COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A of the People's Resource Center, 100 Community Place, Crownsville, Maryland, on September 5, 2003.

Members present:

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

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Robert L. Dean, Esq.
Hon. Ellen M. Heller
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Hon. William D. Missouri
Hon. John L. Norton, III
Anne C. Ogletree, Esq.
Debbie L. Potter, Esq.
Twilah S. Shipley, Esq.
Del. Joseph F. Vallario, Jr.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Una M. Perez, Esq., Special Reporter
David R. Durfee, Executive Director of Legal Affairs, A.O.C.
Jeraldine Kavanaugh, Human Resources, A.O.C.
M. Peter Moser, Esq.
Pamela J. White, Esq.
Sally Rankin, Court Information Office
Kelley O'Connor, Court Information Office
Diane Pawlowicz, Administrative Services, District Court
Albert "Buz" Winchester, Director of Legislative Relations, Maryland State Bar Association
Tyson Bennett, Esq.

The Chair convened the meeting. He welcomed the newest member of the Committee, Twilah S. Shipley, and he welcomed Mr. Brault back after surgery. Mr. Brault said that he is making a good recovery.

The Chair asked if there were any additions or corrections to the minutes of the January 3, 2003 and February 14, 2003 Rules Committee meetings. There being none, Mr. Klein moved to accept the minutes as presented, the motion was seconded, and it passed unanimously.

Agenda Item 1. Consideration of a policy question concerning judicial campaign conduct committees

The Chair stated that Agenda Item 1 involves a policy question for the Committee as to whether there should be a rule providing for and governing a judicial campaign conduct committee. Una M. Perez, a former Reporter to the Rules Committee, is now working as a Special Reporter to the Committee. She studied the issue of judicial campaign conduct committees, considering approaches taken by other jurisdictions on the same topic. She has identified policy issues associated with a judicial campaign conduct committee acting under court authority. The General Court Administration Subcommittee was unanimously opposed to a formal rule governing campaign conduct committees. The Subcommittee's opinion was that there should not be an opportunity for a judicial opponent to accuse the judiciary of helping out its own members. Any committee under the authority of the judiciary that includes judges is ripe for that kind of criticism. There are already rules governing the conduct of both judges and attorneys including during election campaigns. Ms. Perez's memorandum, which is part of the meeting materials for today (See Appendix 1), indicates that most states having structured campaign conduct committees also have judicial

elections every four years that are partisan with candidates running on Democratic or Republican tickets.

The Vice Chair expressed the opinion that any action instituting a judicial campaign conduct committee should not be effected by rule. She moved that the recommendation of the Subcommittee be adopted, and the motion was seconded. The Committee unanimously agreed with the Vice Chair's motion.

Mr. Dean asked if there are any legislative efforts afoot to institute a judicial campaign committee. Mr. Winchester answered that there has been no real effort to do anything legislatively to impose standards on judicial campaign conduct.

The Chair thanked Ms. Perez for her assistance.

Agenda Item 2. Reconsideration of proposed revised Rule 16-813 (Maryland Code of Judicial Conduct) and proposed amendments to Rule 8.2 (Judicial and Legal Officials) of the Maryland [Lawyers'] Rules of Professional Conduct in light of certain amendments to the ABA Model Code of Judicial Conduct (See Appendix 2)

The Chair presented Rule 16-813, Maryland Code of Judicial Conduct and Rule 8.2, Judicial and Legal Officials, for the Committee's consideration. (See Appendix 2).

The Chair told the Committee that the American Bar Association (ABA) has recently made some changes to the Model Code of Judicial Conduct that should be considered by the Committee for possible changes to the Maryland Code. Mr. Moser, a consultant to the General Court Administration Subcommittee, explained that the ABA has attempted to respond to Justice Anton Scalia's opinion in Republican Party of Minnesota v. White, 122 S. Ct. 2528 (2002), which had been discussed by the Committee at

a prior meeting. Although the opinion is difficult to interpret, the changes proposed by the ABA represent the best thinking of a talented group of people.

Mr. Moser said that the language previously approved by the Rules Committee to respond to the White case is Canon 5B (1)(d), which reads as follows: "A judge ... shall not make a pledge or promise of conduct in office other than the faithful and impartial performance of the duties of the office ... ." The Committee struck language from Canon 5B that read, "A judge ... shall not announce the judge's views on disputed legal or political issues... ." The new language suggested by the ABA appears on page 6 of its report and reads as follows: "A [judge] ... shall not with respect to cases, controversies, or issues that are likely to come before the court, make pledges, ~~or~~ promises or commitments ~~of conduct in office other than~~ that are inconsistent with the ~~faithful and~~ impartial performance of the adjudicative duties of the office ... ". This is a combination of the 1990 provisions of the Code of Judicial Conduct and other changes.

It is clear that the integrity and impartiality of the judiciary is an important state concern. The August 2003 ABA Code amendments have narrowed what is prohibited and apply the same limitations to both candidates for judicial office and sitting judges. The absence of comparable limitations applicable to sitting judges was a defect in the Minnesota Code noted in the White opinion. The ABA adopted a definition of "impartial," as follows: "'Impartiality' or 'impartial' denotes absence of bias or prejudice in favor of, or against, particular parties or

classes of parties, as well as maintaining an open mind in considering issues that may come before the judge." There had been speculation as to what Justice Scalia's opinion meant about impartiality. It is difficult to see how the ABA definition as applied in the Model Code is subject to being overbroad and unconstitutional. The ABA also included in the Commentary to Canons 1, 2, and 3 a number of phrases indicating the importance of the impartiality of the judiciary.

