom the jury list is provided in accordance with subsection (c)(2)(A) of this Rule may not disseminate the list or the information contained on the list to any other person.

(3) Not Part of the Case Record; Exception

Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for

identification and offered in evidence pursuant to Rule 4-322, a jury list is not part of the case record.

Cross reference: See ~~Rule 16-1009 concerning motions to seal or limit inspection of a case record~~ Rule 16-1004 (b)(2)(B) concerning disclosure of juror information by a custodian of court records.

(d) Nondisclosure of Names and City or Town of Residence

(1) Finding by the Court

If the court finds from clear and convincing evidence or information, after affording the parties an opportunity to be heard, that disclosure of the names or the city or town of residence of prospective jurors will create a substantial danger that (i) the safety and security of one or more jurors will likely be imperiled, or (ii) one or more jurors will likely be subjected to coercion, inducement, other improper influence, or undue harassment, the court may enter an order as provided in subsection (d)(2) of this Rule. A finding under this section shall be in writing or on the record and shall state the basis for the finding.

(2) Order

Upon the finding required by subsection (d)(1) of this Rule, the court may order that:

(A) the name and, except for prospective jurors residing in Baltimore City, the city or town of residence of prospective jurors not be disclosed in voir dire; and

(B) the name and, except for jurors residing in Baltimore City, the city or town of residence of impaneled jurors not be

disclosed (i) until the jury is discharged following completion of the trial, (ii) for a limited period of time following completion of the trial, or (iii) at any time.

Committee note: Nondisclosure of the city or town in which a juror resides is in recognition of the fact that some counties have incorporated cities or towns, the disclosure of which, when coupled with other information on the jury list, may easily lead to discovery of the juror's actual residence. The exception for Baltimore City is to take account of the fact that Baltimore City is both an incorporated city and the equivalent of a county, and because persons are not eligible to serve as jurors in the Circuit Court for Baltimore City unless they reside in that city, their residence there is necessarily assumed.

Cross reference: See Rule 16-1004 (b)(2)(B).

(3) Extent of Nondisclosure

An order entered under this section may direct that the information not be disclosed to (A) anyone other than the judge and counsel; (B) anyone other than the judge, counsel, and the defendant; or (C) anyone other than the judge, counsel, the defendant, and other persons specified in the order. If the court permits disclosure to counsel but not the defendant, the court shall direct counsel not to disclose the information to the defendant, except pursuant to further order of the court.

(4) Modification of Order

The court may modify the order to restrict or allow disclosure of juror information at any time.

Committee note: Restrictions on the disclosure of the names and city or town of residence of jurors should be reserved for those cases raising special and legitimate concerns of jury safety, tampering, or undue harassment. See *United States v. Deitz*, 577 F.3rd 672 (6th Cir. 2009); *United States v. Quinones*, 511 F.3d 289 (2nd Cir. 2007). When dealing with the issues of juror security or tampering, courts have considered a mix of five factors in deciding whether such information may be shielded: (1)

the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment. See *United States v. Ochoa-Vasquez*, 428 F.3rd 1015 (11th Cir. 2005); *United States v. Ross*, 33 F.3rd 1507 (11th Cir. 1994). Although the possibility of a lengthy incarceration is a factor for the court to consider the court should not shield that information on that basis alone. In particularly high profile cases where strong public opinion about a pending case is evident,the prospect of undue harassment, not necessarily involving juror security or any deliberate attempt at tampering, may also be of concern.

~~(d)~~ (e) Examination and Challenges for Cause

(1) Examination

The trial judge may permit the parties to conduct an examination of qualified jurors or may conduct the examination after considering questions proposed by the parties. If the judge conducts the examination, the judge may permit the parties to supplement the examination by further inquiry or may submit to the jurors additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. On request of any party, the judge shall direct the clerk to call the roll of the array and to request each qualified juror to stand and be identified when called.

(2) Challenges for Cause

A party may challenge an individual qualified juror for cause. A challenge for cause shall be made and determined before the jury is sworn, or thereafter for good cause shown.

~~(e)~~ (f) Peremptory Challenges

Before the exercise of peremptory challenges, the trial judge shall designate those individuals on the jury list who remain qualified after examination. The number designated shall be sufficient to provide the required number of sworn jurors, including any alternates, after allowing for the exercise of peremptory challenges pursuant to Rule 4-313. The judge shall at the same time prescribe the order to be followed in selecting individuals from the list.

~~(f)~~ (g) ~~Impanelled~~ Impaneled Jury

(1) ~~Impanelling~~ Impaneling

The individuals to be ~~impanelled~~ impaneled as sworn jurors, including any alternates, shall be called from the qualified jurors remaining on the jury list in the order previously designated by the trial judge and shall be sworn.

(2) Oath; Functions, Powers, Facilities, and Privileges

All sworn jurors, including any alternates, shall take the same oath and, until discharged from jury service, have the same functions, powers, facilities, and privileges.

(3) Discharge of Jury Member

At any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate in the order of selection set under section (e). When the jury retires to consider its verdict, the trial judge shall discharge any remaining alternates who did not replace another jury member.

~~(g)~~ (h) Foreperson

The trial judge shall designate a sworn juror as foreperson.

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rule 754 a and in part new.
Section (b) is derived from former Rule 751 b.
Section (c) is new.
Section (d) is new.
Section ~~(d)~~ (e) is derived from former Rule 752 and 754 b.
Section ~~(e)~~ (f) is derived from former Rule 753.
Section ~~(f)~~ (g) is new.
Section ~~(g)~~ (h) is derived from former Rule 751 d.

REPORTER'S NOTE

The Maryland Circuit Judges Association suggested that the Maryland Rules be amended to provide for anonymous jurors in cases where the trial court determines that there are strong reasons to believe that juror safety, juror fear, or jury tampering will be a problem during the trial. The Rules Committee agrees with the Association, and proposes several modifications to Rule 4-312.

New subsection (b)(2) requires that in proceedings conducted in the courtroom or in chambers jurors be referred to only by juror number. This will help protect jurors' identities and avoid the need to explain to jurors why, in certain cases, they are being referred to by number only.

New section (d) provides that the court may order that the names of jurors and their cities or towns of residence not be disclosed in voir dire. An exception has been carved out for Baltimore City, because it is both a city and a county, and jurors cannot serve in the Circuit Court for Baltimore City unless they reside in that city. The Subcommittee has included three different time periods for nondisclosure. The Rule provides that the standard of clear and convincing evidence is the one for the court to use in determining whether juror information should not be disclosed.

There are a variety of levels of nondisclosure that have been included in the Rule. A Committee note following subsection (d)(4) references several federal cases setting out factors for courts to consider in deciding whether juries should be anonymous. The Committee note also suggests that undue

harassment of jurors in high profile cases may be of concern.

Also, the cross reference after subsection (c)(3) has been changed to cite a Rule that is more pertinent to disclosure of juror information than the previously cross-referenced Rule.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-314 to conform an internal reference to the relettering of Rule 4-312, as follows:

Rule 4-314. DEFENSE OF NOT CRIMINALLY RESPONSIBLE

. . .

(b) Procedure for Bifurcated Trial

. . .

(3) Examination of Jurors

The court shall inform qualified jurors before examining them pursuant to Rule 4-312 ~~(d)~~ (e) that the issues of guilt or innocence and whether, if guilty, the defendant is criminally responsible will be tried in two stages. The examination of qualified jurors shall encompass all issues raised.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 4-314 conforms an internal reference to the relettering of Rule 4-312.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

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

ADD new Rule 9-205.2, as follows:

Rule 9-205.2. PARENTING COORDINATION

(a) Applicability

This Rule applies to the appointment of parenting coordinators by a court and to consent orders approving the employment of parenting coordinators by the parties in actions under this Chapter.

Committee note: Actions in which parenting coordination may be used include an initial action to determine custody or visitation and an action to modify an existing order or judgment as to custody or visitation.

(b) Definitions

In this Rule, the following definitions apply:

(1) Parenting Coordination

"Parenting coordination" means a process in which the parties work with a parenting coordinator to reduce the effects or potential effects of conflict on the parties' child. Although parenting coordination may draw upon alternative dispute resolution techniques, parenting coordination is not governed by the Rules in Title 17, except as otherwise provided in this Rule.

(2) Parenting Coordinator

"Parenting coordinator" means an impartial provider of

parenting coordination services.

(c) Qualifications of Parenting Coordinator

(1) Age, Education, and Experience

To be designated or approved by the court as a parenting coordinator, an individual shall:

(A) be at least 21 years old and hold a bachelor's degree from an accredited college or university;

(B) hold a post-graduate degree in psychology, social work, counseling, negotiation, conflict management, or a related subject area, or from an accredited medical or law school;

(C) have at least three years of related professional experience undertaken after receiving the post-graduate degree; and

(D) hold a current license if required in the individual's area of practice.

(2) Parenting Coordination Training

A parenting coordinator also shall have completed:

(A) at least 20 hours of training in a family mediation training program meeting the requirements of Rule 17-106 (b); and

(B) at least 40 hours of accredited specialty training in topics related to parenting coordination, including conflict coaching, developmental stages of children, dynamics of high-conflict families, family violence dynamics, parenting skills, problem-solving techniques, and the stages and effects of divorce.

Committee note: The accredited specialty training requirement may be met by training offered by recognized national organizations such as the American Bar Association or the Association of Family and Conciliation Courts.

(3) Continuing Education

Within each calendar year, a parenting coordinator shall complete a minimum of four hours of continuing education approved by the Administrative Office of the Courts in one or more of the topics listed in subsection (c)(2) of this Rule and in recent developments in family law. The Administrative Office shall maintain a list of approved continuing education programs.

(d) Parenting Coordinator Lists

An individual who has the qualifications listed in section (c) of this Rule and seeks court appointment as a parenting coordinator shall submit an application to the family support services coordinator of the circuit court for each county in which the individual seeks appointment. The application shall document that the individual meets the qualifications required in section (c) of this Rule. If satisfied that the applicant meets the qualifications, the family support services coordinator shall place the applicant’s name on a list of qualified individuals which, together with the information submitted by each individual on the list, shall be accessible to the public.

