COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100B of the People's Resource Center, 100 Community Place, Crownsville, Maryland on February 11, 2000.

Members present:

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

Albert D. Brault, Esq.
Robert L. Dean, Esq.
Hon. James W. Dryden
Bayard Z. Hochberg, Esq.
H. Thomas Howell, Esq.
Hon. G. R. Hovey Johnson
Hon. Joseph H. H. Kaplan
Robert D. Klein, Esq.
Larry W. Shipley, Clerk
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Hon. James N. Vaughan
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Deborah Unitus, Administrative Office of the Courts
Barbara Gavin, Esq., State Board of Law Examiners
Bedford T. Bentley, Jr., Esq., Secretary, State Board of Law Examiners

The Chair convened the meeting. He asked if there were any additions or corrections to the minutes of the November 19, 1999 meeting. There being none, Mr. Hochberg moved to adopt the minutes as presented, the motion was seconded, and it passed unanimously.

Agenda Item 2. Consideration of proposed new Bar Admission Rule 23 (Immunity From Civil Liability)

The Chair told the Committee that Agenda Item 2 would be discussed first, because Bedford T. Bentley, Jr., Esq., Secretary

to the Board of Law Examiners, and Barbara S. Gavin, Esq., Director of Character and Fitness were at the meeting to explain proposed Bar Admission Rule 23.

Mr. Brault presented proposed Bar Admission Rule 23, Immunity From Civil Liability, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE

BAR OF MARYLAND

ADD Bar Admission Rule 23, as follows:

Rule 23. IMMUNITY FROM CIVIL LIABILITY

(a) Official Conduct

The Board of Law Examiners, the Character Committees, and their members, employees, and agents are absolutely immune from all civil liability for conduct and communications occurring in the performance of their official duties relating to the examination, investigation, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

(b) Communications

Persons, including individuals, firms, or institutions, furnishing records, statements of opinion, and other information regarding an applicant for bar admission to the Board of Law Examiners, the Character Committees, or their members, employees, or agents are absolutely immune from all civil

liability for these communications.

Bar Admission Rule 23 was accompanied by the following Reporter’s Note.

> On behalf of the State Board of Law Examiners, its Secretary Bedford T. Bentley, Jr., Esq., has requested the addition of Bar Admission Rule 23. The Board feels that explicit immunity is necessary for the protection of its members, members of the Character Committee, and others involved in the investigation of the character and fitness of applicants for admission to the bar. A letter of advice from Julia M. Andrew, Esq., Assistant Attorney General provides that although statutory law and the Eleventh Amendment provide some immunity, to assure absolute immunity, a specific rule should be enacted. The language of the proposed Rule is taken from the American Bar Association Model Rule.

Mr. Brault explained that, at the request of the Board of Law Examiners, Rule 23 had been discussed by the Attorneys Subcommittee at two meetings. The issues for discussion were (1) is the Rule necessary?, (2) if it is, should the immunity be qualified or absolute?, and (3) does the court have the power to extend a substantive grant of immunity? Mr. Brault remarked that he was not certain if there needs to be a rule, but he expressed the view that the benefit of immunity would not be achieved unless some action is taken. Delegate Joseph Vallario, a member of the Rules Committee, and Bedford T. Bentley, Jr., Secretary, State Board of Law Examiners, had each requested an opinion from the Maryland Attorney General. The opinions are in the meeting materials. (See Appendix 1). They clearly indicate that there is authority to draft a rule providing immunity to the Board of

Law Examiners.

Mr. Brault told the Committee that the Subcommittee had discussed whether the immunity should be qualified or absolute. One of the issues for debate was whether an applicant should be allowed to sue someone who deliberately tries to ruin the applicant's reputation. The Subcommittee decided that in spite of that scenario, the Rule should provide absolute immunity. If the Rule provided qualified immunity, there would have to be discovery and questions for the jury to answer. Many entities either already have absolute immunity from suit or are the subject of pending proposals for absolute immunity. Mr. Brault added that he had won a case in the Court of Appeals which established absolute immunity in favor of an emergency medical technician against a complainant. The Court of Appeals seems to be leaning in favor of absolute immunity. Delegate Vallario has questioned the need for a rule providing immunity, because it is available under state and federal law. His views are stated in a letter which is part of the meeting materials. (See Appendix 2).

Mr. Bentley said that the impetus for the proposed Rule comes from concerns of the eight Character Committees, which comprise 110 to 120 attorneys who investigate individual applicants on a voluntary basis. They prepare reports as to the character and fitness of applicants to the Bar. It is not clear

as to what protections are afforded them. In the past, Character Committee members have been sued both individually and as members of the committee. The Board of Law Examiners feels that a statement is needed to clarify that members and staff of the Character Committees have protection against lawsuits. One concern is third parties who relate information about applicants. Routinely, people tell the Board about something in the background of an applicant that may cast doubt on the applicant's moral character, but the informant is reluctant to provide details for fear of being sued. Mr. Brault added that this is especially true for banks, credit card companies, and employers. Ms. Gavin commented that there was a recent case in which an applicant told them that he was paying off an enormous debt, but the indications were that he was not. The bank involved was reluctant to give the Board a letter about this because it was afraid of being sued. Ms. Gavin said that she had also dealt with an attorney who had fired a law clerk, an applicant to the bar, because the clerk had stolen money from the attorney. The attorney was hesitant to provide information because he feared a lawsuit. Mr. Brault noted that law firms receive inquiries about former employees, and their standard answer is to give the employee's dates of employment only. A rule is necessary to protect banks and employers.

Mr. Hochberg pointed out that immunity is often being offered lately. He said that he was neutral about having an immunity rule, but he expressed the opinion that giving immunity to people who volunteer information without having been asked is not a good idea. He represented an attorney who he feels should be entitled to money damages in a situation where the attorney's estranged spouse had volunteered false information about the attorney because of a vendetta arising out of domestic problems. Section (b) of the Rule should be limited to third parties who are responding to a request for information. The American Bar Association (ABA) version of the Rule provides that records, statements of opinion, and other information regarding an applicant communicated by any entity without malice (emphasis added) are privileged. The letter from Julia M. Andrew, Assistant Attorney General, states that the General Assembly affords immunity to persons providing information to other licensing boards only when the person is acting in good faith.

The Vice Chair commented that the Rule has to strike a balance. Affording immunity only to people who are requested to give information discourages people from giving information. The policy should be to encourage people to provide information. The Vice Chair stated that she was in favor of absolute immunity.

Judge Dryden remarked that the Board can check public

records to find out a person's background. Ms. Gavin said that they are able to check with the Criminal Justice Information System (CJIS) and the civil domestic violence records, but they do not have sufficient resources to do record searches on each applicant.

The Chair commented that if the standard is acting in good faith, and the complaint alleges bad faith, much discovery is generated even if the complaint is eventually dismissed. In theory, if an evil person lies under oath, there is the possibility of a perjury charge. Some checks and balances on the system exist. Judge Dryden observed that the Board can require the application to sign a release for bank records. Ms. Gavin responded that the banks do not always accept the releases. The Vice Chair remarked that even under the Rule, if it is adopted, the banks still do not have to accept the releases. She noted that in section (a), there may be other duties besides examination, investigation, character and fitness qualification, and licensing of persons. Instead of the words Arelating to,@ it would be better to use the word Aincluding@ to leave open the possibility of other duties. The Committee agreed to this change by consensus.

Mr. Hochberg expressed the view that section (b) should be eliminated. The Vice Chair pointed out that the ABA uses the

language that the communication is privileged, but the Subcommittee has rejected the privilege concept. Mr. Titus commented that the Subcommittee was troubled by the privilege concept and chose different language. Mr. Brault noted that privileged communications are a part of defamation law. The privilege gives rise to a qualified immunity. Mr. Titus expressed his concern about absolute immunity in the case of someone who makes a vicious statement to ruin the applicant's record, but he said that he was convinced that the Rule should provide absolute immunity to avoid the unnecessary ordeal of a litigation.

Mr. Sykes referred to Delegate Vallario's question as to how serious the problem has been to warrant a rule. It may be like using a cannon to knock down a tin can. The Chair responded that the threats of suit are unlikely to happen if a rule is put into effect. Even though there have only been a few suits, this causes enough concern to frighten people into not providing information. Mr. Sykes observed that the Court of Appeals may want documentation as to the severity of the problem. Any time attorneys give immunity to other attorneys trying to keep people out of the legal profession, it is a difficult situation regardless of how laudable the intention of the Rule is. The Court of Appeals has the right to adopt this rule. However, if

the legislature were to give its approval, it might be better for the legal profession, as a matter of public relations. The Chair suggested that, without naming names, a sufficient case could be documented to justify the Rule.

Mr. Hochberg moved to amend section (b) to add the language Ain response to a request or inquiry@ after the word Aagents@ and before the word Aare.@ The motion was seconded, and it did not pass, with only two in favor. The Committee approved the Rule as amended. The Chair thanked Mr. Bentley and Ms. Gavin for attending the meeting.

Agenda Item 1. Consideration of certain proposed recommendations of the General Court Administration Subcommittee: New Rule 16-819 (Court Interpreters), Amendments to Rule 1-303 (For of Oath), Amendments to Rule 16-404 (Administration of Court Reporters), Rule 16-504 (Recording of Proceedings), Amendments to: Rule 16-101 (Administrative Responsibility), Rule 2-505 (Removal), Rule 4-254 (Reassignment and Removal), and Amendments to Rule 16-817 (Appointment of Bail Bond Commissioner--Licensing and Regulation of Bail Bondsmen)

The Chair presented Rule 16-819, Court Interpreters, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-819, as follows:

Rule 16-819. COURT INTERPRETERS

(a) Regulations and Standards

The Chief Judge of the Court of Appeals shall from time to time prescribe regulations and standards regarding court interpreters and their practice in the courts of this State. The regulations and standards may include:

(1) The selection, qualifications, and responsibilities of court interpreters;

(2) Minimum training and testing requirements for court interpreters;

(3) Designation of a court interpreter supervisory authority, in accordance with the standards of conduct for court interpreters;

(4) Designation of a supervisory authority for disciplinary action against a court interpreter;

(5) Procedures for court interpreting;

(6) Payment of court interpreters, as provided by law;

(7) Equipment used in court interpreting; and

(8) Procedures for the maintenance and filing of administrative records with the Administrative Office of the Courts.