Mr. Moser observed that Canon 3E of the Model Code provides a fallback remedy -- disqualification. If a judge has made a public statement that commits or appears to commit the judge with respect to an issue or a controversy in a proceeding in which the judge's impartiality may be questioned, the judge shall disqualify himself or herself. The grounds for recusal may be discussed by the parties and may be waived. The Vice Chair commented that this detracts from the concept that a judge should not make the public statements in the first place.

Mr. Moser remarked that there are many reasons for a judge to have to recuse himself or herself. One can argue the constitutionality of any restrictions on judicial speech, whether they are campaign-related or not. The Supreme Court could decide that there are no restrictions on campaign speech and few restrictions on judges' speech. The better way to handle the issue currently is to put reasonable and narrow limits on campaign speech. Unlike campaigns in other states that have judicial elections, the campaigns for judicial office in Maryland, with one or two exceptions, have been very reasonable. Mr. Moser added that he has followed a vast number of judicial

campaigns, since his grandfather lost an election as a judge of the then-Supreme Bench of Baltimore, and his father won a judicial office. How will people feel if they have to come before a judge who has announced his or her opinions in advance? Judges should be free of expressions of bias and fixed positions. Maryland should adopt the changes made by the ABA and be aware of any other pertinent changes.

The Vice Chair commented that she was not clear as to how the language that was recommended by the ABA is different from the current proposed Rule in Maryland. Mr. Moser replied that both rules have the same intent from the standpoint of what it means to be a judge. In the Maryland Code, the word "impartial" is not defined, and it should be. The rest of the "bells and whistles" in the ABA version make it clear that the impartiality and integrity of the judiciary is a concern of a state. The rules pertaining to campaign speech need buttressing.

Judge Heller said that she agreed with Mr. Moser that the impartiality and independence of the judiciary is very important. She expressed the concern that the White case was decided by a five to four majority, and she cautioned that in drafting rules, it is important to be careful concerning First Amendment issues. The Chair commented that there is a problem when an attorney is running against a judge for a judicial position, and the incumbent judge's statements can be restricted but the attorney's statements cannot. During a previous campaign, a judge in Baltimore County announced that if he were to convict someone for possession of drugs, the person would go to prison for 30 days. Under the White case, the remedy is not restriction of free

speech but recusal if a judge speaks out of turn. The parent of a judge on the Fourth Circuit had been murdered, and the judge went to observe the death penalty case in Texas. If the judge had made a statement that the defendant should receive the death penalty, would this be a violation of the ABA Code? This is not a pledge or promise about a judge's intended actions. If there is evidence of the bias of a judge, the judge should recuse himself or herself. Senator Stone noted that Mr. Titus, a Subcommittee member not present at today's meeting, had stated that these situations are difficult to parse out.

Mr. Moser observed that both examples set forth by the Chair are not violations of the ABA Code. It will take time to see all of the ramifications of the White decision. It will be necessary to determine why Justice Scalia did not decide that the "pledges or promises" language (Canon 5A (3)(d) of the ABA Code) was unconstitutional, and why the "commitments" language in the same section was not determined to be unconstitutional, either. The decision in the White case was limited.

The Vice Chair expressed her agreement with Mr. Moser and Judge Heller that the Maryland Rule should conform to the ABA language. She pointed out that great minds studied the issues, and they would be available to come in as *amicus curiae* if the matter is challenged. Mr. Bowen commented that what is most important in drafting the Rule is to have grounds for recusal, so there is self-policing. Mr. Brault expressed his agreement with the Vice Chair. He said that the problem is judicial elections, and the solution is to eliminate the elections. Conforming to the ABA language gives support to the Maryland Code; however, it

is a difficult Rule to enforce. Judge Norton asked whether the ABA Rule is legal and constitutional. He expressed the view that the White opinion should be read as narrowly as possible, and he noted that this issue will be revisited. He remarked that it is preferable to try the ABA approach.

Judge Missouri commented that although he supports the ABA approach, the reality is that when a sitting judge is at a fund-raising event and is asked questions, it is difficult for the judge to think about the Canons and whether the judge is violating the "pledges and promises" clause. The best educational process for judges is new judges school, the Judicial Institute, or speaking with other judges.

The Chair suggested that the ABA definition of the word "impartial" be added in to Rule 16-813. He pointed out that the wording of the ABA provision, Canon 5A (3)(d), is broader than the parallel Maryland language in Canon 5B (1)(d). Mr. Moser explained that the point of this provision is the attempt to establish the elements required to be a good judge: impartiality (which is defined), integrity, and independence. The two provisions are not that different.

Judge Heller suggested deleting Canon 3B (8) of the Maryland Code, which provides: "A judge shall abstain from public comment that relates to a proceeding pending or impending in any court and that might reasonably be expected to affect the outcome of that proceeding or to impair the fairness of that proceeding..." in light of the changes to the ABA Code. Mr. Moser disagreed, stating that this provision is in addition to the ABA changes. This is different from a judge making a pledge or promise. The

Chair said that he has always had a problem with this language. If a District Court judge speaks out and criticizes a circuit court judge, this will not impair the fairness of a proceeding and is not a violation of Canon 3B (8). There was a case in Maryland in which a federal judge released a defendant on bail, and a state judge wrote a letter to the editorial page of The Sunpapers criticizing the federal judge's decision. Although the Honorable Robert Murphy, then-Chief Judge of the Court of Appeals, was troubled by the state judge's actions, the Code of Judicial Conduct was flexible enough, so that the Judicial Disabilities Commission did not find that the judge had violated any of the provisions of the Code. The language causing the problem is "... impair the fairness of that proceeding...". What one judge says about another judge does not necessarily impair the fairness of a proceeding.

