COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A, People's Resource Center, Crownsville, Maryland on September 5, 1997.

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.
Bayard Z. Hochberg, Esq.
H. Thomas Howell, Esq.
Hon. G. R. Hovey Johnson
Hon. Joseph H. H. Kaplan
Joyce H. Knox, Esq.
James J. Lombardi, Esq.
Anne C. Ogletree, Esq.
Hon. Mary Ellen T. Rinehardt
Larry W. Shipley, Clerk
Sen. Norman R. Stone, Jr.
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Del. Joseph F. Vallario, Jr.
Hon. James N. Vaughan
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Vikki Rompala, Esq.
Lynn Martin, Esq., Queen Anne's County Dept. of Social Services
Albert D. Winchester, Esq.
Hon. James C. Cawood, Jr., Circuit Court for Anne Arundel County
Pamela Ortiz, Circuit Court for Anne Arundel County
Francine Chambers Diggs, Esq.
Judith Moran, Esq.
Professor Barbara Babb, University of Baltimore School of Law
Hon. Theresa A. Nolan, Circuit Court for Prince George's County
Stuart J. Robinson, Esq.
James Smith, Circuit Court for Baltimore County
Aza Butler, Circuit Court for Baltimore County
Risa Garon, Executive Director, Children of Separation and Divorce Center, Inc.
John Murphy, Esq.
Janet Bliss, Esq.
Michael Manoly, Center for Children, Charles County
Mark Colvin, Esq.

Robert T. Fontaine, Esq., Assistant Attorney General
George Nutwell, Register of Wills, Anne Arundel County
Susan Whiteford, Esq.
Allan J. Gibber, Esq.
Margaret H. Phipps, Register of Wills, Calvert County
Alexander I. Lewis, Esq.
Judy Barr
Alex Leikus

The Chair convened the meeting. He welcomed the guests who were present, and he congratulated Mr. Lombardi on having been appointed to the circuit court bench in Prince George's County.

Agenda Item 1. Consideration of proposed rules changes pertaining to a family division and family support services in the circuit courts: Proposed new Rule 16-204 (Family Division and Support Services) and Proposed amendments to Rule 16-202 (Assignment of Actions for Trial)

The Chair presented Rule 16-204, Family Division and Support Services, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 200 - THE CALENDAR--ASSIGNMENT

AND DISPOSITION OF MOTIONS AND CASES

ADD new Rule 16-204, as follows:

Rule 16-204. FAMILY DIVISION AND SUPPORT SERVICES

(a) Funding Contingency

The provisions of this Rule are contingent upon State funding for the family support services and family support services coordinators required by the Rule.

Committee note: This Rule does not prohibit a court from appointing a family support services coordinator or providing family support services for which the State does not provide funding.

(b) Family Division

(1) Established

In each county having more than seven resident judges of the circuit court authorized by law, there shall be a family division in the circuit court.

(2) Actions Assigned

In a county that has a family division, the following categories of actions shall be assigned to that division:

(A) dissolution of marriage, including divorce, annulment, and property distribution;

(B) child custody and visitation, including proceedings governed by the Maryland Uniform Child Custody Jurisdiction Act, Code, Family Law Article, Title 9, Subtitle 2, and the Parental Kidnapping Prevention Act, 28 U.S.C. §1738A;

(C) alimony and child support, including proceedings under the Maryland Uniform Interstate Family Support Act;

(D) except actions in Montgomery County in which the District Court sitting as a juvenile court is exercising jurisdiction pursuant to Code, Courts Article, §3-804 (a)(2), establishment and termination of the parent-child relationship, including paternity, adoption, guardianship that terminates parental rights, and emancipation;

(E) criminal nonsupport and desertion, including proceedings under Code, Family Law Article, Title 10, Subtitle 2 and Code, Family Law Article, Title 13;

(F) name changes;

(G) guardianship of minors and disabled persons under Code, Estates and Trusts Article, Title 13;

(H) involuntary admission to state facilities and emergency evaluations under Code, Health General Article, Title 10, Subtitle 6;

(I) family legal medical issues, including decisions on the withholding or withdrawal of life-sustaining medical procedures;

(J) actions involving domestic violence under Code, Family Law Article, Title 4, Subtitle 5, except those actions initiated in the District Court and not transferred to a circuit court;

(K) except in Montgomery County, juvenile causes under Code, Courts Article, Title 3, Subtitle 8; and

(L) civil and criminal contempt arising out of any of the categories of actions set forth in subsections (b)(2)(A) through (b)(2)(K) of this Rule.

Committee note: The jurisdiction of the circuit courts, the District Court, and the Orphans' Court are not affected by this section.

(3) Family Support Services

Subject to section (a) of this Rule, the following family support services, when appropriate in a particular action, shall be available through the family division in actions assigned to the family division:

(A) mediation in custody and visitation matters;

(B) custody investigation;

(C) trained personnel to respond to emergencies by interviewing parties, gathering information, and making recommendations to judges and masters;

(D) mental health services to provide mental health evaluations and evaluations for substance abuse;

(E) information services to provide procedural assistance to pro se litigants;

(F) information regarding the availability of lawyer referral services;

(G) parenting seminars; and

(H) any additional family support services for which the State provides funding.

Committee note: Examples of additional family support services that may be provided include general mediation programs, case managers, and family follow-up services.

