STANDING COMMITTEE ON RULES
OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held at the People's Resource Center, Room 1100A, Crownsville, Maryland, on February 9, 2001.

Members present:

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

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Robert L. Dean, Esq.
Hon. Ellen M. Heller
Bayard Z. Hochberg, Esq.
Hon. G. R. Hovey Johnson
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Hon. William D. Missouri
Anne C. Ogletree, Esq.
Debbie L. Potter, Esq.
Larry W. Shipley, Clerk
Roger W. Titus, Esq.
Hon. James N. Vaughan

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Barbara Gavin, Esq., State Board of Law Examiners
Leslie Gradet, Esq., Clerk, Court of Special Appeals

The Chair convened the meeting. He asked if there were any corrections to the minutes of the October 20, 2000 and November 17, 2000 meetings. There being none, the Committee approved the minutes by consensus.

The Reporter told the Committee that there is a conflict between the scheduled June 15, 2001 Rules Committee meeting and the Maryland State Bar Association (MSBA) convention. When the Rules Committee meetings were scheduled, the date for the MSBA convention

was not known. The Reporter inquired whether a change

in the Committee meeting to either June 8th or June 22nd would be acceptable. The Committee decided to change the meeting to June 22, 2001.

The Chair said that on the previous Monday, February 5, 2001, the Court of Appeals discussed the 148th Report. The Vice Chair, Mr. Klein, Mr. Brault, and Mr. Titus also attended the hearing. The Reporter stated that most of the Rules were approved, including Title 9, Chapter 200; the Product Liability Form Interrogatories; and the Rules pertaining to Child in Need of Assistance representation. The proposed amendments to Rule 7-206, Record, were rejected. The Title 17 Rules were remanded to the Committee and will be discussed again at the March 2001 Rules Committee meeting. The issue is whether drawing up an agreement in writing between the parties is considered the practice of law. The Court also sent back Rule 16-819, Court Interpreters, so it could be expanded further.

The Chair introduced Mike Lytle, a second-year student at the University of Baltimore Law School, who will be an intern for the Rules Committee for the next few months.

Agenda Item 1. Consideration of certain proposed rules changes pertaining to the Rules Governing Admission to the Bar of Maryland: Proposed new Bar Admission Rule 23 (Time Limitation for Admission to the Bar) and Proposed amendments to Bar Admission Rule 13 (Out-of-State Attorneys).

Mr. Titus presented proposed new Rule 23, Time Limitation for

Admission to the Bar, and proposed amendments to Rule 13, Out-of-State Attorneys, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE

BAR OF MARYLAND

ADD new Bar Admission Rule 23, as follows:

Rule 23. TIME LIMITATION FOR ADMISSION TO THE BAR

(a) Successful Examinees

A candidate who successfully completes the Maryland bar examination will be eligible to take the oath of admission to the Bar for a period of twenty-four months following the date of ratification by the Court of the Board's report and recommendations for admission pursuant to Rule 10 for the examination the candidate passed. For good cause shown, the Board may extend the time for taking the oath. Delay in satisfying the admission requirements in these rules that occurs as a result of the inaction of an applicant does not constitute good cause.

(b) Failure to Fulfill Requirements

A candidate who fails to take the oath within the time period specified in section (a) of this Rule or within the time period specified by the Board if it grants the candidate an extension must reapply for admission. Unless otherwise ordered by the Court of Appeals for good cause shown, a candidate who reapplies for admission under these circumstances must retake and pass the bar examination notwithstanding the fact that the candidate passed the examination when the earlier application was pending.

(c) Applicability

(1) Application Filed After Effective Date of Rule

Sections (a) and (b) of this Rule shall apply to all candidates who file an application for admission to the Bar after the effective date of this Rule.

(2) Application Filed Before Effective Date of Rule

Candidates who have successfully completed a bar examination prior to the effective date of this Rule must be admitted to the Bar within twenty-four months of the effective date of this Rule. For good cause shown, the Board may extend the time for taking the oath to permit completion of the character review process.

Source: This Rule is new.

Rule 23 was accompanied by the following Reporter's Note.

The State Board of Law Examiners is requesting that a new Rule be added to the Rules Governing Admission to the Bar which would provide a time limit for being sworn into the Bar after passing the bar examination. Because no time limit currently exists, and the Board is concerned that the passage of time may affect the attorneys' competence which is minimally demonstrated by passing the examination. Adding a time limit would also help the Boar ascertain current information about changes in circumstances of newly examined attorneys that may affect their eligibility.

RULES GOVERNING ADMISSION TO THE

BAR OF MARYLAND

AMEND Bar Admission Rule 13 to add a new section (p), as follows:

Rule 13. OUT-OF-STATE ATTORNEYS

. . .

(p) Time Limitation for Admission to the Bar

A petitioner under this Rule is subject to the time limitation of Rule 23.

. . .

Rule 13 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 23.

Mr. Titus explained that this Rule was requested by the State Board of Law Examiners. Currently, there is no time limit as to when an attorney can take the oath of admission to the Bar after taking and passing the bar examination or the attorney's examination. An attorney could have become incompetent or have been disbarred elsewhere before the attorney takes the oath and becomes admitted to the Maryland Bar. Judge Heller questioned as to how many attorneys are delaying admission. Ms. Gavin, Director of Character and Fitness for the State Board of Law Examiners, told the Committee that she ran this information in their data base from 1988, and there were 98 applications outstanding. She expressed the view that finality is needed in this process. There have been problems, such as the attorney who came back years later, bypassing the Office of the State Board of Law Examiners, and got admitted, even though the attorney had been disbarred in the District of Columbia. Ms. Gavin had

distributed a request for an order to be issued by the Court of Appeals disbarring this attorney, Raymond B. Thompson, Sr. This order demonstrates the problem. See Appendix 1. Under the proposed Rule, the attorney would have to take the oath within 24 months after the date of ratification by the Court of the Board's report.

Mr. Titus inquired as to why the time period of 24 months was chosen. If the concern is that the attorney will get into trouble after passing the bar examination, one year might be more appropriate for the time limit. Ms. Gavin answered that her office is a member of the Conference of Bar Examination Administrators. She looked through the bar admission rules of other jurisdictions, and the average time period was two years. This would accommodate people in the service or who are overseas. All applicants will receive full notice and will know that they have 24 months to take the oath. There would be exceptions for people still going through the character evaluation process, which can take from two to three years. The Vice Chair questioned whether applicants have passed the bar examination when they go through the character review process. Ms. Gavin replied that applicants always have passed the bar examination first. The Vice Chair inquired as to whether most people finish the character evaluation fairly quickly. Ms. Gavin answered that most people are finished in time to take the oath in a ceremony with others who passed the same examination, but there are later admission ceremonies for those few who do not finish.

Mr. Titus commented that the way the Rule is written, the time period will be 24 months after ratification. The Board will not recommend someone who has a character problem, and the clock does not run on that person. Two years is not necessarily enough time for completion of a character study. Mr. Hochberg asked about the chronology of the process. A person may have taken the July bar examination, but not finished the character process by the December ceremony. Ms. Gavin responded that two lists go with the order *nisi* to the Court. One is a list of the applicants approved by the Board and the other is a list of applicants to which the Board notes an exception.

Judge Heller asked about the time running from the date of ratification. Ms. Gavin explained that when someone files an application with the State Board of Law Examiners, the application is sent to the character committee in the appropriate judicial district. Judge Heller inquired as to when the bar examination is taken. Ms. Gavin replied that the petition to take the examination on a particular date is filed separately. Mr. Klein questioned whether the application is a condition precedent to take the examination, and Ms. Gavin answered in the affirmative. She explained the procedure that if the Board recommends admission, a report is made to the Court of Appeals in the order *nisi* which runs for 30 days. She commented that the word "ratification" could be changed. The Reporter replied that the term "ratification" is used throughout the Bar Admission

Rules. The Vice Chair pointed out that Rule 10, Report to Court -- Order, does not use the language "order *nisi*". Ms. Gavin remarked that the language "report to the court" is more accurate. Mr. Titus said that the term "exceptions" is not in the Rule. Ms. Gavin said that the term "exceptions" is used, but the language "report to the court" is better than the language "ratification." The Chair said that it is the date the Court approves the list, and Ms. Gavin added that it is the date the Court ratifies the order *nisi*. The Chair suggested that this language should be deleted.

Mr. Titus suggested that section (b) of Rule 10 could be changed to provide that the order will have both a conditional and an unconditional list of applicants. The exceptions could be in a separate section. This would take into account someone listed on the order whose character evaluation is pending. Looking at the language in the proposed Rule which reads "24 months following the date of ratification by the Court," if the Court ratifies the report with the conditional and the unconditional list, some people will be approved subject to a character evaluation. The Vice Chair suggested that Rule 23 could use the language "the date of unconditional ratification." Mr. Klein read the following language from section (b) of Rule 10: "The order shall state generally that all recommendations are conditioned on character approval, but shall not identify those persons as to whom proceedings are still pending." This sounds as if the list of conditional persons is not segregated.

The Vice Chair pointed out that in section (d) of Rule 10, the court's ratification is subject to the conditions stated in the recommendation, but the provision does not state how the conditions get removed.

Judge Heller remarked that section (a) of Rule 23 could provide that the candidate who successfully completes all the requirements for admission to the Bar will be eligible to take the oath of admission to the Bar for a period of twenty-four months. Mr. Dean observed that this language makes more sense. Mr. Hochberg asked about the time requirement. The Vice Chair commented that the time requirement as written in the proposed Rule does not work. The two-year period is different for a person approved by the character committee before the report to the Court, than for a person approved after the report. The two-year period should be triggered from the same date for everyone, whether or not the character committee has finished. The ratification would be for everyone, but conditional if someone is not finished with the character committee. Ms. Gavin noted that the only time the character committee takes a long time is if it has to hold a hearing.

The Vice Chair inquired whether the two-year period runs from December or July if the person passed the bar examination in July but for some reason the character committee is not finished until December. Mr. Karceski asked what the likelihood is of a person not completing the character evaluation within two years of having passed

the bar examination. Ms. Gavin replied that it is remote. Judge Vaughan pointed out that section (a) provides that for good cause shown the Board may extend the time for taking the oath. The Vice Chair inquired if the language in section (b) which reads: "[u]nless otherwise ordered by the Court of Appeals for good cause shown" means that someone who did not ask the Board for an extension could ask the Court of Appeals for one. Ms. Gavin replied that the Court would not encourage this, but the language in the Rule gives them the power to answer affirmatively.

