COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A of the People's Resource Center, 100 Community Place, Crownsville, Maryland on January 7, 2000.

Members present:

Hon. Joseph F. Murphy, Jr., Chair
Linda M. Schuett, Esq., Vice Chair

Albert D. Brault, Esq.
Robert L. Dean, Esq.
Hon. James W. Dryden
Bayard Z. Hochberg, Esq.
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Timothy F. Maloney, Esq.
Hon. John F. McAuliffe
Anne C. Ogletree, Esq.
Larry W. Shipley, Clerk
Sen. Norman R. Stone, Jr.
Melvin J. Sykes, Esq.
Del. Joseph F. Vallario, Jr.
Hon. James N. Vaughan

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Debra Callahan, DCM Coordinator, Prince George's County Circuit Court
Linda Morris, Director of Family Division, Prince George's County Circuit Court
James J. Shoemaker
Pamela Ortiz, Esq., Administrative Office of the Courts
Hon. James C. Cawood, Jr.
Hon. Larnzell Martin, Jr.
Master Bernard A. Raum

The Chair convened the meeting. He said that Agenda Item 3 may be withdrawn. He stated that the minutes of the October 15, 1999 Rules Committee meeting had been mailed out, and he asked if

there were any additions or corrections to the minutes. Judge Kaplan moved to adopt the minutes as presented, the motion was seconded, and it passed unanimously.

Agenda Item 1. Consideration of the proposed deletion of Rule 16-402 (Attorneys and Other Officers Not to Become Sureties)

The Chair presented the proposed deletion of Rule 16-402, Attorneys and Other Officers Not to Become Sureties, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

DELETE Rule 16-402 in its entirety:

~~Rule 16-402. ATTORNEYS AND OTHER OFFICERS NOT TO BECOME SURETIES~~

~~No attorney or other officer or employee of a court, or of any office serving a court, shall be accepted as security for costs or surety on any bond, or be received as bail in any case. Source: This Rule is former Rule 1221.~~

Rule 16-402 was accompanied by the following Reporter's Note.

> The General Court Administration Subcommittee is recommending that Rule 16-402 be deleted. Chief Judge Rasin has had problems with the prohibition against court employees posting bond, and Delegate Vallario has expressed the view that the Rule is unconstitutional. It was noted that when

> someone posts property as bond, the judge may not even know if the person is an attorney. Therefore, the Subcommittee's opinion is that the Rule should be deleted.

The Chair explained that Rule 16-402 had been a former Supreme Bench Rule which was brought forward into the Rules of Procedure. The Rule has caused problems in the District Court, and Delegate Vallario had noted the problems it had caused for him when he tried to bail someone out of jail. The Honorable Martha Rasin, Chief Judge of the District Court of Maryland, had told the General Court Administration Subcommittee that she had received many complaints about the Rule. District Court employees are prohibited from posting collateral on behalf of their children. The Subcommittee could find no reason to keep the Rule and proposes to delete it. The Committee agreed by consensus to the proposal of the Subcommittee.

Agenda Item 3. Consideration of a policy issue concerning proposed new Rule 2-509.1 (Circuit Court--Trial Upon Default)

The Reporter told the Committee that new Rule 2-509.1 was proposed by the Case Processing Work Group of the Ad Hoc Committee on the Implementation of the Family Division. (See Appendix 1). The Family and Domestic Subcommittee of the Rules Committee had reviewed the Case Processing Report, looking at the

recommendations to see if any rules changes would be required. The Subcommittee did not understand proposed new Rule 2-509.1 and requested that a proponent of the new rule be invited to the Rules Committee meeting to explain it. Pamela Ortiz, Esq., who staffed the Case Processing Work Group, said that the concern of the Work Group was that there should be a sanction for failure to appear at a pre-trial conference, so the case can move forward. The Reporter said she had spoken with the Hon. Albert J. Matricciani, Jr., Chair of the Work Group, and he has requested that Agenda Item 3 be withdrawn.

Agenda Item 2. Continued consideration of proposed new Title 9, Chapter 200, Divorce, Annulment, Alimony, Child Support, and Child Custody and proposed amendments to: Rule 2-504.1 (Scheduling Conference), Rule 2-507 (Dismissal for Lack of Jurisdiction or Prosecution), and Rule 2-535 (Revisory Power)

In the absence of the Family and Domestic Subcommittee Chair, Ms. Ogletree, who was on her way to the meeting, the Reporter presented Rule 9-203, Educational Seminar, for the Committee's consideration.

Rule 9-203. EDUCATIONAL SEMINAR

(a) Applicability

This Rule applies in actions in which child support, custody, or visitation are involved and the court determines to send the

parties to an educational seminar designed to minimize disruptive effects of separation and divorce on the lives of children.

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

(b) Order to Attend Seminar

(1) Subject to subsection (b)(2) of this Rule and as allowed or required by the county's case management plan required by Rule 16-202 b., the court may order the parties to attend an educational seminar within the time set forth in the plan. The content of the seminar shall be as prescribed in section (c) of this Rule. If a party who has been ordered to attend a seminar fails to do so, the court may not use its contempt powers to compel attendance or to punish the party for failure to attend, but may consider the failure as a factor in determining custody and visitation.

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

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

(c) Content

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

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

(2) developmental stages of children and

the effects of divorce on children at different stages;

(3) changes in the parent-child relationship;

(4) discipline;

(5) transitions between households;

(6) skill-building in

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

(B) explaining divorce to children,

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

(D) conflict resolution,

(E) coping strategies,

(F) helping children adjust to family changes,

(G) avoiding inappropriate interactions with the children, and

(H) developing constructive parenting arrangements; and

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

(d) Scheduling

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

(e) Costs

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

Source: This Rule is new.

Rule 9-203 was accompanied by the following Reporter's Note.

This Rule is derived, verbatim, from current Rule 9-204.1, which was adopted by Rules Order dated January 13, 1998, effective July 1, 1998.

The Reporter explained that Rule 9-203 had been drafted recently in response to a provision in Code, Family Law Article, §7-103.2. When the Subcommittee reviewed Rules in Title 9, Chapter 200, the Subcommittee decided not to change Rule 9-203. The Chair asked the consultants if they were in agreement with the language of the Rule, and Ms. Ortiz indicated that the Rule was satisfactory.

The Vice Chair referred to section (e) and inquired as to who pays for the seminar when the court waives payment of the fee. Ms. Ortiz responded that in the counties with family divisions, funds are set aside to pay for the seminars when the court waives the fees. Often the classes are taught by in-house staff, and the court absorbs the charges. The Chair added that

when the classes are taught by a private person, the court can work out an agreement with the teacher. Mr. Hochberg asked how many jurisdictions charge for the seminars. Ms. Ortiz answered that not all jurisdictions charge, but generally the cost in most jurisdictions is $75. Some of the counties on the Eastern Shore subsidize the cost of the seminars and pay for the training of the vendors. The Committee approved Rule 9-203 as presented.

The Reporter presented Rule 9-204, Mediation of Child Custody and Visitation Disputes, for the Committee's consideration.

> Rule 9-204. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES
>
> (a) Scope of Rule
>
> This Rule applies to any case under this Chapter in which the custody of or visitation with a minor child is in issue, including an initial action to determine custody or visitation, an action to modify an existing order or judgment as to custody or visitation, and a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.
>
> (b) Duty of Court
>
> (1) Promptly after an action subject to this Rule is at issue, the court shall determine whether:
>
> (A) mediation of the dispute as to custody or visitation is appropriate and would likely be beneficial to the parties or

the child; and

(B) a properly qualified mediator is available to mediate that dispute.

(2) If a party or a child represents to the Court in good faith that there is a genuine issue of physical or sexual abuse of the party or child, and that, as a result, mediation would be inappropriate, the court shall not order mediation.

(3) If the court concludes that mediation is appropriate and feasible, it shall enter an order requiring the parties to mediate the custody or visitation dispute. The order may stay some or all further proceedings in the action pending the mediation on terms and conditions set forth in the order.

Query to Committee: With subsection (b)(2) changed from AIf counsel for a party or child ...@ to AIf a party or child ...,@ what changes should be made to this cross reference?

Cross reference: With respect to subsection b (2) of this Rule, see Rule 1-341 and Rules 3.1 and 3.3 of the Maryland Rules of Professional Conduct.

(c) Scope of Mediation

(1) The court may not in its initial order require the parties to attend more than two mediation sessions; however, for good cause shown and upon the recommendation of the mediator, the court may order up to two additional mediation sessions. The parties may voluntarily continue with further mediation.

(2) Mediation under this Rule shall be limited to the issues of custody and visitation unless the parties agree otherwise in writing.

(d) If Agreement

If the parties reach a proposed agreement on some or all of the disputed issues, the mediator shall prepare a written draft of the agreement and send copies of it to the parties and their attorneys. If the agreement is signed by the parties as submitted or as modified by the parties, the mediator shall submit it to the court for approval and entry as an order.

(e) If No Agreement

If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall so advise the court but shall not state the reasons. If the court does not order mediation or the case is returned to the court after mediation without an agreement as to all issues in the case, the court shall promptly schedule the case for hearing on any pendente lite or other appropriate relief not covered by a mediation agreement.

(f) Confidentiality

Except for an agreement submitted to the court pursuant to section d of this Rule or as otherwise required by law, no statement or writing made in the course of mediation is subject to discovery or admissible in evidence in any proceeding under this Chapter unless the parties and their counsel agree otherwise in writing. Neither the mediator nor an attorney may be called as a witness in such a proceeding to give evidence regarding the mediation or custody or visitation.

Committee note: See Code, Family Law Article, §5-701 et seq. for provisions that require the reporting of suspected child abuse.

(g) Costs

Payment of the compensation, fees, and costs of a mediator may be compelled by order of court and assessed among the parties as the court may direct. In the order for mediation, the court may waive payment of the compensation, fees, and costs.

Cross reference: For the qualifications and selection of mediators, see Rule 17-104.

Source: This Rule is derived from former Rule S73A.

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

This Rule incorporates the substance of current Rule 9-205 (former Rule S73A), which was adopted as a new rule in 1988 and amended in 1990.

At its October, 1995 meeting, the Rules Committee approved as an addition to subsection (b)(3) a sentence that prohibits a court from ordering mediation unless both parties are represented by attorneys. The language of the current rule is ambiguous as to whether both parties must have attorneys before the court may require mediation. The Committee revised the proposed Rule to remove this ambiguity. The Committee believed that given the importance of custody and visitation determinations and the potential economic implications of those determinations, as well as the potential imbalance that can occur when only one party is unrepresented, both parties should have legal counsel before the court mandates this process.

The Family/Domestic Subcommittee, however, recommends that the Rule be clarified in the opposite direction. Given the adoption of Title 17 of these Rules and the increased use and acceptance of alternative dispute resolution, as well as the increased numbers of pro se litigants, the Subcommittee recommends that mediation be used regardless of whether the parties are represented by attorneys. The Subcommittee believes that mediation is very useful in resolving child custody and visitation disputes and lowering the level of acrimony between the parties. A skilled mediator can handle the problem of the potential imbalance

between a represented party and an unrepresented party.

In section (f), the phrase Aor as otherwise required by law@ is added in light of statutory reporting requirements with respect to suspected child abuse.

Section (h) of the current Rule has been deleted. In its place, the Subcommittee has added a cross reference to Rule 17-104, Qualifications and Selection of Mediators.

