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 Judicial Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on January 4, 2019.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.
Robert R. Bowie, Jr., Esq.
Hon. Yvette M. Bryant
James E. Carbine, Esq.
Hon. John P. Davey
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Alvin I. Frederick, Esq.
Ms. Pamela Q. Harris
Victor H. Laws, III, Esq.
Dawne D. Lindsey, Clerk
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Hon. Douglas R. M. Nazarian
Steven M. Sullivan, Esq.
Gregory K. Wells, Esq.
Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Colby L. Schmidt, Esq., Assistant Reporter
Shantell K. Davenport, Esq., Assistant Reporter
Hon. John Morrissey, Chief Judge, District Court of Maryland
Nicholas Iliff, Esq., Office of the Chief Judge, District Court Headquarters
Hon. Michael Reed, Court of Special Appeals
Thomas B. Stahl, Esq., Spencer & Stahl, P.C.
Tanya C. Bernstein, Esq., Director, Commission on Judicial Disabilities
Derek Bayne, Esq., Commission on Judicial Disabilities
Kendra Randall Jolivet, Esq., Commission on Judicial Disabilities
Melissa M. Higdon, Executive Director, Client Protection Fund of the Bar of Maryland
Phillip Robinson, Esq., Consumer Law Center, LLC.
Michelle Karczeski, Project Manager, JIS
Yanet Amanuel, Policy Advocate, Job Opportunities Task Force

Nikki Thompson, Policy Advocate, Job Opportunities Task Force
Amy Hennen, Esq., Maryland Volunteer Lawyers Services
Gray Barton, Director, Office of Problem Solving Courts
Jennifer Diamond, Maryland Consumer Rights Coalition
Debra Gardner, Esq., Director, Public Justice Center
D. Robert Enten, Esq., Gordon Feinblatt, LLC.
Luke Pinton, Chief of Staff for William C. Smith, Jr., MD State Senator

The Chair convened the meeting. He said that he hopes to transmit the revised Judicial Disabilities Rules, including what the Committee decides to do with Agenda Item 2, to the Court of Appeals within the next week.

The Chair advised the Committee that a project of the General Court Administration Subcommittee, in collaboration with many groups, is the development of comprehensive Rules to deal with public emergencies and natural disasters. There are currently Rules and administrative orders in place that deal with a few emergency scenarios. However, there is no provision that addresses venue issues or alternate court locations in the event of a Hurricane Katrina type of natural disaster or another catastrophic event. The goal is to draft a set of Rules that will ensure the operation of the Judiciary during emergencies.

The Chair explained that there are a number of issues that have to be considered when drafting the proposed Rules. Some of those issues include ensuring the efficient operation of pretrial release hearings, coordinating with Executive Branch policies and directives, the continuity of operations plans, the

possible extension of expiration dates on temporary domestic violence and peace orders, and injunctions, and extending or tolling time limits on filings. He added that recent events in Houston and elsewhere in the country have shown that these issues need to be considered.

The Reporter introduced the new Deputy Director, Colby Schmidt, Esq. to the Committee. She said Mr. Schmidt brings a wealth of experience to the position and that the Rules Committee Office is delighted to have him.

Agenda Item 1. Consideration of proposed amendments to Rule 2-633 (Discovery in Aid of Enforcement), Rule 3-633 (Discovery in Aid of Enforcement), and Rule 1-361 (Execution of Warrants and Body Attachments).

The Chair presented Rules 2-633 Discovery in Aid of Enforcement; Rule 3-633 Discovery in Aid of Enforcement; and Rule 1-361 Execution of Warrants and Body Attachments, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 2-633 (b) by requiring that an order to appear for examination warn that a body attachment may issue in the event of non-appearance, by precluding the issuance of a body attachment unless the judgment

debtor was served in person with the order or has been evading service, by adding and updating cross references, and by making stylistic changes, as follows:

Rule 2-633. DISCOVERY IN AID OF ENFORCEMENT

. . .

(b) Examination before a judge or an examiner

(1) Generally

Subject to section (c) of this Rule, on request of a judgment creditor~~,~~ filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or recorded shall issue an order requiring the appearance for examination under oath before a judge or examiner of ~~(1)~~ (A) the judgment debtor, or ~~(2)~~ (B) any other person who may have property of the judgment debtor, be indebted for a sum certain to the judgment debtor, or have knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor.

(2) Order

(A) The order shall specify when, where, and before whom the examination will be held and that failure to appear may result in (i) the issuance of a body attachment directing a law enforcement officer to take the person served into custody and bring that person before the court and (ii) the person served being held in contempt of court.

Cross reference: See Rule 1-361.

(B) The order shall be served upon the judgment debtor or other person in the manner provided by Rule 2-121, but no body attachment shall issue in the event of a non-appearance absent evidence that (i) the person to whom the order was directed was personally served with the order in the manner described in Rule 2-121 (a)(1) or (3), or (ii) that person has been evading service willfully.

(3) Sequestration

The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

Cross references: Code, Courts Article, §§ 6-411 and 9-119.

. . .

Rule 2-633 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed amendments to Rules 2-633 and 3-633 address concerns raised regarding the issuance of body attachments to enforce an order for a judgment debtor to appear in court or before the examiner when (1) the order to appear does not warn of that possibility, and (2) the order was not served on the debtor in person, but was left with someone else at the residence. Evidence was presented to the General Assembly that some debtors were taken into custody pursuant to a body attachment when they had not, in fact, received the order to appear. The current Rule requires that the order to appear warn of the possibility of contempt but not of the more immediate and

onerous prospect of physical seizure by a law enforcement officer.

Finally, a cross reference is added following new subsection (b)(2), and the cross reference following section (b) is updated to include a reference to Code, Courts Article, § 6-411. Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 3 – CIVIL PROCEDURE – DISTRICT COURT

CHAPTER 600 – JUDGMENT

AMEND Rule 3-633 (b) by requiring that an order to appear for examination warn that a body attachment may issue in the event of non-appearance, by precluding the issuance of a body attachment unless the judgment debtor was served in person with the order or has been evading service, by adding and updating cross references, and by making stylistic changes, as follows:

Rule 3-633. DISCOVERY IN AID OF ENFORCEMENT

. . .

(b) Examination before a judge or an examiner

(1) Generally

Subject to section (c) of this Rule, on request of a judgment creditor~~,~~ filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or recorded shall issue an order requiring the appearance for examination

under oath before a judge or person authorized by the Chief Judge of the Court to serve as an examiner of ~~(1)~~ (A) the judgment debtor, or ~~(2)~~ (B) any other person who may have property of the judgment debtor, be indebted for a sum certain to the judgment debtor, or have knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor.

(2) Order

(A) The order shall specify when, where, and before whom the examination will be held and that failure to appear may result in (i) the issuance of a body attachment directing a law enforcement officer to take the person served into custody and bring that person before the court and (ii) the person served being held in contempt of court.

Cross reference: See Rule 1-361.

(B) The order shall be served upon the judgment debtor or other person in the manner provided by Rule 2-121, but no body attachment shall issue in the event of a non-appearance absent evidence that (i) the person to whom the order was directed was personally served with the order in the manner described in Rule 3-121 (a)(1) or (3), or (ii) that person has been evading service willfully.

(3) Sequestration

The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

Cross reference~~s~~: Code, Courts Article, §§ 6-411 and 9-119.

. . .

Rule 3-633 was accompanied by the following Reporter's note.

REPORTER'S NOTE

See the Reporter's Note to Rule 2-633.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-361 by adding references to Rules 2-633 and 3-633 to the cross reference following section (a), as follows:

Rule 1-361. EXECUTION OF WARRANTS AND BODY ATTACHMENTS

(a) Generally

A person arrested on a warrant or taken into custody on a body attachment shall be brought before the judicial officer designated in the specific instructions in the warrant or body attachment.

Cross reference: See Rules 4-102, 4-212, and 4-347 concerning warrants. See Rules 1-202, 2-510, 2-633, 3-510, 3-633, 4-266, and 4-267 concerning body attachments.

(b) Warrants Without Specific Instructions

If a warrant for arrest issued by a judge does not contain specific instructions designating the judicial officer before whom the arrested person is directed to appear:

(1) The person arrested shall be brought without unnecessary delay, and in no event later than 24 hours after the arrest, before a judicial officer of the District Court sitting in the county where the arrest was made, and

(2) The judicial officer shall determine the person's eligibility for release, establish any conditions of release, and direct how the person shall be brought before the judge who issued the warrant.

(c) Body Attachments Without Specific Instructions

If a body attachment does not specify what is to be done with the person taken into custody, the person shall be brought without unnecessary delay before the judge who issued the attachment. If the court is not in session when the person is taken into custody, the person shall be brought before the court at its next session. If the judge who issued the attachment is not then available, the person shall be brought before another judge of the court that issued the attachment. That judge shall determine the person's eligibility for release, establish any conditions of release, and direct how the person shall be brought before the judge who issued the attachment.

Committee note: Code, Courts Article, § 2-107 (a)(3) requires that a warrant for arrest issued by a circuit court contain certain instructions to the sheriff or other law enforcement officer who will be executing the warrant. This Rule provides procedures for processing a person taken into custody on a warrant or body attachment that does not contain this information.

Source: This Rule is new.

Rule 1-361 was accompanied by the following Reporter's note.

REPORTER'S NOTE

> References to Rules 2-633 and 3-633 are proposed to be added to the cross reference following section (a) of Rule 1-361. Suggested changes to Rules 2-633 and 3-633 concern body attachments issued by the court in proceedings for discovery in aid of enforcement of money judgments.

The Chair explained that the amendments to the Rules contained in Agenda Item 1 were triggered, in part, by concerns expressed to the Legislature. There were complaints that debtors were being picked up on body attachments for failure to appear for examinations in aid of enforcement of the judgments against them. The debtors were being held in jail for a period of time despite not having personally received notice to appear for the examination. The Committee received requests to take up this issue from several sources, including the Public Defender's Office, the Maryland Alliance for Justice Reform ("MAJR") (a group chaired by Senior Judge Phillip Caroom), and Stuart Simms, Esq., the former Secretary of Public Safety & Correctional Services.

The Chair said that the original suggestion was to prohibit body attachments from being issued against debtors. The

Subcommittee was not prepared to do that. Instead, the focus was to make sure that debtors would not be picked up on body attachments unless they had received personal service of the order to appear for the examination. That suggestion was before the Committee when Ron Cantor, a collections attorney, pointed out that there is a Rule in Florida which requires the debtor to fill out a form under oath. When a money judgment is entered against an individual, a form is sent to the debtor indicating that if the debtor fails to complete the form, he or she could be held in contempt of court. The Subcommittee was not willing to take the Florida approach.

