COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held at the Wakefield Valley Golf and Conference Center, 1000 Fenby Farm Road, Westminster, Maryland on October 12, 2001.

Members present:

Hon. Joseph F. Murphy, Jr., Chair

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Robert L. Dean, Esq.
Hon. James W. Dryden
Hon. Ellen M. Heller
Bayard Z. Hochberg, Esq.
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Hon. John F. McAuliffe
Hon. William D. Missouri
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Hon. James N. Vaughan

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Becky K. Feldman, Rules Committee Intern
Charles Moulden, Assistant Chief Clerk, District Court
Hon. Steven I. Platt, Circuit Court for Prince George's County
Patricia H. Platt, Chief Clerk, District Court
Wilbur D. Preston, Jr., Esq., Chairman, Business and Technology Court in Maryland
Steven E. Tiller, Esq.
Hon. Michael D. Mason, Circuit Court for Montgomery County
Alice N. Lucan, Esq.
Frank Broccolina, State Court Administrator
Albert D. "Buz" Winchester, III, M.S.B.A., Director of Legislative Relations

The Chair convened the meeting. He told the Committee that the Court of Appeals held a conference on October 9, 2001 to consider the remainder of the 149th Report. Mr. Brault was

present and, following his skillful handling of the discussion of Rules 4.2, Communication with Person Represented by Counsel, and 4.4, Respect for Rights of Third Persons, the Court approved of the amendments to those Rules. Rules 2-124 and 3-124, both entitled Process -- Persons to be Served, were deferred for further consideration by the Court. A Court of Appeals Committee will draft a revised version of the Pro Bono Rules, because there was no consensus on the Court as to any of the three versions of those Rules transmitted with the 149th Report. The final product probably will contain a provision for fewer local Pro Bono Committees, and a reduction in judicial involvement in the Pro Bono committees. Mr. Brault noted that another issue to be determined is mandatory reporting of Pro Bono activities and whether failure to report would result in automatic decertification.

Agenda Item 1. Consideration of proposed new Rule 16-506 (Electronic Filing of Pleadings and Papers) and a proposed amendment to Rule 1-322 (Filing of Pleadings and Other Papers

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The Chair announced that Judge Vaughan is the new Chief Judge of the District Court of Maryland. Unfortunately, this means that he will no longer be able to serve on the Rules Committee. The Chair offered his congratulations and best wishes to Chief Judge Vaughan on his promotion. The Chair said that also present to discuss Agenda Item 1 were Patricia Platt, Chief Clerk of the District Court; Charles Moulden, Assistant for

Operations of the District Court; and Alice Neff Lucan, Esq., who represents the Maryland, Delaware, and D.C. Press Association.

The Chair presented Rule 16-506, Electronic Filing of Pleadings and Papers, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 500 - COURT ADMINISTRATION —

DISTRICT COURT

ADD new Rule 16-506, as follows:

Rule 16-506. ELECTRONIC FILING OF PLEADINGS AND PAPERS

(a) Applicability; Conflicts with Other Rules

This Rule applies to the electronic filing of pleadings and papers. A pleading or paper may not be filed by direct electronic transmission to the court except in accordance with this Rule. To the extent of any inconsistency with any other Rule, this Rule and any administrative order entered pursuant to it shall prevail.

(b) Submission of Plan

The Chief Judge of the District Court may submit to the Court of Appeals for approval a detailed plan for a pilot project for the electronic filing of pleadings and papers. The plan must provide for the protection of privacy and must be available for use by litigants and attorneys at a reasonable cost. In developing the plan, the Chief Judge shall consult with the District Administrative Judge and the District Administrative Clerk of the district(s) affected, the District Court Chief Clerk,

appropriate vendors, the State Court Administrator, and any other judges, court clerks, members of the bar, vendors of electronic filing systems, and interested persons as the Chief Judge shall choose in order to ensure that (1) the proposed electronic filing system will be compatible with (A) the data processing and operational systems used by the Judiciary, and (B) electronic filing systems that may be installed by other courts; (2) the installation and use of the proposed system will not create any undue financial or operational burdens on the District Court; (3) the proposed system is reasonably available for use by litigants and attorneys at a reasonable cost, or an efficient and compatible system of manual filing shall be maintained; (4) the proposed system will be effective, secure, and not likely to break down; (5) the proposed system makes appropriate provision for the protection of privacy; and (6) the court can discard or replace the system during or at the conclusion of a trial period without undue financial or operational burden. The State Court Administrator shall make a recommendation to the Court of Appeals with respect to the plan.

(c) Approval; Duration

A plan may not be implemented unless approved by administrative order of the Court of Appeals. The plan shall terminate two years after the date of the administrative order approving it unless terminated earlier or extended by a subsequent administrative order.

