COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A, People's Resource Center, Crownsville, Maryland on October 15, 1999.

Members present:

Linda M. Schuett, Esq., Vice Chair

Lowell R. Bowen, Esq.
Robert L. Dean, Esq.
Hon. James W. Dryden
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Robert D. Klein, Esq.
Joyce J. Knox, 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
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Marguerite Angelari, University of Baltimore
Anna Benshoof, University of Baltimore
Hon. James C. Cawood
Master Bernard A. Raum, Circuit Court for Howard County
Julie Bernhardt, Esq., Office of the Public Defender
Pamela Otiz, Esq., Administrative Office of the Courts
Hon. Albert J. Matricciani, Jr.

In the absence of the Chair, the Vice Chair convened the meeting. She announced that the Court of Appeals had held a hearing on October 5, 1999 to consider the One Hundred Forty-Sixth Report, a package of rules which the Rules Committee had recommended for modifications to conform to legislative changes. The Court made some style changes, but it adopted the package of rules virtually in the form they were presented.

The Vice Chair also told the Committee that Westlaw now provides free access to the Maryland Rules of Procedure online at http://mdrules.westgroup.com. Initially a group of people had looked at the Rules online and had suggested that Westlaw not have a registration requirement. However, Westlaw retained the registration requirement, but the only information the user has to give is name, city, and state, even though the screen requirement indicates that more information is necessary.

Agenda Item 3. Consideration of AY2K@ amendments to certain rules (See Appendix 1).

The Reporter presented the following Rules and Forms for the Committee's consideration: Rule 4-343, Rule 4-512, Form 4-217.1, Form 4-217.2, Rule 6-125, Rule 6-126, Rule 6-207, Rule 6-208, Rule 6-311, Rule 6-312, Rule 6-321, Rule 6-322, Rule 6-402, Rule 6-403, Rule 6-405, Rule 6-411, Rule 6-413, Rule 6-415, Rule 10-206, Rule 10-708, and Rule 13-501. (See Appendix 1). The Reporter explained that all of these Rules and Forms must be changed because they contain a provision to fill in a date reading A19____,@ which will not be correct in the Year 2000. The suggested change is to indicate the date by having a line with the word Adate@ underneath it. There being no objections, the Committee approved the changes to the Rules and Forms as presented. The Reporter thanked Ken Crocken, a University of Baltimore law student who had been a summer intern in the Rules Committee Office, for doing a computer search to find all of the incorrect date references and for assisting with the

identification of obsolete statutory references in the Rules, the correction of which is the next agenda item.

Agenda Item 4. Consideration of Ahousekeeping amendments to certain rules: Rule 1-203 (Time), Rule 4-231 (Presence of Defendant), Rule 4-341 (Sentencing C Presentence Investigation), Rule 4-348 (Stay of Execution of Sentence), Rule 5-408 (Compromise and Offers to compromise), Rule 8-204 (Application for Leave to Appeal to Court of Special Appeals), Rule 8-422 (Stay of Enforcement of Judgment), Rule 11-103 (Juvenile Petition), Rule 15-205 (Constructive Criminal Contempt; Commencement; Prosecution), Rule 15-306 (Service of Writ; Appearance by Individual; Affidavit), Rule 15-801 (Actions Involving the Maryland Automobile Insurance), Rule 15-802 (Definitions), Rule 15-803 (Uninsured Motorist C Action Against Motorist), Rule 15-804 (Unidentified or Disappearing Motorist C Action Against Fund) and Rule 15-1001 (Wrongful Death)

The Reporter presented Rules 1-203, 4-231, 4-341, 4-348, 5-408, 8-204, 8-422, 11-103, 15-205, 15-306, 15-801, 15-802, 15-803, 15-804, and 15-1001 for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-203 to correct a statutory reference, as follows:

Rule 1-203. TIME

(a) Computation of Time After an Act, Event, or Default

In computing any period of time prescribed by these rules, by rule or order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. If the period of time

allowed is more than seven days, intermediate Saturdays, Sundays, and holidays are counted; but if the period of time allowed is seven days or less, intermediate Saturdays, Sundays, and holidays are not counted. The last day of the period so computed is included unless:

(1) it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or holiday; or

(2) the act to be done is the filing of a paper in court and the office of the clerk of that court on the last day of the period is not open, or is closed for a part of the day, in which event the period runs until the end of the next day that is not a Saturday, Sunday, holiday, or a day on which the office is not open during its regular hours.

Committee note: This section supersedes Code, ~~Article 94, §2~~ Article 1, §36 to the extent of any inconsistency.

Cross reference: For the definition of "holiday," see Rule 1-202.

. . .

Rule 1-203 was accompanied by the following Reporter’s Note.

Code, Article 94, §2 has been transferred to Code, Article 1, §36, and the cross reference at the end of section (a) of Rule 1-203 needs to be modified accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-231 to correct a statutory reference, as follows:

Rule 4-231. PRESENCE OF DEFENDANT

. . .

(b) Right to be Present -- Exceptions

A defendant is entitled to be present at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248; or (3) at a reduction of sentence pursuant to Rules 4-344 and 4-345.

Cross references: Code, ~~Courts Article, §9-102~~ Article 27, §774.

Rule 4-231 was accompanied by the following Reporter’s Note.

Code, Courts Article, §9-102 has been transferred by the legislature to Article 27, §774, and the cross reference in Rule 4-231 needs to be modified accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-341 to correct a statutory reference, as follows:

Rule 4-341. SENTENCING -- PRESENTENCE INVESTIGATION

Before imposing a sentence, if required by law the court shall, and in other cases may, order a presentence investigation and report. A copy of the report, including any recommendation to the court, shall be mailed or otherwise delivered to the defendant or counsel and to the State's Attorney in sufficient time before sentencing to afford a reasonable opportunity for the parties to investigate the information in the report. The presentence report, including any

recommendation to the court, is not a public record and shall be kept confidential as provided in Code, ~~Article 41, § 4-609~~ Correctional Services Article, §6-112.

Cross reference: See, e.g., Sucik v. State, 344 Md. 611 (1997). As to the handling of a presentence report, see Ware v. State, 348 Md. 19 (1997) and Haynes v. State, 19 Md. App. 428 (1973).

Source: This Rule is derived from former Rule 771 and M.D.R. 771.

Rule 4-341 was accompanied by the following Reporter’s Note.

Code, Article 41, §4-609 has been transferred to the new Correctional Services Article as §6-112, and Rule 4-341 need to be modified accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-348 to correct a statutory reference, as follows:

Rule 4-348. STAY OF EXECUTION OF SENTENCE

(a) Sentence of Death

(1) Definition

In this section, "state post conviction review process" has the meaning stated in Code, ~~Article 27, §75 (a)~~ Correctional Services Article, §3-902.

(2) Stay

A sentence of death shall be stayed during the direct review process and the state post conviction review process.

. . .

Rule 4-348 was accompanied by the following Reporter’s Note.

The 1999 legislature enacted a new Code article, Correctional Services Article, which contain provisions from Article 27 and Article 41. Rule 4-348 (a) contains reference to Article 27, §75 (a) which has been transferred to Correctional Services Article, §3-902, and the Rule needs to be changed accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 400 - RELEVANCY AND ITS LIMITS

AMEND Rule 5-408 to correct a statutory reference, as follows:

Rule 5-408. COMPROMISE AND OFFERS TO COMPROMISE

(a) The following evidence is not admissible to prove the validity, invalidity, or amount of a civil claim in dispute:

(1) Furnishing or offering or promising to furnish a valuable consideration for the purpose of compromising or attempting to compromise the claim or any other claim;

(2) Accepting or offering to accept such consideration for that purpose; and

(3) Conduct or statements made in compromise negotiations or mediation.

(b) This Rule does not require the exclusion of any evidence otherwise obtained merely because it is also presented in the course of compromise negotiations or mediation.

(c) Except as otherwise provided by law, evidence of a type specified in section (a) of this Rule is not excluded under this Rule when offered for another purpose, such as proving bias or prejudice of a witness, controverting a defense of laches or limitations, establishing the existence of a "Mary Carter" agreement, or proving an effort to obstruct a criminal investigation or prosecution, but exclusion is required where the sole purpose for offering the evidence is to impeach a party by showing a prior inconsistent statement.

(d) When an act giving rise to criminal liability would also result in civil liability, evidence that would be inadmissible in a civil action is also inadmissible in a criminal action based on that act.

Cross reference: Code, ~~Article 79, §12;~~ Courts Article, §§3-2A-08 and 5-401.1.

Source: This Rule is derived from F.R.Ev. 408.

Rule 5-408 was accompanied by the following Reporter's Note.

Code, Article 79, §12 has been revised as Courts Article, §5-401.1, and the cross reference at the end of Rule 5-408 needs to be modified accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-204 to correct a statutory reference, as follows:

Rule 8-204. APPLICATION FOR LEAVE TO APPEAL TO COURT OF SPECIAL APPEALS

(a) Scope

This Rule applies to applications for leave to appeal to the Court of Special Appeals.

Cross reference: For Code provisions governing applications for leave to appeal, see Courts Article, §3-707 concerning bail; Courts Article, §12-302 (e) concerning guilty plea cases; Courts Article, §12-302 (g) concerning revocation of probation cases; Article 27, §776 concerning victims of violent crimes; Article 27, §645-I concerning post conviction cases; ~~Article 41, §4-102.1 (m)~~ Correctional Services Article, §10-206 et seq. concerning inmate grievances; and Health-General Article, §§12-117 (e)(2), 12-118 (d)(2), and 12-120 (k)(2) concerning continued commitment, conditional release, or discharge of an individual committed as not criminally responsible by reason of insanity or incompetent to stand trial.