(b) Implementation

The Administrative Office of the Courts shall be responsible for implementing the regulations and standards regarding court interpreters.

Source: This Rule is new.

Rule 16-819 was accompanied by the following Reporter's Note.

> The General Court Administration Subcommittee is proposing the adoption of Rule 16-819, Court Interpreters, in accordance with the Report of the Maryland Judicial Conference Advisory Committee on Interpreters, which had recommended that the Court of Appeals adopt a set of rules governing the use of interpreters in court.

The Chair introduced Deborah Unitus of the Administrative Office of the Courts (AOC), who was attending the meeting to answer questions about Rule 16-819. The Reporter's note indicates that the Maryland Judicial Conference Advisory Committee on Interpreters had recommended that there be a set of rules governing the use of interpreters in court. Initially, the recommended set of rules was expansive, including a code for interpreters. The General Court Administration Subcommittee chose to recommend that the code not be included in the Rule. The Rule authorizes the Chief Judge of the Court of Appeals to prescribe regulations and to provide a list of regulations that are implemented by the AOC.

Ms. Unitus explained that Elizabeth Veronis, Esq., Court Officer, had drafted the Rule in response to the Subcommittee's

suggestions. The Vice Chair referred to language in the Rule that provides that the Chief Judge shall prescribe regulations and standards. She asked what the result is if the Chief Judge does not take this action. Mr. Sykes commented that this type of language is always directory.

The Vice Chair asked what the difference is between subsections (a)(3) and (a)(4). Mr. Brault replied that the first one is the standards of conduct and the second is the authority for disciplinary action. The Vice Chair suggested that the two could be combined into one provision. The Chair pointed out that some jurisdictions, such as Montgomery County, have a supervisory court interpreter. Ms. Unitus added that there is one in Prince George's County, also. The Chair said that the supervisory court interpreter handles scheduling, but the disciplinary authority is usually a matter of court administration. Ms. Unitus pointed out that there are no disciplinary proceedings to remove interpreters because there is no authority to do so. The Chair suggested that subsection (a)(3) be deleted. The Assistant Reporter noted that originally subsections (a)(3) and (a)(4) had been one provision, which was then separated.

The Vice Chair suggested that the Rule could provide that the regulations and standards may include a code of conduct for interpreters. The Chair suggested that subsection (a)(3) read as

follows: AStandards of conduct for court interpreters.@ Mr. Brault commented that Rule 16-819 is different from Rule 16-404, Administration of Circuit Court Reporters. He suggested that the two Rules could be more symmetrical. The Chair said that the Maryland Judicial Conference envisioned that the regulations would be passed by the Chief Judge and implemented by the AOC. He suggested that in section (a) the language which reads Aand standards@ be deleted and in subsection (a)(3), the beginning language which reads ADesignation of a court interpreter supervisory authority, in accordance with the@ be deleted, so that subsection (a)(3) would read: AStandards of conduct for court interpreters;@. Subsection (a)(4) would not be changed. The Committee agreed by consensus to these changes.

The Vice Chair questioned as to how, at a practical level, the AOC would implement the regulations. Ms. Unitus answered that it does so through recruiting, training, testing, and skill-building of interpreters. Mr. Brault remarked that there is a shortage of interpreters. Ms. Unitus responded that one of the problems is that no tests are available for certain dialects. The most common languages requiring interpreters in Maryland are Spanish, Russian, Vietnamese, and Korean. Sometimes people who are bilingual are not necessarily good court interpreters.

The Committee approved the Rule as amended.

The Chair presented Rule 1-303, Form of Oath, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-303 to add a form of oath for court interpreters, as follows:

Rule 1-303. FORM OF OATH

(a) Generally

Except as provided in subsection (b), ~~W~~whenever an oral oath is required by rule or law, the person making oath shall solemnly swear or affirm under the penalties of perjury that the responses given and statements made will be the whole truth and nothing but the truth. A written oath shall be in a form provided in Rule 1-304.

(b) Court Interpreters

A court interpreter shall solemnly swear or affirm under the penalties of perjury to interpret accurately, completely and impartially, using the interpreter's best skill and judgment in accordance with the standards prescribed by the Maryland Judiciary for legal interpreting or translating.

Source: This Rule is derived from former Rules 5 c and 21 and is in part new.

Rule 1-303 was accompanied by the following Reporter's Note.

> In conjunction with the addition of a new Rule governing court interpreters the General Court Administration Subcommittee is proposing amendments to Rule 1-303 adding an oath for court interpreters.

The Chair explained that the Rule adds an oath for interpreters. The Vice Chair asked why interpreters are sworn in. She pointed out that section (a) uses the language Awhenever an oath is required by rule or law...,@ and she asked why there has to be a specific provision for an unusual situation when there is already a general rule. The Chair replied that the Maryland Judicial Conference had recommended that there be an oath for interpreters. Judge Johnson pointed out that a high percentage of cases require interpreters. Oaths are being administered to the interpreters, but they are not uniform. Ms. Unitus added that she had spoken with court clerks all over the state who told her that the oaths are different around the state.

Mr. Sykes inquired as to why the language in section (b) which reads Ausing the interpreter's best skill and judgment@ has to be in the Rule. His view was that the language which reads Ainterpret accurately, completely, and impartially@ is sufficient. The Chair commented that there may be a problem communicating with the witness, and the interpreter may need to use his or her best skill and judgment. Mr. Sykes expressed the opinion that the language to which he is objecting may actually

lessen the interpreter's obligation. The Reporter pointed out that the translation given by the interpreter is not necessarily verbatim, and it may require great skill and judgment. The Vice Chair remarked that the interpretation should be accurate, but not necessarily word for word. Mr. Brault added that some foreign idioms do not translate. Judge Dryden observed that this is especially true for legal idioms. One problem is that interpreters try to be helpful, and sometimes he has to stop them from conversing with the witness.

The Vice Chair commented that not all of the problems can be cured with a change in language, but she suggested that section (b) read as follows: AA court interpreter shall solemnly swear or affirm under the penalties of perjury to interpret accurately, completely, and impartially.@ The Committee agreed by consensus to this change and approved the Rule as amended.

The Chair thanked Ms. Unitus for attending the meeting.

The Chair presented Rule 16-404, Administration of Court Reporters, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

AMEND Rule 16-404 to make it applicable

to court reporters in District Court and to make it gender-neutral, as follows:

Rule 16-404. Administration of ~~Circuit~~ Court Reporters.

a. Establishment of Regulations and Standards.

The Chief Judge of the Court of Appeals shall from time to time prescribe regulations and standards regarding ~~circuit~~ court reporters and the system of reporting in the courts of the State. The regulations and standards may include provisions relative to:

(1) The selection, qualifications, and responsibilities of court reporters;

(2) Procedures and regulations for court reporting;

(3) Preparation, typing, and format of transcripts;

(4) Charges for transcripts and copies;

(5) Preservation and maintenance of reporting notes, however recorded;

(6) Equipment and supplies utilized in reporting.

b. Number of Court Reporters--Supervisory Court Reporter.

Each circuit court shall have the number of court reporters recommended by the County Administrative Judge and approved by the Chief Judge of the Court of Appeals. In a county with more than one court reporter the County Administrative Judge shall designate one as supervisory court reporter, to serve at ~~his~~ the pleasure of the County Administrative Judge. The Chief Judge of the Court of Appeals shall prescribe the duties of the supervisory court reporter.

c. Supervision of Court Reporters.

Subject to the general supervision of the Chief Judge of the Court of Appeals and to the direct supervision of ~~his~~ the Circuit Administrative Judge, the County Administrative Judge shall have the supervisory responsibility for the circuit court reporters in ~~his~~ that county. The County Administrative Judge may delegate supervisory responsibility to the supervisory court reporter, including the assignment of court reporters to attend the record at each session of the court and every other proceeding as provided in this Rule or by order of the court.

d. Methods of Reporting--Proceedings to Be Recorded.

Each circuit court reporter assigned to record a proceeding shall record verbatim by shorthand, stenotype, mechanical or electronic sound recording methods, or any combination of these methods, subject to regulations and standards prescribed by the Chief Judge of the Court of Appeals.

1. Criminal Cases.

(a) Trial on Merits Other than District Court Appeals.

In criminal cases, other than appeals from the District Court, the entire trial on the merits held in open court, including opening statements and closing arguments of counsel;

(b) Appeals from District Court.

In appeals from the District Court, upon specific request of the judge or a party, the entire trial on the merits held in open court, including opening statements and closing arguments of counsel;

(c) Motions and Other Proceedings.

Upon specific request of the judge or a party the entire or any designated part of the hearing on all motions or other proceedings before the court.

2. Civil Cases.

(a) Trial on Merits Other than District Court Appeals.

In civil cases, other than appeals *de novo* from the District Court, the entire trial on the merits held in open court, excluding opening statements and closing arguments of counsel unless requested by the judge or a party;

(b) *De Novo* Appeals from District Court.

In appeals *de novo* from the District Court, upon specific request of the judge or a party, the entire trial on the merits held in open court, including, if requested opening statements and closing arguments of counsel;

(c) Motions and Other Proceedings.

Upon specific request of the judge or a party, the entire or any designated part of the hearing on all motions or other proceedings before the court.

e. Maintenance and Filing of Administrative Records.

The Chief Judge of the Court of Appeals may prescribe procedures for the maintenance and filing of administrative records and reports with the Administrative Office of the Courts and the Circuit Administrative Judge.