(4) Responsibilities of the County Administrative Judge

The County Administrative Judge in each county having a family division shall:

(A) allocate sufficient judicial resources to the family division so that actions are heard expeditiously in accordance with applicable law and the county's case management plan required by Rule 16-202 (b), unless good cause for a modification of time requirements exists in a particular action;

Committee note: This Rule requires the assignment of certain actions to the family division of a circuit court. The Rule neither requires nor prohibits the assignment of one or more judges to hear family division cases on a full-time basis. Rather, this section allows each County Administrative Judge the flexibility to determine how that county's judicial assignments are to be made so that

actions in the family division are heard expeditiously. Additional matters for county-by-county determination include whether and to what extent masters, special masters, and examiners are used to assist in the resolution of family division cases.

(B) provide in the county's case management plan required by Rule 16-202 (b) for:

(i) establishment of criteria for requiring parties in an action assigned to the family division to attend a scheduling conference in accordance with Rule 2-504.1 (a)(1) and

(ii) assignment of each action in the family division that is appropriate for assignment to a specific judge to a judge who shall be responsible for the entire case, unless good cause exists for the reassignment of the case to another judge;

Cross reference: For rules concerning the referral of matters to masters as of course, see Rules 2-541 and 9-207.

(C) appoint a family support services coordinator whose responsibilities include:

(i) compilation and maintenance of lists of available family support services,

(ii) development of forms for referrals to family support services,

(iii) coordination of referrals ordered in actions assigned to the family division, and

(iv) periodic reporting to the County Administrative Judge concerning the need for additional family support services or the modification of existing services; and

(D) no later than October 15 of each year, prepare and submit to the Chief Judge of the

Court of Appeals a written report that includes an assessment of family support services needed by the county's family division and a fiscal note that states the cost of those services for the following fiscal year. Whenever practicable, the report shall also include an assessment of the fiscal needs of the Clerk of the Circuit Court for the county pertaining to the family division.

(5) County Administrative Judge Designee

The County Administrative Judge, may, but is not required to, appoint a designee who shall identify actions or proceedings pending in the family division that should be referred to a master, examiner, or appropriate and available family support services.

Committee note: Although only a judge may issue an order, a designee responsible for identifying actions or proceedings under this subsection may be the family support services coordinator or other court employee who has received special training in identifying cases or actions for referral, a master, or a judge.

(c) Counties Without a Family Division

(1) Applicability

This section applies to counties having seven or less resident judges of the circuit court authorized by law.

(2) Family Support Services and Coordinator

Subject to section (a) of this Rule:

(A) When appropriate in a particular action, the family support services listed in subsection (b)(3) of this Rule shall be available through the circuit court in the categories of actions listed in subsection (b)(2) of this Rule, and

(B) The County Administrative Judge shall appoint a family services coordinator who

shall serve in the position full- or part-time and whose responsibilities shall be as set forth in subsection (b)(4)(C) of this Rule.

(3) Report to the Chief Judge of the Court of Appeals

No later than October 15 of each year, the County Administrative Judge shall prepare and submit to the Chief Judge of the Court of Appeals a written report that includes an assessment of the family support services needed by the court and a fiscal note that states the cost of those services for the following fiscal year. Whenever practicable, the report shall include an assessment of the fiscal needs of the Clerk of the Circuit Court for the county pertaining to family support services.

Source: This Rule is new.

Rule 16-204 was accompanied by the following Reporter's Note.

Proposed new Rule 16-204 requires (1) the establishment of a family division in the circuit courts of the five largest jurisdictions and (2) in all jurisdictions, the appointment of a family services support coordinator and the availability of certain family support services through the circuit court, all contingent upon State funding.

The categories of actions assigned to the family division are listed in section (b). The categories are substantially the same as the categories recommended by the proponents of family division legislation in the 1997 session (S.B. 571 and H.B. 1346, both failed) with the addition of proposed subsection (b)(2)(C) pertaining to contempt. Family support services to be provided are substantially the same services set out in S.B. 571 and H.B. 1346 as essential family support services, with the addition of subsections (b)(3)(F) and (H) and

"evaluators for substance abuse" in subsection (b)(3)(D).

Subsection (b)(4) sets out responsibilities of the County Administrative Judge with respect to the family division. Subsection (b)(4)(A) requires the allocation of sufficient judicial resources so that actions are heard expeditiously in accordance with applicable law and the county's case management plan. As stated in the Committee note, the Rule neither requires nor prohibits the assignment of one or more judges to hear family division cases on a full-time basis. Subsection (b)(4)(B) requires the County Administrative Judge to include in the county's case management plan criteria for required scheduling conferences and provisions for the special assignment of appropriate actions to a specific judge. Subsection (b)(4)(C) requires the appointment of a family support services coordinator and lists the minimum responsibilities of the coordinator. Subsection (b)(4)(D) requires the County Administrative Judge to submit an annual report (including fiscal note) to the Chief Judge of the Court of Appeals.

Under subsection (b)(5) a County Administrative Judge is allowed, but not required, to appoint a designee to identify actions that are appropriate for referral to a master, examiner, or family support services.

Section (c) applies to counties without a family division. Subject to the funding contingency set out in section (a), section (c) requires the appointment of a family support services coordinator and the provision of family support services in smaller jurisdictions. Section (c) also requires the County Administrative judge in each jurisdiction to submit an annual report to the Chief Judge of the Court of Appeals, similar to the report required by subsection (b)(4)(D).

Legislative Note:

The General Court Administration Subcommittee recommends that the Legislature reexamine Code, Courts Article, §4-404, concerning the concurrent jurisdiction of the District Court and circuit courts to hear domestic violence cases.

When an action between the parties is already pending in the circuit court, the Subcommittee believes that the District Court should not have jurisdiction to hear an ex parte proceeding.

Even when no action is pending in the circuit court, the concurrent jurisdiction of the District Court and circuit court can result in conflicting orders and a lack of coordinated handling of the case as a whole. One possible approach in this situation would be for the District Court to have exclusive original jurisdiction to hear ex parte and protective order proceedings, with an expedited appeal to or review by the circuit court. The Subcommittee expresses no clear preference for this approach, suggesting that it is a matter appropriate for further study by the Legislature.