The Reporter explained that the main controversy surrounding this Rule is whether a party who is not represented by an attorney can be required to go to mediation. In the last version of the Rule, the Committee was concerned about the imbalance in a situation where one side is represented by counsel and one side is not. The Committee had decided that, unless both parties are represented by attorneys, the court should not require mediation. The Subcommittee had the opposite view. Because of the number of pro se litigants, the usefulness of mediation, and the fact that a skilled mediator can handle the situation where a party is not represented by counsel, the Subcommittee's recommendation is to not require that both parties must be represented by counsel. This is a policy issue. The Vice Chair remarked that as a mediator with 60 hours of mediation training, she agreed with the Subcommittee. The Chair added that in cases in which the mediation process should not be used, the court can decide as to

mediation under subsection (b)(1)(A) of Rule 9-204. Ms. Ortiz observed that this follows current practice.

The Honorable James C. Cawood, of the Circuit Court for Anne Arundel County, said that he had a question about section (d) of Rule 9-204, which provides that the mediator shall prepare a written draft of the agreement. He questioned whether the mediator should prepare the draft on the theory that mediators are not supposed to draft agreements. He suggested that the mediator could prepare a memorandum of understanding of the agreement between the parties. The Reporter inquired as to how this would become a court order when pro se parties are involved. The Vice Chair commented that the negative side to this is that the parties would have to be represented by counsel. However, the positive side is that it would ensure that the mediator is not practicing law. It is difficult to draft an agreement neutrally, and the mediator could lose his or her credibility. Mediators are opposed to drafting agreements. They tend to refuse to draft unless the court orders them to do so. Ms. Ortiz noted that this can generate significant problems.

Mr. Hochberg questioned as to who would draw up the agreement if the parties have no counsel. The Chair expressed the opinion that the mediator should draw up the agreement. The Rule provides that the parties can modify the agreement. The

Vice Chair commented that if a mediator drafts an agreement, this is beyond the role of a mediator, and she asked if mediators are required to have malpractice insurance. Judge Dryden suggested that the agreement be given another name. Judge Vaughan suggested that the first sentence of section (d) read as follows: AIf the parties reach a proposed agreement on some or all of the disputed issues, the mediator shall prepare a written memorandum of the points of the agreement and shall submit it to the parties and their attorneys.@ Judge Cawood responded that he did not think this change would solve the problem. The Vice Chair said that the mediator does not have to be an attorney. If the mediator is a social worker, this would be sanctioning the practice of law by a non-attorney.

The Reporter told the Committee that she had been asked a rules question involving an attorney who works as a mediator. The attorney had been mediating a divorce case and was reported to the Attorney Grievance Commission for representing both sides in the case. It is important to avoid placing someone in an ethical bind. Mr. Sykes suggested that the procedure could be the same one that takes place in an open court settlement. The court asks both sides if they are in agreement, and then the court states on the record what the agreement is. The transcript becomes the agreement. The same procedure could apply to a

mediation. The Reporter added that this could be recorded on tape. Mr. Sykes observed that this type of procedure would remove the problems associated with drafting the agreement. The Chair commented that this would work well if the mediation took place at the courthouse. Mr. Sykes responded that if not, the mediator could record the agreement on tape.

Mr. Johnson remarked that a document memorializes the agreement for people. The taped procedure would build in expenses and cause additional expenses for pro se persons. The Reporter pointed out that the person needs to be able to go back to his or her attorney to assure that the terms of agreement are satisfactory. The Vice Chair cautioned that a mediator cannot give advice, and there is a huge benefit to having an independent attorney look at it. Judge Kaplan pointed out that the mediator could summarize the terms of the agreement in writing, and then each party could sign off. The Chair said that in some situations, both parties have counsel, while in others, neither has counsel, or only one is represented. He suggested that the first sentence of section (d) read as follows: AIf the parties reach a proposed agreement on some or all of the disputed issues, the agreement shall be reduced to writing and submitted to the court.@ The Vice Chair remarked that this a good use of the passive tense. Mr. Sykes observed that the agreement may not get

drafted if the Rule does not state who is responsible for drafting it.

Judge McAuliffe suggested that another way to handle the problem is to provide that the mediator shall prepare a memorandum of the points of the agreement. The first sentence of section (d) would read as follows: AIf the parties reach a proposed agreement on some or all of the disputed issues, the mediator shall prepare a written memorandum of the points of agreement and send copies of it to the parties and their attorneys.@ The Committee agreed by consensus to this change. Judge Cawood noted that mediators may have trouble getting the parties to sign. Mr. Johnson asked what happens if the agreement is not signed. Ms. Ortiz said that many people do not have counsel, especially in custody and visitation cases. Many jurisdictions handle this differently, but they require that there be a window of time to consult with counsel. The Vice Chair noted that it is appropriate to have a cooling off period before the agreement is signed. A party may be agreeing to something very major such as giving up his or her share of the marital home.

The Reporter pointed out that at the top of page 17 of the package of rules, there is a query to the Committee as to whether the cross reference to the Maryland Rules of Professional Conduct

should be changed because of the change in subsection (b)(2) from the language A[i]f counsel for a party or child@ to A[i]f a party or child.@ The Vice Chair said that Rule 1-341 applies to both attorneys and parties. Mr. Sykes commented that the child is not subject to sanctions because he or she is not a party. Although Rules 3.1 and 3.3 apply only to attorneys, it is worthwhile to keep a reference to them in the cross reference.

The Chair observed that, arguably, the court should not order mediation if there is a good faith assertion of abuse, regardless of the truth of that assertion. It could be that the court is not persuaded that there is anything to the assertion. The parent may believe that the child has been physically abused, but the court is persuaded that the bruises were from horseback riding. Mr. Sykes noted that subsection (b)(2) provides that the court has to determine if mediation is inappropriate. The Chair suggested that the language could read A[i]f the court concludes that there is a genuine issue of physical or sexual abuse...@. The Vice Chair suggested that the Rule could read that Athe court shall not order mediation if it determines that ....@. The Style Subcommittee can rewrite this provision. Mr. Sykes asked if the intention of the Rule is to bind the court on the basis of an allegation. Judge Cawood responded that it would be overkill to provide that if any abuse is claimed, mediation is inappropriate.

The Chair commented that there are situations where there has been a bad faith representation, and mediation would not be appropriate. This may be taken care of in subsection (b)(1). The problem is how does one know if there is a genuine issue of physical or sexual abuse.

Mr. Sykes pointed out that the Rule provides some flexibility for the court. If the court feels the allegation is a sham, the court can do what it wishes. The Vice Chair said that it is not clear how the court could determine that an allegation is not in good faith. The Chair stated that a good faith belief that there has been abuse can be resolved if a small amount of evidence is taken. Hopefully, the person who has made a bad faith claim will back down. The Vice Chair observed that subsection (b)(2) should not be used to allow someone to get out of mediation. However, if someone incorrectly believes that abuse has occurred, this subjective belief may make mediation inappropriate. The person who believes this will not be able to mediate effectively. Ms. Ogletree remarked that the parties would be in an unequal bargaining position. There needs to be some way to shunt this out. The Vice Chair expressed the opinion that subsection (b)(2) should not be changed. The Reporter questioned as to what the practice is. Judge Cawood replied that it is not a huge problem. Cases involving some physical abuse

have gone to mediation successfully. It would cause more problems to change the language of the Rule, which had been heavily debated by the Subcommittee. If the allegation of abuse is genuine, the court need not order mediation. The issue as to whether the allegation is genuine and in good faith is not up to the parties to decide, it is up to the court to decide.

The Vice Chair commented that it would be inappropriate for someone to put in a pleading, solely for the purpose of keeping the matter out of mediation, an allegation that her husband bumps her every time he passes her. The purpose of the provision is for situations where someone genuinely believes he or she has been abused. Ms. Ogletree added that sometimes verbal abuse is alleged as well as other things, and it is impossible for the person to participate in mediation. The Chair pointed out that the language of the Rule may be read as allowing a party to opt out of mediation, and the court has no choice. The Vice Chair said that she agreed, but she noted the opposite problem which is that the wife alleges the husband bumps into her. Would all judges believe that this constitutes abuse? The Chair remarked that there are close cases and cases where someone alleges that a spouse hit the person 20 years ago. This is a judgment call. He asked if the Rules Committee is satisfied with the Rule as it now reads. Judge McAuliffe said that he did not agree with the

interpretation of the language that the court cannot go forward if abuse has been alleged. The Vice Chair suggested that the Rule be left as it is now. Judge Kaplan noted that the language Aas a result@ indicates that the judge is not precluded from ordering mediation. Mr. Sykes remarked that the language Aas a result@ is part of the representation to the court. It would be better to state: Aand the court concludes, that as a result...@. The Reporter pointed out that subsection (b)(2) used to begin A[i]f counsel for a party or child...@. That language was deleted, and without it, a pro se party can make his or her own representations, which provides more potential for mischief. Judge Dryden suggested that the language of subsection (b)(2) could read as follows: A...and that, as a result, the court concludes ...@. The Reporter noted that there is no hearing early in the proceedings. Mr. Hochberg questioned as to how the court could conclude anything.

The Vice Chair commented that the Alternative Dispute Resolution Commission has expressed the view that it is preferable that a few cases not be sent to mediation rather than to send cases where there has been abuse. The provision should be left as it is. The Reporter pointed out that there is another chance at the scheduling conference for the court to order mediation. The Chair commented that if someone makes an

allegation of abuse, it is going to cause trouble anyway. The Committee approved Rule 9-204 as amended.

Ms. Ogletree presented Rule 9-205, Child Support Guidelines, for the Committee's consideration.

Rule 9-205. CHILD SUPPORT GUIDELINES

(a) Definitions

The following definitions apply in this Rule:

(1) Shared Physical Custody

"Shared physical custody" has the meaning stated in Code, Family Law Article, §12-201 (i).

(2) Worksheet

"Worksheet" means a worksheet used to compute child support under the guidelines set forth in Code, Family Law Article, Title 12, Subtitle 2.

(b) Filing of Worksheet

In an action involving the establishment or modification of child support, not later than the date of the hearing on the issue of child support or as directed otherwise by the court, each party shall file a worksheet in the form set forth in this Rule.

Cross reference: See Code, Family Law Article, §12-203 (a) and Walsh v. Walsh, 333 Md. 492 (1994).

(c) Primary Physical Custody

Except in cases of shared physical custody, the worksheet shall be in substantially the following form:

_____ In the
Circuit Court for _____

v.

_____ No. _____

WORKSHEET A - CHILD SUPPORT OBLIGATION: PRIMARY PHYSICAL CUSTODY

Children	Date of Birth	Children	Date of Birth
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

	Mother	Father	Combined
1. MONTHLY ACTUAL INCOME (Before taxes)	$	$	////////////// //////////////
a. Minus preexisting child support payment actually paid	-	-	////////////// //////////////
b. Minus health insurance premium (if child included)	-	-	////////////// //////////////
c. Minus alimony actually paid	-	-	//////////////
d. Plus/minus alimony awarded in this case	+/-	+/-	////////////// //////////////
2. MONTHLY ADJUSTED ACTUAL INCOME	$	$	$
3. PERCENTAGE SHARE OF INCOME (Line 2. Each parent's income divided by Combined Income)	%	%	////////////// ////////////// //////////////
4. BASIC CHILD SUPPORT OBLIGATION (Apply line 2 Combined to Child Support Schedule)	//////// //////// ////////	//////// //////// ////////	$
a. Work-Related Child Care Expenses Code, FL §12-204 (g)	//////// //////// ////////	//////// //////// ////////	+
b. Extraordinary Medical Expenses Code, FL, §12-204 (h)	//////// ////////	//////// ////////	+
c. Additional Expenses Code, FL, §12-204 (i)	//////// ////////	//////// ////////	+
5. TOTAL CHILD SUPPORT OBLIGATION (Add lines 4, 4a, 4b, and 4c.)	//////// ////////	//////// ////////	$
6. EACH PARENT'S CHILD SUPPORT OBLIGATION (Multiply line 3 times line 5 for each parent)	$	$	////////////// ////////////// //////////////
7. RECOMMENDED CHILD SUPPORT ORDER (Bring down amount from line 6 for the non-custodial parent only. Leave custodial parent column blank)	$	$	////////////// ////////////// ////////////// ////////////// //////////////

Comments, calculations, or rebuttals to schedule or adjustments if non-custodial parent directly pays extraordinary expenses:	
PREPARED BY:	DATE:

(d) Shared Physical Custody

In cases of shared physical custody, the worksheet shall be in substantially the following form:

_____ In the
Circuit Court for _____

v.

