COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A,, People's Resource Center, 100 Community Place, Crownsville, Maryland on September 10, 1999.

Members present:

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

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Hon. James W. Dryden
Bayard Z. Hochberg, Esq.
H. Thomas Howell, Esq.
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Joyce H. Knox, Esq.
Timothy F. Maloney, Esq.
Anne C. Ogletree, Esq.
Larry W. Shipley, Clerk
Sen. Norman R. Stone, Jr.
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Del. Joseph F. Vallario, Jr.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Mark T. McDermott, Esq.
Steven P. Lemmey, Esq., Commission on Judicial Disabilities
Ken Crocken, Rules Committee Intern

The Chair convened the meeting. He asked if there were any additions or corrections to the minutes of the May, 1999 and June, 1999 Rules Committee meetings. There being none, Judge Kaplan moved that both sets of minutes be approved as presented, the motion was seconded, and it passed unanimously.

The Chair announced that Steven P. Lemmey, Esq., Investigative Counsel to the Judicial Disabilities Commission, was present, and he wanted to make a statement about the proposed

change to Canon 3 A of Rule 16-813, which is to be considered as agenda item #7. Mr. Lemmey said that he would have to leave the meeting, but he told the Committee that the Judicial Disabilities Commission had no problem with the proposed change to Canon 3 A which clarifies that a judge may comment about a pending or impending proceeding under certain conditions.

The Chair stated that the Vice Chair, Mr. Brault, Mr. Howell, the Reporter, and the Chair had attended a Court of Appeals conference the day before to discuss the proposed Attorney Disciplinary Rules. The Court declined to adopt the proposed changes to the Rules, expressing the concern that attorneys are the only group of professionals who get "two bites of the apple" in disciplinary proceedings. Attorneys are entitled to an evidentiary hearing before an Inquiry Panel and an evidentiary hearing in circuit court. The Honorable Alan M. Wilner and the Honorable John C. Eldridge were particularly concerned about this. They pointed out that the proposed Rules provide for discipline of attorneys which is different than that of physicians, dentists, chiropractors, etc. The two-hearing process is causing delays in the system. The Court has requested that the Attorneys Subcommittee, and then the full Rules Committee reconsider the Rules as quickly as possible to come up with proposed alternatives to the two-tiered hearing system.

Mr. Brault commented that some of the people who attended the hearing were very surprised that the Court did not substantively consider the Rules. He and Mr. Howell were prepared to answer criticisms that the Court might have had.

Representatives of the Maryland State Bar Association (MSBA) were also present to speak about the proposed Rules, but their issues became moot when the Rules were sent back to the Rules Committee. Mr. Brault said that he and the Rules Committee Reporter met with James Thompson, Esq., President of the MSBA, and other MSBA representatives, including Paul Carlin, Esq. and Albert Winchester, to discuss the situation. Mr. Thompson will be creating a study group right away to try to develop a strategy. The group will look at the attorney discipline systems in other states. The Court had asked how many other states have two-tiered systems, but unfortunately Mr. Brault had not been prepared to answer the question. The MSBA representatives are willing to work with the Attorneys Subcommittee to come up with an alternative. Mr. Thompson is contemplating an inventory of disciplinary systems of other states and the procedures from the current system that the MSBA would like to retain. Before a new set of rules is undertaken, the basic policy question of how the system should be organized needs to be answered.

The Vice Chair noted that the question Judge Wilner seems to be asking is what is so special about attorneys that they merit a confidential hearing prior to a public hearing when being disciplined, although no other professionals are entitled to this system. Mr. Howell pointed out that physicians get two bites of the apple, when a case goes to a health claims arbitration panel before it goes to the circuit court. Workers' compensation cases get a de novo hearing at the circuit court level. The Vice Chair observed that these examples do not include a confidential

hearing. Mr. Sykes observed that judges are not entitled to a confidential hearing. The Chair added that once formal charges are initiated against a judge, the matter is no longer confidential.

Mr. Brault remarked that he had been discussing the matter with Mr. Lemmey earlier. Mr. Lemmey had been a prosecutor for the Physicians Board of Quality Assurance. Mr. Brault said that in 1986, he had been a member of a commission investigating medical malpractice cases. The data indicated that the medical profession was not policing itself properly. The change in the physicians' discipline system resulting in the formation of the Board of Quality Assurance grew out of that finding. Mr. Brault said that he had never heard a complaint that attorneys are not doing a good job of disciplining themselves. The Chair agreed with Mr. Brault, but observed that holding two hearings takes a long time. The question is if the delay is worth the wait. This is a policy question. No one seems to be complaining about the two-tiered system. Physicians are not complaining that they would prefer two hearings like the attorney disciplinary system has.

The Vice Chair commented that Judge Wilner seems to feel strongly about not having a two-tiered system. The Chair added that some of the other judges did not express the desire to do away with the two-tiered system as long as the delay is cut down. It may be possible to do away with the Review Board and hold a full Inquiry Panel hearing. There may be a delay in getting the transcript to the Review Board. It may be preferable to simply

send a summary of the Inquiry Panel proceedings to the Review Board, particularly when the Board is not making a demeanor-based credibility assessment. The Vice Chair remarked that the current proposed Rules come close to doing that -- the Review Board is almost non-existent. Mr. Howell expressed his agreement that the Review Board could be eliminated, and the Inquiry Panel Hearing changed to a full due process hearing, which is reviewed by the Court.

Mr. Sykes noted that some attorney disciplinary cases take a very long time before they are resolved. The Chair suggested that information should be obtained as to the time lines in the last 15 attorney discipline cases in which the Court imposed discipline. The time line should include when the case went to the Inquiry Panel, the Review Board, and the circuit court. The idea is to find if there were any delays and why they happened. It is possible that if the two hearings can be shown to be important, and the delays in the system can be eliminated, a majority of the Court may approve the Rules.

Mr. Titus remarked that what separates out the legal profession from other professions is that the business of attorneys is "trouble." This produces more complaints than in other professions.

Mr. Titus continued that one of the issues for consideration is whether to continue with the procedure of a statement of charges filed after an inquiry panel hearing. An inquiry proceeding is not a full trial, nor is it purely a Grand Jury type of proceeding with paper submissions. An Inquiry Panel

consists of at least two attorneys and one lay person who look at the complaint and the documents, hear perhaps one or two witnesses, and then decide whether to recommend the filing of a statement of charges. The Chair pointed out that one of the arguments in favor of retaining the Review Board is that the Inquiry Panels may protect their own and exonerate the attorney. The check to prevent this from happening is the review by the Review Board. Mr. Hochberg added that some of the delay may be caused by the Office of Bar Counsel. He also noted that the Inquiry Panel serves to weed out the unimportant issues. The Chair commented that the circuit court judge could weed those out, but the Inquiry Panel can save the judge time.

The Vice Chair noted that one of the reasons Judge Rodowsky voted against sending the Attorney Discipline Rules back to the Rules Committee was that when he was in private practice, he had represented an attorney in Baltimore at a panel hearing in which the complainant clearly lacked credibility. Judge Rodowsky favors a hearing at which the attorney has a chance to defend himself or herself. Mr. Howell commented that one of the issues to be decided is whether the hearing should be conducted by a panel of attorneys and lay persons, eliminating the role of the circuit court judge. This is the American Bar Association model, which provides for a hearing body to hear the case, and then the case goes to the highest court.

Mr. Brault said that the Attorneys Subcommittee had worked with the Office of Bar Counsel when drafting the Rules. The Subcommittee had tried to accommodate the needs of Bar Counsel

and the various deputies who attended the meetings. Unfortunately, some of them decided that they disagreed with certain provisions in the proposed Rules. Mr. Brault expressed his agreement with Mr. Hochberg that some of the delay may be caused by the Office of Bar Counsel. The Chair reiterated that the survey of the time line of cases is important. Judge Kaplan remarked that it is becoming more difficult to find circuit court judges who are available to hear the attorney discipline cases, and it might be beneficial to eliminate the role of the circuit court judge.

The Reporter noted that Harry Wolpoff, Esq., Chairman of the Inquiry Committee, had pointed out that giving a complainant a chance to vent at the Inquiry Panel hearing helps to resolve some cases. Also, the attorney realizes that he or she is in trouble and may be willing to make some changes or agree to a resolution of the matter. The Court may be willing to reevaluate the philosophy of having two hearings if it can be demonstrated that the first hearing functions as an alternative dispute resolution proceeding. The Chair remarked that one of the problems with a two-tiered system is that some people take advantage of the delay. A meeting of the Attorneys Subcommittee is being scheduled to discuss these Rules.

Agenda Item 1. Consideration of certain proposed recommendations of the Family/Domestic Subcommittee concerning adoption and guardianship terminating parental rights: Amendments to: Rule 9-102 (Consents; Requests for Attorney or Counseling), Rule 9-103 (Petition), Rule 9-105 (Show Cause Order; Disability of a Party; Other Notice), Rule 9-106 (Appointment of Attorney — Investigation), and Letter to Senator Stone and Delegate Vallario Re: (1) Code, Family Law Article, §5-319 and (2) Code, Family Law Article, §5-322 (c), (d), and (e)

Ms. Ogletree presented Rule 9-102, Consents; Requests for Attorney or Counseling, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; GUARDIANSHIP TERMINATING PARENTAL RIGHTS

AMEND Rule 9-102 to conform the form of parental consent set out in section (c) to certain statutory requirements and to make certain changes to the form of consent of the person to be adopted set out in section (d), as follows:

Rule 9-102. CONSENTS; REQUESTS FOR ATTORNEY OR COUNSELING

(a) Generally

Except when otherwise permitted by Code, Family Law Article, §5-312, §5-313, or §5-313.1, a judgment of adoption or guardianship may not be entered without the consents prescribed by Code, Family Law Article, §5-311 or §5-317 (c)(2).
Cross reference: See Code, Family Law Article, §5-314 for provisions governing the validity of consents.

(b) Revocation of Consent

(1) Time for Revoking Consent
An individual to be adopted may revoke his or her consent at any time before

entry of a judgment of adoption. Any other person or agency executing a required consent to an adoption or guardianship may revoke the consent within 30 days after the consent is signed.

(2) Procedure for Revoking

An individual may revoke a consent to an adoption or guardianship only by a signed writing actually delivered by mail or in person to the clerk of the circuit court designated in the consent to receive the revocation. An agency entitled to revoke a consent to an adoption may do so (A) by counsel on the record at the hearing required by Rule 9-109 or (B) in a writing signed by the executive head of the agency and filed with the court.

Cross reference: Rule 9-112.

(3) Action by Court upon Revocation

If a consent is revoked pursuant to this Rule, the court shall (A) schedule a hearing within three days to determine the status of the petition and temporary custody of the child, (B) determine the immediate custody of the child pending that hearing, and (C) send to all parties and all persons who previously consented to the adoption or guardianship, including the person who revoked the consent, a copy of the revocation, notice of the immediate custody determination, and notice of the scheduled hearing. This subsection does not apply to actions governed by Code, Family Law Article, §5-312, §5-313, or §5-313.1.

Cross reference: Code, Family Law Article, §§5-311 and 5-317.

(c) Form of Consent of Parent to Adoption

The consent of a parent to an adoption shall be in substantially the following form:

CONSENT TO ADOPTION/GUARDIANSHIP

OR

REQUEST FOR ATTORNEY OR COUNSELING

1. Name.

My name is _____.

2. Age and Competence.

My date of birth is _____ and I am capable of understanding what this consent means.

3. Status as Parent. **Check all that apply**.

(a) I am [ ] the mother [ ] the father (or) [ ] alleged to be the father of_____ , born on _____,

at _____,
(name of hospital or address of birthplace)

in _____ .
(city, state, and county of birth)

(b) I was married to the mother of the child [ ] at the time of conception [ ] at the time the child was born.

4. Right to Attorney.

I understand that:

(a) The court will appoint an attorney for me if I am under 18 years of age or if, because of a disability, I am incapable of consenting to the adoption/guardianship or of effectively participating in the adoption/guardianship proceeding.

(b) Even if I am not entitled to a court-appointed attorney, I am entitled to consult an attorney chosen by me. If this is a consent to an adoption, the adoptive parents may agree

to pay all or part of the attorney's fees on my behalf and, if this is an independent adoption (that is, where an agency is not involved), the court may order the adoptive parents to do so.

(c) If I choose to seek the appointment or advice of an attorney, I cannot now consent to the adoption/guardianship and this Consent Form will be ineffective as a consent.

Check one of the following statements:

[ ] I do not want an attorney.

[ ] I already have an attorney whose name, address, and telephone number are _____

_____.
(Name) (Address) (Telephone Number)

[ ] I want an attorney.

5. Option of Adoption Counseling.

I understand that, if this is an independent adoption, I have the option of receiving adoption counseling and guidance for which a court may require the adoptive parents to pay. I also understand that if I choose to seek such counseling or guidance, I cannot now consent to the adoption and this Consent Form will be ineffective as a consent to adoption.

Check one of the following statements:

[ ] I do not want adoption counseling and guidance.

[ ] I am already receiving or have received adoption counseling and guidance.

[ ] I want adoption counseling and guidance.

[IF A REQUEST IS MADE FOR AN ATTORNEY OR FOR ADOPTION COUNSELING AND GUIDANCE, SIGN HERE AND DO NOT COMPLETE THE REST OF THIS FORM]

_____ _____
(Date) (Signature)

_____
(Address)

_____
(Telephone Number)

6. Compensation.

I understand that by Maryland law I am not allowed to receive compensation of any kind for the placement of my child, except that reasonable and customary charges or fees for hospital or medical or legal services may be paid on my behalf.

7. Access to Birth and Adoption Records.

I understand that when my child is at least 21 years old, my child or I or my child's other biological parent may apply to the Secretary of Health and Mental Hygiene for access to certain birth and adoption records. If I do not want information about me to be disclosed, I have the right to prevent disclosure by filing a disclosure veto. I acknowledge receiving a copy of the Maryland Code, Family Law Article, Title 5, Subtitle 3A and a form that I may use if I want to file a disclosure veto. _____
(Initials)
(This paragraph applies to adoptions finalized on or after January 1,2000.)

8. Adoption Search, Contact, and Reunion Services.

I understand that when my child is at least 21 years old, my child or I or my child's other biological parent may apply to the Director of the Social Services Administration of the Department of Human Resources for adoption search, contact, and reunion services. By my initials, I acknowledge receiving a

copy of the Maryland Code, Family Law Article, Title 5, Subtitle 4B. _____
(Initials)

~~7.~~ 9. Effect of Consent.

I UNDERSTAND THAT, BY SIGNING THIS CONSENT, I AGREE TO THE CONTENTS OF IT, AND THAT, UNLESS THIS IS A STEPPARENT ADOPTION IN WHICH MY (HUSBAND)(WIFE) IS PROPOSING TO ADOPT MY CHILD, I AM GIVING UP ALL RIGHTS, DUTIES, AND OBLIGATIONS WITH RESPECT TO MY CHILD AND ALL RIGHTS TO PARTICIPATE IN ANY PROCEEDING FOR ADOPTION OR GUARDIANSHIP OF MY CHILD.

~~8.~~ 10. Right to Revoke Consent - Limitations.

I understand that the only way in which I can revoke this consent is by delivering my revocation to the following person:

Clerk of the Circuit Court for _____
(Name of County)

Attention: Adoption Clerk

_____
(Address and Telephone Number of Court)

_____

in writing no later than _____ , which is 30 days from the date I sign this consent, that my consent is revoked. The revocation must be signed by me and should contain my printed name and address and, to the extent known, the name, sex, and date of birth of my child.

I understand that revocation by telephone or other oral conversation or by writing to anyone other than the person named above will not constitute a valid revocation. I understand that I

may deliver my written revocation by mail or in person, but if it is not received by the clerk by the date stated above, it will not constitute a valid revocation.

~~9.~~ 11. Consent.

Having read carefully all of the above statements **(check one of the following statements)**:

[ ] I freely, voluntarily, and unequivocally consent to the adoption of my child by _____ and _____ or the person or persons whose name(s) is/are unknown to me, but known to the court. I further consent that the prospective adoptive parents may have immediate and temporary custody of my child.

[ ] I freely, voluntarily, and unequivocally consent to a judgment appointing _____ as the guardian of my child, with the right of the guardian to consent to adoption or long-term care short of adoption.

~~10.~~ 12. Waiver of Notice of Adoption or Guardianship Proceeding.

I understand that, based on this consent, a petition for adoption or guardianship will be filed in court and that I have the right to be notified when the petition is filed and of further proceedings concerning the guardianship or adoption. I also understand that I may waive my right to notice.

Check one of the following statements:

[ ] I waive notice of all proceedings concerning the adoption or guardianship, including entry of judgment. I understand that a court representative may nonetheless contact me in connection with these proceedings.

[ ] I want to receive notice of the filing of the petition but waive notice of all further proceedings concerning the adoption or guardianship. I understand that notice will be sent to the address given by me on this form unless I advise the clerk of the court stated in Paragraph ~~8~~ 10 of this consent, in writing, of a change in my address.

[ ] I want to receive notice of the filing of the petition and of further proceedings concerning the adoption or guardianship until my parental rights have been terminated. I understand that notice will be sent to the address given by me on this form unless I advise the clerk of the court stated in Paragraph ~~8~~ 10 of this consent, in writing, of a change in my address.

11. I acknowledge that I have read this consent or have had it read to me, that I understand it, and that I have received a copy of the signed consent to keep. I further acknowledge that no one has persuaded me to sign this consent or any other form or paper regarding this adoption or guardianship against my will.

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

_____ _____

(Date) (Signature)

_____

(Address)

_____

(Telephone Number)

(d) Form of Consent of Person to be Adopted

The consent of a person to be adopted shall be in substantially the following form:

CONSENT TO ADOPTION

OR

REQUEST FOR ATTORNEY

1. Name.

My name is _____.

2. Age and Place of Birth.

(a) I am at least 10 years old. My date of birth is _____.

(b) I was born at _____

_____.
(name of hospital or address of birthplace)

in _____ .
(city, state, and county of birth)

3. Right to Attorney.

I understand that:

(a) The court will appoint an attorney for me if (i) because of a disability, I am incapable of consenting to the adoption or of effectively participating in the adoption proceeding or (ii) my adoption or guardianship would involuntarily terminate the parental rights of at least one of my parents.

(b) Even if the court is not required to appoint an attorney for me, if I am under 18 years of age the court may nevertheless appoint an attorney for me.

(c) If I choose to seek the appointment or advice of an attorney, I cannot now consent to the adoption and this Consent Form will be ineffective as a consent.

Check one of the following statements:

[ ] I do not want an attorney.

[ ] I already have an attorney whose name, address, and telephone number are _____

_____.
(Name) (Address) (Telephone Number)

[ ] I want an attorney.

[IF A REQUEST IS MADE FOR AN ATTORNEY, SIGN HERE AND DO NOT COMPLETE THE REST OF THIS FORM]

_____ _____
(Date) (Signature)

_____
(Address)

_____
(Telephone Number)

4. Access to Birth and Adoption Records.

I understand that when I am at least 21 years old, my biological parents or I may apply to the Secretary of Health and Mental Hygiene for access to certain birth and adoption records. If I do not want information about me to be disclosed, I have the right to prevent disclosure by filing a disclosure veto when I am at least 20 years old. I acknowledge receiving a copy of the Maryland Code, Family Law Article, Title 5, Subtitle 3A and a form that I may use if I want to file a disclosure veto. _____
(Initials)
(This paragraph applies to adoptions finalized on or after

January 1, 2000.)