Source: This Rule is former Rule 1224.

Rule 16-404 was accompanied by the following Reporter's

Note.

> The General Court Administration Subcommittee is proposing to amend Rule 16-404, so that section a is applicable to court reporters in the District Court, a suggestion made by Chief Judge Bell. The Subcommittee is also proposing changes to the Rule to make it gender-neutral and to add two commas.

The Chair explained that the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, had been concerned that Rule 16-404 should be made applicable to court reporters in the District Court. The change was driven by the Americans with Disabilities Act (ADA), which allows for court reporters in District Court to assist the parties and witnesses under certain circumstances. The Honorable Martha F. Rasin, Chief Judge of the District Court of Maryland, had requested that the Rule clarify that only section a. is applicable to the District Court as well as the circuit court. The changes suggested by the General Court Administration Subcommittee are highlighted.

The Vice Chair commented that since section b. only applies to the circuit court, the tagline should state this. Mr. Sykes added that this is true for section c. as well. The Vice Chair said that she had never seen a court reporter in District Court. Judge Vaughan responded that there are occasions when a reporter is brought in. The Vice Chair suggested that there be a separate section pertaining to the District Court. The Reporter explained

that this was originally drafted as a separate rule, but the Subcommittee had changed it to be part of Rule 16-404. The Chair noted that the Rule could be read in conjunction with Rule 16-504. The Vice Chair stated that the Style Subcommittee can reorganize it. She pointed out that in section c., the first sentence provides that the Chief Judge and the Circuit Administrative Judge have supervisory authority over the County Administrative Judge. Mr. Brault said that this is correct.

The Vice Chair pointed out that subsection d. 1.(c) provides that hearings on motions are recorded upon specific request of the judge or a party. This is a significant trap for attorneys, who may expect that when they argue a motion, a record of the argument automatically would be made, without anyone making a request. Asking for the motion to be heard on the record puts the attorney in an awkward position, implying to the judge that the attorney plans to appeal. Motions should be heard automatically on the record. Mr. Brault observed that some proceedings are handled in the judge's chambers. Mr. Sykes remarked that a court reporter could be brought in. Judge Kaplan said that this provision is not a major problem. Mr. Brault agreed that the provision may create a trap. He noted that in the Circuit Court for Montgomery County, there are no live court reporters. To be recorded, the proceeding must be conducted in a

courtroom where there is a recording device.

The Chair suggested that the Rule could provide that everything is recorded, except by agreement of the parties. The Vice Chair pointed out that the same change should be made in subsection d. 2.(b), De Novo Appeals from District Court. Judge Dryden remarked that these are always on the record. The Chair pointed out that in criminal cases in subsection d. 1., there is no automatic right of appeal, but someone can petition for certiorari. A record of the hearing should be made. The same change with the language Aexcept upon agreement of the parties@ could be added to subsection d. 1. Judge Dryden suggested that the Rule could provide that all hearings in open court are to be recorded.

The Vice Chair observed that subsection d. 1. could be redrafted as one provision which would state that appeals from the District Court, criminal or civil, are always on the record. There would be no exception for the parties' agreement in subsection 1.(a). The Chair reiterated that in criminal cases, the entire trial would be recorded, and Mr. Brault added that in civil cases, the entire trial would be recorded. The Vice Chair said that motions and other proceedings would be recorded unless the parties agree otherwise.

The Chair observed that all criminal cases would be

recorded. As for the civil cases, if the appeal is on the record from the District Court, there is no need to record. It would be appropriate to provide in subsection d. 2.(a) that the recording is upon the request of the parties. The Vice Chair expressed the view that it should be on the record. The Chair pointed out that there is no right to appeal, only a chance to request certiorari based on the District Court record. Mr. Brault suggested that the Rule should be simplified and provide that everything in open court, both criminal and civil, is recorded except upon agreement of the parties. The Committee agreed by consensus to Mr. Brault's suggestion.

Judge Kaplan commented that in earlier days, the chambers judge in Baltimore City had no court reporter. Most of the motions heard were not on the record, unless it was requested five days in advance. There were not enough court reporters to put all proceedings on the record. Now there are 27 courtrooms and chambers with video recording capabilities.

The Chair suggested that section e. be moved to the beginning of the Rule. The Committee agreed by consensus to this suggestion.

Mr. Sykes noted that section a. would apply to the Orphans' Court. The Chair said that he did not know of the standards or regulations in the Orphans' Court. However, section a. empowers

the Chief Judge to prescribe any regulations or standards, and this would include regulations and standards applicable to the Orphans' Court. Judge Kaplan remarked that the Orphans' Court in Baltimore City has video recording. Mr. Sykes observed that the Orphan's Court is a court of record, whether or not there is a record.

The Committee approved Rule 16-404, as amended.

The Chair presented Rule 16-504, Recording of Proceedings, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 500 - COURT ADMINISTRATION - DISTRICT COURT

AMEND Rule 16-504 to make it applicable to court reporters in the District Court and to videotape recording of District Court proceedings, as follows:

Rule 16-504. Recording of proceedings.

a. Recording.

All trials and hearings before a judge or examiner shall be recorded verbatim either stenographically or by an electronic recording device provided by the court, and the recording shall be filed among the court records. Persons recording stenographically shall comply with the requirements set forth in Rule 16-404 a. The Chief Judge of the District Court may authorize the use,

procedures, and technology for the recording by videotape of proceedings.

b. Access to Recording.

If a proceeding is recorded by sound recording device, a party to the proceeding shall have access to the sound recording for the purpose of having the recording replayed or transcribed, subject to such procedures and regulations as the Chief Judge of the District Court of Maryland may prescribe.

Source: This Rule is former M.D.R. 1224.

Rule 16-504 was accompanied by the following Reporter's Note.

The General Court Administration Subcommittee is proposing to amend Rule 16-504 to adopt Chief Judge Bell's suggestion that reporters in the District Court be subject to regulations just as circuit court reporters are. Rule 16-404 a would apply to court reporters who are making an official record in the District Court or who are making a record to assist hearing impaired persons, but it would not apply to District Court employees who are involved in the recording or transcribing process.

The Subcommittee is also proposing new language which would comply with Chief Judge Bell's suggestion to provide in the Rules for the videotape recording of proceedings in the District Court, since this technology may be extended to the District Court at some time.

The Chair explained that Chief Judge Bell had suggested that court reporters in the District Court be subject to regulation just as circuit court reporters are. The Vice Chair asked about

the meaning of the first proposed new sentence. The Chair replied that this relates to the situation in which a party or a witness in District Court has a disability, including loss of vision or hearing, and needs assistance, such as real-time reporting. The Vice Chair inquired as to whether this applies only in the District Court. The Chair responded that Chief Judge Rasin wanted express authority with respect to videotaping. The Vice Chair remarked that Chief Judge Bell could grant her this authority without the necessity of a Rule change. The proposed new language conflicts with the first sentence of the Rule, and there is no sense of compliance with the Americans With Disabilities Act (ADA). The Chair noted that the first sentence of the proposed additional language causes no harm. The Reporter commented that Title 16 has not yet been revised, and the Rules in Chapter 500 apply only to the District Court

The Chair said that Chief Judge Rasin's concern was that the ADA procedures supersede existing rules. The second additional sentence of section a. relates to an issue that came before the Criminal Subcommittee. In Baltimore City, there is video-conferencing of initial appearances. The Chief Judge of the District Court has the express authority to regulate the technology employed to videotape station house conferences. Mr. Sykes questioned whether a District Court judge is prohibited

from allowing videotaping if the Chief Judge does not authorize it. Judge Vaughan answered that allowing the videotaping would be at the judge's peril. The Chair observed that, although arguably there is no need for the proposed language, Chief Judge Rasin would like it to be added to the Rule, and it causes no harm.

Mr. Sykes suggested that the second proposed sentence be reorganized, so that it would read as follows: ANo use, procedures, and technology for the recording by videotape of proceedings shall be used in District Court, except upon the authority of the Chief Judge.@ The Chair expressed the opinion that the Rule should use the language AThe Chief Judge may authorize@ to avoid the danger that a proceeding may be invalid because the Chief Judge did not authorize it. Mr. Sykes asked if the language should be: AThe Chief Judge shall authorize...@. Judge Dryden replied that it is better to leave it as Amay authorize.@

Mr. Klein commented that video recording should not be limited to using tapes. Other means of recording exist, including digital disc drives. Judge Vaughan remarked that digital disc drives are already being used in the District Court. The Chair suggested that the order of the proposed two new sentences be reversed. He asked if there are examiners in the

District Court. Judge Vaughan answered that there are no examiners in the District Court, and he suggested that the words Aor examiner@ be deleted from the first sentence of section a. The Committee agreed by consensus to this suggestion.

Mr. Howell noted that the second sentence refers only to recording stenographically, but the first sentence refers to stenographic and electronic recording. Judge Kaplan suggested that the word Avideotape@ be changed to Avideo,@ eliminating the word Atape.@ The Committee agreed by consensus to this change. The Chair observed that someone recording proceedings stenographically should comply with whatever regulations are prescribed by the Chief Judge. The Reporter suggested that instead of the proposed sentence which provides that persons recording stenographically shall comply with the requirements set forth in Rule 16-404 a., a cross reference to Rule 16-404 a. should be added to Rule 16-504. The Committee agreed by consensus to this suggestion. The Chair stated that the proposed first sentence will be deleted, and the other proposed sentence will substitute the language Avideo recording@ for the language Arecording by videotape.@ The cross reference to Rule 16-404 a. will be added to the end of section b.