The Chair explained that the discussions at the Subcommittee level became separated into two issues. The first issue involved addressing the issuance of body attachments served on judgment debtors for failure to appear for examinations in aid of enforcement. The second issue was how to address the form suggestion. There were discussions about whether the form would be mandatory or discretionary and whether it would be a court form or issued by the creditor. The Florida form required the debtor to attach three years of Federal and State tax returns as exhibits. The form also asked for bank account numbers and other financial information. However, the form did not indicate where the completed form and required attachments were to be sent. The form could be sent to the

creditors, where secretaries and others would have access to the debtor's financial information. There were some privacy concerns about that.

The Chair said that the Subcommittee has been working with Judge Stone who is the Chair of the Forms Committee of the Judicial Council. There have been many discussions about what the form would include and how it would work. There has been no resolution of that issue. The issue presented to the Committee today does not involve the consideration of a form; rather, it is the proposed changes to the Rules regarding the issuance of body attachments. The proposed Rule changes are more urgent than whatever the Committee decides to do with the form.

The Chair stated that a creditor has three choices when trying to recover a money judgment. The first option is to try to work out an agreement with the debtor. The second option is to require the debtor to answer interrogatories in aid of enforcement. The third option is to summon the debtor to appear before a judge or an examiner for an oral examination. If the creditor chooses the third option, the debtor is sworn in as a witness and then, ordinarily, taken outside of the courtroom or hearing room to be questioned under oath by the creditor or the creditor's attorney. When a debtor appears for an oral examination, the debtor cannot be brought back for another examination for one year absent a showing of good cause.

The Chair said that the Committee has received a number of written comments regarding the proposed amendments to Rule 2-633 and Rule 3-633. The comments mostly address two issues. The first issue is an objection to the provision that permits the issuance of a body attachment where the debtor has been willfully evading service. There is one comment that objects to the word "willfully" as a vague term and a second comment that objects to the provision altogether.

The Chair explained that the second issue that was raised by the comments is one of policy. The argument is that a body attachment should not be issued against a debtor for consumer debts. The Chair asked the guests who were present if he accurately stated the objections that were raised.

Ms. Hennen, Managing Attorney at the Maryland Volunteer Lawyers Service, addressed the Committee. She said that the Chair accurately presented the objections raised in a comment she submitted. Ms. Hennen explained that her position is closer to the second issue categorized by the Chair. She believes that body attachments should not be issued against debtors.

Ms. Hennen said that she has seen a number of willful evasion affidavits which often discuss observations that someone is present at the debtor's home and that person does not answer the door. She said that her position is that substitute service should be impermissible because it does not properly notify the

debtor that they may be subject to a body attachment if they fail to appear for the examination. If a process server cannot verify that the person inside the home is, in fact, the debtor or that the property where service is attempted is the debtor's correct address, then there is no assurance that the debtor is evading service.

Ms. Hennen mentioned that on a personal note, if someone comes to her home and she is not expecting anyone, she does not answer the door if she doesn't know who is knocking. She reiterated that she believes the body attachment provision should be eliminated from the Rules, but respects that the Committee is not on board with that request.

Mr. Robinson addressed the Committee. He said that he believes there is a constitutional problem with the issuance of body attachments for debtors, rather than a policy one. The body attachment tool is one that is rarely used by creditors against judgment debtors. There is a small group of collectors within the financial service litigation industry who seek body attachments.

Mr. Robinson said that he has limited experience in dealing with the body attachment issue, but would like the opportunity to challenge the constitutionality of the practice. He said that in one of his cases where a body attachment was issued, he was able to resolve the issue. That case was a small class

action case. The defendant and the creditor's attorney sought a body attachment against one of the class members who had relocated from Charles County to West Virginia. The Charles County Circuit Court issued a body attachment without knowing that the case had been resolved. The creditor's attorney had not told the court, despite being aware of the status of the case.

Mr. Robinson reiterated that he was able to resolve the issue. However, that begs the question of what would have happened had the class member been picked up in West Virginia. Many people don't have the luxury of an attorney working on their case. How long would it have taken for the class member to be released in Charles County? Mr. Robinson urged the Rules Committee to consider the suggestions contained in his comment letter from the perspective of the consumer. He asked that a Committee note be added that addresses the context of the constitutional provision.

The Chair clarified that Mr. Robinson is referring to the provision that prohibits the imprisonment of debtors. Mr. Robinson answered in the affirmative. The Chair responded that body attachments are not issued because of the debtor's failure to repay the debt. The body attachments are issued when the debtor fails to appear at court for an oral examination, pursuant to a court order.

Mr. Robinson said that is what his colleagues on the opposing side are arguing. However, his response to that is that the action arises from a debt. There is an argument that if the constitutional provision is broadly interpreted, then the body attachment provision as applied to judgment debtors, would be unconstitutional. He reiterated that he has not had the opportunity to take up that issue in court because he resolved the cases where a body attachment was issued.

Ms. Gardner, Director of the Public Justice Center, addressed the Committee. Ms. Gardner said that she had not been present for the Subcommittee discussions regarding the body attachment issue. She urged the Committee to give serious consideration to prohibiting body attachments from being issued against individuals in consumer debt cases. She said that her understanding is that the use of body attachments against debtors is not common. Out of the hundreds of thousands of consumer debt actions that are filed in Maryland, there are perhaps two thousand or fewer requests for body attachments. However, when used, it is an extreme remedy.

Ms. Gardner said that the Maryland Consumer Rights Coalition has documented several cases where body attachments were issued against debtors. In one case, an elderly couple who were completely unaware of the existence of the judgment against them were arrested. That is an extreme measure for what are

typically small debts incurred by consumers. With the boom in the debt-buying business, there is a documented lack of quality information regarding the debts in many cases. Ms. Gardner asked the Committee to reconsider its position on prohibiting the issuance of body attachments in the consumer debt context.

The Chair asked Ms. Gardner whether she had thought about an alternative method that would permit a creditor to enforce a judgment. Ms. Gardner said that she has thought about that, but has not come up with an alternative. She stated that she understands the concern that debtors may be ignoring the court's authority by failing to appear for examinations. She added that, from a balancing perspective, it is not worth the court's authority, given that most creditors do not elect the body attachment remedy.

Mr. Enten, an attorney representing the Maryland Bankers Association and the Mid-Atlantic Collectors Association, addressed the Committee. Mr. Enten said that when he was a young attorney, he did a lot of debt collection work. A judgment is worthless unless the creditor can find an asset to satisfy the judgment. Creditors are unable to find assets to satisfy judgments without engaging in post-judgment discovery.

Mr. Enten said the choices left to the creditor are the ones previously explained by the Chair. When a creditor sends a debtor a set of interrogatories, the debtor usually has no idea

what the interrogatories are or how to respond to them. The preferred method is to file for post-judgment oral examination. The debtor has to be served, and if the debtor fails to appear, then the debtor is served with a show cause order. If the debtor fails to respond to the show cause order, then the creditor can request a body attachment.

Mr. Enten stated that the issuance of the body attachment has nothing to do with the nature of the debt. He said the argument that this issue is about debtors' prisons is over-the-top. The only information that a judgment creditor really wants to know in a consumer debt case is whether there is a wage or a bank account that the creditor can attach in order to satisfy the judgment. Creditors generally do not try to seize a debtor's investment accounts or personal property. He added that he was greatly encouraged at the Subcommittee level by the discussion about creating a form.

Mr. Enten explained that the Chair's description about what happens when a debtor is brought to court for an examination in aid of enforcement is accurate. The debtor is sworn in and taken into the hallway so the creditor or the creditor's attorney can ask questions about the debtor's employment and assets. Then the creditor returns to the hearing room or courtroom and dismisses the examination proceeding. He said the issue has nothing to do with the type of debt. He added that if

the Court of Appeals decides that the practice is unconstitutional, then that is up to the Court to do so. That is not up to the Committee to decide.

Mr. Enten stated that the body attachment tool is very important for creditors. When a merchant sells goods to a consumer or a plumber provides services and does not get paid, if they go through the trouble of obtaining a judgment, then they should be able to use resources to help enforce the judgment. The General Assembly has declined to do away with body attachments. The issue has been presented to the General Assembly, and those bills have failed.

Mr. Enten said that the process included in the Rules addresses the concerns raised. The primary concern expressed is to make sure that the debtor subject to the body attachment actually was served with the order to appear at the examination hearing or that the debtor had intentionally, purposefully, or willfully evaded service. Mr. Enten said that his clients would agree that a body attachment should not be issued unless there is good evidence to support that the debtor is evading service. He said that he would not oppose adding a provision to the Rules to require that process servers must provide a statement setting forth the basis their conclusions with particularity. Judges are going to review the affidavits of the process servers and determine whether they believe there are sufficient facts to

find that the debtor has evaded service. He added that creditors are not looking for debtors to be taken into custody who have not been served. However, if he were one of the hundreds of thousands of creditors who obtain judgments every year, he would like to see those judgments be recovered.

The Chair asked if there was anyone else in the audience who would like to address this issue.

Mr. Robinson commented that he would volunteer to work with the Subcommittee to discuss alternatives for creditors instead of seeking body attachments. He said many members of the debt-collection bar do not use the body attachment tool, yet manage to work out payment plans and other arrangements. The Chair responded that the Committee is always willing to have input.

Ms. Gardner commented that if the Committee intends to proceed with some version of the proposed Rules, then she would strongly encourage including language that requires verification of the identity of the debtor along with the "willful" evasion provision. She said there are a lot of reasons for individuals to avoid interacting with strangers. If the process server doesn't know that he or she had been attempting to serve the right person, then the amendments to the Rules will not create change.

The Chair said that several suggestions pertaining to the issue of evasion have been made. He said one suggestion is to

require that the act of evasion must have happened more than once, which would support the argument for willful evasion. A second suggestion is to require the affidavit of the process server to state with particularity the basis for the conclusion that there is a willful evasion. Another suggestion is to have the judge make a finding that there is an evasion of service, whether by a preponderance of the evidence or some other standard based on the information contained in the process server's affidavit.

The Chair stated that the Subcommittee did look into the amorphous nature of the term "willful." He said what he discovered is that the term has been defined in many different ways by the courts in different contexts. The definitions vary, to some extent, based upon whether the person knows what he or she is doing is illegal or wrong. However, the commonality observed among all the definitions is that the action has to be intentional and knowing to be considered willful. Some courts add other conditions but those two requirements seem to be used across the board.

The Chair said that his sense is that this issue will come up again, given that the Legislature is back in session. He said that, in the meantime, the Committee has an opportunity to craft something to address some of the concerns expressed. He

asked the Committee what its pleasure is regarding Agenda Item 1.

Mr. Zollicoffer said that his vote is to remand the matter back to the Subcommittee.

Judge Eaves commented that she does not have insight into what was discussed regarding the priority of the Rule amendments over the development of the form. She inquired as to whether there was any consideration of including information on the form to notify debtors how they can avoid having a body attachment issued against them, either by contacting the court or requesting a stay.

Ms. Thompson said that remanding the issue to the Subcommittee at this point would not be helpful since there are so many other issues that the Subcommittee has yet to resolve. She said that decisions about the use of the term “willfully” versus “purposefully” can be made at a later time. She urged the Rules Committee to approve the proposals as presented.