5. Adoption Search, Contact, and Reunion Services.

I understand that when I am at least 21 years old, my biological parents or I may apply to the Director of the Social Services Administration of the Department of Human Resources for adoption search, contact, and reunion services. I acknowledge receiving a copy of the Maryland Code, Family Law Article, Title 5, Subtitle 4B. _____
(Initials)

~~4.~~ 6. Effect of Consent and Adoption.

I understand that, by signing this Consent, I agree to the contents of it. I also understand that, if a court enters a judgment of adoption, I will become the child of the persons who adopt me and I will no longer be the legal child of any parent whose parental relationship to me is terminated by the judgment.

~~5.~~ 7. Right to Revoke Consent - Limitations

I understand that the only way in which I can revoke this Consent is by delivering my revocation to the following person:

Clerk of the Circuit Court for _____
(Name of County)

Attention: Adoption Clerk

_____
(Address and Telephone Number of Court)

_____

in writing, prior to entry of a judgment of adoption by a court, that my consent is revoked. The revocation must be signed by me and should contain my printed name, address, sex, date of birth, and the names of my parents or guardian.

I understand that revocation by telephone or other oral conversation or by writing to anyone other than the person named above will not constitute a valid revocation. I understand that I may deliver my written revocation by mail or in person, but if it is not received by the clerk prior to entry of a judgment of adoption by a court, it will not constitute a valid revocation.

~~6.~~ 8. Consent

Having read carefully all of the above statements, I freely, voluntarily, and unequivocally consent to being adopted by _____ and _____ and (if applicable) I consent to the change of my name to _____ .

~~7.~~ 9. Waiver of Notice of Adoption Proceeding

I understand that, based on this consent, a petition for adoption will be filed in court and that I have the right to be notified when the petition is filed and of further proceedings concerning the adoption. I also understand that I may waive my right to notice.

Check one of the following statements:

[ ] I waive notice of all proceedings concerning the adoption, including entry of judgment. I understand that a court representative may nonetheless contact me in connection with these proceedings.

[ ] I want to receive notice of the filing of the petition but waive notice of all further proceedings concerning the adoption. I understand that notice will be sent to the address given by me on this form unless I advise

the clerk of the court stated in Paragraph ~~8~~ 7 of this consent, in writing, of a change in my address.

[ ] I want to receive notice of the filing of the petition and of further proceedings concerning the adoption. I understand that notice will be sent to the address given by me on this form unless I advise the clerk of the court stated in Paragraph ~~8~~ 7 of this consent, in writing, of a change in my address.

~~8.~~ 10. I acknowledge that I have read this consent or have had it read to me, that I understand it, and that I have received a copy of the signed consent to keep. I further acknowledge that no one has persuaded me to sign this consent or any other form or paper regarding this adoption against my will.

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

_____ _____

(Date) (Signature)

_____

(Address)

_____

(Telephone Number)

Source: This Rule is derived in part from former Rule D73 and is in part new.

Rule 9-102 was accompanied by the following Reporter's Note.

The proposed amendments to section (c) conform the form of parental consent to new statutory requirements that are effective October 1, 1999. As amended by Chapter 679, Laws of 1998, Code, Family Law Article, §5-314 states, *inter alia*:

(a) Required Notice

The consent of a natural parent to either an adoption or guardianship of a child is not alid unless the consent contains an express notice of:

. . .

(2) the search rights of adopted individuals and biological parents under Subtitles 3A and 4B of this Title; and

(3) the right to file a disclosure veto under §5-3A-05 of this Title.

To conform the form of parental consent set out in section (c) of the Rule to the statute, new paragraphs 7 (Access to Birth and Adoption Records) and 8 (Adoption Search, Contact, and Reunion Services) are proposed to be added to the form. The form requires that the parent receive a copy of Code, Family Law Article, Title 5, Subtitles 3A and 4B, and a form that may be used to file a disclosure veto. The disclosure veto form is being prepared by the Department of Human Resources. The Family/Domestic Subcommittee has been advised that the form will be available by October 1, 1999.

Although not required by statute, a comparable change to the form of consent of the person to be adopted set out in section (d) of the Rule is proposed. If the individual to be adopted is old enough for the consent requirement of Code, Family Law, §5-311 (a)(3) to apply, the consenting individual should receive information that is comparable to the information received by a consenting parent. Accordingly, new paragraphs 4 (Access to Birth and Adoption Records) and 5 (Adoption Search, Contact and Reunion Services) are proposed to be added to the form.

Ms. Ogletree explained that the proposed amendments conform to new statutory requirements that go into effect on October 1, 1999. The statutory change provides that the consent of a natural parent to the adoption or guardianship with right to consent to adoption of a child is not valid unless it includes certain notices. In section (c) of the Rule, paragraphs 7 and 8 contain changes incorporating the statute. The parent indicates that he or she received a copy of the pertinent statute and the form for filing a disclosure veto by initialing the form. The Subcommittee did not want to track the statute's language directly, because it is long and it might be changed. There are two new paragraphs added to the consent form -- the first one provides for notice that the biological parent has the right to prevent disclosure of information about himself or herself contained in the birth and adoption records of the child. The second section notifies the biological parent that the child or either biological parent may apply for adoption search, contact, and reunion services. This provision also contains a place for the parent to initial that he or she received a copy of the Family Law Article, Title 5, Subtitle 4B. In section (d) of the Rule, comparable changes are made to the form of consent that is signed by an adoptee who is at least 10 years old. Mr. McDermott, a consultant to the Subcommittee, expressed his agreement with these changes.

The Vice Chair asked where the notices come from. Ms. Ogletree responded that the attorney handling the adoption provides the notice. The Chair added that the judge will

ascertain whether pro se litigants received the proper notice. Mr. Brault commented that these changes are designed to prevent reversals. There being no objection, the Rule was approved as presented.

Ms. Ogletree presented Rule 9-103, Petition, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; GUARDIANSHIP TERMINATION PARENTAL RIGHTS

AMEND Rule 9-103 to add to the petition a certain statement concerning facts known to each petitioner that may constitute a disability of a party that makes the party incapable of consenting or participating in the proceedings, as follows:

Rule 9-103. PETITION

(a) Titling of Case

Except as otherwise provided in Rule 9-105, a proceeding shall be titled, "In the matter of the Petition of _____
_____
(name of petitioner(s))

for the Adoption of [a Minor] [an Adult]," or "In the matter of the Petition of
_____
(name of petitioner(s))

for Guardianship with Right to Consent to Adoption or Long-Term Care Short of Adoption," as the case may be.

(b) Petition for Adoption

(1) Contents

A petition for adoption shall be

signed and verified by each petitioner and shall contain the following information:

(A) The name, address, age, business or employment, and employer of each petitioner;

(B) The name, sex, and date and place of birth of the person to be adopted;

(C) The name, address, and age of each parent of the person to be adopted;

(D) Any relationship of the person to be adopted to each petitioner;

(E) The name, address, and age of each child of each petitioner;

(F) A statement of how the person to be adopted was located (including names and addresses of all intermediaries or surrogates), attaching a copy of all advertisements used to locate the person, and a copy of any surrogacy contract;

Committee note: If the text of an advertisement was used verbatim more than once, the requirement that a copy of all advertisements be attached to the petition may be satisfied by attaching a single copy of the advertisement, together with a list of the publications in which the advertisement appeared and the dates on which it appeared.

(G) If the person to be adopted is a minor, the names and addresses of all persons who have had legal or physical care, custody, or control of the minor since the minor's birth and the period of time during which each of those persons has had care, custody, or control, but it is not necessary to identify the names and addresses of foster parents, other than a petitioner, who have taken care of the minor only while the minor has been committed to the custody of a child placement agency;

(H) If the person to be adopted is a minor who has been transported from another state to this State for purposes of placement for adoption, a statement of whether there has been compliance with the Interstate Compact on the Placement of Children (ICPC);

(I) If applicable, the reason why the spouse of the petitioner is not joining in the petition;

(J) If there is a guardian with the right to consent to adoption for the person to be adopted, the name and address of the guardian and a reference to the proceeding in which the guardian was appointed;

(K) Facts known to each petitioner that may constitute a disability that makes a party incapable of consenting or participating in the proceedings, or a statement that no such facts are known to the petitioner;

~~(K)~~ (L) Facts known to each petitioner that may entitle the person to be adopted or a parent of that person to the appointment of an attorney by the court;

~~(L)~~ (M) If a petitioner desires to change the name of the person to be adopted, the name that is desired;

~~(M)~~ (N) As to each petitioner, a statement whether the petitioner has ever been convicted of a crime other than a minor traffic violation and, if so, the offense and the date and place of the conviction;

~~(N)~~ (O) That the petitioner is not aware that any required consent has been revoked; and

~~(O)~~ (P) If placement pending final action on the petition is sought in accordance with Code, Family Law Article, §5-507 (c), a request that the court approve the proposed placement.

(2) Exhibits

(A) The following documents shall accompany the petition as exhibits:

(i) A certified copy of the birth certificate or "proof of live birth" of the person to be adopted;

(ii) A certified copy of the marriage certificate of each married petitioner;

(iii) A certified copy of all judgments of divorce of each petitioner;

(iv) A certified copy of any death certificate of a person whose consent would be required if that person were living;

(v) A certified copy of all orders concerning temporary custody or guardianship of the person to be adopted;

(vi) A copy of any pre-placement report concerning a petitioner;

(vii) A document evidencing the annual income of each petitioner;

(viii) The original of all consents to the adoption and, if available, a copy of any written statement by the consenting person indicating a desire to revoke the consent, whether or not that statement constitutes a valid revocation;

Cross reference: Code, Family Law Article, §5-311.

(ix) If a parent of the person to be adopted cannot be identified or located, an affidavit of each petitioner and the other parent describing the attempts to identify and locate the unknown or missing parent;

(x) A copy of any agreement between a parent of the person to be adopted and a petitioner relating to the proposed adoption;

(xi) If the adoption is subject to the Interstate Compact on the Placement of Children, the appropriate ICPC approval forms; and

Cross reference: Code, Family Law Article, §5-601.

(xii) A brief statement of the health of each petitioner signed by a physician or other health care provider.

(B) The following documents shall be filed before a judgment of adoption is entered:

(i) Any post-placement report relating to the adoption;

(ii) A brief statement of the health of the child by a physician or other health care provider;

(iii) If required by law, an accounting of all payments and disbursements of any money or item of value made by or on behalf of each petitioner in connection with the adoption;

Cross reference: Code, Family Law Article, §5-327 (c).

(iv) An affidavit of counsel, if any, for a minor parent or parent under a disability attesting to the voluntariness of the parent's consent;

Cross reference: Code, Family Law Article, §5-314 (b).

(v) If the adoption is subject to the Interstate Compact on the Placement of Children, the required post-placement form;

(vi) A proposed judgment of adoption; and

(vii) A Department of Health and Mental Hygiene Certificate of Adoption Form.

Cross reference: Code, Health-General Article, §4-211 (f).

(c) Petition for Guardianship

A petition for guardianship shall state all facts required by subsection (b)(1) of this Rule, to the extent that the requirements are applicable and known to the petitioner. It shall be accompanied by all documents required to be filed as exhibits by subsection (b)(2) of this Rule, to the extent the documents are applicable. The petition shall also state the license number of the child placement agency.

Cross reference: Code, Family Law Article, §5-317 (b).

(d) If facts Unknown or Documents Unavailable

If a fact required by subsection

(b)(1) or section (c) of this Rule is unknown to a petitioner or if a document required by subsection (b)(2) or section (c) is unavailable, the petitioner shall so state and give the reason in the petition or in a subsequent affidavit. If a document required to be submitted with the petition becomes available after the petition is filed, the petitioner shall file it as soon as it becomes available.

(e) Judgment from Foreign Country

When a judgment of adoption or guardianship is sought pursuant to Code, Family Law Article, §5-313.1, an exemplified copy of the judgment granted by the foreign jurisdiction shall be filed with the petition.

Committee note: For exemplification procedure, see Federal Rule of Civil Procedure 44 (a) (2).

(f) Disclosure of Facts Known to Child Placement Agency

If any fact required by subsection (b)(1) of this Rule to be stated is known to a child placement agency and the agency declines to disclose it to a petitioner, the agency shall disclose the fact to the court in writing at the time the petition is filed.

Source: This Rule is derived in part from former Rule D72, in part from former Rule D80, and is in part new.

Rule 9-103 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 9-103, in conjunction with proposed amendments to Rule 9-105, address a concern about individuals who, because of a disability, are incapable of consenting or participating in the proceedings. This amendment adds a requirement to the petition that each petitioner state any facts known to the petitioner that may constitute the disability of a party or state that no such facts are known to the petitioner.

Ms. Ogletree explained that the Subcommittee had discussed the fact that some people with disabilities cannot validly consent to or participate in adoption proceedings. Disabilities may include mental capacity, minority, or developmental level. Instead of having all of the parties and interested persons show up in court only to discover that someone has a disbaility of this nature, by getting out the facts of the disability early, the court could hold a hearing to determine whether someone is able to consent or participate. Subsection (b)(1)(K) is new and requires the petitioner to provide any facts about a party's disability. Mr. McDermott expressed the view that this is a useful protection to secure adoption proceedings.

The Chair commented that he read a newspaper article which stated that a minor whose alcohol drinking resulted in his being removed from the high school football team sued alleging that he had a disability. The Chair cautioned that an alcohol or drug problem should not be considered a disability within the meaning of Rule 9-103. The Reporter responded that Rule 9-101, Definitions, provides that the term "disability" has the meaning stated in Code, Family Law Article, §5-301, which limits the meaning. Ms. Ogletree added that the Rule is designed to bring forward any possibility of ineffective consent before a final contested hearing. It allows the court to address, at an early stage of the proceedings, whether a person has a disability that could negate the effect of the "deemed consent" provisions of Code, Family Law Article, §5-322 (d) or a written consent signed by that person.

Mr. Sykes noted that as a matter of style, the language of subsection (b)(1)(K) should read: "Facts known to each petitioner that may indicate a disability...". The Committee agreed by consensus to this change. The Committee approved the Rule as amended.

Ms. Ogletree presented Rule 9-105, Show Cause Order; Other Notice, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; GUARDIANSHIP TERMINATING PARENTAL RIGHTS

AMEND Rule 9-105 to add a certain procedure to determine whether a party has a disability, to clarify that the request for appointment of attorney is printed on the notice of objection form, to change the number of notice of objection forms that are served, and to revise certain notices in the show cause order and notice of objection, as follows:

Rule 9-105. SHOW CAUSE ORDER; DISABILITY OF A PARTY; OTHER NOTICE

(a) Requirement

(1) Generally

Upon the filing of a petition for adoption or guardianship, the court shall enter a show cause order in the form set forth in section (h) of this Rule unless all parties entitled to service of the show cause order under section (b) of this Rule have consented to the adoption or guardianship. If the petition seeks adoption of a minor, the show cause order shall not divulge the name of the petitioner. If the petition seeks appointment of a guardian, the show cause order shall state the name of the child

placement agency seeking guardianship.

(2) Alleged Disability of a Party

If subsection (a)(1) of this Rule requires the entry of a show cause order and the petition has alleged facts that may constitute the disability of a party, the court shall (A) appoint an attorney for the alleged disabled party, (B) set a prompt hearing to determine whether the party has a disability that makes the party incapable of consenting or participating in the proceeding, and (C) cause subpoenas to the hearing to be issued and served upon the petitioner and the alleged disabled party.

(b) Persons to be Served

(1) In Adoption Proceeding

(A) Subject to paragraphs (1)(B), (1)(C), and (1)(D) of this section, if the petition seeks adoption, the show cause order shall be served on (i) the person to be adopted, if the person is 10 years old or older; (ii) the parents of the person to be adopted; and (iii) any other person the court directs to be served.

(B) If the parental rights of the parents of the person to be adopted have been terminated by a judgment of guardianship with the right to consent to adoption, service shall be on the guardian instead of the parents.

(C) If an attorney has been appointed to represent a parent or the person to be adopted, service shall be on the attorney instead of the parent or person to be adopted.

Cross reference: See Rule 9-106 (a) concerning appointment of attorney.

(D) The show cause order need not be served on: (i) a parent of a person to be adopted if the person to be adopted has been adjudicated to be a child in need of assistance in a prior juvenile proceeding, the petition for adoption is filed by a child placement agency, and the court is satisfied by affidavit or testimony that the petitioner

has made reasonable good faith efforts to serve the show cause order on the parent by both certified mail and private process at the addresses specified in Code, Family Law Article, §5-322 (b) and at any other address actually known to the petitioner as one where the parent may be found; or (ii) a person who has executed a written consent pursuant to Rule 9-102.

(2) In a Guardianship Proceeding

(A) Subject to paragraphs (2)(B) and (2)(C) of this section, if the petition seeks guardianship, the show cause order shall be served on (i) the parents of the person for whom a guardian is to be appointed and (ii) any other person that the court directs to be served.

(B) If an attorney has been appointed to represent a parent or the person for whom a guardian is to be appointed, service shall be on the attorney instead of the parent or person for whom a guardian is to be appointed.

(C) The show cause order need not be served on: (i) a parent of a person for whom a guardian is to be appointed if the person for whom a guardian is to be appointed has been adjudicated to be a child in need of assistance in a prior juvenile proceeding and the court is satisfied by affidavit or testimony that the petitioner has made reasonable good faith efforts to serve the show cause order on the parent by both certified mail and private process at the addresses specified in Code, Family Law Article, §5-322 (b) and at any other address actually known to the petitioner as one where the parent may be found; or (ii) a person who has executed a written consent pursuant to Rule 9-102.

(c) Method of Service

Except as otherwise provided in this Rule, the show cause order shall be served in the manner provided by Rule 2-121. If the court is satisfied by affidavit or testimony that the petitioner or a parent, after reasonable efforts made in good faith, has been unable to ascertain the identity or

whereabouts of a parent entitled to service under section (b) of this Rule, the court may order, as to that parent, that the show cause order be published one time. Publication shall be in the county of that parent's last known residence. When a show cause order is published, unless the court orders otherwise, the show cause order shall identify the individual who is the subject of the proceeding only as "a child born to" followed by the name of any known parent of the child and shall set forth the month, year, county, and state of the child's birth, to the extent known.

Cross reference: See Code, Family Law Article, §5-322 (c)(2)(ii), which provides that an indigent petitioner may serve notice by posting. See Code, Family Law Article, §5-322 (e), setting forth the efforts necessary to support a finding that a reasonable, good faith effort has been made by a local department of social services to locate a parent.

(d) Time for Service

Unless the court orders otherwise, a show cause order that is served in the manner provided by Rule 2-121 shall be served within 90 days after the date it is issued. If service is not made within that period, a new show cause order shall be issued at the request of the petitioner.

(e) Notice of Objection; Request for Appointment of an Attorney

When the show cause order is served pursuant to Rule 2-121, it shall be accompanied by two copies of a pre-captioned notice of objection in substantially the form set forth in section (i) of this Rule, on which is also printed a Request for Appointment of an Attorney in substantially the form set forth in section (j) of this Rule.

(f) Additional Notice in a Guardianship

The petitioner in an action for guardianship of a child who has been adjudicated a child in need of assistance in a prior juvenile proceeding shall also send a

copy of the petition and show cause order by first class mail to each attorney who represented a parent and to the attorney who represented the child in the juvenile proceeding.