(e) Approval of Parenting Coordinator Employed by Parties

In any action in which the custody of or visitation with a child of the parties is or was at issue, the parties, by agreement, may employ a parenting coordinator to assist them in

dealing with existing or future conflicts regarding their access to and responsibilities for the child. The parties may jointly request the court to enter a consent order approving the agreement. The court shall enter such an order if it finds that the parenting coordinator has the qualifications set forth in section (c) of this Rule and that the agreement:

(1) is in writing and signed by the parties and the parenting coordinator;

(2) states the services to be provided by the parenting coordinator;

(3) states the extent to which the parenting coordinator may receive confidential or privileged information pertaining to the child or the parties and any limitations on the use of that information by the parenting coordinator;

(4) states the amount or rate of compensation to be paid to the parenting coordinator, which may exceed the amount or rate provided for in section (k) of this Rule; and

(5) is otherwise consistent with the best interest of the child.

Committee note: Parties who, by agreement, employ a parenting coordinator on their own initiative are not required to seek court approval. Section (e) of this Rule applies only if they request a court order approving the agreement.

(f) Appointment of Parenting Coordinator by Court

In an action in which the custody of or visitation with a child of the parties is in issue and the court determines that the level of conflict between the parties with respect to that

issue so warrants, the court may appoint a parenting coordinator in accordance with this section.

(1) Appointment During Pendency of Action

On motion of a party, on joint request of the parties, or on the court's own initiative and after notice and hearing, the court may appoint a parenting coordinator during the pendency of the action. Unless sooner terminated in accordance with this Rule, the appointment shall terminate upon the entry of a judgment granting or modifying custody or visitation.

(2) Appointment Upon Entry of Judgment

Upon entry of a judgment granting or modifying custody or visitation, the court, with the consent of the parties and after a hearing, may appoint a parenting coordinator. The court may appoint the individual who served as a parenting coordinator during the pendency of the action. Unless sooner terminated in accordance with this Rule, the appointment of a post-judgment parenting coordinator shall not exceed two years unless the parties and the parenting coordinator agree in writing to an extension for a specified longer period.

Committee note: Appointment of a parenting coordinator does not affect the applicability of Rules 9-204, 9-205, or 9-205.1, nor does the appointment preclude the use of an alternative dispute resolution process under Title 17 of these Rules.

(3) Selection

The court may not appoint an individual as a parenting coordinator unless the individual:

(A) has the qualifications listed in section (c) of this

Rule,

(B) is willing to serve as the parenting coordinator in the action, and

(C) agrees not to charge or accept a fee in excess of that allowed in the applicable fee schedule adopted pursuant to subsection (k)(1) of this Rule.

(4) Contents of Order or Judgment

An order or judgment appointing a parenting coordinator shall include:

(A) the name, business address, e-mail address, and telephone number of the parenting coordinator;

(B) if there are allegations or findings of domestic violence committed by or against a party or child, any provisions the court deems necessary to address the safety and protection of the parties, all children of the parties, other children residing in the home of a party, and the parenting coordinator; and

Committee note: The order must be consistent with the relevant provisions of any other existing order, such as a “no contact” requirement that is included in a civil protective order or is a condition of pre-trial release in a criminal case.

(C) if the appointment is of a post-judgment parenting coordinator, any decision-making authority of the parenting coordinator authorized pursuant to subsection (g)(9) of this Rule.

(g) Services Permitted

As appropriate, a parenting coordinator may:

(1) if there is no operative custody and visitation order,

work with the parties to develop an agreed plan for custody and visitation;

(2) if there is an operative custody and visitation order, assist the parties in amicably resolving disputes about the interpretation of and compliance with the order and in making any joint recommendations to the court for any changes to the order;

(3) educate the parties about making and implementing decisions that are in the best interest of the child;

(4) assist the parties in developing guidelines for appropriate communication between them;

(5) suggest resources to assist the parties;

(6) assist the parties in modifying patterns of behavior and in developing parenting strategies to manage and reduce opportunities for conflict in order to reduce the impact of any conflict upon their child;

(7) in response to a subpoena issued at the request of a party or an attorney for a child of the parties, or upon action of the court pursuant to Rule 2-514 or 5-614, produce documents and testify in the action as a fact witness;

(8) if concerned that a party or child is in imminent physical or emotional danger, communicate with the court or court personnel to request an immediate hearing; and

(9) decide post-judgment disputes by making minor, temporary modifications to child access provisions ordered by the court if (A) the judgment or post-judgment order of the court authorizes such decision making, and (B) the parties have agreed in writing

or on the record that the post-judgment parenting coordinator may do so.

Committee note: Examples of such modifications include one-time or minor changes in the time or place for child transfer and one-time or minor deviations from access schedules to accommodate special events or circumstances.

(h) Services Not Permitted

A parenting coordinator may not:

(1) except as permitted by subsections (g)(7) and (8) of this Rule, communicate orally or in writing with the court or any court personnel regarding the substance of the action;

Committee note: This subsection does not prohibit communications with respect to routine administrative matters; collection of fees, including submission of records of the number of contacts with each party and the duration of each contact; or resignation. Nothing in the subsection affects the duty to report child abuse or neglect under any provision of federal or State law or the right of the parenting coordinator to defend against allegations of misconduct or negligence.

(2) testify in the action as an expert witness; or

Cross reference: See Rule 5-702 as to expert witnesses.

(3) except for decision making by a post-judgment parenting coordinator authorized pursuant to subsection (g)(9) of this Rule, make parenting decisions on behalf of the parties.

(i) Confidential Information

(1) Access to Case Records

Except as otherwise provided in this subsection, the parenting coordinator shall have access to all case records in the action. If a document or any information contained in a case record is not open to public inspection under the Rules in Title 16, Chapter 1000, the court shall determine whether the parenting

coordinator may have access to it and shall specify any conditions to that access.

Cross reference: See Rule 16-1001 for the definition of "case record."

(2) Other Confidential Information

(A) A parenting coordinator may not require or coerce the parties or an attorney for the child to release any confidential information that is not included in the case record.

(B) Confidential or privileged information received by the parenting coordinator from a party or from a third person with the consent of a party may be disclosed by the parenting coordinator to the other party, to an attorney for the child, and in court pursuant to subsections (g)(7) and (8) of this Rule. Unless otherwise required by law, the parenting coordinator may not disclose the information to anyone else without the consent of the party who provided the information or consented to a third person providing it.

(j) Removal or Resignation of Parenting Coordinator

(1) Removal

The court shall remove a parenting coordinator:

(A) on motion of a party or an attorney for the child, if the court finds good cause, or

(B) on a finding that continuation of the appointment is not in the best interest of the child.

(2) Resignation

A parenting coordinator may resign at any time by

written notice sent by first-class mail to each party and any attorney for the child. The notice shall state the effective date of the resignation and that the parties may request the appointment of another parenting coordinator. The notice shall be sent at least 15 days before the effective date of the resignation. Promptly after mailing the notice, and at least seven days before the effective date of resignation, the parenting coordinator shall file a copy of the notice with the court.

(k) Fees

(1) Fee Schedules

Subject to the approval of the Chief Judge of the Court of Appeals, the county administrative judge of each circuit court may develop and adopt maximum fee schedules for parenting coordinators. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide parenting coordination services and the ability of litigants to pay for those services. A parenting coordinator appointed by the court may not charge or accept a fee for parenting coordination services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal from all lists maintained pursuant to section (d) of this Rule, Rule 9-205, and the Rules in Title 17.

(2) Allocation of Fees and Expenses

Subject to any agreement entered into by the parties

pursuant to section (e) of this Rule, the court shall designate how and by whom the parenting coordinator shall be paid. If the court finds that the parties have the financial means to pay the fees and expenses of the parenting coordinator, the court shall allocate the fees and expenses of the parenting coordinator between the parties and may enter an order against either or both parties for the reasonable fees and expenses.

Source: This Rule is new.

REPORTER'S NOTE

A detailed description of proposed new Rule 9-205.2 is contained in the "Category 4" section of the One Hundred Sixty-Eighth Report.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 200 - THE CALENDAR – ASSIGNMENT AND DISPOSITION OF MOTIONS AND CASES

AMEND Rule 16-204 by adding a new subsection (a)(3)(G) pertaining to parenting coordination services, as follows:

Rule 16-204. 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 Act, Code, Family Law Article, Title 9, Subtitle 2, 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;

(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 persons under Code, Estates and Trusts Article, Title 13;

(H) involuntary admission to state facilities and emergency evaluations 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 and 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 Orphan's Court is not affected by this section. For example, the District Court has concurrent jurisdiction with the circuit court over proceedings under Code, Family Law Article, Title 4, Subtitle 5.

(3) Family Support Services

Subject to the availability of funds, the following family support services shall be available through the family division for use when appropriate in a particular action:

(A) mediation in custody and visitation matters;

(B) custody investigations;

(C) trained personnel to respond to emergencies;

(D) mental health evaluations and evaluations for alcohol and drug abuse;

(E) information services, including procedural assistance to pro se litigants;

Committee note: This subsection is not intended to interfere with existing projects that provide assistance to pro se litigants.

(F) information regarding lawyer referral services;

(G) parenting coordination services as permitted by Rule 9-205.2;

~~(G)~~ (H) parenting seminars; and

~~(H)~~ (I) any additional family support services for which funding is provided.

Committee note: Examples of additional family support services that may be provided include general mediation programs, case managers, and family follow-up services.

(4) Responsibilities of the County Administrative Judge

The County Administrative Judge of the Circuit Court for

each county having a family division shall:

(A) allocate sufficient available judicial resources to the family division so that actions are heard expeditiously in accordance with applicable law and the case management plan required by Rule 16-202 b;

Committee note: This Rule neither requires nor prohibits the assignment of one or more judges to hear family division cases on a full-time basis. Rather, it allows each County Administrative Judge the flexibility to determine how that county's judicial assignments are to be made so that actions in the family division are heard expeditiously. Additional matters for county-by-county determination include whether and to what extent masters, special masters, and examiners are used to assist in the resolution of family division cases. Nothing in this Rule affects the authority of a circuit court judge to act on any matter within the jurisdiction of the circuit court.

(B) provide in the case management plan required by Rule 16-202 b criteria for:

(i) requiring parties in an action assigned to the family division to attend a scheduling conference in accordance with Rule 2-504.1 (a) (1) and

(ii) identifying those actions in the family division that are appropriate for assignment to a specific judge who shall be responsible for the entire case unless the County Administrative Judge subsequently decides to reassign it;

Cross reference: For rules concerning the referral of matters to masters as of course, see Rules 2-541 and 9-208.