. . .

Rule 8-204 was accompanied by the following Reporter's Note.

Code, Article 41, §4-102.1 has been transferred to the new Correctional Services Article as §10-206 et seq., and the cross reference in Rule 8-204 needs to be changed accordingly.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-422 to correct a statutory reference, as follows:

Rule 8-422. STAY OF ENFORCEMENT OF JUDGMENT

(a) Generally

Except as otherwise provided in the Code or Rule 2-632, an appellant may stay the enforcement of a civil judgment, other than for injunctive relief, from which an appeal is taken by filing a supersedeas bond under Rule 8-423, alternative security as prescribed by Rule 1-402 (e), or other security as provided in Rule 8-424. The bond or other security may be filed with the clerk of the lower court at any time before satisfaction of the judgment, but enforcement shall be stayed only from the time the security is filed. Stay of an order granting an injunction is governed by Rules 2-632 and 8-425.

Cross reference: For provisions permitting a stay without the filing of a bond, see Code, Article 27, §645-I; Family Law Article, § 5-518; Courts Article, § 12-701 (a) (1). For provisions limiting the extent of the stay upon the filing of a bond, see Code, Article 2B, §16-101, Courts and Judicial Proceedings Article, §12-701 (a) (2); ~~Article 48A, §40 (6)~~ Code, Insurance Article §2-215 (j)(2); Tax-Property Article, §14-514. For general provisions governing bonds filed in civil actions, see Title 1 of these rules, Chapter 400.

. . .

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

Code, Article 48A, §40 (6) has been transferred to the Insurance Article as §2-215 (j)(2), and the cross reference in Rule 8-422 needs to be changed accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

AMEND Rule 11-103 to correct a statutory reference, as follows:

Rule 11-103. Juvenile Petition.

a. Form -- Contents.

The juvenile petition shall be by the State of Maryland. It shall be in writing and shall comply with the requirements of this Rule.

1. Caption.

The petition shall be captioned "Matter of................"

2. Contents.

The petition shall state:

(a) The respondent's name, address and date of birth. If the respondent is a child, it shall also state the name and address of his parent.

(b) Allegations providing a basis for the court's assuming jurisdiction over the respondent (e.g., that the respondent child is delinquent, in need of supervision, or in need of assistance; that the respondent adult violated Section 3-831 of the Courts Article; that the action arises under the Interstate Compact on Juveniles; or that the action arises under the compulsory public school attendance laws of this State).

(c) The facts, in clear and simple language, on which the allegations are based. If the commission of one or more delinquent acts or crimes is alleged, the petition shall specify the laws allegedly violated by the respondent.

(d) The name of each witness to be subpoenaed in support of the petition.

(e) Whether the respondent is in detention or shelter care; and if so, whether his parent has been notified and the date such detention or shelter care commenced.

3. Signature.

Except in the case of a petition filed under the Interstate Compact on Juveniles,

the petition shall be signed by the State's Attorney if delinquency or a violation of Section 3-831 of the Courts Article is alleged, or by the intake officer in other cases.

4. Interstate Compact Petitions.

Juvenile petitions filed under Article IV of the Interstate Compact on Juveniles (Code, ~~Health-General Article, §6-303~~ Article 83C, §3-103) shall comply with the requirements of the Interstate Compact and must be verified by affidavit.

b. Filing.

The petition shall be filed with the clerk of the court, in a sufficient number of copies to provide for service upon the parties.

Committee note: Juvenile petitions filed under Article IV of the Interstate Compact on Juveniles Code, ~~Health-General Article, §6-303~~ Article 83C, §3-103) must be verified by affidavit.

Source: This Rule is former Rule 903.

Rule 11-103 was accompanied by the following Reporter's Note.

Code, Health General Article, §6-303 has been transferred to Code, Article 83C, §3-103, and subsection a 4 of Rule 11-103 and the Committee note needs to be modified accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 200 - CONTEMPT

AMEND Rule 15-205 (b)(4) to correct a statutory reference, as follows:

Rule 15-205. CONSTRUCTIVE CRIMINAL CONTEMPT; COMMENCEMENT; PROSECUTION

. . .

(b) Who May Institute

(1) The court may initiate a proceeding for constructive criminal contempt by filing an order directing the issuance of a summons or warrant pursuant to Rule 4-212.

(2) The State's Attorney may initiate a proceeding for constructive criminal contempt committed against a trial court sitting within the county in which the State's Attorney holds office by filing a petition with that court.

(3) The Attorney General may initiate a proceeding for constructive criminal contempt committed (A) against the Court of Appeals or the Court of Special Appeals, or (B) against a trial court when the Attorney General is exercising the authority vested in the Attorney General by Maryland Constitution, Art. V, §3, by filing a petition with the court against which the contempt was allegedly committed.

(4) The State Prosecutor may initiate a proceeding for constructive criminal contempt committed against a court when the State Prosecutor is exercising the authority vested in the State Prosecutor by Code, ~~Article 10, §33B~~ State Government Article, §9-1201 et seq., by filing a petition with the court against which the contempt was allegedly committed.

(5) The court or any person with actual knowledge of the facts constituting a constructive criminal contempt may request the State's Attorney, the Attorney General, or the State Prosecutor, as appropriate, to file a petition.

Rule 15-205 was accompanied by the following Reporter’s Note.

Code, Article 10, §33B has been transferred to Code, State Government

Article, §9-1201 et seq., and subsection (b)(4) of Rule 15-205 needs to be modified accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-306 to correct a statutory reference, as follows:

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

(a) Service

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

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

(b) Production of Individual

At the time stated in the writ, which, unless the court orders otherwise, shall not be later than three days after service of the writ, the person to whom the writ is directed shall cause the individual confined or restrained to be taken before the judge designated in the writ.

(c) Immediate Appearance

If the judge finds probable cause to believe that the person having custody of the individual by or on whose behalf the petition was filed is about to remove the individual or would evade or disobey the writ, the judge shall include in the writ an order directing

the person immediately to appear, together with the individual confined or restrained, before the judge designated in the writ. The sheriff to whom the writ is delivered shall serve the writ immediately, together with a copy of the petition, on the person having custody of the individual confined or restrained and shall bring that person, together with the individual confined or restrained, before the judge designated in the writ.

Cross reference: See Code, Courts Article, §2-305 for the penalty on a sheriff for failure to act as provided in section (b) of this Rule; see Code, ~~Article 27, §617~~ Correctional Services Article, §9-611 for the penalty on an officer or other person failing to furnish a copy of a warrant of commitment when demanded.

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

Rule 15-306 was accompanied by the following Reporter's Note.

Article 27, §617 has been transferred to the new Correctional Services Article as §9-611, and the cross reference at the end of Rule 15-306 needs to be changed accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 800 - MARYLAND AUTOMOBILE INSURANCE FUND

AMEND Rule 15-801 to correct a statutory reference, as follows:

Rule 15-801. ACTIONS INVOLVING THE MARYLAND AUTOMOBILE INSURANCE FUND

The rules in this Chapter apply to actions involving the Maryland Automobile Insurance Fund that are authorized by Code, ~~Article 48A, §243H~~ Insurance Article, §20-601.

Cross reference: For procedure governing claims against the Fund not rising to the level of a civil action, see C.O.M.A.R. 14.07.04.01 - .06, Uninsured Persons' Claims for Compensation from the Maryland Automobile Insurance Fund.

Source: This Rule is derived from former Rule BW1 b.

Rule 15-801 was accompanied by the following Reporter's Note.

Code Article 48A, §243H has been transferred to Insurance Article, §20-601, and Rule 15-801 needs to be changed accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 800 - MARYLAND AUTOMOBILE INSURANCE FUND

AMEND Rule 15-802 to correct a statutory reference, as follows:

Rule 15-802. DEFINITIONS

In Rules 15-803 through 15-805 the following definitions apply:

(a) Claimant

"Claimant" means a person who claims damages resulting from an act or omission of a disappearing motorist, an unidentified

motorist, or an uninsured motorist.

Cross Reference: Code, ~~Article 48A, § 243H (a)~~ Insurance Article, §20-601.

. . .

Rule 15-802 was accompanied by the following Reporter's Note.

Code, Article 48A, §243H has been transferred to Insurance Article, §20-601, and Rule 15-802 needs to be changed accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 800 - MARYLAND AUTOMOBILE INSURANCE FUND

AMEND Rule 15-803 to correct a statutory reference, as follows:

Rule 15-803. UNINSURED MOTORIST -- ACTION AGAINST MOTORIST

(a) Against Whom Brought

An action on a claim against an uninsured motorist shall be brought against the uninsured motorist. The Fund shall not be named as a defendant.

(b) Notice to Executive Director

Within 15 days after the filing of the complaint, the claimant shall mail a copy of the complaint and summons to the Executive Director. Failure to give notice pursuant to this section shall not defeat the claim against the Fund if the Fund has reasonable notice of the pendency of the action and a reasonable opportunity to defend.

(c) Order for Payment

(1) By Consent

After entry of a money judgment against the uninsured motorist, the claimant may file with the court a stipulation, signed by the Executive Director, setting forth the deductions required by law and consenting to entry of an order directing payment of a specified amount by the Fund.

(2) On Motion

After entry of a money judgment against the uninsured motorist, the claimant may file a motion for payment of a specified amount by the Fund. The motion shall be supported by affidavit, shall set forth the grounds for entitlement to payment by the Fund and all the deductions required by law, and shall be served on the Executive Director.

Cross reference: See Code, ~~Article 48A, §243-I~~ Insurance Article, §20-602, for required deductions from payment by the Fund.
Source: This Rule is derived from former Rules BW4 and BW6.