(g) Notice of Change of Name

If the person to be adopted is an adult and the petitioner desires to change the name of the person to be adopted to a surname other than that of the petitioner, notice of a proposed change of name shall also be given in the manner provided in Rule 15-901.

(h) Form of Show Cause Order

The show cause order shall be in substantially the following form:

IMPORTANT

THIS IS A COURT ORDER. IF YOU DO NOT UNDERSTAND WHAT THE ORDER SAYS, HAVE SOMEONE EXPLAIN IT TO YOU. YOUR RIGHT TO AN ATTORNEY IS EXPLAINED IN PARAGRAPH 3 OF THIS ORDER. **IF YOU DO NOT FILE A NOTICE OF OBJECTION BEFORE THE DEADLINE STATED IN PARAGRAPH 2 OF THIS ORDER, YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS.**

IN THE MATTER OF A PETITION	IN THE
FOR _____ (adoption/guardianship)	CIRCUIT COURT FOR
OF _____ (Name of individual who is the subject of the proceeding)	_____ (county)
	_____ (docket reference)

SHOW CAUSE ORDER

TO:

_____
(name of person to be served)

_____

_____

(address, including county)

_____
(relationship of person served to individual who is the subject of the proceeding)

You are hereby notified that:

1. *Filing of Petition*

A petition has been filed for_____
(adoption/guardianship)

of _____ who
(name of individual who is the subject of the proceeding)

was born at _____ on _____.
(birthplace) (date of birth)

(If the petition is for guardianship, include the following sentence: The petition was filed by _____).
(name of child placement agency seeking guardianship)

2. *Right to Object; Time For Objecting*

(A. This portion should be included when the show cause order is to be served pursuant to Rule 2-121.)

If you wish to object to the_____,
(adoption/guardianship)

you must file a notice of objection with the clerk of the court at _____
(address of courthouse)

within _____ days after this Order is served on you. For your convenience, a form notice of objection is attached to this Order.

(B. This portion should be included when the show cause order is to be published or posted.)

If you wish to object to the_____
(adoption/guardianship)

you must file a notice of objection with the clerk of the court on or before _____
(date)
at _____.
(address of courthouse)

WHETHER THE PETITION REQUESTS ADOPTION OR GUARDIANSHIP, IF YOU DO NOT FILE A NOTICE OF OBJECTION ~~OR A REQUEST FOR AN ATTORNEY~~ **BY THE DEADLINE STATED ABOVE,** ~~A JUDGMENT TERMINATING~~ **YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS** ~~MAY BE ENTERED WITHOUT YOUR CONSENT~~.

3. *Right to an Attorney*

(a) You have the right to consult an attorney and obtain independent legal advice.

(b) An attorney may already have been appointed for you based on statements in the petition. If an attorney has been appointed and has already contacted you, you should consult with that attorney.

(c) If an attorney has not already contacted you, you may be entitled to have the court appoint an attorney for you if:

(1) you are the person to be adopted and:

(A) you are at least ten years old but are not yet 18; or

(B) you are at least ten years old and have a disability that makes you incapable of consenting to the adoption or of participating effectively in the proceeding.

(2) you are the person to be adopted or the person for whom a guardian is sought and the proceeding involves

the involuntary termination of the parental rights of your parents.

(3) you are a parent of the person to be adopted or for whom a guardian is sought and:

(A) you are under 18 years of age; or

(B) because of a disability, you are incapable of consenting to the adoption or guardianship or of participating effectively in the proceeding; or

(C) you object to the adoption and cannot afford to hire an attorney because you are indigent.

IF YOU BELIEVE YOU ARE ENTITLED TO HAVE THE COURT APPOINT AN ATTORNEY FOR YOU AND YOU WANT AN ATTORNEY, YOU MUST NOTIFY THE COURT BEFORE THE TIME YOUR NOTICE OF OBJECTION MUST BE FILED. YOU MAY FILE A REQUEST FOR AN ATTORNEY WITHOUT FILING A NOTICE OF OBJECTION, BUT **IF YOU DO NOT FILE A NOTICE OF OBJECTION BY THE DEADLINE STATED, YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS**.

For your convenience, a request for appointment of an attorney is printed on the notice of objection form attached to this Order. (Omit the last sentence from a published or posted show cause order.)

(d) If you are a parent of the person to be adopted, you are entitled to consult an attorney chosen by you, even if you are not entitled to an attorney appointed by the court. If you employ an attorney, you may be responsible for any fees and costs charged by that attorney unless this is an adoption proceeding and the adoptive parents agree to pay, or the court orders them to pay all or part of those fees or expenses.

(e) If you wish further information concerning appointment

of an attorney by the court or concerning adoption counseling and guidance, you may contact

_____
(name of court official)

_____
(address)

_____
(telephone number)

4. *Option to Receive Adoption Counseling*

If this is an adoption proceeding, you also may have the option to receive adoption counseling and guidance. You may have to pay for that service unless the adoptive parents agree to pay or the court orders them to pay all or part of those charges.

Date of issue: _____

_____
(Judge)

(i) Form of Notice of Objection

The notice of objection shall be in substantially the following form:

IN THE MATTER OF A PETITION	IN THE
FOR _____ (adoption/guardianship)	CIRCUIT COURT FOR
OF _____ (Name of individual who is the subject of the proceeding)	_____ (county)
	_____ (docket reference)

NOTICE OF OBJECTION

(Instructions to the person served with the show cause order: **IF YOU WISH TO OBJECT, YOU MUST FILE YOUR NOTICE OF OBJECTION WITH THE COURT ON OR BEFORE THE DEADLINE STATED IN THE SHOW CAUSE ORDER.** You may use this form to do so. You need only sign this form, print or type your name, address, and telephone number underneath your signature, and mail or deliver it to the court at the address shown in paragraph 2 of the show cause order. **IF YOU DO NOT FILE A NOTICE OF OBJECTION BY THE DEADLINE STATED, YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS.** If you wish to state your reasons, you may state them on this sheet.)

I object to the _____ of the
(adoption/guardianship)

above-named individual. My reasons for objecting are as follows:

_____

_____

_____

_____

_____
(Signature)

_____
(Name, printed or typed)

_____
(Address)

_____
(Telephone number)

(j) Form of Request for Attorney

A request for attorney shall be in substantially the following form:

REQUEST FOR APPOINTMENT OF AN ATTORNEY

I want the Court to appoint an attorney to represent me.

(Check appropriate box or boxes)

[ ] I am the person to be adopted and:

[ ] I am at least ten years old but am not yet 18; or

[ ] I am at least ten years old and I have a disability that makes me incapable of consenting to the adoption or of participating effectively in the proceeding; or

[ ] the proceeding involves the involuntary termination of the parental rights of my parents.

[ ] I am a parent of the person to be adopted or for whom a guardian is sought and:

[ ] I am under 18 years of age; or

[ ] because of a disability, I am incapable of consenting to the adoption or guardianship or of participating effectively in the proceeding; or

[ ] I object to the adoption or guardianship and cannot afford to hire an attorney because I am indigent.

_____
(Signature)

_____
(Name, printed or typed)

_____
(Address)

_____
(Telephone Number)

Committee note: See Rule 9-103 (a). The caption of the petition designated in the show cause order is different from the caption of the case record referred to in Rule 9-103, which is kept by the clerk. The caption in the show cause order preserves the anonymity of the prospective adoptive parents. The caption in

the case record preserves the anonymity of the adoptee.

Source: This Rule is in part derived from former Rule D74 and is in part new.

REPORTER'S NOTE

Following a review of the "deemed consent" provisions of Code, Family Law Article, §5-322 (d); In Re: Adoption No. 93321055, 344 Md. 458 (1997); and the proposed amendments to Rule 9-105 transmitted to the Court of Appeals with the One Hundred Thirty-Seventh Report of the Rules Committee and remanded to the Committee for further study by Rules Order dated July 23, 1997, the Family/Domestic Subcommittee recommends amendments to sections (a), (h), and (i) of Rule 9-105, together with an amendment to Rule 9-103.

The proposed amendments to Rule 9-103 and to section (a) of this Rule address the problem of a party who, because of a disability (as that term is defined in Code, Family Law Article, §5-301 (c)) is incapable of consenting or participating in the proceedings. The amendment to Rule 9-103 requires each petitioner to state any facts known to the petitioner that may constitute a disability of a party. Under proposed new subsection (a)(2) of Rule 9-105, the inclusion of such facts in the petition triggers the appointment of an attorney for the alleged disabled person and a hearing on the issue of disability.

If a person who is not under a disability is served with a show cause order under Rule 9-105 and fails to file a notice of objection within the time allowed, the "deemed consent" provisions of Code, Family Law Article, §5-322 (d) are applicable. So that a person who is served with a show cause order is clearly apprised of the effect of a failure to file a timely notice of objection, a bold-type warning that states, "If you do not file a notice of objection by the deadline stated, you have agreed to a termination of your parental rights" is added to the show cause order in three places and to the notice of objection form. The phrase "you have agreed to a termination of your parental rights" was suggested by a representative of the Office of the Public Defender as a plain-language approach to advising parents of the consequences of ignoring the show cause order. Also added to the show cause order is a statement at the top concerning the right to an attorney.

In addition, a proposed amendment to section (e) conforms that section to a statement in section (3) of the show cause order and actual practice that the notice of objection and the request for appointment of an attorney are printed on the same form. The amendment to section (e) also increases from one to two the number of copies of the notice of objection form served with the show cause order. This allows a person to file one copy and retain the other copy, either for the person's records or, if

the first form was used solely to request an attorney, to file a timely notice of objection.

Ms. Ogletree told the Committee that with the inclusion of a requirement in Rule 9-103 (b) that the petitioner set forth facts alleging a disability of a party, if a show cause order is required because not all of the parties have consented to the adoption and there is an allegation of disability, Rule 9-105 should provide that the court must take certain actions to determine whether there is a disability.

Mr. Sykes pointed out that in subsection (a)(2), the word "constitute" should be changed to the word "indicate" as it was changed in Rule 9-103. The Committee agreed by consensus to this change. Mr. Sykes also noted that even though the petition may not allege facts that indicate a disability, a party could be disabled. Ms. Ogletree said that this is designed as an allegation that a party may be disabled. Mr. McDermott asked whether the phrase "allegedly disabled party" should be changed to "potentially disabled party." The Vice Chair suggested that in subsection (a)(2) of Rule 9-105 the words "allegedly disabled" be deleted. The Committee agreed by consensus to this suggestion. The Reporter pointed out that the tagline to subsection (a)(2) will need to be changed. The Chair suggested that the tagline read: "Determination of Disability," and the Committee agreed to this by consensus.

Ms. Ogletree stated that other changes to the Rule are made to give better notice to a party that if no timely notice of

objection is filed, the party is deemed to have consented. A consultant from the Office of the Public Defender had said at a Subcommittee meeting that many times people do not understand the show cause order. The Subcommittee tried to make the language in the show cause order explicit. The Public Defender consultant also pointed out that two papers have to be filed by the party who receives the show cause order. One paper objects to the adoption, another requests an attorney. There is a conforming change in the notice of objection form, which states that if the person does not file the notice of objection by the deadline, the person has agreed to a termination of his or her parental rights. Filing the form to request an attorney does not toll the time for filing a notice of objection. The Chair commented that his recollection was that this issue was presented to the Court of Appeals in the case of In Re Adoption No. 93321055, 344 Md. 458 (1997). The Court had stated that there are situations when the court may entertain an untimely-filed objection. Ms. Ogletree explained that the notice is designed so that if a person does not do something, the person will lose his or her rights.

The Reporter said that the Subcommittee had expressed its concern about this. Representatives of both the Public Defender and the Attorney General were present at the Subcommittee meeting. Once it is determined that someone has the mental capacity to consent, then if that person does not take the proper steps, the person's inaction is deemed to be a consent. The Vice Chair questioned as to what happens if the petition does not allege facts which may indicate disability, and the person

receiving the show cause order cannot read. Mr. Klein pointed out that some people may be able to read, but they do not understand the forms. If a person requests an attorney, this could mean that he or she does not agree with the adoption. Requesting an attorney should be considered the same as lodging an objection. The Reporter noted that one point, a proposed Rule had been drafted so that a request for an attorney was coupled with the notice of objection.

Mr. Brault pointed out that the adoption case is explicit -- the construction of the statute is consent arising by operation of law. Ms. Ogletree observed that if this is the holding, then the consent cannot be revoked. The Chair questioned whether the proposed modification is close to what the Court of Appeals would like. He suggested that the show cause order could provide that if someone does not file a notice of objection before the deadline, "the court can decide that you have agreed to a termination of your parental rights." Mr. Brault remarked that this language would imply that the court could decide otherwise.

Mr. Hochberg suggested that the Rule be sent to the Court of Appeals as it was presented. Mr. Klein proposed that an alternative also be sent. Ms. Ogletree said that the Reporter’s note could provide that one of the issues that was raised at the Rules Committee meeting was that the request for an attorney should be considered as a notice of objection. The Vice Chair suggested that an alternative to Rule 9-105 be sent to the Court of Appeals. The alternative Rule could provide that when someone requests an attorney, it constitutes the filing of an objection.

Mr. Klein agreed with this suggestion. The Chair added that the idea is that if someone requests an attorney, the person so requesting must have some concerns about the adoption.

The Chair stated that two alternatives of Rule 9-105 would be presented to the Court of Appeals.

Ms. Ogletree presented Rule 9-106, Appointment of Attorney--Investigation, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; GUARDIANSHIP TERMINATING PARENTAL RIGHTS

AMEND Rule 9-106 to change the circumstances under which an investigation is required, to specify certain persons who may not conduct the investigation, and to clarify to whom the report of an investigation is available, as follows:

Rule 9-106. APPOINTMENT OF ATTORNEY - INVESTIGATION

(a) Appointment of Attorney

The court shall appoint an attorney for any person entitled to the appointment pursuant to Code, Family Law Article, §5-323. The court may appoint an attorney for a minor who is not otherwise entitled by statute to a court-appointed attorney. If the petition shows that a person is entitled to a court-appointed attorney, the court shall appoint an attorney for that person promptly after the filing of the petition.

Cross reference: See In Re Adoption No. A91-71A, 334 Md. 538 (1994).

(b) Investigation by Court

~~If the proceeding is contested, t~~ The

court shall order an investigation of the facts of the case ~~and if the proceeding is uncontested, the court may order an investigation~~ (1) if an investigation is required by law or (2) in a contested proceeding, upon the request of a party made no later than 30 days before the hearing on the merits. A court may order an investigation in any case at any time. The court may designate any person or agency to conduct the investigation, except the court shall not designate a party, an attorney for a party, or the attorney for the person who is the subject of the proceeding. ~~That~~ The designated person or agency shall report the findings of the investigation to the court in writing and, also, if requested by the court, the recommendation of the person or agency.

(c) Reports

The reports of any investigation shall be filed among the records of the proceeding and shall be available to the parties and their attorneys and the attorney for the person who is the subject of the proceeding.

Source: This Rule is derived from former Rule D75.

Rule 9-106 was accompanied by the following Reporter's Note.

The Family/Domestic Subcommittee proposes amendments to Rule 9-106 (b) and (c), concerning court-ordered investigations.

At the request of the Honorable Dennis M. McHugh, the Subcommittee considered whether the investigation which is now mandatory in a contested case should be made discretionary. The Subcommittee was advised that in many jurisdictions, investigations are not being conducted, in part due to lack of resources. In jurisdictions where investigations occur, they often consist of a "record review" of the petitioner's file, which the Subcommittee believes to be meaningless at best and prejudicial at worst.

Under the proposed amendment to section (b), the court retains the authority to order an investigation in any case at any time, but

> the mandatory investigation is all contested cases is eliminated. Instead, an investigation is mandatory only if (1) it is required by law (e.g., Code, Family Law Article, §5-312 (c)(2)(ii)) or (2) at least 30 days before the hearing on the merits, a party to the proceeding requests an investigation.
>
> The amendment to section (b) also requires the investigation to be conducted by a neutral person or agency, not by a party or attorney involved in the case.
>
> The Subcommittee also was advised of problems that occasionally occur with access to reports of the investigation. An amendment to section (c) clarifies that the report is available to parties and their attorneys and the attorney for the person who is the subject of the proceeding.

This Rule pertains to investigations by the court. Under the current Rule, an investigation is supposed to be conducted in every contested case, but apparently this is not taking place. The Subcommittee tried to conform the Rule to practice. The changes also require the appointment of a neutral third person to conduct any investigation that is ordered. Mr. Brault inquired if the file and the report are confidential. Ms. Ogletree replied that they remain confidential until later on in the proceedings. Mr. Brault asked if anything requires that the report remain confidential after it is given to the parties. Ms. Ogletree replied that she did not know of any such requirement. She said that the Subcommittee was concerned about indiscriminate dissemination of information by pro se parties, but the pro se parties have a right to the information.

The Chair pointed out that there is a difference in getting the report and simply looking at it. Ms. Ogletree noted that the

Rule provides that the reports are made available. Mr. Hochberg commented that it is not easy for an attorney to only be able to read the report, without getting a copy of it. The attorney has to read the report into a dictaphone. If a person is pro se, he or she needs access to the file, but should not disseminate it. The Reporter said that the Subcommittee added the language to section (c) as a compromise.

The Chair suggested that section (c) provide that the reports of the investigation shall be open to the parties and their attorneys, and copies available upon order of court. Mr. Brault said that another approach is that if the documents are deemed confidential, the order would require that the confidential documents would be returned to the producing party without allowing any parties to make copies of or destroy the documents. Ms. Ogletree stated that she was in favor of the Chair's suggested language. The Vice Chair suggested that section (c) read as follows: "The reports of any investigation shall be filed among the records of the proceeding and shall be available to the parties and their attorneys and the attorney for the person who is the subject of the proceeding. Copies of the report shall be available only upon order of court, subject to any conditions the court deems appropriate." The Committee agreed by consensus to this change. The Committee approved the Rule as amended.

Ms. Ogletree told the Committee that the next item in the meeting materials was a draft letter to the legislative members of the Rules Committee requesting that the General Assembly

consider enacting legislation concerning two aspects of the law governing adoption and guardianship with the right to consent to adoption. (See Appendix 1.) The first aspect is clarification of the intended role of a natural parent who has not waived notice under Code, Family Law Article, §5-319 (d) after parental rights have been terminated by a judgment of guardianship and before the child is adopted. The second aspect is a recommendation by the Rules Committee that portions of Code, Family Law Article, §5-322 (c), (d), and (e), which allow a waiver of notification, be rescinded and instead there be a requirement of notice by publication. The Committee is concerned that the court may enter a judgment terminating the fundamental liberty interest that a parent has to raise his or her child without the court having made any attempt to notify the parent of the existence of the judicial proceeding. The reason that there was opposition to the idea of publication was because of the expense. The Reporter added that another reason was the delay in the adoption because of the time it takes to publish. Mr. McDermott commented that the interest in finding permanent homes for children as soon as possible may outweigh the jeopardizing of parental rights. The Reporter noted that this may jeopardize the finality of the adoption. Judge Johnson remarked that it does not take much time to publish once.

The Vice Chair expressed her concern about publication under the current statute, Code, Family Law Article, §5-322(b). Ms. Ogletree pointed out that the provisions being recommended for rescission are in sections (c), (d), and (e) of the statute. The

Vice Chair said that she believes that subsection (b)(2) would be unconstitutional if it provides that publication is a reasonable good faith effort to locate a parent who was not present at the hearing. Ms. Ogletree noted that section (b) only applies to petitions filed after a juvenile proceeding in which the child has been adjudicated to be a child in need of assistance.