(d) Evaluation

The Chief Judge of the Court of Appeals shall appoint a committee consisting of one or more judges, court clerks, lawyers, legal educators, bar association representatives, and other interested and knowledgeable persons to monitor and evaluate the plan. Prior to the expiration of the two-year period set forth in section c of this Rule, the Court of Appeals, after considering the

recommendations of the committee, shall evaluate the operation of the plan.

(e) Extension, Modification, or Termination

By administrative order, the Court of Appeals may extend, modify, or terminate a plan at any time.

(f) Public Availability of Plan

The Chief Clerk of the District Court shall make available for public inspection a copy of any current plan.

Source: This Rule is new.

Rule 16-506 was accompanied by the following Reporter's Note.

The Honorable Martha F. Rasin, Chief Judge of the District Court of Maryland has requested a rule applicable in District Court, which is similar to Rule 16-307, Electronic Filing of Pleadings and Papers, a circuit court rule. This will provide a pilot project for the electronic filing of pleadings and papers to be instituted in District Court.

Chief Judge Vaughan stated that he had been a member of the General Court Administration Subcommittee when the Rule was drafted. The proposed Rule tracks Rule 16-307, Electronic Filing of Pleadings and Papers, applicable in the circuit court. Approval of the new Rule would allow the District Court the opportunity to proceed with an experimental program in Prince George's County to provide for electronic filing in landlord-tenant cases. Chief Judge Vaughan expressed the concern that there has to be a system in place to accommodate those persons

who do not have access to a computer.

Ms. Lucan told the Committee that as well as representing the Press Association, she also is a member of the Committee on Access to Court Records, appointed by Chief Judge Robert M. Bell. The amendment to Rule 16-506 (b) proposed by the Maryland, Delaware, and D.C. Press Association, a copy of which amendment has been distributed to the Committee members today, is consistent with the recommendations of the Task Force. (See Appendix 1). In section (b), the Rule lists six considerations which are essential to the framework of an electronic filing system. The proposed amendment would add a new (7) to this list. This addition is parallel to and consistent with the other items in the list. Anything that is part of the public file, which is accessible in a paper system, should be accessible in an electronic system.

Judge Heller commented that the Circuit Court for Baltimore City has an electronic filing system for approximately 20,000 asbestos cases. When the system was designed, the planners took public access into consideration. The current resolution to the problem of public access is to have a computer provided by the vendor available in the courthouse, so that anyone can come in during daytime hours and have access to the files. The Sunpaper newspaper is concerned that the information in the files should be available over the internet. However, the vendor does not want to lose funds from the fees people pay to acquire access. The Court of Appeals has already approved this system. Ms. Lucan

observed that the proposed amendment satisfies the public access requirement and does not dictate that there be a choice of means of access. Chief Judge Vaughan said that the law provides that public access is required.

The Chair pointed out that one advantage to the proposed amendment is that it clarifies that access to everything in the file is not available, protecting what is not public. The vendors are protected from piracy. Mr. Sykes remarked that the Honorable Paul Alpert, a retired Associate Judge of the Court of Special Appeals, is chairing the Committee on Access to Court Records. Mr. Sykes asked whether the proposed Rule is consistent with the findings of this committee and whether it can be reconciled with privacy protections. He suggested that someone check with Judge Alpert about the status of this committee to get the benefit of the committee's deliberations. The Chair responded that the proposed Rule is not at cross purposes with the work of the committee. Mr. Sykes expressed the concern that no one should be able to find anything from a court file by clicking on one's home or office computer. Is the proposed amendment to the Rule couched too broadly? Judge Heller answered that the breadth of the language should not have an effect on public access, because it does not provide how the access is to be provided. She reiterated her example of an accessible computer in the courthouse, and she added that if the Rules Committee wants to provide for internet access to the files, the language of the proposed amendment would allow this.

Mr. Brault questioned as to whether all of the attorneys handling asbestos cases in Baltimore City have a terminal allowing access to the asbestos files. Judge Heller replied that all of the attorneys have terminals, but this is not mandatory. The attorneys are not required to pay access fees to the vendor. Mr. Brault inquired as to whether any newspaper can pay for access, and Judge Heller answered in the affirmative. Mr. Brault remarked that there could be a problem with confidential or proprietary information. Judge Heller responded that Baltimore City has a detailed plan which provides that confidential information is not to be electronically filed. Mr. Brault inquired as to whether confidential information in the files is sealed, and Judge Heller replied that it is. She stated that any problems with the system are ironed out by Courtlink, a computer business. She said that along with Chief Judge Vaughan, she had attended a technology conference which displayed a video from the Chief Judge of Philadelphia's district court, which uses e-filing in the entire civil system for small claims where two-thirds of the docket is pro se.