The Chair inquired as to what the Committee’s view is on the suggestion to require that the court have to make a “finding” that the debtor has willfully evaded service and that the finding be based on “a particularized affidavit stating the basis for that conclusion.”

Judge Nazarian said that the latter language is what he would like added to the Rules. He said the evidence is not as good as a finding. He added that he likes Mr. Laws' suggestion to require a particularized affidavit in support of the conclusion that the debtor is evading service.

Mr. Laws said that the problem with requiring the court to make a finding as to the debtor's evasion is that it implies that there will be a hearing on the issue. He said realistically, the body attachments will be signed off by judges after reviewing the service processer's affidavits and the creditor's request.

The Chair said that a judge's issuance of a body attachment would qualify as a finding that the debtor is willfully evading service but would not be a finding as to the debt. Mr. Laws replied that he understands. He said that his concern is that the term "finding" may imply that there will be a full hearing.

Mr. Carbine commented that he has never had a hearing to obtain substitute service. He said that he simply files a motion for substitute service, and the judge rules on the motion. Sometimes the judge's order will interlineate additional steps that must be taken before obtaining substitute service. He said there is judicial intervention involved whether a hearing is held or not.

Mr. Laws reiterated his concerns about using the term "finding." He said that a particularized affidavit or a verification requirement is enough.

Judge Bryant commented that when she read the drafts, she circled the word "evidence." She asked why that word was selected instead of the word "proof." The Chair replied that the choice of words was based on the assumption that the evidence would be the affidavit of the process server unless someone appears in court to embellish on the issue.

Ms. McBride said that she agrees with Mr. Laws' approach. She said that she believes the Committee should approve the proposed Rules with the added language requiring a particularized affidavit. She expressed concern about the "finding" language to the extent that it may create some dispute regarding the necessity of a hearing.

Judge Bryant suggested adding language to state that "no attachment shall issue in the event of a non-appearance unless the court finds, based on a particularized affidavit that" the debtor was personally served or has been evading service willfully.

Mr. Zollicoffer commented that he is satisfied so long as there is some form of judicial intervention prior to the issuance of a body attachment.

Judge Mosley noted that in the Anne Arundel County District Court, all of the findings are going to be made in open court. She explained that there are a series of dockets with the show causes and oral examinations. In the event that the creditor appears but the debtor does not, under the language proposed by Mr. Laws, the creditor is going to be required to present some evidence, either an affidavit or some proof that the debtor was personally served or has been willfully evading service. Then the judge will have to decide whether there is enough evidence that the person has been served or is evading service before issuing a body attachment.

Judge Morrissey stated that the process in the District Court is such that when a debtor fails to appear for an oral examination, a show cause order is issued. If the debtor fails to appear at the show cause hearing, then that would be the appropriate time to seek a body attachment. He said that the judges check for proper service every time before considering whether to issue a body attachment. Usually, the affidavit of service or attempted service is in the case file. If the creditor presents it to the court, then the evidence is added to the file.

Mr. Enten said that he has gone through this process hundreds of times and is not aware of any judge having issued a body attachment without having checked for proper service. He

said that body attachments are not issued by magistrates, clerks, or commissioners. They are issued solely by judges after reviewing the case file. He added that it would be appropriate to have a hearing if the Committee is going to add language that requires the court to make a "finding."

The Chair noted that several months ago, the Committee approved an amendment to Rule 4-212 that allows clerks to issue arrest warrants if directed to do so by a judge on the record or in writing. He asked the Committee where they stood on the proposals contained in Agenda Item 1.

Mr. Laws moved to add language to Rule 2-633 and Rule 3-633 subsections (b)(2)(B). The final line of those subsections would read "service willfully, as shown by a verified and particularized affidavit." The motion was seconded.

The Chair invited comments about Mr. Laws' motion.

Mr. Frederick asked Judge Bryant what her previously proposed language was. Judge Bryant responded that she proposed to change the new language in subsection (b)(2)(B) to read "but no body attachment shall issue in the event of a non-appearance absent a finding that (i) the person to whom the order was directed was personally served with the order in the manner described in Rule 2-121 (a)(1) or (3), or (ii) that person has been evading service willfully." Mr. Frederick asked whether that language was acceptable to the Committee.

The Chair clarified that Mr. Laws' motion is to add the particularized affidavit requirement.

Mr. Laws said that he is still troubled by the word "finding." He said that forces the judges to do something in open court where, without that term, the judges could issue an order or body attachment as a chambers task.

Mr. Frederick proposed to add the language "as shown by a particularized affidavit" to the end of Judge Bryant's proposal.

Judge Nazarian pointed out that Judge Bryant previously stated her proposal in a way that was less troubling. He asked Judge Bryant whether under her previous proposal she recommended the language "unless the court finds." Judge Bryant responded in the affirmative. She said that her previous proposal was for the Rule to state that "no body attachment shall issue in the event of a non-appearance unless the court finds, based on a particularized affidavit that" the debtor was personally served or has been evading service willfully. She added that she does agree that the court must have something from which to base its finding.

Judge Bryant said this issue is akin to a request for substitute service. She said that her courthouse has a seven-page document that sets forth the different methods of service and what must be attempted before a party may use substitute service. She noted that the Committee could do something

similar to that process by requiring a particularized proof of all the steps taken to either verify the debtor's address or that the debtor is willfully evading service.

Mr. Frederick suggested combining Judge Bryant's proposal with the language proposed by Mr. Laws. Mr. Laws stated that he has an issue with including the word "finding."

Judge Bryant suggested modifying her proposal to state that "no attachment shall issue unless the court finds, based on a particularized affidavit." Mr. Laws responded that he disagreed with the suggestion because it modifies both the proof of personal service and the proof of willful evasion. He said he does not believe it is necessary to require a particularized affidavit when the debtor is personally served. He said he is not sure the modifier is needed before the language discussing personal service. Judge Bryant suggested that the modifying language could be added right before the discussion of willful evasion.

The Chair commented that when this issue was initially brought to the Committee's attention, he was forwarded two process server returns from Baltimore County Circuit Court. One return was excellent. The process server provided the person's height, gender, and a description of the person's appearance. He said it may have been false, but it included details. The other return said nothing to describe the person who was served;

it simply indicated that the person was served. The Chair said that some of the problems expressed have to do with creditors being careful about which process servers they are using and how much information is contained in the returns.

Judge Bryant said part of that problem is caused by the language included or not included in the Rules. The Rules don't require the process servers to provide details about who they are serving unless the process server is making substitute service.

Judge Morrissey said that the District Court deals with show cause orders and requests for alternate service on a daily basis. He assured the Committee that judges would not issue a body attachment unless the judge is satisfied with the service requirement, whether that be due to personal service or evasion of service. He encouraged the Committee not to get caught up on the term "finding." He said that the particularized affidavit requirement will force process servers to provide greater details in support of their conclusions.

The Reporter suggested replacing the word "finding" with "determine" in Judge Bryant's proposed language. Mr. Laws responded that the suggestion was reasonable. Judge Nazarian commented that he agreed with that suggestion.

The Chair asked the Committee where it stood on the issue.

The Reporter clarified that Mr. Laws' motion to add the particularized affidavit requirement is currently pending. She said there has been discussion about adding language that the court make a "finding" or "determination." She asked Mr. Laws what the word "verified" adds to the particularized affidavit requirement, since there may be some discussion about that word when the Style Subcommittee reviews the proposal.

Mr. Laws explained that the intent in using the word "verified" is to require that the affidavit contain the standard language indicating that the statements are made under oath. Judge Bryant commented that affidavits are required to be made under oath. Mr. Laws said that he was satisfied with removing the word "verified."

The Chair asked the Committee whether they understood the current motion.

Judge Nazarian asked whether Mr. Laws' motion would include language indicating that the court is to "determine" that the debtor has been personally served or is evading service. Mr. Laws responded in the affirmative.

The Reporter clarified that Mr. Laws' motion as amended is for the Rule to state "but no body attachment shall issue in the event of a non-appearance absent a determination that (i) the person to whom the order was directed was personally served with the order in the manner described in Rule 2-212 (a)(1) or (3),

or (ii) that person has been evading service willfully, as shown by a particularized affidavit." Mr. Laws confirmed that the Reporter accurately stated his motion. The motion was seconded.

The Chair invited comments to the motion. The motion passed by a majority vote. There being no additional motions to amend or disapprove the Rule, it was approved as amended.

Agenda Item 2. Consideration of proposed new Rule 18-409.1 (Subpoenas).

Mr. Frederick presented Rule 18-409.1 Subpoenas, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 – JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

ADD new Rule 18-409.1, as follows:

Rule 18-409.1. SUBPOENAS

(a) Investigative Subpoenas

(1) Authorization

Upon application by Investigative Counsel, the Chair of the Board, on behalf of the Commission, may authorize Investigative Counsel to issue a subpoena to

compel the attendance of witnesses and the production of designated documents or other tangible things at a time and place specified in the subpoena if the Chair finds that the subpoena is necessary to and in furtherance of an investigation being conducted by Investigative Counsel pursuant to Rule 18-422 or 18-424.

(2) Requirements; compliance

To the extent otherwise relevant, Rule 19-712 shall apply to subpoenas issued pursuant to section (a) of this Rule, except that "attorney" shall refer to the judge and "Bar Counsel" shall refer to Investigative Counsel.

(b) Subpoenas issued pursuant to Rule 18-434

The Chair of the Commission, on behalf of the Commission, may authorize the Executive Secretary to issue a subpoena to compel the attendance of witnesses and the production of documents or other tangible things at a time and place specified in the subpoena. To the extent otherwise relevant, the provisions of Rule 2-510(c), (d), (e), (g), (h), (i), (j). and (k) shall apply to subpoenas issued pursuant to this section. References to a court in those Rules shall mean the Chair of the Commission, on behalf of the Commission.

Rule 18-409.1 was accompanied by the following Drafter's note.

DRAFTER'S NOTE: There are four Chapter 400 Rules and one statute authorizing the issuance of subpoenas. Those provisions are inconsistent in several respects.

(A) Who can authorize issuance

- **Md. Const., Art. IV, § 4B(a)(1)(ii) and Code, § 13-401 of the Courts Art. authorize the *Commission* to subpoena witnesses and require the production of documents, etc.**
- **Rule 18-411(g)(2) [General Powers of Commission] provides that the *Commission* may *issue* subpoenas.**
- **Rule 18-422(a)(2) [Investigation by I.C] authorizes the *Chair* of the Commission to *authorize* the issuance of them.**
- **Rule 18-424(b) [Further Investigation by I.C.] authorizes the *Chair* of the Commission to *authorize* issuance of them.**
- **Rule 18-434 [Hearing on Charges] authorizes the *Commission* to *authorize* issuance of them.**
- **Rules 18-422, 18-424, and 18-434 do not specify who actually issues and serves the subpoena.**
- **Under Rules 2-510 (civil) and 4-261 and 4-264 (criminal), the court orders the issuance and the clerk issues. Under the AGC Rules, Rule 19-712 authorizes the Chair of the Commission to authorize Bar Counsel to issue a subpoena.**

(B) Good Cause

Rules 18-422 and 18-424 require a showing of good cause; Rules 18-411 and 18-434 do not require such a showing. Rule 2-510, dealing with Circuit Court civil cases, does not expressly require a showing of good cause but does limit subpoenas from being used for any purpose other than what is allowed under Rule 2-510(a)(1)(3).