_____ No. _____

WORKSHEET B - CHILD SUPPORT OBLIGATION: SHARED PHYSICAL CUSTODY			
Children _____ _____ _____	Date of Birth _____ _____ _____	Children _____ _____ _____	Date of Birth _____ _____ _____
	Mother	Father	Combined
1. MONTHLY ACTUAL INCOME (Before taxes)			////////////// //////////////
a. Minus preexisting child support payment actually paid	-	-	////////////// ////////////// //////////////
b. Minus health insurance premium (if child included)	-	-	////////////// //////////////
c. Minus alimony actually paid	-	-	//////////////
d. Plus/minus alimony awarded in this case	+/-	+/-	////////////// //////////////
2. MONTHLY ADJUSTED ACTUAL INCOME	$	$	$
3. PERCENTAGE SHARE OF INCOME (Line 2. Each parent's income divided by Combined Income)	%	%	////////////// ////////////// //////////////

4. BASIC CHILD SUPPORT OBLIGATION (apply line 2 Combined to Child Support Schedule)	//////////	//////////	$
5. ADJUSTED BASIC CHILD SUPPORT OBLIGATION (Line 4 times 1.5)	//////////	//////////	
6. OVERNIGHTS with each parent (must total 365)			365
7. PERCENTAGE WITH EACH PARENT (Line 6 divided by 365)	A %	B %	//////////
STOP HERE IF Line 7 is less than 35% for either parent. Shared physical custody does not apply. (See Worksheet A)	//////////	//////////	//////////
8. EACH PARENT'S THEORETICAL CHILD SUPPORT OBLIGATION (Multiply line 3 times line 5 for each parent)	A$	B$	//////////
9. BASIC CHILD SUPPORT OBLIGATION FOR TIME WITH OTHER PARENT (Multiply line 7A times line 8B and put answer on line 9B. Multiply line 7B times Line 8A and put answer on Line 9A	A$	B$	//////////
WORKSHEET B - CHILD SUPPORT OBLIGATION: SHARED PHYSICAL CUSTODY			
10. NET BASIC CHILD SUPPORT OBLIGATION (Subtract lesser amount from greater amount in line 9 and place answer here under column with greater amount in Line 9)	$	$	//////////
11. EXPENSES:	//////////	//////////	
a. Work-related Child Care Expenses Code, Family Law Article, §12-204 (g)	//////////	//////////	+
b. Extraordinary Medical Expenses Code, Family Law Article, §12-204 (h)	//////////	//////////	+
c. Additional Expenses Code, Family Law Article, §12-204 (i)	//////////	//////////	+

12. NET ADJUSTMENT from WORKSHEET C. Enter amount on line h, WORKSHEET C, if applicable. If not continue to Line 13.	$	$	////////////// ////////////// ////////////// //////////////
13. NET BASIC CHILD SUPPORT OBLIGATION (From Line 10, WORKSHEET B)	$	$	////////////// ////////////// //////////////
14. RECOMMENDED CHILD SUPPORT ORDER (If the same parent owes money under Lines 12 and 13, add these two figures to obtain amount owed by that parent. If one parent owes money under Line 12 and the other owes money under Line 13, subtract the lesser amount from the amount to obtain the difference. The parent owing the greater of the two amounts on Lines 12 and 13 will owe that difference as the child support obligation. NOTE: The amount owed in a shared custody arrangement may not exceed the amount that would be owed if the obligor parent were a noncustodial parent. See WORKSHEET A).	$	$	////////////// //////////////
PREPARED BY:			DATE:
Use reverse side for comments, calculations, or rebuttals including in-kind responsibility because of sharing or special adjustments because of direct payments			

INSTRUCTIONS FOR WORKSHEET C: Use this Worksheet ONLY if any of the Expenses listed in lines 11a, 11b, or 11c is directly paid out or received by the parents in a different proportion than the percentage share of income entered on line 3 of Worksheet B. Example: If the mother pays all of the day care, or parents split education/medical costs 50/50 and line 3 is other than 50/50. If there is more than one 11c expense, the calculations on lines e and f below must be made for each expense.

WORKSHEET C - FOR ADJUSTMENTS, LINE 12, WORKSHEET B		
	Mother	Father

a. Total amount of direct payments made for Line 11a expenses times each parent's percentage of income (Line 3, WORKSHEET B) (Proportionate share)	$	$
b. The excess amount of direct payments made by the parent who pays more than the amount calculated in Line a. above. (The difference between amount paid and proportionate share)	$	$
c. Total amount of direct payments made for Line 11b expenses times each parent's percentage of income (Line 3, WORKSHEET B)	$	$
d. The excess amount of direct payments made by the parent who pays more than the amount calculated on Line c. above.	$	$
e. Total amount of direct payments made for Line 11c. expenses times each parent's percentage of income (Line 3, WORKSHEET B)	$	$
f. The excess amount of direct payments made by the parent who pays more than the amount calculated in Line e. above.	$	$
g. For each parent, add lines b, d, and f	$	$
h. Subtract lesser amount from greater amount in Line g. above. Place the answer on this line under the lesser amount in Line g. Also enter this answer on Line 12 of WORKSHEET B, in the same parent's column.	$	$

Source: This Rule is new.

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

> This Rule is proposed in light of the rebuttable presumption that the correct amount of child support is that which would result from the application of the child support guidelines set forth in Code, Family Law Article, §12-201 - 204 and the duty of the court to act in the best interests of the children when establishing or modifying child support, even in cases where the parents have agreed upon a support amount. See Walsh v. Walsh, 333 Md. 492 (1994).
>
> The worksheet for primary physical custody set forth in Section (c) of the Rule

> is "Worksheet A," originally adopted and issued as a standardized form by Administrative Order of the Court of Appeals dated February 21, 1989.
>
> The worksheet for shared physical custody set forth in section (d) of the Rule is based upon the shared custody worksheet adopted by the February 21, 1989 Administrative Order. This worksheet has been modified to eliminate the crossed arrows in the current worksheet, which practitioners have found to be confusing.

Ms. Ogletree explained that section (a) contains no changes. The forms for computing the worksheets are included in the Rule. The worksheets are filed before the hearing. There is a worksheet for a case with sole custody, and one for a case with shared custody. Worksheet A is for primary physical custody; Worksheet B is for shared physical custody. The worksheets can be prepared through computer programs which make them easier to complete. The Vice Chair pointed out that the Rule allows worksheets to be completed not later than the date of the hearing. Does this mean that a parent may not get the worksheet in advance of the hearing? Ms. Ogletree responded that this information is obtained through discovery. Mr. Hochberg said that in pendente lite cases, there is no discovery. Ms. Ogletree remarked that the arithmetic is the same. The numbers can be calculated with a calculator or a computer. The Vice Chair stated that one party’s calculations for work-related child care and extraordinary medical expenses may differ from the

calculations of the other side. The other parent would have no opportunity on the day of the hearing to figure out the discrepancy. The Chair remarked that there is usually lead time in the fight over pendente lite custody. Ms. Ogletree added that at this point in the proceedings, the Bureau of Support Enforcement usually has contacted both parties and sent a copy of the parties' earnings. In almost all of the cases, there is a computer sheet in the file with this information. The Chair suggested that the Rule could provide that the worksheets are to be filed no later than seven or ten days before the hearing. Judge Cawood observed that the income information is usually agreed upon through discovery or an exchange of information. It does not cover everything if a party is self-employed. Mr. Hochberg added that most information comes out at the pendente lite hearing. Ms. Ortiz remarked that there is no problem. The guidelines lend themselves to predictability. Ms. Ogletree commented that there could be problems if the parties' incomes are above the guidelines or if there is an assertion that there should be a deviation from the guidelines.

The Chair said that the wife may state that the husband makes more money than he put on the form. It would be unfair if the court would not be able to resolve this. Ten days' lead time could help. Ms. Ogletree commented that this usually does not

happen. The Chair responded that it has happened previously. Lead time would be helpful. If an amount is disputed, the matter would not be resolved at the hearing, and there would have to be a continuance. Judge Kaplan noted that this problem does not happen very often, and the court could grant a continuance if the problem arose. The Chair asked how much of a burden it would be to have a time requirement for the worksheets to be completed before the hearing. Ms. Ogletree answered that a number of cases have pro se litigants, and it would be a burden to them. She continued that the court makes the computations based on the evidence presented at the hearing. Mr. Hochberg added that the previous year's tax return is usually sufficient to supply the information. Judge Cawood said that no great problem exists. The Committee approved Rule 9-205 as presented.

Ms. Ogletree presented Rule 9-206, Joint Statement of Marital and Non-Marital Property, for the Committee's consideration.

> Rule 9-206. JOINT STATEMENT OF MARITAL AND NON-MARITAL PROPERTY
>
> (a) When Required
>
> When a monetary award or other relief pursuant to Code, Family Law Article, §8-205 is in issue, the parties shall file a joint statement listing all property owned by one

or both of them.

(b) Form of Property Statement

The joint statement shall be in the following form:

JOINT STATEMENT OF PARTIES CONCERNING
MARITAL AND NON-MARITAL PROPERTY

1. The parties agree that the following property is "marital property" as defined by Maryland Annotated Code, Family Law Article, §8-201:

Description of Property	How Titled		Fair Market Value		Liens, Encumbrances or Debt Directly Attributable	
	Husband's Assertion	Wife's Assertion	Husband's Assertion	Wife's Assertion	Husband's Assertion	Wife's Assertion

2. The parties agree that the following property is not marital property because the property (a) was acquired by one party before marriage, (b) was acquired by one party by inheritance or gift from a third person, (c) has been excluded by valid agreement, or (d) is directly traceable to any of these sources:

Description of Property	Reason Why Non-Marital	How Titled		Fair Market Value		Liens/Debts	
		Husband's Assertion	Wife's Assertion	Husband's Assertion	Wife's Assertion	Husband's Assertion	Wife's Assertion

3. The parties are not in agreement as to whether the following property is marital or non-marital:

Description of Property	Marital? Husband's Assertion	Wife's Assertion	How Titled Husband's Assertion	Wife's Assertion	Fair Market Value Husband's Assertion	Wife's Assertion	Lien/Debts Husband's Assertion	Wife's Assertion

Date _____ _____
Plaintiff or Attorney

Date _____ _____
Defendant or Attorney

INSTRUCTIONS:

1. If the parties do not agree concerning the title or value of any property, the parties shall set forth in the appropriate column a statement that the title or value is in dispute and each party's assertion relative to how the property

is titled or the fair market value.

2. In listing property that the parties agree is non-marital because the property is directly traceable to any of the listed sources of non-marital property, the parties shall specify the source to which the property is traceable.

(c) Time for Filing; Procedure

The joint statement shall be filed at least ten days before the scheduled trial date or by any earlier date fixed by the court. At least 30 days before the joint statement is due to be filed, each party shall prepare and serve on the other party a proposed statement in the form set forth in section (b) of this Rule. At least 15 days before the joint statement is due, the plaintiff shall sign and serve on the defendant for approval and signature a proposed joint statement that fairly reflects the positions of the parties. The defendant shall timely file the joint statement. The statement shall be signed by the defendant or be accompanied by a written explanation of the specific reasons why it is not signed by the defendant.

