COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A of the People's Resource Center, 100 Community Place, Crownsville, Maryland, on June 20, 2003.

Members present:

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

F. Vernon Boozer, Esq.
Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Hon. James W. Dryden
Hon. Ellen M. Heller
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Hon. William D. Missouri
Hon. John L. Norton, III
Anne C. Ogletree, Esq.
Debbie L. Potter, Esq.
Sen. Norman R. Stone, Jr.
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Shannon Simmons, Rules Committee Intern
Elizabeth B. Veronis, Esq., Legal Officer, Court of Appeals
David R. Durfee, Esq., Executive Director of Legal Affairs
Frank Broccolina, State Court Administrator
Leslie D. Gradet, Esq., Clerk, Court of Special Appeals
Albert "Buz" Winchester, III, Maryland State Bar Association

The Chair convened the meeting. He congratulated Mr. Johnson on assuming the presidency of the Maryland State Bar Association and Mr. Titus on his appointment as a United States District Court Judge.

Agenda Item 1. Consideration of certain proposed amendments to Rule 16-814 (Code of Conduct for Judicial Appointees) and Rule 16-816 (Financial Disclosure Statement - Judicial Appointees)

The Chair presented Rules 16-814, Code of Conduct for Judicial Appointees, and 16-816, Financial Disclosure Statement - Judicial Appointees, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-814 to add the phrase "except as otherwise provided" and to add language referring to the definition of judicial appointee in Rule 16-816 a, as follows:

Rule 16-814. CODE OF CONDUCT FOR JUDICIAL APPOINTEES

. . .

The Code of Conduct for Judicial Appointees as set forth in this Rule is adopted as a Rule of this Court governing the conduct of all judicial appointees. For purposes of this Rule, <u>except as otherwise provided,</u> judicial appointees are defined as: a master, examiner, auditor, referee appointed by the Court of Appeals of Maryland, the Court of Special Appeals of Maryland, a circuit court or an Orphans' Court; or a commissioner appointed by the Administrative Judge of the District Court of Maryland subject to the approval of the Chief Judge of the District Court of Maryland. <u>For purposes of filing a financial disclosure statement, a judicial appointee is defined in Rule 16-816 a.</u>

. . .

Rule 16-814 was accompanied by the following Reporter's Note.

> The Judicial Cabinet has decided that all District Court commissioners and all masters are to file financial disclosure statements. Currently, only full-time masters and District Court commissioners are required to file these statements, and any other masters or commissioners must file only if they meet the earning requirements set out in section a of Rule 16-816. Therefore, the General Court Administration Subcommittee recommends modifying section a of Rule 16-816 to reflect the change requested by the Judicial Cabinet. The Subcommittee also recommends modifying the first paragraph of Rule 16-814. Code, State Government Article, §15-610 (a) requires the Court of Appeals to adopt rules that mandate the individuals listed in §15-601 (b) to file a financial disclosure statement. The latter Code section provides that judicial appointees are defined in Rule 16-814. The changes proposed for Rule 16-814 will ensure that the Code cross references encompass the changes to Rule 16-816.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-816 a by deleting and adding certain language to reorganize it, so that all masters and District Court Commissioners as well as full-time examiners, auditors, or referees must file financial disclosure statements, and other examiners, auditors, or referees must file these statements if they meet the earning requirements set out in section a, as follows:

Rule 16-816. FINANCIAL DISCLOSURE STATEMENT - JUDICIAL APPOINTEES

a. In this Rule, "judicial appointee" includes ~~a full-time judicial appointee as defined in Maryland Rule 16-814 and~~ any master~~,~~ or District Court commissioner, as defined in Maryland Rule 16-814. It also includes examiner, auditor, or referee~~, or District Court commissioner~~ as defined in that Rule who is full-time or who earns in any calendar year, by reason of the judicial appointee's official position, compensation at least equal to the pay provided for the base step of State Pay Grade 16, as in effect on July 1 of that calendar year. If ~~a judicial appointee~~ examiner, auditor, or referee has served as such for only a portion of a calendar year, a pro rata determination of compensation shall be applied.

b. Every judicial appointee shall file with the State Court Administrator an annual financial statement on the form prescribed by the Court of Appeals. When filed, a financial disclosure statement is a public record.

c. Except as provided in paragraph d of this Rule:

(i) The initial financial disclosure statement shall be filed on or before April 15, 1989, and shall cover the period beginning on January 1, 1988, and ending on December 31, 1988.

(ii) A subsequent statement shall be filed annually on or before April 15 of each year, and shall cover the preceding calendar year or that portion of the preceding calendar year during which the judicial appointee held office.

(iii) A financial disclosure statement is presumed to have been filed unless the State Court Administrator, on April 16, notifies a judicial appointee that the judicial appointee's statement for the preceding calendar year or portion thereof has not been received.

d. If ~~an~~ a judicial appointee who files a certificate of candidacy for nomination for an elected office has filed a statement pursuant to §15-605 or §15-610 (b) of the State Government Article, Annotated Code of Maryland, the judicial appointee need not file for the same period of time the statement required by paragraph c of this Rule.

e. The State Court Administrator is designated as the person to receive statements from the State Administrative Board of Election Laws pursuant to §15-610 (b) of the State Government Article.

f. (i) Except when the judicial appointee is required to file a statement pursuant to §15-605 or §15-610 (b) of the State Government Article, Annotated Code of Maryland, a judicial appointee may apply to the State Court Administrator for an extension of time for filing the judicial appointee's statement. The application shall be submitted prior to the deadline for filing the statement, and shall set forth in detail the reasons an extension is requested and the date upon which a completed statement will be filed.

(ii) For good cause shown, the State Court Administrator may grant a reasonable extension of time for filing the statement. Whether the request is denied or approved, the State Court Administrator shall furnish the judicial appointee and the Judicial Ethics Committee with a written statement of the State Court Administrator's reasons, and the facts upon which this decision is based.

(iii) A judicial appointee who is dissatisfied with the State Court Administrator's decision may seek review by the Judicial Ethics Committee by filing with the Committee a statement of reasons for the judicial appointee's dissatisfaction within ten days from the date of the State Court Administrator's decision. The Committee may take the action it deems appropriate with or without a hearing or the consideration of additional documents.

g. (i) A judicial appointee who fails to file a timely statement, or who files an incomplete statement, shall be notified in writing by the State Court Administrator, and given a reasonable time, not to exceed ten days, within which to correct the deficiency. If the deficiency has not been corrected within the time allowed, the State Court Administrator shall report the matter to the Committee on Judicial Ethics.

(ii) If the Committee finds, after inquiry, that failing to file or the omission of information was either inadvertent or in good faith belief that the omitted information was not required to be disclosed, the Committee shall give the judicial appointee a reasonable period, not to exceed 15 days, within which to correct the deficiency. Otherwise, the Committee shall refer the matter to the State Ethics Commission. If ~~an~~ a judicial appointee who has been allowed additional time within which to correct a deficiency fails to do so within that time, the matter shall also be referred to the State Ethics Commission.

h. Violation of this Rule is grounds for disciplinary action, including removal, by the appointing authority.

Source: This Rule is former Rule 1234.

Rule 16-816 was accompanied by the following Reporter's Note.

See the Reporter's Note to proposed amendments to Rule 16-814.

The Chair explained that the Judicial Cabinet had requested that part-time District Court commissioners be required to file financial disclosure statements, and the Honorable James Vaughan, Chief Judge of the District Court had concurred. The rationale is that commissioners, including part-time ones, are empowered to

make important decisions, and they should disclose the information required on the financial disclosure statements. The Rule is still structured so that other part-time judicial service appointees who do not earn a significant amount of money are not burdened with the requirement of providing financial disclosure. Mr. Broccolina added that the financial disclosure requirement extends to part-time masters. Judge Norton noted that the corollary to this change is that part-time commissioners in rural areas, who had been somewhat poorly compensated and received no benefits, have been recently upgraded and are tending to stay in their jobs longer.

The Vice Chair suggested a style revision to the Rules: the new language in Rule 16-814 should be deleted, and in its place, a cross reference to the Code provisions should be added. Rule 16-816 should be changed to provide that it applies to full-time or part-time masters and commissioners. Mr. Bowen agreed that the only change to Rule 16-814 should be the addition of a cross reference to the applicable Code provisions. Ms. Ogletree commented that it is important that part-time examiners are not included in the requirement to file financial disclosure statements. The Vice Chair pointed out that Rule 16-816 provides that a judicial appointee must earn in any calendar year, compensation at least equal to the pay provided for the base step of State Pay Grade 16, as in effect on July 1 of that calendar year. This language prevents examiners who work minimally from being required to file financial disclosure statements. The

Chair said that the Style Subcommittee will restyle the Rules. The Committee approved the Rules as amended, subject to stylistic changes.

Agenda Item 2. Consideration of certain proposed rules changes recommended by the Appellate Subcommittee: Amendments to: Rule 8-501 (Record Extract), Rule 8-503 (Style and Form of Briefs); New Rule 1-104 (Citation of Unreported Opinions); Amendments to: Rule 8-114 (Unreported Opinions), Rule 8-504 (Contents of Brief); Amendments to: Rule 8-207 (Expedited Appeal)

Mr. Titus presented Rule 8-501, Record Extract, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 to move a phrase from the end to the beginning of section (b) and to combine subsections (2) and (3) as well as eliminate the second reference to the Court of Special Appeals, to add an extra item to the contents of the record extract in section (c) -- circuit court docket entries, to move a sentence which has been amended from section (d) to section (c), and to add a Committee note after section (c), as follows:

Rule 8-501. RECORD EXTRACT

(a) Duty of Appellant

Unless otherwise ordered by the appellate court or provided by this Rule, the appellant shall prepare and file a record extract in every case in the Court of

Appeals, subject to section (k) of this Rule, and in every civil case in the Court of Special Appeals. The record extract shall be included as an appendix to appellant's brief, or filed as a separate volume with the brief in the same number of copies.

(b) Exceptions

~~A~~ Unless otherwise ordered by the court, a record extract shall not be filed (1) when an agreed statement of the case is filed pursuant to Rule 8-207 or 8-413 (b); or (2) in an appeal in the Court of Special Appeals from juvenile delinquency proceedings, inmate grievance proceedings, ~~or~~ extradition proceedings~~,~~ or ~~(3) in~~ a criminal case ~~in the Court of Special Appeals, unless otherwise ordered by that Court~~.

Cross reference: See Rule 8-504 (b) for contents of required appendix to appellant's brief in criminal cases in the Court of Special Appeals.

(c) Contents

The record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal. It shall include the circuit court docket entries, the judgment appealed from, and such other parts of the record as are designated by the parties pursuant to section (d) of this Rule. In agreeing on or designating parts of the record for inclusion in the record extract, the parties shall not engage in unnecessary designation. The record extract shall not include those parts of the record that support facts set forth in an agreed statement of facts or stipulation made pursuant to section (g) of this Rule nor any part of a memorandum of law in the trial court, unless it has independent relevance. The fact that a part of the record is not included in the record extract shall not preclude ~~a party from relying on it or the~~ an appellate court from considering it.

Committee note: The last sentence of this section is not intended to grant the parties the right to exclude relevant evidence from the record extract, but rather to discourage designation of excessive parts of the record.

(d) Designation by Parties

Whenever possible, the parties shall agree on the parts of the record to be included in the record extract. ~~In agreeing on or designating parts of the record for inclusion in the record extract, the parties shall have regard for the fact that the entire record is always available to the appellate court for reference and examination and shall not engage in unnecessary designation.~~ If the parties are unable to agree:

(1) Within 15 days after the filing of the record in the appellate court, the appellant shall serve on the appellee a statement of those parts of the record that the appellant proposes to include in the record extract.

(2) Within ten days thereafter, the appellee shall serve on the appellant a statement of any additional parts of the record that the appellee desires to be included in the record extract.

