COURT OF APPEALS STANDING COMMITTEE

ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms UL 4 and 5 of the Judiciary Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on April 13, 2018.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Hon. Yvette M. Bryant
James E. Carbine, Esq.
Hon. John P. Davey
Mary Anne Day, Esq.
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Alvin I. Frederick, Esq.
Ms. Pamela Q. Harris
Victor H. Laws, III, Esq.
Bruce L. Marcus, Esq.
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Hon. Paula A. Price
Scott D. Shellenberger, Esq.
Steven M. Sullivan, Esq.
Gregory K. Wells, Esq.
Hon. Dorothy J. Wilson
Thurman W. Zollicoffer, Esq.

In attendance:

Hon. Kathleen Gallogly Cox, Circuit Court for Baltimore County
Michael Schatzow, Esq., Chief Deputy State's Attorney, Office of the State's Attorney for Baltimore City
Hon. Cynthia Callahan, Circuit Court for Montgomery County
Nisa C. Subasinghe, Esq., Juvenile and Family Services, Administrative Office of the Courts
Hon. John Morrissey, Chief Judge, District Court of Maryland
Russell Butler, Esq., Executive Director, Maryland Crime Victims' Resource Center, Inc.
Scott MacGlashan, Clerk, Circuit Court for Queen Anne's County
Katherine Hager, Deputy Clerk, Circuit Court for Queen Anne's County
Polly Harding, Executive Director of Administrative Services, District Court of Maryland
Hon. Gary G. Everngam, Retired Judge, District Court of Montgomery County
Hon. Richard Sandy, Circuit Court for Frederick County
Kim Klein, Civil and Criminal Case Administrator, Circuit Court

for Anne Arundel County
Thomas J. Dolina, Esq., Bodie, Dolina, Hoggs, Friddell & Grenzer, P.C.
Sandra F. Haines, Reporter
Susan L. Macek, Assistant Reporter
Sherie B. Libber, Assistant Reporter

The Chair convened the meeting. He announced with sadness the death of Senator Wayne Norman, who had been a valued member of the Committee. His service was all too short. The Chair added that he and the Committee will miss him. The Court of Appeals has announced a replacement for Senator Norman, Senator Robert Cassilly, who is from Harford County. The appointment was announced yesterday, but Senator Cassilly was unable to make the meeting today because of a conflict in his schedule.

The Chair said that a glitch had arisen in the appointment of a replacement for Cathy Cox, who recently retired as the Committee's administrative assistant. After two days of interviews, a preferred candidate was selected from several good choices, but the person who had accepted the job and was supposed to start April 25 announced yesterday that she was going to remain at her current job. The Chair and the Reporter will go back to the list of candidates to try to find another person for the job. In the meantime, they had spoken about the possibility of hiring someone temporarily to do the job.

The Chair told the Committee that the 195th Report to the Court was approved by the Court of Appeals with two exceptions.

The Rules will take effect July 1, 2018. The first exception was the proposal to exempt the Attorney Grievance Commission from section (d) of Rule 2-412, Deposition--Notice. Section (d) pertains to the designation of a person to testify for an organization. There was considerable opposition to this at the Court hearing from a number of attorneys, and the Court did not reject it, but decided to think about it.

The Chair said that the other exception involved proposed Rules pertaining to magistrates and examiners. These Rules had already been remanded to the Committee. The original concern was that some of the circuit courts were referring domestic cases, in particular uncontested divorce cases, to standing examiners, who are private attorneys. Another Rule provides that these cases are to go to standing magistrates. The costs for a standing examiner had been assessed to the parties for up to $200 plus the cost of transcripts.

The Chair said that the Committee had been asked to develop a rule to put a stop to this practice, and that had been done. Two days before the Court hearing on that Rule, some new problems surfaced that had more far-reaching implications. There was no way to attempt to address those issues, because it was unclear what the scope of the problem was. The Chair and the Reporter asked the Court to permit them to withdraw the proposed Rules changes so that they could do some redrafting.

The Chair then gave an update on the Judicial Disabilities Rules. In 2013, as part of the 178th Report, which reorganized all of the Judicial Administration Rules, all of the Rules dealing with judges as judges, and all of the Rules dealing with attorneys as attorneys were included. It was a project that had taken years of work. The first two parts of the Report that pertained only to the Judicial Administration Rules and the Rules pertaining to judges were submitted in 2013. The Committee had not yet addressed the Rules pertaining to attorneys. The Court was asked to defer action on Parts 1 and 2 until Part 3 was completed. Because of cross-references, they all had to be made effective at the same time. The Court agreed to do this.

The Chair said that in the meantime, some other issues had arisen, and it took three years to complete work on the Rules pertaining to attorneys. In 2016, in the 191st Report, those Rules were sent to the Court, along with a revised set of Rules on Judicial Disabilities, which needed to be changed because of issues that had arisen. Right before the Court hearing on the 191st Report, the Court issued a writ of mandamus in the case of a judge of the Circuit Court for Baltimore City. It was not clear what that was going to involve. The Chair asked the Court to defer any action on the Judicial Disabilities Rules and keep in place the then-current Rules that would be renumbered to

match the numbering system in the general revision. The Court obliged.

The Chair noted that recently, an opinion was issued in the case, but in the meantime, the Court took up the case of a District Court judge in Howard County. It was not clear what would happen with that case. A per curiam order was issued recently in that case with an opinion to follow. It is still unknown how the Court will handle the specific issues raised in the case until an opinion is issued.

The Chair said that as a result of these cases, and the case involving another judge of the Circuit Court for Baltimore City, a number of judges have become more vocal about the need for revisions to the Rules, but the revisions they may seek are not yet clear. A meeting of a private group of circuit court judges was held at the last Judicial Conference. That group now has hired counsel to assist it in making suggestions for change. The Rules Committee will listen to all of the concerns that may be expressed.

The Chair remarked that he wanted to advise the Committee that as soon as the opinion in the case of the District Court judge in Howard County is issued, and there is an opportunity to sort out the Court's holdings in the cases to which he had referred, an open and transparent process will begin. The first step will be to determine in-house what the Court said that may

need to be addressed. Then, various stakeholders will be invited to meet with the Attorneys and Judges Subcommittee, including current and former members of the Judicial Disabilities Commission who may wish to weigh in on this, current and past members of the Judicial Inquiry Board, Investigative Counsel, the circuit court judges group that spearheaded the request for change (although this did not come entirely from them), any other judges who may wish to weigh in on this, the MSBA, and news media organizations. Also invited will be attorneys who represent judges before the Commission, because the attorneys have become vocal in terms of what they see as the need for change.

The Chair pointed out that the Subcommittee has to listen to everyone without preconceived notions, because the Court will be relying on the Committee to sort out the various viewpoints. Any of these people can come before the Court at the hearing on the Rules and express an opinion.

The Chair commented that if anyone has an opinion about this, the Chair would like to hear it. He is hoping that this will be a late spring/early summer project. Some people are indicating that some of the issues that are addressed in the Judicial Disabilities Rules also may need to be addressed in the Attorney Discipline Rules. When the Committee determines how to address the issues pertaining to the Judicial Disabilities

Rules, which are more pressing, and then finds out what the Court does with the recommendations on those issues, the Committee can determine what, if anything, may need to be changed with respect to the Attorney Discipline Rules. This is subject to any more immediate issues that could arise with those Rules.

The Reporter said that the Rules Order for the 195th Report will be posted on the Judiciary website very soon. Also, Rule 19-304.4, Respect for Rights of Third Persons, has been remanded to the Committee by the Court.

Agenda Item 1. Consideration of proposed amendments to Rules 4-262 (Discovery in District Court) and 4-263 (Discovery in Circuit Court)

Mr. Marcus presented Rules 4-262, Discovery in Circuit Court, and 4-263, Discovery in District Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-262 by adding a Committee note following subsection (d)(2)(C)(ii), as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

. . .

(d) Disclosure by the State's Attorney

. . .

(2) On Request

On written request of the defense, the State's Attorney shall provide to the defense:

. . .

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

All relevant material or information regarding:

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

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

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant by a State's witness may also be required. See *Green v. State*, 456 Md. 97 (2017).

(D) Reports or Statements of Experts

As to each State's witness the State's Attorney intends to call to testify as an expert witness other than at a preliminary hearing:

(i) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(ii) 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
>
> (iii) the substance of any oral report and conclusion by the expert;
>
> (E) 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
>
> (F) 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.
>
> . . .

Rule 4-262 was accompanied by the following Reporter's note.

> Rule 4-262 (d)(2)(C)(ii) requires a prosecutor to disclose, upon written request of the defense during discovery, a pretrial identification of the defendant by a State's witness; however, under circumstances such as those found in *Green v. State*, 456 Md. 97 (2017), a prosecutor also is required to disclose, upon written request of the defense during discovery, a pretrial identification of a co-defendant by a State's witness.
>
> In *Green*, the Court held that under the specific facts of the case, "a pretrial identification of a co-defendant is relevant information regarding pretrial

identification of the defendant where the pretrial identification of the co-defendant is effectively the equivalent of a pretrial identification of the defendant." 456 Md. at 161-62. In light of that holding, a Committee note to *Green* is proposed to be added following subsection (d)(2)(C)(ii).

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSE

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-263 by adding a Committee note following subsection (d)(7), 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:

. . .

(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;

Committee note: In addition to disclosure of a pretrial identification of a defendant by a State's witness, in some cases, disclosure of a pretrial identification of a co-defendant by a State's witness may also be required. See *Green v. State*, 456 Md. 97 (2017).

(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.
>
> . . .

Rule 4-263 was accompanied by the following Reporter's note.

> Rule 4-263 (d)(7)(B) requires a prosecutor to disclose, during discovery, a pretrial identification of a defendant by a State's witness; however, under circumstances such as those found in Green v. State, 456 Md. 97 (2017), a prosecutor also is required to disclose, during discovery, a pretrial identification of a co-defendant by a State's witness.
>
> In Green, the Court held that under the specific facts of the case, "a pretrial identification of a co-defendant is relevant information regarding pretrial identification of the defendant where the pretrial identification of the co-defendant is effectively the equivalent of a pretrial identification of the defendant." 456 Md. at 161-62. In light of that holding, a Committee note to Green is proposed to be added following subsection (d)(7).

Mr. Marcus told the Committee that Agenda Item 1 relates to discovery issues. There are two separate Discovery Rules, one applicable in the circuit courts, and one applicable in the District Court. Rules 4-262 and 4-263 are very similar, but they have different triggering mechanisms. In the District Court, a request needs to be made to obtain certain kinds of

information. In the circuit court, broader obligations are imposed on the State's Attorney to provide the information.

Mr. Marcus noted that the issues that are critical in the discovery process relate to the ability of the defendant and the State to frame discovery that triggers the filing of various motions, particularly motions to suppress that implicate constitutional issues. The issues include questions such as whether there are statements that are attributable to the defendant and that are necessary from a discovery standpoint, whether there are Fifth Amendment issues that trigger motions to suppress, and whether there are Fourth Amendment issues on searches and seizures. Another category has to do with pretrial identification.

Mr. Marcus said that in 2017, the Court of Appeals in *Green v. State*, 456 Md. 97 (2017) expanded the traditional notion of the kind of discovery that is required of the State. *Green* was a very unusual case. The Court was very careful in how it described the actors in order to frame the issues. Two co-defendants – Green and Copeland – confronted the victim, Myers, regarding an earlier burglary of Copeland's home. During the confrontation, Myers was shot and killed, and the issue was whether it was Copeland or Green who fired the shots. The State's sole eyewitness saw the two men at the scene of the shooting. She described one as tall and slim and the other as

short and stout. She said that she could not see the face of the short, stout one but that he was the shooter. She did see the face of the tall, slim one. At trial, she was called and allowed to identify the tall, slim one, who was Copeland, as the person who was not the shooter. Green objected because the State had not disclosed that identification in discovery. The Court of Appeals reversed, noting that, in light of the fact that there were only two prospective shooters, the witness's identification of Copeland as not being the shooter was inferentially an identification of Green as the shooter, and that identification should have been disclosed.

