COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A of the People's Resource Center, 100 Community Place, Crownsville, Maryland, on November 18, 2005.

Members present:

Hon. Joseph F. Murphy, Jr., Chair

F. Vernon Boozer, Esq.
Albert D. Brault, Esq.
Hon. James W. Dryden
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
J. Brooks Leahy, Esq.
Timothy F. Maloney, Esq.
Hon. John F. McAuliffe
Robert R. Michael, Esq.
Hon. John L. Norton, III
Anne C. Ogletree, Esq.
Larry W. Shipley, Clerk
Sen. Norman R. Stone, Jr.
Melvin J. Sykes, Esq.
Del. Joseph F. Vallario, Jr.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Dawn Musgrave, Esq., Adoptions Together
Paul H. Ethridge, Esq.
Stacy McCormack, Esq., Public Defender's Office
Nathan Siegel, Esq., Levine, Sullivan, Koch, and Schulz, LLP
Carol Melamed, Esq., The Washington Post
John Greene, Esq.
Sally Rankin, Court Information Office
Hope Gary, Administrative Office of the Courts
Joan C. Dudley, Esq., Administrative Office of the Courts

The Chair convened the meeting. He announced that Mr. Zarnoch, a member of the Committee who was not in attendance at the meeting, was one of the Leadership in Law honorees at the event sponsored by The Daily Record today. On November 7, 2005,

the Court of Appeals held a hearing on the 155th Report. The Court approved most of the recommendations of the Rules Committee, but they remanded Rules 4-262, Discovery in District Court, and 4-263, Discovery in Circuit Court, to the Committee to rework the Rules so that they would expressly provide that discovery material includes material that tends to impeach a witness pursuant to Rule 5-616 (a) and (b). The Criminal Subcommittee will take up this matter with the help of consultants from the Office of the Public Defender, the private defense bar, and prosecutors. Another change not adopted by the Court was in the Expungement Rules. The Committee had proposed a modification to those Rules that provided that, if on its face, a petition for expungement should not be granted, no hearing would be necessary. However, opponents of the proposed Rule change felt that there should be a hearing, regardless of what the petition alleged. The Court preferred that the Rules remain the way they currently are. The remainder of the package of Rules in the 155th Report was approved.

Mr. Michael introduced Paul Ethridge, Esq., liaison to the Maryland State Bar Association.

Agenda Item 1. Reconsideration of proposed amendments to Rule 16-760 (Order Imposing Discipline or Inactive Status) and consideration of proposed amendments to Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants) of the Maryland Lawyers' Rules of Professional Conduct

---

Mr. Brault presented Rules 16-760 (Order Imposing Discipline

or Inactive Status) and Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants) of the Maryland Lawyers' Rules of Professional Conduct for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-760 to add to section (c) certain duties with respect to Rule 5.3 (d) of the Maryland Lawyers' Rules of Professional Conduct and to delete subsection (d)(2), as follows:

Rule 16-760. ORDER IMPOSING DISCIPLINE OR INACTIVE STATUS

. . .

(c) Duties of Respondent

Unless otherwise stated in the order, an order that disbars or suspends a respondent or places a respondent on inactive status shall operate as an immediate directive that the respondent perform each of the following duties in a timely manner:

(1) The respondent shall not accept any new clients or undertake any new or further representation of existing clients.

(2) The respondent shall take any action necessary to protect current clients.

(3) The respondent shall conclude any current client matters that can be concluded within 15 days after the date of the order.

(4) Within 15 days after the date of the order, the respondent shall supply to Bar Counsel or an attorney designated by Bar Counsel a list of the attorney's clients (by

name, address, and telephone number) whose legal matters have not been concluded by the respondent and identify any client matters (by name, tribunal, and docket reference) currently pending in any court or agency.

(5) Within 15 days after the date of the order, the respondent shall mail a letter to each client whose legal matter has not been concluded, to counsel for any other party or to any unrepresented party in a pending action or proceeding, and to all attorneys with whom the respondent is associated in the practice of law, notifying each of them of the order and the fact that the respondent will be unable to practice law after the effective date of the order. The respondent shall supply copies of the letters to Bar Counsel or an attorney designated by Bar Counsel.

(6) Within 30 days after the date of the order, the respondent shall withdraw from all client matters.

(7) Unless suspended for a definite period of not more than one year, the respondent shall promptly request the publisher of any telephone directory or law listing to remove any listing or reference that suggests that the respondent is eligible to practice law.

(8) The respondent shall deliver promptly to clients with pending matters any papers or other property to which the clients are entitled or notify the clients and any co-counsel of a suitable time and place to obtain the papers and other property and call attention to any urgent need to obtain them.

(9) The respondent shall promptly notify the disciplinary authority in each jurisdiction in which the respondent is admitted to practice of the disciplinary sanction imposed by the Court of Appeals.

(10) Within 30 days of the effective date of the order, the respondent shall file with the Commission an affidavit that states (A) the manner and extent to which the respondent has complied with the order and the provisions of this section, (B) the names of all state and federal jurisdictions in which

and administrative agencies before which the respondent has been admitted to practice, (C) the residence and any other address of the respondent to which future communications may be directed, (D) the policy number and the name and address of each insurer that provided malpractice insurance coverage to the respondent during the past five years and the inclusive dates of coverage, and (E) the date and manner that a copy of the affidavit required by this subsection was served upon Bar Counsel. The affidavit shall be accompanied by copies of the list required by subsection (c)(4) of this Rule and the letters mailed under subsection (c)(5) of this Rule.

(11) If the respondent is employed or retained by or associated with a lawyer, the respondent shall comply with Rule 5.3 (d) of the Maryland Lawyers' Rules of Professional Conduct and shall assist the supervising lawyer in complying with the supervising lawyer's obligations under the Rule.

~~(11)~~ (12) The respondent shall maintain records of the various steps taken to comply with this section and the order of the Court of Appeals and make those records available to Bar Counsel on request.

(d) Effect of Order; Prohibited Acts

After the effective date of an order that disbars or suspends a respondent or places a respondent on inactive status, the respondent may not practice law, attempt to practice law, or offer to practice law in this State either directly or through an attorney, officer, director, partner, trustee, agent, or employee. Unless otherwise stated in an order of the Court of Appeals, the respondent shall not:

(1) occupy, share, or use office space in which an attorney practices law unless under circumstances clearly indicating to clients, prospective clients, and persons who may visit the office that the respondent is not a lawyer and is not permitted to practice law;

~~(2) work as a paralegal for or as an employee of an attorney;~~

~~(3)~~ (2) use any business card, sign, or advertisement suggesting that the respondent is entitled to practice law or maintain, either alone or with another, an office for the practice of law;

~~(4)~~ (3) use any stationery, bank account, checks, or labels on which the respondent's name appears as an attorney or in connection with any office for the practice of law;

~~(5)~~ (4) solicit or procure any legal business or retainer for an attorney, whether or not for personal gain; and

~~(6)~~ (5) share in any fees for legal services performed by another attorney after the effective date of the order, but may be compensated for the reasonable value of services rendered prior to that date.