The Vice Chair said that she has rewritten the first sentence in section (b) to indicate that a candidate who fails to take the oath within the time specified shall reapply for admission and retake the bar examination. Ms. Gavin observed that what happens is that the applicant does not respond to the character committee, so the application is delayed. Judge Kaplan remarked that a person who does not respond to the character committee probably will not represent his or her clients very well.

The Vice Chair suggested that section (c) of proposed Rule 23 be put into the Court of Appeals' rules order; it is not necessary that this language be in the Rule. The Committee agreed by consensus to this change.

The Vice Chair pointed out that Rule 23 will appear at the end of the Bar Admission Rules, which is out of chronological order. The Rules could be renumbered, or the new Rule could be placed

appropriately numbered as a ".1" or an "A." The Reporter stated that the Style Subcommittee can consider this problem. Mr. Klein suggested that the new Rule could be added as subsections to an earlier Rule. The Committee agreed by consensus to this suggestion. The Committee approved the Rule as amended.

The Committee also approved the proposed amendments to Rule 13.

Agenda Item 2. Consideration of certain rules changes proposed by the District Court Subcommittee: Amendments to: Rule 2-101 (Commencement of Action) and Rule 3-101 (Commencement of Action); Amendments to Rule 3-311 (Motions)l Amendments to: Rule 3-307 (Notice of Intention to Defend), Rule 3-102 (Trial Date and Time); Amendments to Rule 3-509 (Trial Upon Default) and Amendments to Rule 3-711 (Landlord-Tenant and Grantee Actions)

Judge Vaughan presented Rules 2-101, Commencement of Action, and 3-101, Commencement of Action, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE — CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-101 to allow certain actions to be filed in a circuit court within 30 days after an order of dismissal in the District Court, as follows:

Rule 2-101. COMMENCEMENT OF ACTION

(a) Generally

A civil action is commenced by filing a complaint with a court.

(b) After Certain Dismissals

Except as otherwise provided by statute, if an action is filed in a United States District Court, the District Court of Maryland, or a court of another state within the period of limitations prescribed by Maryland law and the ~~foreign~~ other court enters an order of dismissal for lack of jurisdiction, because the

court declines to exercise jurisdiction, or because the action is barred by the statute of limitations required to be applied by that court, an action filed in ~~this State~~ a circuit court within 30 days after the ~~foreign~~ other court's order of dismissal shall be treated as timely filed in ~~this State~~ the circuit court.

Cross reference: Code, Courts and Judicial Proceedings Article, §5-115.

Source: This Rule is derived as follows:
Section (a) is derived from FRCP 3 and former Rules 140 a and 170 a.
Section (b) is new.

Rule 2-101 was accompanied by the following Reporter's Note.

Proposed amendments to Rules 2-101 and 3-101 allow a plaintiff whose timely filed action in the District Court should have been filed in a circuit court, or vice versa, to file a new complaint in the correct court within 30 days after an order of dismissal for lack of jurisdiction is entered in the original court.

The District Court Subcommittee initially considered a rule change that would give the District Court the discretion to transfer the action to a circuit court in a manner similar to the transfer that is allowed from a circuit court to the District Court under Rule 2-327 (a). The Subcommittee believes that that approach is inadvisable due to the higher filing fees and more stringent pleading requirements in circuit court, as well as timing issues pertaining to the filing of the defendant's first responsive pleading to the complaint.

The Subcommittee agrees with the Honorable Martha F. Rasin that a better approach is to amend Rules 2-101 and 3-101 so that if the plaintiff files a complaint in the proper court within 30 days after the entry of an order of dismissal by the District Court or a circuit court for lack of jurisdiction, the new action

would be treated as timely filed provided that the original action was timely filed.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE--DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-101 to allow certain actions to be filed in the District Court within 30 days after an order of dismissal in a circuit court, as follows:

Rule 3-101. COMMENCEMENT OF ACTION

(a) Generally

A civil action is commenced by filing a complaint with a court.

(b) After Certain Dismissals

Except as otherwise provided by statute, if an action is filed in a United States District Court, a circuit court of this State, or a court of another state within the period of limitations prescribed by Maryland law and the ~~foreign~~ other court enters an order of dismissal for lack of jurisdiction, because the court declines to exercise jurisdiction, or because the action is barred by the statute of limitations required to be applied by that court, an action filed in ~~this State~~ the District Court within 30 days after the ~~foreign~~ other court's order of dismissal shall be treated as timely filed in ~~this State~~ the District Court.

Cross reference: Code, Courts and Judicial Proceedings Article, §5-115.

Source: This Rule is derived as follows:
Section (a) is derived from FRCP 3 and former M.D.R. 100.
Section (b) is new.

Rule 3-101 was accompanied by the following Reporter's Note.

See the Reporter's Note to the proposed amendment to Rule 2-101.

Judge Vaughan explained that the District Court Subcommittee is recommending parallel changes to Rules 2-101 and 3-101. The concern is that if someone files a case in District Court that is dismissed for lack of jurisdiction, there needs to be a mechanism to move the case to the circuit court. Rather than the District Court transferring the case, the Subcommittee prefers the approach that allows the case to be filed in the circuit court within 30 days after the entry of an order for dismissal by the District Court. The case then would be treated as timely filed, provided that the original action was timely filed. Judge Heller inquired if the party who files the case is responsible for paying the filing fees, and Judge Vaughan answered affirmatively. The Vice Chair said that she has no problem with the concept, but she does not like combining the new provision with the language in existing section (b). It might be that the court declines to exercise jurisdiction, or the case is barred by limitations. She suggested that the new language be placed in its own subsection, which would be applicable when a new action is filed in a circuit court after the District Court had dismissed the

case because of subject matter jurisdiction. Judge Heller noted that the action could have been dismissed, because it is barred by the statute of limitations. The Reporter responded that the Rule should provide that the original action had to have been filed within the period of limitations.

The Vice Chair asked if the Rule is intended to apply when the period of limitations runs in another state. Mr. Titus said that one could file a case in Alabama, and the case sits until limitations run. The plaintiff can then file in Maryland if the original filing was within Maryland's statute of limitations.

Mr. Titus requested that the Style Subcommittee look at the tagline of section (b). It is very difficult to find this Rule, and the existing tagline is not helpful. The Vice Chair said that the Rule does not pertain only to limitations, and when the Rules were revised in 1984, the drafters spent a great amount of time deciding where to put the issue of limitations. Judge Kaplan told the Committee that he had a case before him which involved a corporation filing suit in a state court in California. The case was removed to the federal court in California, and the federal judge dismissed it as a final judgment. The plaintiff went back to state court, but the limitations in California had run. The plaintiff then went to Maryland which has a three-year statute of limitations as opposed to California's two-year statute. Judge Kaplan held that the final judgment of the federal court prevented the case from being heard in

Maryland.

Judge Heller commented that under the proposed changes to the Rules, the following hypothetical situation is possible: the District Court could dismiss a case as barred by the statute of limitations, and the case goes to the circuit court, which rules that it was timely filed. Judge Vaughan commented that under the current Rule, one can file in federal court, which holds the matter is barred by the statute of limitations, and then the person can file in circuit court, which treats the matter as timely filed. The Reporter pointed out that there may be an ambiguity in the way the Rule is drafted now, which was noted by Judge Heller in discussing the new language -- a case can be dismissed by the U.S. District Court for Maryland for limitations and then refiled in a Maryland state court. Mr. Titus observed that the filing in Maryland has to be timely under Maryland law. Judge Heller added that it would have to be within the period of limitations.

Mr. Titus suggested that the tagline of section (b) could be: "Determination of Timeliness after Certain Dismissals." The Vice Chair commented that the question is: when is the action commenced under these circumstances? Mr. Brault remarked that he also had trouble finding the Rule. The Vice Chair questioned whether a change in the tagline will help. The Chair suggested that when the Rule is revised, the tagline could be "Times for filing." Mr. Karceski commented that this Rule could be misused. Some attorneys could be

late for filing their complaints, and they wait until the last minute to timely file in District Court, although the subject matter is not correct. By the time the District Court dismisses the case, they will have received 60 additional days to file in circuit court. Judge Heller pointed out that the attorney who does this will have to pay two filing fees.

Mr. Hochberg suggested that the word "final" could be added to section (b) in the fifth line after the word "an" and before the word "order." The Vice Chair responded that she has argued for years that the word "final" is not meaningful. The Chair asked if it means "appealable." The Vice Chair remarked that in some sense, the proceedings are never over. Mr. Brault commented that in Montgomery and Prince George's Counties, the issue of *forum non conveniens* is debated with Virginia and the District of Columbia. This Rule is important for raising this issue. The Chair added that this is also true with Baltimore County and Pennsylvania.

Judge Vaughan suggested that the concept of refiling when there is no subject matter jurisdiction in a court can be put into a new section (c). The Chair said that the Style Subcom-mittee will reorganize the Rule.

The Vice Chair asked why the proposed amendments to Rule 3-101 are necessary. Section (a) of Rule 2-327, Transfer of Action, already provides that a circuit court may transfer a case to the District Court. The court has the discretion to transfer, but if

limitations have run, it is an abuse of discretion not to transfer. The Reporter responded that she had considered Rule 2-327, but two of the phrases in that Rule are not in Rule 3-101. One is "may transfer," and the other is the requirement that the "court determines that in the interest of justice the action should not be dismissed." The Subcommittee wanted parallel provisions applicable to the District Court and the circuit courts. It also wanted the plaintiff's decision to pursue the action in the appropriate court not subject to a court's determination as to the "interest of justice."

The Vice Chair noted that the intended change relates to subject matter jurisdiction, but by adding it to Rule 3-101, is more involved. She observed that there is no reason not to transfer the case. It is not user-friendly to require dismissal and starting over. She stated that no amendments to Rule 3-101 are needed because under Rule 2-327 (a), a circuit court may transfer to the District Court an action file in the circuit court that is within the exclusive subject matter jurisdiction of the District Court. If limitations have rule, case law mandates that the case be transfered.

The Chair suggested that section (a)(1) of Rule 2-327 could be changed so that the word "may" becomes "shall" and so that the language "in the interest of justice" is deleted. The annotations to the Rule indicate that the court has wide discretion. The Committee agreed by consensus to this change.

The Reporter inquired if this change is in lieu of the change to Rule 3-101, and the Chair answered in the affirmative. The Chair suggested that a cross reference to Rule 2-327 be added to Rule 3-101. The Committee agreed with this suggestion by consensus.