The Chair suggested that the Committee could recommend that the notice required in any adoption be the same as the notice required in an independent adoption. Instead of recommending that sections (c), (d), and (e) be deleted, the Committee could recommend that in subsections (c)(1) and (c)(2), the first clause be deleted, so that the independent adoption exception would be removed. The Reporter observed that there is a legislative history to this statute, and the legislature may not agree to the changes. Ms. Ogletree said that the Subcommittee's concern is to provide the broadest opportunity for someone to see the notice. This may be of more benefit in smaller counties. Judge Kaplan expressed the view that publication is an unnecessary step resulting in expense and delay.

The Reporter remarked that the focus of the Subcommittee's concern is the waiver of all notice of the court proceedings under the current statute. There ought to be some way that the court tries to find a person who has never been served. Ms. Ogletree said that the Subcommittee asked for the issue to go before the full Committee. The Chair expressed the opinion that publication is the equivalent of "needle in the haystack" notice. The Vice Chair inquired if there is a requirement of an affidavit

of good faith efforts to find the person. Ms. Ogletree responded that in agency adoptions, the agency has to inform the court as to what efforts it has made to find the person. The Chair commented that the court orders the adoption after the representations are made to the court. Mr. Howell observed that privacy issues may be involved if a public notice is posted. The Reporter remarked that posting and publication have been going on for a long time in adoption and guardianship cases. Judge Kaplan pointed out that if a foreign child is being adopted, publication in The Baltimore Sun would not be too helpful. Ms. Ogletree said that publication would only take place if a parent cannot be found.

Delegate Vallario noted that in many cases, a child is put up for adoption. The father does not know about the child's existence and cannot be found. The Supreme Court has reversed many cases because no notice was given. Publication is not the greatest notice, but by employing publication, it shows that every attempt to find the missing parent was made. Ms. Ogletree added that the cost of publishing one time is not that much, and is well worth it if it keeps the adoption from being overturned many years later. Mr. Sykes commented that the legislature will make the final decision.

Agenda Item 2. Consideration of certain proposed recommendations of the Judgments Subcommittee: Amendments to Rule 2-646 (Garnishment of Wages), Rule 3-646 (Garnishment of Wages), and Letter to Chief Judge Bell Re: Rule 3-621 (b)

Mr. Bowen presented Rules 2-646 and 3-646 for the

Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE — CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-646 to delete a certain filing requirement and to add a requirement that a certain document be retained by a judgment creditor for a certain period of time, as follows:

Rule 2-646. GARNISHMENT OF WAGES

(a) Applicability

This Rule governs garnishment of wages under Code, Commercial Law Article, §§15-601 through 15-606.

(b) Issuance of Writ

The judgment creditor may obtain issuance of a writ of garnishment by filing in the same action in which the judgment was obtained a request that contains (1) the caption of the action, (2) the amount owed under the judgment, (3) the name and last known address of the judgment debtor, and (4) the name and address of the garnishee. Upon filing of the request, the clerk shall issue a writ of garnishment directed to the garnishee together with a blank answer form provided by the clerk.

(c) Content

The writ of garnishment shall:

(1) contain the information in the request, the name and address of the person requesting the writ, and the date of issue,

(2) notify the garnishee of the time within which the answer must be filed and that failure to do so may result in the garnishee being held in contempt,

(3) notify the judgment debtor and garnishee that federal and state exemptions may be available,

(4) notify the judgment debtor of the right to contest the garnishment of wages by filing a motion asserting a defense or objection.

(d) Service

The writ and answer form shall be served on the garnishee in the manner provided by Chapter 100 of this Title for service of process to obtain personal jurisdiction and may be served in or outside the county. Upon issuance of the writ, a copy of the writ shall be mailed to the debtor's last known address. Subsequent pleadings and papers shall be served on the creditor, debtor, and garnishee in the manner provided by Rule 1-321.

(e) Response of Garnishee and Debtor

The garnishee shall file an answer within the time provided by Rule 2-321. The answer shall state whether the debtor is an employee of the garnishee and, if so, the rate of pay and the existence of prior liens. The garnishee may assert any defense that the garnishee may have to the garnishment, as well as any defense that the debtor could assert. The debtor may file a motion at any time asserting a defense or objection.

(f) When no Answer Filed

If the garnishee fails to file a timely answer, the court on motion of the creditor may order the garnishee to show caused why the garnishee should not be held in contempt and required to pay reasonable attorney's fees and costs.

(g) When Answer Filed

If the answer denies employment, the clerk shall dismiss the proceeding against the garnishee unless the creditor files a request for hearing within 15 days after service of the answer. If the answer asserts any other defense or if the debtor files a motion asserting a defense or objection, a hearing on the matter shall be scheduled

promptly.

(h) Interrogatories to Garnishee

Interrogatories may be served on the garnishee by the creditor in accordance with Rule 2-645 (h).

(i) Withholding and Remitting of Wages

While the garnishment is in effect, the garnishee shall withhold all garnishable wages payable to the debtor. If the garnishee has asserted a defense or is notified that the debtor has done so, the garnishee shall remit the withheld wages to the court. Otherwise, the garnishee shall remit them to the creditor or the creditor's attorney within 15 days after the close of the debtor's last pay period in each month. The garnishee shall notify the debtor of the amount withheld each pay period and the method used to determine the amount. If the garnishee is served with more than one writ for the same debtor, the writs shall be satisfied in the order in which served.

(j) Duties of the Creditor

(1) Payments received by the creditor shall be credited first against accrued interest on the unpaid balance of the judgment, then against the principal amount of the judgment, and finally against attorney's fees and costs assessed against the debtor.

(2) Within 15 days after the end of each month in which one or more payments are received from any source by the creditor for the account of the debtor, the creditor shall ~~file~~ mail to the garnishee and to the debtor a statement disclosing the payments and the manner in which they were credited. The creditor shall retain a copy of each statement until 90 days after the termination of the garnishment proceeding and make it available for inspection upon request by any party or by the court.

(3) If the creditor fails to comply with the provisions of this section, the court upon motion may dismiss the garnishment proceeding and order the creditor to pay

reasonable attorney's fees and costs to the party filing the motion.

(k) Termination of Garnishment

A garnishment of wages terminates 90 days after cessation of employment unless the debtor is reemployed by the garnishee during that period.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule F6 a.
Section (b) is new.
Section (c) is in part derived from former Rule F6 b and in part new.
Section (d) in part derived from former Rule F6 c and in part new.
Section (e) is derived from former Rule F6 d and k.
Section (f) is derived from former Rule F6 f.
Section (g) is in part derived from former Rule F6 e and in part new.
Section (h) is derived from former Rule F6 g.
Section (i) is in part derived from former Rule F6 h and in part new.
Section (j) is derived from former Rule F6 j.
Section (k) is derived from former Rule F6 i.

Rule 2-646 was accompanied by the following Reporter’s Note.

Proposed amendments to Rules 2-646 and 3-646 conform the rules to Chapter 623, Laws of 1999 (H.B. 314), by deleting the requirement that the judgment creditor file monthly reports of payments received. The creditor remains obligated to prepare the statements and send copies to the garnishee and debtor. Added to the Rule is a requirement that the creditor retain a copy of each statement until 90 days after the termination of the garnishment proceeding and make the statement available for inspection upon request by any party or by the court.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE — DISTRICT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 3-646 to delete a certain filing requirement and to add a requirement that a certain document be retained by a judgment creditor for a certain period of time, as follows:

Rule 3-646. GARNISHMENT OF WAGES

. . .

(j) Duties of the Creditor

(1) Payments received by the creditor shall be credited first against accrued interest on the unpaid balance of the judgment, then against the principal amount of the judgment, and finally against attorney's fees and costs assessed against the debtor.

(2) Within 15 days after the end of each month in which one or more payments are received from any source by the creditor for the account of the debtor, the creditor shall ~~file~~ mail to the garnishee and to the debtor a statement disclosing the payments and the manner in which they were credited. The creditor shall retain a copy of each statement until 90 days after the termination of the garnishment proceeding and make it available for inspection upon request by any party or by the court.

(3) If the creditor fails to comply with the provisions of this section, the court upon motion may dismiss the garnishment proceeding and order the creditor to pay reasonable attorney's fees and costs to the party filing the motion.

. . .

Rule 3-646 was accompanied by the following Reporter’s Note.

This amendment to Rule 3-646 is proposed for the reasons stated in the Reporter's Note to the proposed amendment to Rule 2-646.

Mr. Bowen explained that the legislature deleted the requirement that a judgment creditor file with the court monthly reports of payments received. The creditor remains obligated to prepare the statements and send copies to the garnishee and the debtor. The Judgments Subcommittee has proposed modifications to subsection (j)(2) of Rules 2-646 and 3-646 to reflect these changes. The last sentence was added by the Subcommittee, even though this is not required by the statute.

The Vice Chair commented that it might be preferable to state in the Rule that the creditor mails the statement, but does not file it. Otherwise, creditors may file it, anyway. Mr. Hochberg asked why the legislature provided that the creditor furnishes the employer with a statement disclosing the payments. Mr. Bowen answered that this provides a record of the application of the payment to the debt. Mr. Brault remarked that the debt accumulates interest, creating an accounting problem. Mr. Bowen added that this is an acknowledgment of receipt of payment. It is a notice to the garnishee that the payment was received, and it provides the total of all the payments. Judge Dryden observed that if no accounting were made, the employer could continue to deduct from the employee's pay, even if the debt had been paid off.

Mr. Sykes suggested that the following language could be added to the beginning of the last sentence of subsection (j)(2): "The statement shall not be filed in court, but the creditor

shall retain ...". Mr. Bowen expressed his agreement with this, and the Committee agreed by consensus to this change. The Committee approved the Rules as amended.

Mr. Bowen told the Committee that the next item in the meeting materials was a draft letter to the Honorable Robert M. Bell, Chief Judge of the Court of Appeals (See Appendix 2), responding to the suggestion made by Delegate Michael R. Gordon that all money judgments entered in the District Court be made judgments of record, as they are in Baltimore City. The Subcommittee's opinion is that this issue is one for the legislature to address, and the letter informs Chief Judge Bell of this. The Committee agreed by consensus.

Agenda Item 3. Consideration of proposed amendments to: Rule 2-121 (Process — Service — In Personam) and Rule 3-121 (Process — Service — In Personam)

Mr. Brault presented Rules 2-121, Process--Service--In Personam, and 3-121, Process--Service--In Personam, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE — CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-121 for conformity with recent legislation, as follows:

Rule 2-121. Process - Service - In Personam

(a) Generally

Service of process may be made within this State or outside this State when authorized by the law of this State, (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it~~,~~; (2) by leaving at the dwelling house or usual place of abode of the individual to be served a copy of the summons, complaint, and all other papers filed with it with a person of suitable age and discretion who resides at the dwelling house or place of abode; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: "Restricted Delivery - show to whom, date, address of delivery." Service by certified mail under this Rule is complete upon delivery. Service outside the State may also be made in the manner prescribed by the court or prescribed by the foreign jurisdiction if reasonably calculated to give actual notice.

(b) Evasion of Service

When proof is made by affidavit that a defendant has acted to evade service, the court may order that service be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence and delivering a copy of each to a person of suitable age and discretion at the place of business~~, dwelling house, or usual place of abode~~ of the defendant.

(c) By Order of Court

When proof is made by affidavit that good faith efforts to serve the defendant pursuant to section (a) of this Rule have not succeeded and that service pursuant to section (b) of this Rule is inapplicable or impracticable, the court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice.

(d) Methods Not Exclusive

The methods of service provided in this Rule are in addition to and not exclusive of any other means of service that may be provided by statute or rule for obtaining jurisdiction over a defendant.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 104 b 1 and 2, 105 a, and 107 a 1, 2 and 4 and Fed.R.Civ.P. 4 (e)(2).
Section (b) is derived from former Rules 104 h 1 and 107 a 3.
Section (c) is new.
Section (d) is derived from former Rules 104 i and 107 c.

Rule 2-121 was accompanied by the following Reporter's Note.

Proposed amendments to Rules 2-121 and 3-121 conform the Rules to Code, Courts Article, §6-312 (c)(1), which was added by Chapter 434, Laws of 1999 (H.B. 603).

The new statute adds a method of personal service that is effected by

... leaving copies of the summons and complaint at the defendants dwelling house or usual place of abode with a person of suitable age and discretion residing at the swelling house or place of abode ...

A similar method is set out in Fed.R.Civ.P. 4 (e)(2), which reads:

(e) Service Upon Individuals Within a Judicial District of the United States

Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any judicial district of the United States:

. . .

(2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

The Process, Parties & Pleading Subcommittee observed that the only "person" (as defined in Rule 1-202) who has a "dwelling house or place of abode" is an individual and used that terminology in the proposed amendment. This comports with Fed.R.Civ.P. 4 (e)(2).

Because proof of evasion of service, a court order, and mailing to the defendant's last known residence are no longer required in connection with personal service that is effected by leaving a copy of the papers with a person of suitable age and discretion at the defendant's dwelling house or place of abode, the phrase "dwelling house or usual place of abode" is proposed to be deleted from section (b) of Rules 2-121 and 3-121.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE — DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-121 for conformity with recent legislation, as follows:

Rule 3-121. Process - Service - In Personam

(a) Generally

Service of process may be made within this State or outside this State when authorized by the law of this State, (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it~~,~~; (2) by leaving at the dwelling house or usual place of abode of the individual to be served a copy of the summons, complaint, and all other papers filed with it with a person of suitable age and discretion who resides at the swelling

house or place of abode; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: "Restricted Delivery - show to whom, date, address of delivery." Service by certified mail under this Rule is complete upon delivery. Service outside the State may also be made in the manner prescribed by the court or prescribed by the foreign jurisdiction if reasonably calculated to give actual notice.

(b) Evasion of Service

When proof is made by affidavit that a defendant has acted to evade service, the court may order that service be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence and delivering a copy of each to a person of suitable age and discretion at the place of business~~, dwelling house, or usual place of abode~~ of the defendant.

(c) By Order of Court

When proof is made by affidavit that good faith efforts to serve the defendant pursuant to section (a) of this Rule have not succeeded and that service pursuant to section (b) of this Rule is inapplicable or impracticable, the court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice.

(d) Methods Not Exclusive

The methods of service provided in this Rule are in addition to and not exclusive of any other means of service that may be provided by statute or rule for obtaining jurisdiction over a defendant.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 104 b 1 and 2, and 107 a 1 and 2 and Fed.R.Civ.P. 4 (e)(2).
Section (b) is derived from former M.D.R. 104 h 1 and 107 a 3.
Section (c) is new.
Section (d) is derived from former M.D.R. 104 i and 107 b.

Rule 3-121 was accompanied by the following Reporter's Note.

> See the Reporter's Note to the proposed amendment to Rule 2-121.

Mr. Brault explained that the 1999 legislature enacted House Bill 603 (Chapter 434) which adds a new method of personal service derived from Fed.R.Civ.P. 4. This supersedes the requirement of personal service on original process by allowing service to be effected by leaving copies of the summons and complaint at the defendant's home with a person of suitable age who resides at the home. The Rules Committee debated this method during the discussions preceding the 1984 rules revision, but decided not to adopt it. The new statute requires it. Delegate Dana Dembrow sent a letter to Mr. Zarnoch, who is counsel to the General Assembly, for the purpose of clarifying the meaning of the new statute, thereby creating a legislative history. The letter and the response are included in the meeting materials. (See Appendix 3.) The Subcommittee added language from Fed.R.Civ.P. 4 to Rule 2-121. There is an enormous background of federal case decisions pertaining to this issue. In the Rule, the word "person" is defined by Rule 1-201. The question of serving the president or corporate agent of a corporation at the person's home will be left to another time. The statute covers both the circuit and the District courts. The only issue is the federal rule requirement that the defendant has to consent to receive service. This works in federal litigation which is usually complicated, but would not work so well in Maryland which

has every kind of litigation, both minor and major cases.

Mr. Hochberg inquired as to what the affidavit of service would look like. Mr. Brault replied that Mary Jones would be served, and the affidavit would state that she is the defendant's daughter. The process server files a paper showing the return, which is presumed to be correct. The burden is on the other party to challenge the propriety of the return. Mr. Howell pointed out that the new language may need to be restyled to change the phrase "filed with it." The Reporter remarked that the language was difficult to draft. The Vice Chair commented that she thought the statute only applied to insurance situations. Mr. Brault responded that Delegate Dembrow had asked this question. The legislation covers two different sections of the Code. The first, Courts Article, §6-311, applies to cases involving insurance companies. The second, Courts Article, §6-312, applies to all defendants in all cases. The Committee approved the changes to the Rules subject to change by the Style Subcommittee.

Agenda Item 4. Consideration of proposed amendments to: Rule 11-113 (Waiver of Jurisdiction) and Rule 11-118 (Parents' Liability — Hearing — Recording and Effect)

In the absence of the Chair of the Juvenile Subcommittee, the Chair of the Rules Committee presented Rule 11-113, Waiver of Jurisdiction, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11

JUVENILE CAUSES

AMEND Rule 11-113 d to conform it to recent legislation, as follows:

Rule 11-113. Waiver of Jurisdiction.

. . .

d. Consideration in Determining Waiver.

In determining whether to waive its jurisdiction, the court shall comply with the provisions of Section 3-817 (c) ~~and (d)~~ , (d), and (e) of the Courts Article. In the interest of justice, the court may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses.

. . .

Rule 11-113 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 11-113 d conforms it to Chapter 619, Laws of 1999 (HB 302), which repealed and reenacted with amendments Code, Courts Article, §3-817.

The Chair explained that Code, Courts Article, §3-817 was repealed and reenacted with amendments, and the changes to Rule 11-113 conform to the statutory changes. There being no objection, the Rule was approved as presented.

The Chair presented Rule 11-118, Parents' Liability--Hearing--Recording and Effect, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 11

JUVENILE CAUSES

AMEND Rule 11-118 a to conform it to recent legislation, as follows:

Rule 11-118. Parents' Liability — Hearing — Recording and Effect.

a. Hearing.

If, at any stage of a proceeding, the court believes a respondent has committed acts for which the respondent's parent or parents may be liable under Code, Article 27, §§807, 139D, 151A, or 151C, the court shall summon the parent or parents in the manner provided by Chapter 100 of Title 2 for service of process to obtain personal jurisdiction over a person to appear at a hearing to determine liability. This hearing may be conducted contemporaneously with a disposition hearing, if appropriate.

. . .

Rule 11-118 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 11-118 a conforms it to Chapter 329, Laws of 1999 (SB 223), which expanded restitution provisions with respect to certain offenses involving destructive devices.

The Chair explained that in Senate Bill 223, Chapter 329, Laws of 1999, the legislature expanded restitution provisions to include certain offenses involving destructive devices. The Rule is proposed to be amended to conform to the statutory provisions. There being no objection, the Rule was approved as presented.

Agenda Item 5. Consideration of proposed amendments to: Rule 4-211 (Filing of Charging Document), Rule 4-212 (Issuance, Service, and Execution of Summons or Warrant), Rule 4-216 (Pretrial Release), Rule 4-262 (Discovery in District Court), Rule 4-331 (Motions for New Trial), Rule 4-406 (Hearing), Rule 4-342 (Sentencing — Procedure in Non-Capital Cases), Rule 4-344 (Sentencing — Review), Rule 4-343 (Sentencing — Procedure in Capital Cases), Rule 4-502 (Expungement Definitions), and Form 4-504.1 (Petition for Expungement of Records)

Judge Johnson presented Rule 4-211, Filing of Charging Document, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-211 to add two more categories of occupations to the cross reference to section (b), as follows:

Rule 4-211. FILING OF CHARGING DOCUMENT

(a) Citation

The original of a citation shall be filed in District Court promptly after its issuance and service.