Mr. Howell inquired if the rule pertaining to video recording impacts section b. which refers to a sound recording

device. The Chair replied that it does not impact section b. The first sentence of section a. pertains to recording devices provided by the court. Judge Johnson pointed out that an electronic recording device includes both audio and video. The Vice Chair said that the first sentence of section a. allows for videotaping. The Chair expressed his concern that someone may argue that it does not. This is necessary for compliance with the ADA. The Vice Chair suggested that a Committee note be added which would provide that Aelectronic recording is intended to include video recording, and the Chief Judge may authorize it.@ The Chair responded that Chief Judge Rasin may not agree with this, because she would like the express authority in the Rule.

The Chair questioned whether section b. should be modified or whether the Style Subcommittee should work on it. With respect to a recording done on an electronic device provided by the court, the parties have a right to have the recording replayed or transcribed, subject to the procedures and regulation which the Chief Judge of the District Court may prescribe. Judge Johnson asked if the intent of the Rule is that if it is a video recording, the parties do not have a right to have the recording replayed or transcribed. The Chair answered that that is not the intent of the Rule. Judge Vaughan suggested that the word Asound@ be deleted from section b. The Committee agreed by

consensus to this change. The Chair said that the Rule is referring to a recording device provided by the court. This is consistent with District Court practice where everything is electronically recorded. Mr. Hochberg asked if the tape is filed. Judge Dryden replied that the tape is filed separately from the case file. Mr. Klein inquired if it is implicit in section b. that there is no access to a stenographic recording. The Chair remarked that that is the question for determination. He said that in the first sentence of section a., the words Aor examiner@ will be taken out. He suggested that the second sentence in section a. be moved to section b.

Mr. Klein inquired as to whether the stenographic recording or the electronic recording gets filed. Mr. Sykes answered that both are filed. The Chair reiterated that the court provides the electronic recording device. Mr. Klein pointed out that the Rule provides that the recording is to be filed. The Vice Chair suggested that the word Aelectronic@ be taken out of the tagline. Electronic recording includes video recording. The Rule could begin as follows: AAll trials and hearings before a judge shall be recorded verbatim either stenographically or by means other than video...@. Judge Kaplan commented that the term Aelectronic@ is necessary, because there is obviously some doubt as to the meaning. The Vice Chair suggested that the word Aelectronic@ be

changed to Aaudio,@ distinguishing what happens in District Court. The Chair pointed out that there are no stenographers in District Court. He suggested taking the word Astenographically@ out of section a.

The Chair said that there is a serious question as to whether if a stenographer is brought in, the transcript has to be shared with all counsel. The Rule should be conformed to District Court practice. The language of section a. would be AAll trials and hearings before a judge shall be recorded verbatim by an audio recording device provided by the court, and the recording shall be filed among the court records. A party to the proceeding shall have access to the recording for the purpose of having the recording replayed or transcribed, unless the court orders otherwise.@ Section b. would read as follows: AThe Chief Judge of the District Court may authorize the use, procedures, and technology for other recording.@ The Vice Chair added that section a. would have the tagline AAudio Recording@ and section b. the tagline AOther Recording.@ The Chair stated that Rule 16-504 will have a cross reference to Rule 16-404, and Rule 16-404 will have a cross reference to Rule 16-504. The Committee agreed by consensus to these changes.

The Chair presented Rules 16-101, 2-505, and 4-254 for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TILE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL DUTIES, ETC.

AMEND Rule 16-101 to make it gender-neutral and to remove certain supervisory duties of the Circuit Administrative Judge over the County Administrative Judge, as follows:

Rule 16-101. Administrative Responsibility.

. . .

c. Circuit Administrative Judge.

1. Designation.

In each judicial circuit there shall be a Circuit Administrative Judge~~. He~~, who shall be appointed by order~~,~~ and serve at the pleasure of the Chief Judge of the Court of Appeals~~, provided that~~. In the absence of any such appointment, the Chief Judge of the judicial circuit shall be the Circuit Administrative Judge.

2. Duties.

~~(a) Generally.~~

Each Circuit Administrative Judge shall be generally responsible for the administration of the several courts within ~~his~~ the judicial circuit, pursuant to these Rules and subject to the direction of the Chief Judge of the Court of Appeals. Each Circuit Administrative Judge shall also be responsible for the supervision of the County

Administrative Judges within ~~his~~ the judicial circuit and may perform any of the duties of a County Administrative Judge. ~~He~~ The Circuit Administrative Judge shall also call a meeting of all judges of ~~his~~ the judicial circuit at least once every six months.

~~(b) Removed Cases - Approval Authority.~~

~~In the interest of expediting the trial of a removed action, criminal cause, or issue, and of equalizing judicial work loads to the extent feasible, it shall be the duty of a judge, before exercising removal authority designating a Court within his judicial circuit to which such action, criminal cause, or issue shall be removed, to obtain the approval of the Circuit Administrative Judge for such designation. It shall also be the duty of a judge, before exercising removal authority to a jurisdiction without the judicial circuit, to make inquiry of the Circuit Administrative Judge of the Circuit to which it is proposed to make the removal concerning the trial calendar and judicial work loads of any Court to which it is contemplated the action, criminal cause, or issue may be removed and to give consideration to the recommendations of such Circuit Administrative Judge. The Circuit Administrative Judge, in the interest of expediting the removal process, may at any time or from time to time delegate his approval authority under this Rule to any judge or judges within his judicial circuit.~~

Cross reference~~s~~: For more detailed provisions pertaining to duties of Circuit Administrative Judges, see section (d) of Rule 4-344 ~~(d)~~ (Sentencing -- Review); Rule 16-103 (Assignment of Judges); and Rule 16-104 (Judicial Leave)~~; Rule 16-105 (Reports to Be Filed); Rule 15-106 (Court Sessions - Holidays - Time for Convening); Rule 16-201 a (Motion Day). For removal in civil actions and criminal causes, see Rules 2-505 and 4-~~

~~254.~~

~~Committee note: Section e of this Rule is based on portions of the Court of Appeals Administrative and Procedural Regulation of July 17, 1967. Under the Rule, and particularly the portions thereof, dealing with the Circuit Administrative Judge, the Chief Judge of the Court of Appeals is free to appoint any judge of a circuit, including but not necessarily limited to the Chief Judge of that circuit, to be Circuit Administrative Judge. The judge so appointed, even if he is not the Chief Judge of the Circuit, exercises the administrative powers granted in this and other rules, such as Rule 16-103, dealing with assignment of judges. The intent of this Rule is to vest administrative power, at the judicial circuit level, in the Circuit Administrative Judge. In this regard, it should be noted that a Chief Judge has no inherent administrative power or authority, with the exception of the right to preside at sessions of his court, when more than one judge is present. See Bean v. Boryca, 81 Cal. 151, 22 Pac. 513 (1889); In re Opinion of the Justices, 271 Mass. 575, 171 N.E. 237, 240 (1930), and 48 C.J.S. "Judges," §2. Under this and other rules, the duty of selecting a panel for review of criminal sentences, as set forth in Article 27, §645JA, of the Code, would be vested in the Circuit Administrative Judge and not the Chief Judge. So would the duty of arranging for a sitting of the court en banc under Article IV, §22, of the Constitution. However, this Rule is not intended to interfere with the present practice of issuing process in the name of the Chief Judge of a Circuit.~~

d. County Administrative Judge.

1. Designation.

~~In the first seven judicial circuits, the~~

~~Circuit Administrative Judge of a judicial circuit may, from time to time, and with approval of~~ The Chief Judge of the Court of Appeals~~, by order~~ may appoint a judge of the Circuit Court for any county ~~within his judicial circuit~~ to be County Administrative Judge of the Circuit Court for ~~such~~ that county. A County Administrative Judge ~~may be replaced by the Circuit Administrative Judge of his circuit with the approval of the Chief Judge of the Court of Appeals or by~~ shall serve at the pleasure of the Chief Judge of the Court of Appeals ~~on his own motion. In the Eighth Judicial Circuit the Circuit Administrative Judge shall have all the powers and duties of a County Administrative Judge~~.

~~Committee note: This is essentially the language of Paragraph 3 of the July 17, 1967 Administrative and Procedural Regulation of the Court of Appeals, except that the Circuit Administrative Judge is made the basic appointing and replacing authority to emphasize and reinforce his position in the administrative hierarchy. No express provision is made for a "County Administrative Judge" in any of the Supreme Bench courts, since the peculiar organization of these courts and their present method of functioning seems to make such unnecessary. The Circuit Administrative Judge in the Eighth Judicial Circuit is given the powers of a County Administrative Judge and pursuant to subsection 3 of this section may delegate portions of his authority to other judges of the Supreme Bench.~~

2. Duties.

Subject to the ~~general~~ supervision of the Chief Judge of the Court of Appeals ~~and to the direct supervision of his Circuit Administrative Judge, particularly with reference to assignment of judges and of cases~~, a County Administrative Judge shall be

responsible for the administration of justice and for the administration of the court for ~~which he is County Administrative Judge~~ that county. ~~His~~ The duties shall include:

(i) Supervision of all judges, officers, and employees of ~~his~~ the court~~, and of officers and employees of court~~, including the authority to assign judges within ~~his~~ the court pursuant to Rule 16-103 (Assignment of Judges).

Cross reference: For removal in civil actions and criminal causes, see Rules 2-505 and 4-254.

(ii) Supervision and expeditious disposition of cases filed in ~~his~~ the court~~,~~ and the control of the trial calendar and other calendars ~~therein~~, including the authority to assign cases for trial and hearing pursuant to Rule 16-102 (Chambers Judge) and Rule 16-202 (Assignment of Actions for Trial).

(iii) Preparation of the budget of ~~his~~ the court.

(iv) Ordering ~~of~~ the purchase of all equipment and supplies for ~~his~~ the court and its ancillary services, such as master, auditor, examiner, court administrator, court stenographer, jury commissioner, staff of the medical and probation offices, and all additional court personnel other than personnel comprising the Clerk of Court's office.