Judge Vaughan presented Rule 3-311, Motions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-311 to establish a time to respond to a motion, to change the time within which a party who is served with a motion may file a request for a hearing, and to make hearings on certain motions discretionary, as follows:

Rule 3-311. MOTIONS

(a) Generally

An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought.

(b) Response

Except as otherwise provided in Rule 3-421 (g), a party against whom a motion is directed shall file a response within ten days after being served with the motion, or within the time allowed for a party's original pleading pursuant to Rule 3-307 (b), whichever is later. Unless the court orders otherwise,

no response need be filed to a motion filed pursuant to Rules 1-204, 3-533, or 3-534. If a party fails to file a response required by this section, the court may proceed to rule on the motion.

~~(b)~~ (c) Statement of Grounds; Exhibits

A written motion and a response to a motion shall state with particularity the grounds. A party shall attach as an exhibit to a written motion or response any document that the party wishes the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 3-303 (d) or set forth as permitted by Rule 3-421 (g).

~~(c)~~ (d) Hearing - Motions for New Trial or to Amend the Judgment

When a motion is filed pursuant to Rule 3-533 or 3-534, the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.

~~(d)~~ (e) Hearing - Other Motions

A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 3-533 or 3-534, shall file a timely written request. The request of the moving party shall be included in the motion under the heading "Request for Hearing," and the request of a party served with a motion shall be made by filing a "Request for Hearing" within ~~five~~ ten days after service. ~~Upon a timely request, a hearing shall be held except as provided in Rule 3-421 (g).~~ Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but it may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section. If the court decides to hold a hearing, ~~The~~ the court may hear and decide the motion before or at trial. If no hearing is

requested, the court may decide the motion without a hearing at any time.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 321 a.
Section (b) is new.
Section ~~(b)~~ (c) is derived from former M.D.R. 321 a.
Section ~~(c)~~ (d) is derived from former Rule 321 d.
Section ~~(d)~~ (e) is derived in part from former M.D.R. 321 b and is in part new.

Rule 3-311 was accompanied by the following Reporter's Note.

The proposed amendments to Rule 3-311 are twofold and are based upon recommendations of Chief Judge Martha F. Rasin and the administrative judges of the District Court.

New section (b) is proposed to be added to the Rule to establish a specific period of time within which a party against whom a motion is directed may file a response. The District Court Subcommittee recommends that the time allowed for the response be ten days after the party is served with the motion, with certain exceptions set out in the section. The language of the section is patterned after Rule 2-311 (b).

Section (d) is proposed to be relettered (e) and amended to allow the Court discretion as to whether a hearing will be held on a motion, except that a decision that is dispositive of a claim or defense may not be rendered without a hearing if one was requested as provided in the section. The language proposed to be added to the section is patterned after Rule 2-311 (f). The time within which a party who is served with a motion may file a request for a hearing is changed from five days to ten days, in conformity with the time for filing a response set out in section (b).

Judge Vaughan explained that when the District Court Rules were drafted, an attempt was made to limit pleading as much as possible. However, now that the jurisdictional amount of the court is up to $25,000, the pleadings are much more complex. The District Court Committee on Civil Procedures and the administrative judges of the District Court have requested the changes to the Rule, including direction as to timeliness, filing an answer, and whether or not a hearing is to be held. The Vice Chair expressed her agreement with the proposed changes. She suggested that Rule 2-311 could read the same as Rule 3-311. This also would involve changing section (g) of Rule 3-421, Interrogatories to Parties.

The Chair asked why the time period for filing a response is ten days and not 15. Judge Vaughan answered that District Court cases are on a faster track than circuit court cases. The Vice Chair suggested that Rule 3-421 (g) could be changed. The Rule provides for a five-day response time to a motion for an order compelling discovery. The suggested response time is ten days for all other motions in District Court. Section (g) of Rule 3-421 provides that the court shall decide the motion without a hearing. Rule 3-311 does not provide for a hearing unless it is requested when a decision is dispositive of a claim or defense. This is already in the motions rule, so it is not necessary to refer to Rule 3-421 (g). Without the reference to Rule 3-421 (g), Rule 3-311 will be the same as Rule 2-311, except for the time for filing an answer.

The Reporter reiterated that section (g) of Rule 3-421 states that the court "shall decide the motion without a hearing." If motions to compel are included in Rule 3-311, a party would be able to request a hearing. The Vice Chair remarked that there is no implication in the Rule that the court will hold a hearing. Judge Vaughan commented that by the time discovery is completed, there is not much time available. This may build in an almost automatic postponement. The Vice Chair expressed the view that the ten-day time period to file a response to a motion is appropriate generally. Judge Heller suggested that the five-day discovery period be retained. The Reporter suggested that the District Court judges could be asked to see if they are willing to change the time period to ten days. Judge Heller pointed out that a party can ask to have the time period shortened pursuant to Rule 1-204, Motion to Shorten or Extend Time Requirements. Ms. Ogletree remarked that she does not want to see the time period shortened to less than five days, because this is too tight. The Vice Chair said that when the District Court Rules were written, the jurisdictional amount for District Court was $10,000. Having a variety of time periods in the Rules is difficult. The Chair suggested that the time period should be ten days. Judge Missouri expressed his opposition to five days. The Chair agreed with the Reporter that the administrative judges should be consulted.

Mr. Titus noted that if one seeks a continuance by filing a motion, the Rule should provide that this will not change the trial

date. Ms. Ogletree said that in her jurisdiction, if the attorney asks for a continuance more than seven days before the hearing, the continuance is granted automatically. The Chair suggested that language could be added to clarify that a person who files a motion within a certain amount of time before trial is not entitled to an automatic continuance. Mr. Titus remarked that the Rule could provide that filing a motion shall not delay the date of the hearing. The Vice Chair observed that there is no need to state this -- the District Court can decide the motion before or at the trial. Ms. Ogletree reiterated that judges are not generous within seven days of trial. The Chair stated that the Subcommittee will look at this issue.

The Vice Chair expressed the opinion that it is time for an affidavit requirement in District Court for facts not in the record. Mr. Brault asked about summary judgment, and Judge Vaughan answered that there is no summary judgment in District Court. The Chair said that the issue is if the jurisdiction of the District Court has reached the point where the formal kind of motion practice in circuit court should be applicable to the District Court. Mr. Klein remarked that he had had a case with out-of-state witnesses, and he could not get his motion heard. The Vice Chair added that it costs thousands of dollars to bring witnesses to court. The Chair stated that it would be helpful to see what the District Court judges think about a summary judgment rule. The Committee agreed by consensus to remand

the Subcommittee to obtain the recommendations of the District Court Administrative judges on the issues that were discussed today.

Judge Vaughan presented Rules 3-307, Notice of Intention to Defend and 3-102, Trial Date and Time, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-307 to clarify the term "statutory agent," as follows:

Rule 3-307. NOTICE OF INTENTION TO DEFEND

(a) To be Filed with Court - Service not Required

The defendant, including a counter-defendant, cross-defendant, and third-party defendant, shall file with the court a notice of intention to defend which may include any explanation or ground of defense. The defendant need not serve the notice on any party.

(b) Time for Filing

The notice shall be filed within 15 days after service of the complaint, counterclaim, cross-claim, or third-party claim, except if service is made outside this State or upon a statutory agent for a defendant, the notice shall be filed within 60 days after service. For the purpose of this Rule, a statutory agent does not include a resident agent for a domestic corporation or partnership.

(c) Identity of Attorney

If the defendant is represented by an attorney, the notice shall contain the attorney's name, office address and telephone number.

(d) Notice to Parties

When the defendant files a notice pursuant to this Rule, the clerk promptly shall mail notice of the filing to other parties.

(e) Effect of Failure to File Notice

If a defendant fails to file a timely notice of intention to defend pursuant to this Rule, the court, on the date set for trial, may determine liability and assess damages based on ex parte proof by the plaintiff, unless the defendant appears and the court is satisfied that the defendant may have a defense to the claim. In that event, the court shall proceed with trial or, upon request of the plaintiff, may grant a continuance for a time sufficient to allow the plaintiff to prepare for trial on the merits.

Source: This Rule is derived from former M.D.R. 302.

Rule 3-307 was accompanied by the following Reporter's Note.

Proposed amendments to Rules 3-307 and 3-102 make clear that the term "statutory agent" as used in the two Rules does not include a resident agent for a domestic corporation or partnership.

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-102 to clarify the term "statutory agent," as follows:

Rule 3-102. TRIAL DATE AND TIME

(a) Fixed by Clerk

At the time the complaint is filed, the clerk shall fix the date and time for trial of the action which shall be not less than 60 days after the date of filing, or not less than 90 days after filing when service of process is to be made out of State or upon a statutory agent ~~for a nonresident~~. For the purpose of this Rule, a statutory agent does not include a resident agent for a domestic corporation or partnership. With leave of court, an action may be tried at an earlier date than that originally fixed.

(b) Reassignment

Subject to section (c) of this Rule, when service of process is not made and the summons becomes dormant pursuant to Rule 3-113, the clerk shall cancel the assigned trial date. If the summons is renewed pursuant to Rule 3-113, the clerk shall assign a new trial date and shall notify the plaintiff of the reassignment.

(c) Multiple Defendants

When multiple defendants are joined in the action and one or more, but not all, are served, the action shall be tried as to those served on the assigned trial date unless continued pursuant to Rule 3-508.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 101

a.
Section (b) is in part new and in part derived from former M.D.R. 103 e.
Section (c) is derived from former M.D.R. 103 g.

Rule 3-102 was accompanied by the following Reporter's Note.

See the Reporter's note to the proposed amendment to Rule 3-307.

The Reporter distributed Rule 3-701, Small Claim Actions, to the Committee for its consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 700 - SPECIAL PROCEEDINGS

AMEND Rule 3-701 to clarify the term "statutory agent," as follows:

Rule 3-701. SMALL CLAIM ACTIONS

(a) Applicable Rules

The rules of this Title apply to small claim actions, except as provided in this Rule.

Cross reference: Code, Courts Article, §4-405.

(b) Forms

Forms for the commencement and defense of a small claim action shall be prescribed by the Chief Judge of the District Court and used by persons desiring to file or defend such an action.

(c) Trial Date and Time

The original trial date for a small claim action shall be within 60 days after the filing of the complaint, except that the original trial date shall be within 90 days after the filing of the complaint if service of the complaint is to be made outside this State or on a statutory agent for the defendant. The action shall be tried at a special session of the court designated for the trial of small claim actions. For the purpose of this Rule, a statutory agent does not include a resident agent for a domestic corporation or partnership.