(d) Sanctions

If a party fails to comply with this Rule, the court, on motion or on its own initiative, may enter any orders in regard to the noncompliance that are just, including:

(1) an order that the classification of property as marital or non-marital shall be taken to be established for the purpose of the action in accordance with the statement filed by the complying party;

(2) an order refusing to allow the

> noncomplying party to oppose designated allegations on the other party's statement filed pursuant to this Rule, or prohibiting the noncomplying party from introducing designated matters in evidence.
>
> Instead of any order or in addition thereto, the court, after opportunity for hearing, shall require the noncomplying party or the attorney advising the noncompliance or both of them to pay the reasonable expenses, including attorney's fees, caused by the noncompliance, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.
>
> Committee note: The Joint Statement of Marital and Non-marital Property is not intended as a substitute for discovery in domestic relations cases.
>
> Source: This Rule is derived from former Rule S74.

Rule 9-206 was accompanied by the following Reporter's Note.

> This Rule incorporates the substance of Rule 9-206 (former Rule S74), which was adopted as a new rule in 1986. In section (b), the form of property statement has been redesigned in accordance with masters' and practitioners' recommendations.

Ms. Ogletree pointed out that Rule 9-206 used to be numbered Rule S74. The parties present the statement to the court, either agreeing or disagreeing as to the valuations of marital and non-marital property. This allows the court lead time to get the parties' positions on the table. Occasionally, one party will

not cooperate and give the necessary information. Usually the forms get filed on time. Mr. Johnson questioned as to why the form is titled a Ajoint statement.@ Ms. Ogletree responded that the parties agree or disagree as to certain items. The Vice Chair commented that it is similar to a joint pretrial order. Mr. Hochberg inquired if this is evidence, and Judge Cawood answered that it is evidence, but it is not binding. The Chair added that it is an admission. Ms. Ogletree said that some things are added at the last minute, such as disposition of houses, cars, and liens.

Ms. Ogletree noted that the statement is supposed to be filed a certain number of days before the trial. Mr. Sykes pointed out that section (c) provides that the statement is to be filed ten days before the trial. Thirty days before the joint statement is due to be filed, each party serves on the other party a proposed statement. Is the proposed joint statement a collation of the two documents into one? Ms. Ogletree responded in the affirmative. Mr. Sykes remarked that the Style Subcommittee can clarify this. The Committee approved Rule 9-206 as presented.

Ms. Ogletree presented Rule 9-208, Testimony, for the Committee’s consideration.

Rule 9-208. TESTIMONY

A judgment granting a divorce, an annulment, or alimony may be entered only upon testimony in person before an examiner or master or in open court. In an uncontested case, testimony shall be taken before an examiner or master unless the court directs otherwise. Testimony of a corroborating witness shall be oral unless otherwise ordered by the court for good cause.

Cross reference: For requirement of oral testimony by plaintiff in divorce actions, see Code, Family Law Article, §1-203 (c). For requirement of corroboration, see Code, Family Law Article, §7-101 (b).

Source: This Rule is derived from former Rule S75 a.

Rule 9-208 was accompanied by the following Reporter's Note.

It is recommended that section b of current Rule 9-208 (former Rule S75) be omitted from this Rule. Rule 2-613 governs the entry of a default judgment and contains a cross reference to the Soldiers and Sailors Relief Act. The first sentence of current Rule 9-204 (former Rule S73), pertaining to the entry of an order of default pursuant to Rule 2-613 also is not carried forward. Inasmuch as the Title 2 Rules apply unless otherwise expressly provided or necessarily implied, that sentence is not needed. The substance of the second sentence of current Rule 9-204 is incorporated in this proposed revision of Rule 9-208.

Section (c) of current Rule 9-208, pertaining to stale testimony, also has been omitted. The Subcommittee is of the opinion that the section serves no useful purpose.

Ms. Ogletree said that the changes from the existing rule are that section (b) pertaining to default cases and section (c) pertaining to stale testimony have been deleted. Judge Cawood commented that stale testimony is testimony taken over 90 days previously. Ms. Ogletree remarked that it used to be 30 days. The Chair asked if there is a statute concerning this. Ms. Ogletree responded that there was a statute long ago, but it is not in existence currently. She explained that the Subcommittee's view was that section (c) should be deleted because some cases take three to four months for a decision, and a party who is just over the poverty level may not be able to pay the costs to take new testimony. The Chair noted that the statute which required this provision has been eliminated, so it is not necessary to keep the provision in the Rule if the policy decision is to eliminate it.

Judge Cawood suggested that if the testimony is over 90 days old, the Rule could provide that the court could require additional testimony or affidavits. Ms. Ogletree reiterated that there are economic issues. The Vice Chair pointed out that the court has the power to call the parties in for additional testimony. In an uncontested case, further testimony should not be necessary unless the court orders otherwise. The Chair said that the court can award the divorce and resolve the property

issues later. If the Court of Appeals is concerned about this, it can direct the Rules Committee.

The Vice Chair commented that the Reporter's note provides that Rule 9-204, pertaining to the entry of an order of default pursuant to Rule 2-613, is not carried forward. Ms. Ogletree responded that only the first sentence has been deleted. The Vice Chair said that the benefit of the default order is to clarify that in divorce cases, if the defendant does not answer, he or she is in default. Ms. Ogletree stated that there is no intention to change this. The Reporter pointed out that the Rules in Title 2 apply to divorce cases, and Rule 2-613 governs orders of default. The Vice Chair suggested that the Rule could expressly provide that the default judgment process applies. She asked when the sentence, which is suggested for deletion, was added. Ms. Ogletree answered that before the order of default, there was a decree pro confesso which allowed a party to proceed without the other party. The Reporter suggested that the following language could be added to the cross reference: AFor default procedures, see Rule 2-613.@ The Committee agreed by consensus with this change. The Committee approved Rule 9-208 as amended.

Ms. Ogletree presented Rule 9-209, Annulment--Criminal Conviction, for the Committee's consideration.

Rule 9-209. ANNULMENT--CRIMINAL CONVICTION

> When a court shall convict one or both of the spouses of bigamy or of marrying within any prohibited degree, the judgment of conviction shall serve as an annulment of the unlawful marriage. Upon request of an interested person and the filing of a copy of the docket entries, the circuit court for the county in which the judgment of conviction was entered shall enter a judgment of annulment.
>
> Cross references: For within what degrees of kindred or affinity marriages are void, see Family Law Article, §§2-201 and 2-202. For crime of bigamy, see Article 27, §l8. For crime of unlawful marriage, see Family Law Article, §2-202.
>
> Source: This Rule is derived from former Rule S76.

Rule 9-209 was accompanied by the following Reporter's Note.

> This Rule is derived from Rule 9-209 (former Rule S76). It clarifies how a civil judgment of annulment may be obtained following the annulment of an unlawful marriage by a criminal conviction of one or both parties.

Ms. Ogletree explained that the judgment of conviction of bigamy or marrying within any prohibited degree serves as an annulment. The second sentence provides the notice. The Subcommittee debated this Rule, and it has made changes to it. It was not clear from the current Rule whether a judgment of

bigamy acts as an annulment, or if a separate action had to be filed. The proposed Rule clarifies this. The Vice Chair inquired as to why the copy of the docket entries has to be filed. Judge McAuliffe answered that title searchers may not search the criminal records. Judge Cawood asked if this defeats the right to a monetary award. Ms. Ogletree replied that it does not defeat the right to a monetary award for 90 days. Judge Cawood inquired as to what happens after 90 days. Ms. Ogletree observed that this is the existing law. The Chair said that a judgment of conviction for bigamy or marrying within any prohibited degree serves as an annulment of an unlawful marriage. Ms. Ogletree commented that this leaves in limbo the question posed by Judge Cawood. Judge Vaughan noted that the marriage would be void ab initio. Judge Cawood questioned whether the Code provides that one can receive a monetary award if a marriage has been annulled. Judge Vaughan observed that the Code has very little pertaining to annulments.

Mr. Sykes pointed out that the two sentences in Rule 9-209 are inconsistent. Judge Vaughan suggested that the judgment of conviction be filed in the equity records. The Chair suggested that the language in the Rule could be: AA final judgment of conviction of bigamy or of marrying within any prohibited degree shall serve as an annulment and shall be recorded...@. The Vice

Chair looked at current Rule 9-209 and pointed out that the only case listed under the Rule was one pertaining to the history of the statutory source -- Townsend v. Morgan, 192 Md. 168 (1949). She asked if this discussion is a matter for the Rules Committee or if it is statutory. Ms. Ogletree said that it is important to clarify that the marriage has been terminated if there is real property. If there is no property, no separate proceeding needs to be filed.

The Vice Chair questioned as to whether the Rules Committee wrote this Rule. What is the status of the marriage if the judgment is reversed on appeal? The Reporter pointed out that the Chair had suggested that the judgment in the criminal action should be final before this Rule is invoked. The Chair added that this Rule would be used after there is no longer an appeal as of right in the criminal action. Ms. Ogletree inquired as to when the marriage is void -- when all the appeals are exhausted or when the circuit court says that the marriage is void.

Mr. Hochberg suggested that there should be a review of where the venue is -- is it in the court where the conviction is? He questioned as to why venue should not be where the parties reside or where they own property. The Chair suggested that the Rule be sent back to the Subcommittee to check the history and whether any statutes are still in effect. The Committee agreed

by consensus to remand the Rule to the Subcommittee.

Ms. Ogletree presented Rule 9-210, Revocation of Limited Divorce C Joint Application, for the Committee's consideration.

> Rule 9-210. REVOCATION OF LIMITED DIVORCE -- JOINT APPLICATION
>
> On the joint application of the parties filed at any time after entry of a judgment for limited divorce, the court that entered the judgment may revoke it.
> Source: This Rule is derived from former Rule S77 a.
>
> Cross reference: See Article III, §38, Maryland Constitution. See also Koger v. Koger, 217 Md. 372 (1958); Weiss v. Melnicove, 218 Md. 571 (1959). For other powers of the court as to judgments for limited divorce, see Code, Family Law Article, §§1-201 and 1-203.

Rule 9-210 was accompanied by the following Reporter's Note.

> This Rule incorporates the substance of current Rule 9-210 a (former Rule S77 a.), with style changes.
>
> Section b of the current Rule has been omitted as unnecessary, in light of Code, Family Law Article, §8-102.

Ms. Ogletree said that when the parties agree to reconcile, the court may revoke the judgment of limited divorce. The Chair asked if the court is able to refuse to revoke the judgment. Ms. Ogletree responded that the current Rule uses the language

Amay revoke.@ The Chair suggested that the Rule could read as follows: AAfter an entry of a judgment of limited divorce or upon the parties' request, the court shall...@. He asked why the court should have the discretion to deny the request. The Vice Chair questioned whether this negates the time frames in Rule 2-535. Ms. Ogletree responded that ordinarily one would file a supplemental complaint for an absolute divorce one year later. In a number of cases, the party asks for a limited divorce, then reconciles with the other party before the matter has ripened to an absolute divorce. The Vice Chair asked how the Rule addresses this. Ms. Ogletree replied that people do not know that the judgment can be revoked. She said that she had never seen a revocation. Judge Cawood added that he had never seen one, either, and it did not matter to him whether the Rule used the word Amay@ or the word Ashall.@ Mr. Hochberg suggested that the word Amay@ be left in. The Chair inquired as to whether the proposed Rule is the same as the current one, and Ms. Ogletree responded that it is basically the same. The Committee approved Rule 9-210 as presented.

Ms. Ogletree presented Rule 9-211, Order Not to Leave State, for the Committee's consideration.

Rule 9-211. ORDER NOT TO LEAVE STATE

(a) Who May File

A person designated to receive support in an order mandating the payment of support may file an ex parte application for an order prohibiting an obligor who has failed to comply with the support order from leaving this State.