. . .

Rule 16-760 was accompanied by the following Reporter's Note.

Rule 16-760 (d)(2), which prohibits a respondent who has been disbarred or suspended or placed on inactive status from working as a paralegal or as an employee of an attorney, is proposed to be deleted.

Proposed new subsection (c)(11) tracks the language of Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants) of the Maryland Lawyers' Rules of Professional Conduct by requiring a respondent who "is employed or retained by or associated with a lawyer" to comply with proposed new section (d) of Rule 5.3 and to assist the

respondent's "supervising lawyer" with compliance.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

AMEND Rule 5.3 of the Maryland Lawyers' Rules of Professional Conduct to add certain provisions with respect to a nonlawyer assistant who was formerly admitted to the practice of law in any jurisdiction and has been disbarred or suspended or based on incapacity placed on inactive status, as follows:

Rule 5.3. RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; ~~and~~

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Maryland Lawyers' Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action~~.~~; and

(d) if the nonlawyer was formerly admitted to the practice of law in any jurisdiction and has been disbarred or suspended or based on incapacity placed on inactive status:

(1) All law-related activities of the formerly admitted lawyer shall be (A) performed from an office that is staffed on a full-time basis by a supervising lawyer who has been a member in good standing of the Bar of this State for at least 5 years, and (B) conducted under the direct supervision of the supervising lawyer who shall be responsible for ensuring that the formerly admitted lawyer complies with the requirements of this Rule.

(2) The only law-related activities that may be conducted by a formerly admitted lawyer are:

(A) work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents;

(B) accompanying a lawyer to a deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing assistance to the lawyer; and

(C) direct communication with a client or other party limited to ministerial matters, such as scheduling, billing, updates, confirmation of receipt or sending

of correspondence, and messages.

(3) A formerly admitted lawyer is specifically prohibited from:

(A) representing himself or herself as a lawyer or person of similar status;

(B) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (d)(2) of this Rule;

(C) rendering legal consultation or advice to a client;

Alternative 1

(D) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer, or any other adjudicative person or body;

Alternative 2

(D) appearing on behalf of or representing a client in any judicial, administrative, legislative, or alternative dispute resolution proceeding;

(E) appearing as a representative of the client at a deposition or other discovery matter;

(F) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction;

(G) receiving, disbursing, or otherwise handling client funds; and

(H) if the formerly admitted lawyer was disbarred or suspended by an order effective after [Insert the effective date of the Rule

change], performing any law-related activity (i) for a law firm or lawyer with whom the formerly admitted lawyer was associated when the acts that resulted in the disbarment or suspension occurred, or (ii) for any client who in the past was represented by the formerly admitted lawyer.

Committee note: Paragraph (d)(3)(H) of this Rule does not apply to a formerly admitted lawyer who has been disbarred or suspended from the practice of law by an order effective on or before [Insert the effective date of the Rule change] nor to a formerly admitted lawyer who based on incapacity has been placed on inactive status.

(4) No later than [insert a date] as to formerly admitted lawyers employed as of [insert the effective date of the Rule change] and, as to formerly admitted lawyers hired after [Insert the effective date of the Rule change], within 30 days of commencement of the employment, the supervising lawyer and the formerly admitted lawyer shall file with Bar Counsel (A) a notice of employment, identifying the formerly admitted lawyer, each jurisdiction in which the formerly admitted lawyer has been disbarred or suspended or based on incapacity placed on inactive status, and the supervising lawyer; and (B) a copy of a written agreement, signed by the formerly admitted lawyer and the supervising lawyer, which sets forth the duties of the formerly admitted lawyer and includes an undertaking that the formerly admitted lawyer and the supervising lawyer will cooperate with such requests for evidence of compliance with the terms of the agreement and this Rule as Bar Counsel may make from time to time. Immediately upon the termination of the employment of the formerly admitted lawyer, the supervising lawyer and the formerly admitted lawyer shall file with Bar Counsel a notice of the termination.

COMMENT

[1] Lawyers generally employ assistants in their practice, including secretaries,

investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Maryland Lawyers' Rules of Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Maryland Lawyers' Rules of Professional Conduct if engaged in by a lawyer.

[3] Paragraph (d) is addressed only to the special circumstance of formerly admitted lawyers engaging in law-related activities and should not be read more broadly to define the permissible activities that may be conducted by a paralegal, law clerk, investigator, etc. who is not a formerly admitted lawyer. Paragraph (d) is also not intended to establish a standard for what constitutes the unauthorized practice of law. Finally, paragraph (d) is not intended to prohibit a formerly admitted lawyer from performing services that are not unique to law offices, such as physical plant or equipment maintenance, courier or delivery services, catering, typing or transcription, or other similar general office support activities.

Model Rules Comparison.-- The language of Rule 5.3 (a) through (c) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct. Paragraph (d) and Comment [3] are in part derived from Rule 217 (j) of the Pennsylvania Rules of Disciplinary Enforcement and in part new.

Rule 5.3 was accompanied by the following Reporter's Note.

At the October 11, 2005 open meeting of the Court of Appeals concerning Rule 16-760 (d)(2), the Court, by a vote of 4 to 3, directed that the Rules Committee draft proposed amendments to the Maryland Rules "roughly consistent" with Rule 217 (j) of the Pennsylvania Rules of Disciplinary Enforcement. Amendments to Rule 5.3 of the Maryland Lawyers' Rules of Professional Conduct and Rule 16-760 have been drafted in accordance with that directive.