(3) Within five days thereafter, the appellant shall serve on the appellee a statement of any additional parts of the record that the appellant proposes to include in view of the parts of the record designated by the appellee.

(4) If the appellant determines that a part of the record designated by the appellee is not material to the questions presented, the appellant may demand from appellee advance payment of the estimated cost of reproducing that part. Unless the appellee pays for or secures that cost within five days after receiving the appellant's demand, the appellant may omit that part from the record extract but shall state in the record extract the reason for the omission.

(e) Appendix in Appellee's Brief

If the record extract does not contain a part of the record that the appellee believes is material, the appellee may reproduce that part of the record as an appendix to the appellee's brief together with a statement of the reasons for the additional part. The cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607.

(f) Appendix in Appellant's Reply Brief

The appellant may include as an appendix to a reply brief any additional part of the record that the appellant believes is material in view of the appellee's brief or appendix. The appendix to the appellant's reply brief shall be prefaced by a statement of the reasons for the additional part. The cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607.

(g) Agreed Statement of Facts or Stipulation

The parties may agree on a statement of undisputed facts that may be included in a record extract or, if the parties agree, as all or part of the statement of facts in the appellant's brief. As to disputed facts, the parties may include in the record extract, in place of any testimony or exhibit, a stipulation that summarizes the testimony or exhibit. The stipulation may state all or part of the testimony in narrative form. Any statement of facts or stipulation shall contain references to the page of the record and transcript. The parties are strongly encouraged to agree to such a statement of facts or stipulation.

(h) Table of Contents

If the record extract is produced as an appendix to a brief, the table of contents required under section (a) of Rule 8-504 shall include the contents of the appendix. If the record extract is produced as a

separate volume, it shall be prefaced by its own table of contents. The table of contents shall (1) reference the first page of the initial examination, cross-examination, and redirect examination of each witness and of each pleading, exhibit, or other paper reproduced and (2) identify each document by a descriptive phrase including any exhibit number.

(i) Style and Format

The numbering of pages, binding, method of referencing, and covers of the record extract, whether an appendix to a brief or a separate volume, shall conform to sections (a) through (c) of Rule 8-503. Except as otherwise provided in this section and in section (g) of this Rule, the record extract shall reproduce verbatim the parts of the record that are included. Asterisks or other appropriate means shall be used to indicate omissions in the testimony or in exhibits. Reference shall be made to the pages of the record and transcript. The date of filing of each paper reproduced in the extract shall be stated at the head of the copy. If the transcript of testimony is reproduced, the pages shall be consecutively renumbered. Documents and excerpts of a transcript of testimony presented to the trial court more than once shall be reproduced in full only once in the record extract and may be referred to in whole or in part elsewhere in the record extract. Any photograph, document, or other paper filed as an exhibit and included in the record extract shall be included in all copies of the record extract and may be either folded to the appropriate size or photographically or mechanically reduced, so long as its legibility is not impaired.

(j) Correction of Inadvertent Errors

Inadvertent omissions or misstatements in the record extract or in any appendix may be corrected by direction of the appellate court on motion or on the Court's own initiative.

(k) Record Extract in Court of Appeals on Review of Case from Court of Special Appeals

When a writ of certiorari is issued to review a case pending in or decided by the Court of Special Appeals, unless the Court of Appeals orders otherwise, the appellant shall file in that Court 20 copies of any record extract that was filed in the Court of Special Appeals within the time the appellant's brief is due. If a record extract was not filed in the Court of Special Appeals or if the Court of Appeals orders that a new record extract be filed, the appellant shall prepare and file a record extract pursuant to this Rule.

(l) Deferred Record Extract; Special Provisions Regarding Filing of Briefs

(1) If the parties so agree in a written stipulation filed with the Clerk or if the appellate court so orders on motion or on its own initiative, the preparation and filing of the record extract may be deferred in accordance with this section. The provisions of section (d) of this Rule apply to a deferred record extract, except that the designations referred to therein shall be made by each party at the time that party serves the page-proof copies of its brief.

(2) If a deferred record extract authorized by this section is employed, the appellant, within 30 days after the filing of the record, shall file four page-proof copies of the brief if the case is in the Court of Special Appeals, or one copy if the case is in the Court of Appeals, and shall serve two copies on the appellee. Within 30 days after the filing of the page-proof copies of the appellant's brief, the appellee shall file one page-proof copy of the brief and shall serve two copies on the appellant. The page-proof copies shall contain appropriate references to the pages of the parts of the record involved.

(3) Within 25 days after the filing of the page-proof copy of the appellee's brief, the appellant shall file the deferred record

extract, and the appellant's final briefs. Within five days after the filing of the deferred record extract, the appellee shall file its final briefs.

(4) The appellant may file a reply brief in final form within 20 days after the filing of the appellee's final brief, but not later than ten days before the date of scheduled argument.

(5) In a cross-appeal:

(A) within 30 days after the filing of the page-proof copies of the appellee/cross-appellant's brief, the appellant/cross-appellee shall file one page-proof copy of a brief in response to the issues and argument raised on the cross-appeal and shall include any reply to the appellee's response that the appellant wishes to file;

(B) within 25 days after the filing of the cross-appellee/appellant's reply brief, the appellant shall file the deferred record extract, the appellant's final briefs, and the final cross-appellee's/appellant's reply briefs;

(C) within five days after the filing of the deferred record extract, the appellee shall file its final appellee/cross-appellant's briefs; and

(D) the appellee/cross-appellant may file in final form a reply to the cross-appellee's response within 20 days after the filing of the cross-appellee's final brief, but not later than ten days before the date of scheduled argument.

(6) The deferred record extract and final briefs shall be filed in the number of copies required by Rules 8-502 (c) and 8-501 (a). The briefs shall contain appropriate references to the pages of the record extract. The deferred record extract shall contain only the items required by Rule 8-501 (c), those parts of the record actually referred to in the briefs, and any material needed to put those references in context.

No changes may be made in the briefs as initially served and filed except (A) to insert the references to the pages of the record extract, (B) to correct typographical errors, and (C) to take account of a change in the law occurring since the filing of the page-proof briefs.

(7) The time for filing page-proof copies of a brief or final briefs may be extended by stipulation of counsel filed with the clerk so long as the final briefs set out in subsections (3) and (5) of this section are filed at least 30 days, and any reply brief set out in subsections (4) and (5) of this section is filed at least ten days, before the scheduled argument.

(m) Sanctions for Noncompliance

Ordinarily, an appeal will not be dismissed for failure to file a record extract in compliance with this Rule. If a record extract is not filed within the time prescribed by Rule 8-502, or on its face fails to comply with this Rule, the appellate court may direct the filing of a proper record extract within a specified time and, subject to Rule 8-607, may require a non-complying attorney or unrepresented party to advance all or part of the cost of printing the extract. The appellate court may dismiss the appeal for non-compliance with an order entered under this section.

Source: This Rule is derived from former Rules 1028 and 828 with the exception of section (l) which is derived from former Rule 833.

Rule 8-501 was accompanied by the following Reporter's Note.

The Appellate Subcommittee recommends moving the last phrase of section (b) to the beginning of that provision because it applies to the entire section and combining subsections (2) and (3) of section (b) for clarity.

The Subcommittee is in agreement with Leslie Gradet, Esq., Clerk of the Court of Special Appeals, that language should be added to section (c) of Rule 8-501 that would expand the contents of the record extract to include the circuit court docket entries. She had explained that when a case appealed to the Court of Special Appeals is sent to a three-judge panel for review, only one of the judges receives the actual record. The other two judges receive only the record extract, and including the docket entries of the circuit court would add to the overview of the case for those two judges.

The Subcommittee also recommends the addition of a Committee note after section (c) of Rule 8-501 and after section (b) of Rule 8-503. Ms. Gradet had pointed out that in 1993, the last sentence of section (c) of Rule 8-501 was added. Before this change, attorneys were fearful that they might be penalized for leaving something out of the record extract and tended to put too many items in it. The new language was intended to let attorneys know that they would not necessarily be penalized if they inadvertently left something out of the record extract. Unfortunately, some attorneys are interpreting the last sentence to mean that they need not be concerned about the contents of the record extract at all and can simply cite to the record or transcript pursuant to section (b) of Rule 8-503. The addition of the Committee notes after Rules 8-501 (c) and 8-503 (b) is intended as a reminder to attorneys and parties that they cannot bypass placing something in the record extract by simply citing to the record or transcript. Rule 8-501 (b) provides a specific list of exceptions for not putting items in the record extract, and other than in those specific categories of cases cited, attorneys must include pertinent information in the record extract.

To further clarify the Rule, the Subcommittee proposes to move the second sentence of section (d) to section (c) deleting as inapplicable the language that states that the parties should have regard

> for the fact that the entire record is always available to the appellate court for reference and examination. The Subcommittee is also deleting the language which states that a party may rely on a part of the record not included in the record extract to avoid the confusion about shortcutting citations.

Mr. Titus explained that it is not automatic that there is no record extract in the situations listed in section (b). The appellate court may want an extract in a criminal case or in an appeal from juvenile delinquency proceedings, for example. The Appellate Subcommittee recommends the addition of the introductory language of section (b) to give the appellate court discretion to request a record extract. There are two changes to section (c). The first change is to include the circuit court docket entries in the record extract. Many practitioners are not including these, and only one of the three judges on a Court of Special Appeals panel receives the full record from the lower court. The docket entries are helpful to the other two judges to provide a road map of the case.

The second change provides a message to the bar involving designation of parts of the record in the record extract. Previously, lawyers used to overload the record extract to avoid leaving anything out that the court would have considered. The last sentence of section (c) was added to reassure the bar that the court could still consider a part of the record not included in the record extract. Unfortunately, some practitioners have interpreted this provision to mean that they did not have to be

concerned about including in the record extract all parts of the record reasonably necessary for the determination of questions presented on appeal. The Subcommittee recommends moving part of a sentence from section (d) into section (c) and adding a Committee note to make the bar aware that they should not deliberately exclude relevant material from the record extract.

The Vice Chair asked if a practitioner may rely on what is in the record. Mr. Titus replied in the affirmative. The Vice Chair remarked that she reads the last sentence of section (c) to mean that a practitioner may never rely on the record. Mr. Titus noted that it is not that someone may never rely on the record, but a practitioner should not exclusively rely on it. The Vice Chair pointed out that by deleting the words "a party from relying on it," the last sentence of section (c) seems to preclude any reliance by a party on the record if it is not included in the record extract.

The Chair said that a party is not entitled to rely on the record but may ask the court to consider from the record what was excluded from the record extract. The Vice Chair commented that looking at Rule 8-501 and Rule 8-503, Style and Form of Briefs, in tandem, the Rules appear to prevent references to the record. The two Rules seem to preclude a party from relying on the record, and the language of the new Committee note after section (b) of Rule 8-503 supports this. Mr. Karceski remarked that if the language pertaining to excessive designation is stricken, counsel will engage in excessive designation.

Ms. Gradet expressed the opinion that it is important to make the changes to Rule 8-501, because many cases are filed in the Court of Special Appeals in which the briefs are full of "R" and "T" references. The parties refer to the transcript, but have not included any portion of it in the record extract. When the parties are informed about the omission, many respond by stating that the Rule allows references by "R" and "T." This happens frequently. The Vice Chair noted that an attorney may not know what he or she needs in the record extract until the brief is written. Mr. Titus remarked that the sentence in section (d) providing that parties shall not engage in unnecessary designation has been moved to section (c). Ms. Potter asked why it was moved. Mr. Titus answered that the Chair felt that this message should appear earlier in the Rule. The Vice Chair agreed with the transfer of the sentence to section (c).

Mr. Titus remarked that he and the Vice Chair had discussed deleting the last sentence of section (c). The Chair expressed his opposition to the sentence being taken out, because its removal could mean that the appellate court cannot rely on that part of the record not included in the record extract. The question is whether the party deliberately omitted something from the record extract that should have been included. If a party files a motion to amend the record extract, it is usually granted by the Court of Special Appeals. The Rule has to state that the court can look at anything. The party's inefficiency in

providing the necessary material should not be a bar to the court.