(b) Statement of Charges

(1) Before any Arrest

Except as otherwise provided by statute, a judicial officer may file a statement of charges in the District Court against a defendant who has not been arrested for that offense upon written application containing an affidavit showing probable cause that the defendant committed the offense charged. If not executed by a peace officer, the affidavit shall be made and signed before a judicial officer.

(2) After Arrest

When a defendant has been arrested without a warrant, unless an information is filed in the District Court, the officer who has custody of the defendant shall (A) forthwith cause a statement of charges to be filed against the defendant in the District Court and (B) at the same time or as soon thereafter as is practicable file an affidavit containing facts showing probable cause that the defendant committed the offense charged.

Cross reference: See Code, Courts Article, §2-608 for special requirements concerning an application for a statement of charges against a law enforcement officer, an educator, or emergency services personnel for an offense allegedly committed in the course of executing the law enforcement officer's duties.

(c) Information

A State's Attorney may file an information as permitted by Rule 4-201.

Committee note: Nothing in section (b) of this Rule precludes the filing of an information in the District Court by a State's Attorney at any time, whether in lieu of the filing of a statement of charges or as an additional or superseding charging document after a statement of charges has been filed.

(d) Indictment

The circuit court shall file an indictment returned by a grand jury.

Source: This Rule is derived as follows:
Section (a) is derived from the last clause of M.D.R. 720 i.
Section (b) is derived from M.D.R. 720 a and b.
Section (c) is new.
Section (d) is new.

Rule 4-211 was accompanied by the following Reporter's Note.

During the 1999 legislative session, House Bill 537 (Chapter 429) added emergency services personnel to the list of occupations

for which procedure concerning statement of charges apply. The Criminal Subcommittee is recommending that emergency services personnel be added to the list of personnel in the cross reference to subsection (b)(2) of Rule 4-211. Since educators are also in the statutory list of occupations, a reference to them is also recommended to be added to the cross reference.

Judge Johnson explained that the legislature had added emergency services personnel to the list of occupations for which procedures concerning a statement of charges apply. Because educators are also in the statutory list, the Criminal Subcommittee recommends that a reference to them be added to the cross reference at the end of section (b) of Rule 4-211. There being no objection, both recommendations were approved.

Judge Johnson presented Rule 4-212, Issuance, Service, and Execution of Summons or Warrant, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-212 to allow a judicial officer in the District Court to issue a warrant for the arrest of a defendant if there is probable cause to believe that the defendant poses a danger to another person or to the community, as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR WARRANT

. . .

(d) Warrant -- Issuance; Inspection

(1) In the District Court

A judicial officer may, and upon request of the State's Attorney shall, issue a warrant for the arrest of the defendant, other than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that (A) the defendant has previously failed to respond to a summons that has been personally served or a citation, or (B) there is a substantial likelihood that the defendant will not respond to a summons, or (C) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court, or (D) the defendant is in custody for another offense, or (E) there is probable cause to believe that the defendant poses a danger to another person or to the community. A copy of the charging document shall be attached to the warrant.

(2) In the Circuit Court

Upon the request of the State's Attorney, a warrant shall issue for the arrest of a defendant, other than a corporation, if an information has been filed against the defendant and the circuit court or the District Court has made a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document or if an indictment has been filed against the defendant; and (A) the defendant has not been processed and released pursuant to Rule 4-216, or (B) the court finds there is a substantial likelihood that the defendant will not respond to a summons. A copy of the charging document shall be attached to the warrant. Unless the court finds that there is a substantial likelihood that the defendant will not respond to a criminal summons, a warrant shall not issue for a defendant who has been processed and released pursuant to Rule 4-216 if the circuit court charging document is based on the same alleged acts or transactions. When the defendant has been processed and released pursuant to Rule 4-216, the issuance of a warrant for violation of conditions of release is governed by Rule 4-217.

(3) Inspection of the Warrant and Charging Document

Unless otherwise ordered by the court, files and records of the court pertaining to a warrant issued pursuant to subsection (d)(1) or (d)(2) of this Rule and the charging document upon which the warrant was issued shall not be open to inspection until either (A) the warrant has been served and a return of service has been filed in compliance with section (g) of this Rule or (B) 90 days have elapsed since the warrant was issued. Thereafter, unless sealed pursuant to Rule 4-201 (d), the files and records shall be open to inspection.

Committee note: This subsection does not preclude the release of otherwise available statistical information concerning an unserved warrant nor does it prohibit a State's Attorney or peace officer from releasing information pertaining to an unserved arrest warrant and charging document.

Cross reference: See Rule 4-201 concerning charging documents. See Code, State Government Article, §10-616 (q) which governs inspection of court records pertaining to an arrest warrant.

. . .

Rule 4-212 was accompanied by the following Reporter's Note.

At the request of the Hon. Martha F. Rasin, Chief Judge of the District Court of Maryland, the Rules Committee has considered whether Rule 4-212 should be amended to allow a Commissioner to take into account victim safety when the Commissioner determines whether to issue a summons or a warrant. The Committee recommends the addition of a new clause (d)(1)(E) that allows a judicial officer to issue a warrant when there is probable cause to believe that the defendant poses a danger to another person or to the community.

The Subcommittee is recommending a cross reference to Code, State Government Article,

§10-616 (q) which governs inspection of court records pertaining to an arrest warrant rather than an amendment to subsection (d)(3) to refer to the Code provision.

Judge Johnson explained that the proposed amendment to subsection (d)(1) has already been approved by the Committee. Additionally, the Subcommittee is recommending a cross reference to Code, State Government Article, §10-616 (q), which governs inspection of court records pertaining to an arrest warrant. The Chair commented that this includes in the Rule the procedure which is being carried out already. There being no objection, the Rule was approved as presented.

Judge Johnson presented Rule 4-216, Pretrial Release, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 to include a reference to a new crime which has limitations as to pretrial release and to add a new provision allowing a court to issue a bench warrant for the arrest of a defendant who violates a condition of pretrial release, as follows:

Rule 4-216. PRETRIAL RELEASE

(a) Interim Bail

Pending an initial appearance by the defendant before a judicial officer pursuant to Rule 4-213 (a), the defendant may be released upon execution of a bond in an amount and subject to conditions specified in a schedule that may be adopted by the Chief Judge of the District Court for certain

offenses. The Chief Judge may authorize designated court personnel or peace officers to release a defendant by reference to the schedule.

(b) Probable Cause Determination

A defendant arrested without a warrant shall be released on personal recognizance under terms that do not significantly restrain the defendant's liberty unless the judicial officer determines that there is probable cause to believe that the defendant committed an offense.

(c) Defendants Eligible for Release by Commissioner or Judge

Except as otherwise provided in section (d) of this Rule, a defendant is entitled to be released before verdict in conformity with this Rule on personal recognizance or with one or more conditions imposed unless the judicial officer determines that no condition of release will reasonably assure (1) the appearance of the defendant as required and (2) if the defendant is charged with an offense listed under Code, Article 27, §616 1/2 (k), the safety of the alleged victim.

Cross references: See Code, Article 27, §616 1/2 (d) concerning defendants who may not be released on personal recognizance.

(d) Defendants Eligible for Release Only by a Judge

A defendant charged with an offense for which the maximum penalty is death or life imprisonment or with an offense listed under Code, Article 27, §616 1/2 (c), (i), (j), ~~or~~ (l), or (n) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably assure (1) the appearance of the defendant as required and (2) if the defendant is charged with an offense listed under Code, Article 27, §616 1/2 (c), (j), ~~or~~ (l), or (n), that the defendant will not pose

a danger to another person or the community while released.

(e) Duties of Judicial Officer

(1) Consideration of Factors

In determining whether a defendant should be released and the conditions of release, the judicial officer, on the basis of information available or developed in a pretrial release inquiry, may take into account:

(A) The nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction, insofar as these factors are relevant to the risk of nonappearance;

(B) The defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;

(C) The defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;

(D) The recommendation of an agency which conducts pretrial release investigations;

(E) The recommendation of the State's Attorney;

(F) Information presented by defendant's counsel;

(G) The danger of the defendant to another person or to the community;

(H) The danger of the defendant to himself or herself; and

(I) Any other factor bearing on the risk of a wilful failure to appear, including prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult and prior

convictions.

(2) Statement of Reasons - When Required

Upon determining to release a defendant to whom section (d) of this Rule applies or to refuse to release a defendant to whom section (c) of this Rule applies, the judicial officer shall state the reasons in writing or on the record.

(3) Imposition of Conditions of Release

If the judicial officer determines that the defendant should be released other than on personal recognizance without any additional conditions imposed, the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release set out in section (f) of this Rule that will reasonably:

(A) Assure the appearance of the defendant as required,

(B) Protect the safety of the alleged victim if the defendant is charged with an offense listed under Code, Article 27, §616 1/2 (k), and

(C) Assure that the defendant will not pose a danger to another person or to the community if the charge against the defendant is an offense listed under Code, Article 27, §616 1/2 (c), (j), ~~or~~ (l), or (n).

(4) Advice of Conditions and Consequences of Violation

The judicial officer shall advise the defendant in writing or on the record of the conditions of release imposed and of the consequences of a violation of any condition.

(f) Conditions of Release

The conditions of release imposed by a judicial officer under this Rule may include:

(1) Committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in assuring the defendant's appearance in court;

(2) Placing the defendant under the supervision of a probation officer or other appropriate public official;

(3) Subjecting the defendant to reasonable restrictions with respect to travel, association, or residence during the period of release;

(4) Requiring the defendant to post a bail bond complying with Rule 4-217 in an amount and on conditions specified by the judicial officer including any of the following:

(A) without collateral security,

(B) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to the greater of $25.00 or 10% of the full penalty amount, or a larger percentage as may be fixed by the judicial officer,

(C) with collateral security of the kind specified in Rule 4-217 (e)(1) equal in value to the full penalty amount,

(D) with the obligation of a corporation that is an insurer or other surety in the full penalty amount;

(5) Subjecting the defendant to any other condition reasonably necessary to:

(A) assure the appearance of the defendant as required,

(B) protect the safety of the alleged victim if the charge against the defendant is an offense listed under Code, Article 27, §616 1/2 (k), and

(C) assure that the defendant will not pose a danger to another person or to the community if the charge against the defendant is an offense listed under Code, Article 27, §616 1/2 (c), (j), ~~or~~ (l), or (n);

(6) Imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, Article 27, §763 reasonably necessary to stop or prevent the intimidation of a victim or witness or a

violation of Code, Article 27, §26, §761, or §762.

Cross reference: See Code, Article 27, §616 1/2 (m), and Code, Business Occupations and Professions Article, Title 20, concerning private home detention monitoring as a condition of release.

(g) Review of Commissioner's Pretrial Release Order

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody for 24 hours after a commissioner has determined conditions of release pursuant to this Rule shall be presented immediately to the District Court if the court is then in session, or if not, at the next session of the court. The District Court shall review the commissioner's pretrial release determination and take appropriate action. If the defendant will remain in custody after the review, the District Court shall set forth in writing or on the record the reasons for the continued detention.

Cross reference: See Rule 4-231 (d) concerning the presence of a defendant by video conferencing.

(h) Continuance of Previous Conditions

When conditions of pretrial release have been previously imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section (i) of this Rule.

(i) Amendment of Pretrial Release Order

After a charging document has been filed, the court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of pretrial release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record.

(j) Supervision of Detention Pending Trial

In order to eliminate unnecessary detention, the court shall exercise supervision over the detention of defendants pending trial. It shall require from the sheriff, warden, or other custodial officer a weekly report listing each defendant within its jurisdiction who has been held in custody in excess of seven days pending preliminary hearing, trial, sentencing, or appeal. The report shall give the reason for the detention of each defendant.

(k) Violation of Condition of Release

A court may issue a bench warrant for the arrest of a defendant charged with a criminal offense who violates a condition of pretrial release. After the defendant is presented before a court, the court may (1) revoke the defendant's pretrial release or (2) continue the defendant's pretrial release with or without conditions.

~~(k)~~ (l) Title 5 not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is derived in part from former Rule 721, M.D.R. 723 b 4, and is in part new.

Rule 4-216 was accompanied by the following Reporter's Note.

House Bill 231 (Chapter 403) was approved by the 1999 Legislature. It creates a new category of crimes involving violation of ex parte and protective orders which order a defendant to refrain from abusive behavior. Similar to other crimes listed in Rule 4-216, new section (n) of Code, Article 27, §616 1/2 does not permit a court commissioner to authorize pretrial release of a defendant charged with violating the new category of crimes, and permits a judge to allow pretrial release under certain specified conditions. A reference to the new section should be added to the other crimes listed in Rule 4-216.

House Bill 1166 (Chapter 497) added a new provision to Article 27, §616 1/2 which

allows a court to issue a bench warrant for the arrest of a defendant charged with a criminal offense who violates a condition of pretrial release, and provides for the courts' options when the defendant is brought in. A similar provision is being suggested for inclusion in Rule 4-216.

Judge Johnson explained that House Bill 231 (Chapter 403) was enacted by the 1999 legislature. It creates a new category of crimes involving the violation of ex parte and protective orders which order a defendant to refrain from abusive behavior. A court commissioner is not permitted to authorize pretrial release of a defendant charged with violating one of the new category of crimes. The Rule is proposed to be modified to add this new category to the list of other crimes which have the same limitation. Also, House Bill 1166 (Chapter 497) added a new provision to Article 27, § 616 ½ which allows a court to issue a bench warrant for the arrest of a defendant charged with a criminal offense who violates a condition of pretrial release. The new legislation also provides for the court's options when the defendant is brought in. The Subcommittee suggests that a similar provision be added to Rule 4-216 as section (k). There being no objection, the Committee approved the changes to Rule 4-216 as presented.

Judge Johnson presented Rule 4-262, Discovery in District Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 to clarify that subsection (a)(2) intends to except out only a preliminary hearing, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

(a) Scope

Discovery and inspection pursuant to this Rule is available in the District Court in actions for offenses that are punishable by imprisonment, and shall be as follows:

(1) The State's Attorney shall furnish to the defendant any material or information that tends to negate or mitigate the guilt or punishment of the defendant as to the offense charged.

(2) Upon request of the defendant the State's Attorney shall permit the defendant to inspect and copy (A) any portion of a document containing a statement or containing the substance of a statement made by the defendant to a State agent that the State intends to use at ~~a hearing, other than a preliminary hearing, or trial,~~ trial or at any hearing other than a preliminary hearing and (B) each written report or statement made by an expert whom the State expects to call as a witness at a hearing, other than a preliminary hearing, or trial.

(3) Upon request of the State the defendant shall permit any discovery or inspection specified in subsection (d)(1) of Rule 4-263.

Committee note: This Rule is not intended to limit the constitutional requirement of disclosure by the State. See Brady v. State, 226 Md. 422, 174 A.2d 167 (1961), aff'd, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

(b) Procedure

The discovery and inspection required or permitted by this Rule shall be completed before the hearing or trial. A request for discovery and inspection and response need not be in writing and need not be filed with

> the court. If a request was made before the date of the hearing or trial and the request was refused or denied, the court may grant a delay or continuance in the hearing or trial to permit the inspection or discovery.
>
> (c) Obligations of the State's Attorney
>
> The obligations of the State's Attorney under this Rule extend to material and information in the possession or control of the State's Attorney and staff members and any others who have participated in the investigation or evaluation of the action and who either regularly report, or with reference to the particular action have reported, to the office of the State's Attorney.
>
> Source: This Rule is new.

Rule 4-262 was accompanied by the following Reporter's Note.

> The Honorable Dana M. Levitz pointed out an ambiguity in subsection (a)(2)(A) of Rule 4-262. It is not clear if only a preliminary hearing is excepted out, or if both a preliminary hearing and the trial are excepted. The history of the Rule indicates that only the preliminary hearing is excepted from the Rule, so new language is being suggested to clarify this.

Judge Johnson told the Committee that the Honorable Dana M. Levitz, of the Circuit Court for Baltimore County, had pointed out an ambiguity in subsection (a)(2)(A) of the Rule. It is not clear from the way the subsection is worded if only a preliminary hearing is excepted out, or if both the preliminary hearing and the trial are excepted. The history of the Rule indicates that only the preliminary hearing is excepted, and the Subcommittee is proposing new language to clarify this. The Chair added that this ambiguity arose when a law student, who was in a class taught by Judge Levitz, questioned the judge about the meaning of

subsection (a)(2)(A). There being no objection, the change to the Rule was approved as presented.

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

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-331 to add a provision for notice to victims, as follows:

Rule 4-331. MOTIONS FOR NEW TRIAL

(a) Within Ten Days of Verdict

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

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

(b) Revisory Power

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

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

(2) in the circuit courts, on motion filed within 90 days after its imposition of sentence.

Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity.

(c) Newly Discovered Evidence

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

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

(2) in a circuit court, on motion filed within one year after its imposition of sentence or the date it receives a mandate issued by the Court of Appeals or the Courts of Special Appeals, whichever is later, except that if a sentence of death was imposed, the motion may be filed at any time if the newly discovered evidence, if proven, would show that the defendant is innocent of the capital crime of which the defendant was convicted or of an aggravating circumstance or other condition of eligibility for the death penalty actually found by the court or jury in imposing the death sentence.

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

(d) Form of Motion

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

(e) Disposition

The court shall afford the defendant or counsel and the State's Attorney an opportunity for a hearing on a motion filed under this Rule, except that if the motion is filed more than one year after the circuit court receives the mandate issued by the Court of Appeals, a hearing need not be held unless the motion satisfies the requirements

of section (d) of this Rule. The court may revise a judgment or set aside a verdict prior to entry of a judgment only on the record in open court. The court shall state its reasons for setting aside a judgment or verdict and granting a new trial.

Cross reference: Code ~~(1957, 1992 Repl. Vol.)~~, Article 27, §§594 and 770.

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

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

In House Bill 304 (Chapter 621), the legislature added two new sections to Article 27, §594, Motions for New Trial, which provide for notice to victims or victim's representatives if a hearing on a motion for new trial is to be held, and also for the right of victims to attend the hearing. Since Rule 4-331 already contains a cross reference to Article 27, §594, the Subcommittee is suggesting that Article 27, §770, which pertains to victim notification, also be cross reference.

Judge Johnson explained that the legislature passed House Bill 304 (Chapter 621) which added two new sections to Article 27, §594. The new sections provide for notice to victims or to victims' representatives if a hearing on a motion for a new trial is to be held and for the right of victims to attend the hearing. The Subcommittee proposes that since Article 27, §594 is already cross referenced, a new cross reference to Article 27, §770, which pertains to victim notification, be added. There being no objection, the change to Rule 4-331 was approved as presented.

Judge Johnson presented Rule 4-406, Hearing, for the Committee's consideration.

AMEND Rule 4-406 to add a provision for notice to victims, as follows:

Rule 4-406. HEARING

(a) When Required

A hearing shall be held promptly on a petition under the Uniform Post Conviction Procedure Act unless the parties stipulate that the facts stated in the petition are true and that the facts and applicable law justify the granting of relief. If a defendant requests that the court reopen a post conviction proceeding that was previously concluded, the court shall determine whether a hearing will be held, but it may not reopen the proceeding or grant the relief requested without a hearing unless the parties stipulate that the facts stated in the petition are true and that the facts and applicable law justify the granting of relief.