The Chair explained that Rule 16-204 is a product of dynamic factors in the circuit courts around the State and in the legislature, and also is a product of Chief Judge Robert M. Bell's desire to create a division for the resolution of family-type issues. Some years ago, the concern was already being expressed that family issues, such as divorce, custody, and visitation were not getting through the courts as quickly as they should. The cases were being bounced from judge to judge. A bill to remedy this situation by creating a Family Court Division failed in the legislature, but it served as a wakeup call to the judiciary. Some counties in Maryland have had more problems with the family cases than other counties. Former Chief Judge Robert C. Murphy set up several committees to study the problems in the courts. The Commission on the Future of the Courts (Futures Commission), made recommendations and identified issues that are addressed by the proposed Rule.

The Chair continued that Chief Judge Bell has expressed a commitment to the Family Division. If the Rules Committee approves the proposed Rule or another version of it, this will be presented to the Court of Appeals as a representation of the changes family law practitioners would like to see made. The Rule has many good qualities -- it identifies the kind of cases which would fall under the jurisdiction of the Family Division, it identifies the personnel needed, it provides for legislative funding, and it affords county administrative judges flexibility to implement the Rule consistent

with its underlying purposes.

The Chair suggested that section (a) of the Rule be moved to subsection (b)(3). Although the Family Division will be enhanced by funding, it will exist regardless. The amount of personnel involved will be contingent upon the amount of funding. If section (a) is moved, section (b) will become section (a). The Committee agreed by consensus to move section (a). Mr. Sykes expressed his concern about the idea of a funding contingency. The Committee note to section (a) indicates that the Rule does not prohibit a court from appointing a family support services coordinator or from providing family support services for which the State does not provide funding. There could be a family division and support services in a jurisdiction with less than seven judges. A statement should be added to the effect that the number of services provided may be contingent upon funding by the State and also upon local funding, and to the extent that there is no funding, the administrative judge or some other member of the judiciary can tailor the services provided to meet the funding available.

The Vice Chair remarked that the Rule is mandatory if a jurisdiction has more than seven judges. She questioned as to what would happen if a jurisdiction has no money. Mr. Sykes observed that a jurisdiction could arrange for the assignment of judges to a family division, even without funds. The Vice Chair noted that subsection (b)(3) lists new types of family and support services which would

cost a significant amount of money. Without funding, some jurisdictions may not be able to provide such services. Mr. Sykes commented that subsection (b)(3) provides that "... the following family support services, when appropriate in a particular action, shall be available ..." (emphasis added). Mr. Hochberg questioned whether the word "shall" should be changed to the word "may."

Mr. Hochberg asked how the number seven was chosen as the amount of judges to qualify for a family division. Professor Babb of the University of Baltimore explained that former Chief Judge Robert Murphy had made a report to the Legislature in 1993 in which the recommendation of the seven-judge jurisdiction was made. This number represented the five largest counties.

Mr. Lombardi asked the Chair to introduce the guests in attendance at the meeting. The Chair introduced the Honorable Theresa A. Nolan and the Honorable Steven I. Platt of the Circuit Court of Prince George's County, Professor Barbara Babb of the University of Baltimore, Judy Moran, Francine Diggs, Pamela Ortiz, Stuart Robinson, the Honorable James C. Cawood, Jr. of the Circuit Court of Anne Arundel County, the Honorable James T. Smith, Jr. of the Circuit Court of Baltimore County, Aza Butler, Albert (Buz) Winchester, Lynn Martin, Vikki Rompala, and two law student interns in the Rules Committee Office, Judy Barr and Alex Leikus.

The Chair drew the Committee's attention to subsection (b)(1) of Rule 16-204 (which will be relettered as subsection (a)(1)).

There was no discussion of subsection (b)(1). The Chair drew the Committee's attention to subsection (b)(2). He pointed out that this provision is consistent with legislation recommended by the Futures Commission. Professor Babb commented that Chapter 198 of the Laws of 1993 contained the categories of actions, and she asked if this should be referenced in the Reporter's note. The Vice Chair inquired if the Rule is consistent with the legislation, and Professor Babb replied that it is. The wording of subsection (b)(2)(J) is different. The Reporter said that she would include in the Reporter's note that there is a difference between the Rule and the legislation. The Vice Chair pointed out that the Reporter's note indicates that the Rule goes beyond the legislation in subsections (b)(3)(D), (F), and (H).

The Vice Chair expressed the opinion that subsection (b)(2)(J) is difficult to understand. It should be clear that this refers to actions in the circuit court. The Chair suggested that the last clause which begins with the word "except" could be deleted. Mr. Sykes suggested that there should be a catchall, similar to the one in the hearsay rule, which gives the administrative judge the right to assign to the family court any matters related to it which are not specifically provided for in the Rule. The Chair commented that that was a good suggestion. Judge Vaughan suggested that the reference to the District Court be changed, so that the Rule has language to the effect that it includes actions involving domestic violence under the

Code. The Vice Chair suggested that the language should be: "actions in the circuit court involving domestic violence." The Chair proposed the following change in language: "actions initiated or transferred to the circuit court." Mr. Sykes stated that this could be decided by the Style Subcommittee.