The Vice Chair pointed out that the Committee note at the end of section (c) is out of context. Mr. Sykes commented that the issue is not the mental state of the party who left something out, but it is a question of whether a significant quantity of material was left out. It is not a good idea to always preclude a party from relying on the record. The fact that a particular part of the record is not included should not preclude a party from relying on it where appropriate. This gives the ultimate control to the court, and it does not open the floodgates.

The Chair said that the problem is that some attorneys and *pro se* individuals feel that they are entitled to rely on this Rule. Relevant items are omitted from the record extract to avoid the cost of reproducing the items. Mr. Klein remarked that the issue is the party's state of mind in leaving out necessary items from the record extract. Mr. Sykes cautioned that the Rule should not be designed to lead to evidentiary hearings as to a party's state of mind.

The Vice Chair noted that the first sentence of section (c) requires that the record extract contain all parts of the record reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal. Mr. Titus suggested that the last sentence could begin with the following language: "[i]n cases of excusable neglect." Judge Heller

observed that the court has discretion regarding the payment of the costs necessary to add something to the record extract. If something is not in the record extract, two of the judges will not see it. The appellate court should be able to require reproduction of necessary materials for the record extract.

Mr. Bowen suggested that the last sentence of section (c) should use the following language: "The court may, but need not, consider a part of the record that is not included in the record extract." The Vice Chair commented that if the omission is caused by excusable neglect, the court can consider it. Mr. Titus remarked that in some cases of excusable neglect, the court may say that it is not excusable. The Vice Chair responded that the court has the ability to determine this. Other Rules have this concept in them, including Rule 1-204, Motion to Shorten or Extend Time Requirements, which allows the court discretion to permit an act to be done even if the time period to do the act already has expired, if the failure to act was the result of excusable neglect.

Mr. Brault commented that different jurisdictions have different approaches to this issue. The Court of Appeals for the District of Columbia does not require a record extract. The attorneys designate what parts of the transcript should be sent to the appellate court, and the appeals office sends whatever was designated to the court. The Chair pointed out that all of the appellate judges in D.C. are located in one place, unlike the Court of Special Appeals whose judges have offices all over the

State.

Mr. Titus expressed the opinion that excusable neglect is an appropriate standard. Mr. Brault stated that references to the record can be put into an appendix to the reply brief. Judge Heller remarked that if there is a requirement that parties have to attach as an appendix any parts of the transcript they are citing that are not in the record extract, that requirement should discourage the parties from deliberately omitting the pages from the record extract. Mr. Titus noted that in the past, attorneys would not include items that were necessary, but now with the onset of copy machines, it is much simpler to attach items for consideration by the court. Judge Heller observed that if someone cites items that are not in the record extract, these items should be required to be placed into the appendix. The Vice Chair pointed out that Rule 8-501 precludes parties from relying on a part of the record that is not included in the record extract. The Vice Chair expressed the view that both the appellee and the appellant should be allowed to include additional items in an appendix. Judge Heller suggested that the Rule combine the concept of excusable neglect and the idea of citing items that are in the record but not in the record extract by including them in an appendix.

The Chair suggested that the last sentence of section (c) could read as follows: "The fact that a part of the record is not included in the record extract or an appendix shall not preclude an appellate court from considering it." Mr. Titus

suggested that this sentence could be moved to Rule 8-503 (b). The Vice Chair pointed out that the Rule should provide that important parts of the record should go into the record extract, but if something is missed, a party can put this into an appendix. This will satisfy the goal of providing the appellate court the information it needs, while discouraging over-inclusion. She also noted that section (e) of Rule 8-501 pertains to the appendix to the appellee's brief, and section (f) pertains to the appendix to the appellant's reply brief. She stated that it should be permissible for inadvertently omitted material to be included in an appendix to the appellant's brief, also. In many cases, the appellant will file a brief, but no reply brief. She asked if the Committee agreed with this concept and suggested that the appropriate language be drafted by the Style Subcommittee. The Committee agreed by consensus to the Vice Chair's suggestion.

The Chair pointed out that the first sentence of section (b) of Rule 8-504, Contents of Brief, provides: "The appellant shall reproduce, as an appendix to the brief, the pertinent part of every ruling, opinion, or jury instruction of each lower court that deals with points raised by the appellant on appeal." He suggested that the following language could be added in an appropriate place in this sentence: "... any particular portion of the record that was inadvertently omitted from the record extract." Mr. Sykes observed that someone may leave out a portion of the record intentionally and not find out until later

that it was relevant. The Chair said that this could be referred to in a reply brief. The Rule expressly authorizes citing material that does not become relevant until later. The Reporter commented that the proposed new Committee note following section (b) of Rule 8-503 indicates that in cases where a record extract is required, one may cite only to the record extract or to the appendix, but not to the transcript or the record.

The Vice Chair expressed the view that the Committee note after section (b) of Rule 8-503 is appropriate. Mr. Bowen noted that the change to Rule 8-504 (b) may not be consistent with Rule 8-501 (c). The Chair said that the proposed modified sentence is appropriate. The appellate court is not being precluded from considering anything. Mr. Titus added that this does not address the question of whether, at oral argument, if a judge asks an attorney a question about something not included in the record extract or an appendix, the attorney may include a reference to the record or transcript in his or her answer. Mr. Brault suggested that the words "or an appendix" be added to the last sentence of Rule 8-501 (c), so that the sentence would read: "The fact that a part of the record is not included in the record extract or an appendix shall not preclude an appellate court from considering it." The Committee agreed by consensus to this change.

The Vice Chair asked if the Committee note at the end of section (c) is necessary. The Chair suggested that it be deleted, and the Committee agreed by consensus to the deletion of

the Committee note.

The Committee approved the Rule as amended.

The Chair presented Rule 8-503, Style and Form of Briefs, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 (b) to add a Committee note and section (c) to add to the items on the cover page identification of the lower court and the name or names of the lower court judges whose rulings are at issue in the appeal, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

(a) Numbering of Pages; Binding

The pages of a brief shall be consecutively numbered. The brief shall be securely bound along the left margin.

(b) References

References to the record extract shall be indicated as (E ......), to any appendix to appellant's brief as (App ......), to an appendix to appellee's brief as (Apx ......), and to an appendix to a reply brief as (Rep. App ......). Any references to material not included in the record extract or an appendix shall be indicated as (T ......) for references to the transcript of testimony contained in the record and as (R ......) for other references to the record.

Committee note: The references to the record indicated as "(R ......)" and to the transcript indicated as "(T ......)" apply only if the case falls within the exceptions listed in Rule 8-501 (b).

(c) Covers

A brief shall have a back and cover of the following color:

(1) In the Court of Special Appeals:

(A) appellant's brief - yellow;

(B) appellee's brief - green;

(C) reply brief - light red;

(D) amicus curiae brief - gray.

(2) In the Court of Appeals:

(A) appellant's brief - white;

(B) appellee's brief - blue;

(C) reply brief - tan;

(D) amicus curiae brief - gray.

The cover page shall contain the name, address, and telephone number of at least one attorney for a party represented by an attorney or of the party if not represented by an attorney. It shall also identify the lower court and contain the name or names of the lower court judge whose ruling is at issue in the appeal. The name typed or printed on the cover constitutes a signature for purposes of Rule 1-311.

(d) Length

Except as otherwise provided in section (e) of this Rule or with permission of the Court, a brief of the appellant and appellee shall not exceed 35 pages in the Court of Special Appeals or 50 pages in the Court of Appeals. This limitation does not apply to (1) the table of contents and

citations required by Rule 8-504 (a)(1); (2) the citation and text required by Rule 8-504 (a)(7); and a motion to dismiss and argument supporting or opposing the motion. Except with permission of the Court, any portion of a brief pertaining to a motion to dismiss shall not exceed an additional ten pages in the Court of Special Appeals or 25 pages in the Court of Appeals. Any reply brief filed by the appellant shall not exceed 15 pages in the Court of Special Appeals or 25 pages in the Court of Appeals.

(e) Briefs of Cross-appellant and Cross-appellee

In cases involving cross-appeals, the brief filed by the appellee/cross-appellant shall have a back and cover the color of an appellee's brief and shall not exceed 50 pages. The responsive brief filed by the appellant/cross-appellee shall have a back and cover the color of a reply brief and shall not exceed (1) 50 pages in the Court of Appeals or (2) in the Court of Special Appeals (A) 35 pages if no reply to the appellee's answer is included or (B) 50 pages if a reply is included.

(f) Incorporation by Reference

In a case involving more than one appellant or appellee, any appellant or appellee may adopt by reference any part of the brief of another.

(g) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 831 a and 1031 a.
Section (b) is derived from former Rules 831 a and 1031 a.

Section (c) is derived from former Rules 831 a and 1031 a.
Section (d) is in part derived from Rule 831 b and 1031 b and in part new.
Section (e) is new.
Section (f) is derived from FRAP 28 (i).
Section (g) is derived from former Rules 831 g and 1031 f.

Rule 8-503 was accompanied by the following Reporter's Note.

See the second paragraph of the Reporter's note to Rule 8-501 for an explanation of the addition of the Committee note after section (b).

The Subcommittee proposes to add to the cover page of an appellate brief the identification of the lower court and the name or names of the lower court judges whose rulings are at issue in the appeal. Leslie Gradet, Esq., Clerk of the Court of Special Appeals, requested this addition because there may be more than one judge involved in a case, and the Court of Special Appeals needs to know to which judge the opinion is to be sent. It will also aid the clerk's staff in identifying conflicts between Court of Special Appeals judges and circuit court judges and help attorneys to focus in on which issues of a case are being appealed.

The Chair drew the Committee's attention to the Committee note at the end of Rule 8-503 (b). The Vice Chair commented that she did not understand how there could be a reference to "T" only if it falls within the exceptions listed in Rule 8-501 (b). Ms. Ogletree noted that this requires a party to cite to the appendix by using "R" and "T." Ms. Gradet expressed the opinion that the language of the Committee note is helpful. Parties or their attorneys often feel that they can use the "R" and "T" references

any time, because the Rules do not state that this is prohibited. The Vice Chair expressed the view that the language of the Committee note should be placed into the body of the Rule to avoid the interpretation that anyone can cite to the transcript using the symbol "T." Mr. Titus suggested that the second sentence of section (b) could be changed to read as follows: "In those cases in which the record extract is not filed pursuant to Rule 8-501 (b), any references to material not included in the record extract or an appendix ...". The Chair suggested that the new language could be as follows: "If a case falls within an exception listed in Rule 8-501 (b), any references ....".

Ms. Gradet pointed out that the proposed change to section (c) provides that the cover page of a brief will contain the name of each judge whose ruling is at issue in the appeal. This will ensure that the decision in the case is sent to the correct judge or judges. The Subcommittee had debated which judges should be included in the new language. Often the pretrial judge and the trial judge are two different individuals. Judge Missouri added that there could be a ruling from the motions judge as well as the trial judge. Judge Heller remarked that in Baltimore City, there may be discovery, motions, and trial judges involved in a single case.

Mr. Bowen suggested that the new language should read: "... and contain the name of each lower court judge...". Judge Missouri suggested that the wording should be changed from: "... whose ruling is at issue in the appeal" to: "...whose ruling is

at issue on appeal." The Chair suggested that the word "lower" be deleted from the proposed language. Mr. Titus commented that if a case is in the Court of Appeals, the brief should contain the names of the judges on the Court of Special Appeals panel who had heard the case. The Chair said that the language "the judge whose ruling is at issue" could mean the author of the Court of Special Appeals opinion, unless the case was heard *per curiam*. Mr. Brault inquired as to whether the term "judge" or "lower court" would sweep in an appellate panel. Mr. Sykes suggested that the new language read as follows: "If the appeal is from a decision of a trial court, the cover page shall also name the trial court and each judge of that court whose ruling is at issue in the appeal." The Committee agreed with this suggestion. By consensus, the Committee approved the Rule as amended.