Mr. Sykes commented that there should be no less public access to any part of the e-file that is a public record than exists at the present time, and the proposed amendment should not be considered as expanding or contracting access. Chief Judge Vaughan asked what Rule 16-307 provides as to this issue. The Chair answered that it does not address this issue and may have to be amended. Chief Judge Vaughan questioned as to whether the

reference to privacy in subsection (5) of section (b) of Rule 16-506 should be deleted. Ms. Lucan said that her agency only wished to add another item to the list in section (b) but not take any away.

Judge Missouri stated that he has no problem with the language of the suggested amendment, and he feels that it will not interfere with the work of Judge Alpert's committee.

Judge McAuliffe suggested that the language "and public access to public records" could be added to subsection (5) of section (b), placing access to public records on an equal footing with the protection of privacy. Mr. Titus suggested adding a new third sentence to section (a) which would read as follows: "A pleading or paper filed electronically shall be equally accessible to the same extent as a pleading or paper filed in paper form." The Reporter observed that one of the problems with electronic access is that information can be aggregated and widely disseminated over the Internet, which cannot happen readily with paper access. Ms. Lucan commented that the advantage of the language suggested by the Press Association is that it does not allow for discretion or decision-making, which the word "appropriate" in subsection (5) of section (b) implies. The new language fits better into the list of objectives of the plan. Ms. Lucan said that she objects to the word "appropriate." Judge McAuliffe responded that under the First Amendment, contrary to the absolutists' view, the law is always subject to appropriate controls. Ms. Lucan responded that the members of

the Press Association are not absolutists. The Chair stated that the term "public record" is a defined term in Code, State Government Article, §10-611 (g).

Mr. Sykes commented that to preserve the status quo, the Rule should state that the proposed system does not limit public access to any public part of the file. The language which reads "provides for public access" looks new. Electronic filing provides more immediate access and has more important implications. The Chair suggested that the second sentence of section (b) read as follows: "The plan must provide for the protection of privacy, must be available for use by litigants and attorneys at a reasonable cost, and must not limit access to any public record." Judge Heller suggested that the word "public" be placed after the word "limit" and before the word "access" in the Chair's suggested language. Mr. Titus inquired as to whether this includes a public record sealed by court order. The Chair answered that this is not included. Mr. Bowen suggested that the language "or document" be added after the word "record" at the end of the Chair's suggested additional language in the second sentence of section (b). The Chair agreed to this amendment, as well as to Judge Heller's, and, by consensus, the Committee approved the Chair's suggested language as amended.

Judge McAuliffe said that one or two years ago, an issue was brought before the Committee concerning the problem of attorneys contacting people for whom an arrest warrant has been issued before the warrant can be served. Mr. Brault questioned as to

how electronic filing affects this problem. The Chair responded that even those warrants that are not electronically filed are in the District Court's data base. Judge Heller added that the electronic access is the same as access to the court file. In the Baltimore City system, there is no electronic access from a home computer.

Mr. Bowen suggested that in the second sentence of section (b), the language "by litigants and attorneys" should be taken out, since the press has shown its concern as to public access. The Committee agreed by consensus to this change. The Chair stated that Rule 16-307 would be amended to reflect the changes made to Rule 16-506 today. Mr. Johnson added that some of the language in Rule 16-307 is not in the new Rule, and Rule 16-307 will have to be rewritten.

The Chair presented Rule 1-322, Filing of Pleadings and Other Papers, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-322 by adding a reference to new Rule 16-506, as follows:

Rule 1-322. FILING OF PLEADINGS AND OTHER PAPERS

(a) Generally

The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the papers the filing date and forthwith transmit them to the office of the clerk. No filing of a pleading or paper may be made by transmitting it directly to the court by electronic transmission, except pursuant to an electronic filing system approved under Rules 16-307 or 16-506.

(b) Photocopies; Facsimile Copies

A photocopy or facsimile copy of a pleading or paper, once filed with the court, shall be treated as an original for all court purposes. The attorney or party filing the copy shall retain the original from which the filed copy was made for production to the court upon the request of the court or any party.

Cross reference: See Rule 1-301 (d), requiring that court papers be legible and of permanent quality.

Source: This Rule is derived in part from F.R.C.P. 5 (e) and Rule 102 1 d of the Rules of the United States District Court for the District of Maryland and is in part new.

Rule 1-322 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-506.

The Chair explained that Rule 1-322 should have a reference to Rule 16-506 added to it. The Committee agreed by consensus to the amendment to Rule 1-322.

Chief Judge Vaughan said that he would miss being on the Rules Committee, an experience which has been one of the

highlights of his legal career. He commented that he has found the work of the Committee extraordinary, with attorneys and judges spending so much time and effort on the Rules of Procedure.

The Reporter introduced Becky Kling-Feldman, an intern in the Rules Committee Office, who is a student at the University of Baltimore School of Law. She has done an excellent job working with the Rules Committee staff.