The Vice Chair questioned as to why the cases have to be assigned to a family division when they can be assigned to a particular judge. Judge Kaplan answered that cases assigned to a family division can include cases involving primarily family matters, and the same judges can hear other overflow cases, as well. The Vice Chair remarked that the catchall phrase could cover this. Mr. Sykes said that the phrase could refer to cases related to the purposes of the division. The Reporter commented that an example would be a criminal assault case which may be related to a domestic violence case. Mr. Sykes responded that this could be assigned to the family division, but it could not be mandated in the Rule. Judge Cawood observed that if it is clear that a case should be tried by a family division judge, but is tried by a non-family judge, this should not be an issue which is appealable. The Vice Chair noted that the reverse situation, where a family judge tries a non-family case, is also a concern. Judge Cawood cited an example of a hypothetical situation where there is a bench meeting, and one judge is left back to hear cases. If the judge is not in the family division, he or she should be able to hear a family matter which is brought before that

judge.

Ms. Ortiz remarked that a contract case between spouses could trigger auxiliary support services, such as the case being sent to a mediator. The Reporter asked about a stalking case. Ms. Ortiz said that this may be put into a family division, but it is less likely that a criminal matter would fit in or benefit from being in the family division. The Chair said that the suggestion by Mr. Sykes to have a catchall category is a good one. The Committee agreed by consensus to this suggestion.

The Chair suggested that to address Judge Cawood's concern about a judge who is not assigned to the family division hearing a family case, something could be added to the Rule to cover this situation. Mr. Sykes remarked that the Committee note at the end of subsection (b)(2) would handle this problem. The Vice Chair commented that she did not read the Committee note to cover this. Mr. Howell suggested that the Committee note could be strengthened to pertain to the situation where a non-family judge hears a family case, or the reverse situation. The Vice Chair suggested that in each county, the administrative judge could designate all judges as capable of hearing family cases, but Judges Kaplan and Johnson disagreed with this suggestion. Judge Kaplan said that there should be an ability to move cases. If family division judges are overcrowded, the cases should be able to be assigned to another judge, so that the case can be tried right away. The Vice Chair

observed that all judges are capable of being assigned to the family division, and a provision to this effect would take care of the jurisdiction issue.

The Chair suggested that there could be a provision in the Rule to the effect that nothing in the Rule affects the authority of the circuit judge to act on any matter properly before the circuit court. Delegate Vallario noted that this issue was discussed by the legislature. The idea was to avoid having interchangeable situations. There should be a separate division, and any judge can handle the cases in it. The idea is to have the same judges who will recognize the parties. The same family judges can also sit in criminal court. The Chair asked the Committee if it agreed with adding language to the Rule to the effect that nothing in the Rule affects the authority of the circuit court judge to act on any matter properly before the circuit court. The Committee agreed by consensus to add this language. The Chair suggested that the catchall category proposed by Mr. Sykes be added to the Rule, and the Committee agreed by consensus with this suggestion.

Judge Kaplan referred to the memorandum from Judy Moran addressed to Judge Albert J. Matricciani, Jr. and to Judge Kaplan, a copy of which was distributed at the meeting today (See Appendix 1). In the memorandum, Ms. Moran had suggested that in subsection (b)(3)(C) the language "a crisis intervention unit" be substituted for the language "trained personnel." Mr. Lombardi questioned

whether this suggested language could be too narrow. Judge Kaplan suggested that the new language could be "crisis intervention personnel." Ms. Moran explained that she was interested in the Rule addressing a specific group of persons having specialized training in the diversion of cases. Ms. Ortiz inquired if this language would include trained social work personnel. Ms. Moran replied that it would. Mr. Hochberg expressed the view that more generic language is preferable. Judge Vaughan commented that the language which is currently in the Rule is sufficient, but that the word "crisis" could be added after the word "trained" and before the word "personnel." Mr. Sykes noted that the Rule does not address all of Ms. Moran's concerns as to triaging cases. Sometimes, the crisis personnel divert cases before they get to a judge. He suggested that the Rule should cover this. The term "crisis intervention unit" does not sufficiently address the concerns expressed in the memorandum. The Chair expressed the opinion that the language "trained personnel to respond to emergencies" is adequate, and the remainder of the language which reads "by interviewing parties, gathering information, and making recommendations to judges and masters" is not necessary. A crisis unit would fit in under this language. Judge Platt agreed. The Committee agreed by consensus to delete the remainder of subsection (a)(3)(C).

Judge Smith referred to subsection (a)(3)(D), and he commented that alcohol abuse is a bigger problem than the use of illegal

narcotics. He suggested that the language "including alcohol abuse" be added in. The Chair asked if there should be a separate section dealing only with services to provide evaluations for alcohol and substance abuse. Judge Vaughan remarked that there may be a difference between being alcoholic and being mentally ill. Mr. Sykes pointed out that the term "alcohol and substance abuse" implies mental illness. The Chair suggested that subsection (a)(3)(D) read "services to provide mental health evaluations and evaluations for alcohol or drug abuse." The Committee agreed by consensus to this change.

Drawing the Committee's attention to subsection (a)(3)(E), the Vice Chair questioned as to why this provision applies only to pro se litigants. The Chair remarked that Mr. Shipley had previously commented about the problems with pro se litigants. Mr. Howell observed that the Subcommittee had discussed wording this as "information services, including procedural assistance to pro se litigants." Judge Cawood suggested that subsections (E) and (F) could be read together. Judge Rinehardt cautioned that in drafting the Rule, the Committee should not lose the thought that clerks have problems with pro se litigants. Some counties have programs for pro se litigants. They are a real problem for the clerks. The Rule would provide personnel, who are not clerks and are employed by the court, to help. Mr. Sykes commented that subsection (E) takes care of the problem. He expressed the view that subsections (E) and (F)

should not be collapsed into one section.