(C) appoint a family support services coordinator whose responsibilities include:

(i) compiling, maintaining, and providing lists of available public and private family support services,

(ii) coordinating and monitoring referrals in actions assigned to the family division, and

(iii) reporting to the County Administrative Judge concerning the need for additional family support services or the modification of existing services; and

(D) prepare and submit to the Chief Judge of the Court of Appeals, no later than October 15 of each year, a written report that includes a description of family support services needed by the court's family division, a fiscal note that estimates the cost of those services for the following fiscal year, and, whenever practicable, an estimate of the fiscal needs of the Clerk of the Circuit Court for the county pertaining to the family division.

(b) Circuit Courts Without a Family Division

(1) Applicability

This section applies to circuit courts for counties having less than eight resident judges of the circuit court authorized by law.

(2) Family Support Services

Subject to availability of funds, the family support services listed in subsection (a)(3) of this Rule shall be available through the court for use when appropriate in cases in the categories listed in subsection (a)(2) of this Rule.

(3) Family Support Services Coordinator

The County Administrative Judge shall appoint a full-time or part-time family support services coordinator whose

responsibilities shall be substantially as set forth in subsection (a)(4)(C) of this Rule.

(4) Report to the Chief Judge of the Court of Appeals

The County Administrative Judge shall prepare and submit to the Chief Judge of the Court of Appeals, no later than October 15 of each year, a written report that includes a description of the family support services needed by the court, a fiscal note that estimates the cost of those services for the following fiscal year, and, whenever practicable, an estimate of the fiscal needs of the Clerk of the Circuit Court for the county pertaining to family support services.

Source: This Rule is new.

REPORTER'S NOTE

Proposed amendments to Rule 16-204 conform the Rule to provisions in new Rule 9-205.2.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-101 (b) to add a reference to parenting coordinators appointed under Rule 9-205.2, as follows:

Rule 17-101. APPLICABILITY

. . .

(b) Rules Governing Qualifications and Selection

The rules governing the qualifications and selection of a person designated to conduct court-ordered alternative dispute resolution proceedings apply only to a person designated by the court in the absence of an agreement by the parties. They do not apply to a master, examiner, ~~or~~ auditor, or parenting coordinator appointed under Rules 2-541, 2-542, ~~or~~ 2-543, or 9-205.2.

. . .

REPORTER'S NOTE

New Rule 9-205.2 is a self-contained Rule pertaining to parenting coordination. The second sentence of Rule 9-205.2 (b)(1) reads, "Although parenting coordination may draw upon alternative dispute resolution techniques, parenting coordination is not governed by the Rules in Title 17, except as otherwise provided in this Rule."

The proposed amendment to Rule 17-101 (b) excludes a parenting coordinator appointed under Rule 9-205.2 from the applicability of the Rules in Title 17 that govern the qualifications and selection fo a person designated by the court to conduct alternative dispute resolution proceedings.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 700 - SEVERED MINERAL INTERESTS

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MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 700 - SEVERED MINERAL INTERESTS

ADD new Rule 12-701, as follows:

Rule 12-701. DEFINITIONS

In this Chapter, the terms “mineral,” “mineral interest,” “severed mineral interest,” “surface estate,” “surface owner,” and “unknown or missing owner” have the meanings set forth in Code, Environment Article, §15-1201. A “dormant mineral interest” is a mineral interest that satisfies the criteria set forth in Code, Environment Article, §15-1203 (a)(2).

Source: This Rule is new.

REPORTER’S NOTE

Chapter 269, Laws of 2010 (HB 320) authorizes the owner of surface real property subject to a mineral interest such as oil, metallic ores, or coal, to file an action to terminate a dormant mineral interest or, if the owner of a severed mineral interest is unknown or missing, to have the mineral interest placed in trust. If the unknown or missing owner cannot be ascertained or located, the trustee later petitions for termination of the trust. Because these procedures involve property, the Rules administering the statute have been placed in Title 12.

Proposed new Title 12, Chapter 700 is based on the statute and comprises four Rules:

- Rule 12-701, containing definitions;
- Rule 12-702, containing the scope of the Chapter;
- Rule 12-703, containing procedures to establish and administer a trust for unknown or missing persons with a legal interest in a severed mineral interest and to terminate that trust; and

• Rule 12-704, containing procedures to terminate a dormant mineral interest.

The statute provides that an action to terminate a dormant mineral interest requires the same notice as an action to quiet title set forth in Code, Real Property Article, §14-108, in rem notice. However, the statute does not provide a method for notice of an action to establish the trust or to terminate the trust. The recommendation is to provide for in rem notice to persons who are unknown or missing, since (1) it is the method used in an action to terminate the dormant mineral interest, and (2) Rule 10-602 provides for notice to persons with an interest in a fiduciary estate whose identity or whereabouts are unknown in the manner provided by Rule 2-122, which is in rem notice.

The Committee discussed a Constitutional equal protection concern as to which the statute is silent – whether the known owner of a severed mineral interest and the unknown or missing owner of a severed mineral interest receive equal protection under the law. Under the statute, the interest of a known owner is subject to termination after the expiration of a 20-year period of dormancy; whereas, the interest of an unknown or missing owner is subject to termination after only five years of dormancy. The Committee requested from the Office of the Attorney General additional information concerning the constitutionality of the statute. Having considered the information received, the Committee approved Rules that incorporate the time periods set forth in the statute. However, if a policy determination is made that no interest should be subject to termination until after the expiration of a 20-year period of dormancy, this can be effected by the addition of the language, “and the severed mineral interest has become a dormant mineral interest,” to Rule 12-703 (f)(2)(A) and (E).

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 700 - SEVERED MINERAL INTERESTS

ADD new Rule 12-702, as follows:

Rule 12-702. SCOPE

This Chapter does not apply to a mineral interest:

(a) held by the United State or a Native American tribe, except to the extent permitted by federal law; or

(b) held by the State or an agency or political subdivision of the State, except to the extent permitted by State law.

Source: This Rule is derived from Code, Environment Article, §15-1202 (a)(2).

REPORTER'S NOTE

See the Reporter's note to Rule 12-701.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 700 - SEVERED MINERAL INTERESTS

ADD new Rule 12-703, as follows:

Rule 12-703. TRUST FOR UNKNOWN OR MISSING OWNER OF SEVERED MINERAL INTEREST

(a) Petition to Create Trust

(1) Generally

An owner in fee simple of a surface estate subject to a severed mineral interest that is vested, in whole or in part, in an unknown or missing owner may file a petition to place the mineral interest of the unknown or missing owner in trust. The petition shall be filed in the circuit court of any county in which the surface estate is located.

Cross reference: Code, Environment Article, §§15-1201 through 15-1206.

(2) Contents

The petition shall be captioned “In the Matter of ...” stating the location of the surface estate subject to the severed mineral interest. It shall be signed and verified by the petitioner and shall contain at least the following information:

(A) the petitioner’s name, address, and telephone number;

(B) the name and address of all other surface owners;

(C) the reason for seeking the assumption of jurisdiction by the court and a statement of the relief sought;

(D) a legal description of the severed mineral interest;

(E) the name, address, telephone number, and nature of the interest of all persons with a legal interest in the severed mineral interest, including any unknown or missing owners, and their heirs, successors, or assignees;

(F) an affidavit of the petitioner stating that the identity or whereabouts of one or more owners are unknown and describing the reasonable efforts made in good faith to identify and locate each unknown or missing owner who is the subject of the petition;

(G) the nature of the interest of the petitioner;

(H) the nature and location of the surface estate subject to the severed mineral interest; and

(I) an affidavit of the petitioner, affirming fee simple ownership of the surface estate and including a reference to each recorded document establishing such ownership. If any person whose name is required information under this subsection is unknown, that fact shall be stated. If any person is the unknown heir of a decedent, that person shall be described as the unknown heir of _____, deceased.

(b) Service

The proceeding shall be deemed in rem or quasi in rem. A copy of the petition and attached documents shall be served on all persons with a legal interest in the severed mineral interest named in the petition and all surface owners who have not joined in the petition. Service on a person alleged to be unknown or

missing shall be pursuant to Rule 2-122. Otherwise, service shall be pursuant to Rule 2-121.

(c) Hearing

The court shall hold a hearing on the petition.

(d) Order Creating Trust

If the court finds that the title to a severed mineral interest is vested, in whole or in part, in an unknown or missing owner, the court may enter an order:

(1) placing the severed mineral interest of the unknown or missing owner in trust;

(2) appointing a trustee for the unknown or missing owner;

(3) if it is likely that any revenue will accrue to the benefit of the unknown or missing owner, directing the trustee to create a separate trust bank account to manage all trust assets; and

(4) authorizing the trustee to lease the mineral interest to the owner of the surface estate, subject to any conditions the court deems appropriate.

Cross reference: See Rule 1-324 concerning notice of the order sent by the clerk to the parties.

(e) Administration of Trust

A trust created under this Rule shall be administered pursuant to Rules 10-702 to 10-712.

(f) Termination of Trust

(1) Petition by Unknown or Missing Owner

(A) Generally

An unknown or missing owner whose interest in a severed mineral interest has been placed in trust, at any time prior to the filing of a petition under subsection (f)(2) or (f)(3) of this Rule, may file a petition to terminate the trust and convey the interest to the petitioner. The petition shall be signed and verified by the petitioner, filed in the court that created the trust, and name as respondents the trustee, each surface owner, and each other person with a legal interest in the minerals.

(B) Contents

The petition shall be captioned "In the Matter of ..." and shall state:

(i) the petitioner's name, address, e-mail address, if any, and telephone number;

(ii) the name, address, e-mail address, if any, and telephone number of the trustee and each surface owner;

(iii) the nature and extent of the petitioner's legal interest in the severed mineral interest in trust and include a reference to each recorded document establishing that interest and be accompanied by any unrecorded document establishing that interest; and

(iv) whether, the petitioner has recorded or intends to record a notice of intent to preserve the mineral interest in accordance with Code, Environment Article, §15-1204.

(C) Service

The petition shall be served on each respondent in accordance with the provisions of Rule 1-321 (a).

(D) Response

A respondent shall file a response to the petition within the time prescribed by Rule 2-321.

(E) Hearing

Unless waived in writing by all parties, the court shall hold a hearing on the petition.