(v) Subject to the approval of a majority of the judges of ~~his~~ the court, supervision of~~,~~ and responsibility for~~,~~ the employment, discharge, and classification of court personnel and personnel of its ancillary services and the maintenance of personnel files. However, each judge (subject to budget limitations) shall have

the exclusive right to employ and discharge ~~his~~ the judge's personal secretary and law clerk.

Committee note: Article IV, §9, of the Constitution gives the judges of any court the power to appoint officers~~,~~ and, thus, requires joint exercise of the personnel power. A similar provision was included in the July 17, 1967 Administrative and Procedure regulation.

(vi) ~~In general, the i~~Implementation and enforcement of all policies, rules, and directives of the Court of Appeals, its Chief Judge, and the ~~Director of the Administrative Office of the Courts~~ State Court Administrator, ~~and his Circuit Administrative Judge,~~ and ~~the~~ performance of ~~such~~ any other duties ~~as may be~~ necessary for the effective administration of the judicial business of ~~his~~ the court and the prompt disposition of litigation ~~therein~~.

Cross references: For specific duties of a County Administrative Judge, see Rule 16-102 (Chambers Judge); Rule 16-103 (Assignment of Judges); Rule 16-201 (Motion Day--Calendar); and Rule 16-202 (Assignment of Actions for Trial).

3. Power to Delegate.

(i) A County Administrative judge~~, with the approval of his Circuit Administrative Judge,~~ may delegate to any judge, ~~or~~ to any committee of judges, ~~of his court,~~ or to any officer or employee ~~of such court, such of the those~~ any of the responsibilities, duties, and functions ~~imposed upon him~~ of the County Administrative Judge as ~~he~~ the judge, in ~~his~~ the judge's discretion, ~~shall~~ deems necessary or desirable.

(ii) In the implementation of Code,

Article 27, §591 and Rule 4-271 (a), a County Administrative Judge may authorize (A) with the approval of the Chief Judge of the Court of Appeals, ~~authorize~~ one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for jury trial, and (B) ~~authorize~~ not more than one judge at a time to postpone all other criminal cases.

4. Single Judge Counties.

In ~~any~~ a county ~~in which there is but~~ that has only one resident judge of the Circuit Court, ~~such~~ that judge shall exercise~~, as appropriate,~~ the power and authority of a County Administrative Judge.

~~Comment. In general, section d (County Administrative Judge) is based upon the Court of Appeals Administrative and Procedural Regulation of July 17, 1967. Authority for the Rule is derived from Article IV, §18, of the Constitution, designating the Chief Judge of the Court of Appeals as administrative head of the judicial system and granting general rule making and assignment power; the grant of administrative rule making authority contained in Chapter 444, Acts of 1966, the provisions of Chapter 468, Acts of 1968, dealing with the distribution of judicial work loads and vacations; the provisions of CJ §1-201, of the Code dealing with rule-making power of the judges of the several courts of the State; and the inherent power of courts to prescribe rules to effectuate the administration of justice, including the inherent power of superior courts to regulate inferior courts; see, e.g., Petite v. Estate of Papachrist, 219 Md. 173, 148 A.2d 377 (1959); Annots., "Power of Court to Prescribe Rules of Pleadings, Practice and Procedure," 110 A.L.R. 22 (1937); 158 A.L.R. 705 (1945); Dowling, The Inherent Power of the Judiciary, 21 A.B.A.J. 835 (1935); Pound, Procedure~~

~~Under Rules of Court in New Jersey, 66 Harv. L. Rev. 28 (1952).~~

Source: This Rule is former Rule 1200.

Rule 16-101 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to make it gender-neutral, to delete outdated Committee notes and cross references, and to remove some of the supervisory duties of the Circuit Administrative Judge over the County Administrative Judge.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE C CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-505 to provide that the Circuit Administrative Judge may designate a county to which a case is to be removed, as follows:

Rule 2-505. REMOVAL

(a) Grounds

(1) Prejudice

In any action that is subject to

removal, and on issues from the Orphans' Court, any party may file a motion for removal accompanied by an affidavit alleging that the party cannot receive a fair and impartial trial in the county in which the action is pending. If the court finds that there is reasonable ground to believe that the allegation is correct, it shall order that the action be removed for trial to a court of another county. Any party, including a party who has obtained removal, may obtain further removal pursuant to this Rule.

(2) Disqualification of all Judges

In any action in which all the judges of the court of any county are disqualified to sit by the provisions of the Maryland Constitution, any party, upon motion, shall have the right of removal of the action to a court of another county or, if the action is not removable, the right to have a judge of a court of another county preside in the action.

(b) Designation of Court and Transmittal of Record

The Circuit Administrative Judge of the court ordering removal shall designate the county to which the case is to be removed. When the court orders that the action be removed for trial to a court of another county, the clerk shall transmit the record to that court within five days from entry of the order, unless the court ordering the removal extends the time. The record shall consist of all the original papers filed in the action and a copy of the docket entries.

(c) Striking the Order of Removal

Before the record has actually been transmitted, the court, on motion of the

party who obtained the order of removal, may vacate the order.

(d) Order by Court to Which Removed

The court to which an action has been removed may issue a warrant of resurvey or other process to the sheriff, surveyor, or other officer of the county from which the action has been removed.

(e) Return of Papers to Original Court

Within five days after final disposition of the action, including all appeals, the clerk shall transmit all papers in the action and a copy of the docket entries to the court from which the action was first removed.

Cross reference: For limitations on the constitutional right of removal in condemnation cases, see Mayor and City Council of Baltimore v. Kane, 125 Md. 135 (1915) and Mayor and City Council of Baltimore v. Libowitz, 159 Md. 28 (1930).

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 542 a 1 and 2.
Section (b) is derived from former Rule 542 c 1 and 4.
Section (c) is derived from former Rule 542 d 1.
Section (d) is derived from former Rule 542 g.
Section (e) is derived from former Rule 542 i.

Rule 2-505 was accompanied by the following Reporter's Note.

The General Court Administration Subcommittee is recommending the addition of language to Rule 2-505 to provide a procedure for removal of a case to another county. The Rules Committee had recommended the deletion of subsection c 2 b of Rule 16-101 which pertained to approval authority of removal of cases, and the Style Subcommittee had expressed the opinion that deletion of this provision left a gap in the removal procedure. The proposed change is to bridge that gap.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-254 to provide that the Circuit Administrative Judge may designate a county to which a case is to be removed, as follows:

Rule 4-254. REASSIGNMENT AND REMOVAL

(a) Reassignment in District Court

The reassignment of a criminal action pending in the District Court shall be governed by the provisions of Rule 3-505.

(b) Removal in Circuit Courts

(1) Capital Cases

When a defendant is charged with an offense for which the maximum penalty is death and either party files a suggestion under oath that the party cannot have a fair and impartial trial in the court in which the action is pending, the court shall order that the action be transferred for trial to another court having jurisdiction. The Circuit Administrative Judge of the court ordering removal shall designate the county to which the case is to be removed. A suggestion by a defendant shall be under the defendant's personal oath. A suggestion filed by the State shall be under the oath of the State's Attorney.

(2) Non-capital Cases

When a defendant is charged with an offense for which the maximum penalty is not death and either party files a suggestion under oath that the party cannot have a fair and impartial trial in the court in which the action is pending, the court shall order that the action be transferred for trial to another court having jurisdiction only if it is satisfied that the suggestion is true or that there is reasonable ground for it. The Circuit Administrative Judge of the court ordering removal shall designate the county to which the case is to be removed. A party who has obtained one removal may obtain

further removal pursuant to this section.

(3) Transfer of Case File - Trial

Upon the filing of an order for removal, the clerk shall transmit the case file and a certified copy of the docket entries to the clerk of the court to which the action is transferred and the action shall proceed as if originally filed there. After final disposition of the action, the clerk shall return a certified copy of the docket entries to the clerk of the court in which the action was originally instituted for entry on the docket as final disposition of the charges.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 744.
Section (b) is derived from former Rule 744.

Rule 4-254 was accompanied by the following Reporter's Note.

The General Court Administration Subcommittee is recommending the addition of language to Rule 4-254 to provide a procedure for removal of a case to another county. The Rules Committee has recommended the deletion of subsection c 2 b of Rule 16-101 which pertained to approval authority of removal of cases, and the Style Subcommittee had expressed the opinion that deletion of this provision left a gap in the removal procedure. The proposed change is to bridge the gap.

The Chair explained that Rule 16-101 had been sent to the Style Subcommittee who had remanded it to the Subcommittee for further work. The Subcommittee reviewed the Rule, looking also

at Rules 2-505 and 4-254. Rule 16-101 contained material pertaining to removal, but it never solved the problem of a judge refusing to accept a case from another county. The proposal to resolve this problem is to refer to the removal procedures in Rules 2-505 and 4-254. These Rules are proposed to be changed to provide that the Circuit Administrative Judge of the court ordering removal shall designate the county to which the case is to be removed. The Vice Chair suggested that the Style Subcommittee look at Rule 2-505. The Chair agreed, commenting that the Rule should not be silent as to the procedure if one judge sends a case to another county, and the judge in that county refuses to take the case. Judge Kaplan remarked that this is not a prevalent problem. Judge Johnson noted that the Rule has not changed the situation in which the county administrative judge moves a case out of the circuit, and the other circuit refuses to take the case. The Chair said that the circuit administrative judge makes the decision. The receiving judge (county administrative or circuit administrative) is prevented from refusing to take the case. Judge Johnson observed that the circuit court can send the case out of the circuit, but previously, the Chief Judge had to approve this. He asked whether this has been changed. The Chair answered that this has been changed.

Mr. Shipley pointed out that Rules 2-505 and 4-254 cover different procedures. In the Clerk's Office in Carroll County, there is some confusion as to the difference between removal and transfer. In a civil case, the record goes back to the original court; in a criminal case, the record stops at the receiving court. He inquired as to whether one situation should be called Atransfer,@ and the other one called Aremoval.@ The Chair replied in the negative, explaining that people are comfortable with the idea of removal, even if the criminal case is transferred. Judge Kaplan remarked that when a case is removed, the first county has to reimburse the receiving county for the costs incurred by the jurors. The Chair cited the case of Howard County v. Frederick County, 30 Md. 432 (1869), which held that when a case is removed, the expenses of the trial are to be paid by the originating county. The Chair reiterated that the terms should not be changed.