The Chair suggested that subsection (E) read as follows: "information services, including procedural assistance to pro se litigants." The Committee agreed by consensus to this change. Judge Cawood asked whether the clerk's office would provide the procedural assistance, or if someone would be referred to a system such as a clinic. The Chair replied that it would depend on what is available in the particular jurisdiction. Judge Cawood pointed out that the clerks are told not to provide assistance, although some reasonable assistance might be acceptable. This could be read by a pro se litigant to mean that the clerk's office is obligated to help pro se litigants. Ms. Ortiz remarked that in Anne Arundel County, there is a grant from the local bar foundation to aid pro se litigants. Presumably, the services can be delegated.

Turning to subsection (b)(3)(F), Mr. Sykes asked why the words "the availability of" are necessary. The Chair suggested that they be deleted, and the Committee agreed by consensus to delete the words.

The Vice Chair pointed out that in subsection (b)(3)(H), the language which refers to the State providing funding is not necessary, because the Rule already states that it is subject to the availability of funds. The Chair disagreed, explaining that the language should remain, in the event that money would be available for additional services. The Vice Chair noted that the wording of

this provision implies that the State provides the funding. The Chair suggested that the reference to "the State" be removed. The Committee agreed by consensus to this deletion. Judge Vaughan asked about having a definition for the term "family", especially since a large number of people are unmarried. The Chair responded that it is intentionally not defined; instead the Rule provides specific causes of action. To define the term "family" would be a needless and potentially impossible exercise. Ms. Ortiz commented that many jurisdictions provide that there is some charge to litigants for services. The Rule should be clear that it is not intended to say that the litigant is never obligated to pay for anything. The Chair said that the Committee note could provide in subsection (a)(4) that the court can determine the extent to which the parties must pay. The Vice Chair remarked that she had no problem with this, except that obligating parties to pay may lead to a less user-friendly court system for the middle class and below. Judge Smith observed that the concept of funding can also mean self-support as a means of funding. The Reporter noted that the lack of uniformity of fees is a constitutional problem. Providing a funding mechanism is a matter for the legislature. When considering the mediation rules that were proposed in the 128th Report but were not adopted, the Court of Appeals expressed its concern about forcing people to pay for court-ordered services. The Chair commented that family support services are conditioned upon funding, which may include the generation of

expenses payable by the parties. The Rule has to clarify that the services are available where there is funding.

Judge Rinehardt asked how these types of services are funded in Baltimore County. Ms. Butler answered that the County does not charge for divorce education or mediation services, because a grant provides the funding. Judge Rinehardt observed that this is a matter of concern throughout the entire State. The Chair responded that the various jurisdictions will have to find out what works. He inquired as to what else the State can do if the property tax cap does not allow the funding. Ms. Butler stated that when there is a reasonable fee scale, parties are more accepting of the arrangement.

The Chair said that the administrative judge makes the decision as to who pays and how much. Judge Vaughan questioned if any other Rule is contingent on the availability of funding. The Chair cautioned that the legislature had requested this Rule. Judge Smith commented that the funding issue is more than political -- it is practical. Putting the issue of funding up front is being honest. Judge Kaplan added that it would be a family division in name only if there is no funding available. Baltimore City will not fund this. Professor Babb remarked that in the past three years, three-quarters of a million dollars had been appropriated by the legislature for support services in the five major counties. The Chair stated that the Rule identifies the kinds of services which will be used, so that the legislature can see where the money will be spent. Judge Cawood

observed that Ms. Ortiz had said that the Rule should not leave to chance the issue of whether the parties can be ordered to make reasonable payments for services, or the current services which are provided may be jeopardized. All of these services may be funded by the State some day. The Chair stated that one of the responsibilities of the county administrative judge could be to decide who pays for what. The Vice Chair expressed the opinion that sometimes it is appropriate for parties to pay, but there are times when it is inappropriate for the parties to bear the cost. The Rule should not be so broad as to allow anything and everything to be assessed to the parties. Judge Rinehardt agreed with this. Ms. Ortiz remarked that the philosophical answer is to provide services to low-income litigants. The budget of the Department of Social Services (DSS) in Anne Arundel County depends on the economic level of the persons involved.

The Chair questioned whether the Rule has to address who pays for the services. If it does, it should provide that it is a function of the administrative county judge to determine who pays. The Vice Chair said that she thinks the Rule will be construed to mean that the services will be provided free of charge. Judge Cawood suggested that the Rule or a Committee note clarify that the parties can pay reasonable charges, but that the decision is up to the administrative judge. Charging a modest fee for DSS charges cannot be eliminated. The Chair observed that if the Rule is general, some

counties will pay for services that are free in other counties. Professor Babb responded that the reality is that there may be different amounts of money in different jurisdictions. This should be left to the determination of the county administrative judge. The Chair asked if the Rule implies that the services are free of charge, or if the jurisdiction has the right to charge. Language could be added to the Rule which provides as follows: "nothing in the section shall affect the right of the court to charge the parties costs in connection with the case." Mr. Robinson commented that this may benignly set up patterns of economic discrimination for services provided to those who can pay. A uniform fee structure would go a long way. Some jurisdictions get money from the State. If someone does not live in these jurisdictions, he or she may be denied services. The Chair said that this is similar to the Public Defender services. It would be difficult for the Rules Committee to propose a fee schedule, and it would make the Rule too long. This is more of a legislative function. If the legislature chooses to provide funding for mediation or require that services are free or that there is a small fee, the legislature can do this. All the Rule is providing is that the services will be available if they are funded.