Mr. Marcus noted that when *Green* was issued, some thought had been given to adding a comment that would clarify that the concept of what had been understood as traditional extrajudicial pretrial identification may well be more expansive, and under some circumstances, may require the State to disclose the identity of a co-defendant if that identification may impact the identification of the defendant who is on trial. Mr. Marcus remarked that a cautionary note is that if a case involves two people who were not present at the scene, and nothing links the defendant who is on trial to a co-defendant or some other accomplice, the State is not required to give all information about all other persons who may be involved in a criminal act unless it bears on the identification of the defendant. For

both Rules 4-262 and 4-263, the form is similar. It is the obligation of the State in certain circumstances in light of the *Green* case to provide information about identification of a co-defendant.

The Chair noted that a Committee note to *Green* has been proposed to be added after subsection (d)(2)(c)(ii) of Rule 4-262 and after subsection (d)(7)(B) of Rule 4-263. In *Green*, it was a non-identification of a co-defendant that led to the identification of the defendant.

By consensus, the Committee approved the addition of the Committee notes to Rules 4-262 and 4-263.

Agenda Item 2. Consideration of proposed amendments to Rule 4-212 (Issuance, Service, and Execution of Summons or Warrant)

Mr. Marcus presented Rule 4-212, Issuance, Service, and Execution of Summons or Warrant, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

CHAPTER 200 – PRETRIAL PROCEDURES

AMEND Rule 4-212 by removing the phrase "the court" and replacing it with the phrase "a judge," and by requiring that a judge's order to issue an arrest warrant be made in writing or on the record, as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR

WARRANT

. . .

(d) Warrant - Issuance; Inspection

. . .

(2) In the Circuit Court

Upon the request of the State's Attorney, ~~the court~~ a judge may order, in writing or on the record, issuance of a warrant for the arrest of a defendant, other than a corporation, if an information has been filed against the defendant and the circuit court or the District Court has made a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document or if an indictment has been filed against the defendant; and (A) the defendant has not been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2, or (B) the court finds there is a substantial likelihood that the defendant will not respond to a summons. A copy of the charging document shall be attached to the warrant. Unless the court finds that there is a substantial likelihood that the defendant will not respond to a criminal summons, the court shall not order issuance of a warrant for a defendant who has been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2 if the circuit court charging document is based on the same alleged acts or transactions. When the defendant has been processed and released pursuant to Rule 4-216, 4-216.1, or 4-216.2, the issuance of a warrant for violation of conditions of release is governed by Rule 4-217.

. . .

Rule 4-212 was accompanied by the following Reporter's note:

> After being contacted by some concerned clerks, the State Court Administrator requested that the Criminal Rules Subcommittee review language in Rule 4-212 relating to the issuance of arrest warrants. Specifically, the Administrator requested clarification of the phrase "the court" and the propriety of clerks signing warrants once a judge has ordered issuance of the warrants.
>
> The Criminal Rules Subcommittee recommends that the phrase "a judge" be substituted for the phrase "the court" and that the language "in writing or on the record" be added to specify how an order to issue a warrant may be executed.

Mr. Marcus explained that the issue pertaining to Rule 4-212 arose because of some confusion as to may issue an arrest warrant. For the circuit court, the Rule provides in subsection (d)(2): "Upon the request of the State's Attorney, the court may order issuance of a warrant for the arrest of a defendant…". This is similar to original process, because it pertains to the issuance of an arrest warrant upon a criminal information having been filed where probable cause has been determined either by a commissioner of the District Court, a District Court judge, or a circuit court judge. The criminal information is filed at the request of the State's Attorney or, alternatively, there may be a grand jury indictment.

Mr. Marcus commented that the question came up from various clerks around the State as to the language in subsection (d)(2) that reads: "…the court may order issuance of a warrant…". The issue was who is "the court?" In some jurisdictions, the clerk is responsible for issuing the warrant. In other jurisdictions, signatures are placed on a warrant by a judge. To address this issue, language has been proposed to be added to subsection (d)(2) that allows the judge, either by written order or by oral directive that is contained in a court record, to make clear that the issuance of that warrant is the act of a judge, whether under the signature of the judge or at the direction of the judge to the clerk.

The Chair noted that what exacerbates this problem is that subsection (d)(1) of Rule 4-212, which addresses issuance of arrest warrants in the District Court, provides that a judicial officer - a judge, or a commissioner - may issue an arrest warrant, and at the request of the State's Attorney, shall issue a warrant. The circuit court Rule in subsection (d)(2) provides that the "court" may order issuance of an arrest warrant. In some of the circuit courts, judges are signing the warrants, which are arrest warrants, not search warrants. In other jurisdictions, clerks are signing the arrest warrants.

The Chair commented that the clerks had debated whether it is appropriate for a clerk to sign an arrest warrant. There are

failure to appear ("FTA") warrants, and there could be others as well. It was not clear in the courts that were permitting clerks to do this exactly what the judge was doing. Was the judge signing an order directing the clerk to issue the warrant? Was the judge making this order a matter of record? Or, was the judge simply telephoning the clerk and asking him or her to issue a specific arrest warrant?

The Chair noted that this issue had been presented to the Conference of Circuit Judges to get its opinion. It was confirmed that the circuit courts were handling this in different ways. It was agreed that clerks should be allowed to sign arrest warrants, provided that it was on the order of a judge, and that the order was either written or on the record, so that it was traceable and could be found.

Mr. Marcus remarked that last week Michael Schatzow, Esq., Chief Deputy State's Attorney for Baltimore City, who is present at today's meeting, had called Mr. Marcus. Mr. Schatzow had raised an interesting and puzzling issue. Mr. Schatzow told the Committee that in Baltimore City, clerks do not sign arrest warrants. The warrants are signed by commissioners or by circuit court judges. The first concern of Mr. Schatzow and his colleagues was whether the clerk has that authority. The U.S. Supreme Court in *Shadwick v. City of Tampa*, 92 S. Ct. 2119 (1972) held that clerks do have the authority to sign arrest

warrants; however, a clerk signing a warrant is inconsistent with section (n) of Rule 4-102, Definitions. That section defines a "warrant" as "a written order by a judicial officer…".

Mr. Schatzow said that he and his colleagues would like this issue clarified. They do not want to be in the position where police officers arrest someone, and later there is a claim that the arrest was invalid because the warrant had been issued by a clerk, which is not a valid warrant according to the Rules. In Maryland, one has the right to resist an illegal arrest. It is important not to encourage resisting arrest and not to incur civil liabilities for the police officers serving the warrants. Mr. Schatzow added that Rule 4-102 (n) needs to be changed to be consistent with Rule 4-212.

The Chair said that this can be done. Although Rule 4-212 pertains to arrest warrants, it can have an impact on searches as well. If an officer arrests someone, even on a warrant, and searches the person as an incident to the arrest, there could be a motion to suppress any evidence found pursuant to the search, because the arrest was unlawful. Rule 4-102 (n) defines the term "warrant" as Mr. Schatzow had said. The problem is that it includes search warrants. There has never been a question raised as to whether a clerk can sign a search warrant. Either the judge orders it or not.

The Chair pointed out that the first issue for the Committee is the policy one. Should clerks be signing arrest warrants even on the order of a judge? The proposed change to Rule 4-212 provides that this can be done for arrest warrants. The second issue is the need to split the definition of the term "warrant" in Rule 4-102 (n) into two parts, one applying to arrest warrants and one applying to search warrants. If the Committee is of the view that clerks can sign arrest warrants on the order of a judge, this would be added to Rule 4-212, but it would not be added to Rule 4-601, Search Warrants. This change can easily be made.

Mr. Shellenberger commented that the District Court has a tremendous volume of arrest warrants issued. He asked the judges present how many warrants are issued by the circuit court. Would it be onerous to require a judge to sign the arrest warrants? Judge Eaves responded that the number of arrest warrants depends on the size of the judge's docket, and the dockets vary. It is fairly routine to authorize the issuance of a Failure to Appear ("FTA") warrant, and this is done on the record. When a petition for a violation of probation comes in, the judge may review it in chambers and then will make a written determination that the warrant needs to be issued, depending on the circumstances that were alleged.

The Chair asked Judge Eaves whether a clerk could sign the warrant. Judge Eaves replied that the clerks can sign the FTA warrants and warrants for a violation of probation. There is an oral record for FTA warrants and a written record for violations of probation ordered by a judge.

The Chair commented that Rule 4-212 requires either a written order or one on the record. Judge Eaves said that it appears that Harford County is compliant with the Rule. Judge Bryant commented that the question about how many warrants there are should be directed to someone in a smaller jurisdiction. This could become an issue in a one-judge jurisdiction.

The Honorable Kathleen Cox, a judge of the Circuit Court for Baltimore County, said that this matter had been discussed at the Conference of Circuit Judges. The practices vary, but her impression was that signature by the judges was not the majority practice. Some jurisdictions have a high volume of FTAs and violations of probation. Requiring a judge's signature would certainly slow down the process. In some instances where the warrant is specific to the judge who issues it, there could be a substantial delay. The warrants in Baltimore County indicate at whose direction they were issued. They are all reflected either by an oral order and statement on the record, or something in writing that directly orders the issuance of the warrant. To

require that the judge must sign the warrant will cause delay, and there is no benefit to it that Judge Cox could see.

Mr. MacGlashan, Clerk of the Circuit Court for Queen Anne's County, remarked that he is concerned about the possibility of a delay. The situation may arise where there is a lengthy docket on a Friday afternoon, and a delay could result in a public safety issue. Judge Price commented that the smaller jurisdictions may not have as much of a problem as the larger ones if the same judge has to sign off on the warrant.

The Chair said that the proposed changes to Rule 4-212 are a Subcommittee recommendation. By consensus, the Committee approved Rule 4-212 as presented.

The Chair asked the Committee about amending section (n) of Rule 4-102 to split the definition. It can be accomplished by a "housekeeping" amendment. By consensus, the Committee agreed to make the change to Rule 4-102 (n).

Agenda Item 3. Consideration of proposed amendments to: Rule 4-346 (Probation), Rule 4-351 (Commitment Record), and Rule 11-115 (Disposition Hearing)

Mr. Marcus presented Rules 4-346, Probation; 4-351, Commitment Record; and 11-115, Disposition Hearing, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 – CRIMINAL CAUSES

AMEND Rule 4-346 by adding a new section (c) pertaining to the delivery of probation orders, judgments of restitution, and victim notifications to the Division of Parole and Probation, as follows:

Rule 4-346. PROBATION

(a) Manner of Imposing

When placing a defendant on probation, the court shall advise the defendant of the conditions and duration of probation and the possible consequences of a violation of any of the conditions. The court also shall file and furnish to the defendant a written order stating the conditions and duration of probation.

(b) Modification of Probation Order

During the period of probation, on motion of the defendant or of any person charged with supervising the defendant while on probation or on its own initiative, the court, after giving the defendant an opportunity to be heard, may modify, clarify, or terminate any condition of probation, change its duration, or impose additional conditions.

(c) Delivery or Transmittal to the Division of Parole and Probation

The clerk shall deliver or transmit a copy of any probation order, the details or a copy of any order or judgment of restitution, and the details or a copy of any request for victim notification to the Division of Parole and Probation.

Cross reference: For orders of probation or parole recommending that a defendant reside in or travel to another state as a condition of probation or parole, see the Interstate

Compact for Adult Offender Supervision, Code, Correctional Services Article, §6-201 et seq. For evaluation as to the need for drug or alcohol treatment before probation is ordered in cases involving operating a motor vehicle or vessel while under the influence of or impaired by drugs or alcohol, see Code, Criminal Procedure Article, §6-220. For victim notification procedures, see Code, Criminal Procedure Article, §11-104 (f). For procedures concerning compliance with restitution judgments, see Code, Criminal Procedure Article, §11-607.

Source: This Rule is in part derived from former Rule 775 and M.D.R. 775 and in part new.

Rule 4-346 was accompanied by the following Reporter's note:

An attorney advised the Criminal Rules Subcommittee that at times, victim notification forms and orders of restitution are not reaching the individuals who need the information in order to provide notice to victims or to collect restitution, including the Division of Parole and Probation.

To address these issues, amendments to three Rules are proposed, including Rule 4-346. The proposed amendment to Rule 4-346 requires the clerk to transmit or deliver to the Division of Parole and Probation a copy of any probation order, any order or judgment of restitution, and any request for victim notification.