Agenda Item 2. Consideration of proposed new Rule 16-205 (Business and Technology Case Management Program)

The Chair announced that the Committee is privileged to have consultants present who have devoted much time and effort to working on the Business and Technology Task Force. They include Wilbur D. (Woody) Preston, Jr., Esq.; Steven E. Tiller, Esq.; the Honorable Steven I. Platt, Circuit Court for Prince George's County; and the Honorable Michael D. Mason, Circuit Court for Montgomery County.

The Chair presented Rule 16-205, Business and Technology Case Management Program, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

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

ADD new Rule 16-205, as follows:

Rule 16-205. BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

(a) Established

Subject to the availability of fiscal and human resources, in each of the judicial circuits in the State there shall be a Business and Technology Case Management Program (the Program) which shall consist of specialized tracks within the case management system that utilize judges, mediators, and arbitrators specially trained in business and technology. The Program will enable the circuit court to handle business and technology matters in the most coordinated, efficient, and responsive manner and to afford convenient access to lawyers and litigants in business and technology matters.

(b) Actions Assigned

(1) Generally

Upon the court's own initiative or at the request of a party, cases that present commercial or technological issues of such a complex or novel nature that specialized treatment is likely to improve the administration of justice may be assigned to the Program. A party wishing to utilize the Program shall so designate on the Civil Non-Domestic Case Information Report form by checking the appropriate boxes.

(2) Determination of Appropriateness of Cases for the Program

The Administrative Judge of the circuit court of the county in which the action is filed or the Administrative Judge's designee shall determine which cases are appropriate for the Program. Factors that may be considered include: (A) the number and diverse interests of the parties, (B) the amount and nature of pretrial discovery and motions, (C) whether the parties agree to waive venue for the hearing of motions and other pretrial matters, (D) the novelty and complexity of the factual and legal issues

presented, (E) whether business or technology issues predominate over other issues presented in the case, and (F) the willingness of the parties to participate in alternative dispute resolution (ADR) procedures.

(c) Tracks Within Program

The case may be placed on a Program Expedited Track if minimal discovery and pretrial motions are required. The Expedited Track may provide for the scheduling of alternative dispute resolution, discovery, and a trial date immediately following the filing of an answer. Other matters shall be designated Business and Technology Case Management Program Standard Track to be administered in accordance with Rule 2-504.

(d) Alternative Dispute Resolution

The Program shall incorporate alternative dispute resolution procedures into the early management of each case assigned to it. The Program may establish a schedule for a certain number of alternative dispute resolution sessions in each case pursuant to an appropriate scheduling order.

Cross reference: Title 17, Alternative Dispute Resolution. See Rule 2-504 which pertains to scheduling orders.

(e) Motion Practice

The Program judge to whom the action has been assigned shall hear all proceedings until the matter is concluded. However, if circumstances so require, the Administrative Judge or the Administrative Judge's designee may appoint another Program Judge to hear discovery and other pretrial motions.

Source: This Rule is new.

Rule 16-205 was accompanied by the following Reporter's Note.

> The General Court Administration Subcommittee is proposing the addition of new Rule 16-205 because of a recommendation of three circuit court judges acting as consultants to the Conference of Circuit Judges. The judges made the recommendation based on a report done by the Business and Technology Task Force, an organization created by the Maryland legislature to further technology business in the State. In its Report, the Task Force concluded that all of the benefits of the specialization of judges to hear business and technology cases and a fair and equitable allocation of judicial resources can be accomplished by the establishment of a Business and Technology Case Management Program in the circuit courts. The Program is set out in a new Rule which is patterned after Rule 16-204, Family Division and Support Services.

Mr. Preston said that he had some questions about the proposed Rule, adding that he was generally pleased with its simplicity. One question is whether venue can be waived. This is provided for in part (C) of subsection (b)(2). Also, parties cannot be required to participate in mediation, although part (F) of subsection (b)(2) implies that this is required. In other states, mediation can be mandated in the business courts. The business cases usually involve a finite amount of money, unlike tort cases which involve a calculation for pain and suffering. Section (c) of the Rule refers to two separate tracks, but the idea of the Rule is that everything should be expedited.

Judge Platt said that the representatives of the Task Force had drafted the Rule, and the Conference of Circuit Court Judges also looked at it. The Conference, chaired by the Honorable Paul Weinstein, Administrative Judge of the Circuit Court for

Montgomery County, is the entity responsible for implementation of the Task Force's recommendations. Some of the language of the Rule was taken from a parallel North Carolina rule. In North Carolina, one business and technology judge handles cases from all around the state, but in Maryland, it is anticipated that one judge will be appointed from each circuit to hear these cases. The venue provision was taken from the North Carolina rule. The judges from the rural areas in Maryland had requested this provision which was the subject of some debate. The Assistant Reporter had assisted the Task Force committee and had done research on this provision, concluding that the parties would have to agree to waive venue. A judge would have no authority to order people to come to a different county. The Assistant Reporter was very helpful, turning in the requested changes to the Rule promptly. Judge Platt thanked her, as well as the Chair of the Rules Committee, for their help.