(C) Enforcement

Rule 18-411 merely authorizes the Commission to invoke the aid of a Circuit Court if a person refuses to obey a subpoena but references Code, Courts Art. § 13-402, which allows the court to issue an order to

obey and punish disobedience with the order as a contempt. Rule 18-422 has similar language and references the Code provision. Rule 18-424 has provisions on service and notice to the judge, motions for protective orders, confidentiality, and hearings before the court. Rule 18-434(b) incorporates Rule 2-510 (c), (d), (e), (g), (h), (i). (j), and (k).

QUESTION:

These inconsistencies can create problems. The closest analogy is the AGC Rules, in particular Rule 19-712. They distinguish between Bar Counsel's investigative subpoenas and subpoenas for Circuit Court hearings on charges filed by Bar Counsel, which the current JDC Rules, somewhat inconsistently, attempt to do. We should clarify that distinction as best we can. In light of the Constitution and the statutes, all subpoenas should be authorized, at least nominally, by or on behalf of the Commission. With respect to investigative subpoenas, however, that could involve the Commission too deeply into the investigative procedure. Investigative subpoenas, which could be issued without any notice to the judge, should require a finding of good cause. Subject to a possible protective order, trial subpoenas need not and should not. The parties have a right to compel the production of evidence With respect to investigative subpoenas, the only alternatives are (1) to allow the Chair of the Commission to authorize them, on behalf of the Commission, which might taint him/her, but not the other members, or (2) allow the Chair of the *Board*, on behalf of the *Commission*, to authorize them. That may seem an anomaly, but it isn't really. Nearly everything the Board does is something that ultimately is a function of the Commission under the Constitution and statutes. To allow the Chair of the Board to authorize investigative subpoenas would

be entirely consistent with the functions delegated to the Board by Rule and keep the Commission, including its Chair, free from taint. (I do not have the same feeling regarding the grant of immunity, which should remain with the Commission). Subpoenas issued with respect to hearings on charges should be physically issued by the Executive Secretary (the analogy to the court clerk).

To achieve this objective, we could have a separate Subpoena Rule, as above, and delete the extended language in Rules 18-424 and 18-434 in favor of a cross-reference to Rule 18-109.1. This would be more than a pure style matter. If you agree, we could conference the subcommittee by phone and put it on the January 4 Rules Committee agenda. Please advise.

Mr. Frederick said that the addition of Rule 18-409.1 provides a slight change to the Judicial Disabilities Rules approved by the Committee in November. He said that he is pleased to say that the Maryland Circuit Court Judges Association and the Commission on Judicial Disabilities, with a slight modification to the presentation, have no problems with the Rule.

Mr. Frederick stated that some time ago, the Committee approved amendments to the Rules governing the entry of judgments. At that time, it was discussed that there are four ways in which a clerk can enter a judgment, each of which could result in a different date for appeal purposes. That issue is somewhat similar to the issue addressed by Rule 18-409.1.

Mr. Frederick explained that the Subcommittee reviewed the Judicial Disability Rules and realized that there are several ways in which a subpoena may be issued. The Maryland Constitution suggests that the Commission, as a whole, has the authority to issue subpoenas. Rule 18-411 sets forth the general powers of the Commission, which includes the authority to issue subpoenas. Rule 18-422 and Rule 18-424 provide that the Chair of the Commission may authorize the issuance of subpoenas. Rule 18-434 provides that the Commission shall authorize the issuance of subpoenas.

Mr. Frederick noted that those Rules are not consistent. One inconsistency involves whether a showing of good cause is required in order to obtain a subpoena. He said that the Subcommittee is trying to make the process as fair and transparent as possible. The goal is also to avoid the transmission of information in an inappropriate way. The idea arose that, instead of having the Chair of the Commission issue investigative subpoenas, which could lead to the Chair becoming disqualified, why not have the Chair of the Board issue investigative subpoenas?

Mr. Frederick said that the Board was created by Rule adopted by the Court of Appeals. Under the proposed revised Rules, the Court selects the Chair of the Board. It makes sense to have the Chair of the Board issue the subpoenas on behalf of

the Commission. The thought process was that the change would allow Investigative Counsel to obtain subpoenas while avoiding the possibility that a member of the Commission may later recuse him or herself based on information provided when an investigative subpoena was sought.

Mr. Frederick stated that Rule 18-409.1 implements that change. There is one minor suggestion made by the Commission with regard to the reference to Rule 19-712 in subsection (a)(2). The Commission has suggested that, rather than referring to the Attorney Grievance Rule and incorporating it by reference, Rule 18-409.1 should include the direct language from Rule 19-712 that is being incorporated. That minor change would avoid any confusion since the Attorney Grievance Rules apply to attorneys and the Judicial Disabilities Rules apply to judges.

The Chair said that one issue that had not been addressed when revisions to the Judicial Disabilities Rules were drafted is that the Rules do not provide a clear distinction between investigative subpoenas and subpoenas issued to compel a witness to testify at Commission hearings. In Rule 18-409.1, subsection (a)(1) provides that the Chair of the Board, on behalf of the Commission, may authorize Investigative Counsel to issue a subpoena in furtherance of an investigation. Subpoenas compelling a witness to testify before the Commission will be

authorized by the Chair of the Commission and issued by the Executive Secretary.

The Chair noted that one other issue raised by the Commission relates to investigative subpoenas and notifying the judge that a subpoena has been issued once the subpoena is served. There was a concern that judges who opt out of receiving notice when any complaint is filed against them will nevertheless receive a notice when an investigative subpoena has been served. The Chair said that the issue can easily be resolved as a matter of style.

The Chair invited comments about Rule 18-409.1.

The Chair said that the Rule was a Subcommittee proposal and would take a motion to change or reject the Rule. There being no motion to amend or disapprove the proposed Rule, it was approved, subject to the stylistic changes mentioned.

Agenda Item 3. Reconsideration of proposed amendments to Rule 16-207 (Problem Solving Court Programs).

The Chair presented Rule 16-207, Problem Solving Court Programs, for reconsideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 – COURT ADMINISTRATION

CHAPTER 200 – GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURTS

AMEND Rule 16-207 to revise the procedure for approval of a problem-solving court program **and to add provisions pertaining to monitoring, altering and terminating existing programs**, as follows:

Rule 16-207. PROBLEM SOLVING COURT PROGRAMS

(a) Definition

(1) Generally

Except as provided in subsection (a)(2) of this Rule, "problem-solving court program" means a specialized court docket or program that addresses matters under a court's jurisdiction through a multi-disciplinary and integrated approach incorporating collaboration by the court with other governmental entities, community organizations, and parties.

(2) Exceptions

(A) The mere fact that a court may receive evidence or reports from an educational, health, rehabilitation, or social service agency or may refer a person before the court to such an agency as a condition of probation or other dispositional option does not make the proceeding a problem-solving court program.

(B) Juvenile court truancy programs specifically authorized by statute do not constitute problem-solving court programs within the meaning of this Rule.

(b) Applicability

This Rule applies in its entirety to problem-solving court programs submitted for approval on or after ~~July 1, 2016~~ [Date],

2019. Sections (a), (e), (f), and (g) of this Rule apply also to problem-solving court programs in existence on ~~July 1, 2016~~ [Date], 2019.

(c) Submission of Plan

After initial consultation with the Office of Problem-Solving Courts and any officials whose participation in the programs will be required, the County Administrative Judge of a circuit court or a District Administrative Judge of the District Court may prepare and submit to the ~~State Court Administrator~~ Office of Problem-Solving Courts a detailed plan for a problem-solving court program **in a form approved by the State Court Administrator** ~~**consistent with the protocols and requirements in an Administrative Order of the Chief Judge of the Court of Appeals**~~**.**

Committee note: Examples of officials to be consulted, depending on the nature of the proposed program, include individuals in the Office of the State's Attorney, Office of the Public Defender; Department of Juvenile Services; health, addiction, and education agencies; the Division of Parole and Probation; and the Department of Human Services.

(d) Approval of Plan

After review of the plan and consultation with such other judicial entities as the State Court Administrator may direct, ~~the State Court Administrator~~ the Office of Problem-Solving Courts shall submit the plan, together with any comments and a recommendation, ~~to the Judicial Council for review by the Council and~~ to the State Court Administrator. The State Court Administrator shall review the materials and make a recommendation to the Chief Judge of the Court of Appeals. The program shall not

be implemented until it is approved by order of the Chief Judge of the Court of Appeals.

(e) Acceptance of Participant into Program

(1) Written Agreement Required

As a condition of acceptance into a program and after the advice of an attorney, if any, a prospective participant shall execute a written agreement that sets forth:

(A) the requirements of the program;

(B) the protocols of the program, including protocols concerning the authority of the judge to initiate, permit, and consider ex parte communications pursuant to Rule 18-102.9 of the Maryland Code of Judicial Conduct;

(C) the range of sanctions that may be imposed while the participant is in the program, if any; and

(D) any rights waived by the participant, including rights under Rule 4-215 or Code, Courts Article, § 3-8A-20.

Committee note: The written agreement shall be in addition to any advisements that are required under Rule 4-215 or Code, Courts Article, § 3-8A-20, if applicable.

(2) Examination on the Record

The court may not accept the prospective participant into the program until, after examining the prospective participant on the record, the court determines and announces on the record that the prospective participant understands the agreement and knowingly and voluntarily enters into the agreement.

(3) Agreement to be Made Part of the Record

A copy of the agreement shall be made part of the record.

(f) Immediate Sanctions; Loss of Liberty or Termination from Program

If permitted by the program and in accordance with the protocols of the program, the court, for good cause, may impose an immediate sanction on a participant, except that if the participant is considered for the imposition of a sanction involving the loss of liberty or termination from the program, the participant shall be afforded notice, an opportunity to be heard, and the right to be represented by an attorney before the court makes its decision. If a hearing is required by section (f) of this Rule and the participant is not represented by an attorney, the court shall comply with Rule 4-215 in a criminal action or Code, Courts Article, § 3-8A-20 in a delinquency action before holding the hearing.

Committee note: In considering whether a judge should be disqualified pursuant to Rule 18-102.11 of the Maryland Code of Judicial Conduct from post-termination proceedings involving a participant who has been terminated from a problem-solving court program, the judge should be sensitive to any exposure to ex parte communications or inadmissible information that the judge may have received while the participant was in the program.