TITLE 4 – CRIMINAL CAUSES

CHAPTER 300 – TRIAL AND SENTENCING

AMEND Rule 4-351 by adding the language "or transmit" to section (a), by correcting a cross reference after subsection (a)(6), and by adding a new subsection (a)(7) pertaining to delivery to the custodial officer of any request for victim notification, as follows:

Rule 4-351. COMMITMENT RECORD

(a) Content

When a person is convicted of an offense and sentenced to imprisonment, the clerk shall deliver or transmit to the officer into whose custody the defendant has been placed a commitment record containing:

(1) The name and date of birth of the defendant;

(2) The docket reference of the action and the name of the sentencing judge;

(3) The offense and each count for which the defendant was sentenced;

(4) The sentence for each count, the date the sentence was imposed, the date from which the sentence runs, and any credit allowed to the defendant by law;

(5) A statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the preceding term or to any other outstanding or unserved sentence; ~~and~~

(6) the details or a copy of any order or judgment of restitution~~.~~; and

(7) the details or a copy of any request for victim notification.

Cross reference: See Code, Criminal Procedure Article, §6-216 (c) concerning Maryland Sentencing Guidelines Worksheets prepared by a court. See Code, Criminal Procedure Article, §11-104 ~~(f)~~ (g) for notification procedures for victims. See Code, Criminal Procedure Article, §11-607 for procedures concerning compliance with restitution judgments.

(b) Effect of Error

An omission or error in the commitment record or other failure to comply with this Rule does not invalidate imprisonment after conviction.

Source: This Rule is derived from former Rule 777 and M.D.R. 777.

Rule 4-351 was accompanied by the following Reporter's note:

An attorney advised the Criminal Rules Subcommittee that at times, victim notification forms and orders of restitution are not reaching the individuals who need the information in order to provide notice to victims or to collect restitution, including correctional officers and detention centers.

To address these issues, amendments to three Rules are proposed, including Rule 4-351. The proposed amendment to Rule 4-351 requires the clerk to transmit or deliver to the officer into whose custody a defendant has been placed the details or a copy of any request for victim notification.

In addition, the language "or transmit" is proposed to be added to section (a), and

a citation in the cross reference following subsection (a)(6) has been updated.

MARYLAND RULES OF PROCEDURE

TITLE 11 – JUVENILE CAUSES

AMEND Rule 11-115 by adding a new section (e) requiring the delivery or transmittal of the details or a copy of any order or judgment of restitution and any request for victim notification to the custodial agency, as follows:

Rule 11-115. DISPOSITION HEARING

. . .

(e) Delivery or Transmittal of Documents to Custodial Agency

Along with any commitment or probation order, the clerk shall deliver or transmit the details or a copy of any order or judgment of restitution and any request for victim notification to the agency having custody of or supervision over the child.

Source: This Rule is former Rule 915.

Rule 11-115 was accompanied by the following Reporter's note:

An attorney advised the Criminal Rules Subcommittee that at times, victim notification forms and orders of restitution are not reaching the individuals who need the information in order to provide notice to victims or to collect restitution,

> including the agencies that have custody of or supervision over a child.
>
> To address these issues, amendments to three Rules are proposed, including Rule 11-115. The proposed amendment to Rule 11-115 requires the clerk to deliver or transmit to the agency having custody of or supervision over a child the details or a copy of any order or judgment of restitution and any request for victim notification.

Mr. Marcus said that the proposed changes to Rules 4-346, 4-351, and 11-115 pertain to the same subject. The changes came about as a result of a matter brought to the Criminal Subcommittee's attention by Russell Butler, Esq., Executive Director of the Maryland Crime Victims' Resource Center. The concern relates to notification to victims of certain changes.

Mr. Butler noted that a statute, Code Criminal Procedure Article, §11-104 (f), requires notifications to victims of any court proceedings, the terms of any plea agreements, changes in probation, the right to submit a victim impact statement, and other matters that may affect the standing and location of the defendant. Code, Criminal Procedure Article, §11-607 provides for restitution to victims. Mr. Butler brought to the attention of the Rules Committee the fact that the process of notification has not been as successful as planned. To implement effectively the requirements of Code, Criminal Procedure Article, §11-104, some logistical changes need to be made.

Mr. Marcus told the Committee that Rules 4-346, 4-351, and 11-115 represent three separate circumstances. Mr. Marcus said that Rule 4-346 is directed to the Department of Corrections. The agency to be notified is the Division of Parole and Probation ("DPP"). Some minor changes have been made to the Rule, which allow the DPP to obtain the information about the victims. If the DPP changes the status of a probationer, then under the statute there is a notification that is required in order for the DPP to take the necessary steps to notify the victim. Rule 4-346 clarifies that the information will be transmitted by the clerk to the DPP.

Mr. Marcus drew the Committee's attention to Rule 4-351. This applies to those persons who are committed to the Division of Correction ("DOC"). This is similar to the procedure in Rule 4-346. The proposed change will ensure that the DOC has been given the information so that it can satisfy its obligations under the statutes in terms of victim notification.

Mr. Marcus noted that Rule 11-115 relates to juveniles. An agency that has custody or supervision over a juvenile respondent in a delinquency case is responsible for ensuring that changes to the status of the respondent are made in conformance with the statute, which requires notification to the victim. Each of the three Rules provides for transmittal to the agency responsible for the offender, whether it be the

Department of Juvenile Services ("DJS"), DOC, or the DPP. The changes are ministerial and hopefully will allow the flow of information to the agencies so that the statutes can be complied with.

Mr. Butler remarked that there have been some omissions in complying with the statutes, and the proposed changes will conform the Rules to the statute.

Judge Bryant referred to the new language in Rule 4-351 (a)(7) and asked if the details of or a copy of any request for victim notification would be available to the defendant. She expressed the concern that the defendant would be given access to the whereabouts of the victim if that information is included in the commitment form. The Chair responded that this issue had been raised at the Subcommittee meeting, particularly with respect to restitution, which may have identifying information in it as to where the payments are to be made. Once the information is in the hands of an executive agency, such as the DPP or DOC, the court has its own record but cannot control what the executive agency does.

Mr. Butler pointed out that the DOC has its own statute, Code, Correctional Services Article, §7-303, which provides that the victim's address and telephone number are not available to the defendant. Judge Bryant asked about the defendant's commitment record. The suggested language "a copy of any

request for victim notification" implies that personal information of the victim would be available.

The Chair reiterated that this issue had been discussed by the Subcommittee. The Subcommittee's view was that it was important to have this information in the commitment record so that the correctional agencies would know that they have to notify the victim if they are going to release the defendant or change his or her status. The courts will have to rely on the agencies' own rules and regulations not to have the victim information publicly accessible, particularly to the defendant.

Mr. Marcus remarked that Judge Bryant's point is well-taken, because it goes to the heart of the issue that the defendant should not be put back in touch with the victim. The difficulty is to know how the agency functions and does its work. The most that the Rule can do is to find a way to ensure that the information goes to the agency. The agency would then presumably do what it is supposed to do, which is to ensure that the purpose of the statute is not frustrated by providing to the defendant information to which he or she is not entitled.

Judge Bryant said that her concern did not have to do with the agency. She is concerned about the information that is going to be in a document. The information that goes from the clerk has to include an address for the victim, because otherwise the victim will not receive any information.

The Chair commented that his recollection of the discussion by the Subcommittee is that the victim notification form has to contain identifying information, so the agencies know whom to notify. That identifying information can be shielded by checking a box on the written form. The Chair added that he was not sure how the Maryland Electronic Courts initiative (MDEC) would affect this. There is a statute pertaining to this that is somewhat vague. The court record will be there, but it is not going to be accessible.

The Chair said that his understanding is that in some of the courts, and maybe in all of them, clerks are not putting these forms in the file. Mr. Shellenberger added that the clerks may include them in the file, but they are in a sealed envelope inside the file. The Chair said that he had seen those notification forms in some court files but not in other court files. Normally, the forms are given to the State's Attorney.

Mr. Shellenberger commented that the form has seven parts. One is for the clerk, one is for the State's Attorney, one is for the DPP, one is for the DOC, and one is for the Attorney General. Depending upon where the defendant ends up, the form is sent there. If the defendant does not go to prison, obviously the form is not sent to the DOC.

Mr. Shellenberger said that his understanding is that a majority of the clerks' offices are putting these forms under

seal and not distributing them until necessary. They then distribute them only to the places to which the forms need to be sent. One of the reasons that the Committee now has to address this is that under the Justice Reinvestment Act, Chapter 515, Laws of 2016 (S.B. 1005), a victim can collect restitution from a defendant who is serving time in the DOC but has a job. Twenty-five percent of the defendant's money can go to the victim. The person sending this money needs to know where to send it. At a Coordinating Council meeting, Mr. Shellenberger learned that the DOC has done a very good job setting up a system for this.

Judge Bryant said that she sees many motions with the commitment records attached. The Chair commented that the issue of victim information is a fair question. Mr. Butler commented that the DOC has the statute that requires that this information not be provided to a defendant. He added that he would follow up with the DOC to make sure that they are complying with the statute, but if they are not given the notification and restitution information, they cannot do their job.

The Chair asked whether the DOC and the local jails limit or shield this information from anyone who does not need to have it. Someone may be responsible for sending restitution, and that person needs to know. However, the commitment order is in a central file somewhere in the DOC. Do the other employees who

may have some use for the commitment order for other purposes then have access to this information as well? Mr. Butler answered that he did not know. He would assume that just like the practices are different in different courts, there may be different procedures concerning this information.

Judge Bryant inquired whether it would be appropriate to include a provision that would prohibit anyone from providing unredacted information or a copy of the order that has not been redacted. The Chair commented that he was not sure that the Court of Appeals by rule could direct executive agencies on procedures.

Judge Bryant asked whether the Rule could instruct the court not to give out information. The Chair said that the problem is not with the court, because that information is shielded. Judge Bryant responded that this information is not always shielded. The Chair noted that if the victim checks the box on the document he or she receives, the information is supposed to be shielded. Mr. Butler remarked that before the box to check was on the form the victim received, the practice among the circuit courts varied. Some automatically shielded the information, some shielded on motion.

The Chair said that he thought that this issue had been addressed in the Access to Judicial Records Rules, Title 16, Chapter 900. Rule 16-908, Case Record -- Required Denial of

Inspection – Specific Information, states that "[e]xcept as otherwise provided by law, the Rules in this Chapter, or court order, a custodian shall deny inspection of a case record or part of a case record that would reveal…(c) The address, telephone number, and e-mail address of a victim, or a victim's representative in a criminal action, juvenile delinquency action…who has requested that such information be shielded. Such a request may be made at any time, including in a victim notification request form filed with the clerk or a request or motion filed under Rule 16-912."

The Chair noted that this protection of victim information is covered if the victim checks the box on the form. This is for court records, but it does not apply to executive agencies. Judge Bryant suggested that a cross reference to Rule 16-908 could be added to Rule 4-351 after subsection (a)(7) to remind the clerk not to distribute victim information. The Chair pointed out that Rule 4-351 provides only that notification has to be sent with the commitment record. A change could be made to call attention to the fact that the box is checked.

Judge Bryant said that she had a case many years ago in juvenile court, where a child had been kidnapped. Victims are vulnerable, and in this case, there had been retaliation, and two victims had been murdered. Judge Bryant expressed her concern about victim retaliation. Victim location is very

important. Some victims are being intimidated, and they are afriad. This may not be as much of an issue in smaller jurisdictions. However, in Baltimore City, the identification of victims' locations is a major concern. Mr. Shellenberger added that this is true not only in Baltimore City.

The Chair asked whether the three Rules in Agenda Item 3 should go back to the Subcommittee to look at further implications of this. Judge Bryant answered that this was not necessary. If a cross reference could be added to remind the clerk about not giving out victim information, that would solve the problem. The cross reference could provide that clerks should be mindful of Rule 16-908. Clerks should be sure that the box was or was not checked. The Chair commented that the implication of a cross reference to the Access Rules may be that the clerks refuse to distribute the commitment order, which the Rule requires them to do, and the victim will not be notified when a defendant is released.