(F) Order

If the court finds that the petitioner is the unknown or missing owner whose severed mineral interest was placed in the trust, that the petition is timely and in compliance with this Rule, and that the trust with respect to that mineral interest should be terminated, it shall enter an order (i) terminating the trust as to that mineral interest, (ii) directing the trustee to file a final accounting, convey the mineral interest to the petitioner, and distribute all proceeds in accordance with the accounting, as approved by the court, and (iii) assessing costs as it deems just under the circumstances.

(2) Petition by Trustee

(A) Generally

If the unknown or missing owner of a vested severed mineral interest to whom notice of the petition or order was given does not contest or move to terminate a trust created under this Rule on or before five years after the date that the court issued the order creating the trust, the trustee shall file a petition to terminate the trust and to convey to the surface owner title to the severed mineral interest. The petition shall

name as respondents each surface owner and each person with a legal interest in the minerals, including any unknown or missing owners of the severed mineral interest.

(B) Contents

The petition shall be captioned “In the Matter of ...” stating the location of the surface estate subject to the severed mineral interest. It shall be signed and verified by the petitioner and shall contain at least the following information:

(i) a legal description of the severed mineral interest;

(ii) a description of the putative property interests of each party;

(iii) the last known address of each party;

(iv) an affidavit signed by each surface owner, affirming fee simple ownership of the surface estate and requesting the court to convey title to the severed mineral interest at issue; and

(v) an affidavit signed by the petitioner, affirming that after conducting a diligent inquiry, including a search in each county where the severed mineral interest is located, performed in accordance with generally accepted standards of title examination of the land records of the county, the records of the register of wills of the county, and the records of the circuit court for the county, the trustee cannot locate the unknown or missing owner.

(C) Service

The petition shall be served on each respondent in

accordance with the provisions of Rule 1-321.

(D) Hearing

The court shall hold a hearing on the petition.

(E) Order Terminating Trust

The court shall enter an order requiring the trustee to convey the unknown or missing owner's mineral interest to the named surface owner if (i) the petition was filed more than five years after entry of the order creating the trust, (ii) the unknown or missing owner does not appear to contest the petition, and (iii) the court finds that the person named in the petition as surface owner is in fact the fee simple owner of the surface estate. After receiving the final report of the trustee as required by Code, Environment Article, §15-1206, the court shall enter an order (a) terminating the trust as to that mineral interest, (b) directing the trustee to file a final accounting, convey the mineral interest to the surface owner, and distribute all proceeds in accordance with the accounting, as approved by the court, and (c) assessing costs as it deems just under the circumstances.

Committee note: If the mineral interest is located in more than one county, conveyance by the trustee requires recordation in each county in which the surface estate is located.

Cross reference: See Rule 1-324 concerning notice of the order sent by the clerk to the parties.

(3) Petition by Surface Owner or Other Interested Person

If the trustee does not file the petition within the time prescribed in subsection (f)(2) of this Rule, the surface

owner or any person with a legal or beneficial interest in the severed mineral interest placed in trust may file a petition to direct the trustee to comply with subsection (f)(2) of this Rule or to appoint a substitute trustee to do so. The petition shall be served on the trustee in accordance with the provisions of Rule 2-121 and further proceedings shall be in accordance with subsection (f)(2) of this Rule.

Cross reference: For duties of the trustee, see Code, Environment Article, §15-1206.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 12-701.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 700 - SEVERED MINERAL INTERESTS

ADD new Rule 12-704, as follows:

Rule 12-704. TERMINATION OF DORMANT MINERAL INTEREST

(a) Petition

(1) Generally

At any time after October 1, 2011, a surface owner of real property that is subject to a severed mineral interest may initiate an action to terminate a dormant mineral interest by filing a petition in the circuit court of any county in which the surface estate is located, but if a trust created under Rule 12-703 is in existence, then in the county where the trust was created.

(2) Contents

The petition shall be captioned “In the Matter of ...,” stating the location of each surface estate subject to the mineral interest. It shall be signed and verified by the petitioner and shall contain at least the following information:

(A) the petitioner’s name, address, and telephone number;

(B) the name and address of all other surface owners;

(C) the reason for seeking the assumption of jurisdiction by the court and a statement of the relief sought;

(D) a legal description of the severed mineral interest;

(E) the name, address, telephone number, and nature of the interest of all interested persons, including each person who has previously recorded a notice of intent to preserve the mineral interest or a part of a mineral interest pursuant to Code, Environment Article, §15-1204;

(F) the nature of the interest of the petitioner;

(G) the nature and location of the surface estate or estates subject to a severed mineral interest; and

(H) an affidavit signed by each surface owner affirming fee simple ownership of the surface estate, including a reference to each recorded document establishing such ownership. If any person whose name is required information under this subsection is unknown, that fact shall be stated. If any person is the unknown heir of a decedent, that person shall be described as the unknown heir of _____, deceased.

Cross reference: See Code, Environment Article, §§15-1203 through 15-1205.

(b) Service

The proceeding shall be deemed in rem or quasi in rem. A copy of the petition and attached documents shall be served on all persons with a legal interest in the severed mineral interest named in the petition and all surface owners who have not joined in the petition. Service on a person alleged to be unknown or missing shall be pursuant to Rule 2-122. Otherwise, service shall be pursuant to Rule 2-121.

(c) Late Notice of Intent to Preserve Interest

Unless the mineral interest has been unused for a period of 40 years or more proceeding the commencement of the action, the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest and dismiss the action, provided that the owner of the mineral interest pays the litigation expenses incurred by the surface owner of the real property that is subject to the mineral interest.

Cross reference: See Code, Environment Article, §15-1203 (c) for actions constituting use of an entire mineral interest.

(d) Hearing

The court, in its discretion, may hold a hearing on the petition.

(e) Order

The court shall enter an order granting or denying the petition. An order terminating a mineral interest shall describe each tract of the surface estate overlying the terminated mineral interest into which the mineral interest is merged, and shall describe the proportional shares, if any, of each surface owner in each tract. The clerk shall record a copy of the order of termination in the land records of each county in which the mineral interest is located.

Cross reference: See Code, Environment Article, §15-1203 (d)(2) for the effects of an order terminating a mineral interest.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 12-701.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 (d) to require a certain statement and identification of material by the State if the State seeks a sentence of death, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

The name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of each State's witness whom the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony,

together with all written statements of the person that relate to the offense charged;

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise

memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

(7) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's witness;

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; ~~and~~

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial~~.~~; and

(11) Evidentiary Statement and Identification of Materials in Capital Cases

If the defendant is charged with a first degree murder that is eligible for a sentence of death and the State filed a notice of intention to seek a death sentence pursuant to Code,

Criminal Law Article, §2-202 (a), (A) a statement of whether the material disclosed constitutes biological evidence or DNA evidence that links the defendant to the act of murder, a videotaped, voluntary interrogation and confession of the defendant to the murder, or a video recording that conclusively links the defendant to the murder, and, (B) if so, identification of the material that constitutes such evidence.

. . .

REPORTER'S NOTE

Chapter 186, Laws of 2009 (SB 279), prohibits a sentence of death unless the State presents the court or jury with (1) biological evidence or DNA evidence that links the defendant to the act of murder, (2) a videotaped, voluntary interrogation and confession of the defendant to the murder, or (3) a video recording that conclusively links the defendant to the murder. Code, Criminal Law Article, §2-202 (a) requires that the State give notice of its intention to seek the death penalty at least 30 days before trial. Under Rule 4-263 (d), the State must disclose to the defendant before trial certain material including (1) all written reports of experts and the substance of all oral reports of experts regarding the results of scientific tests, as well as relevant material regarding searches and seizures, (2) all relevant material regarding electronic surveillance, and (3) all recordings that relate to the acquisition of statements from the defendant. If the State has any of the specific material required by the new statute, that material would have to be disclosed before trial in accordance with Rule 4-263. Proposed new subsection (d)(11) adds to Rule 4-263 a provision applicable if the State has filed a notice of intention to seek a sentence of death. The new provision requires the State to (1) provide a statement as to whether any of the material disclosed makes the defendant eligible for a sentence of death and (2) identify any such material.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

ADD new Rule 4-281, as follows:

Rule 4-281. MOTION RELATING TO DEATH PENALTY NOTICE

(a) Motion

Upon completion of discovery, a defendant may move to preclude the State from filing a notice of intention to seek a sentence of death pursuant to Code, Criminal Law Article, §2-301 or to strike a notice already filed on the ground that the State has failed to produce in discovery evidence of an aggravating circumstance listed in Code, Criminal Law Article, §2-303 (g), or one of the following:

(1) biological evidence or DNA evidence that links the defendant to the act of murder;

(2) a video taped voluntary interrogation and confession of the defendant to the murder; or

(3) a video recording that conclusively links the defendant to the murder.

(b) Order

After an opportunity for a hearing, the court shall promptly rule on the motion and enter an order.

(c) Appeal by State

An order granting the motion may be appealed by the State

under the collateral order doctrine. Any appeal shall be to the Court of Appeals and shall be filed within 30 days after entry of the order. Trial and all other proceedings in the case that may be affected by the appeal shall be stayed until the appeal is finally concluded. An order denying the motion is not immediately appealable under the collateral order doctrine.

Source: This Rule is new.

REPORTER'S NOTE

In *State v. Manck*, 385 Md. 581 (2005), a 4-3 decision, the Court of Appeals held that the State has no right to appeal from a court's decision to grant a motion to strike a notice of intention to seek the death penalty. Also, there has been some uncertainty as to whether a court has the authority to strike the notice.

To clarify these issues, the Rules Committee recommends the addition of proposed new Rule 4-281, which provides that (1) a defendant may move to strike the notice of intention to seek the death penalty if the State has failed to produce in discovery evidence of an aggravating factor as listed in Code, Criminal Law Article, §2-303 (g) or one of the three factors listed in Code, Criminal Law Article, §2-202, (2) the court promptly shall rule on the motion, and (3) the State may appeal an order granting the motion under the collateral order doctrine.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-326 to conform it to revisions of Rules 16-813 and 16-814, as follows:

Rule 1-326. PROCEEDINGS REGARDING VICTIMS AND VICTIMS' REPRESENTATIVES

. . .

