COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A, People's Resource Center, Crownsville, Maryland on April 24, 1998.

Members present:

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

Albert D. Brault, Esq.
Robert L. Dean, Esq.
Bayard Z. Hochberg, Esq.
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Hon. Joseph H. Kaplan
Robert D. Klein, Esq.
Joyce H. Knox, Esq.
Hon. John F. McAuliffe
Anne C. Ogletree, Esq.
Hon. Mary Ellen T. Rinehardt
Hon. James N. Vaughan

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Linda Estrada, Esq.
Richard J. Douglas, Esq.
Walter Laake, Jr., Esq.
Christopher Davis
Anne Blumenberg, Esq., Community Law Center
Buz Winchester, Director of Legislative Relations,
Maryland State Bar Association

The Chair convened the meeting. He announced that Agenda Item 4, consideration of proposed new Rule 8-115 (Citation Format), would be postponed to the May meeting, because a quorum of the Rules Committee members would not be available after the lunch break. He asked if there were any additions or corrections to the minutes of the March 13, 1998 meeting. Mr. Klein suggested that the last sentence on page 57 could be worded better to read as follows: "Mr.

Howell replied that sometimes an attorney has been 'out of the loop' for 10 or 15 years and some assurance of present competence is necessary." The Committee agreed by consensus to this change. Judge Kaplan moved to adopt the minutes as amended, the motion was seconded, and it passed unanimously.

Agenda Item 1. Consideration of proposed amendments to Rule 4-242 (Pleas)

The Chair introduced two guests who were present to discuss Agenda Item 1: Linda Estrada, Esq., President of the Hispanic Bar Association and Richard Douglas, Esq., Legislative Committee Chair of the Maryland Hispanic Bar Association. Judge Johnson presented Rule 4-242, Pleas, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-242 to require certain advice to the defendant concerning collateral consequences of a plea of guilty or nolo contendere, as follows:

Rule 4-242. PLEAS

(a) Permitted Pleas

A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. In addition to any of these pleas,

the defendant may enter a plea of not criminally responsible by reason of insanity.

(b) Method of Pleading

(1) Manner

A defendant may plead not guilty personally or by counsel on the record in open court or in writing. A defendant may plead guilty or nolo contendere personally on the record in open court, except that a corporate defendant may plead guilty or nolo contendere by counsel or a corporate officer. A defendant may enter a plea of not criminally responsible by reason of insanity personally or by counsel and the plea shall be in writing.

(2) Time in the District Court

In District Court the defendant shall initially plead at or before the time the action is called for trial.

(3) Time in Circuit Court

In circuit court the defendant shall initially plead within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213 (c). If a motion, demand for particulars, or other paper is filed that requires a ruling by the court or compliance by a party before the defendant pleads, the time for pleading shall be extended, without special order, to 15 days after the ruling by the court or the compliance by a party. A plea of not criminally responsible by reason of insanity shall be entered at the time the defendant initially pleads, unless good cause is shown.

(4) Failure or Refusal to Plead

If the defendant fails or refuses to plead as required by this section, the clerk or the court shall enter a plea of not guilty.

Cross reference: See *Treece v. State*, 313 Md. 665 (1988), concerning the right of a defendant to decide whether to interpose the defense of insanity.

(c) Plea of Guilty

The court may accept a plea of guilty only after it determines, upon an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (e) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

(d) Plea of Nolo Contendere

A defendant may plead nolo contendere only with the consent of court. The court may require the defendant or counsel to provide information it deems necessary to enable it to determine whether or not it will consent. The court may accept the plea only after it determines, upon an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, that the defendant is pleading voluntarily with understanding of the nature of the charge and the consequences of the plea. In addition, before accepting the plea, the court shall comply with section (e) of this Rule. Following the acceptance of a plea of nolo contendere, the court shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty. If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to plead anew.

(e) Collateral Consequences of a Plea of Guilty or Nolo Contendere

Although the omission of advice concerning the collateral consequences of a plea does not render the plea invalid, before accepting a plea of guilty or nolo contendere the court shall advise the defendant that by entering the plea, the defendant may face additional consequences including but not limited to the forfeiture of property, the loss of certain civil rights, disqualification from certain governmental benefits, enhanced punishment if the defendant is convicted of another crime in the future, and, if the defendant is not a United States citizen, a change in the defendant's immigration status. The court shall advise the defendant to consult with defense counsel if the defendant needs additional information concerning the potential consequences of the plea.

Committee note: This section is consistent with the holdings of *Yoswick v. State*, 347 Md. 228 (1997) and *Daley v. State*, 61 Md. App. 486 (1985).

~~(e)~~ (f) Plea to a Degree

A defendant may plead not guilty to one degree and plead guilty to another degree of an offense which, by law, may be divided into degrees.

~~(f)~~ (g) Withdrawal of Plea

At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty or nolo contendere when the withdrawal serves the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty or nolo contendere if the defendant establishes that the provisions of section (c) or (d) of this Rule were not complied with or there was a violation of a plea agreement entered into

pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty or nolo contendere.

Committee note: The entry of a plea may waive technical defects in the charging document and waives objections to venue. See, e.g., Rule 4-202 (b) and *Kisner v. State*, 209 Md. 524, 122 A. 2d 102 (1956).

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 731 a and M.D.R. 731 a.
Section (b)
Subsection (1) is derived from former Rule 731 b 1 and M.D.R. 731 b 1.
Subsection (2) is new.
Subsection (3) is derived from former Rule 731 b 2.
Subsection (4) is derived from former Rule 731 b 3 and M.D.R. 731 b 2.
Section (c) is derived from former Rule 731 c and M.D.R. 731 c.
Section (d) is derived from former Rule 731 d and M.D.R. 731 d.
Section (e) is new.
Section ~~(e)~~ (f) is derived from former Rule 731 e.
Section ~~(f)~~ (g) is derived from former Rule 731 f and M.D.R. 731 e.

Rule 4-242 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 4-242 adds a requirement that the court advise the defendant concerning collateral consequences of a plea of guilty or nolo contendere, prior to acceptance of the plea. The language of proposed new section (e) is derived from Standard 14-1.4 (c) of the Supplemental Recommendations Concerning Third Edition ABA Guilty Plea Standards (Second Council Reading, March, 1997), with the substitution of the word "shall" for the word "should" in the two places it appears and the addition of a clause concerning the consequences of a failure to

advise.

Paragraph 6 of the Summary of Recommendations in the aforementioned ABA document states:

(6) Court's advice to the defendant concerning the collateral consequences of a plea. The Council asked the Committee to draft appropriate language for a provision to be included in standard 14-1.4 that would call upon the court to inform the defendant that there may be collateral consequences that follow from the entry of a guilty or nolo contendere plea. After discussion, the Committee concluded that the court's advice concerning collateral consequences of a plea should be addressed in a new subsection, set forth below in standard 14-1.4 (c). The proposed language directs the court to explain to the defendant that there may be collateral consequences from a guilty or nolo plea, and to illustrate the potential consequences by example. If the defendant requested additional information on such collateral consequences, the court would advise the defendant to consult with defense counsel. We propose that this standard be placed in a separate subsection, rather than with the rest of the court's required advice to the defendant in subsection (a). This is intended to make clear that the court's advice concerning potential collateral consequences of a plea falls into a different category than its advice concerning the rights listed in the current standard, and to avoid the implication that the omission of such advice would necessarily render a plea invalid. 14-1.4 (c)

The introductory clause of proposed new section (e) makes clear that, under the Rule, a plea is not rendered invalid by the omission of advice concerning collateral consequences of the plea. As stated in the proposed Committee note following section (e), this is consistent with case law in Maryland.