Rule 15-803 was accompanied by the following Reporter's Note.

Code, Article 48A, §243-I has been transferred to Insurance Article, §20-602, and the cross reference at the end of Rule 15-803 needs to be changed accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 800 - MARYLAND AUTOMOBILE INSURANCE FUND

AMEND Rule 15-804 to correct a statutory reference, as follows:

Rule 15-804. UNIDENTIFIED OR DISAPPEARING MOTORIST -- ACTION AGAINST FUND

(a) Against Whom Brought

An action on a claim against an unidentified or disappearing motorist shall be brought against the Fund.

(b) Condition Precedent to Action Against Fund

Prior to bringing an action against the Fund for damages resulting from an act or omission of an unidentified motorist or a disappearing motorist, the claimant shall first present a request to the Executive Director, in the manner and form prescribed by the Executive Director, for a stipulation by the Fund that the claimant has met the procedural requirements for bringing an action against the Fund.

(c) Venue

The venue of an action against the Fund shall be either the county in which the claimant resides or the county in which the alleged act or omission by the unidentified motorist or disappearing motorist occurred.

(d) Complaint

In addition to complying with Rules 2-303 through 2-305, the complaint shall contain a statement as to whether the stipulation requested pursuant to section (b) of this Rule was granted or refused. If the stipulation was granted, a copy of the stipulation shall be filed with the complaint.

(e) Motion to Dismiss

If the stipulation requested pursuant to section (b) of this Rule was refused, the Fund, within the time for filing an answer to the complaint, may file a motion to dismiss the complaint for failure of the claimant to meet the procedural requirements for bringing

an action against the Fund. This defense may be joined with any other defense raised by motion pursuant to Rule 2-322 and is waived if not raised by motion before an answer is filed. When a motion is filed pursuant to this section, the time for filing an answer is extended without special order of the court to 15 days after entry of an order denying the motion.

(f) Order for Payment

(1) By Consent

After determination of the claimant's gross damages, the claimant may file a stipulation, signed by the Executive Director, setting forth the deductions required by law and consenting to entry of an order directing payment of a specified amount by the Fund.

(2) On Motion

After determination of the claimant's gross damages, either party may file a motion for an order directing payment by the Fund of a specified amount. The motion shall set forth the deductions required by law.

Cross reference: Code, ~~Article 48A, § 243-I~~ Insurance Article, §20-602.

Source: This Rule is derived from former Rules BW2, BW3, and BW5.

Rule 15-804 was accompanied by the following Reporter’s Note.

Code, Article 48A, §243-I has been transferred to Insurance Article, §20-602, and Rule 15-804 needs to be changed accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1000 - WRONGFUL DEATH

Rule 15-1001. WRONGFUL DEATH

(a) Applicability

This Rule applies to an action involving a claim for damages for wrongful death.

Cross references: See Code, Courts Article, §§3-901 through 3-904, relating to wrongful death claims generally. See also ~~Article 101, §58~~ Code, Labor and Employment Article, §9-901 et seq. relating to wrongful death claims when worker's compensation may also be available, and Code, ~~Article 48A, §243H~~ Insurance Article, §20-601, relating to certain wrongful death claims against the Maryland Automobile Insurance Fund. See also Code, Estates and Trusts Article, §8-103, relating to the limitation on presentation of claims against a decedent's estate.

. . .

Rule 15-1001 was accompanied by the following Reporter's Note.

Code, Article 48A, §243H has been transferred to Insurance Article, §20-601 and Code, Article 101, §58 has been transferred to Code, Labor and Employment, §9-901 et seq. The cross reference following section (a) in Rule 15-1001 needs to be modified to reflect these statutory changes.

The Reporter explained that these Rules contain outdated references to statutory provisions which are proposed for modification to conform to the updated statutes. There being no objections, the Rules were approved as presented.

Agenda Item 1. 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), Rule 2-535 (Revisory Power), Rule 2-541 (Masters), Rule 15-206 (Constructive Civil Contempt), and Rule 16-814 (Code of Conduct for Judicial Appointees).

The Reporter said that the Committee began its consideration of revised Divorce Rules in October of 1995. Since that time, the Rules have needed to be updated. The Family and Domestic Subcommittee met seven times over the summer to work on the Rules.

Because Ms. Ogletree, the Subcommittee Chair, was going to be a few minutes late, the Vice Chair presented Rule 9-201, Scope, for the Committee's consideration.

Rule 9-201. SCOPE

The Rules in this Chapter are applicable to actions in a circuit court in which divorce, annulment, alimony, child support, or child custody and visitation is sought. These Rules do not apply to actions in a juvenile court or actions brought solely under Code, Family Law Article, §4-504.

Source: This Rule is new.

Rule 9-201 was accompanied by the following Reporter's Note.

This Rule is new. The substance of current Rules 9-201, Venue--General, and 9-202, Process (former Rules 270 and S71, respectively), are not carried forward. Generally, venue provisions are not included in the revised rules; the pertinent statutory provisions are set forth in Code, Courts Article, §§6-201 and 6-202 (1) and (2). Absent an express provision to the contrary, the "process" provisions of the Title 2 Rules

apply to actions for divorce, annulment, alimony, child support and child custody and visitation.

The Vice Chair pointed out that Title 10 has a provision which states that Titles 1 and 2 apply to the Title 10 Rules. Since no similar provision exists in Rule 9-201, she suggested that either one should be added in or the parallel provisions in other Titles should be removed. The Reporter commented that these cases are always in circuit court, and Title 2 applies. The Vice Chair asked why Title 10 needs the language that Titles 1 and 2 are applicable. Mr. Sykes replied that Title 10 also applies to the Orphans' Court, so the applicability language is necessary. There being no objections, Rule 9-201 was approved as presented.

The Vice Chair presented Rule 9-202, Pleading, for the Committee's consideration.

Rule 9-202. PLEADING

(a) Signing-Telephone Number

A party shall personally sign each pleading filed by that party and, if the party is not represented by an attorney, shall state in the pleading a telephone number at which the party usually may be reached during ordinary business hours.

(b) Child Custody

When child custody is in issue, each party shall comply with Code, Family Law Article, §9-209.

(c) Amendment to Complaint

An amendment to a complaint pursuant to Rule 2-341 may include a ground for

divorce that by reason of the passage of sufficient time has become a ground for divorce since the filing of a prior complaint.

Committee note: Section (c) makes clear that there is no need to file a "supplemental complaint" to allege a ground for divorce occurring subsequent to the filing of the original complaint.

(d) Supplemental Complaint for Absolute Divorce Following Judgment of Limited Divorce

A party who has obtained a judgment of limited divorce may file a supplemental complaint for an absolute divorce if (1) the sole ground for the absolute divorce is that the basis of the limited divorce by reason of the lapse of sufficient time has become a ground for an absolute divorce and (2) the supplemental complaint is filed not later than two years after the entry of judgment granting the limited divorce. Service of the supplemental complaint shall be in accordance with Rule 1-321 if the defendant has an attorney of record in the action at the time the supplemental complaint is filed. Otherwise, service of the supplemental complaint shall be in accordance with Rule 2-121 or in accordance with Rule 2-122.

Cross reference: For automatic termination of attorney's appearance, see Rule 2-132.

(e) Obligation to Pay Spousal Support

If spousal support is claimed by any party and any party alleges that no agreement regarding support exists, the parties shall file current financial statements in substantially the form set forth in Rule 9-202A (a). The statement of a party shall be filed with that party's pleading making or responding to a claim for support. If the claim for spousal support or the denial of an agreement regarding spousal support is made in an answer, the other party shall file that party’s financial statement within 15 days after service of the answer.

(f) Obligation to Pay Child Support

If establishment or modification of

child support is claimed by any party, the parties shall file current financial statements under affidavit. The statement of a party shall be filed with that party's pleading making or responding to the claim. 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 required financial statement shall be in substantially the form set forth in Rule 9-202A (b). Otherwise, the statement shall be in substantially the form set forth in Rule 9-202A (a).

Source: This Rule is derived in part from former Rule S72 a, c, and f and is in part new.

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

Section (a) of current Rule 9-203 (former Rule S72) is rewritten so that the requirement of a personal signature of the party clearly applies to each pleading filed. "Pleading" is defined in Rule 1-202 (s). A new provision is added requiring a telephone number through which a pro se party may be reached during ordinary business hours.

Subsection 1 of section b of the current rule is unnecessary inasmuch as the same substantive provision already appears in Rule 2-202. It is recommended that the substance of subsections 2 and 3 of section b be deleted. The Committee does not believe that the guardian for the defendant in this type of action needs to be treated in a different manner than guardians for defendants in other civil actions.

New section (b) is proposed in lieu of section e. of the current Rule. The Committee believes that the rule should not supercede the statutory requirements of Code, Family Law Article, §9-209.

In section (c) an amended complaint is substituted for the currently required supplemental complaint. Rule 2-341 provides, inter alia, that an amendment may "set forth transactions or events that have occurred

since the filing of the pleading sought to be amended". The Committee note is inserted to further highlight the intended substitution which overrides the case law set forth in Lukat v. Lukat, 21 Md. App. 354,361-2 (1974) providing as follows:

This harsh pleading principle seemingly alien to a "court of conscience," which apparently precluded any alternative short of commencing anew, was leavened by the adoption of Md. Rule S72 c 1 by the Court of Appeals less than a year later. The new rule permitted grounds arising subsequent to the original bill to be asserted by supplemental bill. It did not, however, permit essential facts occurring after suit was filed to be brought in by amendment; nor has any subsequent rule, statute or case since done so.