Mr. Sykes observed that it is within the power of the county administrative judge to set reasonable fees subject to the supervision of the Chief Judge. Even though this may not be uniform, it is not so arbitrary. Ms. Ortiz remarked that providing for the

waiver of fees is up to the administrative judge. The court is currently able to order mediation. Judge Rinehardt pointed out that if the provider of the mediation is private, the situation is different. Mr. Hochberg commented that Harford County uses facilitators. These are not named in the Rule in the list of people offering services, but the catchall category can cover them. The administrative judge should be allowed to set the schedule of charges which should be published. There should be a provision that the court can specifically waive fees to adjust to economic positions. The Chair clarified that this would be done by the administrative judge in each county having a family division.

Judge Rinehardt commented that without a published list of charges, it is difficult to advise a client as to the cost of support services. The Chair remarked that the more uniform the charges, the easier it is. The Vice Chair said that this depends on whether the court orders the service or whether the litigant chooses the service. The problem with providing mediation is if the court orders it, the court should pay for it. Judge Rinehardt noted that the services listed in Rule 16-204 would be ordered by the court.

The Chair asked if there would be a funding problem with respect to subsection (b)(4)(A), which is the allocation of sufficient judicial resources to the family division. The Vice Chair inquired if the word "resources" includes courtrooms. Mr. Sykes also questioned the meaning of "resources." Mr. Robinson commented that

this is an issue of money, particularly as to privately funded programs. Problems are created for pro se litigants and the courts as to what money is available for services. The Chair stated that the issue of funding is not being discussed at this time. The purpose of the discussion is to figure out the responsibilities of the administrative judge. Mr. Lombardi expressed the view that subsection (A) does not create any problems, but subsection (B) does.

Turning to subsection (b)(4)(B), the Chair noted that subsection (ii) is an important feature of the Rule. The Vice Chair asked about the language "... that is appropriate for assignment to a specific judge ...". Judge Platt responded that many cases require only a few minutes in front of a master, and there is no need for a judge. Mr. Sykes pointed out that the previous Committee note discusses the assignment of judges. Judge Platt expressed his agreement with allowing the discretion in the Rule for a case to be reassigned to another judge. The Reporter explained that originally there had been language in this provision which referred to "complex actions." The idea is to define the criteria so that the more complicated cases are assigned to a particular judge.

The Vice Chair inquired as to how the language of subsection (ii) should be read. Does it mean that the county administrative judge assigns criteria for classes of cases? The Chair suggested that the language which reads, "that is appropriate for assignment"

should be deleted. The provision means that when a judge gets a case, that judge stays with the case until its completion. The final clause allows for the reassignment to another judge, if necessary. Judge Kaplan questioned as to how formal the good cause must be. It should be more of a reasonable basis for the administrative judge to reassign the case. The Chair said that the theory is one judge-one case. The principal complaint of domestic relations practitioners is the way the cases go from judge to judge. The Rule should provide one judge-one case, with an opt-out section. Judge Kaplan remarked that the opt-out section should be within the discretion of the administrative judge.

The Vice Chair moved that the last clause of subsection (b)(4)(B)(ii) should read, "unless the administrative judge determines that the case should be reassigned to another judge." Mr. Bowen seconded the motion, and it passed unanimously.

The Chair suggested that the language "that is appropriate for assignment" should be left in. The Vice Chair asked again if this means a whole class of cases exempted, or if it refers to a specific case. Judge Platt answered that it means both. There are blocks of cases, such as uncontested divorces, and individual cases, also. The Vice Chair said that she disagreed with the second category. She inquired why blocks of uncontested divorce cases could not be handled by the county's differentiated case management (DCM) plan. Judge Kaplan suggested that subsection (ii) could read "assignment of each

action in the family division that is appropriate for assignment to a judge in that division, unless the administrative judge determines that the case should be reassigned to another judge."

Judge Smith inquired as to the Vice Chair's concerns. The Vice Chair replied that her concern was that the language is so broad that it appears to allow huge blocks of cases to not be specially assigned. Judge Smith remarked that the county's DCM plan handling this would have to be approved. The Chair suggested that subsection (ii) could become its own section (C) as follows: "determine which actions in the family division are appropriate for assignment to a specific judge who shall be responsible for the entire case ...". Another suggestion by the Chair was to substitute for the language in existing subsection (ii), which now reads, "assignment of each action in the family division ...", the following language: "identification of those actions in the family division ... ."

Mr. Bowen expressed the view that subsection (ii) should not be changed. Mr. Sykes pointed out that there may be a problem with a case-by-case assignment, and he remarked that the DCM plan may be able to handle this. Mr. Hochberg observed that Rule 9-207 removes cases to a master, when the cases need not go to a judge. This is done at the discretion of the county administrative judge. The Chair commented that this is not at the discretion of the county administrative judge. It is better to have the DCM plan identify the cases, than to leave it to an ad hoc decision.

Mr. Shipley explained that in his county, the computer system assigns each case to a judge, so that the clerk's office knows to whom to send required orders. This does not preclude a case being sent to mediation or to a master. The Chair clarified that this section is to prevent parties from walking in to a different judge each month.

The Vice Chair moved that the wording of subsection (ii) be changed so that the Rule reads as follows: "identification of those actions in the family division that are appropriate for assignment to a specific judge ...". The motion was seconded, and it carried with one vote opposed. The Reporter inquired if this is also being kept in the DCM plan, and the Chair answered that it is.

Turning to subsection (C), the Chair noted that Mr. Lombardi had suggested that the lists of support services should be available to the public. This will answer Judge Rinehardt's question as to what services are available for clients. Some support services which are unfunded, such as volunteer mediation, should be on the list as well. Mr. Hochberg suggested that subsection (C)(i) read, "compilation, maintenance, and publication of lists of available family support services ...". Mr. Lombardi suggested that the words "whether funded or unfunded" be added at the end of subsection (C)(i).