Judge Johnson explained that the problem addressed by the suggested changes to Rule 4-242 pertains to the collateral consequences of pleading guilty or nolo contendere. The proposed language provides information to someone that pleading guilty or nolo contendere could result in disqualification from governmental benefits; enhanced punishment if the person is convicted of another crime in the future; and if the person is not a United States citizen, a change in the person's immigration status. The problem concerning immigration status has increased in urban areas as the non-citizen population has increased. The language of the proposed amendment to the Rule is derived from Standard 14-1.4 (c) of the Supplemental Recommendations concerning third Edition ABA Guilty Plea Standards (Second Council Reading, March, 1997). The proposed changes emphasize that although a judge should advise the defendant of the possibility of collateral consequences, the failure to do so is not a reversible omission. The new language in sections (c) and (d) refers the judge to section (e), which lists the advice the Criminal Subcommittee recommends that a judge give a defendant prior to the court's acceptance of a plea.

Mr. Klein commented that he recognized that the Subcommittee used the American Bar Association (ABA) standard in revising the language, but he noted that the meeting materials indicate that some other states give their warnings in greater detail. He questioned as to why the Subcommittee opted for the less detailed ABA language.

Judge Johnson replied that since immigration laws change frequently, it is preferable to keep the new language general. He said that he is not conversant as to the immigration laws, and he suggested that most state judges are not conversant, either. Mr. Douglas responded that Mr. Klein had made an important point. The Hispanic Bar Association is concerned that the Subcommittee's suggested language may be too innocuous and may not reflect the magnitude of the problems in light of the 1996 amendments to the immigration law. The letter written by Mr. Douglas, which appears in the meeting materials for today, suggests that the text of the amended language should be changed to specifically refer to deportation, detention, and ineligibility for citizenship. This tracks the language used in the District of Columbia. The Rules Committee may wish to consider other states' language, which is more explicit.

The Vice Chair asked about the meaning of the term "detention." Mr. Douglas responded that it means that if someone were in custody for a state offense, the Immigration and Naturalization Service (INS) could detain the person because he or she has become automatically deportable. The Chair asked if the INS has to wait until the person is convicted before it can detain someone, or if the INS can detain the person after he or she has been arrested. Mr. Douglas replied that the INS does not have to wait for a conviction. The Chair pointed out that the advice of rights is always given to a defendant well after the defendant's arrest, and he questioned the utility of

advising the defendant about the immigration consequences at the guilty plea proceeding. Mr. Douglas answered that the reference to detention at the guilty plea proceeding is important. Many defendants do not understand that they are still subject to detention even if they are discharged by the court.

Judge Vaughan commented that if someone is in the United States illegally, it should be no surprise to that person that he or she is subject to detention. The amendments to the Rule do not address the distinction as to whether the defendant is in the United States with or without legal status. Judge Vaughan inquired if the Rule contemplates that every defendant in the courtroom is to be told about the immigration consequences. Mr. Douglas replied in the affirmative. The advice is not based on the person's immigration status. This also is an advantage in that it does not put the court in the position of having to find out who is in the U.S. legally. Judge Vaughan agreed that the Rule should not do that.

Judge Rinehardt noted that the Honorable Audrey Carrion, a judge of the District Court and someone of Hispanic heritage, had asked the judges of the District Court in Baltimore City to give a version of the advice about immigration consequences at every guilty plea proceeding. Baltimore City does not have as many non-citizens as Montgomery County does. Mr. Douglas said that the purpose of the amendments to the Rule is to ensure that the advice is given across the board, which would keep the bench from having to make an inquiry

as to the defendant's immigration status. This is important because the INS is permitted to make use of any records. This would include a statement made in court about one's immigration status.

Mr. Dean commented that this is one of the thorniest issues he deals with as Acting State's Attorney for Montgomery County. The county has a large number of non-citizens. He asked where the line should be drawn. This is a matter of policy and is not a constitutional issue. It should not be a game when a guilty plea is voluntarily given and is constitutional. Mr. Johnson inquired whether the Subcommittee specifically rejected the more specific language. Judge Johnson responded that the Subcommittee used the ABA language before they knew about the language adopted by some other states.

The Vice Chair asked if there are any other immigration consequences besides deportation, detention, or ineligibility for citizenship. Mr. Douglas answered that those are all of the possible immigration consequences. The ABA language is misleading because it assumes the defendant has legal status, even though many people do not have status. The Chair suggested that the following language be added to the end of the first sentence of section (e): "such as detention, deportation, or ineligibility for citizenship." The Vice Chair noted that Mr. Douglas had expressed concern about the word "status."

Judge McAuliffe stated that the proposed changes to Rule

4-242 may be overkill, making it difficult to take a guilty plea. One of the problems the Rule is trying to address is getting non-citizens to understand the consequences of a guilty plea. The Rule should be limited to providing advice to non-citizens. Most criminal cases do not involve the forfeiture of property, and the loss of civil rights is relatively inconsequential as is the disqualification from governmental benefits. The potential consequence that is the main problem is the change in immigration status. The Chair pointed out that some consideration should be given to advice about enhanced punishment, to avoid a later post conviction proceeding in which the defendant alleges that his or her attorney never advised the defendant about a mandatory minimum sentence.

Ms. Estrada told the Committee that the recent changes in the immigration law have created a world of headaches. One of the burdens is on the judiciary. As soon as the Hispanic Bar Association realized the consequences of the statutory changes, the Bar Association lawyers had to figure out ways to teach the Hispanic population and the bar. The ABA language does not do the job informing non-citizens of the immigration consequences of pleading guilty. The District of Columbia changed its required language in 1983 to include what a defendant must be advised, and to also include that if this advice is not given, the plea is invalid.

Mr. Hochberg pointed out that if a judge does not give the advice provided for in Rule 4-242, nothing will happen. The Chair

said that the way the Rule is written now, for someone born and raised in Baltimore, no guilty plea can be invalidated on the basis that the person was not given the advice about immigration. The Chair suggested that the following language be deleted from section (e): "the forfeiture of property, the loss of certain civil rights, disqualification from certain governmental benefits." Judge McAuliffe suggested that the word "enhanced" should be changed to "more severe."

Mr. Dean questioned whether the judge taking the guilty plea is supposed to ask the defendant if he or she is a citizen. The Chair replied that the judge is not supposed to ask the defendant this. Mr. Dean expressed the view that the Rule should make clear that the judge is not to inquire about the defendant's legal status. The Chair suggested that a Committee note be added which would provide that Rule 4-242 does not envision the judge questioning the defendant of his or her legal status; rather its purpose is to advise defendants of the consequences of a guilty plea. The Committee agreed by consensus with this suggestion. Mr. Douglas responded that this is an important point. The Committee note should be very clear. The Chair added that the Rule should not confuse judges.

The Vice Chair expressed her disagreement with the fact that if a judge fails to advise the defendant about the consequences of a guilty plea, no remedy exists, even if the defendant suffers dire consequences. Some other states provide that if the advice is not

given, the plea can be invalidated. The Chair pointed out that there are two aspects to this. One is that the defendant can get post conviction relief based on inadequate advice of counsel. The Rule says that the guilty plea cannot be attacked, but does not preclude post conviction relief. U.S. citizens may not ask for their pleas to be set aside because the judge did not give the advice about immigration consequences. If a particular defendant is unfairly prejudiced, that defendant's right to competent defense counsel should cover this situation. The Rule could refer to the remedy of post conviction, but not to the remedy of filing an application for leave to appeal, which would create a floodgate of cases for the courts, some of which may involve people who are already U.S. citizens. Judge Johnson cautioned that since this is a "sea change," the Committee has to be careful drafting the proposed language. A judge may forget to give the advice if the defendant will suffer no consequences from the guilty plea. The Chair said that as the Rule is written now, proof that the advice on collateral consequences of the guilty plea was not given is not a sufficient basis for an appellate court to invalidate the plea. Other grounds are needed, such as incompetence of counsel. This promotes judicial economy.