There being no changes suggested, the Committee approved Rules 16-101, 2-505, and 4-254 as presented.

The Chair presented Rule 16-817, Appointment of Bail Bond Commissioner--Licensing and Regulation of Bail Bondsmen, for the Committee's consideration.

AMEND Rule 16-817 to make it gender-neutral, to organize bail bond commissioners by appellate judicial circuits, and to provide that the Chief Clerk of the District Court is to receive the list of bail bondsmen licensed within a particular appellate circuit, as follows:

Rule 16-817. Appointment of Bail Bond Commissioner--Licensing and Regulation of Bail Bondsmen.

A majority of the judges of the circuit courts in any appellate judicial circuit may appoint a bail bond commissioner and license and regulate bail bondsmen and acceptance of bail bonds.

Each bail bond commissioner appointed pursuant to this Rule shall prepare, maintain and periodically distribute to all District Court commissioners and clerks within ~~his~~ the jurisdiction of the appellate judicial circuit for posting in their respective offices, ~~and~~ to the State Court Administrator, and to the Chief Clerk of the District Court, an alphabetical list of bail bondsmen licensed to write bail bonds within the appellate judicial circuit, showing the bail bondsman's name, business address and telephone number, and any limit on the amount of any one bond, and the aggregate limit on all bonds, each bail bondsman is authorized to write.

. . .

Rule 16-817 was accompanied by the following Reporter's Note.

> This Rule is proposed to be amended to make it gender-neutral and to clarify that the bail bond commissioners are organized by appellate judicial circuits. In addition, in response to comments by the Style Subcommittee that Rule 16-817 should be reviewed in light of other rules and legislation in this area, the General Court Administration Subcommittee is recommending that language be added to the Rule providing that the Chief Clerk of the District Court is to receive a list of all bail bondsmen in each appellate jurisdiction to be consistent with Rule 4-217 (d).

The Chair explained that the Rule has been restructured to organize bail bond commissioners by appellate judicial circuits and to state that the bail bond commissioners must send a list of licensed bail bondsmen within the appellate judicial circuit to the Chief Clerk of the District Court. There being no changes, Rule 16-817 was approved as presented.

The Chair stated that the discussion of Agenda Item 3 would be deferred until Mr. Brault was available to present it.

Agenda Item 4. Continued consideration of proposed Products Liability Form Interrogatories. (See Appendix 3).

Mr. Klein presented the Form Interrogatories for Product Liability cases for the Committee's consideration. (See Appendix 3). Mr. Klein told the Committee that the last time these Form Interrogatories were discussed was in June of 1997. There are 46 questions plus definitions. At the June, 1997 meeting, all but

the last 21 question were considered. Most of the changes suggested were stylistic. The suggested changes are marked in the Interrogatories.

Interrogatories Nos. 7 and 8 had been one question which was separated into two. New Interrogatory No. 8 asks for documents that depict or purport to depict the condition of the product. One of the elements of proof is a substantial change in the product's condition. The change is an attempt to solve the problem of vagueness of the original question. Interrogatory No. 10 was redrafted to address the concern that experts retained in anticipation or preparation for trial who will not be called to testify would not be forced to disclose.

Ten of the questions refer to Asubstantially similar products.@ The Rules Committee had asked the Subcommittee to devise a definition of a Asubstantially similar@ product or component part. The Subcommittee attempted to do this, but after much research was completed, the Subcommittee was of the opinion that it could not draft a generic definition. The problem is that the issue is fact-specific, and it depends on the nature of the case. From a policy point of view, the Subcommittee felt that they should not be building controversy into the Form Interrogatories, since they carry the imprimatur of the court. It is important not to make mischief for the parties, and leave

one party at the substantial disadvantage of trying to persuade someone as to why the Aone size fits all@ approach does not fit.

There are three possibilities as to how to handle the problem of the meaning of the phrase Asubstantially similar.@ One is to leave the questions which contain this language as they are. The second is to strike all of the references to the phrase. The third is to instruct the person asking the question about a Asubstantially similar@ product or component part to explain what the person means by the question. The Subcommittee opted for the second approach. The questions impacted by this problem are: Nos. 9, 32, 33, 34, 36, 38, former 39 (which was stricken entirely), new 39, 43, and 44. This problem is being presented to the Rules Committee to determine which approach should be approved.

Mr. Titus commented that the Form Interrogatories are designed to be widely useable. If they are too narrow, this end will not be achieved. The Chair said that the phrase Asubstantially similar@ should be left in the Rule, with a proviso that the phrase is to be defined by the person seeking information about it. The burden is on the person asking for information to explain what Asubstantially similar@ means. Mr. Klein commented that this was the third option considered by the Subcommittee, but they did not choose it. The Chair stated that

when the answer comes back extremely narrow, it is unfair to the plaintiff's attorney. Mr. Klein noted that the flip side to this is the federal rules where discovery has been too broad. Mr. Brault added that in proposed changes to the federal rules, the phrase in the interrogatories which reads Arelevant to the subject matter@ becomes Amatters at issue.@ Mr. Klein said that he had attended federal hearings and symposia, which had communicated the sense that free-wheeling, *carte blanche* discovery is too expensive, and discovery needs to be narrowed. If the federal rule passes, Maryland could look at it as an example. The Chair commented that it could be considered, regardless of whether it passes. The Vice Chair remarked that the next wave in discovery is automatic exchange of kinds of discovery.

Mr. Klein noted that the phrase Asubstantially similar@ is hard to define, lending itself to free-wheeling discovery. Mr. Howell remarked that there are multiple schools of thought. If the phrase is deleted from the Form Interrogatories, it may build in the conception that a party cannot modify an interrogatory to answer about a substantially similar product. The Chair stated that a Committee note could be added which would state that these questions are not intended to suggest that in a particular case, discovery with respect to substantially similar products is out

of bounds. The Chair said that the draft interrogatories imply that one cannot use substantially similar products in an answer, since they are not mentioned.

After the lunch break, Mr. Klein asked the Rules Committee its preference as to how to handle the issue of substantially similar products. The Chair suggested that there could be a comment about substantially similar products which would explain why the term is not in the language of the interrogatories. Counsel can request information about substantially similar products, but the burden is on counsel to define the term. The Vice Chair expressed her opposition to this suggestion. She pointed out that there are other kinds of interrogatories which do not address certain subject matters. She suggested adding a Committee note in the beginning of the interrogatories which would indicate that the forms are not designed to limit questions about substantially similar products. The Chair commented that there is general agreement that someone is entitled to discovery of substantially similar products. Mr. Howell suggested adding a Committee note which would provide that in certain cases, substantially similar products may have relevance to the issues in the case. There would be no ready definition of Asubstantially similar@ -- it would be based on case law.

The Reporter noted that without a definition, this issue

would be outside of the safe harbor of the Form Interrogatories. Mr. Klein commented that the issue of substantially similar products is so ingrained in product liability cases that it has to be addressed. The Vice Chair inquired as to what the problem is using the phrase in interrogatories. Mr. Klein answered that the Committee was of the opinion that there should be a definition of Asubstantially similar.@ The Vice Chair suggested that the phrase be left in, and if there is any doubt as to the meaning, the parties can argue before the judge. Mr. Brault remarked that the phrase should be left in. There should be a definition explaining that the language cannot be defined generically, but if the interrogator intends to use the term, it will be defined. The Reporter suggested that the phrase be left in with brackets around it. The Committee agreed by consensus to this suggestion.

Mr. Klein pointed out that the phrase Asubstantially similar@ also applies to components. If the phrase is to be retained in the interrogatories, then Interrogatory No. 39 should be modified to add in the language Aor substantially similar components@ after the word Aproduct@ and before the word Aand.@ The Chair stated that it will be the obligation of the party filing the interrogatories to define the phrase Asubstantially similar.@ If there is a contest over the broadness of it, the

judge can decide.

Mr. Klein drew the Committee's attention to Interrogatory No. 61. He commented that Mr. Howell had suggested changing the order of some of the interrogatories. One interrogatory which could be moved is Interrogatory No. 66. It is similar to Interrogatory No. 61, except that Interrogatory No. 61 focuses on the component at issue. It could be argued that Nos. 66 and 67 should be placed up front. The Chair commented that Nos. 61 and 62 should remain in the same position. He suggested that No. 66 could be placed between Nos. 62 and 63. Nos. 63, 64, and 65 flow together. Mr. Klein suggested that in Interrogatory No. 61, and in the other Interrogatories where is appears, the language Ainjuries or damages@ should be changed to the word Aharm,@ which is the term used in the Restatement of Torts. The Committee agreed by consensus to this change.

The Vice Chair expressed the opinion that the use of the word Aidentify@ in the Form Interrogatories may be going too far, in that it encourages the use of one interrogatory which is burdensome and includes several questions. Mr. Brault observed that there is a limit of 30 questions. Mr. Titus noted that this is the trade-off envisioned when the idea of Form Interrogatories was approved by the Committee. Technically, there may be more than 30 questions included in a party's 30 Interrogatories, but

there is no arguing about the Interrogatories.

The Chair reiterated that Interrogatory Nos. 63, 64, and 65 flow together, based on Nos. 61 and 62. No. 66 is general and could be the leadoff question. Mr. Klein questioned whether No. 66 is necessary if the other Interrogatories in that sequence are used. Mr. Howell responded that No. 66 is all-inclusive. Mr. Klein agreed that No. 66 should go to the front of the Interrogatories to Plaintiff from Defendant.