Mr. Bowen pointed out that on the second page of the memorandum from the General Court Administration Subcommittee dated August 25, 2003, there are three options for the Rules Committee — (1) to make no changes, (2) to delete the "pledges or promises" language from Rule 8.2, or (3) to substitute the language on page 6 of the 2003 ABA amendments for the "pledges or promises" language that had been approved by the Judicial Ethics and Rules Committees. The Vice Chair moved that the ABA language be substituted, the motion was seconded, and it passed with 15 in favor.

The Chair clarified that the definition of "impartiality" as it appears on page 3 of the August 2003 amendments to the ABA Model Code of Judicial Conduct will be added to the Maryland Code

of Judicial Conduct. The language of Canon 5A (3)(d) of the ABA Model Code will be substituted for the language of Canon 5B (1)(d) of the Maryland Code. To be consistent with Mr. Bowen's comment about recusal as a self-regulating mechanism, the language of Canon 3E (1)(f) of the Model Code dealing with disqualification will be incorporated into Canon 3D of the Maryland Code.

Mr. Brault commented that disqualification is a problem. ABA Canon 5A (3)(d) indicates that the following language has been stricken: "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court." However, the language which reads, "commits, or appears to commit, the judge with respect to (i) an issue in the proceeding; or (ii) the controversy in the proceeding" has been left in Canon 3E (1)(f). Is this an intentional broadening of disqualification beyond the proscription in Canon 5A (3)(d)? Mr. Moser answered that this is intentional, but he was not certain as to why. Mr. Brault noted that the examples given by the Chair, such as a judge who is a judicial candidate promising heavier sentences, infer that the judge should be disqualified even if the statements do not violate the Code. Mr. Bowen asked if the ABA language in Canon 5A (3)(d) will pass constitutional muster, but he pointed out that as long as there is the language in the Maryland Code pertaining to disqualification resulting from a statement within the ambit of Canon 5A (3)(d), there is a remedy if a judge speaks out of turn. The Chair added that broader disqualification is appropriate. Mr. Zarnoch remarked that the ABA attempt to narrow

the language that is in the Maryland Code is a plus.

Ms. Veronis told the Committee that the Judicial Ethics Committee had previously declined the opportunity to comment on this issue, but she will ask them again if they wish to comment. She questioned whether the changes made to the Commentary in Canon 1 of the Model Code will also be made to the Commentary in Canon 1 of the Maryland Code. The Vice Chair responded that the underlined changes to the Commentary of the Model Code reinforce the Code, and they should be added to the Maryland Code as well. The Committee agreed by consensus to add the new language from the Model Code Commentary to the Maryland Code Commentary.

The Reporter pointed out the proposed changes to Canon 5B require conforming changes to the proposed amendments to Rule 16-814 (Code of Conduct for Judicial Appointees) and Rule 8.2 of the Maryland [Lawyers'] Rules of Professional Conduct. The Committee agreed by consensus to the changes needed to make the Maryland Code of Judicial Conduct, the Code of Conduct for Judicial Appointees, and Rule 8.2 consistent with the approach adopted by the ABA in its August 2003 amendments to the Model Code of Judicial Conduct.

Agenda Item 3. Consideration of certain proposed rules changes recommended by the General Provisions Subcommittee: Amendments to: Rule 1-202 (Definitions), Rule 1-311 (Signing of Pleadings and Other Papers), Rule 1-332 (Notification of Need for Accommodation), Rule 16-819 (Court Interpreters), and Deletion of Appendix: Forms, Form 1-332 (Notification of Need for Accommodation or Interpreter)

Mr. Zarnoch presented Rule 1-202, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 (g) by adding language to conform to a statutory change, as follows:

Rule 1-202. DEFINITIONS

. . .

(g) Code, Reference to

Reference to an article and section of the Code means ~~the article and section of the Annotated Code of Public General Laws of Maryland as from time to time amended~~ any Code of the Public General Laws of the State that has been adopted and made evidence of the Public General Laws of the State under Code, Courts Article, §10-201.

. . .

Rule 1-202 was accompanied by the following Reporter's Note.

The General Provisions Subcommittee recommends amending the definition of "Code, reference to" in Rule 1-202 (g) to conform to Chapter 416, Acts of 2003 (HB 287) which sets out the meaning of "the Annotated Code of Maryland" and other references to the Code.

Mr. Zarnoch explained that the proposed change to Rule 1-202 incorporates a change made by the 2003 legislature in Chapter 416 (HB287), defining the Code of Maryland using this language. By consensus, the Committee approved the Rule as presented.

Mr. Zarnoch presented Rule 1-311, Signing of Pleadings and Other Papers, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-311 (a) by adding any business facsimile number and any business electronic mail address to the contents of the pleading or paper filed, as follows:

Rule 1-311. SIGNING OF PLEADINGS AND OTHER PAPERS

(a) Requirement

Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party. Every pleading or paper filed shall contain the address, ~~and~~ telephone number, any business facsimile number, and any business electronic mail address of the person by whom it is signed.