(d) Counterclaims -- Cross-claims -- Third-party Claims

If a counterclaim, cross-claim, or third-party claim in an amount exceeding the jurisdictional limit for a small claim action (exclusive of interest, costs, and attorney's fees and exclusive of the original claim) is filed in a small claim action, this Rule shall not apply and the clerk shall transfer the action to the regular civil docket.

Cross reference: Rule 3-331 (f).

(e) Discovery Not Available

No pretrial discovery under Chapter 400 of this Title shall be permitted in a small claim action.

(f) Conduct of Trial

The court shall conduct the trial of a small claim action in an informal manner. Title 5 of these rules does not apply to proceedings under this Rule.

Cross reference: See Rule 5-101 (b)(4).

Source: This Rule is derived from former M.D.R. 568 and 401 a.

Rule 3-701 was accompanied by the following Reporter's Note.

See the Reporter's note to the proposed amendment to Rule 3-307.

Judge Vaughan explained that the District Court Subcommittee proposes the changes to Rules 3-307, 3-102, and 3-701 because of a letter from an attorney which indicated that if the Rule is interpreted to mean that a domestic corporation's resident agent is a statutory agent, then a Maryland corporation who is served by service on its statutory agent would have 60 days to file a Notice of Intention to Defend and 70 days to pray a jury trial instead of 15 days to file the notice and 25 days to pray a jury trial. Ms. Potter commented that young practitioners are getting confused about this, and the Rule should clarify that this is not intended by the Rule. The Vice Chair pointed out that Rule 2-321, Time for Filing Answer, provides that a person required by statute to have a resident agent shall file an answer within 60 days. Instead of adding the sentence to Rule 3-307 (b), that section could be made parallel to Rule 2-321 (b). The Committee agreed by consensus with this suggestion.

Mr. Titus inquired whether service can be effected in the District Court by publication or posting. Judge Vaughan answered in the affirmative. Mr. Hochberg questioned as to why section (a) provides that the defendant need not serve the notice of intention to defend on any party. Ms. Ogletree replied that this is because the court notifies the other parties. The computer generates a notice. Mr. Titus asked about *pro se* litigants. The Chair suggested that the

Rule could provide: "if the defendant is represented by an attorney, the attorney shall serve notice on the other parties." Ms. Ogletree remarked that often she does not receive the computer-generated notice.

The Vice Chair pointed out that there is no harm in adding the language suggested by the Chair. Judge Vaughan questioned whether the Chair's suggested language only applies where there is an attorney, and the Chair replied in the affirmative. He suggested that section (c) of Rule 3-307 could be restyled, including the tagline. The Vice Chair suggested that the new language could read as follows: "A defendant who is not represented by an attorney need not serve the notice on any party." The Committee agreed by consensus to the addition of this language.

Judge Vaughan pointed out that Rules 3-102 and 3-701 contain the same proposed change as Rule 3-307. The Reporter said that each of these Rules will be conformed to Rule 2-321 (b). The Committee approved the three Rules as amended.

Judge Vaughan presented Rule 3-509, Trial Upon Default, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 500 - TRIAL

AMEND Rule 3-509 to add a certain Committee note following section (c), as

follows:

Rule 3-509. TRIAL UPON DEFAULT

(a) Requirements of Proof

When a motion for judgment on affidavit has not been filed by the plaintiff, or has been denied by the court, and the defendant has failed to appear in court at the time set for trial:

(1) if the defendant did not file a timely notice of intention to defend, the plaintiff shall not be required to prove the liability of the defendant, but shall be required to prove damages;

(2) if the defendant filed a timely notice of intention to defend, the plaintiff shall be required to introduce prima facie evidence of the defendant's liability and to prove damages.

(b) Property Damage - Affidavit

When the defendant has failed to appear for trial in an action for property damage, prima facie proof of the damage may be made by filing an affidavit to which is attached an itemized repair bill, or an itemized estimate of the costs of repairing the damaged property, or an estimate of the fair market value of the property. The affidavit shall be made on personal knowledge of the person making such repairs or estimate, or under whose supervision such repairs or estimate were made, and shall include the name and address of the affiant, a statement showing the affiant's qualification, and a statement that the bill or estimate is fair and reasonable.

(c) Notice of judgment

Upon entry of a judgment against a defendant in default, the clerk shall mail

notice of the judgment to the defendant at the address stated in the pleadings and shall ensure that the docket or file reflects compliance with this requirement.

Committee note: A default judgment under Code, Transportation Article, §15-115 shall take effect unless, by the end of the 15th day after the date that notice of the default judgment was mailed, the person named in the citation posts bond or a civil penalty deposit and requests a new date for a trial, and the court has granted the motion.

Source: This Rule is derived from former M.D.R. 648.

Rule 3-509 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 3-509 adds a Committee note that references a new statutory provision, Code, Transportation Article, §15-115, under which a person against whom a default judgment is entered has 15 days to vacate that judgment in the manner set forth in the statute.

Judge Vaughan explained that the Subcommittee proposes adding a Committee note to Rule 3-509 to refer to a new statutory provision, Code, Transportation Article, §15-115, which provides that a person against whom a default judgment is entered has 15 days to vacate that judgment in the manner set forth in the statute. The Vice Chair asked about the language "a default judgment shall take effect." Mr. Bowen commented that the issue is if the word "shall" should be the word "should." The Vice Chair remarked that the substance of the Committee note is that if there is a motion to revise the judgment within the 30-day period following the default judgment, the right to

file this motion is taken away during the second half of the revisory period. It might be helpful to add a cross reference to Rules 3-534, Motion to Alter or Amend a Judgment, and 3-535, Revisory Power. The Chair noted that the statute provides: "The default judgment shall take effect unless, by the end of the 15th day after the date that notice of the default judgment was mailed, the person named in the citation posts bond or a civil penalty deposit and requests a new date for a trial and the court has granted the motion." The Vice Chair commented that she does not like the language "the default judgment shall take effect." The default judgment has effect from the day it was entered, but may not apply if no motion is filed. She suggested that in both Rule 3-509 and Rule 3-535, the following language should be added to the Committee note: "For the effect of a default judgment in certain situations, see Code, Transportation Article, §15-115." The Chair suggested that there be a cross reference added to Rule 3-535, also. The Committee agreed by consensus to these suggestions. The Committee approved the Rule as amended.

Judge Vaughan presented Rule 3-711, Landlord-Tenant and Grantee Actions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE — DISTRICT COURT

CHAPTER 700 - SPECIAL PROCEEDINGS

AMEND Rule 3-711 to conform terminology to statutory changes, as follows:

Rule 3-711. LANDLORD-TENANT AND GRANTEE ACTIONS

Landlord-tenant and grantee actions shall be governed by (1) the procedural provisions of all applicable general statutes, public local laws, and municipal and county ordinances, and (2) unless inconsistent with the applicable laws, the rules of this Title, except that no pretrial discovery under Chapter 400 of this Title shall be permitted in a grantee action, or an action for summary ejectment, ~~forcible entry and~~ wrongful detainer, or distress for rent, or an action involving tenants holding over.

Source: This Rule is derived from former M.D.R. 1 b and 401 a.

Rule 3-711 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 3-711 conforms the rule to a recent statutory change in terminology in Code, Courts Article, §4-401.

Judge Vaughan told the Committee that the Subcommittee is proposing to change Rule 3-711 to conform to a recent statutory change in terminology in Code, Courts Article, §4-401. The Committee approved the Rule as presented.

Agenda Item 5. Reconsideration of proposed amendments to Rule 8-602 (Dismissal by Court)

Mr. Titus presented Rule 8-602, Dismissal of Appeal, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 600 - DISPOSITION

AMEND Rule 8-602 to allow one judge designated by the Chief Judge to rule on any motion to dismiss, to preclude the judge who dismissed an appeal from being one of the number of judges of the Court whose concurrence is required by law to decide an appeal reconsidering the order to dismiss, to extend the time for filing a motion to reconsider a dismissal, to change the word "may" to "shall" in subsection (c)(1)(B), and to delete certain language from section (c), as follows:

Rule 8-602. DISMISSAL ~~BY COURT~~ OF APPEAL

(a) Grounds

On motion or on its own initiative, the Court may dismiss an appeal for any of the following reasons:

(1) the appeal is not allowed by these rules or other law;

(2) the appeal was not properly taken pursuant to Rule 8-201;

(3) the notice of appeal was not filed with the lower court within the time prescribed

by Rule 8-202;

(4) an information report was not filed as required by Rule 8-205;

(5) the record was not transmitted within the time prescribed by Rule 8-412, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court stenographer, or the appellee;

(6) the contents of the record do not comply with Rule 8-413;

(7) a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502;

(8) the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or 8-504;

(9) the proper person was not substituted for the appellant pursuant to Rule 8-401; or

(10) the case has become moot.

Cross reference: Rule 8-501 (m).

(b) ~~Determination by Court~~ Ruling on Motions to Dismiss

~~Except as otherwise permitted in this section, a~~ A motion to dismiss an appeal ~~shall~~ may be ruled on for the court by ~~the number of judges of the Court required by law to decide an appeal.~~ ~~T~~the Chief Judge, ~~or a~~ an individual judge of the Court designated by the Chief Judge ~~may rule on a motion to dismiss that is based on any reason set forth in subsections (2), (3), (5), (7), or (8) of section (a) of this Rule or on a motion to dismiss based on subsection (a)(4) of this Rule challenging the timeliness of the information report~~, or the number of judges of the Court required by law

to decide an appeal. If an appeal was dismissed by the ruling of one judge, the order dismissing the appeal, on motion filed within 30 days after entry of the order, shall be reviewed by the number of judges of the Court required by law to decide an appeal, and the judge who dismissed the appeal shall not participate.

Cross reference: For the number of judges required by law to decide an appeal, see Article IV, §14 of the Constitution and Code, Courts and Judicial Proceedings Article, §1-403.