Mr. Brault questioned whether a trial judge would be able to set aside the guilty plea if the Rule is adopted as drafted. The language seems to preclude this. He suggested that in the first sentence of section (e), the word "does" could be changed to the word

"may" so that the sentence would begin as follows: "Although the omission of advice concerning the collateral consequences of a plea may not render the plea invalid...". Judge McAuliffe commented that the trial judge could set the plea aside as long as there is jurisdiction to do so. Mr. Brault argued that the language of the Rule precludes this. Judge McAuliffe responded that the plea is not per se invalid. The advice is not constitutionally required, although there is agreement that it should be given. Judges should be educated that they ought to do this. If "ought to" is not enough, the next step could be that the advice is mandatory. The amendments to the Rule are a good incremental step.

The Chair asked Judge Rinehardt if the judges are implementing Judge Carrion's suggestion to give this advice. Judge Rinehardt replied that the advice is given sporadically. Judge Vaughan remarked that most defendants who are pleading guilty will say "yes" to anything. The Vice Chair noted that Mr. Brault had made the point that the first sentence of section (e) is misleading. The trial judge who has jurisdiction can do whatever he or she wants, although the first sentence of (e) seems to provide otherwise. Judge Rinehardt said that in the cases she sees, the defendant is not given notice by the INS within 90 days, the period when the judge has advisory power -- sometimes it is two years later until the defendant is notified of deportation by the INS.

Mr. Brault reiterated that the way the Rule is written, the

guilty plea cannot be set aside. Mr. Dean suggested that a Committee note could be added which would provide that this provision does not affect the revisory power of the court. Judge Rinehardt clarified that this is the 90-day period. The Chair said that there may be a hiatus, such as if the judge orders a pre-sentence investigation, before the 90-day period begins to run. The judge can permit the defendant to withdraw the plea at sentencing, if the defendant found out there were consequences stemming from his or her guilty plea. Judge Rinehardt pointed out that this does not happen in the District Court where there are no pre-sentence investigations, and proceedings take place much more rapidly.

The Chair suggested that the words "render the plea invalid" be changed to the language, "require that the plea be declared invalid," so that the beginning of section (e) would read as follows: "Although the omission of advice concerning the collateral consequences of a plea does not require that the plea be declared invalid...". Judge McAuliffe was concerned that this change would permit all defendants to argue that withdrawal of the plea should be allowed, and it could result in a flood of applications for leave to appeal. The Chair said that if the judges "ought to" give this advice, that means that there are no legal consequences for failure to give it.

Mr. Klein suggested that section (e) be styled so that there is mandatory language first, followed by language providing for the

consequences of not giving the advice. What had been suggested to be in a Committee note should be added to the body of the Rule, because it is so controversial. Mr. Dean noted that this would give a message to defense counsel as to what to advise his or her client as well as a message to the judge as to what to tell the defendant. Mr. Brault pointed out that some of the parallel provisions in other states break the rule into two parts. Two examples are California and Connecticut. One problem is the defendant who waits until the evidence is gone and then raises the issue.

The Vice Chair referred to the case of Daley v. State, 61 Md. App. 486 (1985), also referenced in the Committee note to section (e) and included in the meeting materials, and she asked if that case means that trial counsel has to inform a non-citizen of the consequences of a guilty plea. The Chair cautioned that loopholes should not be built into the Rule. He noted a case where the conviction of a disbarred attorney was reversed because the disbarred attorney had not been advised of the right to a jury trial.

Mr. Hochberg inquired if the word "shall" in the third line of section (e) is causing a problem. The Chair said that his suggested change to section (e), the substitution of the language "does not require that the plea be declared invalid" in place of the language "does not render the plea invalid" solves some of the problems. When an application for leave to appeal is filed, the applicant has to show prejudice. The fact that the advice about immigration

consequences was not given to the applicant is not sufficient to overturn the plea.

Mr. Brault asked how people get information about immi-gration consequences. Are booklets distributed? Mr. Douglas answered that, unlike people who have been naturalized, permanent residents (such as Mr. Daley, the defendant in the case in the meeting materials) do not get immigration information, because they do not take an oath in order to get permanent resident status. People get faulty information on the street. One has to think of the person who has no education and receives no official information. The Chair expressed the view that the proposed language solves the problem. Judge Rinehardt moved to adopt the proposed language, the motion was seconded, and passed with only Judge McAuliffe expressing opposition.

Ms. Estrada commented that she supported the changes being proposed to Rule 4-242. She agreed with Mr. Dean that every defendant should be advised by the court about the consequences of a guilty plea before the court accepts the plea. She suggested that instead of a Committee note providing that the court should not inquire about the defendant's legal status, this language should be put into the body of the Rule. The Chair responded that this would require that the Rule be rewritten, and this is not necessary. Should any problems arise with this, the Hispanic Bar Association can inform the Rules Committee.

Judge Vaughan remarked that the Committee note regarding the

court's colloquy with the defendant should clarify whether the court may ask if the defendant is a citizen. The Chair stated that the court may question the defendant as to whether the defendant has consulted with defense counsel about the collateral consequences of a guilty plea. Judge Vaughan noted that the defendant may be unrepresented and/or have an interpreter who needs to relay the information. The Chair said that the ABA has language to cover that situation. Mr. Dean pointed out that the defendant may have waived the right to counsel. The Chair responded that, as a practical matter, the judge always asks what was previously discussed with counsel. Judge Rinehardt remarked that the defendant may not know what this discussion means. Judge Johnson observed that the Rule cannot fix all of the problems.

The Vice Chair pointed out that in other provisions which determine the voluntariness of a guilty plea, the court, the State's Attorney, or defense counsel may do the questioning. In section (e), the obligation is on the court to do all the questioning. Judge Rinehardt remarked that as long as the questioning is done orally on the record, it does not make a difference that the court conducts the interrogation. Judge Kaplan commented that the court has to do the questioning because in 95% of the cases, the defendant is represented by a Public Defender who may be representing 60 defendants in one day. Judge Johnson noted that this varies by locale. In Prince George's County, every judge conducts the questioning and the defense

attorney never does. The Chair said that if there is a particular problem, the defendant should hear from the court. Judge Kaplan observed that the court can conduct this interrogation, and defense counsel can do the rest. The Chair agreed, adding that the State's Attorney can also do the rest of the questioning. Judge Kaplan noted that defense counsel goes through the litany; if the defendant is pro se, the prosecutor can go through it. It is not necessary for the court to do everything.

Ms. Estrada pointed out that the court can ensure that the defendant has been properly advised. The Vice Chair suggested that any combination of the judge, prosecutor, or defense counsel can conduct the questioning. Judge Vaughan commented that the burden is on the State to make sure that the plea is not invalidated. The Vice Chair moved that the following language be added after the word "court" and before the word "shall" in the third line of section (e): the State's Attorney, the attorney for the defendant, or any combination." Judge Kaplan seconded the motion, and it was passed unanimously.

The Chair thanked the guests who attended for the discussion of Agenda Item 1. Ms. Estrada thanked the Rules Committee for its attention to the matter.

Agenda Item 2. Consideration of proposed new Rule 1.17, Appendix: The Maryland Lawyers' Rules of Professional Conduct (Sale of Law Practice)

Mr. Brault presented proposed Rule 1.17, Sale of a Law Practice, for the Committee's consideration.

PROPOSED NEW RULE 1.17, SHOWING CHANGES FROM A.B.A. MODEL RULE 1.17

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

CLIENT-LAWYER RELATIONSHIP

ADD new Rule 1.17 as follows:

Rule 1.17. Sale of Law Practice.

~~A lawyer or law firm may sell or purchase a~~ A law practice, including goodwill, may be sold if the following conditions are satisfied:

(a) ~~The seller ceases to engage in the private practice of law [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;~~ Except in the case of death or disability, the entire practice that is the subject of the sale has been in existence at least five years prior to the date of sale;

(b) The practice is sold as an entirety to another lawyer or law firm;

(c) Actual written notice is given to each of the seller's clients regarding:

(1) the proposed sale;

(2) the terms of any proposed change in the fee arrangement authorized by paragraph (d);

(3) the client's right to retain other counsel or to take possession of the file; and

(4) the fact that the client's consent to the ~~sale~~ new representation will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order ~~so~~ authorizing the transfer by a court having jurisdiction. The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale. The purchaser may, however, refuse to undertake ~~the~~ continued representation ~~unless~~ of a pending matter if the client ~~consents~~ refuses to pay the purchaser legal fees at a rate not exceeding the fees charged by the ~~purchaser~~ selling attorney for rendering substantially similar services prior to the ~~initiation of the purchase negotiations~~ sale of the practice.