(b) Content of Application and Order

The application shall be supported by affidavit setting forth facts sufficient to support a finding that (1) the obligor against whom the order is to be directed has failed to comply with an order mandating the payment of support, (2) the obligor intends to leave this State and place the obligor beyond the jurisdiction of the court, and (3) other means of enforcing the support order would be inadequate. The order shall notify the obligor against whom it is directed not to leave the State and of the right to apply for modification or dissolution of the order on two days' notice, or such shorter notice specified in the order, to the person who obtained the order. The court shall promptly hear and determine an application for dissolution or modification.

Source: This Rule is derived from former Rule S72 d.

Rule 9-211 was accompanied by the following Reporter's Note.

This Rule incorporates the substance of current Rule 9-203 d (former Rule S72 d) but instead of the former term "writ of ne exeat" refers to an "order not to leave the State." It is revised so as to expressly apply only when there has been a default in payment of court ordered support. This is consistent with the holding in Jackson v. Jackson, 15 Md. App. 615 (1972). The Rule has also been

modified by addition of a provision requiring the applicant to set forth facts showing that other available enforcement remedies would be inadequate. The Court of Special Appeals in the Jackson case cited a Supreme Court opinion stating that the writ of ne exeat "has been abolished in some states and its use is largely regulated and restricted by statute in others." The Court of Special Appeals also stated in its opinion as follows:

> The few Maryland cases which have considered the writ have been decided on the basis of the English common law and indicate a cautious approach to allowing its issuance. ... In addition, Maryland and Florida, as well as the great majority of other states, have enacted some form of the Reciprocal Enforcement of Support Act which makes an absconding husband amenable to other interstate processes. ... There are also other remedies available to deal with a departing husband. ...
>
> 15 Md. App. at 619 and 623

Because this revised rule authorizes the application for the order to be filed and decided ex parte, language similar to that found in the ex parte injunction rule has been added to this Rule. The new language provides to the obligor against whom the order is directed an opportunity to be heard promptly after service of the order on the issue of its modification or dissolution.

Ms. Ogletree explained that the Rule is similar to current Rule 9-203 d, but it changes the term Awrit of ne exeat@ to Aorder

not to leave the State.@ It is designed to prohibit someone who owes support payments from leaving the State. There is a question about eliminating the writ of ne exeat. Master Raum had expressed the view that the writ should be retained because it is applicable in certain cases. Ms. Ortiz asked whether the order is still good outside of the jurisdiction in which it was filed. Ms. Ogletree answered that personal service would be needed. The Vice Chair asked whether these orders are constitutional, and questioned whether there is any other means to handle this problem. Mr. Sykes stated that the concern had been that the obligor could move to a state which does not have a reciprocal support law, which all states now have

The Vice Chair moved to delete this Rule. The motion was seconded, and it carried on a vote of seven in favor, six opposed.

Ms. Ogletree told the Committee that Master Raum could not attend the meeting until after lunch. He will explain Rule 9-212 later, in the afternoon. The Rule provides for an extraordinary writ, which Master Raum uses in support enforcement cases. The Reporter added that Master Raum spent much time working on this Rule. Judge Cawood noted that there are two parts to the Rule. The first is a procedure to seize property of a defendant who disappears. The second part of the Rule is used as a collection

tool by Master Raum. The Chair commented that the Rule is similar to Rule 2-115, Attachment Before Judgment. The Reporter said that Master Raum had researched Internal Revenue Service regulations with respect to the use of procedures set out in this Rule.

Ms. Ogletree presented Rule 2-504.1, Scheduling Conference, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE C CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504.1 to allow a scheduling conference in an action assigned to a family division to be held earlier that 30 days after the entry of the order setting the scheduling conference and to add certain provisions concerning a scheduling conference in an action assigned to a family division, as follows:

Rule 2-504.1. SCHEDULING CONFERENCE

(a) When Required

The court shall issue an order requiring the parties to attend a scheduling conference:

(1) in any action placed or likely to be placed in a scheduling category for which the case management plan adopted pursuant to Rule 16-202 b requires a scheduling conference;

(2) in any action in which an objection to computer-generated evidence is filed under Rule 2-504.3 (d); or

(3) in any action, upon request of a party stating that, despite a good faith effort, the parties have been unable to reach an agreement (i) on a plan for the scheduling and completion of discovery, (ii) on the proposal of any party to pursue an available and appropriate form of alternative dispute resolution, or (iii) on any other matter eligible for inclusion in a scheduling order under Rule 2-504.

(b) When Permitted

The court may issue an order in any action requiring the parties to attend a scheduling conference.

(c) Order for Scheduling Conference

An order setting a scheduling conference may require that the parties, at least ten days before the conference:

(1) complete sufficient initial discovery to enable them to participate meaningfully and in good faith in the conference and to make decisions regarding settlement, consideration of available and appropriate forms of alternative dispute resolution, limitation of issues, stipulations, and other matters that may be considered at the conference; and

(2) confer in person or by telephone and attempt to reach agreement or narrow the areas of disagreement regarding the matters that may be considered at the conference and determine whether the action or any issues in the action are suitable for referral to an alternative dispute resolution process in accordance with Title 17, Chapter 100 of these rules.

(d) Time and Method of Holding Conference

Except (1) upon agreement of the parties, ~~or~~ (2) upon a finding of good cause by the court or (3) in an action assigned to a family division under Rule 16-204 (a)(2), a scheduling conference shall not be held earlier than 30 days after the date of the order. If the court requires the completion of any discovery pursuant to section (c) of this Rule, it shall afford the parties a reasonable opportunity to complete the discovery. The court may hold a scheduling conference in chambers, in open court, or by telephone or other electronic means.

(e) Scheduling Order

Case management decisions made by the court at or as a result of a scheduling conference shall be included in a scheduling order entered pursuant to Rule 2-504. A court may not order a party or counsel for a party to participate in an alternative dispute resolution process under Rule 2-504 except in accordance with Rule 9-205 or Rule 17-103.

(f) Family Division Scheduling Conference

In an action assigned to a family division under Rule 16-204 (a)(2), the scheduling conference may be used to initiate settlement discussions and facilitate settlement in an appropriate case. If the parties reach an agreement on an issue, the court shall place the agreement on the record and direct that a consent order be prepared and filed. The Court may take testimony pursuant to Rule 9-208 if all issues have been resolved and the necessary witnesses are present.

Source: This Rule is new.

Rule 2-504.1 was accompanied by the following Reporter's Note.

> The proposed amendments to Rule 2-504.1 are based upon proposed amendments to that Rule recommended in the April 1, 1999 Report of the Case Processing Subcommittee of the Ad Hoc Committee on the Implementation of the Family Divisions.
>
> A proposed amendment to section (d) allows the scheduling conference in an action assigned to a family division under Rule 16-204 (a)(2) to be held earlier than 30 days after the entry of the order setting the scheduling conference.
>
> Proposed new section (f) emphasizes that a scheduling conference in an action assigned to a family division under Rule 16-204 (a)(2) may be used to initiate settlement in an appropriate cases. If an agreement is reached, the agreement is placed on the record and the court directs the filing of a consent order. Additionally, if appropriate, testimony may be taken pursuant to Rule 9-208 and a judgment granting a divorce, annulment, or alimony may be entered.

Ms. Ogletree explained that a new section (f) is being proposed at the request of the Case Processing Subcommittee of the Ad Hoc Committee on the Implementation of the Family Division, chaired by the Honorable Albert Matricciani, of the Circuit Court for Baltimore City. The Chair expressed the view that this would be a good practice. The Vice Chair pointed out that including this language may indicate that this is precluded in other cases. The Chair asked if section (f) could be put into

a Reporter's note or Committee note, instead of in the Rule itself. Ms. Ogletree responded that the Subcommittee took no position on this.

The Reporter pointed out that the purpose of Rule 2-504.1 is to schedule cases, not necessarily to settle them, although settlement is preferable. The proposed addition to the Rule is a compromise between the views of the Case Processing Subcommittee and the Family Law Subcommittee. Ms. Ortiz remarked that the Case Processing Subcommittee would like to recharacterize the scheduling conference as a settlement conference. The Vice Chair observed that the Rule requires that a settlement reached at the scheduling conference be placed on the record. Ms. Ortiz replied that although this is preferable, it is not necessary. Mr. Sykes commented that this could be changed to Amay place the agreement on the record.@

The Chair commented that attorneys may come to the conference and try to settle the case. If a settlement is worked out, the judge may try to hammer it out, but what happens to the rest of the docket? Ms. Ortiz noted that in family cases, the scheduling conference is a very important case management tool. The Chair pointed out that the scheduling conference may be conducted by someone other than the court. The court would have to be told to place the settlement on the record and issue a

consent order. Mr. Hochberg observed that if a retired judge is handling the settlement conference, he or she acts in the role of a master. Can the retired judge be called Athe court@?

Judge Cawood expressed the concern, already voiced by the Vice Chair, that by including this provision, it would indicate that it cannot be used in other actions. Ms. Ortiz remarked that there is sentiment to expand the role of the scheduling conference in family cases. The Chair suggested that the language beginning with Athe scheduling conference may be used to....@ could be added to another part of the Rule. The Vice Chair pointed out that Rule 2-504.1 already contemplates that settlement is to be discussed. If an agreement is not reached, what else is required? Mr. Sykes said that this is a matter for the culture of this branch of the law and not for the Rules. It can be handled through educational seminars, literature, and administrative memoranda. Ms. Ogletree commented that one problem in the family division is the number of pro se litigants. They need information about the scheduling conference. Mr. Sykes remarked that most of the pro se litigants will not read the Rules of Procedure. Ms. Ortiz said that she is a member of a group of lawyers and judges who are redrafting the forms in family cases. They are putting in notices to the pro se litigants.

Ms. Ortiz stated that there is a question about the court's authority to conduct a divorce hearing at the time of the scheduling conference. The Vice Chair commented that there is no question if a settlement is reached. Ms. Ortiz explained that the situation to be avoided is where the plaintiff says that he or she did not know that a hearing was to be held, and did not bring a corroborating witness. The Chair pointed out that this could be in the jurisdiction's case management plan. The family division may need express authority to require the presence of other persons at the scheduling conference. The Vice Chair expressed the view that it would be a mistake to require the presence of the corroborating witness. Ms. Ortiz remarked that she recommends that the presence of the corroborating witness not be required at the scheduling conference. The Chair said that this issue should be left to be decided by the parties and their attorneys. Judge Cawood noted that the presence of the corroborating witness no longer may be required, because of the deletion of Rule S73. The Chair commented that proposed revised Rule 9-208, Testimony, covers the corroborating witness.

The Vice Chair moved to delete proposed section (f) from Rule 2-504.1. The motion was seconded, and it carried with one opposed. The amendments to section (d) were approved as presented.

Ms. Ogletree presented Rule 2-507, Dismissal For Lack of Jurisdiction or Prosecution, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-507 to provide that certain orders pertaining to child support or health insurance coverage for children are not rescinded or modified by dismissal of an action for lack of prosecution, as follows:

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

. . .

(f) Entry of Dismissal

If a motion has not been filed under section (e) of this Rule, the clerk shall enter on the docket "Dismissed for lack of jurisdiction or prosecution without prejudice" 30 days after service of the notice. If a motion is filed and denied, the clerk shall make the entry promptly after the denial. Dismissal under this section does not rescind or modify an order entered prior to dismissal pertaining to the payment of child support, child custody or visitation, or the provision of health insurance coverage for a child in accordance with Code, Family Law Article, §12-102.

. . .

Rule 2-507 was accompanied by the following Reporter's Note.