(c) Reconsideration of Dismissal

(1) ~~When Order Was Entered by Individual Judge~~ Determination by Judges

~~If an appeal was dismissed by the ruling of an individual judge pursuant to section (b) of this Rule, the order dismissing the appeal, on~~ On motion filed within ~~ten~~ 30 days after entry of ~~the~~ an order dismissing an appeal, ~~shall be reviewed by the number of judges of the Court required by law to decide an appeal. The order dismissing the appeal~~ the order (A) shall be rescinded if a majority of ~~those~~ the number of judges of the Court required by law to decide an appeal ~~decides~~ determines that the ~~motion to dismiss~~ appeal should not have been dismissed ~~should not have been granted~~, (B) ~~may~~ shall be rescinded if the appeal was dismissed pursuant to subsection (4), (5), or (7) of section (a) of this Rule, and a majority of the number of judges of the Court required by law to decide an appeal is satisfied that the failure to file a report, transmit the record, or file a brief or record extract within the time prescribed by these Rules was unavoidable because of sickness or other sufficient cause, and (C) may be rescinded if the appeal was dismissed pursuant to subsection ~~(a)(8)~~ (a)(7) or (a)(8) of this Rule ~~and the Court is satisfied that a brief, appendix, or record extract complying with the Rules will be filed within a time prescribed by the Court~~.

~~(2) When Order Was Entered by Court~~

~~If an appeal has been dismissed by the ruling of the Court or a panel pursuant to subsection (4), (6), (8), or (9) of section (a) of this Rule, the order dismissing the appeal, on motion filed within ten days after entry of~~

~~the order, may be rescinded if the Court is satisfied that a report, record, brief, appendix, or record extract complying with the Rules will be filed or the proper party will be substituted within a time to be prescribed by the Court.~~

~~(3)~~ (2) Reinstatement on Docket

If the order of dismissal is rescinded, the case shall be reinstated on the docket on the terms prescribed by the Court.

~~(4)~~ (3) No Further Reconsideration by the Court

When an order dismissing an appeal is reviewed by the Court on motion filed pursuant to this section, the moving party may not obtain further reconsideration of the dismissal pursuant to Rule 8-605.

(d) Judgment Entered After Notice Filed

A notice of appeal filed after the announcement or signing by the trial court or a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

(e) Entry of Judgment Not Directed Under Rule 2-602

(1) If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602 (b), the appellate court may, as it finds appropriate, (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative or (D) if a final judgment was entered by the lower court after the notice of appeal as filed, treat the

notice of appeal as if filed on the same day as, but after, the entry of the judgment.

(2) If, upon remand, the lower court decides not to direct entry of a final judgment pursuant to Rule 2-602 (b), the lower court shall promptly notify the appellate court of its decision and the appellate court shall dismiss the appeal. If, upon remand, the lower court determines that there is no just reason for delay and directs the entry of a final judgment pursuant to Rule 2-602 (b), the case shall be returned to the appellate court after entry of the judgment. The appellate court shall treat the notice of appeal as if filed on the date of entry of the judgment.

(3) If the appellate court enters a final judgment on its own initiative, it shall treat the notice of appeal as if filed on the date of the entry of the judgment and proceed with the appeal.

Cross reference: Rule 8-206.

Source: This Rule is in part derived from former Rules 1035 and 835 and in part new.

Rule 8-602 was accompanied by the following Reporter's Note.

Some of the amendments to Rule 8-602 are proposed at the request of the Chief Judge of the Court of Special Appeals. They allow one judge designated by the Chief Judge to rule on any motion to dismiss. That judge would be precluded from being one of the judges reconsidering the order to dismiss.

One of the proposed amendments also extends to 30 days the time for filing a motion to reconsider the dismissal of an appeal under this Rule.

The Subcommittee is recommending that former subsections (b)(1) and (b)(2) be collapsed into one provision, which has eliminated the distinction between cases in

which the order was entered by an individual judge and those in which the order was entered by the court. The Subcommittee discussed rewording the phrase "the number of judges required by law to decide an appeal" which had been moved when the Rule was reorganized but decided to leave it as it is because it has never caused a problem.

In subsection (c)(1)(B), the word "may" is changed to "shall" because, if the court is satisfied that there is a sufficient cause for an unavoidable failure to comply with the specified time requirements, reinstatement of the appeal should not be discretionary.

In subsection (c)(1)(C), language that appears to establish a standard for reinstatement is deleted because reinstatement under this subsection is discretionary and may be conditional (e.g., conditioned upon the filing of a brief, appendix, or record extract complying with the Rules within a time prescribed by the Court).

Mr. Titus explained that Rule 8-602 is back before the Committee after the Style Subcommittee had looked at it. The purpose of changing the Rule was to provide a mechanism for a judge to be designated by the Chief Judge to rule on a motion to dismiss. The Appellate Subcommittee has decided to recommend no changes to section (a). In section (b), language has been added to clarify that either the Chief Judge, a judge designated by the Chief Judge, or a panel of judges (the number of judges required by law to decide an appeal) can rule on a motion to dismiss an appeal. If one judge rules on the motion, it can be reviewed by the appropriate number of judges, but the original judge who ruled cannot sit on the reviewing panel. The

language "the number of judges required by law to decide an appeal" finesses the constitutional requirement of the correct number of judges for each appellate court. There is a safety mechanism providing for *de novo* review by a panel within 30 days. Section (c) provides that if a motion is filed within 30 days, the order dismissing the appeal can be rescinded by the number of judges required by law to decide an appeal. The changes to the Rule reduce its length.

The Chair commented that the Rule allows prompt disposition of motions to dismiss. The mechanism providing for a review by a panel of judges other than the judge who dismissed the appeal causes no mischief. Mr. Titus added that requiring three judges in every dismissal would be a logistical nightmare.

The Committee approved the Rule as presented.

Mr. Titus presented Rule 8-202, Notice of Appeal -- Times for Filing, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-202 (c) to provide for a withdrawal of an appeal once certain post-judgment motions are filed, as follows:

Rule 8-202. NOTICE OF APPEAL -- TIMES FOR FILING

(a) Generally

Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.

Cross reference: Code, Courts Article, §12-302 (c)(3).

(b) Criminal Action - Motion for New Trial

In a criminal action, when a timely motion for a new trial is filed pursuant to Rule 4-331 (a), the notice of appeal shall be filed within 30 days after the later of (1) entry of the judgment or (2) entry of a notice withdrawing the motion or an order denying the motion.

(c) Civil Action - Post Judgment Motions

In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice of withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion. In the event a notice of appeal is filed by one party, and the same party thereafter timely files a motion pursuant to Rules 2-532, 2-533, or 2-534, the filing of the motion will have the effect of withdrawing the prior notice of appeal. In order for that party to perfect an appeal, a new notice of appeal must be filed once the court decides the motion.

Committee note: A motion filed pursuant to Rule 2-535, if filed within ten days after

entry of judgment, will have the same effect as a motion filed pursuant to Rule 2-534, for purposes of this Rule. Unnamed Att'y v. Attorney Grievance Comm'n, 303 Md. 473, 494 A.2d 940 (1985); Sieck v. Sieck, 66 Md. App. 37, 502 A.2d 528 (1986).

(d) When Notice for In Banc Review Filed

A party who files a timely notice for in banc review pursuant to Rule 2-551 or 4-352 may file a notice of appeal provided that (1) the notice of appeal is filed within 30 days after entry of the judgment or order from which the appeal is taken and (2) the notice for in banc review has been withdrawn before the notice of appeal is filed and prior to any hearing before or decision by the in banc court. A notice of appeal by any other party shall be filed within 30 days after entry of a notice withdrawing the request for in banc review or an order disposing of it. Any earlier notice of appeal by that other party does not deprive the in banc court of jurisdiction to conduct the in banc review.

(e) Appeals by Other Party - Within Ten Days

If one party files a timely notice of appeal, any other party may file a notice of appeal within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by this Rule.

(f) Date of Entry

"Entry" as used in this Rule occurs on the day when the clerk of the lower court first makes a record in writing of the judgment, notice, or order on the file jacket, on a docket within the file, or in a docket book, according to the practice of that court, and records the actual date of the entry.

Cross reference: Rule 2-601.

Source: This Rule is derived from former Rule 1012.

Rule 8-202 was accompanied by the following Reporter's Note.

> In order to remedy the somewhat unjust situation in which a party files both an appeal and a post-judgment motion, the Subcommittee is recommending that the filing of the post-judgment motion automatically withdraws the earlier appeal which must be filed again once the motion has been decided.

Mr. Titus explained that the proposed change would prevent the unjust situation of one party filing both an appeal and a post judgment motion. The Vice Chair questioned as to why it is unfair for one party to file both an appeal and a post judgment motion, but it is appropriate for opposing parties to each file one. Ms. Gradet said that the case of Edsall v. Anne Arundel County, 332 Md. 502 (1993), held that a notice of appeal filed prior to withdrawal or disposition of a timely post-trial motion is effective, and processing of the appeal is delayed until the withdrawal or disposition of the motion. The Chair noted that odd situations arise in domestic relations cases. The husband files an appeal, and immediately the wife files a post judgment motion seeking to alter or amend. The cases have held that the appeal by the husband is deemed to have been filed later than the disposition of the motion. The circuit court has jurisdiction to hear the post judgment motion. The Vice Chair pointed out that under the Edsall case, the notice of appeal filed prior to a ten-day motion is saved. The first sentence

of the language proposed to be added to section (c) is not correct and should be revised. The court will deem that the appeal was timely filed. Mr. Brault remarked that Rule 8-202 (c) provides that the last day to file an appeal is 30 days after the post judgment motion is withdrawn or after an order denying the motion filed pursuant to Rule 2-533, Motion For New Trial, or disposing of a motion pursuant to Rule 2-532, Motion for Judgment Notwithstanding the Verdict or to Rule 2-534, Motion to Alter or Amend a Judgment -- Court Decision. The last sentence of the proposed new language is contrary to law. Mr. Titus responded that the Subcommittee is proposing to change the law.

The Vice Chair inquired again as to what is unfair about the same party filing both a notice of appeal and a post judgment motion. Ms. Gradet said that the Edsall case came about in response to a question certified to the Court of Appeals from the Court of Special Appeals. The scenario under the Edsall case is that one party noted an appeal before the tenth day, and the other side filed a post judgment motion. It used to be that the post judgment motion rendered the appeal ineffective if the motion was decided more than 30 days after the appeal was filed. The Edsall case held that if a timely appeal is followed by a timely post judgment motion, the appeal remains viable. The Court made no distinction as to who files the appeal and who files the post judgment motion, but the case involved two different parties filing. Mr. Titus observed that under

the proposed change to the Rule, a party is being forced to make an election between filing an appeal and filing a post judgment motion. The Chair said that the rule change would help the Court of Special Appeals administratively.