COMMENT

~~[1]~~ The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice and another lawyer or firm takes over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6

Termination of Practice by the Seller.-- ~~[2]~~ The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchaser. The fact that a

number of the seller's clients decide not to be represented by the purchaser but take their matters elsewhere~~, therefore,~~ does not therefore result in a violation. ~~Neither does a return to private practice as a result of an unanticipated change in circumstances result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office.~~ The purchase agreement for the sale of a law practice may allow for restrictions on the scope and time of the seller's reentry into practice.

~~[3] The requirement that the seller cease to engage in the practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity which provides legal services to the poor, or as in-house counsel to a business.~~

~~[4] The Rule permits a sale attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographic area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17 (a).~~

Single Purchaser.-- ~~[5]~~ The Rule requires a single purchaser. The prohibition against piecemeal sale of a practice protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The

purchaser is required to undertake all client matters in the practice, subject to client consent. If, however, the purchaser is unable to undertake all client matters because of a conflict of interest in a specific matter respecting which the purchaser is not permitted by Rule 1.7 or another rule to represent the client, the requirement that there be a single purchaser is nevertheless satisfied.

Client Confidences, Consent and Notice.-- ~~[6]~~ Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

~~[7]~~ A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that

the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered *in camera*. ~~(A procedure by which such an order can be obtained needs to be established in jurisdictions in which it presently does not exist.~~

~~[8]~~ All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser.-- ~~[9]~~ The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser, unless the client consents after consultation. ~~The purchaser may, however, advise the client that the purchaser will not undertake the representation unless the client consents to pay the higher fees the purchaser usually charges.~~ To prevent client financing of the sale, the higher fee the purchaser may charge, with the client's express consent, must not exceed the fees charged by the purchaser for substantially similar service rendered prior to the initiation of the purchase negotiations.

~~[10]~~ The purchaser may not intentionally fragment the practice which is the subject of the sale by charging significantly different fees in substantially similar matters. Doing so would make it possible for the purchaser to avoid the obligation to take over the entire practice by charging arbitrarily higher fees for less lucrative matters, thereby increasing the likelihood that those clients would not consent to the new representation.

Other Applicable Ethical Standards.-- ~~[11]~~ Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to ~~involving~~ the involvement of another lawyer in the representation of a

client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure client consent after consultation for those conflicts which can be agreed to (see Rule 1.7); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

~~[12]~~ If approval of the substitution of the purchasing attorney for the selling attorney is required by the rules of any tribunal in which a matter is pending, ~~such~~ that approval must be obtained before the

matter can be included in the sale (see Rule 1.16).

Applicability of the Rule.-- ~~[13]~~ This Rule applies to the sale of a law practice by representatives of a deceased~~,~~ or disabled lawyer, or one who has disappeared ~~lawyer~~. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

~~[14]~~ Admission to or retirement from law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

~~[15]~~ This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice. This Rule does not prohibit an attorney from selling his or her interest in a law practice.

Mr. Brault told the Committee that some time ago, Walter E. Laake, Jr., Esq., of the Prince George's County Bar Association, had brought up the problem that sole practitioners or unincorporated law firms could not sell a law practice, including goodwill, which incorporated law firms could do. Mr. Brault had suggested the addition of a new rule to take care of the problem. The Honorable Louis A. Becker, III, a judge of the District Court of Maryland, was also very interested in this issue. He attended the Subcommittee

meeting in which the proposed Rule was drafted. After the draft was distributed, the consultants suggested more changes to it, and Judge Becker's written suggestions are included in the meeting materials.

Mr. Laake said that he had read articles in the ABA Journal and the National Lawyers Weekly about this problem. He had asked his partner, Michael Jackley, Esq., to look into this. The rule in Maryland is that a sole practitioner can only sell a law practice for book value, including the accounts receivable and the value of the assets. The ABA recommended that this be changed, and some states are already amending their rules. The draft that has been distributed in the meeting materials is 100% better than what there is now.

Mr. Brault noted that some problems came up when the Rule was being discussed by the Subcommittee. Judge McAuliffe was concerned about the possibility of a broker going into the business of buying and selling law practices. To avoid this, a time frame was included in the Rule which requires an attorney to have been in practice for at least five years before the practice can be sold, except in the case of death, disability, or retirement. Another problem was ensuring that the client of the selling attorney has the absolute right to choose successor counsel. Some general law practices are sold to a purchaser who is more specialized, and the question arose as to whether the practice could be sold in pieces. Another issue was whether an attorney who sells a practice should be restricted

from practicing law after the sale. Also discussed was the issue of the takeover of practices by court-appointed conservators. Should the conservator be permitted to solicit cases, and could the clients be charged more money? Mr. Brault expressed the view that the Subcommittee's draft of the Rule addresses these issues well. He pointed out that Mr. Jackley had sent a letter in which he expressed his opposition to the requirement that a lawyer must have practiced five years before the practice can be sold.

Mr. Klein questioned as to how the five years is calculated -- is it from the time the attorney hangs out a shingle or from the time the first file is opened? Mr. Brault answered that the time is calculated from the time the shingle was hung up. The Vice Chair asked why the five-year time period is necessary. She pointed out that a young attorney could have created a wonderful practice in three years. Judge Johnson commented that at this time, the sole law practice, including goodwill, cannot be sold at all. Mr. Hochberg inquired whether the proposed Rule covers abandonment of a law practice. Mr. Brault responded that abandonment is covered in current Rule 16-717 and proposed Rule 16-741, Conservator of Clients' Affairs. In partnerships, this is covered in the partnership agreement. Incorporated law firms are covered by the Professional Corporation Act.

The Chair suggested that the word "entire" be deleted from section (a), and the Committee agreed by consensus with this

suggestion. The Reporter asked why the Subcommittee decided not to adopt the ABA Model Rule in section (a). Mr. Brault replied that the Subcommittee had a lengthy discussion, and they concluded that it was not necessary to provide for non-compete agreements in the Rule. This is a common business problem, and it can be taken care of in business contracts. The Chair added that the Subcommittee did not want to prevent the selling attorney from being able to handle pro bono cases or practice law with a legal clinic.

Mr. Brault noted that proposed Rule 1.17 does not cover a disbarred attorney. Mr. Hirshman added that the courts in Maryland have not recognized selling goodwill for an attorney who has been disbarred. Mr. Brault stated that the main focus is that the spouse of a sole practitioner who has to sell the attorney's law practice should be in an equal position to the spouse of other attorneys. The Vice Chair asked why an incorporated law firm is able to sell a practice including goodwill, but not an unincorporated firm. Mr. Brault replied that the value of corporate stock includes goodwill.

Mr. Brault noted that section (b) of the proposed Rule is taken directly from the ABA Model Rule. Section (c) is also taken from the ABA Rule. The Vice Chair asked when notice is to be given. In the commentary, there is a provision which says that the client has to consent to the sale. Mr. Brault said that this provision was deleted from the proposed Rule. The Chair suggested that the commentary be conformed, and the Committee agreed to this suggestion by consensus.

The Vice Chair questioned the timing of the notice -- is it appropriate to give the notice on the same day as the closing of the sale? Mr. Brault explained that the Subcommittee's view was to provide an ethical notice to clients concerning substitution of counsel. The Chair suggested that the notice provision could state that notice is to be given prior to the sale. Mr. Brault remarked that notice could be given on the day of the sale. The Chair suggested that in the first clause of section (c), the word "is" should be changed to the words "has been." The Committee agreed by consensus to this change.