Mr. Titus presented Rules 1-104, Citation of Unreported Opinions, 8-114, Unreported Opinions, and 8-504, Contents of Brief, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

ADD new Rule 1-104, as follows:

Rule 1-104. CITATION OF UNREPORTED OPINIONS

An unreported opinion of the Court of Appeals or the Court of Special Appeals may

be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.

Source: This Rule is new.

Rule 1-104 was accompanied by the following Reporter's Note.

The Appellate Subcommittee recommends moving the second two sentences of section (b) of Rule 8-114 to Title 1 as a new Rule. The Subcommittee's view was that this language pertains to any court in the state, not only the Court of Appeals and Court of Special Appeals, and therefore belongs in Title 1. In conjunction with this, the Subcommittee recommends adding a cross reference in Rule 8-504 to the new Rule and to Rule 8-114.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-114 to delete the last two sentence of section (b), as follows:

Rule 8-114. UNREPORTED OPINIONS

(a) Not Authority

An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority.

(b) Citation

An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. ~~In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.~~

Source: This Rule is derived from former Rules 1092 c and 891 a 2.

Rule 8-114 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 1-104.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-504 to add a cross reference at the end of subsection (a)(1), as follows:

Rule 8-504. CONTENTS OF BRIEF

(a) Contents

A brief shall comply with the requirements of Rule 8-112 and include the

following items in the order listed:

(1) A table of contents and a table of citations of cases, constitutional provisions, statutes, ordinances, rules, and regulations, with cases alphabetically arranged. When a reported Maryland case is cited, the citation shall include a reference to the official Report.

Cross reference: Citation of unreported opinions is governed by Rules 1-104 and 8-114.

(2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court, except that the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief.

(3) A statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

(4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract supporting the assertions. If pursuant to these rules or by leave of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record.

Cross reference: Rule 8-111 (b).

(5) Argument in support of the party's position.

(6) A short conclusion stating the precise relief sought.

(7) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.

(8) If the brief is prepared with proportionally spaced type, the font used and the type size in points shall be stated on the last page.

Cross reference: For requirements concerning the form of a brief, see Rule 8-112.

(b) Appendix

The appellant shall reproduce, as an appendix to the brief, the pertinent part of every ruling, opinion, or jury instruction of each lower court that deals with points raised by the appellant on appeal. If the appellee believes that the part reproduced by the appellant is inadequate, the appellee shall reproduce, as an appendix to the appellee's brief, any additional part of the instructions or opinion believed necessary by the appellee.

(c) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 831 c and d and 1031 c 1 through 5 and d 1 through 5, with the exception of subsection (a)(6) which is derived from FRAP 28 (a)(5).
Section (b) is derived from former Rule 1031 c 6 and d 6.
Section (c) is derived from former Rules 831 g and 1031 f.

Rule 8-504 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 1-104.

Mr. Titus explained that Rule 1-104 contains the first two sentences of current Rule 8-114, Unreported Opinions. The Appellate Subcommittee's opinion is that this language applies to all courts in the State and not simply to the Court of Special Appeals and the Court of Appeals. The Vice Chair asked why this change is necessary. Mr. Titus replied that the Subcommittee is of the opinion that part of Rule 8-114 should be placed in the general Title 1 Rules. The Rule does not address unreported opinions of courts of other states, which are governed by the other states' rules. It addresses the unreported opinion of an appellate court in Maryland.

The Vice Chair asked how often trial court judges see unreported appellate opinions. She noted that sometimes unreported opinions are very helpful. Mr. Titus responded that an indication of the policy on citation of unreported opinions is the fact that the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, has directed that unreported opinions are not to be placed on the Maryland judiciary's web page. However, unreported opinions from the U.S. Fourth Circuit are on the federal judiciary's web page. The Subcommittee discussed the fact that no Rule precludes an attorney from giving the unreported opinion of one judge to another judge in the same jurisdiction. The Vice Chair said that she could not see the difference between allowing a circuit court judge to be given an

opinion of a judge of the same jurisdiction and not allowing the judge to be given the benefit of an unreported appellate opinion. The Chair responded that he sees at least two cases a month in which someone had cited to the circuit court an unreported opinion of the Court of Special Appeals. The problem is that one can cite an opinion of the court of another state but not an unreported opinion of the Court of Special Appeals.

Judge Heller inquired as to that the difference is between Rules 1-104 and 8-114. Mr. Brault answered that under Rule 8-114, there are only two purposes for which the opinion may not be cited. The Vice Chair commented that section (b) of Rule 8-114 is inconsistent with Rule 1-104. The Chair noted that Rule 1-104, applicable in all courts, limits the circumstances when an unreported opinion may be cited to the three listed circumstances. Rule 8-114 (b), however, permits an unreported opinion to be cited for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. Mr. Titus suggested that the last sentence of Rule 8-114 be retained. Mr. Bowen suggested that sections (a) and (b) could be collapsed into one sentence.

The Vice Chair asked if Rule 1-104 is necessary. The Chair responded that a Rule in Title 100 is needed to control procedures involving unreported opinions in the trial courts. It does not hurt to have a Rule in Title 800 to which attorneys can refer when citing unreported opinions in briefs.

Mr. Johnson questioned as to whether one can cite an

unpublished opinion of the Fourth Circuit in Maryland courts. The Vice Chair answered that this is not prohibited. Mr. Titus commented that the Subcommittee assumed that this is governed by the Fourth Circuit Rule. Judge Heller drew the Committee's attention to the Fourth Circuit Federal Rule of Appellate Procedure -- Local Rule 36 (b), Unpublished Dispositions, on page 889 of Volume 2 of the 2003 edition of the Maryland Rules of Procedure.

The Chair asked the Committee for direction. The Vice Chair asked why the Rule should be changed. Mr. Titus answered that Chief Judge Bell had requested that the topic of unreported opinions be studied. Judge Heller inquired if the Maryland Rule could be patterned after Local Rule 36 (b). Mr. Titus replied that at the Appellate Subcommittee meeting, Judge McAuliffe had not liked the idea. Mr. Titus added that he has a strong feeling that the Court of Appeals also dislikes Rule 36 (b). The Chair expressed concern that a party may be blind-sided by an unreported opinion cited by opposing counsel. Mr. Bowen noted that an unreported opinion may go in a totally opposite direction from a reported opinion. The Chair commented that all opinions cannot be published, because the cost is prohibitive. Judge Heller observed that some unreported opinions are very comprehensive. Mr. Brault added that it might be useful to cite an unreported opinion to an appellate panel of judges to avoid an opposite decision. The Chair said that The Daily Record prints some unpublished opinions, and the taglines alert practitioners

to certain issues. Ms. Potter pointed out that unpublished opinions cannot be shepardized. Mr. Titus reiterated that the Court of Appeals has issued a directive that only published decisions appear on the Maryland judiciary's web site.

The Vice Chair asked about the effect on Rule 1-104 of changing Rule 8-114. Mr. Titus responded that Rule 1-104 applies to all courts in the State; it is not limited to appellate courts. Mr. Klein inquired as to whether the substance of Rule 8-114 could be put into Rule 1-104. Mr. Titus replied that Rule 8-114 serves a different purpose than Rule 1-104. Mr. Klein restated the fact that Rule 1-104 provides that no court may use unreported opinions except for the purposes listed, while Rule 8-114 states that an unreported opinion may be used for any purpose except for those listed. The two Rules are inconsistent.

The Chair suggested that the language of section (a) could be added to the beginning of Rule 1-104, so that it would read as follows: "An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority and may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, (3) in a disciplinary action involving the same defendant or (4) in the Court of Appeals or Court of Special Appeals, for any purpose other than as precedent within the rule of stare decisis or persuasive authority."

The Vice Chair questioned as to why all of Rule 8-114 could not be transferred to Rule 1-104. Mr. Titus answered that appellate practitioners look to Title 8 for guidance. The Chair commented that a cross reference to Rule 1-104 could be added to Title 8, but Mr. Titus argued that it is easy to miss a cross reference. Judge Heller suggested that Rule 8-114 be retained as modified and that Rule 1-104 should be approved. The Chair pointed out that there is a proposed amendment to Rule 8-504, Contents of Brief, which adds a cross reference stating that citation of unreported opinions is governed by Rules 1-104 and 8-114. The Vice Chair suggested that Rule 8-114 provide that unreported opinions are governed by Rule 1-104.

Mr. Sykes questioned the meaning of the language in Rule 8-114 which reads, "[a]n unreported opinion of either Court may be cited in either Court for any purpose other than as precedent ...". He asked if this language includes more than the three numbered circumstances listed in the Rule if citation of the opinion may be for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. Mr. Brault commented that there is a limited ability to cite unreported opinions.

The Chair commented that to the extent that the first sentence of Rule 8-114 (b) is ambiguous, moving the language to Rule 1-104 will solve the problem. He asked what else an unreported opinion could be cited for except for the three items listed in Rule 8-114 (b). Mr. Brault replied that an unreported

opinion could be cited for persuasive reasoning. Ms. Ogletree remarked that citing unpublished cases may be helpful, even if they are not persuasive authority. The Chair remarked that there is no distinction between persuasive reasoning and persuasive authority.

Mr. Titus suggested that all substantive provisions concerning the citation of unreported opinions should be included in Rule 1-104 and that Rule 8-114 should be a single sentence that states that the citation of unreported opinions of the Court of Appeals and Court of Special Appeals is governed by Rule 1-104, all subject to revision by the Style Subcommittee. Rule 8-504 could be approved as presented. By consensus, the Committee agreed with Mr. Titus's suggestions.

By consensus, the Committee approved Rules 1-104 and 8-114, as amended, and Rule 8-504 as presented.

Mr. Titus presented Rule 8-207, Expedited Appeal, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-207 by placing section (b) before section (a) and adding to new section (a) a reference to "child in need of assistance" cases, as follows:

Rule 8-207. EXPEDITED APPEAL

~~(b)~~ (a) Adoption, Guardianship, Child Access, Child in Need of Assistance Cases

(1) This section applies to every appeal to the Court of Special Appeals (A) from a judgment granting or denying a petition for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, ~~and~~ (B) contesting a judgment granting, denying, or establishing custody of or visitation with a minor child, and (C) from a judgment finding that a child is in need of assistance. Unless otherwise provided for good cause by order of the Court of Special Appeals or by order of the Court of Appeals if that Court has assumed jurisdiction over the appeal, the provisions of this section shall prevail over any other rule to the extent of any inconsistency.

(2) In the information report filed pursuant to Rule 8-205, the appellant shall state whether the appeal is subject to this section.

(3) Within five days after entry of an order pursuant to Rule 8-206 (a)(1) or an order pursuant to Rule 8-206 (d) directing preparation of the record, the appellant shall order the transcript and make an agreement for payment to assure its preparation. The court reporter or other person responsible for preparation of the transcript shall give priority to transcripts required for appeals subject to this section and shall complete and file the transcripts with the clerk of the lower court within 20 days after receipt of an order of the party directing their preparation and an agreement for payment of the cost. An extension of time may be granted only for good cause.

(4) The clerk of the lower court shall transmit the record to the Court of Special Appeals within thirty days after the date of the order entered pursuant to Rule 8-206 (a)(1) or Rule 8-206 (d).

(5) The briefing schedule set forth in Rule 8-502 shall apply, except that (A) an

appellant's reply brief shall be filed within 15 days after the filing of the appellee's brief, (B) a cross-appellee's brief shall be filed within 20 days after the filing of a cross-appellant's brief, and (C) a cross-appellant's reply brief shall be filed within 15 days after the filing of a cross-appellee's brief. Unless directed otherwise by the Court, any oral argument shall be held within 120 days after transmission of the record. The decision shall be rendered within 60 days after oral argument or submission of the appeal on the briefs filed.