Professor Babb questioned whether the intent of the Rule was that there should be someone in each jurisdiction who searches out

the services available. If the court cannot provide the services, it can connect families to those services. The court will not have to provide services that may already be available. Mr. Sykes suggested that subsection (C)(i) read as follows: "compilation, maintenance, and provision of lists of available family support services, public or private." The Committee agreed by consensus to this change.

The Chair drew the Committee's attention to subsection (C)(ii). Mr. Sykes suggested that the words "and provision" be added after the word "development" and before the word "of." Judge Rinehardt remarked that this would lead to uniformity of the forms. Mr. Sykes inquired if each county would have the list of services for that county, for the entire State, or for that county and adjacent counties. Judge Rinehardt responded that the list would be for the services in each county for that county's use. The Vice Chair questioned as to what the forms are for and if they are signed by a judge. The Chair answered that in some jurisdictions, the forms are signed by a judge. The Vice Chair pointed out that if the judge signs the referral form, the implication is that this is court-ordered, and it may affect who pays for the service. Judge Platt commented that this is not a cumbersome process. People are not being ordered to use a service, they are being offered a resource. In Prince George's County, there are trained paralegals, social workers, and pro bono attorneys who offer services. Ms. Ortiz noted that subsections (C)(iii) and (iv) anticipate that the court may

order attendance at the offered services. If so, there must be coordination of the services. Ms. Moran observed that subsection (C)(ii) is addressed to the agencies offering the services. The Vice Chair said that subsection (C)(ii) mandates that the coordinator develop forms. Since agency forms are being provided, there is no need for subsection (ii). The Committee agreed by consensus to delete subsection (C)(ii).

Mr. Sykes asked how referrals are coordinated if the judge signs orders. The Chair said that the coordinator will get people to the service quickly without a written order. Mr. Sykes noted that subsection (iii) uses the word "ordered." Judge Platt suggested that the word "ordered" be deleted. Ms. Moran suggested that the language "monitoring compliance with" be added in. Mr. Sykes expressed the view that that is similar to using the word "ordered." The Chair suggested that subsection (C)(iii) read, "coordination and monitoring of referrals in actions assigned to the family division ...". The Committee agreed by consensus to this change.

The Chair drew the Committee's attention to subsection (b)(4)(D). Mr. Sykes asked if the word "estimate" would be better than the word "assessment." Mr. Bowen said that what is meant here is the existing services someone would need. The Reporter suggested that in place of the word "assessment" in the first sentence, the word "description" should be substituted. The Committee agreed by consensus to this change. Mr. Sykes suggested that the word

"assessment" in the second sentence of subsection (D) be changed to the word "estimate." The Committee approved this suggestion by consensus.

Mr. Hochberg asked about putting in a schedule of charges in the Rule. Delegate Vallario commented that court costs are the prerogative of the legislature. He questioned where the authority is to set master's fees or to set fees for outside services. He noted that court costs have always been a matter for the legislature. Another problem is that the family division is self-supporting by rule, but the legislature may not fund it. The Chair pointed out that the DCM plan is the place where counsel can look to find out the incidental costs associated with litigation. Judge Johnson noted that Rule 2-541 authorizes the court to assess master's fees. Mr. Sykes commented that the court has inherent authority. Mr. Hochberg expressed the opinion that each administrative judge should compile and publish a list of costs. Judge Platt remarked that the family services coordinator can monitor the list of costs.

Delegate Vallario commented that the court costs charged by a judge in a juvenile case may go into the general fund, or possibly to the fund to support the family court. What is paid to masters is money not going back to the family court. Judge Kaplan noted that his jurisdiction does not pay master-examiners directly from its county funds; the money comes from the fee set in the case. Judge Johnson said that in Prince George's County, the money from the

master's fees pays the masters. Delegate Vallario observed that the court costs in juvenile cases may not go into the family court fund. Judge Platt pointed out that court costs go to the clerk of the court and master's fees go to the county general fund. The county, through its budget, pays the standing masters. Once juvenile and domestic cases are integrated, different costs go to different places. The Chair said that for many years, there has been no published list of costs of an uncontested divorce. Can this discrepancy be solved by rule?

The Vice Chair expressed the view that this issue is bigger than the way the Rule is attempting to address it. The list of services in subsection (b)(3) provides for custody investigations, which may or may not be ordered by the court, and mental health evaluations, which overlap with Rule 2-423, Mental or Physical Examination of Persons. The authority to charge fees may be appropriate if there is an issue in the case. Some rules allow for the assessment of fees, but some do not. The Chair commented that the preamble to this Rule states that funding has to be available. The Vice Chair said that if funding is available, the court cannot charge for the service. The Chair responded that if funding is available to provide a service without charge, then the State cannot charge for it. Otherwise, the people who cannot pay for it have to go without the service. The Rule does not require the judiciary to go to the legislature and ask for funding.

Ms. Ortiz commented that the plan for Anne Arundel County's family law division would allow the county to charge for some services. The Chair observed that in an ideal world, if no money is available, the people who cannot afford to pay will not have to. The Vice Chair referred to the example of arbitration. If the court orders it, the court has to pay for it. If the parties choose it, the parties pay. Rule 16-204 is not clear as to the fact that what services the court orders, the court will have to pay for. The Chair responded that this is not necessarily a problem with the Rule. Professor Babb remarked that it is difficult to create a uniform system with flexibility for the jurisdictions. The Rule is getting the bare bones of the idea of the family division in place. Litigants are being asked to pay for services currently, and some, but not all, of the services are already in place. At this point, the Rule cannot create uniformity. It is important that litigants get family services, as long as there is funding. Thousands of families in crisis need services. Once the Rule is put into effect, any problems which arise can be dealt with.