Mr. Hirshman pointed out that the selling attorney may have escrow money of clients, and the clients have a right to those funds. Ms. Ogletree suggested that language be added to subsection (c)(3) to indicate that a client has the right to take possession of his or her property. The Chair suggested that subsection (c)(3) read as follows: "the client's right to retain other counsel, to take possession of the file, and to obtain funds to which the client is entitled." Mr. Hirshman suggested that the words "or other property" be added in after the word "funds" and before the word "to." The Committee agreed by consensus to these changes.

Mr. Klein commented that the word "sent" might be better than the word "given" in section (c). The Vice Chair suggested that the word "mailed" would be preferable. Ms. Ogletree added that the language should be "mailed to the last known address." The Chair

suggested that section (c) begin as follows: "Actual notice has been mailed to the last known address of each of the seller's clients." The Committee agreed to this change by consensus. Mr. Johnson inquired as to who gives the notice. Judge Rinehardt answered that the buyer gives the notice. Mr. Johnson commented that the buyer has the obligation to the clients. He suggested that the Rule provide who has the obligation to give the notice.

Ms. Ogletree observed that it may be a breach of client confidentiality to give out the client's address ahead of time. Mr. Johnson questioned as to who looks at the files if the attorney whose practice is being sold is deceased. The Chair said that the notice is a condition precedent to the sale, and it does not matter who gives the notice. Mr. Johnson asked how someone would challenge the sale. Judge Vaughan responded that it would be a matter of the client challenging the new legal representation, not the sale. Mr. Brault noted that the Rule is not designed to have the client's consent to the sale. What is important is that each client of the seller gets another attorney. The seller should give the notice, unless the seller is incapable of doing so. Mr. Hochberg observed that the person who is the most interested in keeping the clients is the buyer.

The Vice Chair pointed out that the commentary indicates that the selling attorney cannot give information about a client to the purchasing attorney, unless the client consents. The commentary

also provides that the client gets written notice of the sale, but the Rule does not contain the timing of this. Judge Vaughan said that there are two different situations to consider. One is where a conservator is appointed, and one is where someone is buying a law practice and wants to know how many clients there are. The Chair questioned whether the names and addresses of the clients are confidential. The term "client-specific information" in the commentary could be changed. Mr. Brault commented that the confidential information relates to the subject matter of the representation and the file, not the name and address of the client. The Vice Chair clarified that she is questioning the timing of the notice. Mr. Brault observed that as a practical business matter, notice is usually given well in advance. The buyer will not pay money for the practice without information about the clients.

The Chair suggested that in place of the words "client-specific information" in the commentary, the words "privileged information" should be substituted. Mr. Brault noted that the identity and address of clients may be privileged. Ms. Ogletree remarked that the seller can work all this out. The Chair responded that the seller may be incapacitated. Mr. Johnson reiterated that the seller has the obligation to the client. The Chair said that it would be unusual if the identity of the client were privileged information. Ordinarily the notice will be furnished by the seller. Judge Vaughan added that this is the case, if possible. Mr. Brault added that if an attorney

disappears, the conservator will handle the files of the disappearing attorney.

The Chair suggested that language could be added to the Rule which provides that except in cases of death or disability, notice shall be furnished by the seller. Mr. Brault pointed out that there may be a court-appointed personal representative. He expressed the view that the Rule should be left as it is. If there are problems with confidentiality, the Office of Bar Counsel can take care of them. Ms. Ogletree observed that the commentary needs to be conformed to the change in section (c) substituting "mailed" for "given."

Mr. Klein noted that in subsection (c)(4), the second paragraph begins: "[i]f a client cannot be given notice...". Mr. Brault suggested that this be changed to "[if] a client cannot be located...". Mr. Laake suggested that the sentence begin: "[i]f notice is returned and the client cannot be located...". Ms. Ogletree asked what happens to the many years of closed files that the selling attorney has. Mr. Laake answered that only the open files are transferred in the sale. Ms. Ogletree pointed out that in real estate files, there are many years of title notes in the closed files. Mr. Brault inquired if the title notes are privileged. Ms. Ogletree replied that they do contain information that is not part of the public record. Mr. Brault remarked that the title notes are work product. Ms. Ogletree remarked that in her area, people buy the

files to get the title notes. The Chair stated that there is no need to give notice about non-privileged work product in a closed file. Ms. Ogletree added that some files contain financial statements, which are privileged. The Chair disagreed, stating that they are not privileged. Mr. Brault asked why financial statements are given. Ms. Ogletree said that they are given in a private mortgage. Judge Kaplan added that they are given to the mortgagee. The Chair commented that somewhere in the file there are settlement sheets which are not privileged, a loan application which is not privileged, and the title notes. The attorney who sells the files does not have to give notice to the former client merely because privileged information possibly is on file. The Vice Chair observed that the buyer and seller can work this out. Notice can be sent out about all the files, and non-privileged information can be given to the purchaser. Mr. Brault said that the purchaser is bound by the same rules as the seller regarding privileged information. The Chair suggested that language be added to the commentary stating that privileged information in the hands of the seller remains privileged after the sale of the practice takes place.

The Vice Chair asked about the purpose of the 90-day period to object -- does the purchaser find out what he or she is getting during the 90 days? The Chair responded that the client gets notice, so that the client can change counsel. Mr. Brault said that notice goes to the existing clients of the seller. The Subcommittee did not

discuss notice to former clients. The ongoing clients fall within the purview of section (c). The Chair suggested that to clarify the ambiguity, the word "present" should be added in section (c) before the word "clients" and after the word "seller's." The Vice Chair asked the meaning of the word "present" -- does it include clients whose case is over? Some clients present themselves every year or two with a new case. Mr. Hirshman noted that in a conservatorship, the conservator will look through the files, even if they are closed. Original wills are kept. The Chair commented that certain obligations transcend the Rule. The obligation of the attorney does not decrease even if he or she sells the files. The Rule can be structured so that notice is to be given to every client or to present clients. The purchasing attorney can send notice to all clients. The Vice Chair remarked that it would be every client intended as part of the purchase. The Chair responded that this would be up to the buyer and seller. In a worker's compensation practice, the buyer would want all the claimants to be notified of the sale of the practice, but in a criminal practice, not every client who is on death row would be notified. Adding in the word "present" indicates that the clients with the active files are to be notified. The Vice Chair expressed the opinion that it is a mistake to add the word "present" to section (c). Common sense can be applied in reading the Rule. The Chair reiterated that the word "present" clarifies the meaning. The confusion needs to be cleared

up.

Mr. Brault explained that not every single client has to be notified. In his practice, files are not routinely given back to the clients. In the Maryland Rules of Professional Conduct, Rule 1.15 provides that a client's property has to be held for five years. Holding property incurs a tremendous storage cost. A law practice cannot afford to keep files after five years. Rule 1.17 should not create the inference that former clients can get their files. The word "present" added in section (c) is appropriate. Mr. Hochberg inquired if a former client has the opportunity to obtain his or her former papers. Mr. Brault answered that before five years have passed, the client could get the files. The Chair commented that the Rule should not be worded so that five minutes before the sale of the practice, the client did not have the right to the files, but once the practice is sold, the client can sue to get the files.

Mr. Hochberg asked if the word "present" should be added to section (c). Ms. Ogletree expressed the opinion that the Rule is a trap without the addition of the word "present." Judge Johnson inquired if files are screened before they are discarded after five years. Mr. Brault said that in his office after the appeal process is over, the documents are returned to the file. The will files are not destroyed after five years, but the others are screened at closure and a destruction date notation is made. Judge McAuliffe inquired about the work product aspect of this. Ms. Ogletree

responded that half of her storage is comprised of the real estate files which she never throws away. These clients have to be notified as to where the file is going.

The Chair asked whether the Rule should require notice to present clients or to all clients. Mr. Brault moved that the word "present" be added in before the word "client," and the motion was seconded. The motion carried with two opposed.