> In conjunction with revision of the Title 9, Chapter 200 (the former Subtitle S Rules), the Subcommittee recommends an amendment to Rule 2-507 that provides for continuation of orders pertaining to child support and health insurance for children subsequent to dismissal of a domestic case for lack of prosecution.

Ms. Ogletree explained that the purpose of the new language is to ensure that when a case is dismissed, the existing pendente lite child support orders and custody orders entered early in the proceeding remain in effect. The Vice Chair asked about orders for spousal support. Ms. Ogletree replied that the Rule pertains only to child support and custody orders. Judge Vaughan pointed out that if the contemplated dismissal is for lack of jurisdiction, the defendant would not know about the orders. The Chair said that these would not have been entered prior to dismissal of action for lack of jurisdiction. They may have been entered prior to dismissal of an action for lack of prosecution. The Vice Chair commented that the orders are not judgments. Ms. Ogletree responded that the orders were adjudicated in a pendente lite proceeding. Judge Cawood remarked that once the case is dismissed, there may be arrearages owed. Can this continue once the action is dismissed?

The Vice Chair questioned where this Rule came from. Ms. Ogletree answered that it antedated her service on the

Family/Domestic Subcommittee. The Vice Chair observed that everything may be erased once the case is dismissed. Mr. Sykes pointed out that the arrearages should be able to be collected. The Vice Chair said that in cases dismissed for lack of prosecution, a party would be entitled to the arrearages. She inquired as to whether a Rule is necessary. Judge Vaughan noted that there are two types of dismissals being discussed. One is dismissal for lack of prosecution; the other is dismissal for lack of jurisdiction over the defendant where there has been no service. Ms. Ogletree noted that the latter provision covers an ex parte award of custody. Judge Vaughan observed that an ex parte domestic violence order will expire if there is no service on the defendant.

The Chair said that the idea of Rule 2-507 is to get the inactive cases out of the system. The Vice Chair commented that the Rule implies that spousal support cannot be collected. Judge Cawood remarked that if a domestic case is dismissed with pendente lite orders remaining, the arrearages continue to the date of the dismissal. The Chair stated that a party can come in to court to ask for the money owed. Ms. Ogletree pointed out that this leaves out the children who are owed support but who cannot speak up for themselves. She observed that if no one has the money to pay for an absolute divorce, the case will not go

forward. She reiterated that it is the children who suffer. The Vice Chair noted that the parents have responsibility for the children.

Judge Dryden observed that a party can go to the Bureau of Support Enforcement or Legal Aid. Ms. Ogletree said that there is a strata of people in her county who cannot qualify for assistance and cannot afford counsel. She referred to the common scenario of the husband or wife filing for divorce, and there is a support order for earnings withholding. The obligee is satisfied with that result, and never goes forward with the divorce. The case is dismissed, and the earnings withholding stops. The Chair asked who will advocate for the children. Ms. Ogletree replied that this is the problem. Ms. Ortiz commented that families may leave with a support order and do not know about the divorce.

The Chair noted that the Rule provides notice in all cases about the outstanding orders, and this will avoid the clerks having to go through every file before the notice is sent. Mr. Hochberg inquired as to where the payee goes to get relief if the order continues. Ms. Ogletree commented that the notice could be improved. One suggestion would be to include in the notice in bold capital letters that once the case is dismissed, the court order will stop if there is no action on the part of the

recipient. The fear is that the person receiving the notice does not understand the consequences of the dismissal. Ms. Ortiz added that another problem is that the obligee parent may no longer retain custody of the child. Senator Stone remarked that if the party originally was represented by an attorney, the attorney will get the notice about the dismissal and can explain the consequences to the client. Ms. Ogletree responded that many of the litigants were pro se.

The Chair stated that to deal with this problem the Rule could provide that any pendente lite order pertaining to custody or child support is not rescinded by a dismissal. The Vice Chair suggested that in place of the proposed language for section (f), in section (d) of Rule 2-507, Notification of Contemplated Dismissal, language could be added which would provide for notice in a family law action stating that dismissal of the action terminates any orders for child support, child custody, or visitation that were entered in the action. Senator Stone suggested that this should be in bold print. Ms. Ogletree added that it should be in simple English. The Vice Chair moved to add this language to section (d), the motion was seconded, and it passed unanimously.

Ms. Ogletree presented Rule 2-535, Revisory Power, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-535 to specify how a court's revisory power is invoked when the court has continuing jurisdiction to modify its judgment, as follows:

Rule 2-535. REVISORY POWER

(a) Generally

On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534.

(b) Fraud, Mistake, Irregularity

On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Committee note: This section is intended to be as comprehensive as Code, Courts Article, §6-408.

(c) Newly-Discovered Evidence

On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.

(d) Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

(e) Continuing Jurisdiction

A party may request revision of a judgment at any time with respect to any matter over which the court has continuing jurisdiction. The request may be made by motion if the party against whom the motion is directed has an attorney of record in the action at the time the motion is filed. Otherwise, the request shall be made by petition. Upon the filing of a petition the court shall issue an order setting the time within which a response to the petition must be filed and notifying the person to whom it is directed that the failure to file a response within the time allowed may result in the granting of the relief sought. Service of the petition and order shall be in accordance with Rule 2-121 or in accordance with Rule 2-122 if the court is satisfied by affidavit that the petitioner, after reasonable efforts made in good faith, has been unable to ascertain the whereabouts of the person against whom the relief is sought.
Cross reference: For automatic termination of attorney's appearance, see Rule 2-132.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 625 a.
Section (b) is derived from former Rule 625 a.
Section (c) is derived from former Rule 625 b.
Section (d) is derived from FRCP 60(a) and

former Rule 681.

Section (e) is new.

Rule 2-535 was accompanied by the following Reporter's Note.

> In connection with the revision of Title 9, Chapter 200 (the former Subtitle S Rules), the Committee noted that the Maryland Rules do not specify how the court's revisory power is invoked when the court has continuing jurisdiction to modify its judgment, e.g., when the judgment includes an award of alimony or support or injunctive relief. (Continuing jurisdiction is an exception to the limited revisory power of the court addressed in Rule 2-535 and Code, Courts Article, §6-408.)
>
> Noting that Rule 2-535 covers the general revisory power of the court, the Committee is proposing a new section (e) to provide a procedure for requesting modification of a judgment over which the court has continuing jurisdiction. The application is made by motion or petition depending upon whether the adverse party is represented by counsel at the time. If a petition is filed the court issues an order directing a response within a specified time. The petition and order are served in accordance with the Title 2, Chapter 100 Rules. If a motion is filed, Rule 2-311 will apply.

Ms. Ogletree explained that the proposed language provides that a party may request revision of a judgment at any time with respect to matters over which the court has continuing jurisdiction. The Vice Chair commented that she agrees with the concept of the modification, but she did not understand the use

of a motion and a petition. Ms. Ogletree responded that this is a matter for the Style Subcommittee. The Subcommittee would like to have included in the Rule the concept that if there is continuing jurisdiction, it is not necessary for a party to start all over again. The Chair suggested that language could be added to section (b) which would provide that when the court has continuing jurisdiction over a matter, on motion of any party, or on its own motion, the court may exercise revisory power and control over the judgment. The Committee agreed by consensus to this suggestion. Mr. Sykes suggested that only the first sentence of section (e) be retained. Ms. Ogletree pointed out that there remains a question as to whether original service is needed if more than 30 days has passed. Judge McAuliffe commented that case law provides that due process requirements have to be satisfied.

The Vice Chair remarked that section (e) requires service of original process pursuant to Rule 2-121. The proposed change to section (b) does not resolve the problem of service. In existing section (b), the issue of service is not addressed in the case of fraud, mistake, or irregularity. The Reporter pointed out that cases involving fraud are infrequent, but there are a lot of family law cases involving continuing jurisdiction. Mr. Sykes noted that personal service is required once the appearance of

the attorney has been terminated. There should be a bright line in the Rule, and not a case-by-case determination. After 30 days, personal service is required on the motion. The Reporter suggested that service pursuant to Rule 2-121 be added to section (b). The Chair commented that the recent change made to Rule 2-121 will make service easier. Mr. Sykes suggested that service pursuant to Rules 2-121 and 2-122 be required in section (b) if the motion is filed more than 30 days after entry of the judgment. The Committee agreed by consensus to this change and approved the Rule as amended.

After the lunch break, Ms. Ogletree presented Rule 9-212, Sequestration, for the Committee's consideration.

Rule 9-212. SEQUESTRATION

(a) Application for Writ

(1) Alimony From Non-Resident Defendant; Original Process

(A) A person who seeks an award of alimony from a non-resident defendant under Code, Family Law Article, §11-104 shall file with the complaint a verified ex parte application for an order to sequester the defendant's real and personal property located in this State. Any award of alimony in this proceeding shall be limited to the extent of the assets sequestered.

(B) The clerk shall issue a summons pursuant to Rule 2-112 upon the filing of the complaint and application. If the

whereabouts of the defendant are unknown or the summons is not served despite reasonable efforts to effect service and if the defendant does not voluntarily appear, the applicant may seek an order of publication or posting pursuant to Rule 2-122 for in rem jurisdiction.

(2) Enforcement of an Order for Child Support, Alimony, Attorney's Fees, or a Monetary Award

(A) A person designated to receive child support, alimony, attorney's fees awarded for the prosecution or defense of a claim for child support or alimony or as a result of any proceeding for the modification thereof, or a monetary award reduced to judgment, in an order mandating the payment of support, attorney's fees, or a monetary award, may request an order to sequester all or part of the real and personal property of the obligor necessary to satisfy the order by filing a verified ex parte application for a writ of sequestration or by including a verified application as part of a petition for civil contempt. The application shall include a certification that no other means to enforce the order is reasonably practicable.

(B) The court shall not issue a writ of sequestration under this subsection unless the court makes an affirmative finding that no other means to enforce the order of court is reasonably practicable.

(b) Additional Information

The court may require the person requesting sequestration to provide additional information regarding the application and the property to be sequestered.

(c) Issuance of Writ

Upon entry of an order for sequestration, the clerk shall issue one or more writs of sequestration and shall attach to each writ a copy of the verified application. When the writ directs a sequestration of property of the defendant, the procedure shall in accordance with Rules 2-641 and 2-642. When the writ directs a sequestration of credits of the defendant, the procedure shall be in accordance with Rule 2-645, except that no judgment shall be entered against the garnishee unless a judgment has been entered for the applicant on the underlying claim. In applying Rules 2-641, 2-642, and 2-645, the applicant shall be treated as a judgment creditor and the defendant shall be treated as a judgment debtor, and a statement of the amount of the applicant's claim shall be treated as a statement of the amount owed under the judgment.

(d) Duties of the Trustee

The court shall appoint a trustee who shall (1) post any bond required by the court in the order of appointment, (2) cause the immediate evaluation of each property sequestered, (3) file an accounting of the property within 30 days after the service of the writ, and (4) comply with the provisions of Title 10, Chapter 700 of these Rules.

(e) Determination by Court

Upon the filing of an accounting by the trustee pursuant to subsection (d) of this Rule, the court shall hold a hearing to determine (1) the amount of any alimony to be awarded pursuant to Code, Family Law Article, §11-104 out of the property, if necessary, and (2) the extent of the property necessary to be retained under the sequestration for either the full compliance with any support order, order for attorneys fees, or monetary award or as surety for full compliance with the order. All property not necessary for

compliance, or as surety, shall be released from the sequestration.

(f) Dissolution of Sequestration for Lack of Service

A writ of sequestration shall dissolve 60 days after the levy is made or a third party in possession is served unless before that time the summons is served upon the defendant pursuant to Rules 2-121 or 2-122. Upon request made within the initial 60 day period, the court for good cause shown may extend the sequestration for not more than 60 additional days to permit service to be made or publication commenced.