In addition to stylistic changes, new paragraph (d) proposed to be added to Rule 5.3 differs from Pennsylvania Rule 217 (j) in several respects:

(1) paragraph (d) applies to nonlawyers formerly admitted to the practice of law who have been disbarred or suspended or based on incapacity placed on inactive status in any jurisdiction, not just to Maryland lawyers who have been disbarred or suspended or placed on inactive status;

(2) the supervising lawyer must be a lawyer who has been a member in good standing of the Maryland Bar for at least the past 5 years;

(3) in paragraph (d)(2)(B), the type of assistance that the formerly admitted lawyer may render to the lawyer whom he or she accompanies to the deposition or other discovery matter is not limited to "clerical" assistance;

(4) the sentence, "The formerly admitted attorney shall clearly indicate in any such

communication that he or she is a legal assistant and identify the supervising attorney," is omitted from paragraph (d)(2)(C);

(If the "Alternative 2" version of paragraph (d)(3)(D) is used) in paragraph (d)(3)(D), the phrase "or representing" is added and the language "hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer, or any other adjudicative person or body" is replaced by the more comprehensive language, "judicial, administrative, legislative, or alternative dispute resolution proceeding;"

(5) the restrictions set forth in paragraph (d)(3)(H), concerning former law firms and clients, are inapplicable to formerly admitted lawyers who based on incapacity have been placed on inactive status and, as to disbarred and suspended lawyers, are prospective, only – that is applicable only to formerly admitted lawyers whose disbarment or suspension becomes effective after the effective date of the Rule change;

(6) a time requirement is added as to when the notice of employment of the formerly admitted lawyer must be sent to Bar Counsel;

(7) the formerly admitted lawyer and the supervising lawyer must enter into a written agreement, filed with Bar Counsel but not subject to prior approval by Bar Counsel, which sets forth the duties of the formerly admitted lawyer and contains an undertaking that the supervising lawyer and the formerly admitted lawyer will cooperate with such requests for evidence of compliance with the agreement and Rule 5.3 as Bar Counsel may make from time to time; and

(8) the sentence, "The supervising attorney shall be subject to disciplinary action for any failure by either the formerly admitted attorney or the supervising attorney to comply with the provisions of this

[paragraph],” is not included in paragraph (d).

The Attorneys Subcommittee discussed, but declined to recommend, a restriction that would preclude a family member of the formerly admitted lawyer from serving as the supervising lawyer under the Rule.

Mr. Brault explained that the Rules Committee had been in favor of deleting subsection (d)(2) from Rule 16-760, and keeping the remainder of the Rule as it appears in the Rule Book. Subsection (d)(2) prohibits a disbarred or suspended attorney from working as a paralegal for an attorney. However, the Court of Appeals by a 4 to 3 vote continued the suspension of the operation of Rule 16-760 (d)(2), and remanded the matter to the Rules Committee, with a request that the subsection be rewritten to be “roughly consistent” with Rule 217 (j) of the Pennsylvania Rules of Disciplinary Enforcement.

Mr. Brault stated that the Reporter drafted section (d) of Rule 5.3 and patterned it after Rule 217 (j). If the disbarred attorney ever wants to be reinstated, he or she must follow Rule 5.3 (d). One question that arises is how an attorney is bound by the Rules of Professional Conduct once the attorney has been disbarred. The practicing attorney who hires the disbarred attorney is bound by the Rules of Professional Conduct and can be disciplined for a violation of them. The placement of the operative provisions of the Rule in Rule 5.3 makes the practicing attorney responsible for compliance.

Mr. Brault said that there are two alternatives for

subsection (d)(3)(D) of Rule 5.3, each describing what a disbarred attorney can and cannot do as a paralegal. Also, new language is proposed to be added to subsection (d)(4) providing that the formerly admitted lawyer and the supervising lawyer must sign an agreement that sets forth the duties of the formerly admitted lawyer and includes an undertaking that the formerly admitted lawyer and the supervising lawyer will cooperate with any requests from Bar Counsel for evidence of compliance with the terms of the agreement and Rule 5.3. The idea for this came from medical malpractice cases in which Mr. Brault represented physicians. A Maryland statute requires a physician who hires a physician's assistant to write an agreement specifying the duties of the assistant. The agreement must be filed with the Board of Quality Assurance, which approves the agreement. The purpose is to enhance the quality of medical care. Adopting the same principle to the situation in which a disbarred or suspended attorney becomes a paralegal will help the former attorney pay attention to what he or she can and cannot do as a paralegal.

Mr. Brault noted that section (d) applies to nonlawyers who were formerly admitted lawyers in any jurisdiction, not just Maryland. In subsection (d)(1)(A), the Subcommittee added the requirement that the supervising lawyer must have been a member of the bar for five years. This is so that a new admittee is not assigned the task of purportedly supervising a senior lawyer who has been disbarred. The Subcommittee believes that five years is enough time for the supervising lawyer to have been a member of

the bar. In Pennsylvania, the work must be conducted under the direct supervision of the attorney assigned to monitor the disbarred lawyer. Subsection (d)(2) lists what activities the disbarred lawyer is permitted to do, and subsection (d)(3) lists the activities that are not permitted. Subsection (d)(3)(D) has two alternative versions. The first is the Pennsylvania language, the second is language suggested by a member of the Maryland Court of Appeals. The Reporter commented that the second alternative is broader.

The Chair questioned as to how a disbarred lobbyist fits into this Rule. The Reporter replied that if the lobbyist is not with a law firm, then Rule 5.3 would not be applicable. The Chair asked what the Subcommittee's recommendation is. Mr. Brault responded that the issue was not before the Subcommittee when the Rule was discussed, but it came up when the changes to the Rule were circulated. If the Rule is not applicable to lobbyists who are not with a law firm, then it is not applicable to disbarred attorneys who are not with a law firm. The Chair inquired as to whether, by Rule, the Court of Appeals can tell a disbarred attorney who is a lobbyist that he or she cannot lobby. The Reporter remarked that there is a statutory prohibition against the unauthorized practice of law. A person who never has been a lawyer may work as a lobbyist, and that person is not violating the statute.

The Chair said that since one of the alternatives was suggested by a member of the Court of Appeals, both versions of

subsection (d)(3)(D) could be sent to the Court for it to choose. Judge McAuliffe suggested that the first alternative should be rewritten, because the language “any other adjudicative person or body” infers that mediation is an adjudicative process. Mr. Brault suggested that the word “other” be removed. Mr. Sykes suggested that the subsection could be restyled, with “or a mediator” moved to the end of the subsection.

Mr. Karceski commented that the treatment of disbarred attorneys should be different from that of suspended or inactive ones. The latter two will be more likely than the disbarred attorney to practice again. Whether or not they are working for a firm, they should be included in the scope of Rule 5.3. They should not be allowed to practice law or work as an attorney works, even if they are suspended or inactive. They should not be allowed to argue a client’s position before a school board or college disciplinary board, even though a non-attorney is allowed to do so. This Rule deals only with those individuals working in law firms. A disbarred attorney should not be allowed to set up shop on his or her own and do whatever he or she wants.

Mr. Brault told the Committee that subsection (d)(4) requires a notice to Bar Counsel of the disbarred or suspended lawyer’s employment as a paralegal. When the employment is terminated, another notice to Bar Counsel is filed. Mr. Brault expressed the concern that the changes to Rule 5.3 may be too draconian for a disbarred lawyer to make a living as a paralegal. The Rule does not pertain to paralegals other than former

lawyers. If the activity of paralegals is producing problems, then a licensing law should be enacted that would apply to all paralegals.