The Reporter pointed out that in subsection (c)(4), the language which reads "within ninety (90) days of receipt of the notice should be changed to "within ninety (90) days of the mailing of the notice." The Committee agreed by consensus to this change.

Mr. Laake commented that according to subsection (c)(4), there will be a new attorney within 90 days. He questioned whether this time frame is longer than is necessary. He expressed the view that a 30-day time period is adequate. He also noted that under subsection (c)(2), the buyer is permitted to get rid of the "chaff" and keep the "wheat" as far as the cases go. It is unfair to let the buyer change the existing fees, so that he or she can get rid of the cases which are not desirable. The Chair pointed out that the first sentence of section (d) provides that the clients' fees shall not be increased by reason of the sale. Mr. Laake suggested that the Rule could provide that the sale would include the legal fees previously agreed to. The buyer knew the fee arrangements before he or she bought the practice. Mr. Hochberg asked how the buyer would know. Mr. Laake replied that

the buyer could have asked the seller. Mr. Hochberg remarked that the seller of the practice may be the attorney's widow or widower.

The Vice Chair observed that section (d) provides that the purchasing attorney may refuse to represent the client only if the client fails to pay the rates charged by the selling attorney. Mr. Laake expressed his concern about the last part of section (d). Mr. Brault noted that the Subcommittee felt that the fees should be determined by the purchaser. The Chair suggested that this should be left to the attorney and the client. Section (d) should be deleted, and subsection (c)(2) should be modified accordingly. The Vice Chair commented that the ABA version of the Rule provides that an attorney should not be allowed to get rid of the cases which are less desirable by changing the hourly rate. Judge Vaughan remarked that this is a contractual relationship between the client and attorney. The Chair said that the client can pay the new attorney's charges or find another attorney. Judge Vaughan hypothesized a situation where the selling attorney had agreed to a $500 fee for representing a client on a charge of driving while under the influence of alcohol, and the new attorney will only take on the case for a fee of $1500. The Chair commented that the client can go to court to enforce the lower fee.

Mr. Brault observed that the proposed Rule cannot solve all of the problems associated with it. He agreed that section (d) should come out, and the parties will work out their own arrangements. The

Chair suggested that a Committee note be added which would state that the sale of a law practice does not mean that the appearance of a lawyer who is in a case will be stricken. The Committee agreed by consensus to the deletion of section (d), the modification of subsection (c)(2), and the addition of the Committee note.

The Reporter asked about Mr. Laake's proposal to change the 90-day time period in subsection (c)(4) to 30 days. Mr. Brault commented that if the seller cannot continue the practice, he or she may have to get a court order to obtain a conservatorship, and there may be time-sensitive deadlines. The Vice Chair expressed the view that 90 days is too long. Mr. Brault noted that the ABA Rule used 90 days. Judge Vaughan suggested that the time period be decreased. There is a distinction between a disabled and a selling attorney. The selling attorney can apprise the purchaser as to what is in the file. Judge Kaplan suggested that the time period be 60 days, and the Committee agreed by consensus to this suggestion.

Mr. Brault presented Rule 5.4, Professional Independence of a Lawyer, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT LAW FIRMS AND ASSOCIATIONS

AMEND Rule 5.4 for consistency with new Rule 1.17, as follows:

Rule 5.4. Professional Independence of a Lawyer.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or representative of that lawyer the agreed upon purchase price.

~~(2)~~ (3) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and

~~(3)~~ (4) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

COMMENT

The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

Code Comparison.-- DR 3-102 (A) provides that "A lawyer or law firm shall not share legal fees with a nonlawyer ... ." DR3-103 (A) provides that "A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." DR 5-107 (B) provides that "A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services." DR5-107 (C) provides that "A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if: (1) A nonlawyer owns any interests therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; (2) a nonlawyer is a corporate director or officer thereof; or (3) a nonlawyer has the right to direct or control

> the professional judgment of the lawyer." EC 5-24 states that "A lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law, if any director, officer, or stockholder of it is a nonlawyer. Although a lawyer may be employed by a business corporation with nonlawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman. Various types of legal aid offices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is not interference in the relationship of the lawyer and the individual client her serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between him and the organization and provides for his independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain his professional independence remains constant...."

Rule 5.4 was accompanied by the following Reporter's Note.

> This Rule is proposed to be amended to provide as an exclusion to the general rule that a lawyer not share legal fees with a non-lawyer, the sale of a law practice, which is covered in proposed new Rule 1.17. This change would allow a spouse, estate, or representative of the selling lawyer to receive the monies realized from the sale.

Mr. Brault explained that the proposed amendment to Rule 5.4 provides an exclusion to the general rule that a lawyer may not split fees with a non-lawyer. The amendment would allow a spouse or

representative of a selling lawyer to receive the monies received from the sale of a law practice. There was no discussion of Rule 5.4, so the amendment was approved as presented.

Mr. Brault presented Rule 5.6, Restrictions on Right to Practice, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT LAW FIRMS AND ASSOCIATIONS

AMEND Rule 5.6 for consistency with new Rule 1.17, as follows:

Rule 5.6. Restrictions on Right to Practice.

A lawyer shall not participate in offering or making:

(a) a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement~~,~~ or the sale of a law practice pursuant to Rule 1.17; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

COMMENT

An agreement restricting the right of partners or associates to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreement except

for restrictions incident to provisions concerning retirement benefits for service with the firm and restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

Code Comparison.-- Rule 5.6 is substantially similar to DR 2-108.

Rule 5.6 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to allow restrictive covenants as to when and where an attorney may practice after the attorney sells a law practice pursuant to new Rule 1.17.

Mr. Brault explained that the amendment to Rule 5.6 would allow restrictive covenants as to when and where an attorney may practice after the attorney sells his or her law practice. There was no discussion of Rule 5.6, so the Rule was approved as presented.

Mr. Brault presented Rule 7.2, Advertising, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT INFORMATION ABOUT LEGAL SERVICES

AMEND Rule 7.2 for consistency with new Rule 1.17, as follows:

Rule 7.2. Advertising.

(a) Subject to the requirements of Rules 7.1 and 7.3 (b), a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television advertising, or through communications not involving in person contact.

(b) A copy or recording of an advertisement or such other communication shall be kept for at least three years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule, ~~and~~ may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization, and may pay for a law practice purchased in accordance with Rule 1.17.

(d) Any communication made pursuant to this Rule shall include the name of at least one lawyer responsible for its content.

(e) An advertisement or communication indicating that no fee will be charged in the absence of a recovery shall also disclose whether the client will be liable for any expenses.

Cross reference.-- Maryland Rule of Professional Conduct 1.8 (e).

(f) A lawyer, including a participant in an advertising group or lawyer referral service or other program involving communications concerning the lawyer's services, shall be personally responsible for compliance with the provisions of Rules 7.1, 7.2, 7.3, 7.4, and 7.5 and shall be prepared to substantiate such compliance.

COMMENT

To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or over-reaching.

This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the layer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have

had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of law and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paragraph (a) permits communication by mail to a specific individual as well as general mailings, but does not permit contact by telephone or in person delivery of written material except through the postal service or other delivery service.

Record of advertising.-- Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying others to recommend a lawyer.-- A lawyer is allowed to pay for advertising permitted by this Rule and for the purchase of a law practice in accordance with the provisions of Rule 1.17, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to

advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

Responsibility for compliance.-- Every lawyer who participates in communications concerning the lawyer's services is responsible for assuring that the specified Rules are complied with and must be prepared to substantiate compliance with those Rules. That may require retaining records for more than the three years specified in paragraph (b) of this Rule.