(g) Credit for Incarceration Time Served

If a participant is terminated from a program, any period of time during which the participant was incarcerated as a sanction during participation in the program shall be

credited against any sentence imposed or directed to be executed in the action.

(h) Continued Program Operation

(1) Monitoring

Each problem-solving court program shall provide the Office of Problem-Solving Courts with the information requested by that office regarding the program.

(2) Report and Recommendation

(A) The Office of Problem-Solving Courts shall submit to the Chief Judge of the Court of Appeals, through the State Court Administrator, annual reports and recommendations as to the status and operations of the various problem-solving court programs. The Office of Problem-Solving Courts shall provide to the Chief Judge of the District Court a copy of each report and recommendation that pertains to a problem-solving court program in the District Court.

(B) The Chief Judge of the Court of Appeals may require information regarding the status and operation of a problem-solving court program and may direct that a program be altered or terminated.

Source: This Rule is derived from former Rule 16-206 (2016).

Rule 16-207 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The State Court Administrator has requested that Rule 16-207 be amended to streamline the process for approval of a new

problem-solving court program. Under the proposed revised procedure, the plan for a new program is submitted to the Office of Problem-Solving Courts, which will review the plan in consultation with such other judicial entities as the State Court Administrator may direct. Currently, the Specialty Courts and Dockets Committee of the Judicial Council reviews the plans, and it is anticipated that this entity will continue in its consultative role, but without the involvement of the full Judicial Council. The Office of Problem-Solving Courts will then submit the plan, together with any comments and a recommendation, to the State Court Administrator. The State Court Administrator will review the materials and provide a recommendation to the Chief Judge of the Court of Appeals. The revised Rule retains the current prohibition against implementation of a program until it has been approved by Order of the Chief Judge of the Court of Appeals.

A new section (h) adds to the Rule provisions pertaining to monitoring existing problem-solving court programs and authorizes the Chief Judge of the Court of Appeals to direct that an existing program be altered or terminated.

The Chair said that the amendments to Rule 16-207 are proposed as a result of a request from the Administrative Office of the Courts. As a matter of internal procedure, plans for problem-solving court programs will be in a form approved by the State Court Administrator and will initially be submitted to the Office of Problem-Solving Courts. The Office of Problem-Solving

Courts will review the plan and provide a recommendation to the State Court Administrator.

The Chair invited comments about Rule 16-207.

The Reporter commented that the language in regular type was previously approved by the Committee in October. New language has been added that pertains to the monitoring, altering, and terminating of existing problem-solving court programs. The bolded language is new material for the Committee's consideration.

There being no motion to amend or disapprove the proposed amendments to Rule 16-207, the amendments were approved as presented.

Agenda Item 4. Consideration of proposed amendments to Rule 20-101 (Definitions), Rule 20-103 (Administration of MDEC), 20-107 (MDEC Signatures), 20-201 (Requirements for Electronic Filing), 20-203 (Review by Clerk; Striking of Submission; Deficiency), and proposed new Rule 20-303 (Record of Transaction Transferred Other than to an Appellate Court).

The Chair presented Rule 20-101 Definitions, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-101 by adding language to section (e), 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) Filer

"Filer" means a person who is accessing the MDEC system for the purpose of filing a submission and includes each person whose signature appears on the submission for that purpose.

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.

(f) Hand-Signed or Handwritten Signature

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

(g) Hyperlink

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

(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.

(i) Judicial Appointee

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

(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;

(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.

(l) MDEC Action

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

(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.

(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.

(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.

(p) Redact

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

(q) Registered User

"Registered user" means an individual authorized to use the MDEC system by the

State Court Administrator pursuant to Rule 20-104.

(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).

(s) Scan

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

(t) Signature

Unless otherwise specified, "signature" means the signer’s typewritten name accompanied by a visual image of the signer’s handwritten signature or by the symbol /s/.

Cross reference: Rule 20-107.

(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.

(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.

(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.

Source: This Rule is new.

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

REPORTER'S NOTE

The proposed amendment to section (e)(1) expands the definition of a "filer" to include each person whose signature appears on an MDEC submission.

The Chair said that Rule 20-101 contains the definitions for the MDEC Rules. He noted that there is a typo in the amend clause before Rule 20-101. The amend clause should read, "Amend Rule 20-101 by adding language to section (e), as follows." The amendment to section (e) provides that each person whose signature appears on an MDEC submission is a "filer."

The Chair invited comments about Rule 20-101. There being no motion to amend or reject the Rule, it was approved as presented.

The Chair presented Rule 20-103 Administration of MDEC, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-103 by revising language in section (b)(1), deleting the Committee note currently following section (b)(1)(B), by relocating the Committee note to follow section (b)(1)(A), and by adding new section (b)(1)(C), as follows:

Rule 20-103. ADMINISTRATION OF MDEC

(a) General Authority of State Court Administrator

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

(b) Policies and Procedures

(1) Authority to Adopt

The State Court Administrator shall adopt policies and procedures that are necessary or useful for the proper and efficient implementation of the MDEC System and consistent with the Rules in this Title, other provisions in the Maryland Rules that are not superseded by the Rules in this Title, and other applicable law. The policies and procedures may ~~be supplemented by~~ include:

(A) examples of deficiencies in submissions that the State Court Administrator has determined constitute a material violation of the Rules in Title 20 or an applicable policy or procedure and justify the issuance of a deficiency notice under Rule 20-203 (d); ~~and,~~

Committee note: The examples of deficiencies listed by the State Court Administrator are not intended (1) to be an exclusive or exhaustive list of deficiencies justifying the issuance of a deficiency notice, or (2) to preclude a judge from determining that the submission does not materially violate a Rule in Title 20 or an applicable policy or procedure. They are intended, however, to require the clerk to issue a deficiency notice when the submission is deficient in a manner listed by the State Court Administrator. See Rule 20-201 (d).

(B) with the approval of the Chief Judge of the Court of Appeals, the approval

of pilot projects and programs in one or more courts to test the fiscal and operational efficacy of those projects or programs~~.~~; and,

(C) with the approval of the Chief Judge of the Court of Appeals, any provision necessary or useful with respect to procedure for the filing and processing of submissions under Code, Real Property Article, § 8-401, nonpayment of rent, as defined by the State Court Administrator.

(2) Publication of Policies and Procedures

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

Source: This Rule is new.

Rule 20-103 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The Committee proposes to delete the language "be supplemented by" in section (b)(1) and to add the word "include."

The Committee note that currently follows section (b)(1)(B) is proposed to be relocated directly following section (b)(1)(A), which references examples of deficiencies.

The addition of section (b)(1)(C) expands the State Court Administrator's

> authority to adopt policies and procedures necessary for the implementation of the MDEC system. Specifically, section (b)(1)(C) authorizes the State Court Administrator to adopt, with the approval of the Chief Judge of the Court of Appeals, any provisions necessary and useful with respect to Code, Real Property Article, § 8-401 non-payment of rent cases.

The Chair said that Rule 20-103 covers the administration of MDEC. He noted that the major change to this Rule can be found in subsection (b)(1)(C). He invited Ms. Harris to comment on the amendment.

Ms. Harris said that the proposed amendment will allow the Administrative Office of the Courts to move forward with the process of requiring electronic filing of landlord-tenant cases. A provision authorizing the State Court Administrator to adopt policies and procedures for the electronic filing of landlord-tenant cases was needed because those cases originally were exempted from the e-filing requirement.

Mr. Laws commented that there are a number of landlord-tenant actions that are not included under Code, Real Property Article, § 8-401. He inquired as to why the new provision was limited only to those submissions filed as a nonpayment of rent action. He added that there are a number of District Court actions that he believes should be covered by Rule 20-103.

The Chair responded that his recollection is that the reason the provision is limited to failure to pay rent actions is that up until now, all other actions were required to be filed through MDEC. Nonpayment of rent actions originally were exempt because there are on average 600,000 complaints for nonpayment of rent filed each year and a question arose regarding the extent to which MDEC could accommodate the bulk filing of those complaints. Currently, a paper complaint form with four or five attached carbon copies is used. When the complaint is filed, the clerk stamps the trial date directly onto the form and tears off one of the carbon copies of it to be served by the sheriff.

The Chair explained that part of the problem with requiring that nonpayment of rent cases be filed via MDEC is that the carbon copy form no longer will be used. As a result, copies of the complaint will need to be printed for service by the sheriff or constable.

The Reporter added that the problem involved the multiple copies of the complaint that are required to be posted to the property and served on the tenant. Under the statute, the sheriff is required to do the posting, as opposed to an agent of the landlord. The Reporter said that Ms. Harris and others responsible for implementing the MDEC system have been working diligently to try to address those issues. The goal is to

enable landlords to file bulk complaints via MDEC and to ensure that the complaints can be posted and served.

The Chair commented that most of the service in these actions will involve posting the complaint and notice on the property. He said that a majority of the complaints are not seeking a money judgment, so there is no requirement of personal service.

Ms. Harris noted that nonpayment of rent actions currently are not required to be filed via MDEC, but that is the ultimate goal. The amendment to Rule 20-103 simply authorizes the State Court Administrator, with the approval of the Chief Judge of the Court of Appeals, to adopt provisions and procedures necessary for the filing and processing of nonpayment of rent actions through MDEC.

The Chair invited comments on Rule 20-103. There being no motion to amend or disapprove the proposed amendments to Rule 20-103, the amendments were approved as presented.

The Chair presented Rule 20-107 MDEC Signatures, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 20-107 by adding a provision pertaining to an action for nonpayment of rent under Code, Real Property Article, § 8-401; and by making stylistic changes to section (d), as follows:

Rule 20-107. MDEC SIGNATURES

(a) Signature by Filer; Additional Information Below Signature

Subject to sections (b), (c), and (d) of this Rule, when a filer is required to sign a submission, the submission shall:

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

(2) provide the following information below the filer’s signature: 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. 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, Judicial Appointee, or Clerk

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

(1) personally affixing the judge's, judicial appointee's, or clerk’s 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 the hand-signed submission 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) 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 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.

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

(1) Generally

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 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.

(2) Actions for Nonpayment of Rent

In an action for nonpayment of rent under Code, Real Property Article, § 8-401,

a person who signs a document under oath, affirmation, or with verification may use a signature as defined in Rule 20-101 (t). A person who signs a document under this subsection is subject to the provisions of Rule 20-107 (e).

(e) Verified Submissions

When a submission is verified or the submission includes a document under oath, the 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.

REPORTER'S NOTE

Section (d) has been restyled to provide for a provision pertaining to actions for nonpayment of rent. New section (d)(2) provides that a person who signs a document under oath, affirmation, or with verification in an action for nonpayment of rent under Code, Real Property Article, § 8-401 may use a signature as defined in Rule 20-101(t).

The Chair said that the proposed amendment to Rule 20-107 allows people who sign documents in nonpayment of rent actions to use signatures as defined in Rule 20-101 (t).

The Chair invited comments on Rule 20-103. There being no motion to amend or disapprove the proposed amendment to Rule 20-107, the amendment was approved as presented.