(6) Any motion for reconsideration pursuant to Rule 8-605 shall be filed within 15 days after the filing of the opinion of the Court or other order disposing of the appeal. Unless the mandate is delayed pursuant to Rule 8-605 (d) or unless otherwise directed by the Court, the Clerk of the Court of Special Appeals shall issue the mandate upon the expiration of 15 days after the filing of the court's opinion or order.

~~(a)~~ (b) By Election of Parties

(1) Election

Within 20 days after the first notice of appeal is filed or within the time specified in an order entered pursuant to Rule 8-206 (d), the parties may file with the Clerk of the Court of Special Appeals a joint election to proceed pursuant to this Rule.

(2) Statement of Case and Facts

Within 15 days after the filing of the joint election, the parties shall file with the Clerk four copies of an agreed statement of the case, including the essential facts, as prescribed by Rule 8-413 (b). By stipulation of counsel filed with the clerk, the time for filing the agreed statement of the case may be extended for no more than an additional 30 days.

Committee note: Rule 8-413 (b) requires that an agreed statement of the case be approved

by the lower court.

(3) Withdrawal

The election is withdrawn if (1) within 15 days after its filing the parties file a joint stipulation to that effect or (2) the parties fail to file the agreed statement of the case within the time prescribed by subsection (a)(2) of this Rule. The case shall then proceed as if the first notice of appeal had been filed on the date of the withdrawal.

(4) Appellant's Brief

The appellant shall file a brief within 15 days after the filing of the agreed statement required by subsection (a)(2) of this Rule. The brief need not include statement of facts, shall be limited to two issues, and shall not exceed ten pages in length. Otherwise, the brief shall conform to the requirements of Rule 8-504. The appellant shall attach the agreed statement of the case as an appendix to the brief.

(5) Appellee's Brief

The appellee shall file a brief within 15 days after the filing of the appellant's brief. The brief shall not exceed ten pages in length and shall otherwise conform to the requirements of Rule 8-504.

(6) Reply Brief

A reply brief may be filed only with permission of the Court.

(7) Briefs in Cross-appeals

An appellee who is also a cross-appellant shall include in the brief filed under subsection (a)(5) of this Rule the issue and argument on the cross-appeal as well as the response to the brief of the appellant. The combined brief shall not exceed 15 pages in length. Within ten days after the filing of an appellee/cross-

appellant's brief, the appellant/cross-appellee shall file a brief, not exceeding ten pages in length, in response to the issues and argument raised on the cross-appeal.

(8) Oral Argument

Except in extraordinary circumstances, any oral argument shall be held within 45 days after the filing of the appellee's brief or, if the Court is not in session at that time, within 45 days after commencement of the next term of the Court. The oral argument shall be limited to 15 minutes for each side.

(9) Decision

Except in extraordinary circumstances or when a panel of the Court recommends that the opinion be reported, the decision shall be rendered within 20 days after oral argument or, if all parties submitted on brief, within 30 days after the last submission.

(10) Applicability of Other Rules

The Rules of this Title governing appeals to the Court of Special Appeals shall be applicable to expedited appeals except to the extent inconsistent with this Rule.

Source: This Rule is derived from former Rule 1029.

Rule 8-207 was accompanied by the following Reporter's Note.

The Honorable James Eyler of the Court of Special Appeals and Leslie Gradet, Esq., Clerk of the Court of Special Appeals pointed out a problem with the organization of Rule 8-207. Because section (a) is placed before section (b), many attorneys have the mistaken belief that they must file an agreed statement of the case before any adoption, guardianship, or child access case under section (b) can proceed. This misinterpretation can be avoided if section

(a) becomes section (b) and vice versa. Ms. Gradet also pointed out that what would become new section (a) should have a reference to child in need of assistance cases because those cases are within the scope of section (a).

Mr. Titus explained that Child in Need of Assistance (CINA) cases also should be included in the list of categories of cases in which an expedited appeal is required. Ms. Gradet added that many states include CINA cases within the scope of expedited appeals, because they have the same issues as custody and visitation cases. She noted that it is preferable to switch the order of sections (a) and (b), because some attorneys mistakenly believe that they are required to file an agreed statement of the case before any adoption, guardianship, or child access case under section (b) can proceed. Transposing sections (a) and (b) may avoid this misinterpretation. By consensus, the Committee approved Rule 8-207 as presented.

Agenda Item 3. Consideration of certain proposed rules changes recommended by the Probate/Fiduciary Subcommittee: Amendments to: Rule 6-455 (Modified Administration), Rule 6-411 (Election to Take Statutory Share), Rule 6-452 (Removal of a Personal Representative); Rule 6-454 (Special Administration); New Rule 6-456 (Modified Administration - Extension of Time to File a Final Report and to Make Distribution); Amendments to: Rule 6-107 (Extension of Time)

Mr. Sykes presented Rule 6-455, Modified Administration, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-455 to change part (c) of the Form of Election in section (b) and to add a new part (d) in the Form of Election to conform to changes to Code, Estates and Trusts Article, §5-702, as follows:

Rule 6-455. MODIFIED ADMINISTRATION

(a) Generally

When authorized by law, an election for modified administration may be filed by a personal representative within three (3) months after the appointment of the personal representative.

(b) Form of Election

An election for modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No. _____

ELECTION OF PERSONAL REPRESENTATIVE FOR

MODIFIED ADMINISTRATION

1. I elect Modified Administration. This estate qualifies for Modified Administration for the following reasons:

(a) The decedent died on _____ [ ] with a will or

[ ] without a will.

(b) This Election is filed within 3 months from the date of my appointment which was on _____.

(c) [ ] ~~All~~ Each of the residuary legatees named in the will or [ ] ~~all~~ each of the heirs of the intestate decedent ~~are limited to~~ is either:

[ ] The decedent's personal representative~~,~~ or [ ] ~~a surviving spouse, [ ] children of the decedent~~ an individual or an entity exempt from inheritance tax in the decedent's estate under §7-203 (b), (e), and (f) of the Tax – General Article.

(d) Each trustee of every trust created in the decedent's will are limited to one or more of the following: the decedent's [ ] personal representative, [ ] surviving spouse, [ ] children.

~~(d)~~ (e) Consents of the persons referenced in 1 (c) [ ] are ~~[ ]~~ filed herewith or [ ] were ~~previously~~ filed previously.

~~(e)~~ (f) The estate is solvent and the assets are sufficient to satisfy all specific legacies.

~~(f)~~ (g) Final distribution of the estate can be made within 12 months after the date of my appointment.

2. Property of the estate is briefly described as follows:

Description	Estimated Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. I acknowledge that I must file a Final Report Under Modified Administration no later than 10 months after the date of appointment and that, upon request of any interested person, I must provide a full and accurate Inventory and Account to all interested persons.

4. I acknowledge the requirement under Modified Administration to make full distribution within 12 months after the date of appointment and I understand that the Register of Wills and Orphans' Court are prohibited from granting extensions under Modified Administration.

5. I acknowledge and understand that Modified Administration shall continue as long as all the requirements are met.

I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information and belief.

_____ _____
Attorney Personal Representative

_____ _____
Address Personal Representative

_____
Address

_____
Telephone

(c) Consent

An election for modified administration may be filed if all the residuary legatees of a testate decedent and the heirs at law of an intestate decedent consent in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____Estate No. _____

CONSENT TO ELECTION FOR
MODIFIED ADMINISTRATION

I am a [ ] residuary legatee or [ ] heir of the decedent who died intestate. I consent to Modified Administration and acknowledge that under Modified Administration:

1. Instead of filing a formal Inventory and Account, the personal representative will file a verified Final Report Under Modified Administration no later than 10 months after the date of appointment.

2. Upon written request to the personal representative by any legatee not paid in full or any heir-at-law of a decedent who died without a will, a formal Inventory and Account shall be provided by the personal representative to the legatees or heirs of the estate.

3. At any time during administration of the estate, I may revoke Modified Administration by filing a written objection with the Register of Wills. Once filed, the objection is binding on the estate and cannot be withdrawn.

4. If Modified Administration is revoked, the estate will proceed under Administrative Probate and the personal representative shall file a formal Inventory and Account, as required, until the estate is closed.

5. Unless I waive notice of the verified Final Report Under

Modified Administration, the personal representative will provide a copy of the Final Report to me, upon its filing which shall be no later than 10 months after the date of appointment.

6. Final Distribution of the estate will occur not later than 12 months after the date of appointment of the personal representative.

_____
Signature of Residuary Legatee or Heir

_____
Type or Print Name

_____
Signature of Residuary Legatee or Heir

_____
Type or Print Name

(d) Final Report

(1) Filing

A verified final report shall be filed no later than 10 months after the date of the personal representative's appointment.

(2) Copies to Interested Persons

Unless an interested person waives notice of the verified final report under modified administration, the personal representative shall serve a copy of the final report on each interested person.

(3) Contents

A final report under modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No. _____

Date of Death _____ Date of Appointment of Personal Representative _____

FINAL REPORT UNDER MODIFIED ADMINISTRATION

(Must be filed within 10 months after the date of appointment)

I, Personal Representative of the estate, report the following:

1. The estate continues to qualify for Modified Administration as set forth in the Election for Modified Administration on file with the Register of Wills.

2. Attached are the following Schedules and supporting attachments:

Total Schedule A: Reportable Property ..... $ _____
Total Schedule B: Payments and Disbursements ..... $(_____)
Total Schedule C: Distribution of Net Reportable Property ..... $ _____

3. I acknowledge that:

(a) Final distributions shall be made within 12 months after the date of my appointment as personal representative.

(b) The Register of Wills and Orphans' Court are prohibited from granting extensions of time.

(c) If Modified Administration is revoked, the estate shall proceed under Administrative Probate, and I will file a formal

Inventory and Account, as required, until the estate is closed.

I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief and that any property valued by me which I have authority as personal representative to appraise has been valued completely and correctly in accordance with law.

_____	_____	
Attorney Signature	Personal Representative	Date
_____	_____	
Address	Personal Representative	Date
_____	_____	
Address	Personal Representative	Date
_____		
Telephone		

CERTIFICATE OF SERVICE OF

FINAL REPORT UNDER MODIFIED ADMINISTRATION

I hereby certify that on this ____ day of _____, I delivered or mailed, postage prepaid, a copy of the foregoing Final Report Under Modified Administration and attached Schedules to the following persons:

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____

_____	_____
Attorney	Personal Representative

_____ _____
Address Personal Representative

_____ _____
City, State, Zip Code

_____ _____
Telephone Number

_____

FOR REGISTER OF WILLS USE

Distributions subject to collateral _____ Tax thereon _____
tax at _____%

Distribution subject to collateral _____ Tax thereon _____
tax at _____%

Distribution subject to direct tax _____ Tax thereon _____
at _____%

Distribution subject to direct tax _____ Tax thereon _____

Exempt distributions to _____ _____
(Identity of the Recipient)

Exempt distributions to _____ _____
(Identity of the Recipient)

Exempt distributions to _____ _____
(Identity of the Recipient)

Total Inheritance Tax due _____

Total Inheritance Tax paid _____

Gross estate _____ Probate Fee & Costs _____
Collected _____

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE A

REPORTABLE PROPERTY

ESTATE OF _____Estate No. _____

Item No.	Description	Valuation	Basis of Value
TOTAL REPORTABLE PROPERTY OF THE DECEDENT (Carry forward to Schedule C)			$ _____

_____

INSTRUCTIONS

ALL REAL AND PERSONAL PROPERTY MUST BE INCLUDED AT DATE OF DEATH VALUE. THIS DOES NOT INCLUDE INCOME EARNED DURING ADMINISTRATION OR CAPITAL GAINS OR LOSSES REALIZED FROM THE SALE OF PROPERTY DURING ADMINISTRATION. ATTACHED APPRAISALS OR COPY OF REAL PROPERTY ASSESSMENTS AS REQUIRED:

1. Real and leasehold property: Fair market value must be established by a qualified appraiser. For decedents dying on or after January 1, 1998, in lieu of a formal appraisal, real and leasehold property may be valued at the full cash value for property tax assessment purposes as of the most recent date of finality. This does not apply to property tax assessment purposes on the basis of its use value.