The Committee discussed the need for a provision designed to clarify that when the amended complaint includes a new ground for divorce based on the passage of time - such as desertion, voluntary separation, or involuntary separation for the statutory period - the amended complaint shall not "relate back." The Committee concluded that such a provision is not necessary because case law already provides that when an amendment alleges a new cause of action, the doctrine of relation back does not apply. (See Crowe v. Houseworth, 272 Md. 481 (1974).) The two Schwab cases, 93 Md. 382 and 96 Md. 592, provide that a claim for absolute divorce is a separate cause of action from a claim for limited divorce and a claim for divorce based on adultery with one third party is a different cause of action from a claim for divorce based on adultery with another third party. It appears from this case law that an amended complaint containing a claim for divorce based on a ground not raised in the prior complaint states a new cause of action and, therefore, does not relate back.

Section (d) is based upon current Rule 9-203 c 2 (former Rule S72 c 2). The service provisions have been clarified and a cross reference to Rule 2-132 has been added. The Subcommittee considered eliminating the 18-month time frame within which a supplemental complaint may be filed, but concluded that

some time limit should be retained for administrative reasons and recommends that the time limit be two years.

In section (e), the current references to "alimony" and "maintenance" are replaced by the term "spousal support." A uniform financial statement form replaces the various local forms currently in use in the different counties. The form is set out in Rule 9-202A (a).

Section (f) is derived in part from current Rule 9-203 f 2 (former Rule S72 f 2) that allows a less detailed financial statement to be filed in cases where the only support issue is the establishment or modification of child support in accordance with the guidelines set forth in Code, Family Law Article, §§12-201 - 12-204. To assist the court in making the independent review of support agreements contemplated by Walsh v. Walsh, 333 Md. 492 (1994), financial statements are required regardless of whether the parties have reached agreement on the establishment or modification of child support. The form of financial statement is prescribed. If child support based on the guidelines is the only support issue, the parties are required to use the form set forth in Rule 9-202A (b). Otherwise, the form set out in Rule 9-202A (a) must be used.

The Vice Chair said that the intent of section (a) is that each pleading requires a personal signature. She asked if there should be a cross reference to the definition of Apleading@ in section (s) of Rule 1-202, Definitions. Master Raum noted that previously equity practice required a signature of a party on any complaint asking for relief. Mr. Sykes added that in earlier times, divorces were hard to get, and there were concerns about fraud. With modern no-fault divorces, the signatures are not as important. The Vice Chair commented that the current Rule only applies to the complaint and answer, but the proposed Rule has

been broadened to apply to any pleading. The Reporter remarked with the increase in pro se parties, it is a good idea to require the telephone number of parties. The Vice Chair suggested that section (a) contain a cross reference to Rule 1-202 (s), and the Committee agreed by consensus.

The Vice Chair said that the Reporter's note to section (b) provides that this section is new and replaces current section (e). The Reporter observed that there is a statutory requirement that parties must give the history of where the child has been. Mr. Sykes pointed out that this provision is not user-friendly, especially to a pro se litigant, because it is not obvious as to what the Code provision requires. Judge Cawood suggested that language could be added identifying what the Code provision concerns. The Vice Chair added that it is difficult to have to read the Code in conjunction with the Rule. Master Raum suggested that a Committee note could be added providing the content of the Code section.

Mr. Klein suggested that section (b) be changed to provide that each party shall state in the party's initial pleading the requirements of Code, Family Law Article, §9-209. Mr. Sykes commented that this should not be restricted to initial pleadings. The Vice Chair suggested that the Rule state that A[w]hen child custody is in issue, each party shall provide in the original pleading...@ adding in the requirements of the Code provision. The Committee agreed by consensus with this suggestion. Mr. Johnson questioned as to the purpose of the change in the Rule. Current Rule 9-203 (e) refers to the

statutory requirements, but proposed section (b) was not written that way. The Vice Chair responded that the current Rule requires statutory compliance only if a court of another state or country might have jurisdiction over the child, but the proposed Rule covers every time child custody is at issue. Master Raum remarked that if someone comes to Maryland and files a petition for custody, when no history is provided, it may not be obvious that another state has already awarded custody. The parent who does not have custody could be charged under the Parental Kidnaping Protection Act. The Vice Chair remarked that this is a good reason for section (b) to apply in every case.

The Vice Chair drew the Committee's attention to section (c). Mr. Bowen questioned the use of the word Aprior@ in this section, since there is only one complaint that is being amended. The Vice Chair asked if this is limited to complaints only, or if counterclaims would be included. Judge Cawood observed that the Committee note refers to Asupplemental complaints,@ and he pointed out that most people do not use that term. The Vice Chair said that the Committee note provides that there is no need to file a supplemental complaint; however, section (d) pertains to supplemental complaints. Judge Cawood remarked that section (d) is rarely used, but it is not harmful to leave the term in the Rule. Master Raum noted that if a limited divorce has been granted, either a new case can be filed or the supplemental complaint procedure can be followed. The Vice Chair suggested that the word Asupplemental@ be changed to the word Aamended.@

Mr. Sykes said that the Rule should clarify that the

supplemental complaint can be filed in the original action. The word Aamended@ makes this clearer than the word Asupplemental.@ He also pointed out that the language in the first sentence of section (d) which reads Abasis of the limited divorce by reason of the lapse of sufficient time@ should be restated. The Vice Chair responded that the Style Subcommittee will work on this.

Judge McAuliffe stated that he had a problem using the word Aamended@ in place of the word Asupplemental.@ The word Asupplemental@ indicates that there was a complaint which resulted in a judgment of divorce. The word Aamended@ means that the complaint supersedes the earlier complaint. The use of the word Asupplemental@ is valid. He expressed the view that the word should not be eliminated entirely. He suggested that the quotation marks be removed from the words Asupplemental complaint@ in the Committee note to section (c), and the words Asupplemental complaint@ should remain in section (d). The Committee agreed by consensus.

Judge Cawood commented that very few people obtain a limited divorce. He suggested that section (c) could begin as follows: [a]n amendment to a complaint before a final judgment may include...@. An amendment after a final judgment would be a supplemental complaint. Judge McAuliffe observed that it is clear that sections (c) and (d) refer to two different things. Mr. Sykes suggested that language could be added to section (d) to indicate that a supplemental complaint can be filed in the same action in which a limited divorce is granted. Judge Cawood suggested that section (d) begin as follows: A[a] party who has

obtained a judgment of limited divorce may file in the same action a supplemental complaint for absolute divorce...@. Master Raum suggested that the wording be: A...may file a supplemental complaint in the same action of divorce...@. The Committee agreed by consensus to the concept of this change. The Vice Chair said that the Style Subcommittee would rephrase it. The Reporter said that the word Asupplemental@ would be retained in section (d).

Turning to section (e), the Vice Chair commented that looking at sections (e) and (f) together, it may be possible to combine them under the heading Afinancial statements@ for (1) spouses and (2) children. The Reporter noted that section (e) should be retitled because it goes beyond spousal support. She also pointed out that the tagline to section (f) is wrong. Master Raum suggested that sections (e) and (f) could be in a separate rule. The Vice Chair asked when financial statements are filed. Ms. Ogletree replied that one is filed with the initial pleading and later in the proceedings there are additional and updated filings.

Subject to style changes, Rule 9-202 was approved as amended.

Ms. Ogletree presented Rule 9-207, Referral of Matters to Masters, for the Committee’s consideration.

Rule 9-207. REFERRAL OF MATTERS TO MASTERS

(a) Referral

(1) As of Course

In a court having a full or part-time standing master for domestic relations causes, unless the court directs otherwise in a specific case, the following matters arising under this Chapter shall be referred to the master as of course when a hearing has been requested or is required by law:

(A) Uncontested divorce, annulment, or alimony actions;

(B) Alimony pendente lite;

(C) Support of children pendente lite;

(D) Support of dependents;

(E) Preliminary or pendente lite possession or use of the family home or family-use personal property;

(F) Subject to Rule 9-204, pendente lite custody of or visitation with children or modification of an existing order or judgment as to custody or visitation;

(G) Modification of an existing order or judgment as to the payment of alimony or support or the possession or use of the family home or family-use personal property;

(H) Subject to Rule 9-204 as to orders and judgments governing custody and visitation, civil contempt by reason of noncompliance with an order or judgment in an action under this Chapter following service of a show cause order upon the person alleged to be in contempt, provided that the order filed pursuant to Rule 15-206 (b)(1) or the petition filed pursuant to Rule 15-206 (b)(2) expressly states that (i) referral to a master is requested and (ii) incarceration is not requested;

(I) Counsel fees and assessment of court costs in any action or proceeding referred to a master under this Rule;

(J) Stay of an earnings withholding order; and

(K) Such other matters arising under this Chapter and set forth in the court's case management plan filed pursuant to Rule

Committee note: Examples of matters that a court may include in its case management plan for referral to a master under subsection (a)(1)(K) of this Rule include scheduling conferences, settlement conferences, uncontested matters in addition to the matters listed in subsection (a)(1)(A) of this Rule, and the application of methods of alternative dispute resolution. Proceedings for civil contempt in which incarceration is sought and proceedings for criminal contempt may not be heard by a master.

(2) By Order on Agreement of the Parties

On agreement of the parties, the court, by order, may refer to a master any other matter or issue arising under this Chapter that is not triable of right before a jury.

(b) Powers

Subject to the provisions of any order of reference, a master has the power to regulate all proceedings in the hearing, including the powers to:

(1) Direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;

(2) Administer oaths to witnesses;

(3) Rule upon the admissibility of evidence;

(4) Examine witnesses;

(5) Convene, continue, and adjourn the hearing, as required;

(6) Recommend contempt proceedings or other sanctions to the court; and

(7) Make findings of fact and conclusions of law.