Judge Bryant suggested that the cross reference could provide that, with the exception of documents going directly to the Department of Public Safety, the clerk should be mindful of Rule 16-908. The clerk would only have to be concerned if someone comes in looking to see the pertinent information. The Chair said that the cross reference could point out that the

Access Rules require shielding generally of that kind of court record.

Mr. MacGlashan remarked that an issue had arisen in his court as to which jurisdiction the victim information is printed from. A cross reference could create more inconsistency. Ms. Hager, the Deputy Clerk of the Circuit Court for Queen Anne's County, noted that anyone who has access to MDEC has the ability to print out confidential information. There is a difference between electronic and paper records. Mr. MacGlashan added that records could be printed out by any clerk in the State. Judge Mosley noted that sometimes it is difficult to access information in the clerk's office. Ms. Hager observed that it is accessible in Odyssey.

Judge Bryant noted that it is difficult to know who is going to be able to obtain certain information. Mr. Shellenberger said that victims have been receiving notice, because this is how they are notified about defendants being paroled. It comes from the base file of the DOC. He asked Mr. Butler whether he had found a statute in the Public Safety article of the Code on shielding this information. He remarked that he would feel better about this situation if the DOC has a statute addressing it.

Mr. Butler observed that Code, General Provisions Article, §4-102 pertains to the question by the Chair as to whether the

Court of Appeals has the authority to direct executive agencies. This statute allows information to be limited by a judicial rule. Language could be added to the Rules stating that the disclosure of a victim's address, telephone number, or e-mail address is not permitted. The executive branch would have to follow that. The Chair commented that he would prefer a Court of Appeals case saying that. Mr. Butler responded that he could not find an annotation for it. Mr. Marcus pointed out that a relevant statute is Code, General Provisions Article, §4-401. The Chair noted that this is the Public Information Act.

Mr. Carbine moved that this be remanded to the Criminal Rules Subcommittee. The motion was seconded. The Reporter asked whether the defendant attorney would have a right to look at the commitment order to make sure that it is correct, so that the defendant is not serving the wrong amount of time. Mr. Shellenberger responded that he had never seen a defense attorney look at a commitment record. Judge Nazarian remarked that defense attorneys must look at the commitment records sometimes because the judges on the Court of Special Appeals occasionally see an issue about the commitment record not in sync with the transcript. The Reporter observed that if the defense attorney has the right to see it, the *pro se* defendant would have that right as well, so the Rule needs somehow to specifically shield the victim information.

Judge Morrissey said that the commitment record is typically generated from the court's case management system. The victim notification request is a separate piece of paper. According to the policies and procedures, that would be locked down and shielded whether it is on paper or in MDEC. So, if an attorney wants to look at the commitment record, he or she would not see the victim notification sheet.

The Chair said that this is an appendage to the commitment record. Two documents are being sent to the executive agencies – one is the victim notification form, and the other is any restitution order. Both of those can have identifying information. The Subcommittee had discussed the fact that the victim notification form can be shielded to block the identifying information. There is nothing in the law or the Rules that the Chair knew of that shields identifying information in a restitution order. The Subcommittee had been concerned about this. It may be best to send these Rules back to the Subcommittee.

The Chair called for a vote on the motion to remand Rules 4-346, 4-351, and 11-115 to the Subcommittee, and the motion carried on a majority vote. Mr. Shellenberger suggested that someone from the DOC, the Department of Public Safety, and the DPP should attend the Subcommittee meeting, and the Chair

agreed, adding that someone from the Office of the Attorney General also should be present.

Agenda Item 4. Consideration of proposed amendments to: Rule 20-101 (Definitions), 20-107 (Electronic Signatures), Rule 20-108 (Delegation of Authority to File), Rule 20-201 (Requirements for Electronic Filing), Rule 20-203 (Review of Clerk; Striking of Submission; Deficiency Notice; Correction; Enforcement), and Rule 20-503 (Archival of Records)

The Chair presented Rules 20-101, Definitions; 20-107, Electronic Signatures; 20-108, Delegation of Authority to File; 20-201, Requirements for Electronic Filing; 20-203, Review of Clerk; Striking of Submission; Deficiency Notice; Correction; Enforcement, and 20-503, Archival of Records, for the Committee's attention.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-101 by deleting definitions of "digital signature," "facsimile signature," and "typographical signature"; by revising the definition of "signature"; and by adding a Committee note and cross reference following the definition of "signature," as follows:

Rule 20-101. DEFINITIONS

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

(a) Appellate Court

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

(b) Business Day

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

(c) Clerk

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

(d) Concluded

An action is "concluded" when

(1) final judgment has been entered in the action;

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

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

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

~~(e) Digital Signature~~

~~"Digital signature" means a secure electronic signature inserted using a process approved by the State Court Administrator that uniquely identifies the~~

~~signer and ensures authenticity of the signature and that the signed document has not been altered or repudiated.~~

~~(f) Facsimile Signature~~

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

~~(g)~~ (e) Filer

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

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

~~(h)~~ (f) Hand-Signed or Handwritten Signature

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

~~(i)~~ (g) Hyperlink

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

~~(j)~~ (h) Judge

"Judge" means a judge of the Court of Appeals, Court of Special Appeals, a circuit court, or the District Court of Maryland and includes a senior judge when designated to sit in one of those courts.

~~(k)~~ (i) Judicial Appointee

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

~~(l)~~ (j) Judicial Personnel

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

~~(m)~~ (k) MDEC or MDEC System

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

Committee note: "MDEC" is an acronym for Maryland Electronic Courts. The MDEC system has two components. (1) The electronic filing system permits users to file submissions electronically through a primary electronic service provider (PESP) subject to clerk review under Rule 20-203. The PESP transmits registered users' submissions directly into the MDEC electronic filing system and collects, accounts for, and transmits any fees payable for the submission. The PESP also accepts submissions from approved secondary electronic service providers (SESP) that filers may use as an intermediary. (2) The second component - the electronic case management system - accepts submissions filed through the PESP, maintains the official electronic record in an MDEC county, and performs other case management functions.

~~(n)~~ (l) MDEC Action

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

~~(o)~~ (m) MDEC County

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

~~(p)~~ (n) MDEC Start Date

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

~~(q)~~ (o) MDEC System Outage

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

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

~~(r)~~ (p) Redact

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

~~(s)~~ (q) Registered User

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

~~(t)~~ (r) Restricted Information

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

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

~~(u)~~ (s) Scan

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

~~(v)~~ (t) Signature

Unless otherwise specified, "signature" means ~~any of the following: a digital signature, a facsimile signature, a handwritten signature, or a typographical signature~~ a symbol or writing that is placed on, attached to, or logically associated with a document that (1) is adopted by the signer and is intended by the signer as the signer's signature, and (2) is accompanied by the signer's typewritten name, which shall be regarded as part of the signature.

Committee note: For the purpose of electronic filing of a submission, the filer may use "/s/" for the symbol component of the filer's signature.

Cross reference: Rule 20-107.

~~(w)~~ (u) Submission

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

Cross reference: See Rule 20-402.

~~(x)~~ (v) Tangible Item

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

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

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

~~(y)~~ (w) Trial Court

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

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

~~(z) Typographical Signature~~

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

Source: This Rule is new.

Rule 20-101 was accompanied by the following Reporter's note:

Proposed amendments to Rule 20-101 simplify the concept of a "signature," as applied in the Rules in Title 20, and delete the definitions of "digital signature," "facsimile signature," and "typographical signature."

Under the revised definition, a "signature" contains two components: (1) a symbol adopted by the signer as the signer's signature and (2) the signer's typewritten name. Together with proposed amendments to Rules 20-107 and 20-203, the revised definition provides clearer guidance as to when a submission is subject to being stricken by a clerk because the submission lacks a signature. A Committee note following the definition states that a filer may use the symbol "/s/," which currently is part of the definition of "typographical signature," as the symbol component of the filer's signature. Also following the definition, a cross reference to Rule 20-107 is added.

AMEND Rule 20-107 by changing the name of the Rule; by requiring signatures that conform to the proposed revised definition of "signature"; by requiring that certain information be included below the filer's signature and specifying that the information shall not be regarded as part of the signature; by deleting references to "digital signature," "facsimile signature," and "typographical signature"; by adding a cross reference following section (a); by adding provisions pertaining to clerks' signatures to section (b); by deleting section (c); by specifying the two methods by which a judge, judicial appointee, or clerk may sign a submission; and by making stylistic changes, as follows:

Rule 20-107. ~~ELECTRONIC~~ MDEC SIGNATURES

(a) Signature by Filer; ~~Generally~~ Additional Information Below Signature

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

~~(2) The filer shall insert the electronic~~ submission shall:

(1) include the filer's signature on the submission, and

(2) provide the following information below the filer's signature: ~~above the filer's typed name,~~ the filer's address, e-mail address, and telephone number and, if the filer is an attorney, the attorney's Client Protection Fund ID number. That information shall not be regarded as part of the signature. ~~An electronic~~ A signature on

an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

Cross reference: For the definition of "signature" applicable to MDEC submissions, see Rule 20-101 (t).

(b) Signature by Judge, ~~or~~ Judicial Appointee, or Clerk

A judge, ~~or~~ judicial appointee, or clerk shall sign a submission ~~electronically~~ by:

(1) personally affixing the judge's, ~~or~~ judicial appointee's, or clerk's ~~digital~~ signature to the submission by using an electronic process approved by the State Court Administrator, or

(2) hand-signing a paper version of the submission and scanning ~~or directing an assistant to scan~~ the hand-signed submission ~~to convert the handwritten signature to a facsimile signature in preparation for electronic filing~~ into the MDEC system.

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

~~(c) Signature by Clerk~~

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

~~(d)~~ (c) Multiple Signatures on a Single Document

When the signature of more than one person is required on a document, the filer shall (1) confirm that the content of the document is acceptable to all signers; (2)

obtain the ~~handwritten, facsimile, typographical, or digital~~ signatures of all signers; and (3) file the document electronically, indicating the signers in the same manner as the filer's signature. Filers other than judges, judicial appointees, clerks, and judicial personnel shall retain the signed document at least until the action is concluded.

~~(c)~~ (d) Signature Under Oath, Affirmation, or With Verification

When a person is required to sign a document under oath, affirmation, or with verification, the signer shall hand-sign the document. The filer shall scan the hand-signed document~~, converting the signer's handwritten signature to a facsimile signature,~~ and file the scanned document electronically. The filer shall retain the original hand-signed document at least until the action is concluded or for such longer period ordered by the court. At any time prior to the conclusion of the action, the court may order the filer to produce the original hand-signed document.

~~(f)~~ (e) Verified Submissions

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

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

Source: This Rule is new.

Rule 20-107 was accompanied by the following Reporter's note:

> Proposed amendments to Rule 20-107 change the name of the Rule and conform its provisions to the amendments to Rule 20-101.
>
> The terms "digital signature," "facsimile signature," and "typographical signature" are deleted from the Rule, and the term "signature" is used throughout.
>
> Amendments to section (a) clearly separate the requirement that a filer's signature be on a submission (subsection (a)(1)) from the requirement that certain additional information be included below the filer's signature (subsection (a)(2)). The amendments include a statement that the additional information "shall not be regarded as part of the signature." As noted in a proposed new Committee note following Rule 20-203 (c), while the absence of the accompanying information may be cause for the issuance of a deficiency notice, the absence of the information does not trigger the striking of the submission by the clerk for lack of a signature.
>
> Provisions pertaining to signatures by clerks are moved to section (b) of Rule 20-107, and section (c) of the Rule is deleted. As amended, section (b) specifies the two methods by which a judge, judicial appointee, or clerk may sign a submission: (1) by affixing a signature using an electronic process approved by the State Court Administrator or (2) by hand-signing the submission and scanning the hand-signed submission into the MDEC system. The term "an electronic process approved by the State Court Administrator" is used in place of the deleted term "digital signature."

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-108 by deleting the word "electronically" in section (b), as follows:

Rule 20-108. DELEGATION OF AUTHORITY TO FILE

(a) Attorneys

After a submission has been signed in accordance with Rule 20-107, an attorney may authorize a paralegal, assistant, or other staff member in the attorney's office to file the signed submission electronically on behalf of the attorney. A submission filed pursuant to this delegation constitutes a filing by the attorney and the attorney's assurance that the attorney has complied with the requirements of Rule 1-311 (b) and has authorized the paralegal, assistant, or staff member to file the submission. The attorney is responsible for assuring that there is no unauthorized use of the attorney's username or password.
Cross reference: See Rule 2-311 (b) for the effect of signing pleadings and other papers.