(g) Release of Property or Dissolution of Sequestration

(1) Preliminary Motion by Defendant or Third Party in Possession

Upon motion by a defendant or third party in possession, the court may release some or all of the sequestered property on the ground that the plaintiff is not entitled to a writ of sequestration. If the motion is filed before the movant's answer is due, the motions shall be treated as a preliminary motion under Rule 2-322.

(2) Bond

The defendant may obtain release of the sequestered property by posting a bond in an amount equal to the value of the property, as determined by the court, or in the amount of the petitioner's claim, whichever is less, conditioned upon satisfaction of any judgment that may be recovered.

(3) Motion to Release

Upon motion by the defendant, the court may release some or all of the

sequestered property if it finds that (A) the complaint has been dismissed or the claim settled, (B) the applicant has failed to comply with this Rule or an order of court regarding these proceedings, (C) the applicant fails to demonstrate the probability of success on the merits, (D) property of sufficient value to satisfy the claim and probable costs will remain subject to the sequestration after the release, or (E) sequestration of the specific property will cause undue hardship to the defendant and the defendant has delivered to the trustee or made available for sequestration alternative property sufficient in value to satisfy the claim and probable costs.

(h) Claim of Property by Person Other Than the Applicant or Defendant

If sequestered property is claimed by a third person other than the applicant or defendant, the person claiming the property may proceed in accordance with Rule 2-643(e).

(i) Retention of Sequestered Property

All property and funds coming into the possession of the trustee by virtue of a sequestration order shall be retained during the pendency of the action unless otherwise directed by the court. Upon request of a party, the court may order the sale or other disposition of any perishable property upon appropriate terms and conditions.

(j) Decision in Favor of Defendant

If the decision is in favor of the defendant, the court shall dissolve the sequestration. On motion, the court may assess and enter judgment for any damages sustained by the defendant by reason of the sequestration.

(k) Decision or Judgment in Favor of the

Applicant

(1) Generally

If a decision or judgment is entered in favor of the applicant, the court shall, by one or more orders: (A) order the trustee to make payments out of the estate to the extent necessary to satisfy the order for support, attorneys fees or monetary award, (B) order the trustee to retain, as surety, property and funds in the trust estate necessary for future compliance with the order for support, attorneys fees, or monetary award, and release any property and funds that are not necessary, and (C) upon full performance of the obligations imposed in the order for support, attorneys fees or monetary award, and full payment of costs and fees allowed the trustee, order any property and funds remaining in the trust estate to be released from the requirements of the sequestration.

(2) If No Personal Jurisdiction Obtained

If personal jurisdiction was not obtained over the defendant, a judgment in favor of the applicant shall be an in rem judgment against the sequestered property, and entry and satisfaction of the judgment will not bar further pursuit of the applicant's claim in the same or another action for any unpaid balance.

Source: This Rule is new.

Rule 9-212 was accompanied by the following Reporter's Note.

Proposed Rule 9-212 establishes procedures for two types of writs of sequestration: (1) as a writ issued in conjunction with a complaint seeking alimony from a non-resident defendant under Code, Family Law Article, §11-104 and (2) as an

> extraordinary remedy for enforcement of an existing order for child support; alimony; attorneys fees as a result of the prosecution or defense of an action for child support, alimony, or modification thereof; or an order for a monetary award that has been reduced to a judgment.
>
> The proposed Rule is new, but it is based in part upon former Rule 685 and current Rule 2-115. Case law pertaining to section (a) of this Rule includes Oles Envelope Corp. v. Oles, 193 Md. 79 91949); Zouck v. Zouck, 204 Md. 285 (1954); Donigan v. Donigan, 208 Md. 511 91956); Reichhart v. Brent, 247 Md. 66 (1967); Keen v. Keen, 191 Md. 31 (1948); Dackman v. Dackman, 252 Md. 331 (1969); and Colburn v. Colburn, 20 Md. App. 346 (1974). Case law pertaining to section (e) of this Rule includes Johnson v. Johnson, 202 Md. 547 (1953) and Stable v. Dixon, 6 East 163, 102 Eng. Rep. 1249 (1805).

Master Raum explained that he had drafted Rule 9-212. He uses the procedures set out in the Rule in domestic cases with much success in a number of different areas. Subsection (a)(1) pertains to an award of alimony against an out-of-state obligor with property in Maryland. It is an in rem proceeding against the property. The only way to obtain jurisdiction is through an in rem proceeding. The complaint for alimony is filed, and an order is issued. The sheriff values the property, and the alimony cannot exceed the value. Issuance of the writ of sequestration if the first step to acquire jurisdiction.

In subsection (a)(2), in conjunction with a contempt order

when someone is not paying, a writ can be issued against the property of the obligor. A trustee is appointed to receive the funds to pay to the recipient. The writ can be used to enforce alimony and child support against a pension under the Employee Retirement Income Security Act of 1974 (ERISA). The ERISA statute allows a Maryland circuit court to divide a pension. The writ can be used to seize a lump sum distribution from a pension plan.

The Chair questioned as to why the Rule is necessary if Code, Family Law Article, §11-104 pertains to an award of alimony from a non-resident defendant. Master Raum answered that the Rule establishes a procedure to effectuate the Code provision. The Chair asked why the application is filed with the complaint when the defendant is a non-resident. He suggested that the language Awith the complaint@ be taken out of subsection (a)(1)(A). The Committee agreed by consensus to this change.

Mr. Brault inquired as to the difference between this Rule and the attachment before judgment proceeding in Rule 2-115. Master Raum replied that it does not fit the definition of an attachment before judgment. The Chair suggested that language could be added to Rule 9-212 to provide that in proceedings in which the plaintiff is seeking alimony from a non-resident defendant who owns property in this State, the plaintiff shall

proceed in accordance with Rule 2-115. The Vice Chair noted that one of the differences between attachment before judgment and the writ of sequestration is the trustee. Master Raum observed that the property may require administration. The Vice Chair remarked that the trustee is more of a receiver. Master Raum said that the term is better as Atrustee@ because there is equitable ownership of the property.

The Chair suggested that a Committee note could be added which would key into the statute and provide that the court may in the appropriate case appoint a receiver or trustee for income-producing property. The Vice Chair asked if the property can be valued in advance. Master Raum commented that the judgment is limited to the value of the asset. The trustee holds the asset, liquidating or supervising it, and receiving the funds to make payment. The Vice Chair inquired if there is reason to treat the property differently from attachment prior to or after judgment. Mr. Sykes noted that the grounds for release are different. The Vice Chair suggested that the Rule could incorporate the grounds for release. Master Raum expressed the view that the nature of the judgment is different. The writ of sequestration is tailored to meet the needs of domestic relations cases.

The Vice Chair commented that it would be better in subsection (a)(1) of Rule 9-212 to use the language of Rule 2-

115, so that it is parallel. Ms. Ogletree responded that the Subcommittee had discussed this, finding that although there are similarities between the two Rules, they do not match on all fours. Section (c) refers to Rules 2-641, 2-642, and 2-645, but there are differences. Master Raum stated that the Rule picks up the due process elements of the service of process rules and the attachment before judgment rules. The Vice Chair questioned whether the attachment before judgment proceeding could be picked up in Rule 9-212. Section (a) is similar to section (c) of Rule 2-115.

The Vice Chair inquired about the language in subsection (a)(2)(A) which reads Ain an order mandating the payment of support, attorney's fees, or a monetary award.@ Mr. Sykes said that this language goes with the word Adesignated@ in the beginning of the subsection. Master Raum pointed out that the Rule can be used to enforce a monetary award by using a Qualified Domestic Relations Order (QDRO), 26 USCS §414(p)(1)(B)(i). Depending on the posture of the case, it may be possible to obtain a lump sum rollover. The Chair commented that once there is a judgment, it can be collected in the same manner as other judgments. Master Raum remarked that a monetary award is not always reduced to a judgment, and obligations to pay future alimony and child support are not reduced to judgment. The Chair

added that if it is, the money judgment rules apply.

Ms. Ogletree asked why this Rule is needed if the attachment before judgment rules are used. The Vice Chair suggested that the language Aor a monetary award reduced to judgment@ be deleted. Master Raum responded that the problem is that monetary awards may be subject to bankruptcy. With a writ of sequestration, the money goes into the hands of the administrator, and there is up to 100% payout. He continued that if a judgment is entered paid, settled, and satisfied, it cannot be reached by bankruptcy. Ms. Ogletree added that a separate fund is set up. Master Raum commented that no provision exists to appoint a trustee in a judgment situation. Judge McAuliffe observed that the history of sequestration is that the assets of the defendant are seized to acquire jurisdiction. This may be unconstitutional. The Chair commented that this may be a matter for the legislature.

The Vice Chair noted that the purpose of subsection (a)(2) is to create an enforcement mechanism for orders that are not reduced to money judgments. The Chair inquired as to why this is an ex parte application, since the court has jurisdiction. Master Raum responded that often the obligor cannot be found or the obligor would transfer or remove the assets as to which the order of sequestration is sought. The Chair said that there are

rules in Titles 2 and 3 concerning this.

Mr. Brault remarked that there is no bond requirement for the writ of sequestration. Master Raum explained that the bond is posted by the trustee. Mr. Brault observed that the rule on attachment before judgment provides that to get attachment before judgment, the attaching party must post bond to guarantee against wrongful damages. Master Raum responded that the idea is that a spouse with no assets should not have to post bond equal to what the person is asking for. Mr. Brault questioned as to what the other differences are between Rule 9-212 and an attachment before judgment. The Vice Chair noted that the problem exists when the obligor holds valuable property and the obligee is waiting for payment of a monetary award. Mr. Brault commented that when no payment is made, it becomes a contempt situation.

The Chair pointed out that there are two situations being discussed. One is the non-resident defendant against whom a claim for alimony has been made and who has attachable property. The Reporter remarked that this serves as original process. The Chair suggested that as to alimony from a non-resident defendant, the section of the Rule can have the procedures to the extent practicable in accordance with pre-judgment attachment. Mr. Brault pointed out that if the language is that the procedure is in accordance with Rule 2-115, there is no bond. The Chair said

that the other situation to which he had previously referred is the defendant over whom the court has jurisdiction. Ms. Ogletree added that there may be an ongoing support obligation. The Vice Chair suggested that the language in subsection (a)(2)(A) which reads Aor a monetary award@ could be eliminated. The Chair noted that alimony pendente lite is an award, not a judgment. The Vice Chair commented that under the dismissal rule, an order for child support is an interim order and not a judgment. Master Raum remarked that a pendente lite order is ongoing. The Chair stated that the order may or may not be ongoing, and the Rule could be drafted to cover both situations.

Mr. Brault asked whether a pendente lite order is appealable. Ms. Ogletree replied that it is. Mr. Brault noted that there are three characteristics of a judgment -- (1) appealability, (2) enforcement, and (3) interest. Figuring out whether something is a judgment can be tricky. Master Raum suggested that the language Ain an order@ be added to the first line of subsection (a)(2)(A) after the word Adesignated@ and before the word Ato.@ The Committee agreed by consensus to this change. The Vice Chair suggested that the language in subsection (a)(2)(A) which reads Aor a monetary award reduced to judgment@ be deleted. Ms. Ogletree asked about the ongoing support situation. The Vice Chair answered that a money judgment for

alimony is no different than any other judgment. Ms. Ogletree questioned as to whether there is anything in the federal statute to prevent attachment as opposed to a writ of sequestration. Master Raum answered that the statute refers to a domestic relations order. He said that the court can issue a QDRO.