Mr. Sykes pointed out that subsection (d)(1) concerning "[a]ll law-related activities of the formerly admitted lawyer" requires that the activities be performed from an office staffed by a supervising lawyer. The former lawyer cannot set up his or her own business. This solves the problem of the Rule not applying to a former lawyer who sets up his or her own shop. Mr. Karceski disagreed, saying that the Rule has no teeth if a disbarred lawyer sets up his or her own shop and chooses not to associate with a law firm or a practicing lawyer. Mr. Sykes noted that the Court of Appeals has the right to control a disbarred lawyer, and the language of subsection (d)(1) helps with the argument of unlawful practice of law by a disbarred lawyer. Mr. Brault commented that the thrust of the Rule is to control law firms, not disbarred lawyers.

The Chair suggested that the following language should be added before section (d) of Rule 5.3: "and shall not employ or retain the services of a nonlawyer who was formerly admitted ... except under the following circumstances." This tells the members of the bar that if they retain the services of a nonlawyer who was formerly admitted, these are the only activities that are permitted. This controls the behavior of the member of the bar. It is members of the bar, rather than nonlawyers, whose behavior is governed by the Maryland Lawyers'

Rules of Professional Conduct. By consensus, the Committee agreed to this change.

Mr. Klein observed that language in subsection (d)(2)(B) may be a trap for the supervising attorney. It is not clear what a "discovery matter" is. The next phrase "or to a meeting regarding a matter that is not currently in litigation" is confusing, also. Can a disbarred lawyer sit in on a meeting with a client or an interview with a witness to assist in preparing a trial strategy? The Chair answered that a disbarred lawyer is permitted to do so. Mr. Klein noted that the language in subsection (d)(3)(B) that reads "regarding a matter that is not currently in litigation" implies that the disbarred lawyer cannot take part in these activities. He suggested that this language should be deleted from the Rule. By consensus, the Committee agreed to this suggestion.

Mr. Maloney pointed out that the language in subsection (d)(2) that reads "[t]he only law-related activities that may be conducted by a formerly admitted lawyer" does not cover numerous other activities that should not be prohibited. The types of activities that are prohibited should be listed at the end of the Rule. Mr. Michael commented that subsection (d)(2)(C) provides that the disbarred lawyer may only speak to a client about ministerial matters. Mr. Leahy observed that this provision is more restrictive than what paralegals actually do. Mr. Michael remarked that subsection (d)(2)(C) prohibits what paralegals do on a daily basis. The Chair suggested that subsection (d)(2)

should be changed by deleting the word “only” and adding in place of the word “are” the language “include, but are not limited to ...:”. Mr. Brault referred to Mr. Michael’s comment that disbarred lawyers may only speak to clients on ministerial matters. Mr. Michael said that the examples of ministerial matters may be too restrictive. Mr. Brault expressed the opinion that the wording of this provision is too loose. Mr. Sykes remarked that the use of the word “include” means that the list is not exhaustive. The Chair suggested that subsections (d)(2) and (d)(3) should be reversed, so that the prohibited activities come first in the Rule. Judge Dryden pointed out that the meaning of the phrase “or person of similar status” in subsection (d)(3)(A) is not clear. Judge Dryden suggested that the phrase be deleted, and the Committee agreed by consensus to this suggestion.

Judge Dryden commented that subsection (d)(3)(B) refers to “contact with clients in person, by telephone, or in writing,” but there are other ways to contact clients. This provision excludes e-mails, contact with third parties, and text messages. Mr. Brault suggested that the language “or with prospective clients” could be added after the word “clients.” Mr. Michael responded that this would be within the scope of *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). Mr. Brault remarked that Maryland prohibits direct solicitation of clients, but the District of Columbia allows it. The Chair asked the Committee if

subsection (d)(3)(B) should be deleted. Mr. Leahy answered that subsection (d)(3)(C) could be rewritten since paralegals have contact with clients, but do not render legal advice. The Chair suggested that a Committee note could be added to make clear that a formerly admitted attorney may have communication with clients for purposes of pretrial discovery and may prepare answers to interrogatories. By consensus, the Committee agreed to delete subsection (d)(3)(B).

Mr. Brault noted that subsection (d)(2)(C) is limited to ministerial matters, but also should include obtaining information. This commonly happens. Clients talk to paralegals and legal secretaries -- this is a frequently used way of communicating with a client. The Reporter commented that if the language "obtaining information from a client" is added to the list in subsection (d)(2)(C), it could be misleading. She suggested that the language "preparation of discovery materials" could be added to subsection (d)(2)(C) as a permitted type of direct communication. Mr. Michael remarked that the list of what a nonlawyer is permitted to do causes problems. The Reporter suggested that subsection (d)(2) be deleted. The Chair observed that subsection (d)(2)(A) is very important, because it clarifies that a formerly admitted lawyer is allowed to do research and assemble data. Mr. Michael commented that a formerly admitted lawyer cannot give legal advice, hold himself or herself out as a lawyer, or do anything that only a lawyer may do. Whatever is not stated in the Rule is permissible. The Chair agreed,

observing that whatever is stated in the Rule is prohibited, and by implication anything else is permissible. Mr. Leahy added that what is permissible is what paralegals traditionally do in law offices. The Chair said that the inclusion of a written agreement is a good idea. The Reporter asked whether the Committee wanted to delete subsection (d)(2), and by consensus the Committee decided to delete this provision.

Mr. Brault asked whether the language "or with prospective clients" should be added after the word "client" in subsection (d)(3)(C), and by consensus, the Committee agreed to this change. Mr. Sykes suggested that the Rule provide that a disbarred lawyer is prohibited from giving legal advice to anyone, not just to clients or prospective clients. The Chair said that he feared that adding this to the Rule will result in a lawsuit filed because someone made a statement in a letter to the editor of a periodical. It is preferable to limit the prohibition to clients and prospective clients. By consensus, the Committee approved Rule 5.3 as amended and Rule 16-760 as presented.

Agenda Item 2. Consideration of a proposed amendment to section (c) of Rule 16-1006 (Required Denial of Inspection - Certain Categories of Case Records)

Judge Norton presented Rule 16-1006, Required Denial of Inspection - Certain Categories of Case Records, for the Committee's consideration.

AMEND Rule 16-1006 (c) to limit the applicability of the section to that portion of a case record that consists of an agency record required to kept confidential by statute, as follows:

Rule 16-1006. REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES OF CASE RECORDS

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) Adoption;

(B) Guardianship; or

(C) To revoke a consent to adoption or guardianship for which there is no pending adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, and child in need of supervision actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection.