Judge Platt referred to the issue raised by Mr. Preston regarding alternative dispute resolution (ADR). The Task Force committee recognized that the Court of Appeals had clearly stated that ADR cannot be mandated. However, the willingness to participate is a factor to be considered. This is consistent with the approach of the Court of Appeals. ADR is not mandated, but its importance is emphasized. Another issue raised was the two-track system which had been recommended by the Task Force. The expedited track would take approximately seven months, and the standard track would take 12 months, although there was some

sentiment to expand this. The Rule would provide the umbrella authority, and the uniform differentiated case management (DCM) language has already been approved. Judge Platt agreed with Mr. Preston's statement that one purpose of this Rule is to ensure that business cases are heard more quickly. The Task Force committee will report to the Conference of Circuit Court Judges on November 19, 2001 as to this Rule and other matters, including judicial education and ADR. This may result in further proposed changes to the ADR Rules.

The Chair suggested that section (c) could be changed to read as follows: "The program will provide an expedited track and a standard track. Cases assigned to the expedited track will promptly be scheduled for ADR, discovery, and an expedited trial date. Matters assigned to the standard track will be administered in accordance with Rule 2-504." This change in language would not lock in the judge who is assigned to the case. Mr. Brault inquired as to whether any consideration was given to jury vs. non-jury cases as a factor to be considered in determining whether the business program is appropriate. Judge Platt replied that this was not considered, although it is an important factor. Other states do not have jury cases in their business track. Mr. Brault commented that Delaware and North Carolina have business courts, and his impression is that they hear only non-jury cases. Judge Platt responded that in a large part, the business cases are non-jury cases, and it is the same for the New York business program in the courts. He did not

believe that jury trials would interfere with the umbrella process in the Rule. The Chair suggested that another factor should be added to subsection (b)(2) which is: "the nature of the relief being sought." Mr. Brault opined that, in general, businesses do not like juries deciding complicated and technical issues. Judge Platt stated that he was in favor of the Chair's suggested language. The Committee agreed by consensus to this addition.

Mr. Titus said that he would like to respond to Mr. Preston's comment about the speed of the process. Mr. Titus explained that his practice includes business litigation. He is not interested in the speediest resolution, but rather prefers that there be one judge handling the case and that the judge be competent in business matters. Speed is the byproduct of a single, competent judge handling the case. This is a judicial education matter. The way the Rule is written, certain categories of cases are expedited. The decision on expedition should be left to the assigned judge. Judge Missouri commented that he is in favor of the Rule and in favor of the triage process set out in the Rule. The Rule is written so as to give the administrative judge or that judge's designee the ability to triage cases and determine which ones should be expedited. The administrative judge should appoint the appropriate designee who is competent. Further delegation of this responsibility is not appropriate.

Mr. Titus expressed the opinion that when the DCM system was

first initiated, the triage procedure was intended to be more meaningful than it is now. The initial conference with the individual judge should be more meaningful. Judge McAuliffe commented that the specialized judge should be the one doing the triaging and it should not be the administrative judge who decides whether the expedited track is appropriate. It is contemplated that the information report is filed, and the initial determination as to the appropriate track is based on the report. Judge McAuliffe expressed his concern that it might be difficult to know if parties are willing to waive venue or willing to participate in ADR early in the process. Judge Heller remarked that the administrative judge does not get the file until the information report is filed. Judge Platt responded that the operational details are not in the Rule, but in the DCM plan language. The Task Force's concept is that the administrative judge determines the track from the information provided in the report. There is nothing controversial about admitting cases into the program. What may cause controversy is the administrative judge designating a judge who is disliked by one of the attorneys. The Chair said that a mechanism may have to be added to the Rule to move the case along from filing to a prompt hearing.

Judge Heller noted that along with the Honorable Albert Matricciani, of the Circuit Court for Baltimore City, she wrote the plan, a copy of which is included in the meeting materials. The case information report is meant to provide the opportunity

for parties to ask to be in the business and technology program. If both parties consent to be in the program, the case goes to the administrative judge. If one party is in opposition, that party files a motion. The case gets onto the docket and into the clerk's office. Judge Platt said that the process is not part of the Rule. The Task Force committee decided not to include a step-by-step process in the Rule. However, the Rule does provide the authority and the DCM language so that this is uniform among the counties in the State. The Chair suggested that the following language should be added to subsection (b)(2): "The Program shall include the procedure by which the administrative judge or the administrative judge's designee shall determine which cases are appropriate for the Program." Judge Platt said that he would have no problem with this language being added to the Rule.