The Chair stated that there are two kinds of people for whom a writ of sequestration may be appropriate. The first is the plaintiff seeking to acquire jurisdiction over an out-of-state defendant when the plaintiff is seeking alimony. The second is anyone else in a domestic relations case. Mr. Sykes inquired if a marital property award can be reduced to judgment if the award is payable in installments. The concern is whether the entire asset can be sequestered if the monies are payable over a period of time. Is a Amonetary award reduced to judgment@ applicable to any marital property award? Master Raum noted that a monetary award can be appealed even if it is payable in the future. He expressed his concern that if the payments are periodic and after a few months, the payments cease, then each month the money is owed has to be reduced to a judgment.

The Vice Chair questioned as to why the Rule requires that the person requesting sequestration has to allege that this is the only means available to get the money owed. Ms. Ogletree responded that this is an extraordinary writ, and the judge has

to be convinced that there is no other way to obtain the money. The Vice Chair commented that the person has to allege that there has been a default. Judge McAuliffe pointed out that this is the procedure under Rule 2-648.

The Chair suggested that the second section could provide that the case shall proceed in accordance with Rule 2-648. The Vice Chair added that the case would proceed as if there were a judgment. Master Raum noted that there is no language telling people how to proceed. The Vice Chair pointed out that Rule 2-648 has more detail. Mr. Sykes remarked that this would be limited to cases where there has been a default of an ongoing obligation. He inquired as to how much the court can sequester when there is an ongoing order and a default of one or two installments. Master Raum answered that the Court of Appeals has held that what can be sequestered is enough to satisfy the whole obligation. The Chair noted that there is case law pertaining to Rule 2-648. Master Raum commented that when a person is in default from missing payments, the court can hold the person in contempt. The Chair pointed out that Rule 2-648 provides that the court may seize so much of the property as is necessary to compel compliance with the judgment. Mr. Sykes remarked that the word Ajudgment@ is causing problems. The Chair suggested that the Rule could provide Aas if there were a judgment.@

Ms. Ogletree said that if ongoing payments have been ordered, it may be necessary to sell the entire property. The court can make the determination. Mr. Sykes noted that sequestration includes seizure. The Chair suggested that Rule 9-212 could provide that the person entitled to the child support, alimony, attorney's fees, or a monetary award may obtain seizure or sequestration of property in compliance with Rule 2-648. The Committee agreed by consensus to this suggestion. The Reporter inquired as to whether the language in subsection (a)(2)(A) which reads Areduced to judgment@ should be deleted. The Committee agreed by consensus that it should be deleted. The Chair pointed out that the procedure for a non-resident defendant is keyed to Code, Family Law Article, §11-104, and the procedure for the other part of the Rule is keyed to Rule 2-648. Mr. Sykes noted that the grounds for relief are not in Rule 2-648. The Vice Chair observed that the writ of execution procedure referred to in section (c) of Rule 9-212 is not clear without looking at Rule 2-641. Ms. Ogletree inquired as to what changes should be made. The Vice Chair replied that she would have to look at each of the post-judgment rules before she could answer.

Ms. Ogletree asked if this is a trustee or receiver situation. The Vice Chair responded that she was not sure a trustee was appropriate. Master Raum commented that a lump sum

judgment is not appropriate for a receivership. Ms. Ogletree said that the assets are held to ensure future payments. The Chair observed that the Rule should not lock the court in. The court can pass an order deciding what mechanism to use in each case. Ms. Ogletree inquired as to how to draft subsection (a)(2)(A) incorporating the judgment rules. The Chair responded that when the court decides to impose an extraordinary remedy, it can pass any order, after considering proposals from counsel, as to who holds the property and the terms of release. It is not necessary to micro-manage this.

Mr. Sykes commented that in certain circumstances, a party is entitled to release. The grounds for release need to be reviewed. He suggested that whatever is different from Rule 2-648 should be put into Rule 9-212, and the Committee agreed by consensus. Mr. Hochberg noted that there should be a special provision dealing with ERISA. Master Raum responded that that is not necessary. Ms. Ogletree said that a writ of sequestration is special. Master Raum added that the court can issue a QDRO. Mr. Hochberg asked about assets not within Maryland, such as a federal pension. Master Raum replied that the judgment may have to be recorded somewhere else, but the property can be reached. The Vice Chair pointed out that section (e) provides that the court shall hold a hearing to determine the amount of any alimony

to be awarded pursuant to the statute out of the property, if necessary. Ms. Ogletree remarked that under Code, Family Law Article, §11-104, the alimony is always out of the property. The Chair noted that the court has broad powers to do this, and this provision is not necessary.

The Vice Chair asked the meaning of the first sentence of section (f). Master Raum said that where the writ issues, but is not served, this is how long the wait is until the writ is stale. Mr. Sykes added that the writ dissolves within 60 days unless the defendant is served. Ms. Ogletree observed that in the in rem proceeding, it is the property that is served. Judge McAuliffe pointed out that the service is Rule 2-122 service by posting. Mr. Sykes remarked that service should be effected by Rule 2-121, if possible, before one uses Rule 2-122 service. There must be an attempt to serve pursuant to Rule 2-121. The Chair said that the provisions relating uniquely to non-resident defendants will go in section (a). The Committee remanded Rule 9-212 to the Subcommittee.

Ms. Ogletree presented Rule 9-202A, Financial Statements, for the Committee's consideration.

Rule 9-202A. FINANCIAL STATEMENTS

(a) Financial Statement C General

Except as otherwise required by section (f) of Rule 9-202, a Financial Statement required by that Rule shall be in substantially the following form:

[Insert final version of the form here]

(b) Financial Statement C Child Support Guidelines

If the establishment or modification of child support in accordance with the guidelines set forth in Code, Family Law Article, §§12-201 - 12-204 is the only support issue in the action and no party claims an amount of support outside of the guidelines, the financial statement required by section (f) of Rule 9-202 shall be in substantially the following form:

[caption of case]

FINANCIAL STATEMENT
(Child Support Guidelines)

I, _____, state that:
My name

I am the mother/father or _____
Circle one State Relationship (for example, aunt, grandfather, guardian, etc.)
of the minor child(ren):

_____	_____	_____	_____
Name	Date of Birth	Name	Date of Birth
_____	_____	_____	_____
Name	Date of Birth	Name	Date of Birth
_____	_____	_____	_____
Name	Date of Birth	Name	Date of Birth

The following is a list of my income and expenses (see below*):

See definitions before filling out.

Total monthly income (before taxes) $_____

Child support I am paying for my other child(ren) each month _____

Monthly health insurance premium for this child(ren) _____

Alimony I am paying each month to _____ _____
(Name of Person(s))

Alimony I am receiving each month from _____ _____
(Name of Person(s))

Work-related monthly child care expenses for this child(ren) _____

Extraordinary monthly medical expenses for this child(ren) _____

School and transportation expenses for this child(ren) _____

* To figure the monthly amount of expenses, weekly expenses should be multiplied by 4.3 and yearly expenses should be divided by 12. If you do not pay the same amount each month for any of the categories listed, figure what your average monthly expense is.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

_____ _____
Date Name

Total Monthly Income: Include income from all sources including self-employment, rent, royalties, business income, salaries, wages, commissions, bonuses, dividends, pensions, interest, trusts, annuities, social security benefits, workers compensation, unemployment benefits, disability benefits, alimony or maintenance received, tips, income from side jobs, severance pay, capital gains, gifts, prizes, lottery winnings, etc. Do not report benefits from means-tested public assistance programs such as food stamps

or AFDC.

Extraordinary Medical Expenses: Uninsured expenses over $100 for a single illness or condition including orthodontia, dental treatment, asthma treatment, physical therapy, treatment for any chronic health problems, and professional counseling or psychiatric therapy for diagnosed mental disorders.

Child Care Expenses: Actual child care expenses incurred on behalf of a child due to employment or job search of either parent with amount to be determined by actual experience or the level required to provide quality care from a licensed source.

School and Transportation Expenses: Any expenses for attending a special or private elementary or secondary school to meet the particular needs of the child or expenses for transportation of the child between the homes of the parents.

(c) Amendment to Financial Statement

If there has been a material change in the information furnished by a party in a financial statement filed pursuant to Rule 9-202, the party shall amend the statement, file it, and send a copy of the amended statement to the other party at least ten days before the scheduled trial date or by any earlier date fixed by the court.

(d) Inspection of Financial Statements

Inspection of a financial statement filed pursuant to the Rules in this Chapter is governed by Code, State Government

Article, §10-617 (a) and (f).

Source: This Rule is new.

Rule 9-202A was accompanied by the following Reporter's Note.

This Rule is new.

The form set out in section (a) was developed from forms used by family law practitioners. The Subcommittee considered the DOMREL 31 form, which was developed in conjunction with the pro se project and has been available from the Administrative Office of the Courts for several years, but opted instead for a more detailed form. The Subcommittee believes that the more detailed form is easier to fill out, generates more complete information, and is more useful to judges and masters. Although the full Committee had deleted the phrase Aunder penalties of perjury@ from the affidavit, the Subcommittee recommends that this phrase be added back to make the form of affidavit conform to the form set out in Rule 1-304 and because there is a right to rely on the values stated on the form. See Beck v. Beck, 112 Md.App. 197 (1996).

The form set out in section (b) is based upon Form DOMREL 30.

Section (c) is new and imposes a duty to amend the financial statement if circumstances warrant.

Section (d) was added because access to financial statements is limited by Code, State Government Article, §10-617 (a) and (f).

Ms. Ogletree told the Committee that as long as the AS@

Rules (now Title 9, Chapter 200) have been in existence, there have been problems with financial statements. The Subcommittee was in agreement that there should be standard forms, but was not totally in agreement as to what should be in the forms. There are two situations requiring different statements. The first is the situation where the parties have substantial assets, and the second is the situation where the computation of child support under the Child Support Guidelines set forth in Code, Family Law Article, §§12-201 - 12-204 is the only financial issue.

Mr. Hochberg referred to Section I of the form that is to be inserted into section (a) of the Rule. (See Appendix 2). He questioned having a separate section for monthly credit card expenses, noting that this information duplicates expenses that are accounted for elsewhere in the form, and it is misleading. Mr. Hochberg also pointed out that in the section entitled ALiabilities,@ under Acredit card accounts,@ the line next to section (a) should not be blackened out. The Committee agreed by consensus to remove the black line. The Vice Chair asked what kind of expenses are included in the category Aother@ that is listed on the form below the monthly credit card expenses. Ms. Ogletree explained that this allows some flexibility for any other expenses that do not fall within the other categories on the form. The Chair suggested that the category marked Aother@

should be made bigger. He asked what the argument is to keep the Acredit card@ information in the form. Ms. Ogletree expressed the view that this category could be deleted, because the same information is asked for in the sections covering the expenses that were charged on the credit card. The Reporter noted that often there will be high credit card balances for charges made before the parties separated, and these must be paid down. The ongoing monthly payments required to do so are not covered elsewhere on the form. The Chair commented that this item could be left in, and the judge will make the appropriate adjustments. The Vice Chair countered that this would encourage delay.

Mr. Hochberg moved to delete the category Amonthly credit card expenses@ from the form. The motion was seconded, and it passed with two opposed.

The Vice Chair commented that referring to AChristmas/Hanukkah@ under the category of AGifts@ is inappropriate, as it is a religious reference. Ms. Ogletree suggested that the category be Aholiday gifts,@ and the Committee agreed by consensus to this change. Mr. Brault inquired about non-recurring expenses which may be a significant portion of business expenses. Ms. Ogletree replied that this information is conveyed through discovery. Mr. Brault asked about loans to a family member being listed on the form. Ms. Ogletree responded

that this also comes in through discovery. Also, there are numerous spaces marked Aother@ where items of this nature may be included. Judge Dryden pointed out that in cases where the parties are represented by counsel, there is no problem with these issues. The only concern is in the pro se cases.

The Committee approved the financial statements as amended at the meeting. The Committee approved Rule 9-202A as amended.

The Chair adjourned the meeting.