(b) The following case records pertaining to a marriage license:

(1) A physician's certificate filed pursuant to Code, Family Law Article, §2-301, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.

(2) Until a license is issued, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.

(c) In any action or proceeding, that portion of a case record concerning child abuse or neglect that consists of an agency record required to be kept confidential by statute.

Committee note: Statutes to which Rule 16-1006 (c) refers include Code, Article 88A, §§6 (b) and 6A and Code, Family Law Article, §5-707.

(d) The following case records in actions or proceedings involving attorneys or judges:

(1) Records and proceedings in attorney grievance matters declared confidential by Rule 16-723 (b).

(2) Case records with respect to an investigative subpoena issued by Bar Counsel pursuant to Rule 16-732;

(3) Subject to the provisions of Rule 19 (b) and (c) of the Rules Governing Admission to the Bar, case records relating to proceedings before a Character Committee.

(4) Case records consisting of Pro Bono Legal Service Reports filed by an attorney pursuant to Rule 16-903.

(5) Case records relating to a motion filed with respect to a subpoena issued by Investigative Counsel for the Commission on Judicial Disabilities pursuant to Rule 16-806.

(e) The following case records in criminal actions or proceedings:

(1) A case record that has been ordered expunged pursuant to Rule 4-508.

(2) The following case records pertaining to search warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d)(3) are satisfied.

(B) Except as otherwise provided in Code, State Government Article, §10-616 (q), a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) A case record maintained under Code, Courts Article, §9-106, of the refusal of a person to testify in a criminal action against the person's spouse.

(5) A presentence investigation report prepared pursuant to Code, Correctional Services Article, §6-112.

(6) A case record pertaining to a criminal investigation by a grand jury or by a State's Attorney pursuant to Code, Article 10A, §39A.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of court records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(f) A transcript, tape recording, audio, video, or digital recording of any court proceeding that was closed to the public

pursuant to rule or order of court.

(g) Backup audio recordings made by any means, computer disks, and notes disk of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

(h) The following case records containing medical information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health - General Article, §18-338.1 or §18-338.2.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health - General Article, §5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health - General Article, §18-201 or §18-202.

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled person, declared confidential by Code, Health - General Article, §7-1003.

(i) A case record that consists of the federal or Maryland income tax return of an individual.

(j) A case record that:

(1) a court has ordered sealed or not

> subject to inspection, except in conformance with the order; or
>
> (2) in accordance with Rule 16-1009 (b), is the subject of a motion to preclude or limit inspection.
>
> Source: This Rule is new.

Rule 16-1006 was accompanied by the following Reporter's Note.

> An amendment to Rule 16-1006 (c) is proposed to limit the applicability of the section to that portion of a case record that consists of an agency record required to be kept confidential by statute. When the agency record is filed in an action, such as a criminal case or domestic violence or other family law action, that otherwise is open to public inspection, the General Court Administration Subcommittee believes that the action should remain open, with only agency record shielded from public inspection. Different interpretations of the Rule are being implemented throughout the State, and the proposed amendment would provide for greater uniformity.

Judge Norton explained that the General Court Administration Subcommittee considered section (c) of Rule 16-1006, which has been subject to a variety of interpretations by clerks' offices around the State. Some of the clerks have interpreted section (c) to mean that if there are any allegations of child abuse in the case, even if only in the pleadings, the clerks will not allow any access to the case records. Some clerks feel that the records are not open if, in the file, there are reports of child abuse in records of the Department of Social Services. The Subcommittee recommends modifying section (c) to clarify that the

entire file is not closed, but only that portion of the file that contains confidential information. This consists of the agency record. A pleading in a divorce case that alleges child abuse is not necessarily shielded from the public. However, a record of the investigation into the allegations of child abuse would be shielded, but not the entire file. The Court of Appeals Access Rules Implementation Committee, appointed by the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, presented in its report the policy issue to be determined by the Court of Appeals as to whether the statutes pertaining to confidentiality of records concerning child abuse or neglect were intended to apply to case records filed in court or only to records in the possession of social services agencies.

Judge Norton said that the minority view of the Implementation Committee is that any action, civil or criminal, involving allegations of child abuse or neglect would be protected from disclosure under section (c). The majority view is that section (c) is meant to cover only case records concerning child abuse or neglect originating from local social service agencies or law enforcement agencies that investigate suspected child abuse or neglect. In a case where a babysitter is accused of sexually abusing a child who is eight years old, and an agency investigates, this is considered to be child abuse. If a non-custodial neighbor is accused, this would not be within the a statutory definition of child abuse set forth in Title 3, Subtitle 6 of Code, Criminal Law Article. The Rules Committee

may wish to consider expanding the protections of child victims by not requiring the statutory definition of child abuse that includes a custodial relationship with the victim. The Subcommittee did not make a recommendation about this.

The Chair suggested that section (c) could read as follows: "In any action or proceeding, a case record that consists of an agency record required by statute to be confidential." If there is no statute, then the record is not confidential unless the judge decides to seal it. Mr. Maloney pointed out that the Committee note provides that the Rule is co-extensive with the statute. The Chair reiterated that if the statute requires confidentiality, the shield applies. Ms. Melamed expressed the opinion that to eliminate the reference to child abuse in the Rule is not a good idea. Section (b) of Rule 16-1005, Case Records – Required Denial of Inspection – In General, states: "Unless inspection is otherwise permitted by the Rules in this Chapter, a custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than the Maryland Public Information Act ... that expressly or by necessary implication applies to a court record." Rule 16-1006 (c) is intended to apply to Department of Social Services agency records dealing with child abuse and neglect. The Rule should retain the reference to "child abuse and neglect." Closure of the record should be limited to the portion of the case record that the statute requires the agency to keep confidential.

The Chair inquired as to why section (c) is necessary. Ms. Melamed answered that it may not be necessary. The direction that the Court of Appeals has taken is that the Rules should enumerate statutes requiring the closure of records. This would be easier for the clerks. The Chair suggested that a Committee note containing this could be added. Ms. Melamed remarked that in Adoption and Child In Need of Assistance cases, child abuse and neglect records remain confidential because there is closure of the entire court record. The debate is whether the statute covers documents in court files in other types of cases. The Court of Appeals has held that it does cover these documents even if the Rule is ambiguous. It is important to make sure that this is clear to the clerks. The problem is that the original drafters' note is not in the Rules, and Rule 16-1006 (c) provides no guidance.