Cross reference: For time requirements applicable to hearings in death penalty cases, see Code, Article 27, §645A (g).

(b) Judge

The hearing shall not be held by the judge who presided at trial except with the consent of the petitioner.

(c) Evidence

Evidence may be presented by affidavit, deposition, oral testimony, or in any other form as the court finds convenient and just. In the interest of justice, the court may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses.

(d) Presence of Petitioner

The petitioner has the right to be present at any hearing on the petition.

Cross reference: Post conviction procedure, right to counsel and hearing, Art. 27, §645A; victim notification, Article 27, §770.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule BK44 c.
Section (c) is derived from former Rule BK44 d.
Section (d) is derived from former Rule BK44 e.
Section (e) is new.

Rule 4-406 was accompanied by the following Reporter's Note.

The 1999 legislature added two new sections to Article 27, §645A, Right to Appeal of Convicted Persons, which provide for notice to victims or victim's representatives if a hearing on a post conviction petition is to be held, and also for the right of victims to attend the hearing. Since Rule 4-406 already contains a cross reference to Article 27, §645A, the Subcommittee is suggesting that Article, §770, which pertains to victim notification, also be cross referenced.

Judge Johnson told the Committee that House Bill 304 modified Article 27, §645A by adding two sections which provide for notice to victims or victims' representatives if a hearing on a post conviction petition is to be held and for the right of victims to attend the hearing. Since Rule 4-406 already contains a cross reference to Article 27, §645A, the Subcommittee is suggesting that Article 27, §770, which pertains to victim notification, also be cross referenced. Judge Johnson pointed out that the source note, which reads "Section (e) is new," has

to be deleted, because the Subcommittee decided not to add a section (e), although initially one had been proposed. There being no objection, the change to the Rule was approved as presented.

Judge Johnson presented Rule 4-342, Sentencing — Procedure in Non-Capital Cases, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 to include a new statutory provision requiring advice to a defendant regarding the minimum sentence for a conviction of a violent crime, as follows:

Rule 4-342. SENTENCING -- PROCEDURE IN NON-CAPITAL CASES

(a) Applicability

This Rule applies to all cases except those governed by Rule 4-343.

(b) Statutory Sentencing Procedure

When a defendant has been found guilty of murder in the first degree and the State has given timely notice of intention to seek a sentence of imprisonment for life without the possibility of parole, but has not given notice of intention to seek the death penalty, the court shall conduct a sentencing proceeding, separate from the proceeding at which the defendant's guilt was adjudicated, as soon as practicable after the trial to determine whether to impose a sentence of imprisonment for life or imprisonment for life without parole.

Cross reference: Code, Article 27, §§412 and 413.

(c) Judge

If the defendant's guilt is established after a trial has commenced, the judge who presided shall sentence the defendant. If a defendant enters a plea of guilty or nolo contendere before trial, any judge may sentence the defendant except that, the judge who directed entry of the plea shall sentence the defendant if that judge has received any matter, other than a statement of the mere facts of the offense, which would be relevant to determining the proper sentence. This section is subject to the provisions of Rule 4-361.

(d) Presentence Disclosures by the State's Attorney

Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State's Attorney shall disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing. If the court finds that the information was not timely provided, the court shall postpone sentencing.

(e) Allocution and Information in Mitigation

Before imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

(f) Reasons

The court ordinarily shall state on the record its reasons for the sentence imposed.

(g) Credit for Time Spent in Custody

Time spent in custody shall be credited against a sentence pursuant to Code, Article 27, §638C.

(h) Advice to the Defendant

At the time of imposing sentence, the

court shall cause the defendant to be advised of any right of appeal, any right of review of the sentence under the Review of Criminal Sentences Act, any right to move for modification or reduction of the sentence, and the time allowed for the exercise of these rights. At the time of imposing a sentence of incarceration for a violent crime as defined in Code, Correctional Services Article, §7-101 and for which a defendant will be eligible for parole as provided in §7-301 (c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve for the violent crime before becoming eligible for parole. The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days after filing an appeal, the defendant must order in writing a transcript from the court stenographer.

Cross reference. Code, Article 27, §§645JA-645JG (Review of Criminal Sentences Act).

(i) Terms for Release

On request of the defendant, the court shall determine the defendant's eligibility for release under Rule 4-349 and the terms for any release.

(j) Restitution from a Parent

If restitution from a parent of the defendant is sought pursuant to Code, Article 27, §807, the State shall serve the parent with notice of intention to seek restitution and file a copy of the notice with the court. The court may not enter a judgment of restitution against the parent unless the parent has been afforded a reasonable opportunity to be heard and to present evidence. The hearing on parental restitution may be part of the defendant's sentencing hearing.

Cross reference: Parent's liability, hearing, recording and effect, Rule 11-118.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 772 a.

Section (b) is new.
Section (c) is derived from former Rule 772 b and M.D.R. 772 a. Section (d) is derived from former Rule 772 c and M.D.R. 772 b.
Section (e) is derived from former Rule 772 d and M.D.R. 772 c.
Section (f) is derived from former Rule 772 e and M.D.R. 772 d.
Section (g) is derived from former Rule 772 f and M.D.R. 772 e.
Section (h) is in part derived from former Rule 772 h and M.D.R. 772 g and in part new.
Section (i) is new.
Section (j) is new.

Rule 4-342 was accompanied by the following Reporter's Note.

The 1999 legislature enacted House Bill 602 (Chapter 648) which amended Code, Article 27, §640 to require the court to state at the time of a defendant's sentencing the minimum time the defendant must serve for a conviction of a violent crime. The Subcommittee is recommending that language to this effect be added to Rule 4-342 (h).

Judge Johnson explained that the legislature enacted House Bill 602 (Chapter 648) which amended Code, Article 27, §640 to require the court to state at the time of a defendant's sentencing the minimum time the defendant must serve for a conviction of a violent crime. The Subcommittee is recommending that similar language be added to Rule 4-342 (h). Delegate Vallario commented that this will be consistent with all of the victims' rights statutes. Originally, requests had been made to have no parole for certain defendants. The Parole Commission wanted defendants to be required to serve 50% of their sentences. One of the problems of putting this requirement into the Code is that no hearing will be held until the defendant has served 50% of the sentence. In general, the length of sentences has

increased. Judge Johnson asked what is the time served on life imprisonment, and the Chair answered that the person serves at least 15 years. Delegate Vallario added that next year every pre-sentence investigation report will contain the minimum time that must be served.

The Chair said that the minutes should reflect the gratitude that sentencing judges owe to Delegate Vallario. His amendments to the legislation averted what could have been an impossible situation for sentencing judges. For some convictions, it is difficult to complete the minimum amount of time that must be served when "good time" and other variables are factored into the equation. The conversion to a limited classification of crimes is beneficial, and the public will be served by the disclosure in these serious cases. Also, allowing a unanimous three-judge panel to override a minimum sentence is a very valuable change. There being no objection, the change to the Rule was approved as presented.

Judge Johnson presented Rule 4-344, Sentencing — Review, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-344 to add another category to the list of available changes in sentence, as follows:

Rule 4-344. SENTENCING — REVIEW

(a) Application - When Filed

Any application for review of a sentence under the Review of Criminal Sentences Act, Code, Article 27, §§645JA-645JG, shall be filed in the sentencing court within 30 days after the imposition of sentence or at a later time permitted by the Act. The clerk shall promptly notify the defendant's counsel, if any, the State's Attorney, and the Circuit Administrative Judge of the filing of the application.

(b) Application - Form

The application shall be signed by the defendant and shall be substantially in the following form:

(Caption of the case)

Application for Review of Sentence

I hereby apply for review of the sentence imposed on me on .....I understand that a review of my sentence may result in the imposition of any sentence allowable by law for the offense, including an increased sentence (unless the maximum has already been imposed), a decreased sentence (including a decrease in a mandatory minimum sentence), a different sentence, or no change in sentence. I understand that I may withdraw this application at any time before receiving notice of a hearing and thereafter only with permission of the Review Panel. I also understand that I may not withdraw my application after the Review Panel renders a decision.

My sentence should be changed for the following reasons: (the reasons for the change shall be stated)

.....
.....
.....

.....
Signature of Defendant

Date:.....

(c) Application - Withdrawal

The defendant may withdraw the application for review at any time before the receipt of notice of a hearing, and

thereafter only with permission of the Review Panel. The application may not be withdrawn after the Review Panel has rendered its decision. A withdrawal shall be signed by the defendant and filed with the clerk. The filing of a withdrawal is final and terminates all rights of the defendant to have the sentence reviewed under the Review of Criminal Sentences Act.

(d) Review Panel - Appointment Of

Upon notification by the clerk of the filing of an application, the Circuit Administrative Judge shall promptly appoint a Review Panel of three judges, not including the sentencing judge, and shall designate one as chairman, to review the sentence. The sentencing judge may sit with the Review Panel in an advisory capacity if requested by a majority of the Review Panel. A Review Panel may be appointed to serve for a fixed term or may be appointed to review only cases specifically assigned to it by the Circuit Administrative Judge.

(e) Review Panel - Procedure Before

Unless a hearing is required by the Review of Criminal Sentences Act, the Review Panel may render its decision without a hearing if it affords the parties an opportunity to present relevant information in writing. If a hearing is to be held, the Review Panel shall serve the defendant, defendant's counsel, and the State's Attorney with reasonable notice of the time and place of the hearing. At the hearing the Review Panel may take testimony and receive other information.

(f) Review Panel - Decision

Whether or not an appeal has been taken, the Review Panel shall file a written decision with the clerk within 30 days after the application is filed. If the sentence is to be increased, the defendant shall be brought before the panel and resentenced pursuant to Rule 4-342. If the sentence is reduced or not changed, the defendant need not be brought before the Review Panel. In either case, the Review Panel shall state the reasons for its decision and shall furnish a

copy of the decision to the defendant, defendant's counsel, and the State's Attorney.

Cross reference: Concerning victim notification and other requirements when a sentence is changed by the review panel, see Code, Article 27, §§645JC and 645JE.

(g) Effect on Time for Appeal

An application filed under this Rule does not extend the time for taking an appeal.

(h) Effect of Vacation or Modification of Sentence by Another Court

If the sentence under review is vacated or modified by a court of competent jurisdiction before the Review Panel renders its decision, the Review Panel shall dismiss the original application and give the defendant a reasonable opportunity, but not less than ten days, to file a new application for review of the sentence as modified if it is subject to review under the Review of Criminal Sentences Act.

Source: This Rule is derived from former Rule 773.

Rule 4-344 was accompanied by the following Reporter's Note.

The legislature passed House Bill 602 (Chapter 648) in 1999, which provides that once an application for review of a sentence has been filed, the three-judge review panel may decrease a mandatory minimum sentence if all of the judges agree. The Subcommittee is recommending that the list of possible changes in sentence in Rule 4-344 (b) be expanded to refer to a decrease in a mandatory minimum sentence.

Judge Johnson said that House Bill 602 (Chapter 648) was enacted in 1999, and it provides that once an application for review of a sentence has been filed, the three-judge review panel

may decrease a mandatory minimum sentence if all of the judges agree. The Subcommittee is proposing that the list of possible changes in sentence in section (b) of Rule 4-344 be broadened to refer to a decrease in a mandatory minimum sentence. There being no objection, the change to the Rule was approved as presented.

Judge Johnson presented Rule 4-343, Sentencing — Procedure in Capital Cases, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-343 by adding language to Section IV of the Findings and Sentencing Determination form to comply with a statutory change, as follows:

Rule 4-343. SENTENCING -- PROCEDURE IN CAPITAL CASES

(a) Applicability

This Rule applies whenever a sentence of death is sought under Code, Article 27, §413.

(b) Statutory Sentencing Procedure

When a defendant has been found guilty of murder in the first degree, the State has given the notice required under Code, Article 27, §412 (b)(1), and the defendant may be subject to a sentence of death, a sentencing proceeding, separate from the proceeding at which the defendant's guilt was adjudicated, shall be conducted as soon as practicable after the trial pursuant to the provisions of Code, Article 27, §413. A separate Findings and Sentencing Determination form that complies with sections (g) and (h) of this Rule shall be completed with respect to each death for which the defendant is subject to a sentence of death.

(c) Presentence Disclosures by the State's Attorney

Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State's Attorney shall disclose to the defendant or counsel any information that the State expects to present to the court or jury for consideration in sentencing. Upon request of the defendant, the court may postpone sentencing if the court finds that the information was not timely provided.

(d) Reports of Defendant's Experts

Upon request by the State after the defendant has been found guilty of murder in the first degree, the defendant shall produce and permit the State to inspect and copy all written reports made in connection with the action by each expert the defendant expects to call as a witness at the sentencing proceeding, including the results of any physical or mental examination, scientific test, experiment, or comparison, and shall furnish to the State the substance of any such oral report or conclusion. The defendant shall provide this information to the State sufficiently in advance of sentencing to afford the State a reasonable opportunity to investigate the information. If the court finds that the information was not timely provided, the court may postpone sentencing if requested by the State.

(e) Judge

Except as provided in Rule 4-361, the judge who presides at trial shall preside at the sentencing proceeding.

(f) Allocution

Before sentence is determined, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement, and shall afford the State the opportunity to respond.

Committee note: A defendant who elects to allocate may do so before or after the State's rebuttal closing argument. If allocution occurs after the State's rebuttal

closing argument, the State may respond to the allocution.

(g) Form of Written Findings and Determinations

Except as otherwise provided in section (h) of this Rule, the findings and determinations shall be made in writing in the following form:

(CAPTION)

FINDINGS AND SENTENCING DETERMINATION

VICTIM: [Name of murder victim]

Section I

Based upon the evidence, we unanimously find that each of the following statements marked "proven" has been proven BEYOND A REASONABLE DOUBT and that each of those statements marked "not proven" has not been proven BEYOND A REASONABLE DOUBT.

1. The defendant was a principal in the first degree to the murder.

_____	_____
proven	not proven

2. The defendant engaged or employed another person to commit the murder and the murder was committed pursuant to an agreement or contract for remuneration or the promise of remuneration.

_____	_____
proven	not proven

3. The victim was a law enforcement officer who, while in the performance of the officer's duties, was murdered by one or more

persons, and the defendant was a principal in the second degree who: (A) willfully, deliberately, and with premeditation intended the death of the law enforcement officer; (B) was a major participant in the murder; and (C) was actually present at the time and place of the murder.

_____ proven _____ not proven

(If one or more of the above are marked "proven," proceed to Section II. If all are marked "not proven," proceed to Section VI and enter "Life Imprisonment.")

Section II

Based upon the evidence, we unanimously find that the following statement, if marked "proven," has been proven BY A PREPONDERANCE OF THE EVIDENCE or that, if marked "not proven," it has not been proven BY A PREPONDERANCE OF THE EVIDENCE.

At the time the murder was committed, the defendant was mentally retarded.

_____ proven _____ not proven

(If the above statement is marked "proven," proceed to Section VI and enter "Life Imprisonment." If it is marked "not proven," complete Section III.)

Section III

Based upon the evidence, we unanimously find that each of the following aggravating circumstances that is marked "proven" has been proven BEYOND A REASONABLE DOUBT and we unanimously find that each of the aggravating circumstances marked "not proven"

has not been proven BEYOND A REASONABLE DOUBT.

1. The victim was a law enforcement officer who, while in the performance of the officer's duties, was murdered by one or more persons.

_____ proven _____ not proven

2. The defendant committed the murder at a time when confined in a correctional institution.

_____ proven _____ not proven

3. The defendant committed the murder in furtherance of an escape from or an attempt to escape from or evade the lawful custody, arrest, or detention of or by an officer or guard of a correctional institution or by a law enforcement officer.

_____ proven _____ not proven

4. The victim was taken or attempted to be taken in the course of a kidnapping or abduction or an attempt to kidnap or abduct.

_____ proven _____ not proven

5. The victim was a child abducted in violation of Code, Article 27, §2.

_____ proven _____ not proven

6. The defendant committed the murder pursuant to an

agreement or contract for remuneration or the promise of remuneration to commit the murder.

_____ proven _____ not proven

7. The defendant engaged or employed another person to commit the murder and the murder was committed pursuant to an agreement or contract for remuneration or the promise of remuneration.

_____ proven _____ not proven

8. At the time of the murder, the defendant was under the sentence of death or imprisonment for life.

_____ proven _____ not proven

9. The defendant committed more than one offense of murder in the first degree arising out of the same incident.

_____ proven _____ not proven

10. The defendant committed the murder while committing or attempting to commit a carjacking, armed carjacking, robbery, arson in the first degree, rape in the first degree, or sexual offense in the first degree.

_____ proven _____ not proven

(If one or more of the above are marked "proven," complete Section IV. If all of the above are marked "not proven," do not complete Sections IV and V and proceed to Section VI and enter "Life Imprisonment.")

Section IV

Based upon the evidence, we make the following determinations as to mitigating circumstances:

1. The defendant has not previously (i) been found guilty of a crime of violence; (ii) entered a plea of guilty or nolo contendere to a charge of a crime of violence; or (iii) been granted probation on stay of entry of judgment pursuant to a charge of a crime of violence.

(As used in the preceding paragraph, "crime of violence" means abduction, arson in the first degree, carjacking, armed carjacking, escape in the first degree, kidnapping, mayhem, murder, robbery, rape in the first or second degree, sexual offense in the first or second degree, manslaughter other than involuntary manslaughter, an attempt to commit any of these offenses, or the use of a handgun in the commission of a felony or another crime of violence.)

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

2. The victim was a participant in the defendant's conduct or consented to the act which caused the victim's death.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

3. The defendant acted under substantial duress, domination, or provocation of another person, even though not so substantial as to constitute a complete defense to the prosecution.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

4. The murder was committed while the capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental incapacity, mental disorder, or emotional disturbance.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

5. The defendant was of a youthful age at the time of the crime.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

6. The act of the defendant was not the sole proximate cause of the victim's death.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

7. It is unlikely that the defendant will engage in further criminal activity that would constitute a continuing threat to society.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

8. (a) We unanimously find by a preponderance of the evidence that the following additional mitigating circumstances exist:

_____

_____

_____

_____

(Use reverse side if necessary)

(b) One or more of us, but fewer than all 12, find by a preponderance of the evidence that the following additional

mitigating circumstances exist:

_____

_____

_____

_____

(Use reverse side if necessary)

(If the jury unanimously determines in Section IV that no mitigating circumstances exist, do not complete Section V. Proceed to Section VI and enter "Death." If the jury or any juror determines that one or more mitigating circumstances exist, complete Section V.)

. . .

Rule 4-343 was accompanied by the following Reporter's Note.

> The Criminal Subcommittee is recommending that language be added to the definition of "crime of violence" in Section IV of the Findings and Sentencing Determination form in Rule 4-343. This would conform to a change to Code, Article 27, §413 (g)(1) which was effected by the 1999 legislature in House Bill 463 (Chapter 422).

Judge Johnson explained that Code, Article 27, §413(g)(1) was changed by the legislature in House Bill 463 (Chapter 422) to include the crime of escape in the first degree as a crime of violence. The Subcommittee is recommending that Section IV of the Findings and Sentencing Determination form in Rule 4-343 be changed to reflect the statutory change. There being no objection, the change to the Rule was approved as presented.