Cross reference: See Maryland Declaration of Rights, Article 47; Rule~~s~~ 16-813, Maryland Code of Judicial Conduct, ~~Canon 3B (6)(a)~~ Rule 2.6 (a); and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, ~~Canon 3B (6)(a)~~ Rule 2.6 (a). For definitions of "victim" and "victim's representative," see Code, Courts Article, §3-8A-01 and Code, Criminal Procedure Article, Title 11.

Source: This Rule is new.

REPORTER'S NOTE

In light of the revision of Rules 16-813 (Maryland Code of Judicial Conduct) and 16-814 (Maryland Code of Conduct for Judicial Appointees), conforming amendments to Rules 1-326, 1-351, 4-327, 5-605, 16-808, 16-813, 16-815, and 17-105 and Rules 8.2 and 8.4 of the Maryland Lawyers' Rules of Professional Conduct are proposed.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-351 to conform it to the revision of Rule 16-813, as follows:

Rule 1-351. ORDER UPON EX PARTE APPLICATION PROHIBITED - EXCEPTIONS

No court shall sign any order or grant any relief in an action upon an ex parte application unless:

(a) an ex parte application is expressly provided for or necessarily implied by these rules or other law, or

(b) the moving party has certified in writing that all parties who will be affected have been given notice of the time and place of presentation of the application to the court or that specified efforts commensurate with the circumstances have been made to give notice.

Source: This Rule is new and is consistent with Rule 16-812 (Maryland Lawyers' Rules of Professional Conduct, Rule 3.5) and Rule 16-813 (Maryland Code of Judicial Conduct, ~~Canon 3~~ Rule 2.9).

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-327 to conform it to the revision of Rule 16-813, as follows:

Rule 4-327. VERDICT - JURY

. . .

Cross reference: See Rule 16-813, Maryland Code of Judicial Conduct, ~~Canon 3B (1)~~ Rule 2.8, regarding praise or criticism of a jury's verdict.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-605 to conform it to the revisions of Rule 16-813, as follows:

Rule 5-605. COMPETENCY OF JUDGE AS WITNESS

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Cross reference: See Rule 16-813, Maryland Code of Judicial Conduct, ~~Canon 3D (1)(a) and (d)(iv)~~ Rule 2.11 (a)(1) and (a)(2)(D).

Source: This Rule is derived from F.R.Ev. 605.

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-808 to conform it to the revision of Rule 16-813, as follows:

Rule 16-808. PROCEEDINGS BEFORE COMMISSION

(a) Charges

After considering the report and recommendation of the Board or Investigative Counsel submitted pursuant to Rule 16-805 (j), and upon a finding by the Commission of probable cause to believe that a judge has a disability or has committed sanctionable conduct, the Commission may direct Investigative Counsel to initiate proceedings against the judge by filing with the Commission charges that the judge has a disability or has committed sanctionable conduct. The charges shall (1) state the nature of the alleged disability or sanctionable conduct, including each ~~Canon of Judicial Conduct~~ Rule of the Maryland Code of Judicial Conduct allegedly violated by the judge, (2) allege the specific facts upon which the charges are based, and (3) state that the judge has the right to file a written response to the charges within 30 days after service of the charges.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGE, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-813, Rule 3.8 to add the word “former” to the source note, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

. . .

Rule 3.8. APPOINTMENTS TO FIDUCIARY POSITIONS

(a) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a **member of the judge's family**, and then only if such service will not interfere with the proper performance of judicial duties.

(b) A judge shall not serve in a fiduciary position if the judge as **fiduciary** will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(c) A judge acting in a **fiduciary** capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(d) If a person who is serving in a **fiduciary** position becomes a judge, he or she must comply with this Rule as soon as

reasonably practicable, but in no event later than one year after becoming a judge.

(e) Paragraph (a) of this Rule does not apply to retired judges approved for recall under Maryland Constitution, Article IV, §3A.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Source: Paragraphs (a) through (d) of this Rule are derived from Rule 3.8 of the 2007 ABA Code. Paragraph (e) is derived from Canon 6C of the former Maryland Code of Judicial Conduct. The Comment is derived from the ABA Comment to Rule 3.8 of the 2007 ABA Code.

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-815 to conform it to the revision of Rule 16-813, as follows:

Rule 16-815. FINANCIAL DISCLOSURE STATEMENT

. . .

h. This rule applies to each judge of a court named in ~~Canon 6A~~ Rule 16-813, Maryland Code of Judicial Conduct, A-109 (General Provisions) who has resigned or retired in any calendar year, with respect to the portion of that calendar year prior to the judge's resignation or retirement and to each former judge with respect to the previous calendar year.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-105 to conform it to revisions of Rules 16-813 and 16-814, as follows:

Rule 17-105. QUALIFICATIONS AND SELECTION OF PERSONS OTHER THAN MEDIATORS AND NEUTRAL EXPERTS

. . .

Cross reference: Rule 16-813, Maryland Code of Judicial Conduct, ~~Canon 4F~~ Rule 3.9 and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, ~~Canon 4F~~ Rule 3.9.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

AMEND Rule 8.2 to conform it to the revision of Rule 16-813, as follows:

Rule 8.2. JUDICIAL AND LEGAL OFFICIALS

. . .

(b) ~~Canon 5C (4)~~ Rule 4.1 (c)(2)(D) of the Maryland Code of Judicial Conduct, set forth in Rule 16-813, provides that a lawyer becomes a candidate for a judicial office when the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office. A candidate for a judicial office:

(1) shall maintain the dignity appropriate to the office and act in a manner consistent with the impartiality, independence and integrity of the judiciary;

(2) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;

Committee note: Rule 8.2 (b)(2) does not prohibit a candidate from making a commitment, pledge, or promise respecting improvements in court administration or the faithful and impartial performance of the duties of the office.

(3) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact;

(4) shall not allow any other person to do for the candidate what the candidate is prohibited from doing; and

(5) may respond to a personal attack or an attack on the candidate's record as long as the response does not otherwise violate this Rule.

COMMENT

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

AMEND Rule 8.4 to conform it to the revision of Rule 16-813, as follows:

Rule 8.4. MISCONDUCT

. . .

COMMENT

. . .

[4] Paragraph (e) reflects the premise that a commitment to equal justice under the law lies at the very heart of the legal system. As a result, even when not otherwise unlawful, a lawyer who, while acting in a professional capacity, engages in the conduct described in paragraph (e) and by so doing prejudices the administration of justice commits a particularly egregious type of discrimination. Such conduct manifests a lack of character required of members of the legal profession. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. A judge, however, must require lawyers to refrain from the conduct described in paragraph (e). See Md. Rule 16-813, Maryland Code of Judicial Conduct, ~~Canon 3 B (11)~~ Rule 2.3.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-326.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-306 to allow certain confined or restrained individuals to participate in habeas corpus proceedings by electronic means under certain circumstances, as follows:

Rule 15-306. SERVICE OF WRIT; APPEARANCE BY INDIVIDUAL; AFFIDAVIT

(a) Service

Except as provided in section (c) of this Rule, a writ of habeas corpus and a copy of the petition shall be served by delivering them to the person to whom the writ is directed or by mailing them by first class mail, postage prepaid, as ordered by the court.

Cross reference: See Rules 2-121 and 3-121.

(b) Production of Individual

At the time stated in the writ, which, unless the court orders otherwise, shall not be later than three days after service of the writ, the person to whom the writ is directed shall cause the individual confined or restrained to be taken before the judge designated in the writ. <u>If the petition is by or behalf of an individual confined or restrained pursuant to an isolation or quarantine directive or order issued under any federal, State, or local public health law or public emergency</u>

law, production of the individual may be by means of a telephonic conference call, live closed circuit television, live internet or satellite video conference transmission, or other available means of communication that reasonably permit the individual to participate in the proceedings.

Cross reference: For proceedings brought pursuant to Code, Health-General Article, §18-906 and Code, Public Safety Article, §14-3A-05, see the Rules in Title 15, Chapter 1100.

(c) Immediate Appearance

Subject to section (b) of this Rule, ~~If~~ if the judge finds probable cause to believe that the person having custody of the individual by or on whose behalf the petition was filed is about to remove the individual or would evade or disobey the writ, the judge shall include in the writ an order directing the person immediately to appear, together with the individual confined or restrained, before the judge designated in the writ. The sheriff to whom the writ is delivered shall serve the writ immediately, together with a copy of the petition, on the person having custody of the individual confined or restrained and shall bring that person, together with the individual confined or restrained, before the judge designated in the writ.

Cross reference: See Code, Courts Article, §2-305 for the penalty on a sheriff for failure to act as provided in section (b) of this Rule; see Code, Correctional Services Article, §9-611 for the penalty on an officer or other person failing to furnish a copy of a warrant of commitment when demanded.

Source: This Rule is derived in part from former Rules Z46 and Z47 and is in part new.

REPORTER'S NOTE

The constitutionally protected right of an individual to seek habeas corpus relief is in addition to the right of the individual who is confined or restrained pursuant to an isolation or quarantine directive or order to seek relief in accordance with the Rules in Title 15, Chapter 1100. See Rule 15-1101 (a).

Using concepts borrowed from the Rules in Title 15, Chapter 1100, amendments to Rules 15-306 and 15-309 are proposed in order to provide a safe and practical approach to the handling of writs of habeas corpus when the confinement is pursuant to an isolation or quarantine directive or order.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-309 to add a new section (b) pertaining to the conduct of a hearing at which an individual is unable to appear in person due to a certain isolation or quarantine directive or order, as follows:

Rule 15-309. HEARING

(a) Generally

Upon the production of the individual confined or restrained, the judge shall conduct a hearing immediately to inquire into the legality and propriety of the individual's confinement or restraint. The individual confined or restrained for whom the writ is issued may offer evidence to prove the lack of legal justification for the confinement or restraint, and evidence may be offered on behalf of the person having custody to refute the claim.

(b) Conduct of Hearing If Isolation or Quarantine

If, pursuant to an isolation or quarantine directive or order issued under any federal, State, or local public health law or public emergency law, one or more of the parties, their counsel, or witnesses are unable to appear personally at the hearing, and the fair and effective adjudication of the proceedings permits, the court may:

(1) admit documentary evidence submitted or proffered by courier, facsimile, or other electronic means;

(2) if feasible, conduct the proceedings by means of a telephonic conference call, live closed circuit television, live internet or satellite video conference transmission, or other available means of communication that reasonably permits the parties or their authorized representatives to participate in the proceedings; and

(3) decline to require strict application of the rules of evidence other than those relating to the competency of witnesses and lawful privileges.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules Z46 b and Z48.
Section (b) is derived from Rule 15-1104 (d).