Judge Norton suggested that the language "sexual abuse and rape" could be added to section (c). Ms. Melamed responded that this is beyond what the statute intends. She said that she had been asked at the Subcommittee meeting how other states handle this issue. She searched the Internet and asked representatives of the press in other states. The closure usually is keyed to statutes. In Pennsylvania, the identity of the person is shielded, but not the entire record. To close any court record containing any allegation of child abuse is not wise. The Rule could be revised to key it to the closure of agency records when they are in court files.

The Chair commented that it may be necessary to change Rule 16-1005. The Rule provides that a custodian shall deny inspection of a case record or any part of a case record if required by any statute other than the Maryland Public Information Act. However, if the record is admitted or considered as evidence in open court, it would be available to the public, unless the court seals it. Everyone has to be satisfied that the Rule provides that the statute requires sealing of the record. Ms. Melamed suggested that Rule 16-1006 (c) could be eliminated entirely. The Chair said that if, in a complaint for divorce, there is an allegation that the husband beat the child, the record does not necessarily have to be sealed.

Mr. Maloney expressed the view that the Rule should not be expanded beyond the statute. Section (c) of Rule 16-1006 should provide that what is protected is the agency record in the court records. Ms. Melamed agreed, suggesting that the Rule should clarify that what is protected in the court file is an agency record required by the statute to be confidential. Mr. Maloney noted that the Committee note clarifies this. The Chair pointed out that if the legislature provides that a matter must be sealed, then it is sealed pursuant to Rule 16-1005 (b). This language may not be necessary. Judge Norton reiterated that a laundry list of applicable statutes may help the clerks.

The Chair asked Mr. Shipley whether the Rule is clear. Mr. Shipley answered that section (c) of Rule 16-1006 is confusing.

The plain language of the Rule is that it does not apply to petitions, but rather only to agency records. However, the term "case record," which is defined in Rule 16-1001, is very broad and includes many items. Judge Dryden commented that if newspaper articles alleging child abuse were attached to the record in Anne Arundel County, the file would not be open to inspection. Mr. Sykes inquired as to whether the statute specifies that access is excluded after the agency record becomes part of a case record. Is the record confidential, even if it is part of the case record, or does the agency record lose its confidentiality when it is filed in a court file? Ms. Melamed remarked that the Access Rules Implementation Committee discussed this issue. Most members of the Implementation Committee felt that by necessary implication a court record is covered. She disagreed, because this would cover more than an agency record.

The Chair said that the Rule should provide that a record that is required to be kept confidential by statute does not lose its confidential status merely because it is filed in a court file. Once it is offered into evidence, it is subject to inspection unless it is sealed. Mr. Sykes noted that the version of section (c) that is before the Committee does not say this. The Chair commented that the language of section (b) of Rule 16-1005 provides that a custodian shall deny inspection of a case record if inspection would be "contrary to a statute enacted by the General Assembly." What does this language mean? Rule 16-1006 (c) should state that if an agency record is placed in a

court file, until it is offered into evidence in open court, it is sealed. Once it is offered into evidence, it is open to inspection, unless the judge seals it pursuant to a motion. Mr. Sykes inquired if this means that the record is offered into evidence or that it is admitted into evidence. The Chair replied that section (c) of Rule 16-1002, General Policy, uses the language "admitted into evidence." Ms. Melamed pointed out that Rule 16-1006 (c) covers records concerning child abuse and neglect. It does not encompass all agency records. Many statutes provide for confidentiality at the agency level.

Mr. Siegel remarked that there is different access to court proceedings than to agency proceedings. Pretrial procedure requires different public policy than ordinary agency operations. Personnel records of an agency may be relevant in court proceedings. Mr. Shipley observed that if there is an allegation of child abuse, an agency record must be kept confidential. The problem with the current Rule is that it can be interpreted either that the agency record or that the entire record must be kept confidential. Ms. Melamed expressed the opinion that the language of the proposed amendment is sound, and it is not necessary to address a broader area. The Chair reiterated that Rule 16-1005 states in section (b): "...a custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to a statute enacted by the Maryland General Assembly...". The Chair said that records required to be kept confidential by statute are not open to inspection. What

is confidential does not lose its confidentiality once it is in a court record. Once it is offered into evidence, then it loses its confidential status. The Court of Appeals may disagree with this, but this would be the recommendation.

Ms. Melamed said that the Subcommittee proposal takes care of the ambiguities associated with section (c), including a Committee note with the appropriate statutory sections.

Judge McAuliffe stated that the addition of the language "that portion of" addresses the problem. The rest of the section may not solve problems on the horizon, but the Subcommittee recommendation should be approved for now. Judge Norton expressed the view that the words "that portion" may be redundant, but Judge McAuliffe responded that this makes section (c) clearer. Mr. Shipley pointed out that because of the way the term "case record" is defined, the language of section (c) could mean any portion of any document, not just agency records. The Chair suggested that section (c) could be worded as follows: "In any action or proceeding, an agency record concerning child abuse or neglect that is required to be kept confidential by statute." Mr. Sykes suggested that the wording could be: "...required by statute to be kept confidential." The Committee agreed by consensus to the Chair's suggested language with Mr. Sykes' amendment. Ms. Melamed inquired as to whether the Committee note will be retained, and the Chair replied that it would be retained. Ms. Melamed thanked the Committee for their time in considering this matter.

Agenda Item 3. Consideration of proposed amendments to the Rules in Title 9, Chapter 100 (Adoption; Guardianship Terminating Parental Rights) (See Appendix 1.)

Ms. Ogletree told the Committee that the General Assembly had changed a substantial portion of the laws pertaining to adoptions, guardianships, and permanency planning, effective January 1, 2006. The changes to the laws require a substantial revision of the Adoption and Guardianship Rules. Several consultants helped redraft the Rules, including Rhonda Lipkin, Esq. and John Greene, Esq. Ms. Lipkin prepared a draft of the revised Rules, and Ms. Ogletree and the Assistant Reporter added to the changes made by Ms. Lipkin. After a meeting of the Family and Domestic Subcommittee in October, further changes were made to the draft of the proposed Rules, and a revised draft was distributed to the Subcommittee members and consultants. Substantial changes were then made to the revision. The Reporter explained that in the materials that were mailed to Committee members prior to today's meeting are the Subcommittee draft that shows changes from the current Rules and an unmarked copy of that draft. After the meeting materials were mailed, Ms. Lipkin drafted additional improvements to the Rules. This is the draft that was distributed today, with a footer that reads, "RL changes." This is the draft that the Committee should consider today.

Ms. Ogletree presented Rule 9-101, Definitions, for the

Committee's consideration. (See Appendix 1.)

Ms. Ogletree explained that section (a) contains updated references to the new Code provisions. Section (b) lists the various parts of the new statute. The Subcommittee had debated whether this list was necessary, but there are many solo practitioners who have a limited adoption practice and need direction in navigating the Code. The consultants did not suggest any changes to this Rule. By consensus, the Committee approved the Rule as presented.