(b) Effect of Signature

The signature of an attorney on a pleading or paper constitutes a certification that the attorney has read the pleading or paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay.

(c) Sanctions

If a pleading or paper is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading had not been filed. For a wilful violation of this Rule,

an attorney is subject to appropriate disciplinary action.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 302 a, 301 f, and the 1937 version of Fed. R. Civ. P. 11.
Section (b) is derived from former Rule 302 b and the 1937 version of Fed. R. Civ. P. 11.
Section (c) is derived from the 1937 version of Fed. R. Civ. P. 11.

Rule 1-311 was accompanied by the following Reporter's Note.

The Honorable Thomas P. Smith, Circuit Court of Prince George's County, requested that any facsimile number of a person filing a pleading or other paper should be added to the pleading or paper filed. He noted that this would save the court time in sending an order to counsel and enable counsel to receive the order sooner than counsel would have received the order had it been mailed. The General Provisions Subcommittee agrees with Judge Smith's suggestion and further recommends the addition of any business electronic mail address also for efficiency of legal practice.

Mr. Zarnoch explained that the Honorable Thomas P. Smith, Judge of the Circuit Court for Prince George's County, had requested that a person filing a pleading or other paper should include the person's facsimile number as part of the required information in the pleading or other paper. The General Provisions Subcommittee also suggests that the person's e-mail address be added for more efficient communication with the court.

Mr. Karceski commented that he and others have problems with e-mail. He expressed his concern that section (a) requires that a pleading or paper contain the e-mail address of the person who signed the pleading or other paper. He noted that all attorneys should not be responsible for accessing their e-mail. Ms. Potter

remarked that she does not wish to be obligated to e-mail opposing counsel. The Chair stated that nothing changes the basic obligation of clerks to serve orders and judgments, whether e-mail is involved or not. Delegate Vallario said that the computers at the House of Delegates are not operational when they are updated from time to time, and often he does not check his e-mail for long periods of time.

Mr. Klein pointed out that there is no requirement to serve by e-mail, other than in asbestos cases in Baltimore City. The argument for using e-mail is that it is very convenient, and a secretary does not have to photocopy documents. The Rules do not allow someone to be sandbagged through service by e-mail. Mr. Brault expressed the opinion that e-mail is a nuisance. Some attorneys are using it to notify opposing counsel about supplemental discovery. The Chair suggested that a Committee note or additional language could be added to Rule 1-311 to expressly clarify that e-mail is not a substitute for notice.

Mr. Dean suggested that the reference to e-mail be couched as optional. The Chair commented that faxing is important, so that the court can get orders out efficiently. Judge Missouri noted that in Prince George's County, faxing is a convenient method for judges to communicate with attorneys. In Prince George's County and Baltimore City, there are pilot projects for the electronic filing of pleadings and other papers, and plans are being made to extend the projects to other large jurisdictions. Judge Heller added that this recognizes developing technology. The United States District Court already uses electronic filing of pleadings and papers. Mr. Klein

predicted that the optional electronic filing will be changed to become mandatory in the future.

The Chair inquired as to whether if the court sends something to an attorney by fax as a courtesy, it would start the clock running as to the time of service. Mr. Brault suggested that a Committee note be added to Rule 1-311, stating that the service rules are not affected by Rule 1-311. The Chair said that the wording of the Committee note could be that the requirement that a pleading contain a business facsimile number in no way alters the service rules or any time periods triggered by the entry of judgment or the receipt of a document. Mr. Brault suggested that a reference to Blundon v. Taylor, 364 Md. 1 (2001) also could be added. The Style Subcommittee can draft the exact language. The Committee approved the Rule as amended, subject to style changes.

Mr. Zarnoch presented Rule 1-332, Notification of Need for Accommodation, the Draft Forms for requesting accommodations (See Appendix 3 for the Forms), and Rule 16-819, Court Interpreters, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-332 to broaden its scope, to delete a certain reference to a form in the appendix to the Rules, to add certain language concerning the form of an application for an accommodation, to specify the time for submission of an application requesting an accommodation, and to delete the cross reference and Committee note following the Rule, as follows:

Rule 1-332. NOTIFICATION OF NEED FOR ACCOMMODATION

(a) Application

If an attorney, a party ~~represented by an attorney~~, or a witness to be called on behalf of ~~that~~ a party will need the court to provide an accommodation under the Americans With Disabilities Act, 42 U.S.C. §12101, et seq., in order to participate in a court proceeding, the ~~attorney~~ person requesting the accommodation shall notify the court promptly by providing the information contained on ~~the form in the appendix to these Rules~~ an application that shall be substantially in the form approved by the **State Court Administrator [and the Chief Judge of the District Court] [Alternative: Chief Judge of the District Court for use in the District Court and by the State Court Administrator for use in the other courts of this State]** and shall be available from the clerk of each court.

(b) Time for Filing

Unless otherwise ordered by the court, an application requesting an accommodation shall be submitted not less than five days prior to the date of the proceeding for which the accommodation is requested.

~~Cross reference: See Form 1-332.~~

~~Committee note: Rule 1-332 places a duty of providing notice on the attorney. Any person entitled to an accommodation under the Americans With Disabilities Act may use Form 1-332 to notify the court of the need for accommodation.~~

Source: This Rule is new.