(b) Judges and Judicial Appointees

After a submission has been signed ~~electronically~~ in accordance with Rule 20-107, a judge or judicial appointee may authorize a secretary, administrative assistant, or law clerk to file the signed submission electronically on behalf of the judge or judicial appointee. The judge or

judicial appointee who signs the submission is responsible for assuring that there is no unauthorized use of the signer's username and password.

Source: This Rule is new.

Rule 20-108 was accompanied by the following Reporter's note:

A proposed amendment to Rule 20-108 deletes the word "electronically" in section (b), conforming the Rule to proposed changes to Rule 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-201 (f) by deleting certain language, by adding a certain requirement pertaining to an initial filing or a change in e-mail address, and by adding a Committee note, as follows:

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

. . .

(f) Service Contact Information

~~Unless previously provided, a~~ A registered user who files a submission and who will be entitled to electronic service of subsequent submissions in the action shall include in the submission accurate

information as to the e-mail address where such electronic service may be made upon the registered user. If the submission is the registered user's initial submission in an action, or if a change in the e-mail address is made, the filer also shall provide service contact information by using the "Actions" drop-down box that is part of the MDEC submission process.

Committee note: If the "Actions" drop-down box is not used to provide service contact information when an initial submission is filed in an action, the default e-mail address for subsequent notifications and service of other parties' submission in the action will be the e-mail address that the filer used when transmitting the initial submission in the action.

. . .

Rule 20-201 was accompanied by the following Reporter's note:

Proposed amendments to Rule 20-201 (f) and a Committee note following section (f) address a "service contact information" problem that has arisen in MDEC.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-203 by deleting the second sentence of subsection (a)(2), by clarifying procedures pertaining to certain non-compliant submissions, by providing for

the refund of certain fees only upon motion and order of the court, and by adding a Committee note following section (c), as follows:

Rule 20-203. REVIEW BY CLERK; STRIKING OF SUBMISSION;

DEFICIENCY NOTICE; CORRECTION; ENFORCEMENT

(a) Time and Scope of Review

(1) Inapplicability of Section

This section does not apply to a submission filed by a judge, or, subject to Rule 20-201 (m), a judicial appointee.

(2) Review by Clerk

As soon as practicable, the clerk shall review a submission for compliance with Rule 20-106, 20-107 (a)(1), 20-201 (d), (g), and (l) and the published policies and procedures for acceptance established by the State Court Administrator. ~~Until the submission is accepted by the clerk, it remains in the clerk's queue and shall not be docketed.~~

(b) Docketing

(1) Generally

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

review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

(2) Submission Signed by Judge or Judicial Appointee

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

(3) Submission Generated by Clerk

The clerk shall enter on the docket each writ, notice, or other submission generated by the clerk.

(c) Striking of Certain Non-compliant Submissions

If, upon review pursuant to section (a) of this Rule, the clerk determines that a submission, other than a submission filed by a judge or, subject to Rule 20-201 (m), by a judicial appointee, fails to comply with the requirements of Rule 20-107 (a)(1) or Rule 20-201 (g), the clerk shall (1) make a docket entry that the submission was received, (2) strike the submission, ~~(2)~~ (3) notify the filer and all other parties of the striking and the reason for it, and ~~(3)~~ (4) enter on the docket that the submission ~~was received, that it~~ was stricken for non-compliance with the applicable section of Rule 20-107 (a)(1) or Rule 20-201 (g), and that notice pursuant to this section was sent. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court. Any fee associated with the filing shall be refunded only on motion and order of the court.

Committee note: The clerk may strike a submission that does not contain a signature

as that term is defined in Rule 2-101 (t), including the signer's typewritten name. The absence of the accompanying information required by Rule 20-107 (a)(2) is cause for a deficiency notice pursuant to section (d) of this Rule but not for striking the submission.

(d) Deficiency Notice

(1) Issuance of Notice

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

(2) Judicial Review; Striking of Submission

The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice. Unless (A) the judge issues such an order, or (B) the deficiency is otherwise resolved within 10 days after the notice was sent, upon notification by the clerk, the court shall strike the submission.

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

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

(2) Shielding of Unredacted Version of Submission

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

(3) Shielding on Motion of Party

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

Source: This Rule is new.

Rule 20-203 was accompanied by the following Reporter's note:

Proposed amendments to Rule 20-203 address the handling of certain non-compliant submissions.

The second sentence of subsection (a)(2) is deleted to assure that non-compliant submissions are not rejected at the "File and Serve" level of MDEC processing. Rather, a non-compliant submission is transmitted out of "File and Serve" into the "Odyssey" portion of the MDEC system, where the clerk proceeds to handle it in accordance with other sections of the Rule, as applicable.

Section (c) is revised and restyled to clarify the procedure for handling a

submission that fails to comply with the requirements of Rule 20-107 (a)(1) or Rule 20-201 (g). A new sentence is added at the end of section (c) to provide that any fee associated with a filing that is stricken pursuant to section (c) is refundable only on motion and order of the court.

A Committee note following section (c) also is proposed. It addresses the distinction between a submission that does not contain a signature, which is subject to being stricken by a clerk, and a submission that does not contain the accompanying information required by Rule 20-107 (a)(2), which is cause for a deficiency notice but not striking.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 500 – MISCELLANEOUS RULES

AMEND Rule 20-503 (a) by adding the phrase, "upon the full statewide implementation of MDEC, as follows:

Rule 20-503. ARCHIVAL OF RECORDS

(a) Development of Plan

~~The~~ Upon the full statewide implementation of MDEC, the State Court Administrator shall work with the State Archivist to develop a plan for the transmission of electronic case records to the Maryland State Archives for the purpose of archiving of those records. Any plan recommended by the State Archivist and the

State Court Administrator shall be presented to the Court of Appeals for approval. The plan shall not take effect until approved by the Court of Appeals after a public hearing.

(b) Contents of Plan

The plan shall provide for:

(1) the entire lifecycle of the electronic record, including creation, use, destruction, and transfer to the Maryland State Archives;

(2) the Courts' records retention and disposition schedules to define the retention period of non-permanent records and the transfer of permanent electronic records to the Maryland State Archives;

(3) when electronic records may be transmitted to the Maryland State Archives;

(4) the categories or types of records to be transmitted or not to be transmitted;

(5) the format and manner of transmission and the format in which the records will be retained by the Maryland State Archives;

(6) the preservation of all limitations on public access to the transmitted electronic records provided for by the Rules in Title 16, Chapter 900 and Title 20 of these Rules until such time or times provided for in the plan;

(7) a method by which MDEC can retrieve and modify records transmitted to the Maryland State Archives;

(8) procedures for the expungement of records transmitted to the Maryland State Archives when ordered by a court in accordance with applicable expungement laws;

(9) procedures to ensure that the electronic records are exported for transfer to the Maryland State Archives in non-proprietary (open-source) formats that constitute a complete and accurate representation of the record as defined by the Court; and

(10) any other matters relevant to the transmission and archiving of court records, including the tracking, verification, and authentication of transfers.

(c) Optional - Archives as Duplicate Repository

The plan may provide for immediate transmission of electronically filed case records in order that the Maryland State Archives constitute a duplicate repository of electronic court records.

Source: This Rule is new.

Rule 20-503 was accompanied by the following Reporter's note:

A proposed amendment to Rule 20-503 adds the phrase, "upon full statewide implementation of MDEC," to section (a). The larger counties and Baltimore City are among the final jurisdictions in which MDEC implementation will occur, and issues may surface in those jurisdictions that were not observed in smaller jurisdictions. After full statewide implementation of MDEC, the experience of all jurisdictions regarding records in the MDEC system can be taken into account in the formulation of the plan.

The Chair told the Committee that more of the MDEC Rules need to be tweaked. The changes in Agenda Items 4 and 5 were developed as a result of three meetings the Chair, the Reporter,

and Ms. Macek, an Assistant Reporter, had with Judge Morrissey, the Honorable Gary Everngam, who is a retired Senior District Court judge in Montgomery County, and Ms. Harris, who comprise the MDEC Executive Steering Committee, and also as a result of a telephone conversation with Carla Jones, who is with Judicial Information Services (JIS). The special MDEC Subcommittee was disbanded about one year ago, because it had appeared that the MDEC setup was complete. The proposed changes have not gone through any of the subcommittees, so it will take a motion to approve the changes.

The Chair commented that with respect to Item 4 generally, the changes to Rules 20-101, 20-107, 20-108, 20-201, and 20-203 address several issues. One is the definition of the term "signature." What constitutes a signature? Mr. Carbine had spent a considerable amount of time dealing with this. The second issue is what a filer must do with respect at least to an initial submission to assure that the filer will electronically receive any subsequent submissions or notices.

The Chair said that the third issue is what a clerk must do when receiving non-compliant submissions. These issues have been discussed several times. With respect to Rule 20-101, Definitions, the current Rule defines "signature" as any of four kinds of signatures, each of which is separately defined. There is a "digital signature" defined in section (e). A "facsimile

signature" is defined in section (f). A "handwritten signature" is defined in section (w), and a "typographical signature" is defined in section (z). The proposal is to delete the definitions of digital, facsimile, and typographical signatures.

The Chair noted that the term "signature" would be redefined in proposed new section (c) of Rule 20-101. The new definition is more generic and is taken in part from the statutory definition of the term "electronic signature" in the Uniform Electronic Transactions Act, which is in Code, Commercial Law Article, §21-101. Because the new definition continues to include the use of symbols, which in the current Rule are included in the definition of "digital signature," a signature will require the filer's typed name as part of the signature. This is obviously important, so that the clerk and anyone one else will know who the filer is.

The Chair remarked that a "symbol" can be anything. It can be the symbol "/s/" or a picture of a duck or a happy face. As many times as this topic has been discussed, this morning as the Chair was looking through his notes, he saw the symbol "/s/," and it occurred to him that some symbols should not be in a court record. Examples would be a swastika or a pornographic depiction. If all symbols are allowed, it is possible that someone would use this type of symbol.

The Chair asked whether there should be a Committee note that prohibits certain symbols, similar to how the Motor Vehicle Administration ("MVA") prohibits the use of certain words on license plates. Pursuant to COMAR 11.15.29.02, the MVA can reject the content of a personalized license plate that communicates any of the following characteristics of a group of people: race, ethnic or national origin, color, religion, disability, or sexual orientation. Also prohibited is a license plate that makes reference to the commission of illegal acts. The COMAR provision refers to a variety of subjects that are prohibited on a license plate. It had occurred to the Chair that a Committee note could be added that would provide that no symbol that is blatantly offensive or pornographic can be used to represent an electronic signature. He is not sure whether this would extend to religious symbols.

Judge Price asked why filers have to be given an option as to what symbol is to be used. If they are not given that option, it would not be necessary to be concerned about what is inappropriate. Why not simply use the symbol "/s/"?

Judge Morrissey commented that some people may not produce a paper document to be scanned. They may produce and file a purely electronic document. That is the reason for using symbols for a signature.

Judge Price explained that her concern was the ability to use a variety of symbols. This is for the practice of law. There is no reason that the one symbol could not be "/s/" or that there could not be a regular signature. Mr. Carbine said that he had no objection to the proposed change, except to ask what is wrong with the original signature concept that has caused this change to be made. Digital signatures are only for judges. Handwritten signatures are only for original paper documents. There is either a facsimile signature where the signature is scanned, or there is the "/s/." Is anyone present today who has had a problem with this?

Judge Morrissey answered that the problem was not with the symbol, which is already in the Rule. The problem is the diversity in various clerks' offices as to where the signature is to appear on the submission, whether a submission is to be stricken because of a non-compliant signature, and when a deficiency notice is to be sent out. The purpose of Rule 20-101 is to clarify for the clerks when it is correct to strike something and when it is not. This hopefully will ensure a uniform process across the State.