Judge McAuliffe referred to the specimen Business and Technology Case Management Plan in the meeting materials, pointing out that the plaintiff's case information report is transmitted to the administrative judge for a determination as to whether the case should be assigned to the Business and Technology Information Track, before the defendant's response is filed. Mr. Titus remarked that both parties file information reports. Mr. Hochberg observed that if there is some interaction between the parties, they could agree to the track to which the case is assigned. Judge Platt responded that there could be a conference call. If both the plaintiff and the defendant would

like to be on the business track, a conference may not be necessary. Mr. Hochberg asked if the assignment of the case can be scheduled without a conference. Judge Platt answered that at that stage in the proceedings, a conference is not necessary.

Judge Mason commented that the Program judge on his or her own initiative could take a case out of the business track if it has been inappropriately assigned. Some business representatives anticipated that every business case would be placed in the business and technology track, but actually the program is for complex business cases. If every case is placed on an expedited track, it will always be requested. Judge Missouri observed that the Rule does not provide what the administrative judge is supposed to do. Mr. Tiller explained that the Business and Technology Task Force heard from people in the business area who felt that predictability was needed statewide as to what the program will consist of and what is discretionary on the part of the judge. The report of the Task Force is based on the experience in other states. The list of what is and is not included was debated heavily and is fairly broad. Judge Platt commented that the Implementation committee felt that the more specific criteria in the plan should be uniform throughout the State. Standards include what cases are and are not admitted, but administrative judges should not be locked in.

Mr. Johnson asked where it is stated that the DCM plan is uniform in all courts. The Chair said that this is not stated in the Rule. Judge Platt remarked that this statement could be

included in the Rule. Mr. Titus noted that the original DCM Rules provided for a plan in each circuit which is approved by the Chief Judge, the purpose of which is to achieve uniformity. The Rule could be expanded to include this. Mr. Bowen commented that the Rule suggests the opposite because of the language in section (a) which reads, "subject to the availability of fiscal and human resources...". Judge Platt explained that Chief Judge Bell would like the program to be administered statewide. The language "subject to the availability of fiscal and human resources" is similar to the language of subsection (a)(3) of Rule 16-204, Family Division and Support Services. It should remain in the Rule, because there should be no unfunded mandates. Mr. Titus pointed out that section b. of Rule 16-202, Assignment of Actions for Trial, pertains to the information report of the case management plan. Similar language could be added to Rule 16-205 providing that the Chief Judge of the Court of Appeals takes the appropriate steps to achieve uniformity. The Chair suggested that this language could be placed in section (a) of Rule 16-205.

Judge Heller noted that Rule 16-204 is applicable only to counties with more than seven judges. The Chair said that Rule 16-205 applies statewide. He suggested that the word "funds" should be used in place of the language "fiscal and human resources" in section (a). Mr. Bowen expressed the view that human resources are important because the judges are being trained. This may be impractical in a one- or two-judge county,

so it may be better to draft the Rule to provide that each circuit court has its own plan. The Chair responded that this is not what the circuit judges want. Judge Platt explained that even when there are one- or two-judge counties, the program is circuit-based, and the assignment decision is up to the circuit administrative judge or that judge's designee. The program judges will receive training. The Honorable Alan M. Wilner, a member of the Court of Appeals, has said that education in business and technology issues is open to all judges, with priority given to those initially designated as business and technology judges.

Mr. Brault inquired as to how the program will work in small counties. If venue is waived for pretrial matters, and the case is moved to another county, will the trial go back to the home county? Judge Platt answered in the affirmative. The Chair pointed out that the Program judge will be from the circuit, but not necessarily from the same county, in which the case is filed. Mr. Sykes suggested that the phrase in section (a) which reads "subject to the availability of fiscal and human resources" should be moved so that it follows the language "(the Program)." He asked if the availability of resources enters into the decision as to the cases to be assigned to the Program. Judge Platt replied that this language was added in response to the concerns of the Conference of Circuit Court Judges. It is not an operational limitation, but it addresses the problem of having sufficient resources to keep the program functioning. It has

worked in the family division. A case is filed, an answer is filed, and the parties fill out an information report. The administrative judge or that judge's designee decides if the case goes to the business and technology program, at which point the Program judge is assigned. The judge will have a scheduling conference to decide if the track should be expedited or standard. The case will be scheduled and proceed on the appropriate track. The language concerning the availability of resources sends a message that support is needed.

The Chair said that the language concerning the availability of resources is a policy question for the Committee to consider. Judge McAuliffe noted that originally there was legislative impetus to have at least one designated judge trained for each circuit as the expert in business and technology. The number of cases put into the program may be dictated by the availability of that judge and of other human and fiscal resources. He agreed with Mr. Sykes that the language "subject to the availability of human and fiscal resources" should be moved. Judge Heller suggested that section (a) should be worded as follows: "There shall be a Business and Technology Case Management Program (the Program) which would be adopted by the Conference of Circuit Court Judges and approved by the Chief Judge of the Court of Appeals." The Chair suggested that the language "subject to the availability of fiscal and human resources" should be included in the first sentence of section (a). The Chair asked if any other Rule provides that it is adopted by the Conference of Circuit

Court Judges, and none of the Committee members knew of any rule with this language.