The Vice Chair commented that the point of the Rule is that when the case goes back to the trial court, things can happen that make the entire appeal moot. It is not important who filed the appeal and who filed the post judgment motion. Ms. Gradet hypothesized that Party A files an appeal the day after a judgment is entered and files an information report the next day. On day nine, the other side files a post judgment motion. The information report which had been filed stated that no post judgment motions had been filed. The staff at the Court of Special Appeals processes the reports, and if a later post judgment motion is filed, they have no way to know this. The Vice Chair commented that it may be better to provide in the Rule that a notice of appeal filed during the ten-day period after the judgment has been entered has no effect.

The Chair suggested that the Rule could be worded similarly to Rule 8-602 (d) and provide that a notice of appeal filed before any of the 10-day post judgment motions shall be treated as filed on the same day as, but after, the entry on the docket of the withdrawal or order disposing of the motion. He asked Ms. Gradet her opinion on adding this language. She replied that if the proposed change is not going to apply only to the filing of an appeal and a post judgment

motion by the same party, the rule should not be changed. Ms. Ogletree suggested that an amended information report should be filed.

Mr. Brault expressed the view that this may be building a trap for attorneys. His preference would be the most liberal approach. The Court of Appeals is liberal about premature appeals. The Chair commented that he did not feel that strongly about amending the Rule. It might be better to state expressly that an appeal filed within 30 days of the judgment is saved, even if a post judgment motion has been filed. The appeal will be treated as filed on the same day as, but later than, disposition of the post judgment motion. The Committee agreed by consensus with this suggestion.

Mr. Titus suggested that the Rule could provide that in the event both an appeal and a timely ten-day motion are pending in a case, the jurisdiction of the appellate court is suspended or stayed until the lower court acts upon the motion. The Chair remarked that this is a good suggestion and inquired as to the preparation of the record. Mr. Shipley pointed out that the circuit court does not prepare the record in that situation until after the 10-day post judgment motion has been resolved. Judge Heller observed that it will help the Court of Special Appeals to have the clerk of the circuit court send out notice. Ms. Gradet said that the clerks of the circuit court will not send up the record until they get an order to proceed from the Court of Special Appeals. Sometimes her office

gets information reports, and after they are processed, the staff might learn that a post judgment motion has been filed. It also would be helpful if the Rule provided that the Court of Special Appeals is told which motions have been dismissed.

Judge Heller suggested that the party who files the motion or the clerk of the lower court can tell the Court of Special Appeals. Ms. Gradet commented that the burden should be on whoever filed the post judgment motion to file a line stating that the motion has been filed. It is not necessary to file a whole new prehearing conference report. Judge Heller suggested that the Rule could provide that in the event an appeal is filed, and thereafter a timely post judgment motion is filed, the party filing the motion shall file a notice with the Court of Special Appeals. The Chair asked if the circuit court clerk could file the notice. Ms. Gradet replied the burden should not be on the circuit court clerks. The Chair pointed out that Rule 8-205 puts the burden on the party. Ms. Gradet remarked that there are no show cause orders for prehearing conferences. Many people file a motion for reconsideration. Many are not filing an information report. The Chair pointed out that subsection (a)(4) of Rule 8-602, Dismissal by Court, provides that an appeal may be dismissed if an information report was not filed.

Mr. Titus suggested that language or a cross reference could be added to Rules 2-532, 2-533, and 2-534, stating that if a post judgment motion and an appeal are filed, the party filing the motion

shall send a copy of the motion to the Court of Special Appeals. The Vice Chair commented that this would involve too much paper. Mr. Titus responded that the party could file only a notice that the motion has been filed. Mr. Brault asked if there is an appeals clerk in all of the circuit court clerks' offices. Mr. Shipley replied in the affirmative. Ms. Gradet noted that under Rule 16-309, Notice to Court of Special Appeals, every month the circuit court clerk sends to the Clerk of the Court of Special Appeals a list of all cases in which, during the preceding month, an order of appeal to the Court of Special Appeals has been filed or an appeal to the Court of Special Appeals has been dismissed. Any ten-day motions filed or withdrawn could be added to this list in Rule 16-309.

Ms. Ogletree remarked that the person filing the post judgment motion should be required to notify the Court of Special Appeals. The Chair agreed. The Reporter asked where this provision should go in the Rules. The Chair suggested that it could go into Title 8. Ms. Ogletree added that a cross reference could be added to each of the 10-day post judgment motion rules in Title 2. Mr. Titus suggested that Rule 8-602 (a)(4) could be modified to add as a ground for dismissal that a party failed to comply with the requirements of Rule 8-205, Information Reports. The Vice Chair inquired as to whether the Court of Special Appeals would dismiss an appeal for failure to file an information report, then review the dismissal. Mr. Titus responded that the review is not automatic; it has to be

requested. The Committee agreed by consensus to the changes to Rules 8-202, 8-205, 8-602, 16-309, 2-532, 2-533, and 2-534.

Mr. Titus presented Rules 2-601, Entry of Judgment, 2-522, Court Decision -- Jury Verdict, 10-205, Hearing, and 12-208, Inquisition -- Form and Contents, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-601 to eliminate the terms "general" and "special" verdict, as follows:

Rule 2-601. ENTRY OF JUDGMENT

(a) Prompt Entry -- Separate Document

Each judgment shall be set forth on a separate document. Upon a ~~general~~ verdict of a jury or upon a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith prepare, sign, and enter the judgment, unless the court orders otherwise. Upon a ~~special~~ verdict of a jury or upon a decision by the court granting other relief, the court shall promptly approve the form of the judgment and sign the judgment and the clerk shall forthwith enter the judgment as approved and signed. A judgment is effective only when so set forth and when entered as provided in section (b) of this Rule. Unless the court orders otherwise, entry of the judgment shall not be delayed pending a determination of the amount of costs.

(b) Method of Entry -- Date of Judgment

The clerk shall enter a judgment by

making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court, and shall record the actual date of the entry. That date shall be the date of the judgment.

(c) Recording and Indexing

Promptly after entry, the clerk shall (1) record and index the judgment, except a judgment denying all relief without costs, in the judgment records of the court and (2) note on the docket the date the clerk sent copies of the judgment in accordance with Rule 1-324.

Source: This Rule is derived as follows:

Section (a) is new and is derived from FRCP 58.
Section (b) is new.
Section (c) is new.

Rule 2-601 was accompanied by the following Reporter's Note.

Because the distinction between a general and special verdict is not always clear, the Appellate Subcommittee is recommending the elimination of those terms from section (a) of Rule 2-601. Without the designations of "general" and "special" verdicts, the jury verdict will be described using the same language which distinguishes the two kinds of court decisions, and this should clarify the distinction between the two kinds of jury verdicts, one with a specified amount of money or denying all relief, and one granting other relief.

AMEND Rule 2-522 to delete the word "special," as follows:

Rule 2-522. COURT DECISION - JURY VERDICT

(a) Court Decision

In a contested court trial, the judge, before or at the time judgment is entered, shall dictate into the record or prepare and file in the action a brief statement of the reasons for the decision and the basis of determining any damages.

(b) Verdict

The verdict of a jury shall be unanimous unless the parties stipulate at any time that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury. The verdict shall be returned in open court. Upon the request of a party or upon the court's own initiative, the jury shall be polled before it is discharged. If the poll discloses that the required number of jurors have not concurred in the verdict, the court may direct the jury to retire for further deliberation or may discharge the jury.

(c) Special Verdict

The court may require a jury to return a ~~special~~ verdict in the form of written findings upon specific issues. For that purpose, the court may use any method of submitting the issues and requiring written findings as it deems appropriate, including the submission of written questions susceptible of brief answers or of written forms of the several special findings that might properly be made under the pleadings and evidence. The court shall instruct the jury as may be necessary to enable it to make its findings upon each issue. If the court fails to submit any issue raised by the pleadings or by the evidence, all parties

waive their right to a trial by jury of the issues omitted unless before the jury retires a party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding or, if it fails to do so, the finding shall be deemed to have been made in accordance with the judgment entered. No party may assign as error the submission of issues to the jury, the instructions of the court, or the refusal of the court to submit a requested issue unless the party objects on the record before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury.

Source: This Rule is derived as follows:
Section (a) replaces former Rule 18 b from which it is in part derived.
Section (b) is derived from former Rule 759 a and e and from FRCP 48.
Section (c) is derived from former Rule 560 and FRCP 49 (a).

Rule 2-522 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 2-601.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-205 to delete the word "special," as follows:

Rule 10-205. HEARING

(a) Guardianship of the Person of a Minor

(1) No Response to Show Cause Order

If no response to the show cause order is filed and the court is satisfied that the petitioner has complied with the provisions of Rule 10-203, the court may rule on the petition summarily.

(2) Response to Show Cause Order

If a response to the show cause order objects to the relief requested, the court shall set the matter for trial, and shall give notice of the time and place of trial to all persons who have responded.

Cross reference: Code, Estates and Trusts Article, §13-702.

(b) Guardianship of Alleged Disabled Person

(1) Generally

When the petition is for guardianship of the person of an alleged disabled person, the court shall set the matter for jury trial. The alleged disabled person or the attorney representing the person may waive a jury trial at any time before trial. If a jury trial is held, the jury shall return a ~~special~~ verdict pursuant to Rule 2-522 (c) as to any alleged disability. A physician's or psychologist's certificate is admissible as substantive evidence without the presence or testimony of the physician or psychologist unless, not later than 10 days before trial, an interested person who is not an individual under a disability, or the attorney for the alleged disabled person, files a request that the physician or psychologist appear. If the trial date is less than 10 days from the date the response is due, a request that the physician or psychologist appear may be filed at any time before trial. If the alleged disabled person asserts that, because of his or her disability, the alleged

disabled person cannot attend a trial at the courthouse, the court may hold the trial at a place to which the alleged disabled person has reasonable access.

(2) Beneficiary of the Department of Veterans Affairs

If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought and no objection to the guardianship is made, a hearing shall not be held unless the Court finds that extraordinary circumstances require a hearing.

Source: This Rule is in part derived from former Rule R77 and is in part new.

Rule 10-205 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 2-601.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 200 - CONDEMNATION

AMEND Rule 12-208 to deleted the word "special," as follows:

Rule 12-208. INQUISITION — FORM AND CONTENTS

(a) Form and Signature

The trier of fact shall render a ~~special~~ verdict in the form of an inquisition signed by

each member of the jury or, if the action is tried without a jury, by the judge hearing the action.

(b) Description of Property

The inquisition shall contain a description of the property condemned. If the property is real property, the description shall be in the form required by Rule 12-205 (b).