Rule 1-332 was accompanied by the following Reporter's Note.

The Honorable Glenn T. Harrell, Jr., wrote a letter to the Chair of the Rules Committee requesting an amendment to Rule 1-332 to better facilitate compliance with the Americans with Disabilities Act (ADA).

The Rule currently requires only an attorney to notify a court if an attorney, a party represented by an attorney, or a witness to be called on behalf of the party needs an ADA accommodation in a court proceeding. Judge Harrell pointed out that the recent increase in *pro se* litigants has resulted in a lack of notice, or very late notice, as to the need for accommodation. He asked the Rules Committee to look at Rule 1-332 and the form that accompanies it, Form 1-332, and recommend changes to require *pro se* litigants to give notice regarding the need for accommodation.

David Durfee, Esq., from the Administrative Office of the Courts (AOC), Diane Pawlowicz from the District Court, and Jeraldine Kavanaugh from the AOC are members of a committee working to review the Judiciary's compliance with the ADA (the "ADA Committee"). They suggested amending Rules 1-332 and 16-819 and deleting Form 1-332. The amendments include deleting the language in Rule 1-332 that reads "represented by an attorney" so that the Rule is applicable to all persons who need an accommodation under the ADA, regardless of whether the person has an attorney, and deleting the language in Rules 1-332 and 16-819 (b) that reads "in the appendix to these Rules." With the proposed removal of the form from the appendix, the General Court Administration Subcommittee recommends that language be added to the two Rules that is similar to language in Rule 17-107 (a) ("... substantially in the form approved by the State Court Administrator ..."), in the interest of statewide uniformity.

The ADA Committee also recommends the addition a new section (b) to Rule 1-332 to require that an application requesting accommodation be filed at least five days before the court proceeding for which the accommodation is needed, unless the court waives the time requirement.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-819 (b) to delete a certain reference to a form in the Appendix to the Rules and to add language concerning the form and availability of an application for the appointment of an interpreter, as follows:

Rule 16-819. COURT INTERPRETERS

. . .

(b) Application for the Appointment of an Interpreter

A person who needs an interpreter may apply to the court for the appointment of an interpreter~~. The application shall be made by providing the information required by Form 1-332 in the Appendix to these Rules~~ on an application that shall be substantially in the form approved by the **State Court Administrator [and the Chief Judge of the District Court] [Alternative: Chief Judge of the District Court for use in the District Court and by the State Court Administrator for use in the other courts of this State] and shall be available from the clerk of each court**.

. . .

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

See the Reporter's Note to the proposed amendments to Rule 1-332.

Mr. Zarnoch explained that the change to the Rule was suggested by the Honorable Glenn T. Harrell, Jr., a judge of the Court of Appeals, who had pointed out that the Rule only requires

an attorney to notify a court if an attorney, a party represented by an attorney, or a witness to be called on behalf of the party needs an accommodation under the Americans with Disabilities Act (ADA). The recent increase in *pro se* litigants has resulted in no notice or late notice as to the need for accommodation. Judge Harrell had asked that Rule 1-332 and the form that accompanies it, Form 1-322, Notification of Need for Accommodation or Interpreter, be modified to require *pro se* litigants to give proper notice of the need for ADA accommodation. In light of this, the General Provisions Subcommittee is suggesting that the language in the first sentence of Rule 1-332 that reads, "represented by an attorney" be deleted. Mr. Zarnoch said that David Durfee, Esq., and Jeraldine Kavanaugh from the Administrative Office of the Courts as well as Diane Pawlowicz from the District Court, attended the Subcommittee meeting to help with this issue and are present today.

Mr. Durfee told the Committee that he, Ms. Kavanaugh, and Ms. Pawlowicz had worked with Judge Harrell on modifying Rule 1-332, Form 1-332, and Rule 16-819. One of the problems is that Rule 1-332 applies only to parties represented by an attorney. Witnesses and *pro se* individuals are not covered by the Rule. Mr. Durfee said that his group is proposing that in place of the language in Rule 1-332 that reads "on the form in the appendix to these Rules," the language "on an application that shall be substantially in the form approved by _____" should be substituted. There are two versions of the new language from which the Rules Committee can choose. In one version, the State Court Administrator specifies the form to be used in all courts

throughout the State. The other version allows the Chief Judge of the District Court to specify the form to be used in the District Court. The same choice is available in Rule 16-819. Another issue involved with these Rules is the use of the ADA form for requesting spoken language interpreters.

The Vice Chair expressed the view that the form should be retained in the appendix to the Rules of Procedure, so that people know what accommodations are available and what they have to do to request an accommodation. Mr. Durfee commented that technology has dramatically changed since the Rule and form were originally adopted. The form lists various types of accommodations that involve technology. Each forthcoming change would require a change to the form. The Vice Chair suggested that the form that is distributed should be very broad. Mr. Durfee responded that persons with disabilities know what they need, and it is difficult to include the entire list of possible accommodations on the form.