Mr. Klein drew the Committee's attention to Interrogatories Nos. 67 through 72. The Chair commented that Nos. 67 and 68 relate to one another. One pertains to the condition before the occurrence, and the other is how the product reached the person. The Vice Chair pointed out that Nos. 66, 67, and 68 all concern the product itself, and the three interrogatories should remain together. Mr. Sykes pointed out a grammatical error in Interrogatory No. 67 -- the word Awhom@ should be changed to the word Awho.@

Mr. Klein noted that Interrogatories Nos. 63 through 65 are variations on a theme of the type of defect. The questions ask why the plaintiff contends there is a defect in the design or manufacture of the product. The Vice Chair inquired if Interrogatory No. 66 is different from the ones that come before it. It is important not to encourage asking the same things over

and over. The Chair questioned whether No. 66 should be deleted. Mr. Klein remarked that he had the same inclination, because other Interrogatories focus the issue. The Chair suggested that some of the language of No. 66 could be incorporated into No. 63. The language of No. 63 could be changed to read: AWith respect to each **component at issue** for which you contend there was a defect in design, state the facts that support your contention, including the particulars...@ The language Astate the facts@ could also be added to Nos. 64 and 65. The Vice Chair remarked that the language of Interrogatory No. 62 is the equivalent of Astate the facts.@ Mr. Klein pointed out that Nos. 63 through 65 are rooted in substantive law. The Chair said that the danger of not having No. 66 is that there would be no discussion of the facts to support the contention.

The Reporter asked if the Committee had decided to delete Interrogatory No. 66. Mr. Sykes inquired as to how persons and documents would be identified. Mr. Klein responded that this is covered in No. 61. The Chair suggested that the language Astate the facts@ could be added to No. 61 as follows: AName each **component at issue**, state whether you contend that the alleged defect in the **component at issue** is one of design, manufacture, or a failure to provide adequate **product information**, state the facts that support your contention, and **identify** each **person** and

document*...@.*

The Vice Chair expressed the view that No. 66 should be deleted. The Chair said that this leaves open the issue of Astate the facts that support your contention.@ The Vice Chair noted that Interrogatory No. 62 asks for the specific nature of the defect, which is a way of obtaining facts. This is the same for No. 63 which asks for more specific facts. The Chair reiterated that the request of Astate the facts that support your contention@ should appear somewhere. The Vice Chair suggested that No. 66 remain in the package, but should include the language Astate any facts not previously set forth or any additional facts.@ Mr. Sykes expressed the opinion that No. 66 is broad enough, and the Vice Chair's suggested language may be more appropriate in another interrogatory. The Vice Chair proposed deleting Interrogatory No. 66. Mr. Hochberg commented that an interrogatory which requests one to state the facts in support of a contention is very broad and requires a broad answer. The Chair commented that if a design defect is alleged, each person or document with information needs to be identified, and the facts in support of the contention have to be set forth.

Mr. Klein noted that Interrogatory No. 62 could be eliminated if some of the other interrogatories used the language Astate the facts that support the contention.@ The Chair said

that this is more an assertion of ultimate fact rather than the foundation of intermediary facts. Mr. Howell asked if this is to be used in all cases or if a menu is to be provided to be tailored for use. Mr. Klein replied that the latter is what is intended. Mr. Howell commented that there are different approaches, such as simple, broad interrogatories or very specific ones. He prefers a mix of the two. The Vice Chair observed that there is not a single cohesive set that can be used in all cases. When the Court of Appeals adopts these as forms, it will be presumptively appropriate to put in Nos. 61 to 66 at the same time, even if the questions overlap. The Chair added that some questions are conditional, such as No. 63. If one is answered, then the rest are appropriate.

Mr. Sykes pointed out that one interrogatory could contain the following provisions: name the component; state whether its design was defective; and if so, state the particulars of each alternative design that should have been employed. It is not fair to make all of these provisions separate when they are conditional. Mr. Klein observed that concerning the design, manufacture, or a failure to provide adequate product information, the question should be to give the alternative design or how the user should have been warned. The Chair suggested that Nos. 62 and 66 be eliminated, and in Nos. 63

through 65, substitute the language Aif you@ for the language Afor which.@ No. 63 could read as follows: AWith respect to each **component at issue** if you contend there was a defect in design, state the facts that support your contention and state the particulars of each alternative design that you contend could and should have been employed.@

Mr. Sykes suggested that the Interrogatories should be designed using the following pattern. First, the Interrogatory should ask the person to specify the contention of what is at issue. Second, as to the item at issue, the person should specify the information as to each. Third, if case law requires certain things, such as alternative designs, the person should specify these.

The Chair said that Interrogatories Nos.62 and 66 should be eliminated, and the proposed changes made to Nos. 63, 64, and 65 (these three interrogatories collapsed into one.)

The Vice Chair asked about possible changes to No. 61. Mr. Brault suggested that it go back to the Subcommittee for further work. The Reporter asked Mr. Klein which Interrogatories he uses. He answered that what is in the proposed Form Interrogatories is more than he uses. The package is a compilation of this interrogatories and those of other attorneys who practice in the field. He remarked that there is a

possibility that the package could be simplified.

Agenda Item 3. Consideration of proposed amendments to: Rule 2-323 (Answer) and Rule 2-322 (Preliminary Motions).

Mr. Brault presented Rules 2-323, Answer and 2-322, Preliminary Motions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-323 to delete a certain defense from subsection (g)(4), as follows:

Rule 2-323. ANSWER

(a) Content

A claim for relief is brought to issue by filing an answer. Every defense of law or fact to a claim for relief in a complaint, counterclaim, cross-claim, or third-party claim shall be asserted in an answer, except as provided by Rule 2-322. If a pleading setting forth a claim for relief does not require a responsive pleading, the adverse party may assert at the trial any defense of law or fact to that claim for relief. The answer shall be stated in short and plain terms and shall contain the following: (1) the defenses permitted by Rule 2-322 (b) that have not been raised by motion, (2) answers to the averments of the claim for relief pursuant to section (c) or (d) of this Rule, and (3) the defenses enumerated in sections (f) and (g) of this Rule.

(b) Preliminary Determination

The defenses of lack of jurisdiction over the subject matter, failure to state a claim upon which relief can be granted, failure to join a party under Rule 2-211, and governmental immunity shall be determined before trial on application of any party, except that the court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial.

(c) Specific Admissions or Denials

Except as permitted by section (d) of this Rule, a party shall admit or deny the averments upon which the adverse party relies. A party without knowledge or information sufficient to form a belief as to the truth of an averment shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. A party may deny designated averments or paragraphs or may generally deny all the averments except averments or paragraphs that are specifically admitted.

(d) General Denials in Specified Causes

When the action in any count is for breach of contract, debt, or tort and the claim for relief is for money only, a party may answer that count by a general denial of liability.

(e) Effect of Failure to Deny

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted unless denied in the responsive pleading or covered by a general denial. Averments in a pleading to which no responsive pleading is required or permitted

shall be taken as denied or avoided. When appropriate, a party may claim the inability to admit, deny, or explain an averment on the ground that to do so would tend to incriminate the party, and such statement shall not amount to an admission of the averment.

(f) Negative Defenses

Whether proceeding under section (c) or section (d) of this Rule, when a party desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the party shall do so by negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge. If not raised by negative averment, these matters are admitted for the purpose of the pending action. Notwithstanding an admission under this section, the court may require proof of any of these matters upon such terms and conditions, including continuance and allocation of costs, as the court deems proper.

(g) Affirmative Defenses

Whether proceeding under section (c) or section (d) of this Rule, a party shall set forth by separate defenses: (1) accord and satisfaction, (2) merger of a claim by arbitration into an award, (3) assumption of risk, ~~(4) discharge in bankruptcy or insolvency from the plaintiff's claim, (5)~~ (4) collateral estoppel as a defense to a claim, ~~(6)~~ (5) contributory negligence, ~~(7)~~ (6) duress, ~~(8)~~ (7) estoppel, ~~(9)~~ (8) fraud, ~~(10)~~ (9) illegality, ~~(11)~~ (10) laches, ~~(12)~~

(11) payment, ~~(13)~~ (12) release, ~~(14)~~ (13) res judicata, ~~(15)~~ (14) statute of frauds, ~~(16)~~ (15) statute of limitations, ~~(17)~~ (16) ultra vires, ~~(18)~~ (17) usury, ~~(19)~~ (18) waiver, ~~(20)~~ (19) privilege, and ~~(21)~~ (20) total or partial charitable immunity.

In addition, a party may include by separate defense any other matter constituting an avoidance or affirmative defense on legal or equitable grounds. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation, if justice so requires.

(h) Defendant's Information Report

The defendant shall file with the answer an information report substantially in the form included with the summons if (1) the plaintiff has failed to file an information report required by Rule 2-111(a), (2) the defendant disagrees with anything contained in an information report filed by the plaintiff, (3) the defendant disagrees with a differentiated case management track previously selected by the court, or (4) the defendant has filed or expects to file a counterclaim, cross-claim, or third-party claim. If the defendant fails to file a required information report with the answer, the court may proceed without the defendant's information to assign the action to any track within the court's differentiated case management system or may continue the action on any track previously assigned.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is new.
Section (c) is derived from FRCP 8 (b) and former Rule 372 a 2.
Section (d) is derived from former Rule 342 b 1 and 2.

Section (e) is derived from FRCP 8 (d) and former Rules 372 b and b 1 and 312 b.

Section (f) is derived from former Rules 311 a, 342 c 1, and 2, and 323 a 5 and from FRCP 9 (a).

Section (g) is derived from FRCP 8 (c) and former Rule 342 c 1 and 2.

Section (h) is new.

Rule 2-323 was accompanied by the following Reporter's Note.