(c) Hearing

(1) Notice

The court shall fix the time and place for the hearing and shall send written notice to all parties.

(2) Attendance of Witnesses

A party may procure by subpoena the attendance of witnesses and the production of documents or other tangible things at the hearing.

(3) Record

All proceedings before a master shall be recorded either stenographically or by an electronic recording device, unless the making of a record is waived in writing by all parties. A waiver of the making of a record is also a waiver of the right to file any exceptions that would require review of the record for their determination.

NOTE TO FULL COMMITTEE: The Subcommittee believes the time requirements in section (d), below, which are carried forward from the current Rule, should be revisited as a policy issue for the full Committee. The minutes of the October, 1990 and January, 1991 meetings of the Committee pertaining to approval of these time requirements in former Rule S74A are included in the meeting materials.

(d) Findings and Recommendations

(1) Generally

The master shall prepare written recommendations, which shall include a brief statement of the master's findings and shall be accompanied by a proposed order. The master shall notify each party of the master's recommendations, either on the record at the conclusion of the hearing or by written notice served pursuant to Rule 1-321. In any matter referred pursuant to subsection (a)(1) of this Rule, the written notice shall be given within **three** days after the conclusion of the hearing. In any other matter referred by order pursuant to subsection (a)(2) of this Rule, the written notice shall be given within **30** days after the conclusion of the hearing. Promptly upon notification to the parties, the master shall

file the recommendations and proposed order with the court.

(2) Supplementary Report

The master may issue a supplementary report on the master’s own initiative before the court enters an order or judgment. A party may file exceptions to a new recommendation contained in the supplementary report in accordance with section (e) of this Rule.

(e) Exceptions

Within ten days after recommendations are placed on the record or filed pursuant to section (d) of this Rule, a party may file exceptions with the clerk. Within that period or within ten days after filing of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(f) Transcript

Unless a transcript has already been filed, a party who has filed exceptions shall cause to be prepared and transmitted to the court a transcript of so much of the testimony as is necessary to rule on the exceptions. Instead of a transcript, the parties may agree to a statement of facts or the court by order may accept an electronic recording of the proceedings as the transcript. At the time the exceptions are filed, the excepting party shall either: (1) order the transcript, make an agreement for payment to assure its preparation, and file a certificate of compliance stating that the transcript has been ordered and the agreement has been made; (2) file a certification that no transcript is necessary to rule on the exceptions; (3) file an agreed statement of facts in lieu of the transcript; or (4) file an affidavit of indigency and motion requesting that the court accept an electronic recording of the proceedings as the transcript. Within ten days after the entry of an order denying a motion under

subsection (f)(4) of this section, the excepting party shall comply with subsection (f)(1). The transcript shall be filed within 30 days after compliance with subsection (f)(1) or within such longer time, not exceeding 60 days after the exceptions are filed, as the master may allow. The court may further extend the time for the filing of the transcript for good cause shown. The excepting party shall serve a copy of the transcript on the other party. The court may dismiss the exceptions of a party who has not complied with this section.

Cross reference: For the shortening or extension of time requirements, see Rule 1-204.

(g) Entry of Orders

(1) In General

Except as provided in subsections (2) and (3) of this section,

(A) the court shall not direct the entry of an order or judgment based upon the master's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions; and

(B) if exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the master.

(2) Immediate Orders

Upon a finding by a master that extraordinary circumstances exist and a recommendation by the master that an order be entered immediately, the court may direct the entry of an immediate order after reviewing the file and any exhibits, reviewing the master's findings and recommendations, and affording the parties an opportunity for oral argument. The court may accept, reject, or modify the master's recommendations. An order entered under this subsection remains subject to a later determination by the court on exceptions.

(3) Contempt Orders

On the recommendation by the master that an individual be found in contempt, the court may hold a hearing and direct the entry of an order at any time.

(h) Hearing on Exceptions

(1) Generally

The court may decide exceptions without a hearing, unless a hearing is requested with the exceptions or by an opposing party within ten days after filing of the exceptions. The exceptions shall be decided on the evidence presented to the master unless: (A) the excepting party sets forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the master, and (B) the court determines that the additional evidence should be considered. If additional evidence is to be considered, the court may remand the matter to the master to hear the additional evidence and to make appropriate findings or conclusions, or the court may hear and consider the additional evidence or conduct a de novo hearing.

(2) When Hearing to be Held

A hearing on exceptions, if timely requested, shall be held within 60 days after the filing of the exceptions unless the parties otherwise agree in writing. If a transcript cannot be completed in time for the scheduled hearing and the parties cannot agree to an extension of time or to a statement of facts, the court may use the electronic recording in lieu of the transcript at the hearing or continue the hearing until the transcript is completed.

(i) Costs

Payment of the compensation, fees, and costs of a master may be compelled by order of court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the court may direct.

Committee note: Compensation of a master paid by the State or a county is not assessed as costs.

Cross reference: See, Code, Family Law Article, §10-131, prescribing certain time limits when a stay of an earnings withholding order is requested.

Source: This Rule is derived in part from Rule 2-541 and former Rule S74A and is in part new.

Rule 9-207 was accompanied by the following Reporter's Note.

Proposed revised Rule 9-207 is derived in part from Rule 2-541 and in part from current Rule 9-207 (former Rule S74A), which was adopted as a new rule in 1991. Substantial revisions have been made in light of the July 12, 1999 Memorandum of Chief Judge Robert M. Bell transmitting to circuit and county administrative judges the Interim Policy Position Relating to standing Masters; State v. Wiegmann, 350 Md. 585 (1998), and correspondence dated May 28, 1999 from the Office of the Public Defender to Chief Judge Joseph F. Murphy, Jr. concerning the right to counsel in civil contempt cases. Additionally, the Rule has been made more self-contained by eliminating references to Rule 2-541 and including the relevant provisions of that Rule in revised Rule 9-207.

In subsection (a)(1), the list of types of cases that are referred to a standing master as of course has been modified to reflect the Interim Policy and the concerns of the Public Defender. Proceedings for civil contempt in which incarceration is sought and proceedings for criminal contempt are not to be set before a master. To facilitate the assignment of contempt cases pursuant to this Rule and to clarify the obligation of the Public Defender to provide representation to an indigent alleged contemnor, proposed amendments to Rule 15-206 require that the order or petition by which a civil contempt proceeding is initiated expressly state whether or not incarceration is requested, and the amendments allow an action for support enforcement in which incarceration is not sought to be assigned to a standing master. In an additional change to Rule 9-207, the reference to all other domestic relations matters in the Seventh

Judicial Circuit is deleted. In its place is Asuch other matters arising under this Chapter and set forth in the court's case management plan filed pursuant to Rule 16-202 b.@ A Committee note lists examples of some Asuch other matters@ that conform to the Interim Policy.

In subsection (a)(2), the Subcommittee has added the requirement that before any matter other than the matters listed in subsection (a)(1) is referred to a master, the parties must agree to the referral.

Section (b) is derived, verbatim, from Rule 2-541 (c).

Section (c) is derived, verbatim, from Rule 2-541 (d).

Subsection (d)(1) is derived, verbatim, from current Rule 9-207 (c). The Subcommittee believes that the Athree day@ time requirement for the master's recommendation is too short in complicated cases. The Subcommittee submits the timing issues in subsection (d)(1) to the full Committee for a policy determination, without a specific Subcommittee recommendation.

Subsection (d)(2) is new. It is added to allow a master to correct obvious errors, such as mathematical mistakes, sua sponte, so that unnecessary exceptions do not have to be filed.

Section (e) is derived from current Rule 9-207 d, except that the triggering events for the running of the time within which exceptions may be filed is the filing of the master's recommendations or the first set of exceptions, rather than the service of these papers. Also, the Subcommittee recommends that the five-day time period for the first party's exceptions be changed to ten days and that the three-day time period for the second party's exceptions also be changed to ten days.

Section (f) is derived in part from Rule 2-541 (h)(2) and is in part new. New to the Rule is the requirement that the excepting party must take one of four possible actions or sets of actions contemporaneously with the

filing of the exceptions: (1) order the transcript, make an agreement for payment, and file a certificate of compliance that these two acts have been accomplished; (2) certify that no transcript is necessary; (3) file an agreed statement of facts; or (4) file an affidavit of indigency and motion that the court accept an electronic recording of the proceedings as the transcript. A cross reference to Rule 1-204 follows section (f).

Section (g) is derived from current Rule 9-207 f. Language restricting subsection (g)(2) to pendente lite orders has been eliminated.

Subsection (h)(1) is derived from Rule 2-541 (i), except the time for the opposing party to file exceptions is changed from five days after service of the exceptions to ten days after filing of the exceptions.

Subsection (h)(2) is derived from current Rule 9-207 g(2). The provision concerning written proffers of evidence if the transcript cannot be completed in time for the hearing has been eliminated. Instead, if the parties cannot agree to an extension of time or a statement of facts, the court may either use the electronic recording in lieu of the transcript or continue the hearing.

Section (i) is derived from Rule 2-541 (j).

Legislative Note:

The Family/Domestic Subcommittee suggests that the Legislature study two areas of concern: (1) the immediate entry of orders based on the master's recommendation in cases other than those where extraordinary circumstances are found to exist and (2) the power of masters to effectuate arrests. The Subcommittee believes that action in these areas cannot be taken by rule and that the appropriate mechanism for any change in these areas would be by legislation or possibly by a Constitutional amendment.