The Chair stated that if there is a form, the Rule that refers to it does not have to require that the request be "substantially in the following form." Even with technological advances, there can always be an approved form. The Vice Chair remarked that she prefers the use of the word "substantially," and she suggested that a general form be available in the appendix. Ms. Potter noted that the form could mirror the language in Rule 3-303, Form of Pleadings: "[a]s far as practicable, all pleadings shall be prepared on District Court forms ...". The Vice Chair pointed out that many of the Orphans' Court forms are introduced by the following language: "...is

substantially in the following form." If the form changes after the Rule Book is published, the form in the book can still be used. Ms. Potter asked why it is necessary to state in the Rule who approves the form. It is better to say that the form is provided by the court.

Ms. Ogletree inquired as to whether there will be one or two forms. The Chair replied that, as a practical matter, there should be one form. Mr. Klein observed that the way the form is drafted has nothing to do with technology. The Vice Chair reiterated that the form should continue to appear in the appendix. The Reporter commented that it may be better to keep the form out of the appendix, because each time a modification of the form is needed, the form would proceed through the sometimes lengthy rule-making process, rather than simply being approved by the State Court Administrator or the Chief Judge of the District Court. The Chair questioned whether a request that is not on the official form is to be disregarded. Ms. Potter expressed the view that the printed form should be used as far as practicable. The Chair said that the Rule should provide that a person who requests an accommodation shall notify the court promptly, and, if practicable, the request shall be presented on the form set forth in the appendix.

Mr. Bowen suggested that the form be available from the clerk of the court, but need not be approved by the court. The Reporter remarked that Mr. Titus, a member of the General Provisions Subcommittee, who was not present at today's meeting, was strongly opposed to each of the circuit courts having its own form. Judge Missouri said that the Conference of Circuit Judges

has not yet approved a uniform form. Ms. Potter suggested that the word "application" in section (a) of Rule 1-332 should be changed to the word "request."

The Vice Chair asked about the form labeled "Draft #8" in the package of three draft forms that had been distributed at the meeting. (See Appendix 3). Mr. Durfee replied that there have been a number of drafts of this form, and this is the most recent. The Vice Chair pointed out that the second form in the package, the "Grievance Form," should not be included. Mr. Durfee explained that the form is in the meeting materials to let the Committee know what has been discussed on this topic. Judge Missouri noted that the word "grievance" in the second form is a term of art and may not be appropriate. Mr. Durfee responded that this word is used in the federal regulations concerning the ADA. Judge Missouri observed that the administrative judge hears the grievances.

Mr. Johnson inquired as to the grievance procedure. Ms. Potter remarked that it would be similar to a request for reconsideration. Mr. Johnson said that it is similar to a judicial disabilities complaint. Ms. Ogletree observed that there is no grievance procedure for this under the Maryland Rules.

Mr. Johnson suggested that in section (b) of Rule 1-332, language should be added to allow the court to waive the time requirement. The Vice Chair asked what the sanction is under ADA law if someone does not follow the procedures yet is entitled to an accommodation. Mr. Brault commented that a party calling a witness or presenting a case is responsible for adhering to the

Rule. Mr. Durfee noted that the current language of the Rule does not include the situation where an attorney does know of the need for a witness's accommodation. The Rule should allow a witness to ask on his or her own for an accommodation.

The Vice Chair expressed the view that the Rule is too involved with technicalities. She questioned as to whether the court would deny a needed accommodation if the request were not filed within five days. Mr. Durfee pointed out that a form similar to the one presented here is used in California. Judge Missouri said that a request will not necessarily be denied based on lack of timeliness, but the accommodation requested has to be reasonable. Ms. Potter inquired as to who makes the decision, and Judge Missouri answered that it is the ADA coordinator. The Chair commented that as a practical matter, a judge could deny the request. Ms. Potter added that the ADA coordinator could ask the judge about the matter.

Mr. Brault remarked that he would not like to see trials aborted because requests for accommodations are made too late. He knew of a case where an interpreter in a specific Indian dialect was needed in a trial, and the interpreter had to be brought in from Pennsylvania. The Vice Chair observed that this issue was discussed when the Rule was initially drafted, and the language was left flexible on purpose. The decision should be based on the circumstances of each case.

The Chair suggested that section (a) read as follows: "... shall notify the court promptly. As far as practicable, the request for accommodation shall be submitted not less than five days prior to the date of the proceeding for which the

accommodation is requested and shall be submitted on a form available from the clerk of each court." Mr. Zarnoch asked if the form should be in the appendix, and the consensus of the Committee was that it should not. Ms. Shipley commented that she likes the idea of the form being in the appendix. The problem with the five-day limitation is that not all individuals are able to meet that burden and may possibly be penalized. The Vice Chair inquired as to what motivates the five-day requirement. Judge Kaplan replied that if a party or witness is hearing-impaired or cannot speak, the court needs time to arrange for an interpreter. If someone is physically disabled, the court may need information in advance of five days to make the necessary arrangements.

The Vice Chair noted that the Rule provides that one is to request accommodation promptly after the person understands that there is a need. If "five days before the hearing" is added in as a time requirement, is the word "promptly" taken out? "Promptly" is a stronger requirement--it means as quickly as one is able. Ms. Ogletree remarked that many people who appear in the District Court in Caroline County cannot read English, so the Rules will not be followed.

The Reporter questioned as to whether the language to be used should be "promptly" or "not less than five days before the hearing." The Vice Chair said that each issue should be taken up separately. She suggested that section (b) should be deleted entirely from the Rule. Judge Norton expressed his agreement with Judge Kaplan that the court can waive the time requirements but needs advance notice of the need for accommodation. Ms.