The Chair said that the request to change Rule 20-101 came from the MDEC Executive Steering Committee. As Judge Morrissey had indicated, the problem has been that if filers are using a symbol for a signature, even the symbol "/s/," the filer's typed

name is also necessary, so the filer can be identified. Another issue, which will be addressed in the following two Rules, is the inclusion of an e-mail address, telephone number, fax number, etc., but it must be clear that those items are not part of the signature. They are required to be part of the filing, but they are not part of the signature. The reason for that was so that the clerk cannot strike a submission simply because those other items were not included. The typed name has to be there to identify the signer as part of the signature. That is the focus of the changes to the Title 20 Rules.

Judge Everngam told the Committee that part of his function as a member of the MDEC Executive Steering Committee is to serve as a liaison with the clerks to troubleshoot. The definition of "facsimile signature" in section (f) of current Rule 20-101 has two elements, a scanned image or other visual representation of the signer's handwritten signature and the signer's typed name. In the existing Rule, section (z) is the definition of "typographical signature." It contains five elements.

Judge Everngam noted that this becomes important in light of subsection (a)(1) of Rule 20-107, which requires a filer to sign a submission with a facsimile signature or a typographical signature. One of the elements for a typographical signature is an address. The clerks were applying two different standards for what a signature is. When section (c) of Rule 20-203 is

considered, this becomes important. Section (c) states that the clerk will strike the submission for failure to comply with the requirements of Rule 20-107 (a)(1). A facsimile signature with a typed name is appropriate. But the symbol "/s/" with a typed name would be stricken, because it does not meet the definition of "typographical signature" under Rule 20-101.

Judge Everngam remarked that the clerks are having a great amount of difficulty in making those distinctions. The idea then was to simplify this. What is a signature? It is something that someone places on a document indicating that the person has some connection to the document. This is not a problem. However, there cannot be two elements for one kind of signature and five elements for another type of signature. Current Rule 20-107 (a)(2) lists information required with the filer's signature – the filer's address, e-mail address, telephone number, and Client Protection Fund ID number, if the filer is an attorney.

Mr. MacGlashan said that he had spoken with Dennis Weaver, Clerk of the Circuit Court for Washington County, who is a member of the Rules Committee. Mr. Weaver had pointed out that the clerks are confused as to what a signature actually is. Mr. Weaver had asked why the clerk has to be involved with determining the correctness of a signature. When a paper

document is filed, the clerk does not determine the correctness of a signature. What is needed is some consistency.

Judge Price remarked that all that is necessary is the symbol "/s/." It is not necessary to repeat the filer's name, address, telephone number, and e-mail address. The Chair said that Judge Price's suggestion is to limit the signature to the symbol "/s/." The Reporter added that a scanned signature would be included.

Mr. Laws noted that some offices do not do this. Some use a stripped style of signature above the line with the name typewritten in traditional type under the line. He expressed the concern that some offices and, even more so, *pro se* litigants will not comply with the new requirement if it is a "one size fits all." The Rule keeps simplicity but adds enough flexibility. Judge Price commented that the symbol can represent the signature, and the five components of a signature can be listed in the Rule. It is a macro. People are identified by the symbol "/s/" with their name included.

The Chair said that the MDEC Executive Steering Committee did not want clerks to be able to strike submissions simply because the e-mail address, the address, or the telephone number was not a part of the filing. If a symbol is going to be used, the typed name has to be included.

Mr. Carbine remarked that breaking the signature line from the data was his idea, because the clerks had said that attorneys had to put their bar number on the filing, and no attorney knows his or her bar number. Mr. Carbine feels strongly that a filing should not be stricken because an attorney did not include his or her bar number. This is why Rule 20-107 (a) is separated into subsections (1) and (2). If the filer fails to sign the submission, as required by subsection (a)(1), the submission is stricken. If the filer fails to include the information listed in subsection (a)(2), a deficiency notice is generated. Mr. Carbine added that the Rule works properly just the way it is.

The Chair responded that the MDEC Executive Steering Committee did not think so. It requested the proposed change. Judge Morrissey explained that, when the clerk strikes a submission, it is not included in the court file, and the statute of limitations is not being tolled. If, instead, a non-compliant submission is treated as having a deficiency, the submission is filed, but the filer has 10 days under the current Rule to correct whatever the problem is. Some District Court and circuit court clerks have been striking any filing that did not have all the required information. The members of the MDEC Executive Steering Committee did not think that this was

appropriate. The Rule change will provide greater consistency in the way that clerks handle non-compliant submissions.

The Chair stated that there are separate issues. What is being discussed is the second issue that Judge Morrissey had raised. It is in Rule 20-203. The Rule provides that a filing is not stricken, except if it does not have the typed name, or a symbol is not used. The situation worsens when Rule 20-108 comes into play. Rule 20-108 allows an attorney to delegate to a secretary to do the filing, and the issue is what the secretary puts into the filing. This will be addressed when that Rule is discussed.

The Chair told the Committee that the question being discussed at this point with respect to Rule 20-101 is simply whether to consolidate four or five different kinds of signatures into one. Currently, an effective signature is any of the four listed in Rule 20-101. Should the term "signature" be defined generically and eliminate the several definitions?

Mr. Carbine remarked that the reason signatures are on pleadings is because the filer is responsible for what is in the pleadings. The filer can be sanctioned if he or she is irresponsible. The definition of the types of signatures should not be tinkered with. Digital signatures are just for judges, and the definition of "handwritten signature" does not need to be changed.

The Chair asked whether digital signatures are not only for judges but also for judicial officers. Mr. Carbine replied that it includes judicial officers. Handwritten signatures do not come into play, because they are not filed all of the time. There are facsimile signatures and the symbol "/s/." If the signature does not look right, the clerk can issue a deficiency notice stating that the signature has to be corrected within 10 days. That protects the statute of limitations. If the clerks are upset, the Rule can be changed from the clerks being required to strike a submission to the clerks issuing a deficiency notice.

Judge Everngam observed that the issue that the MDEC Executive Steering Committee was focusing on was the fact that there are four definitions of the word "signature," and each contains different elements. Some have requirements. For example, the definition of "typographical signature" has all the requirements of a legal signature that are contained in Rule 20-107 (a)(1). It requires the typographical signature plus the filer's address, e-mail address, and telephone number.

Mr. Carbine disagreed. He said that if the clerks would like a telephone number, they will be given it. If they would like an e-mail address, this will be provided. The Chair pointed out that the question is whether this is part of the signature. Mr. Carbine responded that it is part of the

signature, but the filing cannot be stricken if something is missing. The Chair countered that the filing can be stricken if something is part of the signature, and it is missing. Mr. Carbine said that the symbol "/s/" has three elements to it which are the "/", the "s," and the "/." A handwritten signature has one element, the signature. This is not complicated.

Judge Morrissey responded that it is complicated, because there is confusion among the clerks. He suggested that the various definitions of the word "signature" could still be collapsed, but he said that he had no objection to making it a non-strikable offense and making it a deficiency offense if something is missing. He added that he would like a clear definition of what a signature is. The four parts of the signature are causing confusion.

The Chair asked whether it would address Judge Everngam's issue if the definition of "typographical signature" is left in. It could read: "'Typographical signature' means the symbol '/s/' [using Judge Price's suggestion] affixed to the signature line of a submission, together with the typed name." The rest of the definition, which reads: "address, e-mail address, and telephone number of the signer" would be dropped. "Signature" would simply be the symbol "/s/" with the typed name.

The Chair said that he is not sure whether Judge Everngam's concern applies to the "digital" signature. Judge Everngam responded that he thought that the definition of "digital signature" is being eliminated. The Chair clarified that in the current Rule, "digital signature" is defined as "a secure electronic signature inserted using a process approved by the State Court Administrator that uniquely identifies the signer and ensures authenticity of the signature and that the signed document has not been altered or repudiated."

Mr. Carbine pointed out that the definition of "digital signature" was added because the judges were concerned about shielding a signature. This allowed the judges to sign an order without an actual signature appearing on that order. The Chair inquired whether this could be done by signing, using the symbol "/s/" with the typed name of the judge. Then the definition of "digital signature" would not be necessary. The Chair added that he had seen judges' orders signed that way.

The Reporter commented that a concern had arisen about a security issue. The digital signatures only apply to judges and court personnel who need to have the secure, tamperproof signature on the court document. For filers outside the Judiciary, "File and Serve" is used. Filed documents are in scanned PDF files, and the signatures on these documents are not digital signatures. Currently, MDEC "File and Serve" is

incapable of having true digital signatures from the outside world coming into the system. In the proposed Rules changes, the idea is to move the digital signature concept into the only Rule that applies to judges and court employees. They are the only people signing with a true digital signature. The term "digital signature" does not need to be in the definitions, because the method of electronic signatures by judges is approved by the State Court Administrator and it is secure and tamperproof.

Ms. Harris remarked that she is not sure that this is tamperproof. The Reporter responded that the goal is for it to be tamperproof.

The Chair commented that it sounds like the definition of "digital signature" could be eliminated. It is what the judges have to do. The definition of "typographical signature" could be limited to just the typed name. He added that he was hesitant to change this too much. Many hours had been spent drafting this, and then more time was spent amending it.

Judge Everngam pointed out that the proposed Rule eliminates the definition of "digital signature." It can be addressed in Rule 20-107. The Chair responded that the problem with the typographical signature still exists. Judge Everngam stated that he agrees with the other members of the MDEC Executive Steering Committee who did not want a pleading to be

stricken if it did not contain the information in Rule 20-107 (a)(2). He said that he did not understand why the signature cannot be a symbol or a representation of the name over the typed name. It would make the clerk's job easier, because it would be consistent throughout the State. Currently, there is no consistency to this.

Mr. Laws moved to approve Rule 20-101 with an addition to the Committee note after section (t) of language providing that the symbol used for the signature may not be blatantly offensive or obscene and that if any questions arise about something missing from the signature, it should be a matter of a deficiency notice sent out rather than the pleading being stricken.

The Chair asked whether Mr. Laws's motion was to approve the Rule as it was presented with the addition about not having an offensive or obscene symbol for the signature. Mr. Laws replied affirmatively. He added that he was not sure where in the Rule language should be added to state that missing information from the signature should be handled by a deficiency notice rather than the pleading being stricken. The Chair responded that this will be discussed soon. The motion was seconded.

Mr. Sullivan noted that adding the language about a symbol being offensive will create another problem, which is what would

be considered offensive. The experience at the MVA has been difficult. The MVA receives many complaints about vanity license plates being offensive or obscene. More problems may result from introducing the issue of offensiveness and obscenity of the signature symbol into Rule 20-101.

The Chair asked Mr. Sullivan if he agrees with Judge Price that the only symbol for the signature should be "/s/." Mr. Sullivan replied affirmatively. Judge Morrissey remarked that he agrees with this.

Judge Morrissey added that he wanted to comment on Mr. Carbine's statement that missing information should result in a deficiency notice and not a striking of a pleading. When paper pleadings were filed, if the signature was missing, the clerk would simply tell the filer to sign it. Some of this capability is lost when papers are filed electronically. If a signature on an original pleading is lacking, and the pleading is stricken, it creates a business process within the MDEC system that charges a fee, because the document has to be accepted. If deficiency notices are sent out, the filers have 10 days to correct whatever the deficiency is.

The Chair said that a motion was on the floor. Mr. Laws responded that Mr. Sullivan had pointed out an issue with part of the motion. The Chair asked Mr. Laws whether he would accept an amendment to his motion to limit the acceptable symbol for a

signature to "/s/." Mr. Laws agreed, stating that he would withdraw that portion of his motion dealing with symbols that are not offensive or obscene. The Chair asked whether there was a second to the amended motion, and it was seconded.

The Chair called for a vote on the amended motion, and it passed on a majority vote.

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

The Chair said that the next Rule to be discussed was Rule 20-107. Most of the amendments to Rule 20-107 conform it with the changes to the other Title 20 Rules. They delete references to the terms "digital signature," "facsimile signature," and "typographical signature," and they make clear that except for the filer's printed name, the additional information that is required, which includes address, telephone number, and attorney identification number, is not part of the signature but just simply additional required information.

The Chair pointed out that the last part of this is important, because of the proposed changes to Rule 20-203, which make clear that the pleading cannot be stricken if that additional information is not there. This is essentially what Mr. Carbine had wanted in the Rule regarding the fact that a pleading should not be stricken if this information is missing. The pleading can be stricken if the typed signature is missing,

because otherwise there is no way to tell from the "/s/" who the person is.