Policy Issues for the full Rules Committee:

In the Interim Policy, four topics were specifically recommended to the Rules Committee for its consideration: the immediate effect of a master's recommendation, review on the record, a time limit on motions for reconsideration, and the waiver of exceptions in advance by the parties. These topics correspond to Recommendation Nos. 10, 11, 13, and 14, respectively, in the August 12, 1998 Report of the Ad Hoc Committee to Study the Master System. Except for changes that have been incorporated into proposed revised Rule 9-207 and matters set out in the Legislative Note, above, the Family/Domestic Subcommittee makes no recommendations on these issues and requests that the full Committee make a policy determination on each.

Ms. Ogletree explained that the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, had issued an interim policy statement which required that certain aspects of the original Rule had to be changed. The Subcommittee and the consultants went through the Rule to make the necessary changes.

Section (a) covers the matters referred to a master as of course. These include pendente lite custody and visitation and contempt proceedings as long as no possibility of incarceration exists. Masters cannot hear criminal contempt cases because incarceration is always a possibility in those cases. Subsection (H) has been amended to indicate that masters can hear civil contempt cases, if incarceration has not been requested. This is the rule unless the case management plan of the county provides otherwise. Master Raum said that yesterday the Court of Appeals decided the case of Dorsey and Craft v. Maryland, Nos. 112 and 113, September Term, 1997 in which the Court held that a

defendant in a constructive criminal contempt case has a right to a jury trial.

Judge Albert Matricciani commented that the proposed Rule could cause problems for the Family Division of Baltimore City which has two full-time masters who hear child support cases two to three times a week. The cases are brought by the Office of Child Support Enforcement as well as by individuals. Most of the litigants will not waive the possibility of incarceration, so this will leave an enormous caseload which cannot be heard by a master. Judge Cawood remarked that subsection (H) does not apply to cases with monetary issues. Master Raum pointed out that subsection (a)(1)(K) is a Acatchall@ provision which allows for a mechanism to individual counties needing an exception to demonstrate to the Court of Appeals in the county's case management plan the need for broader jurisdiction of masters to hear cases.

The Vice Chair asked why subsection (a)(1)(H) does not apply to monetary issues. The language does not indicate this. Ms. Ogletree replied that her understanding was that the Subcommittee agreed to separate out other orders, such as visitation and custody, from monetary orders, leaving room for requests in the case management plan to broaden jurisdiction. She agreed that the language of subsection (H) does not make it clear that it does not apply to monetary issues. The Vice Chair suggested that subsection (H) begin as follows: A[s]ubject to Rule 9-204, civil contempt by reason of noncompliance with an order or judgment relating to custody of or visitation with children,...@. The

Committee agreed by consensus with this suggestion.

Judge Vaughan inquired as to how one knows whether incarceration should be sought in a civil contempt matter. Ms. Ogletree answered that the Rule requires that someone waive incarceration. The Vice Chair asked what sanctions are available in a contempt case besides incarceration or money. Judge Matricciani answered that without those two sanctions very little is left.

The Vice Chair suggested that subsection (a)(1)(H) be deleted, but Ms. Ogletree disagreed, explaining that occasionally there are situations where someone is requesting that visitation be stopped or that extra time be added on to the visitation. Judge Cawood added that there are cases where a party wants the judge to tell the other party how to behave. Ms. Ortiz observed that there are separate pro se petitions for contempt, and parties are often willing to waive incarceration. The Vice Chair questioned as to why it requires a petition to ask for referral to a master. Judge Matricciani also inquired as to why the litigant has to elect this. The Reporter responded that the Chair of the Rules Committee had suggested this to focus the issues. Judge Matricciani commented that many pro se litigants have no idea how to fill out the forms. Judge Cawood suggested that the language in subsection (a)(1)(H) ,which provides that the petition expressly states that referral to a master is requested, could be deleted. Ms. Ogletree added that few petitioners waive the possibility of incarceration. The Vice Chair suggested that the following language be deleted from

subsection (H): A(i) referral to a master is requested and (ii).@ The Committee agreed by consensus to this suggestion.

Ms. Ogletree said that Judge Cawood would like to speak about the master system. Judge Cawood told the Committee that he had chaired an ad hoc committee which studied the master system in Maryland. The ad hoc committee had made a number of suggestions, including some proposed changes to the Rules of Procedure. That committee suggested that a master's recommendation be an immediate order. The Honorable Robert M. Bell, Chief Judge of the Court of Appeals, issued an Interim Policy on Masters as a result of the ad hoc committee's report, and this is included in the meeting materials for today's meeting. The ad hoc committee would like the Rules Committee to review paragraph 7 of Chief Judge Bell's report. Ms. Ogletree observed that consideration of the issues associated with masters may be invading the province of the legislature. The Rules Committee should look at this before any rules are drafted.

Master Raum remarked that currently in the Juvenile Rules, juvenile masters' recommendations are implemented immediately. Ms. Ogletree responded that there is statutory authority for this. Master Raum noted that there is no similar statute for other kinds of cases. Ms. Ogletree observed that this is the reason the Subcommittee did not want to address this issue. The Vice Chair asked about the meaning of waiver of exceptions. Judge Cawood explained that he had met a court administrator in Los Angeles who was not a lawyer, master, professor, or Ph.D. There were no exceptions problems with the 20 masters in the

administrator's jurisdiction, because parties had the right to waive exceptions. If someone wants a master to hear his or her case, the person should be able to request one. It is important to spell out that if one agrees to go to a master, then one agrees that the master's decision has the legal effect of a circuit court judge's decision. Judge Cawood said that he would like to see the waiver of exceptions codified, so that the right to exceptions can be given up without giving up the right to appeal.

The Reporter pointed out that the Subcommittee's concern is not that it is not a good idea for masters to hear cases, but rather where does this go next when a party is dissatisfied with the master's determination. Ms. Ogletree added that the Subcommittee felt that making the decision that the master's judgment is the final judgment in a case may not be appropriate by rule. The Reporter observed that this could have the effect of conferring jurisdiction upon the Court of Special Appeals to review the decisions of masters, rather than the decisions of circuit court judges, and therefore it is appropriate for the legislature to consider this. Judge Cawood commented that currently two parties can decide to have a master hear the case, and both parties may be willing to waive exceptions. Ms. Ortiz expressed the opinion that the waiver of exceptions should be authorized. It would not take away the judge's discretion to review the master's decision. Judge Matricciani said that there are two good reasons to allow the waiver of exceptions. One is that wealthier parties whose cases are before a master may not

want the case in front of a judge, but would want to retain the right to appeal. The other is that pro se litigants may find the exceptions process cumbersome and ineffective, and they may not know how to except.

Mr. Johnson asked if people will waive exceptions, and Ms. Ogletree replied that they will. Master Raum remarked that unless the judge holds a hearing de novo, the court is bound by the first level findings of fact by the master as long as the record supports it. Judge McAuliffe commented that when the Court of Special Appeals reviews a master's case on appeal, the Court assumes that a circuit court judge has already looked at the case and made an independent determination. Ms. Ogletree added that if the circuit court is to be bound by second level findings of the master, the statute may have to be amended. Judge Matricciani asked why cases are different if they are tried before a master. Once the time for filing exceptions has expired, a party may take an appeal. Master Raum remarked that this happens all the time.

Delegate Vallario observed that it may require a constitutional amendment to provide that a decision of a master is equivalent to the decision of a judge. Constitutionally, judges are appointed by the governor or elected by the people. When a master makes a recommendation, the circuit court rules on it. Waiver of exceptions is permissible, but the circuit court reviews the recommendation before entering an order. Judge Cawood said that when parties waive exceptions, his court does not review. If parties do not waive exceptions, they can appeal

to the Court of Special Appeals. Judge McAuliffe commented that under the current Rule, if a party does not except, any errors are waived. Judge Matricciani remarked that the procedure is accomplished through the back door, and he inquired if it could be redesigned to be a front door procedure by having the litigants waive the exceptions period up front. Ms. Ogletree noted that this could be a problem in the Court of Special Appeals. Ms. Bernhardt questioned as to what would be preserved on appeal. Her concern was that the judge could be Asandbagged.@

Mr. Sykes observed that there is a conceptual problem in conferring jurisdiction by consent on a factor in a process that has no jurisdiction. The Reporter remarked that the Subcommittee had agreed with this. The Vice Chair noted that in the federal system, a party can opt for a trial by magistrate, waiving the exercise of judicial power. Master Raum said that Congress can create jurisdiction. The Vice Chair questioned whether the Maryland Constitution prohibits masters from being judicial officers. Ms. Ogletree replied in the affirmative. Judge Dryden commented that if the parties agree, the master's recommendation is in effect unless the judge changes it. Judge Cawood remarked that the ad hoc committee had suggested that the order of a master take immediate effect unless stayed by the master or a judge. He said that it bothers him that in the western United States, a master's decision has the effect of a trial court decision, and it does not require a constitutional amendment to effectuate this. Pro se exceptions are often delay tactics. This entire issue needs to be carefully considered. The master

system is working well, and it seems that attempts to beat it down are being made, instead of attempts to improve it.

Ms. Ogletree commented that she had no problem starting with the Maryland Constitution and tracing the delegation of power to the Rules. It is a mammoth project, however. Judge Matricciani pointed out that subsection (g)(2) of proposed revised Rule 9-207 pertains to immediate orders of masters. If litigants agree to this procedure up front, this principle could be applied to all masters' cases. Master Raum noted that the Rule does not violate the principles of the case Stach v. Stach, 83 Md. App. 36 (1990). Judge Cawood expressed the view that the issues discussed today should be looked into, even if it is a big undertaking. It is important to find out if extending the masters' powers can be accomplished by rule, statute, or constitutional amendment. Judge McAuliffe commented that if the parties knew in advance that the waiver of filing exceptions is the waiver of the right to appeal, it could affect the willingness of people to sign the waiver. Judge Cawood responded that it would affect the willingness of some people, but some would still sign. Mr. Bowen asked if there was a motion on the floor. Ms. Ogletree replied that the Subcommittee had no motion, but it wanted to raise the issue before the Rules Committee. The Vice Chair inquired whether subsection (a)(2), which provides that upon agreement of the parties, the court may refer a matter that is not triable of right before a jury to a master, is only applicable to the domestic area. Ms. Ogletree responded that in the domestic area, there are two purposes to agreeing to a master. One is the

saving of time, and the other is that the hearing is held before a person who deals with these matters every day. The Vice Chair asked if cases other than in the domestic arena are heard under this provision. Ms. Ogletree replied in the negative, noting that in the domestic area only custody, support, and visitation issues are heard by the master. Marital property cases go to the circuit court.