2. The personal representative may value: Debts owed to the decedent, including bonds and notes; bank accounts, building,

savings and loan association shares, money and corporate stocks listed on a national or regional exchange or over the counter securities.

3. All other interests in tangible or intangible property: Fair market value must be established by a qualified appraiser.

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE B

Payments and Disbursements

ESTATE OF _____ Estate No._____

Item No.	Description	Amount Paid

Total Disbursements: $ _____
(Carry forward to Schedule C)

INSTRUCTIONS

1. Itemize all liens against property of the estate including mortgage balances.

2. Itemize sums paid (or to be paid) within twelve months from the date of appointment for: debts of the decedent, taxes due by the decedent, funeral expenses of the decedent, family allowance, personal representative and attorney compensation, probate fee and other administration expenses of the estate.

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE C

Distributions of Net Reportable Property

1. SUMMARY OF REPORTABLE PROPERTY

Total from Schedule A ..... _____

Total from Schedule B..... _____

Total Net Reportable Property..... _____
(Schedule A minus Schedule B)

2. SPECIFIC BEQUESTS (If Applicable)

Name of Legatee or Heir	Distributable Share of Reportable Estate	Inheritance Tax Thereon

3. DISTRIBUTION OF BALANCE OF ESTATE

Name of Legatee or Heir	Distributable Share of Reportable Estate	Inheritance Tax Thereon

Total Reportable Distributions $ _____

Inheritance Tax $ _____

_____

ATTACH ADDITIONAL SCHEDULES AS NEEDED

(4) Inventory and Account

The provisions of Rule 6-402 (Inventory) and Rule 6-417 (Account) do not apply.

(e) Revocation

(1) Causes for Revocation

A modified administration shall be revoked by:

(A) the filing of a timely request for judicial probate;

(B) the filing of a written objection by an interested person;

(C) the personal representative's filing of a withdrawal of the election for modified administration;

(D) the court, on its own initiative, or for good cause shown by an interested person or by the register;

(E) the personal representative's failure to timely file the final report and make distribution within 12 months after the date of appointment, or to comply with any other provision of this Rule or Code, Estate and Trusts Article, §§5-701 through 5-710.

(2) Notice of Revocation

The register shall serve notice of revocation on each interested person.

(3) Consequences of Revocation

Upon revocation, the personal representative shall file a formal inventory and account with the register pursuant to Rules 6-402 and 6-417. The inventory and account shall be filed within the time provided by Rules 6-402 and 6-417, or, if the deadline for filing has passed, within 30 days after service of the register's notice of revocation.

Source: This Rule is new.

Rule 6-455 was accompanied by the following Reporter's Note.

> Chapter 232 (SB 307), Acts of 2003 (1) changed the categories of the specific residuary legatees and heirs at law which qualify the personal representative to file for a modified administration of an estate and (2) added a requirement that all trustees must be one or more of the following: the decedent's personal representative, surviving spouse, or child in order for the personal representative to be authorized to file for a modified administration. The Probate/ Fiduciary Subcommittee recommends that part (c) of the Form of Election in section (b) of Rule 6-455 be modified and that part (d) in the form be added to conform to the statute. The Subcommittee recommends changing some of the statutory language in the Rule to clarify its meaning.

Mr. Sykes explained that the Probate Subcommittee recommends changes to Rule 6-455 to conform to Chapter 232, Acts of 2003 (SB 307), which changed the categories of the specific residuary legatees and heirs at law that qualify the personal representative to file for a modified administration of an estate. A modified administration is an expedited procedure that eliminates the filing of an inventory and an accounting in the administration of an estate when the beneficiaries are within a limited class of individuals and entities exempt from inheritance tax in the decedent's estate. Part (1)(c) of the form in section (b) has been modified to conform to the legislation. Part (1)(d) has been modified, but it needs to be restyled. It should read as follows: "All trustees under trusts created in the decedent's will are one or more of the following: ...". The Vice Chair expressed the opinion that the word "trustee" should be in the singular. Mr. Sykes suggested that the Style Subcommittee review

this section. By consensus, the Committee approved the Rule, subject to part (1)(d) of the form set forth in section (b) being restyled.

Mr. Sykes presented Rule 6-411, Election to Take Statutory Share, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-411 (b) by deleting the reference to filing an election to take a statutory share "within seven months" and substituting a new time period, as follows:

Rule 6-411. ELECTION TO TAKE STATUTORY SHARE

(a) Form of Election

A surviving spouse may elect to take a statutory share by the timely filing of an election in the following form:

[CAPTION]

ELECTION TO TAKE STATUTORY SHARE OF ESTATE

I,_____,

surviving spouse of_____,

renounce all provisions of my spouse's will pertaining to myself and elect to take my statutory share of the estate.

Witness:

_____ _____

Surviving Spouse

Date: _____

_____
Attorney

_____
Address

_____

_____

_____
Telephone Number

Cross reference: Code, Estates and Trusts Article, §3-203.

(b) Time Limitation for Making Election

An election to take a statutory share shall be filed within ~~seven~~ the later of nine months after the date of the decedent's death or six months after the date of the first appointment of a personal representative under a will, unless extended pursuant to this Rule.

(c) Extension of Time for Making Election

Within the period for making an election, the surviving spouse may file with the court a petition for an extension of time. The petitioner shall deliver or mail a copy of the petition to the personal representative. For good cause shown, the court may grant extensions not to exceed three months at a time, provided each extension is granted before the expiration of the period originally prescribed or extended by a previous order. The court may rule on the petition without a hearing or, if time permits, with a hearing.

If an extension is granted without a hearing, the register shall serve notice on the personal representative and such other persons as the court may direct. The notice shall be in the following form:

[CAPTION]

NOTICE OF EXTENSION OF TIME

TO ELECT STATUTORY SHARE

On the _____ day of _____, _____, an extension
(month) (year)

of time to elect a statutory share of the estate was granted to

_____,

the decedent's surviving spouse. The extension expires on the

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

If you believe there is good cause to object to the extension, within 20 days after service of this notice you may file with the court, in writing, a petition to shorten the time for filing an election. A copy of the petition shall be served on the surviving spouse.

_____
Register of Wills

(d) Withdrawal

The surviving spouse may file with the register a withdrawal of the election at any time before the expiration of the time, or any extension thereof granted by the court, for filing an election.

Cross reference: Code, Estates and Trusts Article, §§3-203 and 3-206.

Rule 6-411 was accompanied by the following Reporter's Note.

> Chapter 234 (SB 312), Acts of 2003, modified the time period for a surviving spouse to take an elective share of an estate. The time period originally was not later than seven months after the date of the first appointment of a personal representative, and it has been changed to the later of nine months after the date of the decedent's death or six months after the first appointment of a personal representative under a will. The Probate/ Fiduciary Subcommittee proposes changing section (b) of Rule 6-411 to conform to the statute, Code, Estates and Trusts Article, §3-206.

Mr. Sykes explained that Chapter 234, Acts of 2003 (SB 312), changed the time period for a surviving spouse to take an elective share of an estate from not later than seven months after the date of the first appointment of a personal representative to within the later of nine months after the date of the decedent's death or six months after the first appointment of a personal representative under a will. The Subcommittee recommends changing section (b) to conform to the statute. Mr. Brault commented that this conforms to the statute of limitations on claims against an estate. By consensus, the Committee approved the Rule as presented.

Mr. Sykes presented Rules 6-452, Removal of a Personal Representative, and 6-454, Special Administration, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-452 to add a cross reference to Code, Estates and Trusts Article, §12-701, as follows:

Rule 6-452. REMOVAL OF A PERSONAL REPRESENTATIVE

(a) Commencement

The removal of a personal representative may be initiated by the court or the register, or on petition of an interested person.

(b) Show Cause Order and Hearing

The court shall issue an order (1) stating the grounds asserted for the removal, unless a petition for removal has been filed, (2) directing that cause be shown why the personal representative should not be removed, and (3) setting a hearing. The order may contain a notice that the personal representative, after being served with the order, may exercise only the powers of a special administrator or such other powers as the court may direct. Unless otherwise permitted by the court, the order shall be served by certified mail on the personal representative, all interested persons, and such other persons as the court may direct. The court shall conduct a hearing for the purpose of determining whether the personal representative should be removed.

Cross reference: Rule 6-124.

(c) Appointment of Successor Personal Representative

Concurrently with the removal of a personal representative, the court shall appoint a successor personal representative or special administrator.

(d) Account of Removed Personal Representative

Upon appointment of a successor personal representative or special administrator, the court shall order the personal representative who is being removed from office to (1) file an account with the court and deliver the property of the estate to the successor personal representative or special administrator or (2) comply with Rule 6-417 (c).

Cross reference: Code, Estates and Trusts Article, §§6-306 and 12-701.

Rule 6-452 was accompanied by the following Reporter's Note.

Chapter 241 (SB 368), Acts of 2003, provides that an appeal from a final order of an orphans' court or a circuit court removing a personal representative does not stay an order appointing a successor personal representative or special administrator and that an appointed successor personal representative shall have the powers of a special administrator, if an appeal is filed. The Probate/Fiduciary Subcommittee proposes to add cross references to this statute, Code, Estates and Trusts Article, §12-701, in Rules 6-452 and 6-454 to draw attention to the new law.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-454 to add a cross reference to Code, Estates and Trusts

Article, §12-701, as follows:

Rule 6-454. SPECIAL ADMINISTRATION

(a) Appointment of Special Administrator

When necessary to protect property before the appointment and qualification of a personal representative or before the appointment of a successor personal representative following a vacancy in the position of personal representative, the court shall enter an order appointing a special administrator. The appointment may be initiated by the court or the register or upon the filing of a petition by an interested person, a creditor, the personal representative of a deceased personal representative, or the person appointed to protect the estate of a personal representative under a legal disability.

(b) Contents of Petition

A petition for appointment of a special administrator shall contain a brief description of the property requiring protection, a statement setting forth the necessity for the appointment before the appointment of a personal representative and, when appropriate, the reasons for the delay in the appointment of a personal representative.

(c) Bond

Upon appointment, the special administrator shall comply with Rule 6-312, except to the extent that the court, upon recommendation of the register, may otherwise prescribe.

(d) Specified Duties

The special administrator shall assume any unperformed duties required of a personal representative concerning the preparation and filing of inventories, accounts and notices of filing accounts, and proposed payments of

fees and commissions. The special administrator shall collect, manage, and preserve property of the estate and shall account to the personal representative subsequently appointed. The special administrator shall have such further powers and duties as the court may order.

(e) Notice

Notice of the appointment of a special administrator is not required unless otherwise directed by the court.

Cross reference: Code, Estates and Trusts Article, §§1-101 (s), 6-304, 6-401 through 6-404, 7-201, ~~and~~ 7-301, and 12-701.

Rule 6-454 was accompanied by the following Reporter's Note.

See the Reporter's Note to the proposed amendment to Rule 6-452.

Mr. Sykes explained that the Subcommittee recommends adding a cross reference at the end of Rules 6-452 and 6-454 to Code, Estates and Trusts Article, §12-701. This statute was amended by the legislature in Chapter 241, Acts of 2003 (SB 368), which provides that an appeal from a final order of an orphans' court or a circuit court removing a personal representative does not stay an order appointing a successor personal representative and that an appointed successor personal representative shall have the powers of a special administrator, if an appeal is filed. The cross reference will alert the bar to the amended statute. The statutes in the cross references should be identified by their subject. By consensus, the Committee approved the Rules as amended.