The Chair presented Rule 20-201 Requirements for Electronic Filing, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-201 by deleting language in subsection (m)(1)(B) and adding new language, as follows:

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

. . .

(m) Filings by Certain Judicial Officers and Employees

(1) District Court Commissioners

(A) Filings in District Court

In accordance with policies and procedures approved by the Chief Judge of the District Court and the State Court

Administrator, District Court commissioners shall file electronically with the District Court reports of pretrial release proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-216, 4-216.1, 4-217, 4-267, or 4-347. Those filings shall be entered directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a District Court clerk.

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

(B) Filings in Circuit Court

Subject to approval by the Chief Judge of the Court of Appeals, the State Court Administrator may adopt policies and procedures ~~for one or more pilot programs~~ permitting District Court Commissioners to file electronically with a circuit court reports of pretrial release proceedings conducted pursuant to Rules 4-212, 4-213, 4-213.1, 4-216, 4-216.1, 4-217, 4-267, or 4-347. ~~A pilot program~~ The policies and procedures shall permit District Court Commissioners to enter those filings directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a circuit court clerk.

(2) Circuit Court Employees

In addition to authorized employees of the clerk's office and with the approval of the county administrative judge, the clerk of a circuit court may authorize other employees of the circuit court to enter

filings directly into the MDEC system, subject to post-filing review and correction of clerical errors in the form or language of the docket entry for the filing by a circuit court clerk.

Committee note: In some counties, there are circuit court employees who are not employees in the clerk's office but who perform duties that, in other counties, are performed by employees in the clerk's office. Those employees are at-will employees who serve at the pleasure of the court or the county administrative judge. The intent of subsection (m)(2) is to permit the clerk, with the approval of the county administrative judge, to authorize those employees to enter filings directly into the MDEC system as part of the performance of their official duties, subject to post-filing review by the clerk. It is not the intent that this authority apply to judges' secretaries, law clerks, or administrative assistants. Rule 20-108 (b) authorizes judges and judicial appointees in MDEC counties to delegate to law clerks, secretaries, and administrative assistants authority to file submissions on behalf of the judge or judicial appointee. That delegated authority is a ministerial one, to act on behalf of and for the convenience of the judge or judicial appointee and not an authority covered by subsection (m)(2).

. . .

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

REPORTER'S NOTE

The proposed amendment to subsection (m)(1)(B) removes the current language that refers to pilot programs. New language is

added to show that the previously referenced pilot programs have been adopted as policies and procedures.

The Chair stated that several years ago, the State Court Administrator implemented a pilot program that allowed the District Court Commissioners to file directly into the MDEC system. The amendments to Rule 20-201 reflect that the pilot program was a success and has been adopted as a permanent procedure.

The Chair invited comments on Rule 20-201. There being no motion to amend or disapprove the proposed amendments to Rule 20-201, the amendments were approved as presented.

The Chair presented Rule 20-203 Review by Clerk for Striking of Submission, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 – FILING AND SERVICE

AMEND Rule 20-203 (d)(1) to clarify that a deficiency notice is not sent if the deficiency is cured prior to the notice being sent, and to provide that the clerk is not required to send certain notifications to parties that have not been served, 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 20-201 (g) and the published policies and procedures for acceptance established by the State Court Administrator.

(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 20-201 (g), the clerk shall (1) make a docket entry that the submission was received, (2) strike the submission, (3) notify the filer and all ~~other~~ parties that have been served of the striking and the reason for it, and (4) enter on the docket that the submission was stricken for non-compliance with **the applicable subsection of** 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.

(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 that have been served a deficiency notice describing the nature of the violation unless the deficiency is cured prior to the sending of the notice.

(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 14 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 unredacted 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.

REPORTER'S NOTE

Proposed amendments to Rule 20-203 (c)(3) and (d)(1) provide that the clerk does not send notices of stricken submissions and deficiencies to parties that have not yet been served.

The amendment to subsection (d)(1) also clarifies that a deficiency notice is not sent if the deficiency has been corrected prior to the sending of the notice. This amendment harmonizes inconsistent practices across jurisdictions.

The Chair said that Rule 20-203 covers the review of MDEC submissions by the clerk, striking of submissions, deficiency notices, correction, and enforcement. He noted that there is a proposed amendment to subsection (d)(1) of the Rule. The amendment clarifies that when a clerk gets a submission that is non-compliant with the MDEC Rules or procedures, and the submission is corrected before a deficiency notice is sent, the clerk need not issue a deficiency notice.

The Reporter commented that there is another issue that is addressed by the proposed amendments. A question arose regarding whether the clerk must send a copy of the deficiency notice to parties in the case that have not yet been served at the time the deficient submission is filed. The clerks have asked the Committee to address that ambiguity in the current Rule. In response to that request, language has been added to clarify that the clerk is required to notify only the filer and all other parties "that have been served" when a submission is stricken or deemed deficient.

The Reporter pointed out that a question arose about whether the bolded language in section (c) that reads "the applicable subsection of" should remain in the Rule. She asked whether the members of the Committee believe that the bolded language should remain in the Rule or be deleted. The consensus was that the language should remain in the Rule.

The Chair invited comments about Rule 20-203.

Ms. Lindsey said that she would like clarification on one potential scenario. She said that suppose a deficient submission is not corrected and there is a defendant in the case who is not served. The clerk would not send that defendant a copy of the deficiency notice. Suppose a judge subsequently signs an order striking the deficient the submission. Is the clerk required to send a copy of the order striking the

submission to that defendant or just the parties that have been served?

The Chair said that Ms. Lindsey raised a good question. That issue was discussed by the Subcommittee and the view seemed to be that a late-served defendant will see everything that has transpired in the case, including previously issued orders, once the defendant is brought into the case.

The Chair invited further comments on Rule 20-203. There being no motion to amend or disapprove the proposed amendments to Rule 20-203, the amendments were approved as presented.

The Chair presented Rule 20-303 Record of Transaction Transferred Other than to an Appellate Court, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 – ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 300 – OFFICIAL RECORD

ADD new Rule 20-303, as follows:

Rule 20-303. RECORD OF ACTION TRANSFERRED OTHER THAN TO AN APPELLATE COURT

(a) Between the District Court and a Circuit Court

The record of an action transferred from the District Court to a circuit court upon demand for a jury trial or on appeal

shall be deemed to be within the custody and jurisdiction of the circuit court unless and until returned to the District Court in accordance with the applicable provisions of the Rules in Titles 2, 3, 4, and 7.

(b) Between Circuit Courts

The record of an action transferred between circuit courts shall be deemed to be within the custody and jurisdiction of the court to which the action is transferred in accordance with the applicable provisions of the Rules in Titles 2, 4, 11, and 16.

Source: This Rule is new.

Rule 20-303 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed new Rule 20-303 fills a perceived gap in the Rules in Title 20 by clarifying that when an action is transferred between the District Court and a circuit court or between circuit courts, the court to which the action is transferred is deemed to have custody of and jurisdiction over the record in accordance with the applicable provisions of the Rules in other Titles.

The Chair said that Rule 20-303 is a new Rule that covers the record of actions transferred between the District Court and the circuit court or between circuit courts. He said that when the MDEC Rules initially were drafted, the thought was that case files would be electronically transferred from the lower court

to the appellate courts. However, the MDEC service provider later informed the Subcommittee that the system was not equipped to transfer files electronically. The Committee had to devise an alternative, which is the current process. Currently, the records stay where they are and the appellate court is provided full electronic access to the record. The last docket entry that the clerk of the lower court makes is to indicate that the record is now in the custody of the appellate court. The record will remain in the custody of the appellate court unless the appellate court sends the matter back to the lower court. The Chair added that proposed new Rule 20-303 simply applies the current procedure to transfers between the District Court and circuit courts.

Mr. Carbine commented that the title of the Rule seems confusing because a circuit court can act as an appellate court when an action is transferred from the District Court. He suggested removing the language "other than" from the title.

The Reporter responded that there is another Rule that covers the transfer of cases to the Court of Special Appeals and the Court of Appeals, and that, in the context of the MDEC Rules, Rule 20-101 (a) defines "appellate court" to mean "the Court of Appeals or the Court of Special Appeals, whichever the context requires."

The Chair suggested that the title of the Rule could be changed to "Record of Action Transferred to Another Court." He added that there may be confusion regarding actions that are transferred to another venue. He inquired as to whether this could be an issue with juvenile cases where a traffic case is transferred from District Court to the circuit court or vice versa.

Judge Mosley responded that it is possible for a juvenile case to be transferred from a circuit court to the District Court. If a juvenile is charged with an alcohol offense, the case will start in juvenile court. However, if the State elects not to prosecute the case, the matter may be transferred to the District Court because individuals who are over the age of 16 are subject to traffic offense penalties.

The Chair asked the Committee if the title could be revised by the Style Subcommittee. The Committee agreed by consensus.

By consensus, the Committee approved the Rule as presented, subject to the possible changing of the title by the Style Subcommittee.

Agenda Item 5. Discussion of possible amendment to new Rule 19-802 (Registration).

Mr. Frederick presented Rule 19-802 Registration, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 800 – ATTORNEY INFORMATION SYSTEM

AMEND Rule 19-802 to revise and clarify the list of categories of attorneys required to register with AIS, to add a new section (b) containing exceptions to the registration requirement, to add a new section (d)(2) pertaining to the timing of a certain registration requirement, and to make stylistic changes, as follows:

Rule 19-802. REGISTRATION

(a) Required

~~The following individuals shall register with AIS:~~

~~(1) attorneys~~ Subject to section (b) of this Rule, each attorney who is admitted to the Maryland bar or otherwise permitted to practice law in Maryland~~, including attorneys whose status is~~ shall register with AIS. This includes:

~~(A) active, inactive, or retired;~~

~~(B) suspended pursuant to Rule 19-606 or 19-741;~~

~~(C) subject to a temporary suspension order or decertification order entered under Rule 19-409 or 19-503;~~

~~(D) a judge, magistrate, or examiner;~~

~~(E) a judicial law clerk; or~~

~~(F) an attorney authorized to practice law in Maryland pursuant to 19-215 (legal services program) or 19-216 (military spouse).~~

(1) magistrates, examiners, and active and senior judges;

(2) judicial law clerks;

(3) attorneys who are subject to a temporary decertification order entered pursuant to Rule 19-409 or 19-503;

(4) out-of-state attorneys who are authorized to practice law in Maryland pursuant to Rule 19-218 (legal service program) and who, pursuant to section (h) of that Rule, are required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund;

(5) out-of-state attorneys who are authorized to practice law in Maryland pursuant to Rule 19-219 (military spouse); and

(6) attorneys who are not required to make payments to the Client Protection Fund and Disciplinary Fund but who wish to make voluntary contributions to one or both Funds.