The Vice Chair questioned as to whether the parties could agree that a collection case should be heard by a master. Master Raum responded that the case could be referred pursuant to Rule 2-541. The Vice Chair pointed out that the Rule allows the motion of one of the parties, but if the other party objects, the case might not go before the master. Even if both parties agree, the case still may not go before a master. The Reporter added that under Rule 2-541, even if both parties object, any matter that is not triable of right before a jury could be heard by a master. Master Raum commented that there are not too many referrals pursuant to Rule 2-541. The Vice Chair remarked that the Trial Subcommittee may wish to consider whether the requirement of agreement of the parties should be added to Rule 2-541.

Judge Cawood reiterated that some changes should be made, including the immediate effect of a master's recommendation and a reconsideration of the time limits. A question was raised in the case of Dominques v. Johnson, 323 Md. 486 (1991) concerning review on the record. Many states permit by rule review on the record. The reviewing court does not apply its individual

judgment, but relies on the master's findings. The ad hoc committee endorsed this, also. The Vice Chair pointed out that although subsection (h)(1) provides that at the hearing on exceptions, the exceptions shall be decided on the evidence presented to the master, case law holds that the court must make an independent conclusion. Judge Cawood asked if this is mandated constitutionally. Ms. Ogletree noted that in the western states, masters may be judicial officers, but clearly this is not the situation in Maryland, so these states cannot be used as a model. The law cannot give final effect to a decision of a person who is not a judicial officer. Judge Cawood remarked that the supposition is that this is effected by the constitutions of the western states. Ms. Ogletree said that she was not sure. Judge Cawood stated that it is important to determine whether the change can be made by rule, by the legislature, or by a constitutional amendment.

Mr. Klein inquired as to whether the Rules Committee could contact its counterparts in the western states to find out if masters are considered to be judicial officers. This could provide some ammunition to argue for a change in the Maryland system. Ms. Bernhardt told the Committee that a nationwide search on the issue of masters and their powers had been conducted. Traditionally, masters are viewed as non-judicial, ministerial officers, unless a state has expressly included them in its constitution as judicial officers. She felt that it does not look promising to give judicial power to masters without a constitutional amendment in Maryland.

Ms. Ogletree noted that section (b) is derived from the current Rule. Master Raum pointed out that there is a problem with subsection (c)(1). The Subcommittee discussed whether to begin the sentence with Athe clerk,@ Athe court,@ or Athe master.@ Ms. Ogletree suggested that the sentence begin as follows: AThe notice shall state....@. Judge Cawood proposed that subsection (c)(1) read as follows: AA written notice setting the time and place for the hearing shall be sent to all parties.@ The Committee agreed by consensus to this change.

Turning to section (d), Ms. Ogletree said that the Reporter’s note to subsection (d)(1) states that the Subcommittee is concerned that the three-day time period for the master’s recommendation is too short. The question is how long it should be without unduly prolonging the proceedings. There has been some sentiment for a 10-day time period, although in the past the Rules Committee has expressed the view that this is too long. The Vice Chair inquired if all masters are complying with the three-day provision. Ms. Ogletree answered that not all masters are complying. The Vice Chair then asked what the sanction is for non-compliance, and Judge Cawood responded that there is no sanction. The Vice Chair commented that it is important to encourage quick resolution of the cases, and a change from three to 10 days may lead to more non-compliance.

The Reporter pointed out that Master Steven Salant from Montgomery County has stated that when there are complicated property issues, three days to finalize the recommendations is not sufficient. Ms. Ogletree remarked that three days is not

unreasonable for most cases, but if all of the issues pertaining to the use, possession, and valuation of property are to be determined in a detailed opinion, three days may be insufficient. Masters decide different issues in different counties. If there are no property issues, a master can do a recommendation in three days. The Subcommittee did not want to put in a time limit which no one can meet. The concern is building in delay if the time limit is lengthened. Master Raum observed that the appropriate time limit depends on when the decision is rendered. If it is not rendered on the record, then the master will have to issue a complete opinion later.

Ms. Ogletree stated that the argument has been made that it is not possible to comply with the current deadlines. Judge McAuliffe suggested that the time limit to issue the master's recommendations should be changed from three days to 10 days. The Committee agreed by consensus to this suggestion.

Turning to subsection (d)(2), Ms. Ogletree explained that this is a new provision. If the master should make a mathematical error, this allows him or her to sua sponte change the calculations without requiring a party to file exceptions. Judge Cawood added that this procedure is in lieu of a motion for reconsideration, which could be used to delay the process. The supplementary report provides a way for the master to correct a mathematical error, a kind of Ahousekeeping@ measure. Mr. Johnson pointed out that subsection (d)(2) provides that a party may file exceptions in accordance with section (e), which allows a time period of 10 days to file exceptions. Ms. Ogletree said

that if the master corrects a mistake, the losing party has 10 days to file exceptions to anything new in the corrected report. Mr. Johnson expressed the view that it is backwards to have exceptions to the supplemental report before the Rule provides for exceptions. The Reporter responded that it is better to tie subsection (d)(2) to section (e). Master Raum noted that the supplemental change may obviate the need for exceptions or affect the rights of a party who did not intend to file exceptions to the original report.

The Vice Chair commented that she envisions an increase in the number of exceptions because of the two-layer process. Ms. Ogletree remarked that it is not a problem to limit the time period to file exceptions after the original report or to state that the purpose of subsection (d)(2) is to correct obvious errors only. The Vice Chair said that this is similar to a clerical mistake. Mr. Sykes noted that the second sentence of subsection (d)(2) indicates that this means more than a clerical error. Master Raum hypothesized that the master's report provides for $50 a week, when the amount should be $500, and the party is not happy about the revised $500 amount. Mr. Johnson questioned as to why 10 days are needed to except to new computations by the master. Ms. Ogletree said that she had some concerns about the $50 to $500 example. If $500 is the correct amount, but a party would like it to be $450, the party should have the right to file exceptions.

The Reporter said that Rule 4-345 (b) allows the court to Acorrect an evident mistake,@ and questioned whether this

language could be used. Judge McAuliffe noted that the mistake could be that the report states that visitation is every weekend, but it should have stated every other weekend. Master Raum responded that as a matter of course, there could be a motion for reconsideration, and another report could be issued. The Reporter pointed out that the intent of subsection (d)(2) is that masters should not have to rewrite their reports when there is a mathematical error. Ms. Ogletree added that the master should be able to correct the error without it being necessary for the circuit court to review the matter.

The Vice Chair suggested that the word Arecommendation@ be changed to the word Amatters,@ so that the second sentence of subsection (d)(2) would read as follows: AA party may file exceptions to new matters contained in the supplementary report in accordance with section (e) of this Rule.@ Mr. Sykes observed that this would limit the new exceptions to changes in the original report and recommendations effected by the supplementary report. The Committee approved the Vice Chair's suggestion by consensus. Mr. Johnson noted that the Juvenile Rules use certain terminology, and there should be some symmetry in the terminology between Rule 9-207 and the Juvenile Rules. Ms. Ogletree added that this is true for Rule 2-541, also.

Turning to section (e), Ms. Ogletree said that the Subcommittee looked at the time limit for filing exceptions. The Vice Chair pointed out that the 10-day period runs from the filing of the first exceptions. She inquired if this should be changed to conform to other rules which key time periods from the

date of service of papers. If the period is timed from the date the court enters the order, the extra three days for service by mail is not available. Ms. Ogletree suggested that there be a compromise in the number of days, longer than five, but not as long as 13. The Vice Chair remarked that to find out the date of filing, one would have to call the court, but using a date of service, one would only have to look at the date the paper was served. She suggested that the first sentence of section (e) begin as follows: AWithin ten days after recommendations are placed on the record or served pursuant to section (d) of this Rule...@. This means that time is counted from the date the recommendations were placed in the mailbox.

Judge Cawood pointed out that under Rule 1-203 (a), Time, if the time period is more than seven days, intermediate Saturdays, Sundays, and holidays are counted, but if the time period is less than seven days, Saturdays, Sundays, and holidays are not counted. He suggested that the period remain at 10 days. The Vice Chair expressed the view that the time period should be keyed from service, the date the clerk, court, or master mailed the recommendations. Mr. Klein pointed out that section (d) provides that the report cannot be filed until the parties are notified. This could happen simultaneously. Judge McAuliffe suggested that the word Afiled@ be changed to the word Aserved@ in the first sentence of section (e). The word Afiling@ in the second sentence would be changed to the word Aserving.@ The Committee agreed by consensus to these changes.

Ms. Ogletree drew the Committee's attention to section (f).

She said that a master in her county is not informing people that a transcript must be ordered at the same time exceptions are filed. Seven out of ten sets of exceptions are being dismissed. Some indication of this should be built into Rule 9-207, so that it is parallel to Rule 2-541. The Rule provides that the party shall either (1) order the transcript, make an agreement for payment and file a certificate of compliance, (2) file a certification that no transcript is necessary, (3) file an agreed statement of facts in lieu of the transcript, or (4) file an affidavit of indigency and motion requesting that the court accept an electronic recording of the proceedings an the transcript.