Mr. Sykes presented Rules 6-456, Modified Administration - Extension of Time to File a Final Report and to Make Distribution and 6-107, Extension of Time, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

ADD new Rule 6-456, as follows:

Rule 6-456. MODIFIED ADMINISTRATION – EXTENSION OF TIME TO FILE A FINAL REPORT AND TO MAKE DISTRIBUTION

(a) Generally

The initial time periods for filing a final report and for making distribution to each legatee and heir may be extended for 90 days if the personal representative and each interested person sign the form set out in section (b) of this Rule and file the form within 10 months of the date of appointment of the personal representative.

(b) Form

A consent to an extension of time to file a final report and to make distribution in a modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

IN THE ESTATE OF _____ Estate No. _____

Date of Death _____ Date of Appointment Of Personal Repre-sentative _____

CONSENT TO EXTEND TIME TO FILE FINAL REPORT

AND TO MAKE DISTRIBUTION IN A MODIFIED ADMINISTRATION

We, the Personal Representative and Interested Persons in the above-captioned estate, consent to extend for 90 days the time to file a final report and to make distribution in the modified administration of the estate. We acknowledge that this consent must be filed within 10 months of the date of appointment of the personal representative.

Personal Representatives
(Type or Print Names)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

Interested Persons
(Type or Print Names)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____

Name Signature

_____ _____

Name Signature

Source: The Rule is new.

Rule 6-456 was accompanied by the following Reporter's Note.

Chapter 233 (SB 310), Acts of 2003 provides for an extension of the time period of 90 days to file a final report and to make distribution to each legatee and heir conditioned upon all personal representatives and interested persons consenting to the extension and the consent being filed within 10 months of the date of appointment of the personal representative. The Probate/ Fiduciary Subcommittee recommends the addition of new Rule 6-456 and an additional cross reference in Rule 6-107 to conform to the change in the law.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-107 to add a cross reference to new Rule 6-456, as follows:

Rule 6-107. EXTENSION OF TIME

(a) By Request to Register or Court

The court or the register, upon written request, may extend to a specified date the time for filing an inventory (Rule 6-402), an information report (Rule 6-404), an application to fix inheritance tax on non-probate assets (Rule 6-405), or an

account (Rule 6-417). The request may be made ex parte.

(b) By Petition

Except as otherwise provided in this section, when these rules, an order of court, or other law require or allow an act to be done at or within a specified time, the court, upon petition filed pursuant to Rule 6-122 and for good cause shown, may extend the time to a specified date. The court may not extend the time for filing a claim, a caveat, or a notice of appeal or for taking any other action where expressly prohibited by rule or statute.

Cross reference: Code, Estates and Trusts Article, §§5-304 and 5-406. For extension of time to elect statutory share, see Rule 6-411. For extension of time to file a final report and make distribution in a modified administration, see Rule 6-456.

Rule 6-107 was accompanied by the following Reporter's Note.

See the Reporter's Note to proposed new Rule 6-456.

Mr. Sykes explained that Rule 6-456 is new. The Subcommittee proposes adding the Rule to conform to Chapter 233, Acts of 2003 (BB 310), which provides for a 90-day extension of the time periods for filing a final report and for making distribution to each legatee and heir, provided that the personal representative and all interested persons consent to the extension and the consent is filed within 10 months of the date of appointment of the personal representative. Mr. Sykes suggested that the word "substantially" be added to the introductory language of section (b) after the word "in" and

before the word "the." The Committee agreed to this change by consensus. The Subcommittee also recommends adding a cross reference to the new Rule at the end of Rule 6-107, Extension of Time. By consensus, the Committee approved Rule 6-456 as amended and Rule 6-107 as presented.

Mr. Sykes told the Committee that the Subcommittee had discussed again a possible rule that would provide for the transfer of cases from the orphans' court to the circuit court. The Subcommittee's opinion was that since this would involve subject matter jurisdiction, it would be a matter for the legislature to handle and should not be effected by rule. The Committee agreed with the Subcommittee on this matter.

Agenda Item 4. Consideration of proposed amendments to Form No. 5, Domestic Relations Interrogatories, in Appendix: Forms, Form Interrogatories

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Ms. Ogletree presented Form No. 5, Domestic Relations Interrogatories, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

APPENDIX: FORMS

FORM INTERROGATORIES

AMEND Form No. 5 - Domestic Relations Interrogatories to correct an obsolete reference in Standard Domestic Relations Interrogatory No. 12, to restate Standard Domestic Relations Interrogatory No. 15 in terms of a contention of entitlement to a divorce, and to conform Standard Domestic Relations Interrogatory No. 15 to recent legislation, as follows:

Form No. 5 - Domestic Relations Interrogatories

Interrogatories

. . .

12. If the information contained on your financial statement submitted pursuant to Rule ~~9-203 f.~~ 9-202 (e) or (f) has changed, describe each change. (Standard Domestic Relations Interrogatory No. 12.)

. . .

15. If you contend that you are entitled to a divorce because your spouse's conduct toward you or your minor child was ~~excessively~~ cruel or vicious or that your spouse ~~acted with extreme cruelty or~~ constructively deserted you, describe your spouse's conduct and state the date and nature of any injuries sustained by you or your minor child and the date, nature, and provider of health care services rendered ~~to you~~ regarding the injuries. **Identify** all **persons** with personal knowledge of your spouse's conduct and all **persons** with knowledge of any injuries you or your minor child sustained as a result of that conduct. (Standard Domestic Relations Interrogatory No. 15.)

. . .

Form No. 5 was accompanied by the following Reporter's Note.

Amendments are proposed to two Form Interrogatories set forth in Form No. 5, Domestic Relations Interrogatories.

The proposed amendment to Standard Domestic Interrogatory No. 12 corrects an obsolete reference to Rule 9-203 f. The requirement that a financial statement be filed under certain circumstances currently is set forth in sections (e) and (f) of Rule

9-202.

Standard Domestic Relations Interrogatory No. 15 is proposed to be amended in light of Chapter 419, Acts of 2003 (HB 346), which adds cruelty of treatment toward a minor child of the complaining party and excessively vicious treatment toward a minor child of the complaining party to the grounds for absolute divorce set forth in Code, Family Law Article, §7-103, conforming that Code provision to comparable grounds for a limited divorce set forth in Code, Family Law Article, §7-102 (a). Also, Franklin B. Olmstead, Esq., has pointed out that the language "extreme cruelty" in the Interrogatory does not track the statutory language, "cruelty of treatment," set forth in Code, Family Law Article, §§ 7-102 (a)(1) and 7-103 (a)(7). The Committee recommends that the Interrogatory be revised and restyled so that the information sought is keyed to a contention of entitlement to a divorce.

Ms. Ogletree explained that in Interrogatory No. 12 of Form No. 5, an obsolete reference has been corrected. Chapter 419, Acts of 2003 (HB 346) created new grounds for divorce which are reflected in Interrogatory No. 15. Franklin Olmstead, Esq. had pointed out that the language "extreme cruelty" in the Interrogatory does not track the statutory language, "cruelty of treatment" in Code, Family Law Article, §§7-102 (a)(1) and 7-103 (a)(7), so this change is being proposed, also. By consensus, the Committee approved Form No. 5 as presented.

Agenda Item 5. Consideration of certain proposed rules changes recommended by the Property Subcommittee: Amendments to: Rule 12-103 (Action for Release of Lien Instrument), Rule 14-206 (Procedure Prior to Sale), and Rule 14-206 (Real property - Recording)

Ms. Ogletree presented Rule 12-103, Action for Release of Lien Instrument, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 12-103 to add a cross reference to Code, Real Property Article, §3-105.1 (e)(1), as follows:

Rule 12-103. ACTION FOR RELEASE OF LIEN INSTRUMENT

When a mortgage or deed of trust remains unreleased of record, the mortgagor, grantor, or a successor in interest entitled by law to a release may file a complaint for release of the lien instrument in any county where the lien instrument is recorded. The person bringing the action shall include as defendants all other parties to the instrument unless their interest has been assigned or transferred of record, and in that case their successors in interest. If the court orders the lien instrument released of record, the clerk shall record the release in the manner prescribed by law.

Cross reference: Code, Real Property Article, §7-106 (e)<u>,</u> ~~and~~ §3-105 (d)<u>, and 3-105.1 (e)(1)</u>.

Source: This Rule is new.

Rule 12-103 was accompanied by the following Reporter's Note.

Chapter 348 (HB 1054), Acts of 2003 changed the time for the holder of a mortgage to record the release of a mortgage from seven to 45 days. The Property Subcommittee

recommends adding a cross reference to the modified statute.

Ms. Ogletree explained that Chapter 348, Acts of 2003 (HB 1054) changed the time to submit the record of the release of a mortgage from seven to 45 days. The Property Subcommittee recommends cross referencing the modified statute to put people on notice of this change. By consensus, the Committee approved the Rule as presented.

Ms. Ogletree presented Rule 14-206, Procedure Prior to Sale, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-206 by adding a new subsection (b)(3) pertaining to notice to counties or municipal corporations, as follows:

Rule 14-206. PROCEDURE PRIOR TO SALE

(a) Bond

Before making a sale of property to foreclose a lien, the person authorized to make the sale shall file a bond to the State of Maryland conditioned upon compliance with any court order that may be entered in relation to the sale of the property or distribution of the proceeds of the sale. Unless the court orders otherwise, the amount of the bond shall be the amount of the debt plus the estimated expenses of the proceeding. On application by a person having an interest in the property or by the

person authorized to make the sale, the court may increase or decrease the amount of the bond pursuant to Rule 1-402 (d).

(b) Notice

(1) By Publication

After commencement of an action to foreclose a lien and before making a sale of the property subject to the lien, the person authorized to make the sale shall publish notice of the time, place, and terms of sale in a newspaper of general circulation in the county in which the action is pending. "Newspaper of general circulation" means a newspaper satisfying the criteria set forth in Code, Article 1, Section 28. A newspaper circulating to a substantial number of subscribers in a county and customarily containing legal notices with respect to property in the county shall be regarded as a newspaper of general circulation in the county, notwithstanding that (1) its readership is not uniform throughout the county, or (2) its content is not directed at all segments of the population. For the sale of an interest in real property, the notice shall be given at least once a week for three successive weeks, the first publication to be not less than 15 days prior to sale and the last publication to be not more than one week prior to sale. For the sale of personal property, the notice shall be given not less than five days nor more than 12 days before the sale.

(2) By Certified and First Class Mail

(A) Before making a sale of the property, the person authorized to make the sale shall send notice of the time, place, and terms of sale by certified mail and by first class mail to the last known address of (i) the debtor, (ii) the record owner of the property, and (iii) the holder of any subordinate interest in the property subject to the lien.

(B) The notice of the sale shall be sent not more than 30 days and not less than

ten days before the date of the sale to all such persons whose identity and address are actually known to the person authorized to make the sale or are reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale.

(3) To Counties or Municipal Corporations

Not less than 15 days prior to the sale of the property, the person authorized to make the sale shall notify the county or municipal corporation where the property subject to the lien is located as to:

(A) the name, address, and telephone number of the person authorized to make the sale; and

(B) the time, place, and terms of sale.

~~(3)~~ (4) Other Notice

If the person authorized to make the sale receives actual notice at any time before the sale is held that there is a person holding a subordinate interest in the property and if the interest holder's identity and address are reasonably ascertainable, the person authorized to make the sale shall give notice of the time, place, and terms of sale to the interest holder as promptly as reasonably practicable in any manner, including by telephone or electronic transmission, that is reasonably calculated to apprise the interest holder of the sale. This notice need not be given to anyone to whom notice was sent pursuant to subsection (b)(2) of this Rule.