(b) Exceptions

Attorneys in the following categories need not register so long as they remain in one of those categories:

(1) attorneys who have been placed and remain on inactive status pursuant to Rule 19-739 or permanent retired status pursuant to Rule 19-740;

(2) attorneys who are suspended pursuant to Rule 19-606 or 19-741;

(3) attorneys who have been approved by the trustees of the Client Protection Fund for inactive/retired status pursuant to Rule 19-605, regardless of whether they are engaged in the limited practice of law permitted by that Rule;

(4) out-of-state attorneys who are authorized to practice law in Maryland pursuant to Rule 19-218 (legal service program) and who, pursuant to section (h) of that Rule, are not required to make payments to the Client Protection Fund and Disciplinary Fund;

(5) out-of-state attorneys admitted *pro hac vice* pursuant to Rule 19-217; and

(6) former judges who have not been approved for recall as senior judges and are not actively practicing law in Maryland.

~~(b)~~(c) Manner of Registration

Registration shall be made in the manner specified by the Administrative Office of the Courts and shall include the information required by the Administrative Office of the Courts, as posted on the Judiciary Website.

~~(c)~~(d) When Registration Required

(1) Subject to ~~subsection (c)(2)~~ subsections (d)(2) and (3) of this Rule, attorneys required to register shall do so on or before June 1, 2019.

(2) Attorneys who are admitted to the Maryland bar or who otherwise become subject to registration after that date shall register as part of the admission process or process authorizing their practice in Maryland.

(3) Attorneys who no longer are in one of the categories listed in section (b) of

this Rule shall register no later than 30 days after becoming subject to the registration requirement of section (a) of this Rule.

~~(d)~~(e) Obligation to Keep Information Current

Attorneys shall update their AIS account within 30 days after becoming aware of a change in the information. AIS and constituent agencies have the right to rely on the latest information in AIS for billing and disciplinary purposes and for other correspondence or communication.

Source: This Rule is new.

Rule 19-802 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed amendments to Rule 19-802 revise and clarify the registration requirements of the Rule.

Mr. Frederick said that the adoption of the Attorney Information Service "AIS" has raised some issues with regard to who is required to register. For example, questions have been raised about whether attorneys who are inactive, have been disbarred, or are retired need to register. The same question was posed about retired judges who are not subject to recall. The Reporter has drafted a revised version of Rule 19-802, which provides that attorneys who are inactive, disbarred, or retired

(including retired judges who are not subject to recall) are not required to register with AIS unless and until their status changes.

Mr. Frederick explained that what prompted this revision is that an attorney had contacted the M.S.B.A and Rules Committee after her father, who also is an attorney, had received notice in the mail stating that he was required to register with AIS. The younger attorney explained that her father was old, retired, and technologically challenged. She asked whether her father was required to register with AIS. The general consensus was that her father and other similarly situated attorneys should be exempt from registering with AIS.

The Chair said that as a practical matter, the revision mostly will deal with attorneys who are exempt from registering with AIS at the time the Rule takes effect. He explained that all active and new attorneys will be required to register with AIS. If an attorney is subsequently disbarred, the attorney already would have registered under section (a) of the Rule. However, the revised section (b) would require the attorney to notify AIS upon a change in status.

The Reporter asked Ms. Ortiz whether she approved of the revised Rule. Ms. Ortiz said that the redraft is fine. She explained that the goal is to exempt from registering with AIS attorneys who do not intend to actively practice law. There

were challenges in drafting the Rule because there are so many ways in which an attorney can leave and return to the profession. The revised Rule provides a very good summary of the exemptions.

The Reporter said that she previously discussed with Ms. Ortiz the issue of whether military spouses will be required to register. Rule 19-221 requires that military spouse attorneys who are specially authorized to practice in Maryland to pay the Client Protection Fund fee. However, they currently are not required to register with AIS. Ms. Ortiz responded that all attorneys who are CPF eligible will need to register with AIS so that they may be contacted by email, which will be the primary form of communication moving forward.

Mr. Frederick inquired as to whether a motion is needed to approve the revision. The Chair responded in the affirmative. Mr. Frederick moved to approve the proposed amendments. The motion was seconded. The Chair invited comments about the motion. The motion passed by a majority vote.

Agenda Item 6. Reconsideration of proposed amendments to Rule 5-703 (Bases of an Expert's Opinion Testimony).

Mr. Armstrong presented Rule 5-703 Bases of an Expert's Opinion Testimony, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 – EVIDENCE

CHAPTER 700 – OPINIONS AND EXPERT TESTIMONY

AMEND Rule 5-703 by changing the title consistent with Fed. R. Evid. 703, by deleting current section (a), by adding new sections (a) and (b) based on Fed. R. Evid. 703, by replacing the current Committee note with a new Committee note, and by making stylistic changes, as follows:

Rule 5-703. BASES OF AN EXPERT'S OPINION TESTIMONY ~~BY EXPERTS~~

~~(a) In General~~

~~The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.~~

(a) Admissibility of Opinion

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If the court finds on the record that experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

(b) If Facts or Data Inadmissible

If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury over objection only if the court finds on the record that their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

~~(b)~~(c) ~~Disclosure~~ Instruction to Jury

~~If determined to be trustworthy, necessary to illuminate testimony, and unprivileged, facts or data reasonably relied upon by an expert pursuant to section (a) may, in the discretion of the court, be disclosed to the jury even if~~ If ~~those~~ facts ~~and~~ or data ~~are~~ not admissible in evidence~~.~~ are disclosed to the jury under this Rule ~~Upon request~~, the court, upon request, shall instruct the jury to use those facts and data only for the purpose of evaluating the validity and probative value of the expert's opinion or inference.

~~(c)~~(d) Right to Challenge Expert

This Rule does not limit the right of an opposing party to cross-examine an expert witness or to test the basis of the expert's opinion or inference.

~~Committee note: Subject to Rule 5-403, and in criminal cases the confrontation clause, experts who rely on information from others may relate that information in their testimony if it is of a type reasonably relied upon by experts in the field. If it is inadmissible as substantive proof, it comes in merely to explain the factual basis for the expert opinion. The opposing party then is entitled to an instruction to the jury that it may consider the evidence only for that limited purpose. See, e.g., *Maryland Dept. of Human Resources v. Bo Peep Day Nursery*, 317 Md. 573 (1989); *Attorney Grievance Commission v. Nothstein*, 300 Md. 667 (1984); *Beahm v. Shortall*, 279 Md. 321~~

~~(1977); *Hartless v. State*, 327 Md. 558 (1992).~~

Committee note: This Rule is derived from Fed. R. Evid. 703, except that it clarifies that the court must make the requisite findings on the record, which the Court, in *Lamalfa v. Hearn*, 457 Md. 350 (2018) declared to be a "best practice." Disclosure of inadmissible evidence to a jury is an exception to the normal rule, and if a timely objection is made, the proponent should have the burden of convincing the judge that the conditions stated in the Rule are satisfied, and the judge should make that finding on the record so that, in the event of an appeal, the appellate court will have a basis to review the trial court's decision. An appellate court may find that the failure to make timely objection constitutes a waiver.

Source: ~~Section~~ Sections (a) and (b) of this Rule ~~is~~ are derived from ~~F.R.Ev.~~ Fed. R. Evid. 703. Sections ~~(b) and~~ (c) and (d) are derived from Ky.R.Ev. 703(b) and (c).

Rule 5-703 was accompanied by the following Reporter's note.

REPORTER'S NOTE

Proposed amendments to Rule 5-703 delete current section (a) and replace it with new sections (a) and (b) that are based upon current Fed. R. Evid. 703. In addition to Stylistic Changes to the Federal Rule, the Evidence Subcommittee recommends that the phrase, "over objection," be included in new section (b) and that the requirement of findings "on the record" be included in both new sections.

Sections (a) and (b) of the Subcommittee's proposal differ from the Federal Rule as follows (showing the comparison by underlining and strikethroughs):

(a) Admissibility of Opinion

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If the court finds on the record that experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

(b) If Facts or Data Inadmissible

~~But if~~ If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury over objection only if the court finds on the record that their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Current sections (b) and (c) of the Rule are relettered (c) and (d), respectively, and conforming amendments to the tagline and text of relettered section (c) are made.

The current Committee note at the end of the Rule is deleted. In its place, a new Committee note that includes a reference to *Lamalfa v. Hearn*, 457 Md. 350 (2018) is added.

Additionally, the title of the Rule is amended to conform it to the Federal Rule.

Mr. Armstrong explained that the proposed amendments to Rule 5-703 are the result of many drafting attempts made by the Evidence Subcommittee. The proposed amendments are derived from

the Federal Rules of Evidence with a few minor changes. Fed. R. Evid. 703 is a single paragraph Rule. Proposed Rule 5-703 is structured into four sections.

Mr. Armstrong said that section (a) addresses the first sentence in Fed. R. Evid. 703. Section (a) provides that an expert's opinion may be admissible even if the facts or data reasonably relied on to form the basis of the expert's opinion are inadmissible.

Mr. Armstrong explained that the revised section (b) of Rule 5-703 is derived from the second sentence of Fed. R. Evid. 703. Section (b) sets forth the standard for determining whether inadmissible evidence which helped to form the basis of the expert's opinion may be disclosed to the jury over objection. The facts or data may be disclosed to the jury only if the court finds on the record that their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect. The Reporter's note identifies language included in the proposed amendment that is not contained in the Federal Rule. The Federal Rule does not require the court to make its findings "on the record" nor does it include the language "over objection."

The Chair stated that amendments to Rule 5-703 previously had come before the Committee for consideration. At that time, the Evidence Subcommittee had drafted amendments to the Rule in

an attempt to address the concerns raised by the Court in *Lamalfa v. Hearn*, 457 Md. 350 (2018). Ultimately, the Committee voted to remand the matter back to the Subcommittee in light of concerns raised by Judge Bryant and other members.

Mr. Armstrong said that incorporating the language from Fed. R. Evid. 703 seemed to be the simplest way to address some of the issues raised by the Court in *Lamalfa*. The new Committee note also addresses the best practice identified in the *Lamalfa* opinion.

The Chair said that the Subcommittee tried to address Judge Bryant's previous concerns about potential reversals if the trial court fails to put its findings on the record. That is why the language "over objection" was added to the Rule. If there is no objection, the issue is waived. Judge Bryant responded that the new language works for her.

The Chair invited comments on the proposal. There being no motions to amend or reject the proposed amendments to Rule 5-703, it approved as presented.

Item 7. Consideration of proposed amendments to Rule 2-506 (voluntary Dismissal).

Judge Bryant presented drafts of two options for amending Rule 2-506 Voluntary Dismissal, for consideration.

OPTION 1: Following *MORELAND*

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 – TRIAL

AMEND Rule 2-506, as follows:

Rule 2-506. VOLUNTARY DISMISSAL

(a) By Notice of Dismissal or Stipulation

Except as otherwise provided in these rules or by statute, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss all or part of the claim without leave of court by filing (1) a notice of dismissal at any time before the adverse party files an answer or (2) a stipulation of dismissal signed by all parties to the claim being dismissed.