(c) Nature of Plaintiff's Estate

The inquisition shall state the nature of the interest in the property acquired by the plaintiff.

(d) Award of Damages

The inquisition shall set forth the amount of any damages to which each defendant or class of defendants is entitled or, if the court so orders, the total amount of damages awarded, or both.

(e) Other Matters

The inquisition shall contain findings on any other issues submitted by the court to the trier of fact for special findings.

Cross reference: Code, Real Property Article, §§12-103, 12-108, 12-110, and 12-112.

Source: This Rule is derived from former Rule U19.

Rule 12-208 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 2-601.

Mr. Titus explained that in a recent Baltimore County case,

the clerk entered a special verdict for the plaintiff for $45,616 because there was a question to be answered by the jury. The court held that the clerk was wrong in entering a special verdict. There had been an evidentiary hearing on attorneys' fees and a supplemental judgment with a general verdict for money only. The case seemed to obliterate the distinction between a general and a special verdict. The Appellate Subcommittee is in favor of eliminating the use of the terms "general" and "special" verdicts. Judge Heller commented that the elimination of the terms does not really change anything. There still would be a verdict denying all relief or money awarded and a verdict granting any other relief or answering a question. In Baltimore City, the form was changed to clarify this. Judge Heller questioned whether it will be clear enough by removing the terms "general" and "special." The Vice Chair answered in the affirmative, noting that questions may be so broad as to blur the distinction between the two terms. Mr. Bowen suggested that in the second sentence of section (a), the word "upon" should be deleted, the second time it appears in the sentence. Similarly, in the third sentence of section (a), the word "upon" should be taken out the second time it appears in the sentence. The Committee agreed by consensus to these changes.

The Vice Chair noted that in Rule 2-522, the taglines to sections (b) and (c) will have to be modified. Mr. Bowen said that the Style Subcommittee can change them. The Vice Chair told the

Committee that she had been involved in a case where there was a waiver of an issue to the jury. She asked how the difference can be eliminated, since the special verdict section may only apply. The Chair commented that section (c) could be titled "Verdict Containing Written Findings." The Committee agreed by consensus to this change.

Mr. Brault noted that the issue of when is a verdict not susceptible to a judgment makes the matter of taking away the terms "general" and "special" tricky. He stated that he is not sure how to deal with this, especially in cases that involve the awarding of attorneys' fees. The question is when is a judgment to be recorded as a judgment. In a wage case under the Fair Wage Act, the plaintiff can be awarded treble damages and attorneys' fees. Either the jury or the court can decide the attorneys' fees, and it is not decided until after the recovery of the wages. Two lines of cases exist -- one holds that the court holds a hearing to assess attorneys' fees which are added on to the jury verdict; the other view holds that the jury verdict is final and attorneys' fees are added as a cost item.

The Vice Chair said that the issue is when are attorneys' fees are part of the damages and therefore part of the judgment, and when are they separate from the initial claim. This affects the finality of the judgment. Mr. Brault pointed out that in civil rights cases, attorneys' fees are determined by the court. The Chair noted that Rule 2-602, Judgments Not Disposing of Entire Action, may apply. The

Vice Chair remarked that if she represented the losing party in a case in which the court calls the decision a "judgment," she would file an appeal. The Chair commented that this is similar to partial summary judgments, which are piecemeal. The Vice Chair noted that partial summary judgment is a term of art. The rule is that the name does not matter if the judgment does not dispose of the entire action. The Chair said that the Court of Appeals had held in a case that if attorneys' fees are outstanding, the matter is not final for purposes of an appeal. The clerk should not docket and index the decision unless the judge states that it is a judgment. If there is a jury verdict of a specific amount of money, but more is at issue, then all of the relief requested has not been disposed of. Mr. Brault added that a judgment includes costs.

Judge Heller pointed out that the current Rule is not affected. The judge knows that attorneys' fees are part of the claim and if they are unresolved, the judge will not sign the judgment. Mr. Brault said that he wanted these issues raised so they will be part of the minutes if problems come up with the proposed change. Mr. Bowen remarked that attorneys should be warned that when these kinds of cases arise, it is better not to enter a judgment. Mr. Bowen suggested that after the first sentence of section (b) of Rule 2-601, the following language could be added: "If there are open issues, the court shall order the clerk not to enter judgment." The Vice Chair commented that it is not always open issues that preclude the

entry of judgment. The Chair said that Rule 2-602 provides for that situation. It clearly implies that a decision that does not adjudicate all of the claims by the parties is subject to revision and is not a final judgment. The Vice Chair commented that if a trial court enters a "judgment," even though it should not have, the appellate court will not allow the appeal, no matter what terminology is used for the trial court's decision. The Chair stated that there is a distinction between a final judgment and an appealable judgment.

Mr. Brault noted that a judgment that is not final can be enforced. There is a stay of execution for ten days, and after that the trial court has authority. The Chair commented that the judgment is final for execution purposes, but not for appeal. The last sentence of section (a) of Rule 2-601 provides: "Unless the court orders otherwise, entry of the judgment shall not be delayed pending a determination of the amount of costs." This is a judicial responsibility.

The Committee approved Rules 2-601 and 2-522 as amended and Rules 10-205 and 12-208 as presented.

Agenda Item 3. Reconsideration of proposed amendments to two Rules in Title 4 (Criminal Causes): Rule 4-331 (Motions for New Trial) and Rule 4-341 (Sentencing — Presentence Investigation)

Mr. Dean presented Rule 4-331, Motions for New Trial, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-331 to allow a motion for a new trial on the ground of newly discovered evidence based on DNA identification testing and other scientific evidence to be filed at any time under certain circumstances and to clarify that under section (e) a hearing must be held under certain circumstances, as follows:

Rule 4-331. MOTIONS FOR NEW TRIAL

(a) Within Ten Days of Verdict

On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.

Cross reference: For the effect of a motion under this section on the time for appeal see Rules 7-104 (b) and 8-202 (b).

(b) Revisory Power

The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:

(1) in the District Court, on motion filed within 90 days after its imposition of sentence if an appeal has not been perfected;
(2) in the circuit courts, on motion filed within 90 days after its imposition of sentence.

Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity and as otherwise provided in section (c) of this Rule.

(c) Newly Discovered Evidence

The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

(1) ~~in the District Court, on motion filed within one year after its imposition of sentence if an appeal has not been perfected;~~

~~(2) in a circuit court,~~ on motion filed within one year after its imposition of sentence or the date it receives a mandate issued by the Court of Appeals or the Court~~s~~ of Special Appeals, whichever is later~~, except that~~

(2) if a sentence of death was imposed, ~~the~~ on motion ~~may be~~ filed at any time if the newly discovered evidence, if proven, would show that the defendant is innocent of the capital crime of which the defendant was convicted or of an aggravating circumstance or other condition of eligibility for the death penalty actually found by the court or jury in imposing the death sentence;

(3) on motion filed at any time if the motion is based upon DNA identification testing or other generally accepted scientific techniques the results of which, if proven, would show that the defendant is innocent of the crime for which the defendant was convicted.

Committee note: Newly discovered evidence of mitigating circumstances does not entitle a defendant to claim actual innocence. See Sawyer v. Whitley, 112 S. Ct. 2514 (1992).

(d) Form of Motion

A motion filed under this Rule shall be in writing and shall state in detail (1) the grounds upon which it is based and (2) if filed under section (c), the newly discovered

evidence required by that section. ~~If the defendant was sentenced to death and the motion is filed more than one year after the circuit court receives the mandate issued by the Court of Appeals, the motion shall be under oath and shall state in detail the newly discovered evidence required by subsection (c)(2) of this Rule.~~

Alternative 1

A motion filed more than one year after the waiver or exhaustion of direct appeals shall be under oath.

Alternative 2

A motion filed more than one year after the court's imposition of sentence or the date the court receives a mandate issued by the Court of Appeals or the Court of Special Appeals, whichever is later, shall be under oath.

(e) Disposition

If a hearing is requested by a party, ~~The~~ the court shall ~~afford the defendant or counsel and the State's Attorney an opportunity for~~ hold a hearing on a motion filed under this Rule, except that if the motion is filed more than one year after the ~~circuit court receives the mandate issued by the Court of Appeals,~~

Alternative 1

waiver or exhaustion of direct appeals,

Alternative 2

court's imposition of sentence or the date the court receives a mandate issued by the Court of Appeals or the Court of Special Appeals, whichever is later,

a hearing need not be held unless the motion satisfies the requirements of section (d) of this Rule. The court may revise a judgment or

set aside a verdict prior to entry of a judgment only on the record in open court. The court shall state its reasons for setting aside a judgment or verdict and granting a new trial.

Cross reference: Code, Article 27, §§594 and 770.

Source: This Rule is derived from former Rule 770 and M.D.R. 770.

Rule 4-331 was accompanied by the following Reporter's Note.

The principal proposed amendments to Rule 4-331 are twofold.

Based on a request by Delegate Samuel Rosenberg, the Committee is recommending a change to Rule 4-331 (c) to add another exception to the rule that a court may not grant a new trial or other appropriate relief on the ground of newly discovered evidence if the motion for a new trial was not filed within a year after the imposition of sentence. The exception is for newly discovered evidence based upon DNA identification testing or other generally accepted scientific techniques the results of which, if proven, would show that the defendant is innocent of the crime for which the defendant was convicted. This change is prompted by ongoing advances in DNA technology which may have occurred or may occur more than a year after criminal trials.

The case of Jackson v. State, 358 Md. 612 (2000) pointed out some ambiguity as to whether section (e) of Rule 4-331 provides an automatic hearing when a motion for a new trial is filed. The Court of Appeals held that in the absence of a waiver by the parties, the court must conduct a hearing. The Committee is recommending a change to the language of section (e) to provide that if a hearing is requested by a party, the court shall hold a hearing except under certain specified circumstances.

Additionally, stylistic changes are proposed.