Ms. Ogletree presented Rule 9-102, Authority; Consents; Requests for Attorney or Counseling, for the Committee's consideration. (See Appendix 1.)

Ms. Ogletree told the Committee that the Code references in section (a) have been updated. There are two suggestions for how to word section (b). The revocation provisions in the Code vary as to the time for filing. She said that she and the Assistant Reporter wrote out the provisions as shown in Alternative 1, but the consultants preferred Alternative 2, which simply refers to the applicable Code provisions. The problem with the second version is that it does not key people into the differences in the time for revocation between the old and the new law. Ms. Musgrave, who represents the agency "Adoptions Together" and Mr. Greene, who is an adoption practitioner, were present at the meeting. Ms. Musgrave expressed the view that either alternative is acceptable.

Ms. Ogletree said that the forms in the Rules were revised

to reflect the statutory changes, but they need further revision to make them more readable and understandable. The Subcommittee plans to review the forms to make them more user-friendly. New section A. 3. of subsection (c) was added to ensure that the parent understands the language of the form. New section B. (a) provides that an indigent parent may be eligible for representation by the Office of the Public Defender. The Chair questioned whether the Office of the Public Defender agrees with this. Ms. Ogletree responded that the statute requires the Office of the Public Defender to provide this representation. She noted that section B. (d) presents four possibilities for the parent to choose regarding the need for an attorney. Section C. pertains to the option to be checked off by the parent as to whether counseling is chosen. In section E., the time periods for revoking the consent have been changed.

Mr. Greene pointed out that the statute is divided into independent adoptions, private guardianships and adoptions, and Department of Social Services guardianships and adoptions. The consent form is used for all three even though the times for revoking consent are different. The plan is to divide the form into three different forms to be used for each of the three divisions of the statute. Ms. Ogletree noted that in section E., the language providing that a revocation may be delivered to the local department in guardianships to and adoptions through the local department is new. Section F. contains four alternatives for the parent to choose. Section G. is new and has been added

to ensure that a translation of the consent was comprehended by the parent. In section I., only the cross references have been changed. Section K. has stylistic changes.

Ms. Ogletree said that section (d) is the form of the consent of the person to be adopted. The form is similar to the current form. Mr. Sykes suggested that the form be captioned "Consent to Adoption or Request for Attorney by Prospective Adoptee," and the Committee agreed by consensus to this suggestion. Mr. Johnson inquired as to whether section (a) of the form on page 24 means that the form is filed without being signed. Mr. Greene replied that in an agency case, an attorney must be appointed, and the prospective adoptee must stop at this point to obtain an attorney. The notice is telling the person not to sign. The Chair commented that this is circular -- the child is to sign that he or she is not to sign. Ms. Musgrave observed that this provides notice to the child concerning appointment of an attorney. The court only sees the form after an attorney represents the child. The Chair commented that this is confusing, and it is not a good idea to ask the Court of Appeals to approve confusing forms. The contents of the form should be tailored to the case. It is difficult to imagine a child who is 11 years old comprehending this form.

Ms. Ogletree reiterated that the Rules were revised before the forms. The new statute goes into effect on January 1, 2006, and the Subcommittee hopes to expedite the necessary revisions to the Rules. The Chair remarked that by next October, the law may

be changed again. Mr. Greene agreed with the Chair that this is a sophisticated area of the law which very few people understand. Ms. Ogletree remarked that the current forms are somewhat unworkable, and they will be revised.

Mr. Karceski suggested that the form for consent to adoption should include a requirement that the prospective adoptee state the name of the person advising him or her. Mr. Maloney remarked that this is like a guardian *ad litem*. Mr. Brault added that this may be somewhat of a conflict for the attorney. The Reporter questioned as to who is entitled to an attorney. Mr. Greene answered that in an independent adoption, a child who is over 10 and is not disabled, does not automatically get an attorney. Ms. Ogletree suggested that the forms should be revised, and Mr. Greene and Ms. Musgrave agreed to work on revising them. Ms. Ogletree suggested that the list of who is entitled to an attorney in sections (a), (b), and (c) of the consent form of the prospective adoptee should be moved to Rule 9-106, Appointment of Attorney - Investigation. By consensus, the Committee agreed with this suggestion. The Committee approved Rule 9-102, as amended.

Ms. Ogletree presented Rule 9-103, Petition, for the Committee’s consideration. (See Appendix 1.)

Ms. Ogletree explained that the titling of the case in section (a) conforms to the confidentiality requirements in appeals from proceedings for adoption or guardianship, as set out

in Rule 8-122 (b). Subsection (b)(2)(A) of Rule 9-103 contains the list of required documents that must accompany the petition as exhibits. Part (vi) has been changed from "a copy of any pre-placement report" to an "existing adoption home study by a licensed child placement agency concerning a petitioner, criminal background reports, or child abuse clearances." Part (ix) is new and requires a certification that a guardianship or relinquishment of parental rights granted by a foreign jurisdiction was granted in compliance with the jurisdiction's laws. Part (xi) adds the requirement of a redaction mandated by law to a copy of any agreement between a parent of the person to be adopted and a petitioner. Part (xiv) is new and is required by the statute. It refers to the notice of filing required by the statute that states the date on which the petition was filed, identifies all persons filing a consent, states the obligation of the parents to give notice of any change of address, refers to the State Department of Human Resources website, and requires that identifying information that would be in violation of an agreement or consent should not be included.

Ms. Ogletree told the Committee that subsection (b)(2)(B) contains the list of documents that must be filed before a judgment of adoption is entered. Part (iv) has language added to it taken directly from the statute. Cross references to the statute have been updated. Section (e) has replaced the language "an exemplified copy of the judgment granted" with the language "a certified copy setting forth the action taken by the foreign

jurisdiction," because the exemplification procedure is not used in all foreign jurisdictions. Mr. Sykes inquired as to who certifies the copy, and Ms. Ogletree answered that the appropriate agency in the foreign jurisdiction certifies. Mr. Sykes pointed out that this provision does not require that the certification be translated. Ms. Musgrave responded that the Department of State gives permission for a child from another country to be allowed into the United States. A translation of the certified copy of the action taken by the foreign jurisdiction should be included. Ms. Ogletree suggested that language be added to section (e) to require a translation of the document into English, if necessary. By consensus, the Committee agreed to this addition to section (e).

By consensus, the Committee approved Rule 9-103, as amended.

Ms. Ogletree presented Rule 9-104, Notice to Consenting Persons, for the Committee's consideration. (See Appendix 1.)