REPORTER'S NOTE

New section (b), proposed to be added to Rule 15-309, uses language borrowed from Rule 15-1104 (d), with the addition of the phrase, "pursuant to an isolation or quarantine directive or order issued under any federal, State, or local public health law or public emergency law," and the omission of the phrase "accept pleadings and," which is contained in Rule 15-1104 (d)(1), and the word "fully," which is contained in Rule 15-1104 (d)(2).

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

AMEND Rule 15-1103 to require that the petition be filed in a circuit court and not with the Clerk of the Court of Appeals and to specify certain actions to be taken by the County Administrative Judge or the judge's designee and by the clerk, as follows:

Rule 15-1103. INITIATION OF PROCEEDING TO CONTEST ISOLATION OR QUARANTINE

(a) Petition for Relief

An individual or group of individuals required to go to or remain in a place of isolation or quarantine by a directive of the Secretary issued pursuant to Code, Health-General Article, §18-906 or Code, Public Safety Article, §14-3A-05, may contest the isolation or quarantine by filing a petition for relief ~~with the Clerk of the Court of Appeals~~ in the circuit court for the county in which the isolation or quarantine is occurring or, if that court is not available, in any other circuit court.

Committee note: Motions to seal or limit inspection of a case record are governed by Rule 16-1009. The right of a party to proceed anonymously is discussed in *Doe v. Shady Grove Hosp.*, 89 Md. App. 351, 360-66 (1991).

(b) Order Assigning Judge and Setting Hearing

The ~~Chief Judge of the Court of Appeals~~ County Administrative Judge or that judge's designee shall enter an

order (1) assigning the matter to a judge ~~of any circuit court to hear the action~~ and (2) setting the date, time, and location of a hearing on the petition or directing ~~that~~ the clerk ~~of the circuit court to which the action has been assigned~~ to promptly set the hearing and notify the parties. The ~~Clerk~~ clerk ~~of the Court of Appeals~~ shall provide a copy of the order to all parties, the State Court Administrator, and the Chief Judge of the Court of Appeals.

Cross reference: See Code, Health-General Article, §18-906 (b), Code, Public Safety Article, §14-3A-05 (c), and Rule 15-1104 (c) concerning the time within which a hearing is to be conducted.

(c) Notice

No later than the day after the petition was filed, the ~~Clerk of the Court of Appeals~~ clerk shall provide a copy of the petition and a notice of the date that it was filed to the Secretary or other official designated by the Secretary and to counsel to the Department of Health and Mental Hygiene.

(d) Answer to Petition

The Secretary or other official designated by the Secretary may file an answer to the petition. If an answer is not filed, the allegations of the petition shall be deemed denied.

Source: This Rule is new.

REPORTER'S NOTE

Because a catastrophic health emergency in Annapolis may make the filing of a petition with the Clerk of the Court of Appeals impossible, Rule 15-1103 is proposed to be amended to require that a petition for relief contesting an isolation or

quarantine be filed in the circuit court for the county in which the isolation or quarantine is occurring or, if that court is not available, in any other circuit court. To apprise the Chief Judge of the Court of Appeals and the State Court Administrator of filings throughout the State, an amendment to section (b) requires the clerk to provide each of them with a copy of the order entered by the County Administrative Judge or designee of that Judge.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-311 to require pleadings and papers to contain the facsimile number, if any, and e-mail address, if any, of the person signing the pleading or paper, as follows:

Rule 1-311. SIGNING OF PLEADINGS AND OTHER PAPERS

(a) Requirement

Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party. Every pleading or paper filed shall contain the signer's address, ~~and~~ telephone number, ~~of the person by whom it is signed. It also may contain that person's business electronic mail address and business~~ facsimile number, if any, and e-mail address, if any.

Committee note: The ~~last sentence of section (a), which allows~~ requirement that a pleading ~~to~~ contain a ~~business electronic mail address and a business facsimile number~~ facsimile number, if any, and e-mail address, if any, does not alter the filing or service rules or time periods triggered by the entry of a judgment. See *Blundon v. Taylor*, 364 Md. 1 (2001).

(b) Effect of Signature

The signature of an attorney on a pleading or paper constitutes a certification that the attorney has read the pleading or paper; that to the best of the attorney's knowledge,

information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay.

(c) Sanctions

If a pleading or paper is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading had not been filed. For a wilful violation of this Rule, an attorney is subject to appropriate disciplinary action.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 302 a, 301 f, and the 1937 version of Fed. R. Civ. P. 11.
Section (b) is derived from former Rule 302 b and the 1937 version of Fed. R. Civ. P. 11.
Section (c) is derived from the 1937 version of Fed. R. Civ. P. 11.

REPORTER'S NOTE

A Judge of the Circuit Court for Baltimore City requested that the Rules Committee consider requiring counsel to put their fax number on pleadings, because this would make it easier and quicker for judges to communicate with counsel.

The Rules Committee has expanded upon this suggestion, and recommends an amendment to Rule 1-311 (a) that requires not only the facsimile number but also the e-mail address of the person who signs the pleading, regardless of whether that person is an attorney or a *pro se* litigant. Because not everyone has a facsimile number or e-mail address, the words "if any" are added.

A conforming amendment to the Committee note following section (a) also is proposed.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-311 by requiring a party requesting a hearing to state the request in the title of the motion or response, as follows:

Rule 2-311. MOTIONS

. . .

(f) Hearing - Other Motions

A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing." <u>The title of the motion or response shall state that a hearing is requested.</u> Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

. . .

<u>REPORTER'S NOTE</u>

A circuit court judge suggested that Rule 2-311 be amended to require parties who file motions to indicate under the caption of the motion if they are requesting a hearing. The judge explained that parties often indicate at the end of the motion, buried within the motion, or in attached exhibits that a hearing is requested. This makes it difficult for judges and clerks to determine quickly whether a hearing is sought.

The Rules Committee recommends amending section (f) to require a party who requests a hearing on a motion to state in the title of the motion or response that a hearing is requested.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-331 (c) to delete the word "previously," as follows:

Rule 2-331. COUNTERCLAIM AND CROSS-CLAIM

. . .

(c) Joinder of Additional Parties

A person not ~~previously~~ a party to the action may be made a party to a counterclaim or cross-claim and shall be served as a defendant in an original action. When served with process, the person being added shall also be served with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action.

. . .

REPORTER'S NOTE

An attorney raised the issue of the meaning of the phrase "not previously a party." He had been involved in a multi-party case in which a potential third-party defendant had been in the action, but the initial claim involving that person had been dismissed without prejudice. The attorney who wished to file the third-party claim later was not allowed to do so pursuant to Rule 2-332 (a), because the potential third-party defendant was not "not previously a party." The question is whether the phrase "not previously a party" means the potential party had never been a party before, or the potential party is not a party at the time the current claim is filed. To clarify this ambiguity, the Process, Parties, and Pleading Subcommittee recommends deleting the word "previously" from Rules 2-331 (c), 2-332 (a), 3-331 (c), and 3-332 (a).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-332 (a) to delete the word “previously,” as follows:

Rule 2-332. THIRD-PARTY PRACTICE

(a) Defendant's Claim Against Third Party

A defendant, as a third-party plaintiff, may cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon a person not ~~previously~~ a party to the action who is or may be liable to the defendant for all or part of a plaintiff's claim against the defendant. A person so served becomes a third-party defendant.

. . .

REPORTER’S NOTE

See the Reporter’s note to Rule 2-331.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-331 (c) to delete the word "previously," as follows:

Rule 3-331. COUNTERCLAIM AND CROSS-CLAIM

. . .

(c) Joinder of Additional Parties

A person not ~~previously~~ a party to the action may be made a party to a counterclaim or cross-claim and shall be served as a defendant in an original action. When served with process, the person being added shall also be served with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-331.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-332 (a) to delete the word "previously," as follows:

Rule 3-332. THIRD-PARTY PRACTICE

(a) Defendant's Claim Against Third Party

A defendant, as a third-party plaintiff, may cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon a person not ~~previously~~ a party to the action who is or may be liable to the defendant for all or part of a plaintiff's claim against the defendant. A person so served becomes a third-party defendant.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-331.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

AMEND Rule 4-403 to correct an obsolete reference to a certain division of the Office of the Public Defender, as follows:

Rule 4-403. NOTICE OF PETITION

Upon receipt of a post conviction petition, the clerk shall promptly notify the county administrative judge and the State's Attorney. When the petition relates to an action tried in that court, it shall be filed in the action. If the petition alleges that the petitioner is indigent, the clerk shall promptly notify the ~~Public Defender's Inmate Services Division~~ Office of the Public Defender by forwarding a copy of the petition.

Cross reference: Code, Article 27A, §4.

Source: This Rule is derived from former Rule BK41 e.

REPORTER'S NOTE

Proposed amendments to Rules 4-403, 4-705, and 4-706 replace an obsolete reference to the "Public Defender's Inmate Services Division" with a reference to the "Office of the Public Defender," which remains applicable regardless of the internal organization of that Office.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 - POST CONVICTION DNA TESTING

AMEND Rule 4-705 to correct an obsolete reference to a certain division of the Office of the Public Defender, as follows:

Rule 4-705. NOTICE OF PETITION

(a) To State's Attorney

Upon receipt of a petition, the clerk promptly shall forward a copy of it to the State's Attorney and the county administrative judge. If the petition seeks a search of the DNA database or log of an identified law enforcement agency, the State's Attorney shall send a copy of the petition to that law enforcement agency.

(b) To Public Defender

If the petition alleges that the petitioner is unable to pay the costs of testing or to employ counsel, the clerk shall promptly forward a copy of the petition to the ~~Public Defender's Inmate Services Division~~ Office of the Public Defender.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-403.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 - POST CONVICTION DNA TESTING

AMEND Rule 4-706 to correct an obsolete reference to a certain division of the Office of the Public Defender, as follows:

Rule 4-706. ANSWER; MOTION TO TRANSFER

. . .