Mr. Dean explained that the Style Subcommittee had sent this Rule back to the Criminal Subcommittee to fix some logical inconsistencies involving policy determinations. The change to the Rule involves permitting a motion for a new trial at any time in light of exculpatory DNA evidence. The Subcommittee reorganized the paragraphs of the Rule to eliminate the inherent inconsistencies. The Reporter pointed out that there were several fact patterns involving factors such as whether the motion is filed one year after the imposition of sentence, whether it has to be under oath, whether a hearing is automatic or has to be requested, and whether the appellate court has issued the mandate. The Chair asked if the motion has to be under oath. The Reporter replied that the Subcommittee was opposed to requiring an oath. The Chair expressed his doubts about the benefit of an oath. If the defendant is in prison, it is unlikely that there will be a prosecution for perjury if the defendant lies. Mr. Dean agreed that the oath is meaningless. The Chair noted that there are cases in federal court in which prisoners who have brought 28 U.S.C.S. 2255 (1948) actions have been prosecuted for perjury. The prisoner has made a direct accusation against former counsel who can prove that it was false. This is unlikely in the context of a motion for a new trial. A post conviction case is different because the defendant takes the stand. Mr. Dean reiterated that the Subcommittee felt that the oath

requirement is meaningless.

Mr. Brault inquired as to why the Rule is permitting the motion for a new trial to be filed at any time. Mr. Dean answered that after one year, the judge can dispose of the motion without a hearing unless the motion conforms to more stringent requirements. After one year, motions are permitted only for newly discovered evidence, fraud, mistake, or irregularity. The Vice Chair observed that someone who files a motion based on a DNA test after a year would not be the DNA expert and cannot take an oath stating the test is true. Mr. Brault inquired as to who administers the oath. The Chair suggested that the oath requirement be removed, and the Committee agreed by consensus to this suggestion.

The Reporter pointed out that on pages 3 and 4 of the Rule, there is a timing issue to be determined, involving whether the reference should be (1) a motion filed more than one year after the waiver or exhaustion of direct appeals or (2) a motion filed more than one year after the court's imposition of sentence or the date the court receives a mandate issued by the Court of Appeals or the Court of Special Appeals, whichever is later. The Chair commented that the trigger date should be the date that the defendant was sentenced. The Committee agreed to use the date of sentencing as the trigger date.

The Vice Chair noted that Rule 4-252, Motions in Circuit Court, undercuts this Rule somewhat. The Chair said that the first sentence

of section (e) provides that "a hearing need not be held unless the motion satisfies the requirements of section (d) of this Rule." Judge Vaughan asked how, if there is no hearing, the judge can revise a judgment or set aside a verdict on the record in open court, which is required by section (e). The Reporter responded that this is only if the judge grants a new trial; if the court denies the motion, no hearing is required. The Vice Chair expressed the concern that someone may file one year later because of DNA testing, and no hearing will be held. If a pro se defendant did not comply with the requirements of section (d), the person would not be able to obtain a hearing. The Chair pointed out that many of the motions are frivolous. If there is a failure to comply, the court should not have to hold a hearing. The Chair noted that a motion for a new trial based on a defendant's statement, which is disputed by seven witnesses, is different than a motion based on newly discovered evidence. Section (e) should provide that if a motion alleges newly discovered evidence, the person gets a hearing; otherwise, the court may hold a hearing. The Committee agreed by consensus.

The Reporter referred to the case of Jackson v. State, 358 Md. 612 (2000), which held that the court must hold a hearing when a motion for a new trial is filed. Mr. Karceski observed that the existing Rule is being changed. The Chair said that the Jackson case held that when a defendant alleges newly discovered evidence, the defendant should have an opportunity to present his or her case.

Judge Missouri pointed out that most of the motions for a new trial allege that the judge made mistakes. The Chair observed that the judge is not prohibited from holding a hearing. Mr. Dean reiterated that newly discovered evidence is rarely alleged in motions for a new trial.

The Committee approved the Rule as amended.

The Chair presented Rule 4-341, Sentencing -- Presentence Investigation, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-341 to add an exception to the confidentiality requirement, as follows:

Rule 4-341. SENTENCING -- PRESENTENCE INVESTIGATION

Before imposing a sentence, if required by law the court shall, and in other cases may, order a presentence investigation and report. A copy of the report, including any recommendation to the court, shall be mailed or otherwise delivered to the defendant or counsel and to the State's Attorney in sufficient time before sentencing to afford a reasonable opportunity for the parties to investigate the information in the report. The presentence report, including any recommendation to the court, is not a public record and shall be kept confidential as provided in Code, Correctional Services Article, §6-112, unless admitted into evidence in a capital case.

Query to Rules Committee: Should the amendment be rephrased to also specifically mention cases in which imprisonment for life without the possibility of parole is sought?

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

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

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

Mary R. Craig, Esq., who represents the Sunpapers, requested a change to the confidentiality provision of Rule 4-341. She pointed out that the decision of Baltimore Sun v. Thanos, 92 Md. App. 227 (1992), held that a presentence report is required to be admitted into evidence in the sentencing phase of a capital case. She contends that once the presentence report is admitted into evidence, the public has a First Amendment right to review it. "unless admitted into evidence" at the end of Rule 4-341.

In light of Thanos, the Committee recommends the addition of the phrase "unless admitted into evidence in a capital case" at the end of Rule 4-341.

The Chair explained that Mary R. Craig, Esq., who represents the Sunpapers, requested a change to the Rule to provide that once the presentence investigation report (PSI) is admitted into evidence in the sentencing phase of a case, in accordance with Baltimore Sun v. Thanos, 92 Md. App 227 (1992), the public has a First Amendment right to review it. The Committee agreed with her, and it had

included the stipulation that this would apply in a capital case. The Reporter posed the question of whether this should also apply to cases in which imprisonment for life without the possibility of parole is sought. She expressed the view that the answer to the question is affirmative under the Thanos case and statutory structure.

The Vice Chair asked when the PSI is part of the record of a case. Judge Heller answered that the defense attorney may find an error in a report and ask that it be introduced into evidence. Once introduced into evidence, the report is not confidential and is a matter of public record. Judge Vaughan observed that it may be partially received into evidence. Mr. Dean said that what the jury sees in a death penalty case is redacted extensively. The Chair suggested that the following language could be added to Rule 4-341: "When the State is seeking the death penalty or a sentence of life without the possibility of parole, the portion of the Presentence Investigation Report admitted into evidence by the court shall not be confidential."

Judge Missouri pointed out that one page of the PSI may be admitted, but the reporter may ask for the entire report. Ms. Ogletree commented that whatever is seen by the jury is not confidential. The Chair suggested that the new language of the Rule could read: "except for that portion of the PSI that is admitted into evidence during the sentencing phase of a capital case." Mr.

Karceski remarked that the PSI might have become part of the record of the case at sentencing and loses its confidentiality. The Chair reiterated that the portion of the PSI which is admitted into evidence is not confidential. He suggested that the exception be placed at the beginning of the third sentence and read: "Except for that portion of the Presentence Investigation Report that is admitted into evidence." The Committee agreed by consensus to this change. The Committee approved the Rule as amended.

The Chair presented Form 4-217.1, Declaration of Trust of Real Estate to Secure Performance of a Bail Bond, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

BAIL BOND FORMS

AMEND Form 4-217.1 to conform to a statutory change, as follows:

Form 4-217.1. DECLARATION OF TRUST OF REAL ESTATE TO SECURE PERFORMANCE OF A BAIL BOND

DECLARATION OF TRUST OF REAL ESTATE
TO SECURE PERFORMANCE OF A BAIL BOND

STATE OF MARYLAND,

The undersigned [ ] Defendant, [ ] Surety .....

..... of .....
(name)

..... in order to secure

(address)

the performance of the bail bond annexed hereto, being first sworn (or, if Surety is a corporation, its undersigned officer being first sworn), acknowledges and declares under oath as follows:

That the undersigned is the sole owner of [ ] a fee simple absolute, or [ ] a leasehold subject to an annual ground rent of $....., in certain land and premises situate in ..... Maryland and described as
(county)

.....
(lot, block, and subdivision or other legal description)

That the undersigned is competent to execute a conveyance of said land and premises; and

That the undersigned hereby holds the same in trust to the use and subject to the demand of the State of Maryland as collateral security for the performance of that bond;

That said property is assessed for $..... x ~~2~~ .8 = $..... from which the following encumbrances should be deducted:

Ground rent capitalized at 6%	$.....	
Mortgages/Deeds of Trust totaling	$.....	
Federal/State Tax Liens	$.....	
Mechanics Liens	$.....	
Judgment & Other Liens	$.....	
Other outstanding Bail Bonds	$.....	
Total Encumbrances	$.....	$..... and

that the present net equity in the property is $.....

That, if the undersigned is a body corporate, this Declaration of Trust is its act and deed and that its undersigned officer is fully authorized to execute this Declaration of Trust on its behalf.

And the undersigned further declares, covenants, and undertakes not to sell, transfer, convey, assign, or encumber the land and premises or any interest therein, so long as the bail bond hereby secured remains undischarged and in full force and effect, without the consent of the court in which the bail bond is filed, it being understood that upon discharge of the bail bond the clerk of the court will execute a release in writing
endorsed on the foot of this document (or by a separate Deed of Release), which may be recorded in the same manner and with like effect of a release of mortgage if this Declaration of Trust is recorded among the Land Records.

.....(Seal)

(Defendant)

or .....(Seal)
(Surety)

by .....

SWORN to, signed, sealed, and acknowledged before me this

..... day of ....., ...
(month) (year)

.....
Commissioner/Clerk/Judge

of the .....Court

for .....County/City

Form 4-217.1 was accompanied by the following Reporter's Note.

> Dennis Weaver, Clerk of the Circuit Court for Washington County, pointed out that Chapter 80, Acts of 2000 (SB 626) changes the way real property is assessed for property tax purposes. It requires that the property be assessed at 100% of its value. Formerly, property was assessed at 40% of its value.
>
> Currently, Form 4-217.1 requires the clerk to double the assessed value to arrive at a percentage of value of the property that may be used as collateral security for the performance of a bail bond — 80% (40% x 2). To maintain the same percentage, the Subcommittee suggests that the form be amended so that the assessed value is multiplied by .8, rather than by 2 (100% x .8 = 80%).

The Reporter explained that Senate Bill 626 (Chapter 80, Acts of 2000) changed the way that real property is assessed for property tax purposes. Instead of being assessed at 40% of the value, the new

law requires that the property be assessed at 100% of the value. Form 4-217.1 has to be changed to maintain the same percentage. The Subcommittee is recommending that the form be amended so that the assessed value is multiplied by .8 instead of by 2, so that the value arrived at by making the computation on the form remains 80% of the value of the property. This is the percentage that banks often use when making mortgage loans. The Committee agreed by consensus to this change.

The Chair stated that the Court of Appeals had approved the deletion of Rule 16-402, Attorneys and Other Officers Not to Become Sureties, which will now allow attorneys to be sureties.

The Chair adjourned the meeting.