Ms. Ogletree explained that notice is given to persons who have consented to a guardianship or an adoption. The notice is different in the various parts of the statute. The Rule sets out the procedures for the notice. The Chair asked whether the statute has a time limit given for sections (b) and (c) pertaining to private agency guardianship proceedings and private agency and independent adoption proceedings. Mr. Greene replied that the statute does not provide time limits on these proceedings. The Chair suggested that a time limit be added to sections (b) and (c). Mr. Shipley recommended that the time

limit be 10 days, and the Committee agreed by consensus to this suggestion. Mr. Sykes noted that each section of the Rule provides for notice by first class mail. Ms. Ogletree said that this was added for conformity. Mr. Shipley suggested that the title of the Rule be changed by deleting the word "consenting." The Chair suggested that the title be simply "Notice," and the Committee agreed by consensus to this change. By consensus, the Committee approved the Rule as amended.

Ms. Ogletree presented Rule 9-105, Show Cause Order; Disability of a Party; Other Notice, for the Committee's consideration. (See Appendix 1.)

Ms. Ogletree told the Committee that a show cause order is required in guardianship and adoption proceedings. Under the new statute, the procedures vary depending on the proceeding. Currently, the show cause procedure is the same for all proceedings. New section (b) breaks down the show cause procedures according to the type of proceeding, which conforms to the new statutory scheme. A new method of notice added by the statute is publication and posting. Ms. Musgrave suggested that the form in subsection (b)(4) of Rule 9-107, Objection, providing for notice by publication or posting on the Department of Human Resources website, should be moved to Rule 9-105. By consensus, the Committee agreed with this suggestion.

Ms. Ogletree pointed out that show cause orders in Subtitle 3, Part III (Adoption without Termination of Parental Rights) proceedings are served by certified mail or personal service.

Ms. Musgrave commented that the word “prior” should be added to the tagline of subsection (b)(2). By consensus, the Committee agreed to this change. Mr. Greene said that rather than refer to the various proceedings only by the subtitle and part of the statute, the citations to the Code should be added. By consensus, the Committee agreed to add the Code citations.

Ms. Ogletree told the Committee that the show cause order form in the Rule contains style changes. By consensus, the Committee approved the Rule as amended.

Ms. Ogletree presented Rule 9-106, Appointment of Attorney - Investigation, for the Committee’s consideration. (See Appendix 1.)

Ms. Ogletree explained that the cross references in section (a) have been updated. Language in section (b) reflects a change in the law that requires the report of any investigation ordered by the court to be submitted to the court in writing. The Reporter inquired as to whether the Rule should require that a recommendation by the investigator be included with the report. Ms. Ogletree answered that the consultants who worked on the Rules felt that no recommendation was necessary. Delegate Vallario commented that a recommendation should be included with the report, since the judge does not know very much about the parties. The Chair said that the court can ask for a recommendation. He suggested that the former language of the Rule be added back in at the end of the Rule as follows: “and, if requested by the court, shall include the recommendation of the

person or agency." By consensus, the Committee agreed to add this language back into the Rule. By consensus, the Committee approved the Rule as amended.

Ms. Ogletree presented Rule 9-107, Objection, for the Committee's consideration. (See Appendix 1.)

Ms. Ogletree explained that language was added to section (b) to comply with the statute. Ms. Musgrave suggested that the notice provision that begins with the language, "Notice under this subsection shall consist ..." should be moved to Rule 9-105 (h), and the Committee agreed by consensus with this suggestion. The Chair suggested that a sentence be added to section (b) of Rule 9-107 that would provide that notice shall conform to Rule 9-105 (h), and the Committee agreed by consensus to this change. By consensus, the Committee approved the Rule as amended.

Since no changes were proposed to Rule 9-108, Temporary Custody, Ms. Ogletree then presented Rule 9-109, Hearing, for the Committee's consideration. (See Appendix 1.)

Ms. Ogletree told the Committee that section (b) has been changed to refer to Subtitle 3, Part II of the new statute, and the cross reference has been updated. Subsection (c)(2)(F) has been changed to refer to the new statute. By consensus, the Committee approved the Rule as presented.

Ms. Ogletree presented Rule 9-110, Accounting Report, for the Committee's consideration. (See Appendix 1.)

Ms. Ogletree noted that the cross references at the end of the Rule have been conformed to the new statute. By consensus,

the Committee approved the Rule as presented.

Ms. Ogletree presented Rule 9-111, Judgment of Adoption or Guardianship, for the Committee's consideration. (See Appendix 1.)

Ms. Ogletree said that section (a) was changed to conform to the new statute. Ms. Musgrave suggested that the language "or publication and posting" be added after the word "order" in section (a). By consensus, the Committee agreed to this change. The Chair pointed out that the phrase "whichever is later" will be redrafted by the Style Subcommittee. Ms. Ogletree commented that the cross references at the end of the Rule have been updated. By consensus, the Committee approved the Rule as amended, subject to restyling.

Ms. Ogletree presented Rule 9-112, Court Records, for the Committee's consideration. (See Appendix 1.)

Ms. Ogletree explained that the word "decree" in section (b) had been proposed to be changed to the word "judgment," but before June 1, 1947 a "judgment" was referred to as a "decree," so no change is necessary. By consensus, the Committee approved the Rule, retaining the word "decree" in section (b).

Ms. Ogletree presented Rule 9-113, Medical History, for the Committee's consideration. (See Appendix 1.)

Ms. Ogletree explained that the new language at the end of the Rule was added to conform to the new statute. Mr. Brault questioned as to whether the privacy aspects required by the Health Insurance Portability and Accountability Act of 1996, P.L.

104-191 (“HIPAA”) impact on the Rules. Mr. Greene responded that parents have to sign documents related to HIPAA. The Chair suggested that the following language should be included in the parent consent form in Rule 9-102: “I agree to execute all documents necessary to comply with HIPAA and all other relevant statutes.” The Committee agreed by consensus to this addition. By consensus, the Committee approved the Rule as amended.

Ms. Ogletree presented Rule 1-101, Applicability, for the Committee’s consideration. (See Appendix 1.)

Ms. Ogletree told the Committee that section (i) was changed to conform to the new statute. The Reporter suggested that in place of the list of proceedings, the specific statutory references should be added. By consensus, the Committee agreed with this suggestion. Ms. Musgrave pointed out that the language in section (j) that reads “with the right to consent to adoption” should be deleted, because the new law no longer uses this language. By consensus, the Committee agreed to this deletion. By consensus, the Committee approved the Rule as amended.

The Chair thanked the Subcommittee and the consultants for their hard work on the Rules. The Vice Chair suggested that the table of contents be revised to list the statutory references first. By consensus, the Committee agreed to this suggestion.

The Chair adjourned the meeting.