Judge Bryant noted that Rule 1-311, Signing of Pleadings and Other Papers, requires pleadings or papers to include facsimile numbers. This requirement is not included in this Rule. The Chair said that this could be added to Rule 20-107. Ms. Harris commented that MDEC negates the need for fax machines.

The Chair presented Rule 20-108 for the Committee's consideration. The Chair explained that Rule 20-108 has a conforming amendment. There is an issue that arises in the Rule, but it is explained in Rule 20-201.

The Chair asked whether anyone had a motion to approve Rules 20-107 and 20-108. Mr. Laws moved to approve Rules 20-107 and 20-108, as presented, the motion was seconded, and it passed on a majority vote.

The Chair presented Rule 20-201 for the Committee's consideration. The Chair told the Committee that the amendments in the Rule address the second issue, which is what the filer of the initial submission must do to assure that he or she will receive subsequent electronically filed submissions and notices. In order to have that assurance, the party filer must provide contact information in the form of an e-mail address, so that

MDEC will know where to direct notices and submissions that need to be served on that filer.

The Chair said that this is particularly critical when filing the initial submission, but it is also important if the filer ever wants to change the contact information. The problem is that on the "File and Serve" screen, there is a drop-down box in which to provide that information. It should be required that in filing the initial submission, the filer should check that box and provide his or her e-mail address. However, the directions on the screen do not require it. If the filer does not check that box asking for the e-mail address, the submission will still transmit. Some filers are not providing their e-mail addresses, and that has created a problem.

The Chair noted that the amendment to section (f) of Rule 20-201 requires that the box be checked and that the information be required.

Mr. Carbine remarked that he had been one of those attorneys who did not know about the pulldown screen. He has since corrected this. It is not that easy to follow the first time someone files electronically. It is not user-friendly. Mr. Carbine said that he has two concerns. In a case he was in where Mr. Marcus was the opposing attorney in an MDEC county, Mr. Marcus filed a motion to dismiss, and Mr. Carbine filed a motion opposing it. When he filed his opposition to the motion

electronically, he got a notification of service, including other service contacts not associated with the party in the case. This was all the counsel of record, because none of this went through the drop-down box. This was served, and Mr. Marcus got it.

Mr. Carbine said that he then filed a motion for summary judgment. The notification of service was just like the one that he got when he had filed his opposition to the motion to dismiss, which had other service contacts not associated with the party in the case, all of the counsel of record. The problem was that MDEC did not serve Mr. Marcus. Mr. Carbine contacted Mr. Marcus and asked whether Mr. Marcus had been served. He replied that he had not been served. Mr. Carbine gave him the relevant papers and told him that he had a month to respond.

Mr. Carbine noted that he then did a test, and he filed a notice of corrected service contacts. It gave him other lists of other service contacts not associated with the party in the case, including Mr. Marcus. Mr. Carbine checked the box. Even though Mr. Marcus was on the list of other service contacts not associated with the party in the case, he got that notification. Something is not working correctly in MDEC. Mr. Carbine added that he has no confidence that when he files something, his opposing counsel is going to get it.

The Chair responded that, assuming there is a problem with implementing Rule 20-201, it may not be able to be corrected by changing the Rule. He asked Mr. Carbine whether he objected to the change in section (f) of Rule 20-201, requiring that the box be checked and contact information be provided. Mr. Carbine said that he did not think that this was a Rule issue. What has to happen is that somewhere on the Judiciary website or on the MDEC screen, the attorneys need to be told that they must check the drop-down box. He suspects that many attorneys are not checking this box. They must be informed about this.

The Chair commented that when the MDEC Rules were being drafted, the hope was that, with respect to many of the details, the vendor who was working with the Judiciary on MDEC would take care of them. Transmission should not be allowed unless the required actions have been performed. This has not happened. Submissions without the drop-down box being checked are going through. The drop-down box is critical for MDEC to be able to tell where to serve clerks' notices and subsequent submissions, and the e-mail address has to be on there.

Mr. Carbine explained that the drop-down box tells the filer to "select service contact information." There are three options, and it would seem that it applies to the people the filer is serving. However, it does not apply to the people being served; it applies to the filer.

The Chair responded that he was not opposing what Mr. Carbine had said. So far, almost from the beginning, the experience has been that the people working on MDEC had reason to expect that the vendor would do what was needed to effectuate MDEC. The vendor and Judicial Information Systems ("JIS") had signed off on all of the initial Rules, promising to do what the Rules required. What has happened is that from the beginning, major parts of this were not working because of what the vendor later said that they could not or would not do. It was not the fault of JIS. This has been the problem.

Ms. Harris remarked that the Judiciary has been working with the vendor to try to resolve some of these problems. They are considering various ways to address the problems. It is important that the filer use the drop-down box to provide the necessary information.

Judge Morrissey thanked Mr. Carbine for bringing the problems he has had to the attention of the MDEC Executive Steering Committee. Judge Morrissey added that he had not heard of that specific problem. He has encouraged members of the Bar to use the help desk that the Judiciary has and one that the vendor has when problems arise. If the problems are not brought to the attention of the MDEC Executive Steering Committee, the Steering Committee cannot fix them. Some of the fixes are

quick, and some require reprogramming, but the Steering Committee is committed to addressing every problem.

The Chair reiterated that the only change to Rule 20-201 is the requirement of checking the drop-down box. Mr. Laws moved to approve Rule 20-201 as presented, the motion was seconded, and it passed on a majority vote.

The Chair said that the drop-down box should solve the problems that have been discussed, but there is another problem. It relates to Rule 20-108. It was anticipated that some attorneys, perhaps many, will delegate to a secretary or a paralegal the purely clerical function of filing a submission that was drafted by the attorney. Rule 20-108 permits this. It makes clear that the attorney is the one who officially files, not the paralegal, and it is critically important that the paralegal or the secretary insert the attorney's e-mail address in the contact information box, and not his or her own e-mail address. Although this seems obvious, other requirements that have seemed obvious have not been followed.

The Chair explained that if the attorney's e-mail address is not submitted, MDEC automatically will send notices and subsequent transmissions to the e-mail address of the secretary or paralegal whose address was inserted and not to the attorney. Unless the attorney's e-mail address is listed in the contact information box, at least with respect to the initial filing,

and probably as to any subsequent filing, the attorney would have to change the contact information. That is something that could be clarified in the Policies and Procedures Manual. An attorney who is going to do this must instruct his or her designee as to which e-mail address is to be provided. Otherwise, the attorney will not get notices. This matter could be added to Rule 20-108 as well. The Chair added that he wanted to point out the issue. At the moment, there is no specific proposal.

The Chair presented Rule 20-203 for the Committee's consideration. This addresses the major part of the discussion about the signature. Under the current Rule, the clerk must review a submission to assure that it complies with the necessary requirements. If a submission does not contain a signature or certificate of service, the clerk is required to strike it. Unless the clerk does make a docket entry of what he or she has done, which is not a universal practice, there may be no record in the court's operating system of what the clerk has done. The rejection would be recorded in the File and Serve part but not in the Odyssey part. If the clerk strikes the submission, it will not get into Odyssey unless it is put in there.

The Chair noted that the amendment to Rule 20-203 tries to provide some transparency. Even if there is a missing

signature, it requires that the submission be docketed, which puts it into Odyssey. Then the submission is stricken, and the reason for striking it is included. This means that there is a record in Odyssey that the submission was submitted and stricken, and a record of the reason why it was stricken. The amendment also makes clear that the submission may be stricken if there is no signature, which includes the filer's printed name, but not because the additional information is not there. That is grounds for a deficiency notice which can lead to a later striking if it is not corrected.

Mr. Sullivan pointed out a typographical error in subsection (e)(2). The word "unredacted" was misspelled. Mr. Frederick moved to approve the proposed change to Rule 20-203. The motion was seconded.

The Reporter said that she had thought that the previous motion was that the submission could not be stricken for want of a signature. This would be a deficiency. Some redrafting will be necessary. Mr. Carbine reiterated that a submission can no longer be stricken for lack of a signature. The Reporter responded that she thought that this was the previous motion where the signature would only be "/s/" or something resembling a person's real signature, and the second half of that motion was that there would be a deficiency determination for the lack

of a signature, rather than a striking of the submission. Rule 20-203 will have to be redrafted.

The Chair said subject to the redrafting, there was a motion to approve Rule 20-203 on the floor. The motion was passed on a majority vote.

The Chair presented Rule 20-503 for the Committee's consideration.

The Chair pointed out that Rule 20-503 addresses the archival of records. When the MDEC Rules were being drafted, there were discussions with the State Archivist as to what the Archivist's role may be in MDEC files. With respect to paper records, the clerk keeps them subject to a retention schedule that has been created by statute by the Department of General Services with a signoff in part by the Chief Judge of the Court of Appeals, by the Administrative Judges, and in District Court by the Chief Judge. The schedule is lengthy, and it has different times for different kinds of cases.

The Chair said that there has been a recent recommendation to revise the schedule. This is because the record only exists in the Clerk's office, and it has to be moved to get into the archives. With MDEC, it is not necessary to move the records. The issue was at what point the court records are to be sent to the archives. The negotiations early on were friendly, but no agreement was reached. The participants decided that at some

point, the State Court Administrator and the State Archivist would get together to develop protocols for the transfer of the records. The protocols would then be sent to the Chief Judge of the Court of Appeals. This has not yet happened.

The Chair said that the proposal is to wait to do anything. Although 17 counties are part of MDEC, Baltimore City and six counties are still using the old system. Probably 80% of the records are in these seven jurisdictions. It is useful to wait until everyone is part of MDEC to see what the whole picture is, and the transfer of records will then have to be figured out. One of the issues that was discussed and is still on the table is confidentiality. All of the Access Rules have shielding provisions, but they only apply to court records. If archiving electronic records is going to have similarities to archiving paper, then shielding will be a matter for the Archivist. The records would become part of the archives and not court records even though they may still be available to the court.

Rule 20-503 defers this matter for another three years until MDEC is statewide. Judge Mosley moved to approve Rule 20-503 as presented, the motion was seconded, and it passed on a majority vote.

Agenda Item 5. Consideration of proposed amendments to: Rule 7-103 (Method of Securing Appellate Review), and Rule 8-201 (Method of Securing Review – Court of Special Appeals)

The Chair presented Rules 7-103, Method of Securing Appellate Review; and 8-201, Method of Securing Review – Court of Special Appeals, for the Committee's attention.

MARYLAND RULES OF PROCEDURE

TITLE 7 – APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

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

AMEND Rule 7-103 (e) by requiring the clerk to enter on the docket a statement of the fees paid and forward the filing fee to the circuit court only in a non-MDEC county, as follows:

Rule 7-103. METHOD OF SECURING APPELLATE REVIEW

(a) By Notice of Appeal

The only method of securing appellate review in the circuit court is by the filing of a notice of appeal with the clerk of the District Court within the time prescribed in Rule 7-104.

(b) District Court Costs

Unless the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1, before the clerk transmits the record pursuant to section (e) of this Rule, the appellant shall pay to the clerk of the District Court the cost of preparation of a transcript, if a transcript is necessary to the appeal.

Cross reference: Rule 7-113 (b).

(c) Filing Fee

Within the time for transmitting the record under Rule 7-108, the appellant shall deposit the fee prescribed by Code, Courts Article, §7-202 with the clerk of the District Court unless:

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1; or

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or the appellant is represented by the Public Defender's Office.

(d) Appeals Where Public Defender Representation Denied - Payment by State

The court shall order the State to pay the court costs related to an appeal and the costs of preparing any transcript of testimony necessary in connection with the appeal in any case in which (1) the Public Defender's Office is authorized by these Rules or other law to represent a party, (2) the Public Defender has declined representation of the party, and (3) the party is unable by reason of poverty to pay those costs.

(e) Transmittal of Record

After all required fees have been paid, the clerk shall transmit the record as provided in Rules 7-108 and 7-109. ~~The filing fee shall be forwarded~~ The clerk shall enter on the docket a statement of the fees paid, and, in a non-MDEC county, forward the filing fee with the record to the clerk of the circuit court.