Judge Heller noted that section b. of Rule 16-202 provides that the County Administrative Judge shall develop and the Chief Judge of the Court of Appeals shall approve the case management plan. The Chair suggested that the language providing for the approval of the Chief Judge of the Court of Appeals be included in section (a) of Rule 16-205. Mr. Hochberg suggested that the phrase "in each of the circuits" should be added. The Chair proposed the following language: "In each circuit court, there shall be a Business and Technology Program (the Program) which shall be approved by the Chief Judge of the Court of Appeals. The Program will enable...". The Reporter suggested the following language: "There shall be a Business and Technology Case Management Program (the Program) approved by the Chief Judge of the Court of Appeals. The Program shall utilize judges, mediators, and arbitrators specially trained in business and technology, which will enable each circuit court, subject to the availability of fiscal and human resources, to handle business and technology matters in the most coordinated, efficient, and responsive manner and to afford convenient access to lawyers and litigants in business and technology matters."

Mr. Titus questioned as to what is distinctive about the specimen case management plan as compared with current case management plans. Judge Mason responded that one distinction is the use of Program judges. It is very important that Program

judges be educated in business and technology. Mr. Titus commented that there have been debates about how to set times in the DCM plans. Some say that the trial date should be set up early in the process, while others feel that a date set up too early is not realistic. Mr. Titus expressed his agreement with the view of Judge Weinstein, who prefers that a real date be set up later in the process. Judge Platt said that the Program judge will work with the attorneys. The hope is that the cases will be expedited. Mr. Titus remarked that there should be some degree of expedition. The word "ordinarily" could be added to section (e) so that it would begin as follows: "The Program judge to whom the action has been assigned shall ordinarily hear all proceedings...". It should be up to the trial judge to work things out.

Judge McAuliffe commented that the Rule seems to provide for tracks within a track. Once the judge sets the schedule, there is no need to choose a standard or an expedited track. The judge administering the Program should have flexibility. Judge Mason observed that the parties have to be flexible, also. The Chair said that a case assigned to the Program gets the Program judge. It is not necessary to provide for tracks in the Rule. The Program judge is authorized to schedule the case, including ADR, discovery, and a trial date. The Program judge may establish a schedule for ADR sessions. Section (e), Motion Practice, can be taken out because the Program judge hears all of the proceedings. Judge Platt said that the expedited and standard tracks may not

be consistent with the DCM language, but they were recommended by the Task Force. There are business courts in Delaware, New York, and North Carolina which have the formal tracks.

The Chair suggested that sections (c), (d), and (e) of Rule 16-205 could be combined into one section. He proposed the following language: "The Program judge to whom the action has been assigned shall ordinarily hear all proceedings until the matter is concluded. The Program shall incorporate alternative dispute resolution procedures into the early management of each case assigned to it and may establish a schedule for a certain number of alternative dispute resolution sessions in each case pursuant to an appropriate scheduling order." Judge Mason pointed out that the word "ordinarily" means that any other judge can hear these proceedings. The Rule should provide that the Program judge or another Program judge from a different jurisdiction shall hear the proceedings.

Judge Heller expressed the opinion that the current language is better, because it provides for discretion. Judge Platt agreed that adding the word "ordinarily" provides more flexibility. The Chair said that another sentence could be added to clarify this issue. Mr. Titus remarked that if the Program judge is unavailable, a business and technology case cannot be heard, unless the Rule provides some discretion. The Chair suggested that the language "if circumstances so require" would cover the situation in which the Program judge is unavailable to hear the case. Mr. Titus suggested that in place of the language

"discovery and other pretrial motions," the language "particular pretrial matter" could be added. The Reporter inquired as to whether the Rule is referring to the circuit or county administrative judge. Judge Platt answered that it is the circuit administrative judge or his or her designee. In the rural circuits, there is one designated judge. The Reporter said that subject to style revisions, the Rule can provide that the circuit administrative judge or that judge's designee may appoint another judge, who shall be a Program judge, if practicable, to hear the matter.

Judge Missouri pointed out that section b. of Rule 16-103, Assignment of Judges, provides that the Circuit Administrative Judge of each of the judicial circuits may assign any judge of that circuit to sit as a judge of the circuit court of any county in that circuit. This would cover the situation where the Program judge is unavailable. Judge Platt suggested that a cross reference to Rule 16-103 be added to Rule 16-205. Mr. Sykes remarked that Rule 16-205 contains a limitation on the power to designate another judge to hear pretrial matters. Mr. Sykes expressed the concern that the Program judge could be ill. Judge Platt responded that the provision in Rule 16-205 (e) is not intended to limit the authority of the Administrative judge, but if the attorneys in a case really want the Program judge to hear the case, there has to be assurance that unless the Program judge is ill, he or she will hear the case. He suggested that a Committee note be added which would indicate that the language of

Rule 16-205 is not intended to limit the authority provided by Rule 16-103.