~~(4)~~ (5) Return Receipt or Affidavit

The person giving notice pursuant to subsections (b)(2), ~~and~~ (b)(3), and (b)(4) of this Rule shall file in the proceedings an affidavit (A) that the person has complied with the provisions of those subsections or (B) that the identity or address of the debtor, record owner, or holder of a

subordinate interest is not reasonably ascertainable. If the affidavit states that an identity or address is not reasonably ascertainable, the affidavit shall state in detail the reasonable, good faith efforts that were made to ascertain the identity or address. If notice was given pursuant to subsection ~~(b)(3)~~ (b)(4), the affidavit shall state the date, manner, and content of the notice given.

(c) Postponement

If the sale is postponed, notice of the new date of sale shall be published in accordance with subsection (b)(1) of this Rule. No new or additional notice under subsection (b)(2) of this Rule need be given to any person to whom notice of the earlier date of sale was sent, but notice shall be sent to persons entitled to notice under subsections (b)(2)(B) and ~~(3)~~ (4) of this Rule to whom notice of the earlier date of sale was not sent.

Source: This Rule is derived in part from former Rule W74 and is in part new.

Rule 14-206 was accompanied by the following Reporter's Note.

Recent legislation added a requirement that when there is a foreclosure sale, the person making the sale must notify the county or municipal corporation where the property is located as to the person's name, address, and telephone number as well as the time, place, and terms of sale. The Property Subcommittee is recommending that the language pertaining to this notice be added to Rule 14-206 (b).

Ms. Ogletree said that the changes to Rule 14-206 are being proposed to comply with Code, Real Property Article, §14-126 which requires notice to counties and municipalities prior to the

sale of real property of the name, address, and telephone number of the person authorized to make the sale and the time, place, and terms of the sale.

The Vice Chair pointed out that the counties are already entitled to certified notice. She suggested that the following language be added to the beginning of subsection (b)(3): "In addition to any other required notice...". The notice should not be oral. The Vice Chair suggested that in place of the word "notify" the words "send written notice to" should be substituted. The Committee agreed with these changes. The Assistant Reporter noted that a reference to subsection (b)(3) is also needed in section (c), and the Committee agreed with this suggestion. By consensus, the Committee approved the Rule as amended.

Ms. Ogletree presented Rule 14-306 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 300 - JUDICIAL SALES

AMEND Rule 14-306 by adding a Committee note referring to Code, Real Property Article, §14-103 (f), as follows:

Rule 14-306. REAL PROPERTY – RECORDING

Upon the entry of a final order of ratification, the person making a sale of an interest in real property in a county other

than one in which all of the property is located shall 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, any complaint, the report of sale, the final order of ratification, and any other orders affecting the property.

Committee note: For special rules applying to properties in Baltimore City, see Code, Real Property Article, §14-103 (f).

Source: This Rule is derived from former Rule BR5.

Rule 14-306 was accompanied by the following Reporter's Note.

Chapter 465, (HB 1049), Acts of 2003 added a new section pertaining to recordation of final orders of ratification of foreclosure sales of interest in Baltimore City. The Property Subcommittee recommends that a Committee note be added to Rule 14-306 directing attention to this new provision.

Ms. Ogletree explained that Chapter 465, Acts of 2003 (HB 1049), added a new section pertaining to recordation of final orders of ratification of foreclosure sales of interests in land in Baltimore City. The Subcommittee recommends the addition of a cross reference to the new statute to Rule 14-306. By consensus, the Committee approved the Rule as presented.

Additional Agenda Item

Judge Dryden presented Rules 2-326, Certain Transfers from District Court, and 3-326, Dismissal or Transfer of Action, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-326 by adding to section (a) language referring to section (d) of Rule 3-326, as follows:

Rule 2-326. CERTAIN TRANSFERS FROM DISTRICT COURT ~~ON DEMAND FOR JURY TRIAL~~

(a) Notice

Upon entry on the docket of an action transferred from the District Court pursuant to a demand for jury trial or a demand for transfer pursuant to section (d) of Rule 3-326, the clerk shall send to the plaintiff and each party that has been served in the District Court action a notice that states the date of entry and the assigned docket reference and includes a "Notice to Defendant" in substantially the following form:

Notice to Defendant

If you are a "defendant," "counter-defendant," "cross defendant," or "third-party defendant" in this action and you wish to contest the case against you, you must file in this court an answer or other response to the complaint, counterclaim, cross-claim, or third-party claim within 30 days after the date of this notice, regardless of whether you filed a notice of intention to defend or other response in the District Court.

Committee note: If an action is transferred and a defendant or third-party defendant has not been served with process, the burden is on the plaintiff or third-party plaintiff to obtain service, as if the action were originally filed in a circuit court.

(b) Answer or Other Response; Subsequent Proceedings

Regardless of whether a notice of intention to defend or other response was filed in the District Court, a defendant, counter-defendant, cross defendant, or third-party defendant shall file an answer or other response to the complaint, counterclaim, cross-claim, or third-party claim within 30 days after the clerk sends the notice required by section (a) of this Rule. Following the expiration of the 30-day period, the action shall thereafter proceed as if originally filed in the circuit court.

Source: This Rule is new.

Rule 2-326 was accompanied by the following Reporter's Note.

Chapter 275 (HB 97), Acts of 2003 provides that an action for damages for a dishonored check may be filed in the District Court regardless of the amount in controversy, and if the action for damages exceeds $25,000, the defendant is allowed to transfer the action to the circuit court by filing a timely demand as prescribed by the Maryland Rules. Accordingly, a change to Rule 3-326 is being proposed that would include a new section (d) providing for a procedure to transfer an action for damages exceeding $25,000 for a dishonored check to the circuit court. Also, a change to Rule 2-326 is being proposed so that the procedures for transferring a case to the circuit court on demand for a jury trial apply to transfer of a dishonored check action to the circuit court.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-326 by adding a new section (d) referring to actions for dishonored checks, as follows:

Rule 3-326. DISMISSAL OR TRANSFER OF ACTION

. . .

(d) Action for Dishonored Check

(1) Transfer to Circuit Court

In an action for damages exceeding $25,000 for a dishonored check or other instrument pursuant to Code, Commercial Law Article, §15-802, the District Court shall transfer the action to a circuit court upon a separate written demand filed by a defendant within 10 days after the time for filing a notice of intention to defend pursuant to Rule 3-307. Failure to file a timely demand constitutes a waiver of the right to transfer the case to a circuit court.

(2) Transmittal of Record to Circuit Court

When a timely demand is filed, the clerk shall transmit the record to the circuit court within 15 days. At any time before the record is transmitted pursuant to this section, the District court may determine on motion or on its own initiative, that the demand for transfer was not timely filed or that the action was not entitled to be transferred pursuant to Code, Courts Article, §4-402 (f).

. . .

Rule 3-326 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 2-326.

Judge Dryden explained that Chapter 275, Acts of 2003 (HB 97), provides that although the District Court has exclusive original jurisdiction in an action for damages for a dishonored check, if the alleged damages exceed $25,000, the defendant may transfer the action to the circuit court by filing a timely demand pursuant to the Maryland Rules. This would not require a demand for a jury trial. The Rules Committee has to determine the mechanism for transferring the case from the District Court to the circuit court. A proposed amendment to Rule 2-236 tracks the jury trial transfer procedure upon receipt of the case from the District Court. Rule 3-326 provides for the mechanics of the transfer from the District Court to the circuit court. A new section (d) allows the defendant to file a timely separately written demand similar to the procedure for demanding a jury trial.

The Vice Chair inquired as to whether there is a statutory time limit on filing the demand, and Judge Dryden replied that there is no time limit in the statute, but one has been included in the Rule. Mr. Brault remarked that this is an interesting procedure without the necessity of having a jury trial. Judge Dryden noted that one could still pray a jury trial if the action exceeds $10,000 in damages. Mr. Brault questioned as to whether the case would be tried by a judge, and Judge Dryden replied that it would unless a jury trial were also requested. The Reporter

said that the time parameters for requesting a jury trial and transfer for damages for a dishonored check would be the same.

The Vice Chair inquired as to whether the District Court can transfer the case to any circuit court. For example, could an action filed in Howard County be sent to Anne Arundel County and then back to Howard County? The Chair suggested that in subsection (d)(1), the language "an appropriate" should be added after the word "to" and before the word "circuit," so that the subsection reads as follows: "... the District Court shall transfer the action to an appropriate circuit court ...". Senator Stone remarked that a party must raise the issue of venue, or it is waived. If the issue is not raised, the District Court will transfer the case to the circuit court in the same county. The Chair said that when the motion to transfer is filed, the motion can also ask for a certain venue. If the judge refuses, the party can then go to the circuit court and make the same request. The Vice Chair remarked that the assumption is that the case will go to the circuit court in the same county as the District Court. The Chair pointed out that the statute, Code, Courts Article, §4-402 provides that the defendant is entitled to transfer the action from the District Court to "an appropriate circuit court...".

Mr. Klein expressed the view that adding the language "an appropriate" to modify the term "circuit court" in subsection (d)(1) of Rule 3-326 will take care of any problems. The Committee agreed by consensus to make this change. The Committee

approved Rule 2-326 as presented and Rule 3-326 as amended.

Additional Agenda Item

Mr. Brault presented Rules 2-124, Process - Persons to Be Served, and 3-124, Process - Persons to Be Served, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-124 by adding a reference to Code, Business Regulation Article, §4-402 to the Committee note, as follows:

Rule 2-124. PROCESS - PERSONS TO BE SERVED

(a) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

Committee note: Examples of statutes permitting or requiring service on a person include the Maryland Tort Claims Act, Code, State Government Article, §12-108 (a) (service of a complaint is sufficient only when made upon the Treasurer of the State); Code, Insurance Article, §4-107 (service on certain insurance companies is effected by serving the Insurance Commissioner); Code, Business Regulation Article, §4-402 (service non-resident "athlete agents" is effected by serving the Secretary of Labor, Licensing, and Regulation); Code, Business Regulation Article, §6-202 (service on certain nonresident charitable organizations is effected by serving the Secretary of State); and Code, Courts Article, §3-405 (notice to

the Attorney General is required immediately after a declaratory judgment action is filed alleging that a statute, municipal or county ordinance, or franchise is unconstitutional).

. . .

Rule 2-124 was accompanied by the following Reporter's Note.

The Process, Parties & Pleading Subcommittee recommends the addition of a reference to a new statute to the Committee note after section (a) of Rules 2-124 and 3-124 that lists examples of statutes permitting or requiring service on a person. The new statute is Code, Business Regulation Article, §4-402 that was created by Chapter 421 (HB 361), Acts of 2003 pertaining to athlete agents.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-124 by adding a reference to Code, Business Regulation Article, §4-402 to the Committee note, as follows:

Rule 3-124. PROCESS - PERSONS TO BE SERVED

(a) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

Committee note: Examples of statutes permitting or requiring service on a person include the Maryland Tort Claims Act, Code,

State Government Article, §12-108 (a) (service of a complaint is sufficient only when made upon the Treasurer of the State); Code, Insurance Article, §4-107 (service on certain insurance companies is effected by serving the Insurance Commissioner); Code, Business Regulation Article, §4-402 (service on non-resident "athlete agents is effected by serving the Secretary of Labor, Licensing, and Regulation); Code, Business Regulation Article, §6-202 (service on certain nonresident charitable organizations is effected by serving the Secretary of State); and Code, Courts Article, §3-405 (notice to the Attorney General is required immediately after a declaratory judgment action is filed alleging that a statute, municipal or county ordinance, or franchise is unconstitutional).

. . .

Rule 3-124 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 2-124.

Mr. Brault explained that new language is being recommended for addition to the Committee note after section (a) of Rules 2-124 and 3-124 to conform to a new statute, Code, Business Regulation Article, §4-402 that was created by Chapter 421, Acts of 2003 (HB 361) pertaining to service on non-resident athletes. Mr. Bowen suggested that the words "non-resident athlete agents" be changed to "a non-resident athlete agent," and the Committee agreed to this change. By consensus, the Committee approved the Rules as amended.

The Chair adjourned the meeting.