(d) Service

The State's Attorney shall serve a copy of the answer or motion to transfer on the petitioner and, if the petitioner alleges an inability to pay the costs of testing or to employ counsel, on the ~~Public Defender's Inmate Services Division~~ Office of the Public Defender.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-403.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-411 (c) to change the word "granted" to the word "filed" and to change the word "extended" to the words "before the expiration of any period extended," as follows:

Rule 6-411. ELECTION TO TAKE STATUTORY SHARE

. . .

(c) Extension of Time for Making Election

Within the period for making an election, the surviving spouse may file with the court a petition for an extension of time. The petitioner shall deliver or mail a copy of the petition to the personal representative. For good cause shown, the court may grant extensions not to exceed three months at a time, provided each petition for extension is ~~granted~~ filed before the expiration of the period originally prescribed or ~~extended~~ before the expiration of any period extended by a previous order. The court may rule on the petition without a hearing or, if time permits, with a hearing.

If an extension is granted without a hearing, the register shall serve notice on the personal representative and such other persons as the court may direct. The notice shall be in the following form:

[CAPTION]

NOTICE OF EXTENSION OF TIME

TO ELECT STATUTORY SHARE

On the _____ day of _____, _____, an extension
(month) (year)

of time to elect a statutory share of the estate was granted to

_____, the decedent's

surviving spouse. The extension expires on the _____ day of

_____, _____.
(month) (year)

If you believe there is good cause to object to the extension, within 20 days after service of this notice you may file with the court, in writing, a petition to shorten the time for filing an election. A copy of the petition shall be served on the surviving spouse.

_____
Register of Wills

. . .

REPORTER'S NOTE

Chapter 146, Laws of 2010 (HB 329) authorizes a surviving spouse, within the period of time provided for making an election to take an elective share of the deceased spouse's estate, to file with the court a petition for a extension of time. To conform Rule 6-411 to the statute, the Rule Committee recommends amending the Rule by changing the word "granted" to the word "filed" in section (c).

The Committee also suggests changing the word "extended" to the words "before the expiration of any period extended" to clarify that there may be more than one extension of the period of time for making an election to take a statutory share.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-416 (b) to modify the "Consent to Compensation for Personal Representative and/or Attorney" form, as follows:

Rule 6-416. ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

. . .

(b) Consent in Lieu of Court Approval

(1) Conditions for Payment

Payment of attorney's fees and personal representative's commissions may be made without court approval if:

(A) the combined sum of all payments of attorney's fees and personal representative's commissions does not exceed the amounts provided in Code, Estates and Trusts Article, §7-601; and

(B) a written consent stating the amounts of the payments signed by (i) each creditor who has filed a claim that is still open and (ii) all interested persons, is filed with the register in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

IN THE ESTATE OF:

_____ Estate No. _____

CONSENT TO COMPENSATION FOR

PERSONAL REPRESENTATIVE AND/OR ATTORNEY

~~I consent to the following payments of compensation to the personal representative and/or attorney and acknowledge that, if consented to by all unpaid creditors who have filed claims and all interested persons, these payments will not be subject to review or approval by the Court. I also understand that the total compensation does not exceed the amounts provided in Estates and Trusts Article, §7-601 which are 9% of the first $20,000 of the gross estate plus 3.6% of the excess over $20,000.~~

I understand that the law, Estates and Trusts Article, §7-601, provides a formula to establish the maximum total compensation to be paid for personal representative's commissions and/or attorney's fees without order of court. If the total compensation being requested falls within the maximum allowable amount, and the request is consented to by all unpaid creditors who have filed claims and all interested persons, this payment need not be subject to review or approval by the Court. A creditor or an interested party may, but is not required to, consent to these fees.

The formula sets total compensation at 9% of the first $20,000 of the gross estate PLUS 3.6% of the excess over $20,000.

Based on this formula, the total allowable statutory maximum based on the gross estate known at this time is_____, LESS any personal representative's commissions and/or attorney's

fees previously approved as required by law and paid. To date, $_____ in personal representative's commissions and $_____ in attorney's fees have been paid.

Cross reference: See 90 Op. Att'y. Gen. 145 (2005).

Total combined fees being requested are $_____, to be paid as follows:

Amount	To	Name of Personal Representative/Attorney
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

~~Consented to by:~~ I have read this entire form and I hereby consent to the payment of personal representative and/or attorney's fees in the above amount.

Date	Signature	Name (Typed or Printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____	_____
Attorney	Personal Representative
_____	_____
Address	Personal Representative

_____
Address

_____
Telephone Number

Committee note: Nothing in this Rule is intended to relax requirements for approval and authorization of previous payments.

(2) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§7-502, 7-601, 7-602 and 7-604.

REPORTER'S NOTE

The Conference of Orphans' Court Judges has suggested that the form in Rule 6-416 entitled "Consent to Compensation for Personal Representative and/or Attorney" be modified to ensure that lay persons who sign the form are giving informed consent. The Rules Committee recommends an amendment to the form, which has been developed with the assistance of the Conference, representatives of the Registers of Wills, and members of the Bar.

MARYLAND RULES OF PROCEDURE

TITLE 13 - RECEIVERS AND ASSIGNEES

CHAPTER 200 - NOTICE AND SCHEDULES

AMEND Rule 13-201 to add clarifying language to three forms, as follows:

Rule 13-201. PUBLICATION OF NOTICE TO CREDITORS

(a) Notice by Receiver or Assignee

Promptly but in no event later than 5 days after the court appoints a receiver or assumes jurisdiction over the estate of an assignee, the receiver or assignee shall file a form of Notice to Creditors with the clerk, who shall issue the Notice. The receiver or assignee shall cause the Notice to be published.

(b) Form of Notice

The Notice to Creditors shall be substantially in one of the following three forms, as applicable:

[CAPTION]

NOTICE TO CREDITORS BY RECEIVER

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____, DEBTOR

Notice is given with respect to _____,
(Name in bold type)

whose business address is _____

_____

and whose business is _____,

that this Court has appointed _____,
(Name in bold type)

whose address is _____

_____,

as Receiver.

All persons having claims against the Debtor should file them, under oath, with the Clerk of the Circuit Court at the address below not later than 120 days from the date this Notice was issued.

_____	_____
Date Notice Issued	Clerk of the Circuit Court for
	_____
	(County or Baltimore City)
	_____
	Address
_____	_____
Receiver	Attorney for Receiver
_____	_____
Address	Address
_____	_____
Telephone Number	Telephone Number

[CAPTION]

NOTICE TO CREDITORS BY ASSIGNEE

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____, DEBTOR

Notice is given with respect to _____,
(Name in bold type)

whose business address is _____

_____

and whose business is _____,

that the Debtor has executed an Assignment for the Benefit of Creditors and that _____,
(Name in bold type)

whose address is _____

_____

has been designated as Assignee.

The deed of assignment [ ] does [ ] does not contain a provision requiring creditors to release their claims against the debtor as a condition to (1) sharing in the distribution under the deed or (2) being accorded a preferred status over other creditors.

All persons having claims against the Debtor should file them, under oath, with the Clerk of the Circuit Court at the address below not later than 120 days from the date this Notice was issued.

_____	_____
Date Notice Issued	Clerk of the Circuit Court for
	_____
	(County or Baltimore City)
	_____
	Address
_____	_____
Assignee	Attorney for Assignee
_____	_____
Address	Address
_____	_____
Telephone Number	Telephone Number

[CAPTION]

NOTICE TO CREDITORS OF BULK TRANSFER

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____,

BULK TRANSFEROR

Notice is given with respect to _____,
(Name in bold type)

whose business address is _____

_____

and whose business is _____,

that the Transferor has effected a bulk transfer of property to

_____, transferee, whose
(Name in bold type)

address is _____

_____

and that _____ whose address is
(Name in bold type)

_____

_____

has been appointed as Receiver pursuant to Code, Commercial Law Article, §6-106.

All persons having claims against the Transferor should file them, under oath, with the Clerk of the Circuit Court at the address below not later than 120 days from the date this Notice was issued.

_____ _____
Date Notice Issued Clerk of the Circuit Court for

	_____ (County or Baltimore City)
	_____ Address
_____ Receiver	_____ Attorney for Receiver
_____ Address	_____ Address
_____ Telephone Number	_____ Telephone Number

(c) Where Published; Frequency

A copy of the Notice to Creditors shall be published in a newspaper of general circulation in the county where the court is located. The Notice shall be published at least once a week in each of three successive weeks, and the last publication shall occur not less than ninety days before the date specified in the Notice as the last day for filing claims.

(d) Certificate of Publication

On or before the last day for filing claims, the receiver or assignee shall file a certificate that publication has been made pursuant to this Rule.

Source: This Rule is derived from former Rule BP4 a 1.

REPORTER'S NOTE

The Clerk of a circuit court observed that occasionally the forms contained in the Rule, when completed, do not contain the address of the Clerk of the circuit court. Because claims are to be filed with the Clerk, each of the three forms in the Rule is proposed to be amended by adding "(County or Baltimore City)" under the first line following "Circuit Court for" and by adding "Address" under the second line following "Circuit Court for."

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-710 to add a Committee note after section (f), as follows:

Rule 10-710. TERMINATION OF A FIDUCIARY ESTATE - FINAL DISTRIBUTION

. . .

(f) Final Accounting

If the petitioner is the fiduciary, the petitioner shall file with the petition a final accounting containing the same information required in annual accountings by Rule 10-708, together with the proposed final distribution of any remaining assets of the estate. The accounting shall cover any period of the fiduciary's administration of the estate which has not been covered by annual accountings previously filed in the proceedings. If the petitioner is not the fiduciary, the fiduciary shall file an accounting as directed by the court.

Committee note: For the right of a guardian to pay from the guardianship estate all commissions, fees, and expenses of the guardianship before the balance of the guardianship estate is paid out to the personal representative or other person entitled to it, see Code, Estates and Trusts Article, §13-214, which abrogates the ruling in *Battley v. Banks*, 177 Md. App. 638 (2007).

. . .