(b) Dismissal Upon Stipulated Terms

If an action is settled upon written stipulated terms and dismissed, the action may be reopened at any time upon request of any party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief.

(c) By Order of Court

Except as provided in section (a) of this Rule, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss the claim only by order of court and upon such terms and conditions as the court deems proper. If a counterclaim has been filed before the filing of a plaintiff's motion for voluntary

dismissal, the action shall not be dismissed over the objection of the party who filed the counterclaim unless the counterclaim can remain pending for independent adjudication by the court. If a third-party claim has been filed before the filing of a plaintiff's motion for voluntary dismissal, the court may, in its discretion, dismiss the action over the objection of the party who filed the third-party claim.

(d) Effect

Unless otherwise specified in the notice of dismissal, stipulation, or order of court, a dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a party who has previously dismissed in any court of any state or in any court of the United States an action based on or including the same claim.

(e) Costs

Unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action or the part dismissed.

Cross reference: See Code, Courts Article, § 7-202. For settlement of suits on behalf of minors, see Code, Courts Article, § 6-405 and Rule 2-202. For settlement of a claim not in suit asserted by a parent or person in loco parentis under a liability insurance policy, see Code, Insurance Article, § 19-113.

Source: This Rule is derived as follows:
Section (a) is derived in part from the 1968 version of Fed. R. Civ. P. 41(a)(1) and is in part new.
Section (b) is new.
Section (c) is derived from former Rule 541 b and the 1968 version of Fed. R. Civ. P 41(a)(2).

Section (d) is derived from former Rule 541 c.
Section (e) is derived from former Rules 541 d and 582 b.

OPTION 2: Not Following MORELAND & Satisfying J. Friedman's Concurrence, fn. 2

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If an action is settled upon written stipulated terms and dismissed, the action may be reopened at any time upon request of any party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief.

(c) By Order of Court

Except as provided in section (a) of this Rule, a party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss the claim only by order of court and upon such terms and conditions as the court deems proper. If a counterclaim or third-party claim has been filed before the filing of a plaintiff's motion for voluntary dismissal, the action shall not be dismissed over the objection of the party who filed the counterclaim or third-party claim unless the counterclaim or third-party claim can remain pending for independent adjudication by the court.

(d) Effect

Unless otherwise specified in the notice of dismissal, stipulation, or order of court, a dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a party who has previously dismissed in any court of any state or in any court of the United States an action based on or including the same claim.

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Judge Bryant said that the Process, Parties, and Pleading Subcommittee considered possible amendments to Rule 2-506 several months ago. The topic of ancillary third-party claims, as discussed in unreported Court of Special Appeals Opinion *Young v. Emkay Title Soultions, LLC* (Court of Special Appeals, No. 00792, Sept. Term, 2016 filed February 21, 2018), was brought to the Subcommittee's attention. The underlying question that prompted the Subcommittee's proposal is what happens to ancillary claims when a case is voluntarily dismissed.

Judge Bryant noted that there are two proposed drafts of amendments to Rule 2-506 for the Committee's consideration. The consensus of the Subcommittee was to allow judges to retain discretion in this type of matter. That change is reflected in Option 1. If a claim is derivative, it may die in a natural manner. If the claim is not derivative and there is no statute of limitations issue, it can be refiled.

Mr. Frederick asked what if the claim is not derivative and there is a statute of limitations issue. Judge Bryant responded

that the trial judge has the discretion to allow the claim to remain. Mr. Frederick asked whether judges should have discretion when there is a nonderivative claim that presents a statute of limitations issue.

Judge Bryant said that both options are included in the Committee's materials in the event the Committee decides that the trial judge should not have that discretion. She expressed an understanding as a former practitioner that the Rule presents a practical issue. However, she reiterated that she believes the court should have discretion in determining whether to grant a voluntary dismissal.

The Chair said that if there is a statute of limitations issue on a nonderivative third-party claim and the judge grants a voluntary dismissal of the case, on appeal the third-party claimant would argue that the trial court dismissed its claim unnecessarily. He added that he thinks those situations would result in reversals on appeal.

Mr. Frederick said that he likes Option 1. However, he would like the Rule to indicate that if there is a statute of limitations issue, the court "shall" allow the nonderivative claim to continue. The Chair added that the nonderivative claim would still be subject to any motions to dismiss. Mr. Frederick agreed. He added that as a defense attorney, he likes Option 1 but he believes that it is not fair as drafted.

The Chair asked the Committee what its pleasure is on the two options presented.

Judge Nazarian commented that he wants to leave the decision at the discretion of the trial judge, but that he likes Option 2.

Mr. Robinson asked to address the Committee briefly. He said that there is a Rule that has a tolling provision for certain claims to be dismissed. In this case, that Rule would not apply to extend the nonderivative claims to be refiled in 30 days. There are two cases on this issue currently on appeal to the Court of Special Appeals. The tolling issue is a problem in one of the two cases because the trial court struck the pleading and the statute of limitations is running.

The Chair asked whether the case involved the tolling of a State-court claim or one that had been in federal court. Mr. Robinson responded that there is a Rule that provides that if a case is dismissed from federal court, then 30 days will be added for the case to be refiled. There is a federal statute which provides that the statute of limitations for a state law claim shall be tolled while the claim is pending in federal court and for a period of 30 days after it is dismissed. He said to address Mr. Fredrick’s issue, the Committee should consider amending Maryland’s tolling Rule so the third-party nonderivative claims can be refiled within 30 days.

The Chair said that he is aware of the federal statute, but is unclear to what Maryland Rule Mr. Robinson is referring. Mr. Robinson explained that Maryland Rule 20-101 states if a case is dismissed from federal court you get 30 days to refile in Maryland. So, the Court of Appeals effectively codified a tolling provision in that Rule.

The Chair responded that the Rule applies to claims that were previously filed in a federal court. Mr. Robinson said that there will be valid claims filed in State court that may be dismissed when a judge exercises his or her discretion in granting a voluntary dismissal of the underlying case. He said in those instances, the statute of limitations issue raised by Mr. Frederick will arise. He said that is the situation in a case that is currently pending before the Court of Special Appeals.

Judge Bryant said that she would favor amending Rule 2-506 to address Mr. Robinson’s concern, rather than to amend multiple Rules to resolve a single issue.

The Chair said that he believes the federal rule is based on a federal statute. He noted that the cases to which Mr. Robinson is referring seem to be State-claims that were joined with claims in federal court. Mr. Frederick added that the Rule referred to which Mr. Robinson referred applies only to certain claims that had been filed in Federal court.

The Chair inquired as to whether there are any motions from the Committee.

Mr. Frederick moved to approve Option 1, with the addition of language to make it clear that if there is a statute of limitations issue, the court will allow the third-party nonderivative claim to continue. The motion was seconded.

The Chair invited comments about Mr. Frederick's motion.

Judge Nazarian asked for clarification on whether, under Mr. Frederick's motion, the court would not have the discretion to dismiss a third-party nonderivative claim that is subject to a statute of limitations. He said that seems much more complicated than Option 2.

Judge Bryant proposed that under Mr. Fredrick's motion the draft would read, "If a third-party claim has been filed before the filing of the plaintiff's motion for voluntary dismissal, the court may, in its discretion, dismiss the action over the objection of the party who filed the third-party claim unless the third-party nonderivative claim would be subject to a statute of limitations." She said the singular issue regarding the statute of limitations could be resolved while providing for the judge's discretion to dismiss the claim otherwise.

The Reporter asked Judge Bryant whether her proposed language would be limited to third-party nonderivative claims. She responded in the affirmative.

The Chair invited further comments on Mr. Frederick's motion.

Judge Nazarian commented that the appellate courts' challenge in reviewing appeals based on voluntary dismissals is that both the trial judge and the appellate judges are going to analyze the merits of the claim before the merits of the claim have been decided. He said that appellate courts tend to think that if the claim is meritorious, the claim should have gotten a closer look by the trial court.

Judge Nazarian said he does not have an issue with the language proposed by Judge Bryant. Option 2 essentially provides that the trial court may not dismiss the case unless the nonderivative claim can stand alone. Option 2 is cleaner because it requires the trial court to make a finding as to whether the nonderivative claim can survive on its own. He added that he deeply believes in the discretion of the trial court. However, the discretionary analysis under Option 1 is invariably going to include an assessment of the merits of the claim. He said that he does not believe that is intended.

The Chair said that he was wondering about the same issue. The Chair questioned whether the court's analysis of the nonderivative claim's ability to "stand alone" is intertwined with an assessment of the merits of the claim. He asked whether

the trial court would be considering whether the claim could survive a motion to dismiss for other reasons.

Judge Nazarian said he read Option 2 as providing for an analysis of the merits of the nonderivative claim. He said that Option 1 with the additional language clarifies the statute of limitations issue. He reiterated that Option 2 is cleaner because it places the trial court in a position to make a procedural decision, which can be reviewed by the appellate court on appeal.

The Chair called for a vote on Mr. Frederick's motion as modified by Judge Bryant. The motion carried with 12 members in favor. The "Option 1" revisions to rule 2-506 were approved as amended.

Item 8. Consideration of a "housekeeping" amendment to Rule 8-422 (Preliminary Procedures).

The Reporter presented Rule 8-422 Preliminary Procedures, for consideration.

MARYLAND RULES OF PROCEDURE

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

Chapter 400 – PRELIMINARY PROCEDURES

AMEND Rule 8-422 to update the cross reference following subsection (a)(1), as follows:

Rule 8-422. PRELIMINARY PROCEDURES

(a) Civil Proceedings.

(1) Generally.

. . .

Cross reference: For provisions permitting a stay without the filing of a bond, see Code, Family Law Article, § 5-518 and Courts Article, § 12-701 (a)(1). For provisions limiting the extent of the stay upon the filing of a bond, see Code, ~~Article 2B, § 16-101~~ Alcoholic Beverages Article, §4-908; Courts Article, § 12-701 (a)(2); Insurance Article § 2-215 (j)(2); and Tax-Property Article, § 14-514. For general provisions governing bonds filed in civil actions, see Title 1, Chapter 400 of these Rules.

. . .

Rule 8-422 was accompanied by the following Reporter's note.

REPORTER'S NOTE

The Cross reference to Code, Article 2B, §16-101 in Rule 8-422 is obsolete. Code, Art. 2B has been repealed in its entirety. The obsolete reference is proposed to be updated to Code, Alcoholic Beverages Article, §4-908, which includes a provision limiting the extent of a stay of a decision by a local licensing board on appeal.

The Reporter said that the housekeeping amendment to Rule 8-422 was brought to her attention by Linda Schuett. Ms. Schuett discovered that the cross reference contained in Rule 8-422 is obsolete. The amendment to Rule 8-422 brings the Rule up to date with the proper cross reference to Code, Alcoholic Beverages Article, §4-908. The Reporter called for a motion to approve the Rule as amended. The motion was made, seconded, and passed by a majority vote.

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