Committee note: When a notice of appeal is filed, the clerk should check the docket to see if it contains the entry of a judgment in compliance with Rules 3-601 and 3-602, and if not, advise the parties and the court. This note is not intended to

authorize the clerk to reject a notice of appeal or to place a mandatory duty on the clerk, or to relieve counsel of their responsibility to assure that there is an appealable order or judgment properly entered on the docket before noting an appeal.

Source: This Rule is derived from former Rule 1311, except that section (d) is derived from the 2014 version of former Rule 1-325 (b).

Rule 7-103 was accompanied by the following Reporter's note:

In an MDEC county, filing fees are processed electronically; no paper checks are forwarded with the record.

Proposed amendments to Rules 7-103 and 8-201 require that the clerk of the lower court enter on the docket a statement of the fees paid, and forward the filing fee to the appellate court only if the lower court is in a non-MDEC county, or if it is an orphans' court.

MARYLAND RULES OF PROCEDURE

TITLE 8 – APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 200 – OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-201 (c) by requiring the clerk to enter on the docket a statement of the fees paid and forward the filing fee to the clerk of the Court of Special Appeals only if the lower court is a circuit court

in a non-MDEC county or an orphans' court, as follows:

Rule 8-201. METHOD OF SECURING REVIEW – COURT OF SPECIAL

APPEALS

(a) By Notice of Appeal

Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202. The notice shall be filed with the clerk of the lower court or, in an appeal from an order or judgment of an Orphans' Court, with the register of wills. The clerk or register shall enter the notice on the docket.

(b) Filing Fees

At the time of filing a notice of appeal in a civil case, or within the time for transmitting the record under Rule 8-412 in a criminal case, an appellant shall deposit the fee prescribed pursuant to Code, Courts Article, §7-102 with the clerk of the lower court unless:

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1; or

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or the appellant is represented by the Public Defender's Office

(c) Transmittal of Record

After all required fees have been deposited, the clerk shall transmit the record as provided in Rules 8-412 and 8-413. ~~The fee shall be forwarded~~ The clerk shall enter on the docket a statement of the fees

> paid, and, if the lower court is a circuit court in a non-MDEC county or an orphans' court, forward the filing fee with the record to the Clerk of the Court of Special Appeals.
>
> Committee note: When a notice of appeal is filed, the clerk should check the docket to see if it contains the entry of a judgment in compliance with Rules 2-601 and 2-602, and if not, advise the parties and the court. This note is not intended to authorize the clerk to reject a notice of appeal, to place a mandatory duty on the clerk, or to relieve counsel of their responsibility to assure that there is an appealable order or judgment properly entered on the docket before noting an appeal.
>
> Source: This Rule is derived from former Rule 1011 with the exception of the first sentence of (a) which is derived from former Rule 1010.

Rule 8-201 was accompanied by the following Reporter's note:

See the Reporter's note to Rule 7-103.

The Chair said that another MDEC issue is associated with these Rules. Currently, in both appeals from the District Court to the circuit court, and from the circuit court to the Court of Special Appeals and the Court of Appeals, the appellate court requires a filing fee. That fee is collected by the lower court and transmitted to the appellate court. This procedure has worked well, but it does not work in MDEC. A procedure needs to be added for the MDEC cases. The filing fee goes into the

general funds of the State no matter who collects it. The proposal is that the lower court will collect the fee and send it to the general treasury of the State and not to the appellate court. The clerk of the lower court would enter on the docket a statement that the fees were paid and forwarded to the State Treasurer.

Ms. Harris explained that this is very time-consuming for the clerks in MDEC counties. It can be done, but the time it takes is not reasonable. It used to be that the circuit court clerks wanted the money given to them to be shown so that they could run their offices. Now it no longer matters, because the money goes to the general fund.

Ms. Harris moved to adopt Rules 7-103 and 8-201 as presented, the motion was seconded, and it passed on a majority vote.

Agenda Item 6. Consideration of proposed amendments to Rule 10-108 (Orders)

The Chair presented Rule 10-108, Orders, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10- GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 10-108 to clarify that the authority of a guardian to act pursuant to the terms of an order of appointment is not

affected by a certain directive in the order and to add language pertaining to monitoring and enforcing compliance with the directive to the Committee note following subsection (a)(1), as follows:

Rule 10-108. ORDERS

(a) Order Appointing Guardian

(1) Generally

An order appointing a guardian shall:

(A) state whether the guardianship is of the property, the person, or both;

(B) state the name, sex, and date of birth of the minor or disabled person;

(C) state the name, address, telephone number, and e-mail address, if available, of the guardian;

(D) state whether the appointment of a guardian is solely due to a physical disability, and if not, the reason for the guardianship;

(E) state (i) the amount of the guardian's bond or that a bond is waived and (ii) the date by which proof of any bond shall be filed with the court;
Cross reference: See Rule 10-702 (a), requiring the bond to be filed before the guardian commences the performance of any fiduciary duties.

(F) state the date by which any annual report of the guardian shall be filed; and
Cross reference: See Rule 10-706 (b).

(G) state the specific powers and duties of the guardian and any limitations on those powers or duties either expressly or by referring to the specific sections or

subsections of an applicable statute containing those powers and duties; and

(H) except as to a public guardian, unless the guardian has already satisfied the requirement or the court orders otherwise, direct the guardian to complete an orientation program and training in conformance with the applicable *Guidelines for Court-Appointed Guardians* attached as an Appendix to the Rules in this Title. A directive in an order of appointment requiring the guardian to complete an orientation program and training does not affect the authority of the guardian to act pursuant to the other provisions of the order.

Committee note: An example of an appointment as to which waiver of the orientation and training requirements of subsection (a)(1)(H) may be appropriate is the appointment of a temporary guardian for a limited purpose or specific transaction. If an order contains a directive to complete an orientation program and training, compliance with the directive should be monitored by the trust clerk or other person designated by the court and may be enforced by the court.

Cross reference: Code, Estates and Trusts Article, §§13-201 (b) and (c), 13-213, 13-214, 13-705 (b), 13-708, and 15-102 and Title 15, Subtitle 6 (Maryland Fiduciary Access to Digital Assets Act).

(2) Confidential Information

Information in the order or in papers filed by the guardian that is subject to being shielded pursuant to the Rules in Title 16, Chapter 900 shall remain confidential, but, in its order, the court may permit the guardian to disclose that information when necessary to the administration of the guardianship, subject

to a requirement that the information not be further disclosed without the consent of the guardian or the court.

Committee note: Disclosure of identifying information to financial institutions and health care providers, for example, may be necessary to further the purposes of the guardianship.

Cross reference: See Rule 16-907 (f) and (j) and Rule 16-908 (d).

(b) Letters of Guardianship

An order appointing a guardian entered under this Rule constitutes "letters of guardianship" as that term is used in Code, Estates and Trusts Article.

Cross reference: Code, Estates and Trusts Article, §§13-215 and 13-217, and 13-219.

(c) Orders Assuming Jurisdiction over a Fiduciary Estate Other than a Guardianship

An order assuming jurisdiction over a fiduciary estate other than a guardianship shall state whether the court has assumed full jurisdiction over the estate. If it has not assumed full jurisdiction over the estate or if jurisdiction is contrary to the provisions in the instrument, the order shall state the extent of the jurisdiction assumed. The order shall state the amount of the fiduciary's bond or that the bond is waived.

(d) Modifications

The court may modify any order of a continuing nature in a guardianship or fiduciary estate upon the petition of an interested person or on its own initiative, and after notice and opportunity for hearing.

Source: This Rule is derived as follows:
Section (a) is derived in part from Code, Estates and Trusts Article, §§13-208 and 13-708 and is in part new.
Section (b) is new.
Section (c) is derived from former Rules V71 f 1 and f 2.
Section (d) is derived in part from former Rule R78 b and is in part new.

Rule 10-108 was accompanied by the following Reporter's note:

> The Rules Committee has been advised that some financial institutions are questioning the authority of a guardian to act pursuant to an order of appointment when the order contains a directive requiring the guardian to complete an orientation program and training and the guardian can provide no proof that the orientation program and training have been completed.
>
> Although the Judiciary is able to track compliance with the orientation and training requirements, it is not contemplated that certificates of compliance will be issued. Additionally, the guardian may need to perform some acts for the benefit of the ward before the guardian has had the opportunity to complete the requirements.
>
> The proposed amendment to Rule 10-108 (a)(1)(H) clarifies that a directive in an order of appointment requiring the guardian to complete an orientation program and training does not affect the authority of the guardian to act pursuant to the other terms of the order. A guardian who fails to complete the requirements in a timely manner may be subject to removal, but prior to any such removal, the guardian has the authority to exercise powers and perform duties for the benefit of the ward.
>
> Language pertaining to monitoring and enforcing compliance with a directive to complete an orientation program and training is proposed to be added to the Committee

note following subsection (a)(1).

The Chair explained that when the Court of Appeals adopted the Guardianship Rules, it was important that, in order to appoint a guardian, there be a directive that the guardian has to take the requisite training if the guardian had not already done so. This was a critical part of the recommendations. It appears that in Baltimore City, there are some banks that have taken the position that, unless they get some kind of certification from the circuit court that the guardian has taken the training, they are not going to recognize the authority of the guardian to do anything, because the order appointing the guardian requires the training.

The Chair commented that rather than bring the president of the bank into court, the decision was to add a provision in Rule 10-108 that a directive in the order requiring the guardian to complete the program does not affect the authority of the guardian to act pursuant to the other provisions of the order. He added that the Honorable Cynthia Callahan of the Circuit Court for Montgomery County, who was present at the meeting, agrees that the order itself would provide for this.

Judge Callahan remarked that because there is some flexibility with the order, the part about the necessity of doing the training could be left out of the order that the banks

get which is the same thing as leaving it out of the order that authorizes the guardian. If the order that the banks get does not refer to the training requirement, in theory, the bank will not insist on having the training done when the law and the Rules do not require the guardian to have completed the training before he or she starts the work as guardian.

The Chair said that if the banks find out that there is another order that refers to the guardian taking the training, they may take the same position that they are taking now. Ms. Subasinghe, who is with the Department of Juvenile and Family Services in the Administrative Office of the Courts, explained that the Baltimore City Circuit Court spoke with two banks in Baltimore City, and they agreed that the guardians do not have to complete the training before they can act as guardian.

The Chair inquired whether anything more needs to be done. Ms. Subasinghe answered that the Honorable Karen Murphy Jensen, who chairs the Guardianship Committee, had asked if this could be tabled for now until they try putting some language in the order to see if the problem is resolved.

Judge Bryant expressed the concern that the number of show cause orders will increase. Guardians will not feel the need to take the training and will act without it. The Chair responded that this aspect had been discussed. Initially, the proposal

was to add the language "unless otherwise ordered by the court," but the Guardianship Committee did not want this.

Judge Callahan commented that the concern is that the training is very important. People who may not have much legal training are being asked to be guardians, and they need the training to understand the rules about guardianships. The banks have decided to police this. The hope is that some language can be crafted that would work. The banks do not have to have an order listing all the requirements that a guardian must do. However, it may be inconsistent to have two orders. It would be a good idea to figure out a way to have the order given to the banks be different than the order appointing the guardian.

The Chair expressed his concern about that. Both orders would have to be docketed. This issue sounds as if it is coming from the legal departments of the banks. Judge Callahan responded that this was the case. There has been an effort to try to talk to the people from the banks, but they have been somewhat uncooperative. They will not communicate, and the Honorable W. Michel Pierson, Administrative Judge for Baltimore City, has had a hard time getting the bank personnel to speak with him.

Mr. Frederick suggested that the banks should be served with a show cause order to avoid being held in contempt. That might get their attention. Judge Callahan said that this had

been considered, but it seemed to be antagonistic rather than leading to a solution. The Chair noted that if the banks are acting on the advice of counsel, they should not be punished.

Judge Price asked why the order for the training could not be a separate order. Judge Callahan responded that this had been suggested. The banks have been difficult to deal with. One scenario would be that someone from the Judiciary could talk to someone from the Bank of America to sort this out. It would be better to defer this. Some effort is being made to try to reach the person in Maryland who is from the Bank of America to discuss this issue and come up with a solution. The Chair said that if possible, it should be done through the form order itself.

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