REPORTER'S NOTE

Chapter 544, Laws of 2010 (SB 339) in response to *Battley v. Banks*, 177 Md. App. 638 (2007) specifically grants to a guardian the right to pay from a decedent's estate the commissions, fees, and expenses of the guardianship before the balance of the estate is paid out to the personal representative or other person entitled to it. The Rules Committee recommends adding a Committee note after section (f) of Rule 10-710 to draw attention to the new law and to indicate that the ruling in *Battley* was abrogated.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-247 (a) to modify the notice procedures for the clerk to follow when a charge has been nol prossed, as follows:

Rule 4-247. NOLLE PROSEQUI

(a) Disposition by Nolle Prosequi

The State's Attorney may terminate a prosecution on a charge and dismiss the charge by entering a nolle prosequi on the record in open court. The defendant need not be present in court when the nolle prosequi is entered, but ~~in that event~~ if neither the defendant nor the defendant's attorney is present, the clerk shall send notice to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. Notice shall not be sent if either the defendant or the defendant's attorney was present in court when the nolle prosequi was entered. If notice is required, the clerk may send one notice that lists all of the charges that were dismissed.

(b) Effect of Nolle Prosequi

When a nolle prosequi has been entered on a charge, any conditions of pretrial release on that charge are terminated, and any bail bond posted for the defendant on that charge shall be released. The clerk shall take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the

arrest or detention of the defendant because of that charge.

Cross reference: For provisions relating to expungement of the records after a case has been dismissed by entering a nolle prosequi, see Rule 4-329. For provisions relating to a nolle prosequi with the requirement of drug or alcohol treatment in non-violent crimes, see Code, Criminal Procedure Article, §6-229.

Source: This Rule is derived from former Rule 782 a and b and M.D.R. 782 a and b.

REPORTER'S NOTE

Chapter 160, Laws of 2010 (HB 698) sets out certain notice procedures for a clerk in the District Court to follow when a criminal action is nol prossed or stetted. Some of these procedures already are in Rules 4-247 and 4-248; others are not. To conform to the legislation and to make the nol pros and stet notice procedures applicable in the circuit courts, as well as in the District Court, the Rules Committee recommends amending Rules 4-247 and 4-248 to provide that notice of a nol pros or stet is sent by the clerk only if neither the defendant nor the defendant's attorney is present in court when the nol pros or stet is entered. A comparable amendment, pertaining to a notice of dismissal of a District Court action pursuant to Rule 4-251 (c)(1), is added to that Rule. The Committee declined to recommend extending the procedure to dismissals of an action on a motion filed in the circuit court.

The Committee also recommends adding to the Rules a provision that allows the clerk to send one notice that lists all of the charges that have been dismissed or stetted, rather than sending a separate notice for each count of the charging document, as many courts do now. Consolidating the notice into one mailing would be a more efficient use of judicial resources.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-248 (a) to modify the notice procedures for the clerk to follow when a charge has been stetted and to make a stylistic change to the language of the cross reference at the end of the Rule, as follows:

Rule 4-248. STET

(a) Disposition by Stet

On motion of the State's Attorney, the court may indefinitely postpone trial of a charge by marking the charge "stet" on the docket. The defendant need not be present when a charge is stetted but ~~in that event~~ if neither the defendant nor the defendant's attorney is present, the clerk shall send notice of the stet to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. Notice shall not be sent if either the defendant or the defendant's attorney was present in court when the charge was stetted. If notice is required, the clerk may send one notice that lists all of the charges that were stetted. A charge may not be stetted over the objection of the defendant. A stetted charge may be rescheduled for trial at the request of either party within one year and thereafter only by order of court for good cause shown.

(b) Effect of Stet

When a charge is stetted, the clerk shall take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of the charge, unless the court orders that any warrant or detainer shall remain outstanding.

Committee note: For provisions relating to bail or recognizance when criminal charges are stetted, see Code, Criminal Procedure Article, §5-208.

Cross reference: For provisions relating to expungement of the records after a ~~case~~ stet has been ~~dismissed by entering a stet~~ entered in a case, see Rule 4-329. For provisions relating to a stet with the requirement of drug or alcohol treatment in non-violent crimes, see Code, Criminal Procedure Article, §6-229.

Source: This Rule is derived from former Rule 782 c and d and M.D.R. 782 c and d.

REPORTER'S NOTE

For section (a), see the Reporter's note to Rule 4-247.

Also, the language of the cross reference at the end of Rule 4-248 is revised because a stet is an indefinite continuance of a case; it is not a dismissal.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-251 (c) by adding language pertaining to sending of a notice of dismissal, as follows:

Rule 4-251. MOTIONS IN DISTRICT COURT

(a) Content

A motion filed before trial in District Court shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual averments.

(b) When Made; Determination

(1) A motion asserting a defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense shall be made and determined before the first witness is sworn and before evidence is received on the merits.

(2) A motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial.

(3) A motion requesting that a child be held in a juvenile facility pending a transfer determination shall be heard and

determined not later than the next court day after it is filed unless the court sets a later date for good cause shown.

(4) A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

(5) Other motions may be determined at any appropriate time.

(c) Effect of Determination Before Trial

(1) Generally

The court may grant the relief it deems appropriate, including the dismissal of the charging document with or without prejudice. The defendant need not be present in court when a dismissal is entered, but if neither the defendant nor the defendant's attorney is present, the clerk shall send notice to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. Notice shall not be sent if either the defendant or the defendant's attorney was present when the charging document was dismissed. If notice is required, the clerk may send one notice that lists all of the charges that were dismissed.

(2) Transfer of Jurisdiction to Juvenile Court

If the court grants a motion to transfer jurisdiction of an action to the juvenile court, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions

reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code, Courts Article, §3-8A-15. Until a juvenile petition is filed, the charging document shall be considered a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of the defendant in detention or shelter care.

Cross reference: Code, Criminal Procedure Article, §4-202.

Source: This Rule is derived from former M.D.R. 736.

REPORTER'S NOTE

See the Reporter's note to Rule 4-247.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

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

AMEND Rule 16-110 by deleting subsection (d)(2), as follows:

Rule 16-110. CELL PHONES; OTHER ELECTRONIC DEVICES; CAMERAS

(a) Definitions

In this Rule the following definitions apply:

(1) Court Facility

"Court facility" means the building in which a circuit court or the District Court is located, but if the court is in a building that is also occupied by county or State executive agencies having no substantial connection with the court, then only that part of the building occupied by the court.

(2) Electronic Device

"Electronic device" means (A) a cell phone, a computer, and any other device that is capable of transmitting, receiving, or recording messages, images, sounds, data, or other information by electronic means or that, in appearance, purports to be a cell phone, computer, or such other device; and (B) a camera, regardless of whether it operates electronically, mechanically, or otherwise and regardless of whether images are recorded by using digital technology, film, light-sensitive plates, or other means.

(3) Local Administrative Judge

"Local administrative judge" means the county administrative judge in a circuit court and the district administrative judge in the District Court.

(b) Possession and Use of Electronic Devices

(1) Generally

Subject to inspection by court security personnel and the restrictions and prohibitions set forth in this section, a person may (A) bring an electronic device into a court facility and (B) use the electronic device for the purpose of sending and receiving phone calls and electronic messages and for any other lawful purpose not otherwise prohibited.

(2) Restrictions and Prohibitions

(A) Rule 5-615 Order

An electronic device may not be used to facilitate or achieve a violation of an order entered pursuant to Rule 5-615 (d).

(B) Photographs and Video

Except as permitted in accordance with this Rule, Rule 16-109, Rule 16-405, or Rule 16-504 or as expressly permitted by the local administrative judge, a person may not (i) take or record a photograph, video, or other visual image in a court facility, or (ii) transmit a photograph, video, or other visual image from or within a court facility.

Committee note: The prohibition set forth in subsection (b)(2)(B) of this Rule includes still photography and moving visual images. It is anticipated that permission will be granted

for the taking of photographs at ceremonial functions.

(C) Interference with Court Proceedings or Work

An electronic device shall not be used in a manner that interferes with court proceedings or the work of court personnel.

Committee note: An example of a use prohibited by subsection (b)(2)(C) is a loud conversation on a cell phone near a court employee's work station or in a hallway near the door to a courtroom.

(D) Jury Deliberation Room

An electronic device may not be brought into a jury deliberation room.

(E) Courtroom

(i) Except with the express permission of the presiding judge or as otherwise permitted by this Rule, Rule 16-109, Rule 16-405, or Rule 16-504, all electronic devices inside a courtroom shall remain off and no electronic device may be used to receive, transmit, or record sound, visual images, data, or other information.

(ii) Subject to subsection (b)(2)(F), the court shall liberally allow the attorneys in a proceeding currently being heard, their employees, and agents to make reasonable and lawful use of an electronic device in connection with the proceeding.

(F) Security or Privacy Issues in a Particular Case

Upon a finding that the circumstances of a particular case raise special security or privacy issues that justify a restriction on the possession of electronic devices, the local

administrative judge or the presiding judge may enter an order limiting or prohibiting the possession of electronic devices in a courtroom or other designated areas of the court facility. The order shall provide for notice of the designated areas and for the collection of the devices and their return when the individual who possessed the device leaves the courtroom or other area. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(c) Violation of Rule

(1) Security personnel or other court personnel may confiscate and retain an electronic device that is used in violation of this Rule, subject to further order of the court or until the owner leaves the building. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(2) An individual who willfully violates this Rule or any reasonable limitation imposed by the local administrative judge or the presiding judge may be found in contempt of court and sanctioned in accordance with the Rules in Title 15, Chapter 200.

(d) Notice

~~(1)~~ Notice of the provisions of sections (b) and (c) of this Rule shall be:

(A) posted prominently at the court facility;

(B) included on the main judiciary website and the website of each court; and

(C) disseminated to the public by any other means approved in an administrative order of the Chief Judge of the Court of Appeals.

~~(2) Notice that the possession and use of cell phones and other electronic devices may be limited or prohibited in designated areas of the court facility shall be included prominently on all summonses and notices of court proceedings.~~

Source: This Rule is new.

REPORTER'S NOTE

Subsection (d)(2) had been added to Rule 16-110 when, during development of the Rule, it appeared that cell phones would be banned from court facilities. When the Rule was redrafted to permit cell phones and other electronic devices to be brought into court facilities, subsection (d)(2) became less needed.

Incorporating the information required by subsection (d)(2) into all of the forms of summonses and notices that are generated by the courts has proved problematic. There is no room on many of the forms for any additional language. Court clerks and administrators have observed that printing addenda containing the required information and attaching the addenda to the summonses and notices is time-consuming, costly, and of little benefit to the public.

Rule 16-110, therefore, is proposed to be amended by the deletion of subsection (d)(2).