Code Comparison.-- Rule 7.2 (a) has no counterpart in the Maryland Disciplinary Rules, which spoke in terms of what advertising is prohibited rather than in terms of what is permitted. DR 2-103 (B) prohibits a lawyer from recommending to a nonlawyer the employment of the lawyer, "his partner ... or associate," except for "commercial advertising which complies with DR 2-101." DR 2-103 (A). See also DR 2-104 (A). This could have been construed as prohibiting all direct mailings seeking legal employment sent to those known to need legal services in specific matters. Such direct mailings are specifically permitted by Rule 7.2 (a), but are subject to Rule 7.3 (b) as well as Rule 7.1.

With regard to Rule 7.2 (b), DR 2-101 (D) provides that "If the advertisement is communicated over television or radio ..., a recording of the actual transmission shall be retained by the lawyer."

With regard to Rule 7.2 (c), DR 2-101 (B) provides that "A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news

item." DR 2-103 (C) provides that "A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment ... except that he may pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103 (D)."
(DR 2-103 (D) refers to legal aid and other legal services organizations.)

There is no counterpart to Rule 7.2 (d) in the Code.

There is no counterpart to Rule 7.2 (e) in the Code.

Rule 7.2 (f) is substantially the same as the last paragraph of DR 2.101 (A).

Rule 7.2 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to permit a lawyer to pay for a law practice in accordance with new Rule 1.17.

Mr. Brault explained that the proposed amendment to Rule 7.2 would permit a lawyer to pay for a law practice. There was no discussion of Rule 7.2, so the Rule was approved as presented.

Mr. Brault presented Rule 16-741, Conservator of Client Matters, for the Committee's consideration.

Rule 16-741. CONSERVATOR OF CLIENT MATTERS

(a) Appointment; When Authorized

If an attorney dies, disappears, or has been disbarred, suspended, or placed on inactive status, or has abandoned the practice of law, and no personal representative, partner, or other responsible party capable of

conducting the former attorney's affairs is known to exist, Bar Counsel may request the appointment of a conservator to inventory the attorney's files, and to take such action as seems indicated to protect the attorney's clients.

(b) Petition And Order

A petition to appoint a conservator shall be filed in ~~any~~ the circuit court in ~~the~~ any county in which the former attorney ~~last~~ maintained an office for the practice of law. Upon such proof of the facts as the court may require, the court may enter an order appointing an attorney ~~designated~~ approved by Bar Counsel to serve as conservator subject to further order of the court.

(c) Inventory

Upon accepting the appointment, the conservator shall promptly take possession of the former attorney's files, take control of the attorney's trust and business accounts, review the files and accounts, identify open matters, note those matters requiring action, and prepare an inventory of the files.

(d) Disposition of Files

~~After consulting each~~ With the consent of the client or the approval of the court, the conservator may seek to sell the practice, in its entirety, pursuant to Rule 1.17, or if circumstances require, the conservator may refer ~~that~~ the client's open matters to attorneys willing to handle such matters, ~~may~~ assist the client in finding new counsel, or~~,~~ ~~with the written consent of the client, may~~ assume responsibility for specific matters. ~~In all other matters, the conservator shall return the client's files to the client.~~

(e) Compensation

The conservator shall be entitled to periodic reimbursement from the attorney's

assets or estate for actual expenses, including reasonable hourly attorney's fees, necessarily incurred by the conservator in carrying out the order of ~~employment~~ appointment. Upon verified motion served upon the attorney at the attorney's last known address or, if the attorney is deceased, upon the personal representative of the attorney, the court may order payment to the conservator and enter ~~final~~ judgment against the attorney or personal representative for the reasonable fees and expenses of the conservator. If the conservator is unable to obtain full payment within one year after entry of judgment, the Commission in its sole discretion may authorize payment from the Disciplinary Fund in an amount not exceeding the amount of the judgment that remains unsatisfied. If payment is made from the Disciplinary Fund, the conservator shall assign the judgment to the Commission for the benefit of the Disciplinary Fund.

(f) Confidentiality

A conservator shall not disclose any information contained in a client file without the consent of the client to whom the file relates, except as necessary to carry out the order of appointment.

Source: This Rule is in part derived from former Rule 16-717 (BV17) and in part new.

Rule 16-741 was accompanied by the following Reporter's Note.

Section (a) is derived in part from former Rule BV17 a and includes an attorney who has abandoned the practice of law within its scope. See New Jersey Rule 1:20-19(a). The purpose of requesting a conservator, as stated in section (a) is derived from the second section of Rule BV17 b.

Section (b) is derived from former Rule BV17 b without substantial change, except that

Bar Counsel is no longer eligible for appointment as conservator. Instead, the court appoints an attorney approved by Bar Counsel.

Section (c) is new. It is derived in part from Rule XI §15(a) of the District of Columbia Bar and New Jersey Rule 1:20-19(a).

Section (d) is new. It is derived from Rule XI §15(h) and (i). The Committee added the provision that the court could approve referral of open matters to other attorneys, in the instance that the client's consent cannot be obtained.

Section (e) is new. The first two sentences contemplate reimbursement from the attorney's assets or estate and, to that extent, are derived from New Jersey Rule 1:20-19(f). The third sentence of section (e) confers a contingent right upon the conservator to apply to the Commission for a discretionary payment from the Disciplinary Fund for any sum that remains unsatisfied. The Committee added the final sentence which provides that the conservator assign the judgment to the Commission for the benefit of the Disciplinary Fund, if the fund made payment.

Section (f) is derived, with changes in style, from former Rule BV17 c.

Mr. Brault explained that this Rule pertains to handling abandoned law practices. Mr. Brault suggested that the language "or the approval of the court" be added into section (d) after the word "client" and the entire phrase "With the consent of the client or approval of the court" be moved to the beginning of the second sentence of section (d), which would begin as follows: "With the consent of the client or the approval of the court, the conservator may refer...". The first sentence of section (d) would read as follows: "With the approval of the court, the conservator may seek to sell the practice, pursuant to Rule 1.17." The Committee agreed by consensus to these changes.

The Chair commented that section (f) pertains to confidential or privileged information, not all information. Mr. Brault expressed the view that section (f) pertains to only privileged information. The term "confidential" is too expansive. The Committee agreed by consensus to add the word "privileged" before the word "information" in section (f).

Mr. Hochberg remarked that proposed Rule 1.17 may allow for restrictions on the practice of law. Mr. Brault said that the ABA model wants the selling attorney out of the practice of law. The issue is the reasonable restriction of the selling attorney. The Reporter noted that all of the comments will have to be conformed to

the changes made today. Judge Johnson moved to adopt the package of Rules as amended. The motion was seconded, and it passed with two dissents. The Vice Chair noted her dissent on the issue of the five-year requirement in Rule 1.17, and she commented that Mr. Jackley had expressed disagreement with this, also.

Agenda Item 3. Consideration of proposed new Rule 3-721 (Receivers)

Judge Rinehardt presented Rule 3-721, Receivers, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 700 - SPECIAL PROCEEDINGS

ADD new Rule 3-721, as follows:

Rule 3-721. RECEIVERS

(a) Applicability

This Rule applies when a receiver is appointed by the District Court to take charge of property, pursuant to the statutory provisions granting equitable jurisdiction to the court, for the enforcement of a local or state code, or to abate a nuisance.

(b) Applicability of Other Rules

Except as otherwise specifically provided in this Chapter, the procedures for making a sale of property by the receiver shall be governed by Title 14, Chapter 300 of these Rules.

(c) Bond

The court may require bond to the State of Maryland, to be filed with the court, in an amount not to exceed the value of the property.

(d) Order

An order appointing a receiver shall specify (1) the powers of the receiver, including the ability to incur expenses and create liens on the property to secure payment of those expenses, and (2) the terms of sale.

(e) Employment of Other Professionals

A receiver shall not employ an attorney, accountant, appraiser, auctioneer, or other professional without prior approval by the court.