Mr. Sykes questioned as to whether the intention is that the Program judge stays with the case. The Chair replied that usually the Program judge remains with the case, but if there are special circumstances, the administrative judge may appoint another judge. Referring to the issue about setting the trial date, Mr. Brault said that Judge Weinstein had tried a system of assigning a trial date early on, but this did not work. What was successful was assigning the trial date once the individual case was assigned to a judge. The Chair suggested that the following language be incorporated into Rule 16-205: "the Program judge shall promptly hold a scheduling conference and schedule a trial date." Judge Platt remarked that his own experience in Prince George's County is that 90% of the dates for trials are set in the complex track cases at the scheduling conference. However, some cases should not have the date set at this time, and it would be better if the Rule did not mandate this.

Judge Mason noted that in Montgomery County, there will be one or two Program judges, whose calendars will fill up quickly. It is difficult to commit to a date 12 or 18 months later. The Chair suggested that the Rule provide: "The Program judge shall promptly hold a scheduling conference at which the judge shall discuss ADR and the trial date." Mr. Brault said that in Prince George's County, it is difficult to get a trial date in Track 4 cases. Judge Missouri responded that in Prince George's County,

trial dates were given out immediately, but so many dates failed that now the attorneys are consulted. The Rule should provide flexibility.

The Reporter pointed out that Rule 2-323, Answer, does not require the defendant to file an information report. If the plaintiff asks to be in the business and technology program, should the defendant be required to file an information report? Mr. Titus responded that the defendant should file only if he or she disagrees with the plaintiff's information report. The Reporter commented that the triage judge needs as much information as possible. The Chair responded that if the plaintiff wants to utilize the business and technology program, he or she can so designate on the information report. Any other party wishing to utilize the program can file a motion pursuant to Rule 2-311, Motions. Judge Heller observed that under the current Rule, the defendant must file an information report, if the defendant disagrees with the plaintiff's report. The Chair questioned as to what happens if the defendant wants the case assigned to the Program, but the plaintiff does not file an information report. Judge Heller answered that under Rule 2-323 (h), the defendant must file a report if the plaintiff fails to file one. The Chair said that there could be a Committee note or a cross reference to Rule 2-323 added to Rule 16-205.

The Chair asked if the Committee approved the Rule, subject to styling. The Committee approved the Rule by consensus as amended, subject to styling. Judge Platt inquired as to when the

Style Subcommittee would consider the Rule, and the Reporter replied that it would be on October 31, 2001. The Chair stated that the business and technology consultants would be invited to the meeting to be held at 9:30 a.m. at Mr. Bowen's office.

Agenda Item 3. Consideration of a proposed amendment to Form No. 5, Domestic Relations Interrogatories, in Appendix: Forms, Form Interrogatories

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The Reporter presented Form No. 5, Domestic Relations Interrogatories, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

APPENDIX: FORMS

FORM INTERROGATORIES

AMEND Form No. 5 - Domestic Relations Interrogatories, by removing the word "extreme" from Standard Domestic Relations Interrogatory No. 15, as follows:

Form No. 5 - Domestic Relations Interrogatories

Interrogatories

. . .

15. If you contend that your spouse's conduct was excessively vicious or that your spouse acted with ~~extreme~~ cruelty or constructively deserted you, describe your spouse's conduct and state the date and nature of any injuries sustained by you and the date, nature, and provider of health care services rendered to you. **Identify** all **persons** with personal knowledge of your

> spouse's conduct and all **persons** with knowledge of any injuries you sustained as a result of that conduct. (Standard Domestic Relations Interrogatory No. 15.)
>
> . . .

Form No. 5 was accompanied by the following Reporter's Note.

> Franklin B. Olmstead, Esq., pointed out that Code, Family Law Article, §§7-102 (a)(1) and 7-103 (a)(7) provide that "cruelty of treatment" is a ground for divorce. This is inconsistent with Standard Domestic Relations Interrogatory No. 15 which uses the language "extreme cruelty." The Discovery Subcommittee is recommending that the word "extreme" be deleted from the interrogatory.

The Reporter explained that Franklin B. Olmstead, Esq., had sent in a comment pointing out that Code, Family Law Article, §§7-102 (a)(1) and 7-103 (a)(7) state that "cruelty of treatment" is a ground for divorce, but Form No. 5 uses the language "extreme cruelty." The Assistant Reporter had done research which indicated that neither the Code nor case law uses the language of the Form. Mr. Hochberg suggested that Form No. 5 should read as follows: "If you contend that ... your spouse is guilty of cruelty of treatment...". This would conform to the statutory language. The Committee approved this suggestion by consensus.

The Chair adjourned the meeting.