Potter asked about modifying Rule 16-819. Mr. Durfee pointed out that the Rule pertains only to spoken language interpreters. Judge Kaplan noted that the language "as far as practicable" solves the problem with an inability to meet the five-day limitation. Mr. Bowen suggested that section (b) read as follows: "Unless otherwise ordered by the court, an application requesting an accommodation shall be submitted promptly, but if practicable, not less than five days prior to the date of the proceeding for which the accommodation is requested." The Committee agreed by consensus to this suggestion.

Mr. Brault remarked that it is difficult to fill out the form if one does not speak English. Ms. Veronis said that the need for a spoken language interpreter is not classified as a disability under the ADA. The Vice Chair suggested that there be a form available in the clerk's office as well as a form in the appendix for requests for accommodations due to ADA disabilities and the same for a request for a spoken language interpreter. Delegate Vallario expressed his concern that a situation could arise in which a party could contend that a proceeding could not go forward because the five-day limitation on notice of a need for an interpreter was violated. Judge Missouri responded that it is the court's responsibility to ensure that an interpreter is present when one has been requested.

Judge Heller pointed out that the five-day limitation is not in Rule 16-819. Judge Missouri observed that Draft #7, the form entitled "Request for Spoken Language Interpreter," provides for a two-week notification. Judge Heller remarked that since the Conference of Circuit Judges has not approved the draft forms,

there could be a problem placing them into the appendix. The Vice Chair suggested that the Rule should not be changed until the forms are changed. The Chair said that if someone needs an interpreter, the person makes a request for one and, if practicable, the person should provide the information that complies with the form in the appendix or use a form from the clerk's office. Judge Heller expressed the opinion that it is preferable to make a uniform form available in the clerk's offices.

The Chair commented that there is the possibility that someone who is 16 years old could call or write to the court to request an interpreter for his or her parent who cannot speak English. Such a request should be made promptly and if practicable at least five days before the trial. A person making this type of request should be able to look at the appendix for a form or get a form from the clerk's office. Ms. Potter asked if there is a duty to forward the request to opposing counsel in the case. She commented that she would like to know if someone involved in a case where she was counsel had requested an interpreter. It would be helpful if the request were made two weeks prior to the date of the legal proceeding. Mr. Brault remarked that he likes to know this in advance so that his law firm can obtain its own interpreter to monitor or prevent editorial comment on the part of the person doing the interpreting.

The Vice Chair expressed the view that the forms should be adopted by the Court of Appeals. The Chair said that the form should continue to be in the appendix and available in the

clerk's office. Judge Norton pointed out that Form 1-322 on page 460 of Volume 2 of the Maryland Rules of Procedure (2003) is confusing, and the District Court does not use it. If someone cannot read English, the person will not be able to locate option #9, which refers to spoken language interpreters. The form used by the District Court has no relation to the one in the Rule Book. There should be a separate form for persons with disabilities and one for persons who need a spoken language interpreter. The language of the Rule mandates the use of the form in the Rule Book. The Chair stated that the Rule will clarify that the information regarding accommodation will be included in an application form that substantially conforms to Form 1-322 or on a form available from the clerk's office. Most people write a letter or see the clerk to request accommodations.

Mr. Durfee inquired as to whether the request for a spoken language interpreter will be on the same form as the request for a sign language interpreter. The Chair replied that the two will not be combined, but Rule 16-819 will be conformed to the changes to Rule 1-322. Mr. Durfee noted that Form 1-332 is the ADA form. The Reporter suggested that the form be retained until another one can be developed. Mr. Durfee said that there is a problem referring to both spoken and sign language interpretation in Form 1-332. Judge Norton remarked that no one will use the form in the Rule Book, and the Chair added that there is no harm leaving the form in the book. Mr. Klein asked if the five-day limitation will be added to Rule 16-819, and the Chair responded that the latter Rule will be conformed to the changes made to Rule 1-332. The Committee by consensus approved the changes to Rules 1-332

and 16-819, as amended. The Chair thanked the consultants for their assistance.

Agenda Item 4. Consideration of a certain proposed amendment to Rule 15-901 (Action for Change of Name) recommended by the Specific Remedies Subcommittee

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Mr. Zarnoch presented Rule 15-901, Action for Change of Name, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 900 - NAME - CHANGE OF

AMEND Rule 15-901 by adding to the contents of the petition in subsection (c)(1) a provision stating whether the person whose name is sought to be changed has ever registered as a sexual offender and the full name under which the person was registered and by adding a cross reference at the end of subsection (c)(1) to the corresponding statute, as follows:

Rule 15-901. ACTION FOR CHANGE OF NAME

(a) Applicability

This Rule applies to actions for change of name other than in connection with an adoption or divorce.

(b) Venue

An action for change of name shall be brought in the county where the person whose name is sought to be changed resides.

(c) Petition

(1) Contents

The action for change of name shall be commenced by filing a petition captioned

"In the Matter of . . ." [stating the name of the person whose name is sought to be changed] "for change of name to . . ." [stating the change of name desired]. The petition shall be under oath and shall contain at least the following information:

(A) the name, address, and date and place of birth of the person whose name is sought to be changed;

(B) whether the person whose name is sought to be changed has ever been known by any other name and, if so, the name or names and the circumstances under which they were used;

(C) the change of name desired;

(D) all reasons for the requested change;

(E) a certification that the petitioner is not requesting the name change for any illegal or fraudulent purpose; ~~and~~

(F) if the person whose name is sought to be changed is a minor, the names and addresses of that person's parents and any guardian or custodian~~.~~; and

(G) whether the person whose name is sought to be changed has ever registered as a sexual offender, and if so, the full name (including suffixes) under which the person was registered.