(f) Procedures Following Sale of the Property

(1) Notice by Certified Mail

In lieu of the clerk issuing notice and publication thereof when filing the Report of Sale, the receiver shall send a notice, which states that the sale has been completed, by certified mail to the last known address of: the mortgagor; the present record owner of the property; and the holder of a recorded subordinate mortgage, deed of trust, or other recorded or filed subordinate interest, including a judgment in the property. The notice shall provide that the sale of the property shall be final unless cause to the contrary is shown within 30 days after the date of the notice.

(2) Posting of Property

The receiver shall cause the sheriff to post a notice in a conspicuous place on the property. The notice shall provide that the sale of the property shall be final unless cause to the contrary is shown within 30 days after the date of the notice.

(3) Exceptions to Sale

An exception to a sale may be filed within 30 days after the date of the notice issued pursuant to subsections (f)(1) and (f)(2) of this Rule.

(g) Final Accounting

After a sale has been ratified by the court, the receiver shall file a proposed accounting. The receiver shall send notice of the accounting to the persons listed in subsection (f)(1) of this Rule, who shall have ten days after the date of the notice to file exceptions. The court may decide exceptions without a hearing unless a hearing is requested with the exceptions.

(h) Conveyance to Purchaser

After a sale has been ratified by the court and the purchase money paid, the receiver shall promptly convey the property to the purchaser, and cause to be recorded among the land records of each county where any part of the property is located a certified copy of the docket entries, the report of sale, the final order of ratification and any other orders affecting the property.

(i) Distribution and Termination

After the final account has been ratified by the court, the receiver shall distribute the proceeds of the sale. Once the proceeds have been distributed, the receiver shall petition the court to terminate the receivership.

(j) Removal of Receiver

Removal of a receiver or of any person employed by the receiver, may be instituted on the court's own initiative or upon petition of any person having an interest in the property. A petition shall state the reasons for the requested removal and may include a request for

the appointment of a successor receiver. The court may grant or deny the relief requested with or without a hearing.

(k) Resignation of Receiver

(1) Petition to Resign

A receiver may file a petition to resign. The petition shall state the reasons for the proposed resignation and may include a request for the appointment of a successor receiver.

(2) Report of Resigning Receiver

The resigning receiver shall file with the petition a report and accounting from the date the receiver was appointed. Resignation of a receiver does not terminate the appointment until the resignation has been approved by the court. The court may grant or deny the requested relief with or without a hearing.

Source: This Rule is derived as follows:

Section (a) is in part derived from Rule 13-102 and is in part new.
Section (b) is derived from Rule 13-103.
Section (c) is derived from Rule 13-107.
Section (d) is new.
Section (e) is derived from Rule 13-301 (a).
Subsection (f)(1) if derived from Rule 14-206 (b)(2).
Subsection (f)(2) is derived from Rule 14-503 (c).
Subsection (f)(3) is derived from Rule 14-305 (d).
Section (g) is in part derived from Rule 2-543 and is in part new.
Section (h) is in part derived from Rule 14-207 (f)(1) and Rule 14-306.
Section (i) is in part derived from Rule 13-503 and is in part new.
Section (j) is in part derived from Rule 13-701 and in part from Rule 13-702.
Section (k) is derived from Rule 13-702.

Rule 3-721 was accompanied by the following Reporter's Note.

This Rule was requested by the Community Law Center because of problems that have arisen when organizations are appointed by the District Court as receivers to sell properties, many of which are vacant, at public auction. Because there are no rules, some title companies are hesitant about insuring properties that have been sold by a receiver appointed by the District Court.

Section (a) is partly derived from Rule 13-102, Scope, which is one of the Rules pertaining to receivers and assignees in the circuit court. Rule 3-721 (a) covers those areas specifically excluded from subsection (b)(2) of Rule 13-102, such as enforcement of local or state codes and abatement of a nuisance.

Section (b) is derived from Rule 13-303 (c), Applicability of Other Rules, which pertains to receivers and assignees in the circuit court. Since proposed Rule 3-721 is a District Court rule, the Title 2 Rules do not apply as they do in the circuit court receiverships, but Title 14, Chapter 300 does apply.

Section (c) is derived from a few of the salient provisions of Rule 13-107, Bond.

Section (d) is new. Neither Titles 13 nor 14 has a provision exactly parallel to this one which clarifies that the court may give the receiver certain powers and may set out the terms of the sale of the property.

Section (e) is derived from section (a) of Rule 13-301, Employment of Attorney, Account, Appraiser, Auctioneer, or Other Professional.

Subsection (f)(1) is derived from subsection (b)(2) of Rule 14-206, Procedure Prior to Sale. To simplify the procedure in the District Court, there is no publication

requirement by the clerk as there is with circuit court receiverships. Instead, the receiver sends notice to the persons who have an interest in the property informing them of the sale of the property.

Subsection (f)(2) is derived from section (c) of Rule 14-503, Process. Because there is no publication requirement, the posting provision has been added as an extra due process protection.

Subsection (f)(3) is derived from section (d) of Rule 14-305, Procedure Following Sale. It provides a simple mechanism for someone with an interest in the property to contest the sale.

Section (g) is in part derived from Rule 2-543, Auditors, but since there is no auditor available in District Court, the rule could not directly follow the circuit court receivership procedure. The receiver files the accounting and send notice of it to interested persons who have the right to file exceptions.

Section (h) is derived from subsection (f)(1) of Rule 14-207, Sale, and Rule 14-306, Real Property--Recording. It provides for the property to be conveyed to the purchaser after the sale has been ratified and for recordation of the sale transaction in the appropriate land records.

Section (i) is in part derived from Rule 13-503, Distribution, which is the distribution provision in the circuit court receivership rules. The second sentence is new and was added to provide a method to close the case.

Section (j) is mostly derived from Rule 13-701, Removal of Assignee, Receiver, or Professional, which is the removal provision in the circuit court receivership rules. The third sentence is derived from Rule 13-702, Resignation of Receiver or Assignee, in the circuit court receivership rules.

> Section (k) is derived from Rule 13-702, Resignation of Receiver or Assignee, the parallel circuit court rule. It provides the mechanism for a receiver to resign.

Judge Rinehardt introduced Anne Blumenberg, Esq., of the Community Law Center, who explained that in 1991, the Baltimore City Code was amended to allow a receiver to be appointed to oversee the sale of vacant houses when the owner is not able to renovate. This includes arranging for Code violations to be abated so that the houses can be brought up to Code standards. Her organization represents various community groups who are appointed as receivers. There have been some difficulties with title companies because of the lack of rules pertaining to these receivers. The District Court judges are also uneasy. The Community Law Center requested that rules should be developed. This request came before the circuit court receiver rules were revised.

Judge Vaughan asked if these receivers are only appointed in Baltimore City, and Judge Rinehardt responded that currently they are only appointed in Baltimore City, but they could be appointed in any county. The Chair suggested that section (a) could end with the word "property," and the remainder of the sentence could be deleted. Ms. Ogletree expressed the view that the remainder of the sentence is necessary, so it is clear to what this Rule applies. The Reporter noted that this is the flip side of Rule 13-102 (b)(2), which specifically excludes a receiver appointed to enforce building codes

or to abate a public nuisance.

Ms. Ogletree observed that this pertains to a specific type of receiver. The Vice Chair asked about the laws on this subject. Ms. Blumenberg referred to Code, Real Property Article, §14-120. The Chair asked about receivers appointed for purposes other than the sale of the vacant properties. Ms. Blumenberg explained that the Rule only applies where equity jurisdiction has been given to the court. The Chair commented that either the District Court has the authority to appoint receivers, or it does not. Judge Rinehardt suggested that a Committee note could be added which says that this Rule only applies to cases under §14-120 of the Real Property Article. Ms. Blumenberg noted that the Rule is oriented to the sale of the vacant houses.

The Chair suggested that Rule 3-721 be put on the agenda for the May Rules Committee meeting. He asked Ms. Blumenberg to provide the Reporter with the forms and orders entered in these cases. The Vice Chair also requested that a copy of the statute and the provision in the Baltimore City Code be included in the meeting materials.

The Chair adjourned the meeting.