Ms. Ogletree commented that there may be no need for a transcript. The Vice Chair said that if there is a need for a transcript, it should have to be ordered within ten days. If an agreement is reached twenty or thirty days later, the transcript should not be mandated. Master Raum agreed that there should be a cutoff. The Reporter asked about the repercussions if no transcript is ordered, and then the parties find that they cannot agree on a statement of facts. Mr. Shipley pointed out that a transcript has to be ordered and completed within 60 days because subsection (h)(2) provides that a hearing is held within 60 days after the filing of the exceptions. Changing one time frame creates a problem with respect to other time requirements.

Mr. Johnson observed that if a transcript is not available, either the parties agree or the court can continue the case. Mr. Shipley reiterated that the hearing must be held within 60 days.

Ms. Ogletree suggested that in the first sentence of subsection (h)(2), the word Aheld@ could be changed to the word Ascheduled.@ Mr. Johnson said that if the hearing is scheduled, then continued, this would cause the same problems that have occurred in juvenile cases. The Vice Chair suggested that the first two sentences of subsection (h)(2) be combined, so that the sentence would provide that a hearing is to be held within 60 days, unless the parties agree or a transcript cannot be completed or the parties cannot agree to an extension or to a statement of facts.

Judge Dryden commented that it is pointless to schedule events that are not going to happen. The dates in the Rule should be realistic. Ms. Ogletree said that it depends on the issues. The Vice Chair added that it depends on the jurisdiction. Mr. Sykes suggested that an electronic recording be mandated; if the transcript is not ready by the deadline, the reporter would not be paid. Judge Cawood pointed out that the judge may have to listen to three or four days of tape recordings. He said that he does not want to be bound by the 60-day time period and prefers no date. Master Raum countered that the date acts as a springboard. Ms. Ogletree stated that it is necessary to have a date certain. Otherwise, it may never get scheduled. The Committee decided no change was necessary.

After the lunch break, Ms. Ogletree drew the Committee’s attention to section (g). She said that the only change from the current rule is the elimination of language restricting subsection (g)(2) to pendente lite orders. Judge Cawood noted that there also may be a need for an escape clause for the rare

case where custody needs to be turned over right away by the master prior to any judicial review to avoid a situation such as where someone may take a child away. Ms. Ogletree commented that this may require a statutory change. Judge Cawood suggested that the legislature consider this issue. Master Raum remarked that the legislature considered this last year, and Ms. Bernhardt added that it was defeated. The Reporter suggested that in the case management plan, the family coordinator could flag a case like this and have it heard by a judge, but Master Raum responded that the problem cannot always be identified on it face. Ms. Ortiz said that most jurisdictions are in line with the case of Wiegmann v. State, 118 Md. App. 317 (1997), aff'd, 350 Md. 585 (1998), which holds that the master has no power to hold someone in custody pending judicial review of a master's recommendation.

Judge Vaughan asked what the legislature could do to take care of this. Judge Cawood answered that the law could provide that the master has jurisdiction when the safety and health of the child are at issue. The child could be detained. The Reporter said that there is a legislative note at the end of the Reporter's Note which suggests that the legislature study this. The Vice Chair stated that both the legislative note and the minutes of today's meeting will reflect this discussion of increasing the master's powers in an emergency situation when the safety and health of the child is at issue.

The Vice Chair asked if the hearings in subsections (g)(2) and (g)(3) are de novo. Ms. Ogletree replied that they may be. She added that the hearing could be de novo if the punishment

could be incarceration. The master may recommend that the person is in contempt and allows no visitation. The fourth time this happens, under certain circumstances, the person could be incarcerated. The Vice Chair remarked that this should not have been heard by a master. Judge Cawood commented that this dovetails with the letter written by the Honorable Clayton Greene, Jr., Fifth Circuit Administrative Judge and County Administrative Judge for Anne Arundel County, copies of which letter were distributed at the meeting today. (See Appendix 2.) Judge Cawood said that most contempts are being heard by masters. In a substantial minority, the master feels the need for incarceration. If so, the person is sent to the judge, or taken to the judge, if the person is in custody. The judge hears the matter again, without rubber-stamping it. The Vice Chair inquired as to how the person gets counsel. Judge Cawood replied that the master asks the person if he or she needs counsel. Judge Dryden added that if there is no chance of incarceration, the person is not entitled to a Public Defender. Judge Cawood noted that most persons do not want an attorney. Master Raum remarked that the Office of the Public Defender does not have enough money to represent everyone.

The Vice Chair expressed the view that it is a problem with the system when the petition states that there will be no incarceration, but the person is then sent up to the circuit court judge. Judge McAuliffe said that from the way subsection (g)(3) is written, it appears that it is the exclusive procedure if contempt is recommended. Judge Dryden observed that

subsection (g)(3) used to mean the judge can confirm the master's decision to send someone to jail. Now, the master cannot send people to jail, and it is not a useful provision. The Vice Chair also noted that the subsection is not appropriate for decisions involving money. The Reporter suggested that subsection (g)(3) be deleted, and the Committee agreed by consensus with this suggestion.

Mr. Sykes commented that it is conceivable that there could be disruptive conduct before a master, and questioned whether the master could then have the judge initiate contempt proceedings. Judge Dryden responded that the master cannot hold the person where he or she goes to get the judge. Master Raum remarked that the sheriff could arrest the person for disorderly conduct. Mr. Sykes commented that the court could cite the person for constructive contempt.

Ms. Ogletree said that subsection (h)(1) pertains to the court deciding exceptions without a hearing. The Committee already decided to keep the 60-day time period in subsection (h)(2).

The Vice Chair drew the Committee's attention to section (i), and she asked how often costs are assessed against anyone. Ms. Ortiz replied that until recently, Baltimore County charged a fee. Judge Johnson remarked that one pays up front to go to a master. Ms. Ogletree added that it depends on whether the master is a court employee or an attorney in private practice who also serves as a part-time master. If the master is under a grant, there is no fee. The Reporter pointed out that a pendente lite

case before a master may involve hundreds of dollars in master's fees, because the fee is based on an hourly rate. Master Raum observed that a filing fee is tacked on, too. The Vice Chair expressed the view that it is not a good idea to force someone to use a master, instead of a judge, and have to pay for it. Judge Johnson noted that indigent people usually are before a judge.

The Vice Chair commented that the masters should be part of the state system. Judge Cawood explained that the history of the masters is that the original master-examiners were private. Prince George's County wanted in-house masters for cases other than uncontested divorces, and the fees went to the court. In some counties, such as Anne Arundel, master-examiners hear the uncontested divorce cases. Ms. Ogletree noted that they are not masters, but examiners. Judge Cawood commented that the bar likes the system the way it is and does not want to change it. If the proposed Rule is approved, it will diminish the master system, which is working well. Masters should be able to hear cases involving incarceration. Ninety to 95% of people will not be incarcerated. Ms. Bernhardt pointed out that that suggestion is inconsistent with the interim policy of the Court of Appeals, and the Office of the Public Defender does not provide representation for cases in front of masters. The proposed rule change is consistent with the interim policy. Judge Cawood said that the interim policy is not final. Ms Ogletree remarked that when the Court of Appeals changes the policy, the Rule can be changed.

Judge McAuliffe commented that under the proposed system,

the master makes a binding adjudication, once it has been determined there will be no incarceration. This could lead to double jeopardy problems as in the case of Swisher v. Brady, 438 U.S. 204 (1978). Ms. Bernhardt said that the role of the Public Defender is to provide counsel in incarceration cases only. Judge McAuliffe noted that the masters filter out the non-incarceration cases. The Vice Chair observed that if incarceration is not mentioned in the petition for contempt, the word will get out that if it is requested, the case goes to a judge. The Reporter pointed out that new language is being proposed in Rule 15-206 which would provide that the order and petition in a constructive civil contempt case would state whether incarceration to compel compliance is being sought. If it is not sought and the action is for support enforcement, the order may direct or the petition may request referral to a master. Ms. Bernhardt noted that there is no Public Defender to represent someone in a settlement conference.

Judge Cawood reiterated his concern that too many cases will go to the circuit court judges. The Reporter suggested that a prehearing conference could be held 10 business days before the hearing date. If the matter is not resolved at the prehearing conference and someone needs a Public Defender, one could be requested after the conference. Ms. Ortiz remarked that it is a matter of resource management. A conference can be set and the hearing date deferred. Judge Cawood said that he had asked the Subcommittee to have the Rule set a date for a conference, then a date for the contempt hearing. If the person did not appear for

the conference, a bench warrant could be issued. He agreed with Ms. Ortiz's suggestion to change the Rule. Judge McAuliffe pointed out that the Public Defender would not be attending the preliminary conference. Ms. Bernhardt added that the conference is merely for screening purposes.

Judge Cawood suggested that the phrase in subsection (c)(1) of Rule 15-206 concerning whether incarceration is requested should be deleted, because the State's Attorney will probably request it routinely. Ms. Ogletree remarked that some people do not want incarceration. They may only be seeking to have payments come through the Office of Support Enforcement. The Reporter added that it may be a visitation dispute in which the non-custodial parent does not want the child's custodial parent to be incarcerated. The Vice Chair asked how the second sentence of subsection (c)(1) works with the provisions in Rule 9-207 concerning the types of cases that the master can hear. She suggested that the language in the second sentence of subsection (c)(1) should be A... and the action is not one for support...@.

The Reporter said that the entire Rule will be restructured, and drafted to be applicable in counties that do not have masters as well as those that do have masters. Ms. Ogletree stated that the Subcommittee will look at it again.

The Vice Chair adjourned the meeting.