Judge Johnson presented Rule 4-502, Expungement Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-502 to expand the definition of "police records," as follows:

Rule 4-502. EXPUNGEMENT DEFINITIONS

The following definitions apply in this Chapter and in Forms 4-503.1 through 4-508.3:

(a) Application

"Application" means the written request for expungement of police records filed pursuant to Code, Article 27, §736 (f) and Rule 4-503.

(b) Central Repository

"Central Repository" means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.

(c) Court

"Court" means the Court of Appeals, Court of Special Appeals, any circuit court, and the District Court.

(d) Court Records

"Court records" means all official records maintained by the clerk or other personnel pertaining to any criminal action or proceeding for expungement. It includes indices, docket entries, charging documents, pleadings, memoranda, assignment schedules, disposition sheets, transcriptions of proceedings, electronic recordings, orders, judgments, and decrees. It does not include: records pertaining to violations of the vehicle laws of the State or of any other traffic law, ordinance, or regulation; written opinions of a court; cash receipt and disbursement records necessary for audit purposes; or a court reporter's transcript of

proceedings involving multiple defendants.

(e) Expungement

"Expungement" means the effective removal of police and court records from public inspection:

(1) by obliteration; or

(2) by removal to a separate secure area to which the public and other persons having no legitimate reason for being there are denied access; or

(3) if effective access to a record can be obtained only by reference to other records, by the expungement of the other records or the part of them providing the access.

(f) Law Enforcement Agency

"Law enforcement agency" means any state, county, and municipal police department or agency, sheriff's office, the State's Attorney's office, and the Attorney General's office.

(g) Notice

"Notice" means a written request for expungement of police records given by a person pursuant to the Code, Article 27, §736 (a), unless the context clearly requires a contrary meaning.

(h) Petition

"Petition" means a written request for expungement of court and police records filed by a person pursuant to Code, Article 27, §737 (a) and Rule 4-504.

(i) Police Records

"Police records" means all official records maintained by a law enforcement agency, a booking facility, or the Central Repository pertaining to the arrest, and detention ~~or confinement~~ of, or further proceeding against ~~a person on~~ an individual for a criminal charge ~~or~~ for a suspected violation of a criminal law, or a violation

of Code, Transportation Article for which a term of imprisonment may be imposed. ~~It~~ "Police records" does not include investigatory files, police work-product records used solely for police investigation purposes, or records pertaining to nonincarcerable violations of the vehicle laws of the State or of any other traffic law, ordinance, or regulation.

(j) Probation Before Judgment

"Probation before judgment" means disposition of a charge pursuant to Code, Article 27, §641; it also means a disposition pursuant to former Code, Article 27, §292 (b), probation without finding a verdict pursuant to Code, Article 27, §641 prior to July 1, 1975, and a disposition pursuant to former Section 22-83 of the Code of Public Local Laws of Baltimore City (1969 Edition).

(k) Records

"Records" means "police records" and "court records."

(l) Service

"Service" with respect to the application or petition means mailing a copy by certified mail or delivering it to any person admitting service, and with respect to any answer, notice, or order of court required by this Rule or court order to be served means mailing by first class mail.

(m) Transfer

"Transfer" means the act, done pursuant to an order of court, of removing an action or proceeding from the court or docket in which it was originally filed or docketed to such other proper court or docket as the nature of the case may require.
Source: This Rule is derived from former Rule EX1.

Rule 4-502 was accompanied by the following Reporter's Note.

Senate Bill 74 (Chapter 31) passed in the 1999 legislature. It expanded the

definition of "police records" as they pertain to expungement, and the Criminal Subcommittee is recommending that the parallel definition in Rule 4-502 be changed accordingly.

Judge Johnson explained that when the 1999 legislature enacted Senate Bill 74 (Chapter 31), it expanded the definition of "police records" as they pertain to expungement. The Subcommittee is recommending that the parallel definition in section (i) of Rule 4-502 be changed to conform to the statute. Section (i) did not have the word "nonincarcerable" preceding the word "violations" as the statute has, so the Subcommittee is also recommending that the word "nonincarcerable" be added to conform to the statute. There being no objection, the Committee approved the changes to Rule 4-502 as presented.

Judge Johnson presented Form 4-504.1, Petition for Expungement of Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-504.1 to add language in the first paragraph of the Form providing that a person was served with a summons or a citation, and to clarify an ambiguous time period in number 3 of the Form, as follows:

Form 4-504.1. PETITION FOR EXPUNGEMENT OF RECORDS

(Caption)

PETITION FOR EXPUNGEMENT OF RECORDS

1. (Check one of the following boxes) On or about _____ _____, I was [ ] arrested, [ ] served with a summons, or [ ] served with a citation by an officer of the _____ at _____, Maryland, as a result of the following incident _____ _____ _____ _____ _____.
(Date) (Law Enforcement Agency)

2. I was charged with the offense of _____.

3. On or about _____, the charge was disposed of as follows (check one of the following boxes):
(Date)

☐ I was acquitted and either three years have passed since disposition or a General Waiver and Release is attached.

☐ The charge was dismissed or quashed and either three years have passed since disposition or a General Waiver and Release is attached.

☐ A judgment of probation before judgment was entered on a charge that is not a violation of Code*, Transportation Article, §21-902 and ~~three years have passed since the later of disposition or my discharge from probation.~~ either (a) three years have passed since the disposition, or (b) I have been

discharged from probation, whichever is later.

Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

☐ A Nolle Prosequi was entered and either three years have passed since disposition or a General Waiver and Release is attached. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

☐ The proceeding was placed on the Stet docket and three years have passed since disposition. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations

not carrying a possible sentence of imprisonment.

☐ The case was compromised pursuant to Code*, Article 27, §12 A-5 or former Code*, Article 10, §37 and three years have passed since disposition.

☐ On or about _____, I was granted a
(Date)
full and unconditional pardon by the Governor for the one criminal act, not a crime of violence as defined in Code*, Article 27, §643B (a), of which I was convicted. More than five years, but not more than ten years, have passed since the Governor signed the pardon, and since the date the Governor signed the pardon I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

WHEREFORE, I request the Court to enter an Order for Expungement of all police and court records pertaining to the above arrest, detention, confinement, and charges.

I solemnly affirm under the penalties of perjury that the contents of this Petition are true to the best of my knowledge, information and belief, and that the charge to which this Petition relates was not made for any nonincarcerable violation of the Vehicle Laws of the State of Maryland, or any traffic law, ordinance, or regulation, nor is it part of a unit the

expungement of which is precluded under Code, Article 27, §738.

_____ _____

(Date) Signature

_____

(Address)

_____

_____

(Telephone No.)

* References to "Code" in this Petition are to the Annotated Code of Maryland.

Form 4-504.1 was accompanied by the following Reporter's Note.

> Dennis J. Weaver, Clerk of the Circuit Court for Washington County, pointed out two problems with Form 4-504.1. The first problem is that not all persons are arrested when there has been an incident; some are served with a summons and some with a citation, and these categories need to be added in the first sentence in the form. The second problem is that an ambiguity exists in the wording of the third sentence under number 3. The language could be read to mean that one of the time periods described is three years after the discharge from probation. The intended meaning is either (1) at least three years after disposition or (2) the date of the discharge from probation, whichever is later. This is evident from the statute, Code, Article 27, §737 (e). This need to be clarified in the Rule.

Judge Johnson told the Committee that Dennis J. Weaver, Clerk of the Circuit Court for Washington County, had pointed out two problems with Form 4-504.1. The first problem is that although the form provides for the date of arrest to be filled

in, not all persons have been arrested when an incident occurs. Some people are served with a summons and some with a citation, and these categories need to added to the first sentence of the form. The second problem is that the wording of the third sentence under number 3 of the form is ambiguous. The language could mean that one of the time periods described is three years after the discharge from probation. The intended meaning, which is clear from Code, Article 27, §737, is either (1) three years after disposition or (2) the date of the discharge from probation, whichever is later. The Reporter pointed out that the language in the third paragraph of number 3 could be restyled, and the Style Subcommittee can take a look at it. There being no objection, the Committee approved the proposed changes to Form 4-504.1, subject to style changes.

Agenda Item 6. Consideration of proposed amendments to: Rule 10-103 (Definitions), Rule 10-202 (Physicians Certificates — Requirement and Content), Rule 10-203 (Service; Notice), Rule 10-205 (Hearing), Rule 10-301 (Petition for Appointment of a Guardian of Property), Rule 10-302 (Service; Notice), and Rule 10-304 (Hearing)

Mr. Sykes presented Rule 10-103, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-103 to correct the name of a state agency, as follows:

Rule 10-103. DEFINITIONS

In this Title the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) Court

"Court" means the circuit court for any county and, where it has jurisdiction, the Orphans' Court.

Cross reference: See Code, Estates and Trusts Article, §13-105 for the jurisdiction of the Orphans' Court over guardians of the person of a minor and protective proceedings for minors. See also 92 Op. Atty. Gen. 009 (March 20, 1992).

(b) Disabled Person

(1) In connection with a guardianship of the person, "disabled person" means a person, other than a minor, who, because of mental disability, disease, habitual drunkenness, or addiction to drugs, has been adjudged by a court to lack sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself, such as provisions for health care, food, clothing, or shelter, and who, as a result of this inability, requires a guardian of the person.

(2) In connection with a guardianship of property, "disabled person" means a person, other than a minor, (A) who has been adjudged by a court to be unable to manage his or her property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance, (B) who has or may be entitled to property or benefits that require proper management, and (C) who, as a result of this inability, requires a guardian of the property.

Cross reference: Code, Estates and Trusts Article, §§13-101, 13-705 (b) and 13-201 (c).

(c) Fiduciary

"Fiduciary" means (1) a guardian of the property of a minor or disabled person, (2) a guardian of the person of a minor or disabled person to the extent that the guardian exercises control over any property of the minor or disabled person, (3) a trustee acting under any inter vivos or testamentary trust over which the court has been asked to assume or has assumed jurisdiction, (4) a person administering an estate under appointment by a court as a "committee," "conservator," or the like, and (5) a personal representative of a decedent to the extent provided in Rules 10-703 and 10-711.

(d) Fiduciary Estate

"Fiduciary estate" means real or personal property administered by a fiduciary.

(e) Heir

"Heir" means a person who would be entitled under the law of this State to inherit property if, at the applicable time, the owner of the property had died intestate.

(f) Interested Person

(1) In connection with a guardianship of the person or the authorization of emergency protective services, "interested person" means the minor or the disabled person; the guardian and heirs of that person; a governmental agency paying benefits to that person or a person or agency eligible to serve as guardian of the person under Code, Estates and Trusts Article, §13-707; the Department of Veterans Affairs as directed by Code, Estates and Trusts Article, §13-801; and any other person designated by the court.

(2) In connection with a guardianship of the property or other fiduciary proceedings, "interested person" means a person who would be an interested person under subsection (f)(1) of this Rule and a current income beneficiary of the fiduciary estate; a fiduciary and co-fiduciary of the fiduciary estate; and the creator of the fiduciary estate.

(3) If an interested person is a minor or disabled person, "interested person" includes a fiduciary appointed for that person, or, if none, the parent or other person who has assumed responsibility for the interested person.

Cross reference: Code, Estates and Trusts Article, §13-101 (j) and §13-801.

(g) Minor

"Minor" means a person who is under the age of eighteen.

(h) Public Guardian

"Public guardian" means a guardian who is the director of a local department of social services, the State ~~Office on~~ Department of Aging, or an area agency on aging.

(i) Temporary Guardian

"Temporary guardian" means (1) a person appointed under Rule 10-210 in a proceeding for emergency protective services, (2) a person who has been authorized to preserve and apply the property of a minor or alleged disabled person pending a hearing on a petition for guardianship, and (3) a guardian of the person or property appointed by the court pending the appointment of a substituted or successor guardian.

Cross references: Code, Estates and Trusts Article, §§13-203 and 13-709 (c)(4).

Source: This Rule is derived as follows:
Section (a) is derived from former Rule R70 a.
Section (b) is derived from former Rule R70 b, and Code, Estates and Trusts Article, §§13-201 (c)(1) and 13-705 (b).
Section (c) is derived in part from former Rule V70 b and is in part new.
Section (d) is new.
Section (e) is derived from former Rule R70 c.
Section (f)
Subsection (1) is derived in part from former Rule R70 d and in part from Code, Estates and Trusts Article, §13-707.
Subsection (2) is derived from former

Rule V70 c.
Section (g) is derived from former Rule R70 e.
Section (h) is derived from Code, Estates and Trusts Article, §13-707 (a)(10).
Section (i) is derived in part from Code, Estates and Trusts Article, §§13-203 and 13-709 and is in part new.

Rule 10-103 was accompanied by the following Reporter's Note.

Elizabeth Veronis, Esq. pointed out that the name of the Department of Aging is incorrectly listed in section (h) of Rule 10-103 and needs to be corrected.

Mr. Sykes explained that the name of the Department of Aging is incorrectly stated in the Rule as the Office on Aging, and this needs to be corrected. There being no objection, the Committee approved the change to Rule 10-103 as presented.

Mr. Sykes presented Rules 10-202, 10-203, 10-205, 10-301, 10-302, and 10-304 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-202 to conform to a statutory change by adding in the option of evaluation of a disabled person by a licensed psychologist, as follows:

Rule 10-202. ~~PHYSICIANS'~~ CERTIFICATES - REQUIREMENT AND CONTENT

(a) To be Attached to Petition

(1) Generally

If guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of (A) two physicians licensed to practice medicine in the United States, ~~one of whom shall have examined the disabled person within 21 days before the filing of the petition~~ or (B) one licensed physician, who has examined the disabled person and one licensed psychologist, who has evaluated the disabled person. An examination or evaluation by at least one of the health care professionals under this subsection shall occur within 21 days before the filing of a petition for guardianship of a disabled person. Each certificate shall state the name, address, and qualifications of the physician or psychologist, a brief history of the physician's or psychologist's involvement with the disabled person, the date of the physician's or psychologist's last examination of the disabled person, and the physician's or psychologist's opinion as to: (1) the cause, nature, extent, and probable duration of the disability, (2) whether the person requires institutional care, and (3) whether the person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian.

(2) Beneficiary of the Department of Veterans Affairs

If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, the petitioner shall file with the petition, in lieu of the certificates of two physicians or one physician and one psychologist required by subsection (1) of this section, a certificate of the Administrator of the Department of Veterans Affairs or a duly authorized representative setting forth the fact that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs. The certificate shall be prima facie evidence of the necessity for the appointment.

Cross reference: Code, Estates and Trusts Article, §13-705.

(b) Delayed Filing of Certificates

(1) After Refusal to Permit Examination

If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination by a physician or psychologist, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the disabled person to be examined appear personally on a date specified in the order and show cause why the disabled person should not be examined. The order shall be personally served on that person and on the disabled person.

(2) Appointment of ~~Physicians~~ Health Care Professionals by Court

If the court finds after a hearing that examinations are necessary, it shall appoint two physicians or one physician and one psychologist to conduct the examinations and file their reports with the court. If both ~~physicians~~ health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

Cross reference: Rule 1-341.

Source: This Rule is in part derived from former Rule R73 b 1 and b 2 and is in part new.

Rule 10-202 was accompanied by the following Reporter's Note.

The 1999 legislature enacted House Bill 290 (Chapter 618) which permits certificates of competency filed in a guardianship matter to be completed by one licensed physician and one licensed psychologist or by two licensed

physicians. The current rules require that only two licensed physicians can fill out the certificates of competency. This change impacts several of the guardianship rules which need to be conformed to the statutory modification.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-203 to conform to a statutory change by adding in the option of evaluation of a disabled person by a licensed psychologist, as follows:

Rule 10-203. SERVICE; NOTICE

(a) Service on Minor or Alleged Disabled Person

The petitioner shall serve a show cause order issued pursuant to Rule 10-104 on the minor or alleged disabled person and on the parent, guardian, or other person having care or custody of the minor or alleged disabled person. Service shall be in accordance with Rule 2-121 (a). If the minor or alleged disabled person resides with the petitioner, service shall be made upon the minor or disabled person and on such other person as the court may direct. Service upon a minor under the age of ten years may be waived provided that the other service requirements of this section are met. The show cause order served on a disabled person shall be accompanied by an "Advice of Rights" in the form set forth in Rule 10-204.

(b) Notice to Other Persons

(1) To Attorney

Unless the court orders otherwise, the petitioner shall mail a copy of the petition and show cause order by ordinary mail to the attorney for the minor or alleged disabled person.

(2) To Interested Persons

Unless the court orders otherwise, the petitioner shall mail by ordinary mail and by certified mail to all other interested persons a copy of the petition and show cause order and a "Notice to Interested Persons."

(c) Notice to Interested Persons

The Notice to Interested Persons shall be in the following form:

In the Matter of In the Circuit Court for

_____ _____
(Name of minor or alleged disabled person) (County)

_____
(docket reference)

NOTICE TO INTERESTED PERSONS

A petition has been filed seeking appointment of a guardian of the person of _____, who is alleged to be a minor or disabled person.

You are an "interested person," that is, someone who should receive notice of this proceeding because you are related to or otherwise concerned with the welfare of this person.

If the court appoints a guardian for the person, that person will lose certain valuable rights to make individual decisions.

Please examine the attached papers carefully. If you object to the appointment of a guardian, please file a response in accordance with the attached show cause order. (Be sure to

include the case number). If you wish otherwise to participate in this proceeding, notify the court and be prepared to attend any hearing.

A physician's or psychologist's certificate attached to the petition will be admissible as substantive evidence without the presence or testimony of the physician or psychologist unless you file a request that the physician or psychologist appear. The request must be filed at least 10 days before the trial date, except that, if the trial date is less than 10 days from the date your response is due, the request may be filed at any time before trial.

If you believe you need further legal advice about this matter, you should consult your attorney.

Source: This Rule is in part derived from former Rule R74 and Code, Estates and Trusts Article, §1-103 (b) and is in part new.

Rule 10-203 was accompanied by the following Reporter's Note.

See Reporter's Note to Rule 10-202.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-205 to conform to a statutory change by adding in the option of evaluation of a disabled person by a licensed psychologist, as follows:

Rule 10-205. HEARING

(a) Guardianship of the Person of a Minor

(1) No Response to Show Cause Order

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

(2) Response to Show Cause Order

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

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

(b) Guardianship of Alleged Disabled Person

(1) Generally

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

courthouse, the court may hold the trial at a place to which the alleged disabled person has reasonable access.

(2) Beneficiary of the Department of Veterans Affairs

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

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

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

See Reporter's Note to Rule 10-202.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

AMEND Rule 10-301 to conform to a statutory change by adding in the option of evaluation of a disabled person by a licensed psychologist, as follows:

Rule 10-301. PETITION FOR APPOINTMENT OF A GUARDIAN OF PROPERTY

(a) Who May File

Any interested person may file a petition requesting a court to appoint a guardian of the property of a minor or an

alleged disabled person.

(b) Venue

(1) Resident

If the minor or alleged disabled person is a resident of Maryland, the petition shall be filed in the county where the minor or alleged disabled person resides, even if the person is temporarily absent.

(2) Nonresident

If the minor or disabled person does not reside in this State, the petition shall be filed in the county in which a petition for guardianship of the person may be filed, or in the county where any part of the property is located. For purposes of determining the situs of property, the situs of tangible personal property is its location; the situs of intangible personal property is the location of the instrument, if any, evidencing a debt, obligation, stock or chose in action, or the residence of the debtor if there is no instrument evidencing a debt, obligation, stock, or chose in action; and the situs of an interest in property held in trust is located where the trustee may be sued.