Cross reference: Code, Criminal Procedure Article, §11-705, which requires a registered sexual offender who is granted a legal change of name by a court to send written notice of the change to the Department of Public Safety and Correctional Services within seven days after the change is granted.

(2) Documents to be Attached to Petition

The petitioner shall attach to the petition a copy of a birth certificate or other documentary evidence from which the court can find that the current name of the person whose name is sought to be changed is as alleged.

(d) Service of Petition - When Required

If the person whose name is sought to be changed is a minor, a copy of the petition, any attachments, and the notice issued pursuant to section (e) of this Rule shall be served upon that person's parents and any guardian or custodian in the manner provided by Rule 2-121. When proof is made by affidavit that good faith efforts to serve a parent, guardian, or custodian pursuant to Rule 2-121 (a) have not succeeded and that Rule 2-121 (b) is inapplicable or that service pursuant to that Rule is impracticable, the court may order that service may be made by (1) the publication required by subsection (e)(2) of this Rule and (2) mailing a copy of the petition, any attachments, and notice by first class mail to the last known address of the parent, guardian, or custodian to be served.

(e) Notice

(1) Issued by Clerk

Upon the filing of the petition, the clerk shall sign and issue a notice that (A) includes the caption of the action, (B) describes the substance of the petition and the relief sought, and (C) states the latest date by which an objection to the petition may be filed.

(2) Publication

Unless the court on motion of the petitioner orders otherwise, the notice shall be published one time in a newspaper of general circulation in the county at least fifteen days before the date specified in the notice for filing an objection to the petition. The petitioner shall thereafter file a certificate of publication.

(f) Objection to Petition

Any person may file an objection to the petition. The objection shall be filed within the time specified in the notice and shall be supported by an affidavit which sets forth the reasons for the objection. The affidavit shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the

affidavit. The objection and affidavit shall be served upon the petitioner in accordance with Rule 1-321. The petitioner may file a response within 15 days after being served with the objection and affidavit. A person desiring a hearing shall so request in the objection or response under the heading "Request for Hearing."

(g) Action by Court

After the time for filing objections and responses has expired, the court may hold a hearing or may rule on the petition without a hearing and shall enter an appropriate order, except that the court shall not deny the petition without a hearing if one was requested by the petitioner.

Source: This Rule is derived in part from former Rules BH70 through BH75 and is in part new.

Rule 15-901 was accompanied by the following Reporter's Note.

Chapter 405, Acts of 2003 (HB 12) added a requirement to Code, Criminal Procedure Article, §11-705 that a registered sexual offender must notify the Department of Public Safety and Correctional Services within seven days after a court has granted a change of name to the registrant. The Specific Remedies Subcommittee is recommending changes to Rule 15-901 to conform to the legislation including (1) adding a requirement to the contents of the petition that the petitioner indicate whether the petitioner has ever registered as a sexual offender and the full name under which the petitioner was registered, and (2) adding a cross reference at the end of subsection (c)(1) to the corresponding statute.

Mr. Zarnoch explained that Chapter 505, Acts of 2003 (HB12) added a requirement to Code, Criminal Procedure Article, §11-705 that a registered sex offender must notify the Department of Public Safety and Correctional Services within seven days after a

court has granted a change of name to the registrant. The Specific Remedies is recommending conforming changes to Rule 15-901 that add a requirement to the contents of the petition that the petitioner indicate whether the petitioner has ever registered as a sex offender and that add a cross reference at the end of subsection (c)(1) to the corresponding statute.

By consensus, the Committee approved the Rule as presented.

Information Item.

The Reporter said that an information item included in the meeting materials concern the 152nd Report to the Court of Appeals, which has been posted on the Judiciary's website. (See Appendix 4). Three proposed "housekeeping" changes that had not been before the Rules Committee were in the Report. Two of the changes are to Rules 2-645 and 3-645, Garnishment of Property - Generally. The amendments conform the Rules to the case of Consolidated Construction v. Simpson, 372 Md. 434 (2002), which held that contingent debts are not attachable. The third change is an amendment to Rule 5-412, Sex Offense Cases; Relevance of Victim's Past Behavior. This amendment conforms the Rule to Chapter 89, Acts of 2003 (SB 453), which amended Code, Criminal Law Article, §3-317 (b). By consensus, the Committee approved the changes to the three Rules.

The Reporter pointed out a memorandum dated August 26, 2003 in the meeting materials (See Appendix 5), which explains that in its 145th Report to the Court of Appeals, the Rules Committee had transmitted a proposed amendment to Rule 13-503, Distribution,

setting $5.00 as the minimum amount of a distribution to a creditor by an assignee or receiver. The Court had deferred action on the proposal pending the outcome of a case that was before the Court at the time of its consideration of the 145th Report. Ms. Shannon Simmons, an intern in the Rules Committee office during the past summer, researched the issue and found no case on point. The Reporter said that the proposed amendment to Rule 13-503 will be resubmitted to the Court of Appeals unless the Committee is of a different opinion. No one expressed any opposition to the resubmission. The resubmission was approved by consensus.

The Chair adjourned the meeting.