At the suggestion of the Hon. Paul Mannes, United States Bankruptcy Court for the District of Maryland, the Process, Parties & Pleading Subcommittee recommends the deletion of subsection (g)(4) of Rule 2-323. Under Section 524 (a) of the Bankruptcy Reform Act of 1978, a discharge in bankruptcy is operative regardless of the action or inaction or the debtor in a state court proceeding. Therefore, bankruptcy should not be included in the class of affirmative defenses listed in Rule 2-323 (g) which, if not specially pleaded, are waived.

The Subcommittee believes, however, that there should be some mention of bankruptcy elsewhere in the Title 2, Chapter 300 Rules so that the plaintiff and the court are made aware of the bankruptcy and of any factual disputes that need to be resolved (such as whether the debt is one that is nondischargeable in bankruptcy, whether the defendant AJohn Doe@ is the same AJohn Doe@ whose debts have been discharged, whether the debt arose subsequent to the debtor's discharge in bankruptcy, etc.). Accordingly, the Subcommittee recommends that discharge in bankruptcy be add to Rule 2-322 (b) as a defense that is permitted to be made by a motion to dismiss filed before the answer. The defenses and objections listed in Rule 2-322 (b) are not waived if they are not included in a motion to dismiss and as stated in the last sentence of that section, Amay be

made in the answer or in any other appropriate manner after answer is filed.@

The phrase Aor insolvency from the plaintiff's claim@ is recommended for deletion, rather than transfer, because it is very rarely used in light of the availability of federal bankruptcy proceedings.

AMEND Rule 2-322 to add discharge in bankruptcy to section (b), as follows:

Rule 2-322. PRELIMINARY MOTIONS

(a) Mandatory

The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

(b) Permissive

The following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the subject matter, (2) failure to state a claim upon which relief can be granted, (3) failure to join a party under Rule 2-211, ~~and~~ (4) discharge in bankruptcy, and ~~(4)~~ (5) governmental immunity. If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed.

(c) Disposition

A motion under sections (a) and (b) of this Rule shall be determined before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be

granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend. The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

(d) Motion for More Definite Statement

If a pleading to which an answer is permitted is so vague or ambiguous that a party cannot reasonably frame an answer, the party may move for a more definite statement before answering. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 15 days after entry of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(e) Motion to Strike

On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after

the service of the pleading or on the court's own initiative at any time, the court may order any insufficient defense or any improper, immaterial, impertinent, or scandalous matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.

(f) Consolidation of Defenses in Motion

A party who makes a motion under this Rule may join with it any other motions then available to the party. No defense or objection raised pursuant to this Rule is waived by being joined with one or more other such defenses or objections in a motion under this Rule. If a party makes a motion under this Rule but omits any defense or objection then available to the party that this Rule permits to be raised by motion, the party shall not thereafter make a motion based on the defenses or objections so omitted except as provided in Rule 2-324.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 323 (a) (1), (2), (3) and (4), and the last sentence of (b).
Section (b) is new and is derived in part from FRCP 12 (b).
Subsection (b) (2) replaces former Rules 345 (Demurrer) and 371 b (Demurrer).
Section (c) is new.
Section (d) is new and is derived from FRCP 12 (e). It replaces former Rule 346 (Bill of Particulars).
Section (e) is derived from FRCP 12 (f), and in part from former Rules 301 j and 322.
Section (f) is new and is derived from FRCP 12 (g).

Rule 2-322 was accompanied by the following Reporter’s Note.

See the Reporter's Note to the proposed amendment to Rule 2-323.

Mr. Brault explained that the Honorable Paul Mannes, a judge of the United States Bankruptcy Court for the District of Maryland, had written a letter to him, suggesting that subsection (g)(4) of Rule 2-323 be eliminated. See Appendix 4. Subsection (g)(4) provides for a discharge in bankruptcy or insolvency from the plaintiff's claim as an affirmative defense. The affirmative defenses listed in section (g), if not specially pleaded, are waived. Under section 524 (a) of the Bankruptcy Reform Act of 1978, a discharge in bankruptcy is operative regardless of the action or inaction of the debtor in a state court proceeding. Bankruptcy should not be included in the class of affirmative defenses which are waived if not specially pleaded. The Subcommittee suggests that subsection (g)(4) be stricken, and the rest of the section renumbered accordingly. The Subcommittee is of the opinion that there should be some reference to bankruptcy in Title 2, Chapter 300 of the Rules, so that the plaintiff and the court are made aware of the bankruptcy and of any factual disputes that need to be resolved. The Subcommittee is suggesting that bankruptcy be added as a defense that is permitted to be made by a motion to dismiss filed before the answer. This would entail an amendment to Rule 2-322 (b). Judge

Vaughan remarked that this is what happens now. Mr. Brault said that the proposed changes would conform to federal bankruptcy law. The Committee approved the changes to Rules 2-323 and 2-322 by consensus.

Agenda Item 4. Continued consideration of proposed Products Liability Form Interrogatories. (See Appendix 3).

The Chair stated that the discussion would return to the topic of Product Liability Interrogatories. The Vice Chair inquired as to how Interrogatory No.73 is different from similar interrogatories. Mr. Klein responded that this pertains to negligence, as opposed to strict liability. Negligence means that someone has violated a standard of care, while strict liability does not require a violation of a standard of care.

Mr. Klein drew the Committee's attention to Interrogatory No. 67. This is an interrogatory used typically in multi-party cases. The Chair pointed out that the Interrogatories continually ask for the identity of the person and the document after the initial question in No. 61. The Vice Chair commented that the Form Interrogatories are supposed to be a safe harbor and not create a system more burden some than the one in use now. There is a General Interrogatory that asks for the identity of each person who has information and a description. This is a

preferable way to ask for information about people. To repeat the question is burdensome.

Mr. Hochberg suggested including an interrogatory that asks for a list of people with knowledge about specific areas. The Vice Chair inquired as to why No. 67 is necessary. Mr. Klein expressed the opinion that it should stay. The Chair remarked that there are unique kinds of issues in product liability that require specific disclosure to tie an expert to the particular contention.

Mr. Howell pointed out a problem with No. 67. It seems to make a mockery of the 30-interrogatory rule. The first part, identifying each person, is appropriate, but the remainder is another separate interrogatory. Mr. Klein agreed that the Interrogatory could be separated into two interrogatories.

The Chair pointed out that contests pertaining to interrogatories require judges to spend days working out the problems as the attorneys battle. The Form Interrogatories are to be presented to the Court of Appeals as proper questions for the parties to ask. They will be helpful to circuit court judges, as well as attorneys, even if the interrogatories are overlapping and extensive. It is appropriate to have compound interrogatories in the Form Interrogatories. Mr. Howell agreed that compound Form Interrogatories are proper, but he said that

he objects to two different types of questions in a single interrogatory. If the interrogatories contain two unrelated or remotely related topics, this will encourage a practice that is difficult to stop. It is appropriate to ask someone to state his or her contention, but not on two different subject matters.

Mr. Klein drew the Committee's attention to Interrogatory No. 68, and there was no discussion of this. Mr. Klein noted that Interrogatory No. 69 will substitute the word Aharm@ for the language Ainjuries or damages,@ a change that has been made in other interrogatories. He said that No. 70 is only appropriate if a product was installed. He pointed out that No. 71 pertains to notice of a defect, and No.72 is similar. No. 73 is used in negligence, as opposed to strict liability, cases. Interrogatory No. 74 concerns violations of statutes, regulations, and standards, to zero in on precisely the provision at issue. No. 75 will be changed in the same way as No. 69. No. 76 pertains to a duty to test, and No. 77 concerns new or used products to trace the chain of custody. Mr. Sykes pointed out that at the end of No. 77, the word Athey@ should be changed to Aeach person.@ The Committee agreed by consensus to this change. Mr. Klein said that No. 78 is a chain of custody question. Mr. Sykes commented that there may not be a street address. The Reporter cautioned against providing post office

boxes as the response. Mr. Sykes observed that the question is looking for where the product is kept. The Chair suggested that in place of Astreet address@ the language Alocation at which@ could be substituted. Mr. Klein remarked that the word Alocation@ is vague. The Vice Chair expressed the opinion that Astreet address@ is appropriate. The Reporter suggested the following language: Aexact location, including street address, if any.@ Mr. Howell asked how an automobile would be handled. The Chair said that the question could ask Afor each person, state the address of the person who had custody.@ The Committee agreed by consensus to add in the suggested language Alocation, including street address, if any@ which had been suggested by the Reporter.

Mr. Klein pointed out that Interrogatory No. 79 pertains to maintenance and repair history. The Chair questioned whether the language Abasis of your awareness@ should be restyled. Mr. Howell noted that there is no place to answer about which repairs were made. The Chair suggested that the following language could be included: Aif you contend that maintenance or repair was contemplated, conducted, or should have been conducted, state the basis for your contention.@ Mr. Klein commented that this is more than a contention. The question is if the person knows the product should have been serviced. Mr. Howell suggested that the

question read: Adescribe any maintenance or repair that was performed or communicated to you.@ The Chair suggested that the following language be added in after the word Arepair@ and before the word Aand@ in the fourth line: Adescribe any maintenance or repair that was conducted.@ The Committee agreed to this suggestion by consensus. The Chair remarked that the language Aare aware of@ can be dangerous.

Mr. Sykes noted that in No. 81, in the second sentence, it is not clear what the antecedent is to the word Ait.@ The Reporter suggested that in lieu of the words Amade it@ the language Arecorded the image@ could be substituted. Mr. Sykes remarked that the photographer did not record the image, the developer did. The Chair suggested that the second sentence of No. 81 begin as follows: AIf your answer is affirmative, describe the medium on which the image is recorded, **identify** each **person** who participated in that process, state the date when the image was made, and **identify** the **person** who has present custody of the image@. The Committee agreed by consensus to this change.

The Chair thanked Mr. Klein and his Subcommittee for their excellent work. The Reporter pointed out that there were two more items in the package for discussion. The Chair stated that these items will be considered when the Form Interrogatories are reviewed.

The Chair adjourned the meeting.