(c) Contents

The petition shall be captioned "In the Matter of . . ." [stating the name of the minor or alleged disabled person]. It shall be signed and verified by the petitioner and shall contain at least the following information:

(1) The petitioner's name, address, age, and telephone number;

(2) The petitioner's familial or other relationship to the alleged disabled person;

(3) Whether the person who is the subject of the petition is a minor or an alleged disabled person and, if an alleged disabled person, a brief description of the alleged disability;

(4) The reasons why the court should

appoint a guardian of the property and, if the subject of the petition is an alleged disabled person, allegations demonstrating an inability of the alleged disabled person to manage the person's property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance;

Cross reference: Code, Estates and Trusts Article, §13-201 (b) and (c).

(5) An identification of any instrument nominating a guardian for the minor or alleged disabled person or constituting a durable power of attorney;

Cross reference: Code, Estates and Trusts Article, §13-207 (a) (2) and (5).

(6) If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator. If a guardianship or conservatorship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court.

(7) The name, age, sex, and address of the minor or alleged disabled person, the name and address of the persons with whom the minor or alleged disabled person resides, and if the minor or alleged disabled person resides with the petitioner, the name and address of another person on whom service can be made;

(8) To the extent known or reasonably ascertainable, the name, address, telephone number, and nature of interest of all interested persons and all others exercising any control over the property of the estate;

(9) If the minor or alleged disabled person is represented by an attorney, the name, address, and telephone number of the attorney.

(10) The nature, value, and location of the property of the minor or alleged disabled person;

(11) A brief description of all other property in which the minor or alleged disabled person has a concurrent interest with one or more individuals;

(12) A statement that the exhibits required by section (d) of this Rule are attached or, if not attached, the reason that they are absent; and

(13) A statement of the relief sought.

(d) Required Exhibits

The petitioner shall attach to the petition as exhibits (1) a copy of any instrument nominating a guardian; (2) any physician's or psychologist's certificates required by Rule 10-202; and (3) if the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Secretary of that Department or any authorized representative of the Secretary, in accordance with Code, Estates and Trusts Article, §13-802.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule R71 a.
Section (b) is derived from former Rule R72 a and b.
Section (c) is in part derived from former Rule R73 a and is in part new.
Section (d) is new.

Rule 10-301 was accompanied by the following Reporter's Note.

See Reporter's Note to Rule 10-202.

AMEND Rule 10-302 to conform to a statutory change by adding in the option of evaluation of a disabled person by a licensed psychologist, as follows:

Rule 10-302. SERVICE; NOTICE

(a) Service on Minor or Alleged Disabled Person

The petitioner shall serve a show cause order issued pursuant to Rule 10-104 on the minor or alleged disabled person and on the parent, guardian, or other person having care or custody of the minor or alleged disabled person or of the estate belonging to the minor or alleged disabled person. Service shall be in accordance with Rule 2-121 (a). If the minor or alleged disabled person resides with the petitioner, service shall be made upon the minor or alleged disabled person and on such other person as the court may direct. Service upon a minor under the age of ten years may be waived provided that the other service requirements of this section are met. The show cause order served on an alleged disabled person shall be accompanied by an "Advice of Rights" in the form set forth in Rule 10-303.

(b) Notice to Other Persons

(1) To Attorney

Unless the court orders otherwise, the petitioner shall mail a copy of the petition and show cause order by ordinary mail to the attorney for the minor or alleged disabled person.

(2) To Interested Persons

Unless the court orders otherwise, the petitioner shall mail by ordinary mail and by certified mail to all other interested

persons a copy of the petition and show cause order and a "Notice to Interested Persons."

(c) Notice to Interested Persons

The Notice to Interested Persons shall be in the following form:

In the Matter of	In the Circuit Court for
_____	_____
(Name of minor or alleged disabled person)	(County)
	_____
	(docket reference)

NOTICE TO INTERESTED PERSONS

A petition has been filed seeking appointment of a guardian of the property of _____, who is alleged to be a minor or alleged disabled person.

You are an "interested person", that is, someone who should receive notice of this proceeding because you are related to or otherwise concerned with the welfare of this person.

If the court appoints a guardian of the property for _____, that person will lose the right to manage his or her property.

Please examine the attached papers carefully. If you object to the appointment of a guardian, please file a response in accordance with the attached show cause order. (Be sure to include the case number). If you wish otherwise to participate in this proceeding, notify the court and be prepared to attend any hearing.

A physician's or psychologist's certificate attached to the petition will be admissible as substantive evidence without the

presence or testimony of the physician or psychologist unless you file a request that the physician or psychologist appear. The request must be filed at least 10 days before the trial date, except that, if the trial date is less than 10 days from the date your response is due, the request may be filed at any time before trial.

If you believe you need further legal advice about this matter, you should consult your attorney.

Source: This Rule is in part derived from former Rule R74 and Code, Estates and Trusts Article, §1-103 (b) and is in part new.

Rule 10-302 was accompanied by the following Reporter's Note.

See Reporter's Note to Rule 10-202.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

AMEND Rule 10-304 to conform to a statutory change by adding in the option of evaluation of a disabled person by a licensed psychologist, as follows:

Rule 10-304. HEARING

(a) No Response to Show Cause Order

If no response to the show cause order is filed and the court is satisfied that the petitioner has complied with the provisions of Rule 10-302, the court may rule on the petition summarily.

(b) Response to Show Cause Order; Place of Trial

If a response to the show cause order objects to the relief requested, the court shall set the matter for trial, and shall give notice of the time and place of trial to all persons who have responded. Upon motion by the alleged disabled person asserting that, because of his or her disability, the alleged disabled person cannot attend a trial at the courthouse, the court may hold the trial at a place to which the alleged disabled person has reasonable access.

Cross reference: Code, Estates and Trusts Article, §13-211.

(c) Request for Attendance of Physician or Psychologist

When the petition is for guardianship of the property of a disabled person, a physician's or psychologist's certificate that complies with Rule 10-202 is admissible as substantive evidence without the presence or testimony of the physician or psychologist unless, not later than 10 days before trial, an interested person who is not an individual under a disability, or the attorney for the disabled person, files a request that the physician or psychologist appear. If the trial date is less than 10 days from the date the response is due, a request that the physician appear may be filed at any time before trial.

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

Rule 10-304 was accompanied by the following Reporter's Note.

See Reporter's Note to Rule 10-202.

Mr. Sykes explained that all of the guardianship rules are proposed to be changed to conform to legislation enacted in House Bill 290 (Chapter 618) by the 1999 legislature. The legislation

permits certificates of competency filed in a guardianship matter to be completed by one licensed physician and one licensed psychologist or by two licensed physicians. The current statute and Rule require that two licensed physicians fill out the certificates of competency.

The Vice Chair pointed out that in subsection (a)(1) of Rule 10-202, the third sentence refers to the psychologist's "last examination" of the person. The first sentence refers to the psychologist's "evaluation" of the person. Mr. Bowen noted that technically a physician examines a patient, but both physicians and psychologists evaluate patients. The Vice Chair suggested that a comma be added to subsection (a)(1)(B) after the words "disabled person," the first time they appear. The proposed new language would read as follows: "or (B) one licensed physician, who has examined the disabled person, and one licensed psychologist, who has evaluated the disabled person." Mr. Sykes commented that the physician had to see the patient in order to examine him or her, but a psychological evaluation may not require the psychologist to see the patient. Whatever was previously required should be required now, so the psychologist should see the patient before making an evaluation. Mr. Bowen suggested that no comma be added to subsection (a)(1)(B), but the language "or evaluation" should be added to the third sentence of subsection (a)(1) after the word "examination" and before the word "of."

The Vice Chair suggested that language be added which would state that the physician or psychologist must see the patient in

person before the certificate is filled out. Mr. Brault suggested that the words "and seen" should be added after the word "evaluated" wherever the word "evaluated" appears. The Committee agreed to this suggestion by consensus. Mr. Sykes said that all of the other Rules would be conformed to this. The Committee approved all of the Rules pertaining to guardianships, including the changes suggested at the meeting.

Agenda Item 7. Consideration of proposed amendments to: Rule 16-101 (Administrative Responsibility), Rule 16-813 (Maryland Code of Judicial Conduct), and Rule 16-814 (Code of Conduct for Judicial Appointees)

The Chair presented Rule 16-101, Administrative Responsibility, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TILE 16 - COURTS, JUDGES, AND ATTORNEYS

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

AMEND Rule 16-101 (a) to clarify that the Chief Judge of the Court of Appeals may delegate administrative duties to retired judges and to make section (a) gender-neutral, as follows:

Rule 16-101. Administrative Responsibility.

a. Chief Judge of the Court of Appeals.

1. Generally.

The Chief Judge of the Court of Appeals ~~is~~ has overall responsibility for the administration of the courts of ~~the~~ this State. ~~Pursuant to this~~ In the execution of that responsibility, ~~he shall appoint, to serve at his pleasure,~~ the Chief Judge:

(A) may exercise the authority granted by the Rules in this Chapter or otherwise by law;

(B) shall appoint a State Court Administrator to serve at the pleasure of the Chief Judge;

(C) may delegate administrative duties to other persons within the judicial system including retired judges recalled pursuant to Md. Constitution, Article IV, §3A; and

(D) In order to promote the efficient ~~utilization of judicial manpower,~~ use of judicial personnel, the equalization of judicial workloads, and the expeditious disposition of cases, ~~he~~ may assign a judge of any court, other than an Orphans' Court, to sit temporarily in any other court ~~within the judicial system~~. ~~He may delegate administrative, duties within the judicial system~~.

2. Pretrial Proceedings in Certain Criminal Cases

The Chief Judge of the Court of Appeals, may by Administrative Order, require in any county a pretrial proceeding in the District Court for an offense within the jurisdiction of the District Court punishable by imprisonment for a period in excess of 90 days.

. . .

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

Chief Judge Bell expressed the opinion that it may be appropriate to provide in a rule that recalled judges are not limited to hearing cases, but may perform other administrative duties. This is particularly applicable in single-judge counties.

The Chair explained that Chief Judge Robert M. Bell had written a letter dated January 25, 1999, a copy of which is in

the meeting materials, in which he had expressed the opinion that it may be appropriate to provide in a rule that recalled judges are not limited to hearing cases, but may perform other administrative duties. The General Court Administration Subcommittee is proposing changes to Rule 16-101 (a) which would make this change and would also make section (a) gender-neutral. There being no objection, the Committee approved the changes to Rule 16-101 as presented.

The Chair presented Rule 16-813, Maryland Code of Judicial Conduct, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-813 to narrow the scope of the prohibition against a judge commenting about a pending or impending proceeding, as follows:

Rule 16-813. Maryland Code of Judicial Conduct.

. . .

CANON 3

Impartial and Diligent Performance of Judicial Duties

In the performance of judicial duties, the following standards apply:

A. ADJUDICATIVE RESPONSIBILITIES

. . .

(7) Except when engaging in activity permitted by Canon 4A, ~~A~~a judge should

> abstain from public comment about a pending or impending proceeding in any court that might reasonably be expected to affect the outcome of that proceeding or impair the public's perception of the fairness of that proceeding, and should require similar abstention on the part of court personnel subject to the judge's discretion and control. This subsection does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court.
>
> . . .

Rule 16-813 was accompanied by the following Reporter's Note.

> The Judicial Ethics Committee requested a change to Canon 3A (7) to avoid the harsh result of the Canon being interpreted to preclude a judge from writing a law review article commenting on an appellate decision in a case not yet finally resolved or critiquing the decision in a law school class that the judge teaches.

The Chair explained that the Judicial Ethics Committee had requested a change to Canon 3 A (7) of Rule 16-813. The change would make clear that the Canon does not preclude a judge from writing a law review article commenting on an appellate case or from critiquing the case in a law school class taught by the judge, when the case has not been finally resolved.

Mr. Sykes asked if the language in the Rule that reads: "that might reasonably be expected to affect the outcome of that proceeding" solves the problem. The Chair pointed out that the letter from The Honorable Charlotte M. Cooksey, a copy of which is in the meeting materials, requests that the Rules Committee substitute the American Bar Association version of Canon 3 A (7)

for current Canon 3 A (7). The ABA version contains the language pointed out by Mr. Sykes. The Vice Chair questioned whether the initial clause, "[e]xcept when engaging in activity permitted by Canon 4 A" is appropriate. Mr. Titus suggested that social activities should be excepted out. The Vice Chair said that the Style Subcommittee can work out the exceptions. The Committee approved the changes to Canon 3 A (7) with the exceptions to be finalized by the Style Subcommittee.

The Chair presented Rules 16-813 and 16-814 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-813 to change the comment to Canon 3 C (1)(c) to reflect a modification in statutory language, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

. . .

CANON 3

Impartial and Diligent Performance of Judicial Duties

. . .

C. RECUSAL.

(1) A judge should not participate in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or

prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or lawyer has been a material witness concerning it;

COMMENT

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should not participate in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child of the judge residing in the judge's household, has a significant financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

COMMENT

As a minimum standard for determining what constitutes a "significant financial interest," the judge should apply the definition of "financial interest" provided in the Maryland Public Ethics Law, Md. Code, State Government Article, § 15-102 (n): "(1) Ownership of an interest as the result of which the owner has received within the past 3 years, is currently receiving, or in the future is entitled to receive, more than $1,000 per year; or (2)(i) ownership of more than 3% of a business entity by an official; an employee; or the spouse of an official or employee; or (ii) ownership of securities of any kind that represent, or are convertible into, ownership of more than 3% of a business entity by an official; an employee; or the spouse of an official or employee."

Moreover, there may be situations involving a lesser financial interest which also require recusal because of the judge's own sense of propriety. Conversely, there are situations where participation may be appropriate even though the "financial interest" threshold is present. In the latter case, the judge must first obtain an opinion from the Judicial Ethics Committee to obtain an exemption, except as provided in Canon 3 D (Non-recusal by Agreement).

. . .

Rule 16-813 was accompanied by the following Reporter's Note.

Senate Bill 719 which was passed in the 1999 legislative session expanded the definition of the term "financial interest" in State Government Article, §15-102 (n), and the parallel definition in the comment to Canon 3 C (1)(C) of Rule 16-813 needs to be changed accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 — MISCELLANEOUS

AMEND Rule 16-814 to change the comment to Canon 3 C (1)(d) to reflect a modification in statutory language, as follows:

Rule 16-814. CODE OF CONDUCT FOR JUDICIAL APPOINTEES

. . .

CANON 3

Impartial and Diligent Performance of Official Duties

. . .

C. RECUSAL

(1) A judicial appointee should not participate in a proceeding in which the judicial appointee's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judicial appointee has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judicial appointee served as lawyer in the matter in controversy, or a lawyer with whom the judicial appointee previously practiced law served during such association as a lawyer concerning the matter, or the judicial appointee or lawyer has been a material witness concerning it;

COMMENT

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judicial appointee formerly employed by a governmental agency, however, should not participate in a proceeding if the judicial appointee's impartiality might reasonably be questioned because of such association.

(c) if a judicial appointee is part-time, the judicial appointee or any attorney with whom the judicial appointee is associated, represents a party or otherwise has an interest in the proceeding;

(d) the judicial appointee knows that he or she, individually or as a fiduciary, or the judicial appointee's spouse or minor child of the judicial appointee residing in the judicial appointee's household, has a significant financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

COMMENT

> As a minimum standard for determining what constitutes a "significant financial interest," the judge should apply the definition of "financial interest" provided in the Maryland Public Ethics Law, Md. Code, State Government Article, § 15-102 (n): "(1) Ownership of an interest as the result of which the owner has received within the past 3 years, is currently receiving, or in the future is entitled to receive, more than $1,000 per year; or (2)(i) ownership of more than 3% of a business entity by an official; an employee; or the spouse of an official or employee; or (ii) ownership of securities of any kind that represent, or are convertible into, ownership of more than 3% of a business entity by an official; an employee; or the spouse of an official or employee."
>
> Moreover, there may be situations involving a lesser financial interest which also require recusal because of the judicial appointee's own sense of propriety. Conversely, there are situations where participation may be appropriate even though the "financial interest" threshold is present. In the latter case, the judicial appointee must first obtain an opinion from the Judicial Ethics Committee to obtain an exemption, except as provided in Canon 3 D (Non-recusal by Agreement).
>
> . . .

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

> Senate Bill 719 which was passed in the 1999 legislative session expanded the definition of the term "financial interest" in State Government Article, §15-102 (n), and the definition in the comment to Canon 3 C (1)(d) of Rule 16-814 needs to be changed accordingly.

The Chair told the Committee that the Subcommittee is proposing changes to the comment to Canon 3 C (1)(c) of Rule 16-

813 and the comment to Canon 3 C (1)(d) of Rule 16-814 because the statute referenced in those comments, Code, State Government Article, §15-102 (n), was changed by the 1999 legislature in Senate Bill 719 (Chapter 302). The proposed changes conform the comment to the statute. There being no objection, the Committee approved the changes to the Rules as presented.

Information Items. Letter to Chief Judge Bell Re: O'Sullivan v. Boerckel, 119 S. Ct. 1729 (1999) and Letter to Chief Judge Bell Re: Miscellaneous Court Administration Issues (See Appendix 4.)

The Chair presented a draft letter to the Honorable Robert M. Bell, Chief Judge of the Court of Appeals (See Appendix 4) pertaining to the case, O'Sullivan v. Boerckel, 119 S. Ct. 1729 (1999). The Chair explained that, at Chief Judge Bell's request, the Criminal Subcommittee had considered the Boerckel case to see if a rule change should be made. The case concerned the exhaustion requirement of claims at a state's highest court. Even though the highest court has discretionary review which is certain to be denied, for a defendant to begin the federal habeas process, the defendant must have made a request for review by the state high court. One solution would be for the Court of Appeals to no longer have jurisdiction to consider these cases, but this is not realistic. The Criminal Subcommittee looked at the case, but it was of the opinion that any problem created by the case would not be solved by a change to the Rules.

The Chair presented a draft letter to Chief Judge Bell (See Appendix 5) which was a response to a letter sent to the Chair on January 25, 1999. Chief Judge Bell had made several suggestions

for possible changes to the Rules, and the draft letter responds to the suggestions. The first issue involved the possibility of rules to ensure audibility in the courtroom in District Court. The General Court Administration Subcommittee felt that this issue should be left up to the judge in each case.

Two other subjects of Chief Judge Bell's letter were the regulation of court reporters and videotaping in District Court. The Honorable Martha F. Rasin, Chief Judge of the District Court of Maryland, had expressed concern over these issues and said that she would like to be present at the next Subcommittee meeting when the issues are discussed. Another issue brought up by Chief Judge Bell was whether there should be a change to Rule 16-104, Judicial Leave. The problems with the Rule appear to have stemmed from the fact that the Administrative Office of the Courts was not always following the Rule, so the Subcommittee's opinion is that there is no reason to change the Rule.

Chief Judge Bell's last issue was whether the Rules should clarify the scope of authority of a recalled judge. He felt that especially in single-judge counties, the Rules should make it clear that recalled judges are not limited to hearing cases, but may perform administrative duties. The Committee has already approved the change to Rule 16-101, Administrative Responsibility, which addresses this issue.

The Chair stated that the letters, subject to stylistic changes, will be sent to Chief Judge Bell.

The Chair adjourned the meeting.