Judge Nolan suggested that the Rule could list the services the payment of which can be allocated to the litigants. Judge Smith remarked that Delegate Vallario had expressed opposition to doing that. The Chair suggested that language be added to the Rule which states that nothing in the Rule prohibits the court from assessing costs to litigants which the courts are already assessing. Judge

Platt suggested that the Rule be left as it is. Mr. Sykes expressed his agreement with this.

The Chair drew the Committee's attention to subsection (b)(5). Mr. Howell suggested that in place of the language "appoint a designee" the phrase "designate a person" should be used. Judge Johnson commented that the person would probably be the individual handling case management for the county. The Chair explained that the theory of this is that the administrative judge can appoint a traffic policeman to direct. Mr. Howell suggested that the language "but is not required to" should be deleted. Judge Platt observed that the person already has the authority to perform this function. The administrative judge supervises the person. Senator Stone suggested that subsection (b)(5) begin as follows: "the administrative judge or his designee shall ...".

Judge Johnson moved that this subsection be deleted. The motion was seconded, and it passed unanimously.

The Chair drew the Committee's attention to section (c). The Reporter pointed out that at the beginning of subsection (c)(2), the phrase which reads, "Subject to section (a) of this Rule" should be deleted, because section (a) has been moved. The Chair noted that subsection (c)(3) is necessary, because it is consistent with subsection (b)(4)(D).

Ms. Ogletree commented that in Caroline County, none of the services provided for in the Rule could ever be available unless the

State funds them. Mr. Robinson remarked that if the services are available, a list of them should be published, even in counties with less than eight judges. The Chair observed that in the smaller counties services will be provided where funding is available and a family services coordinator would identify the necessary services. Professor Babb pointed out that the reference to the smaller jurisdictions was added to the original draft of the Rule at the request of representatives from those counties. Ms. Ogletree said that she would like to be sure that no burdens are imposed on the smaller counties who may not have funding available.

Judge Kaplan noted that in subsection (b)(4)(B)(ii), the decision to substitute the word "identify" for the word "assign" makes no sense. It is clearer to use the original word. He suggested that the Rule could use the language "identify and assign." The Chair responded that the word "assign" may be a problem in terms of the schedules in the DCM plan. Mr. Sykes suggested that subsection (b)(4)(B)(ii) use the language "identification of categories." Mr. Howell remarked that the DCM plan identifies the categories. The Chair suggested that the Rule provide: "identify the categories of actions appropriate for assignment." Judge Smith expressed the view that the word "identify" can be a problem. He suggested that the subsection provide "identification of those actions in the family division that are appropriate for a specific judge ...". The Reporter commented that there may not be categories

of actions. The Chair suggested using the language, "actions or categories of actions." Judge Rinehardt suggested that this issue should be looked at by the Style Subcommittee, and the Committee agreed.

Professor Babb referred to the Legislative note on the next-to-last page of the Rule. She commented that one approach to the issue of jurisdiction of the courts would be that the family division could also address civil protective orders. The Chair said that if a case is filed in the District Court, it does not automatically go to the circuit court. Judge Nolan observed that the Futures Commission in its report expressed the view that one of the purposes of the District Court is that someone is able to get a quick response. With its many locations, the District Court is user-friendly. The protective order stage of the proceedings could be in the circuit court. Professor Babb remarked that concurrent jurisdiction is best for ex parte orders. All of the protective order proceedings should be in the circuit court. However, the language of the Legislative note is that both ex parte and protective order jurisdiction should be in the District Court. The Chair suggested that the Legislative note be eliminated, and the Committee agreed by consensus to this.

The Vice Chair moved to approve the Rule as amended, the motion was seconded, and it carried unanimously.

The Chair presented Rule 16-202, Assignment of Actions for

Trial, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 200 - THE CALENDAR -- ASSIGNMENT

AND DISPOSITION OF MOTIONS AND CASES

AMEND Rule 16-202 to add certain requirements to the case management plans of counties in which a family division is established in accordance with new Rule 16-204, as follows:

Rule 16-202. Assignment of Actions for Trial.

a. Generally.

The County Administrative Judge in each county shall supervise the assignment of actions for trial to achieve the efficient use of available judicial personnel and to bring pending actions to trial and dispose of them as expeditiously as feasible. Procedures instituted in this regard shall be designed to:

(1) eliminate docket calls in open court;

(2) insure the prompt disposition of motions and other preliminary matters;

(3) provide for the use of scheduling and pretrial conferences, and the establishment of a calendar for that purpose, when appropriate;

(4) provide for the prompt disposition of uncontested and ex parte matters, including references to an examiner-master, when appropriate;

(5) provide for the disposition of

actions under Rule 2-507;

(6) establish trial and motion calendars and other appropriate systems under which actions ready for trial will be assigned for trial and tried, after proper notice to parties, without necessity of a request for assignment from any party; and

Cross reference: See Rule 16-201 (Motion Day -- Calendar).

(7) establish systems of regular reports which will indicate the status of all pending actions with respect to their readiness for trial, the disposition of actions, and the availability of judges for trial work.

b. Case Management Plan; Information Report.

(1) The County Administrative Judge shall develop and, upon approval by the Chief Judge of the Court of Appeals, implement and monitor a case management plan for the prompt and efficient scheduling and disposition of actions in the circuit court. The plan shall include a system of differentiated case management in which actions are classified according to complexity and priority and are assigned to a scheduling category based on that classification. In counties that have a family division, the plan shall (A) establish criteria for requiring parties in an action assigned to the division to attend a scheduling conference in accordance with Rule 2-504.1 (a)(1) and (B) provide for the assignment of each action in the division that is appropriate for assignment to a specific judge to a judge who shall be responsible for the entire case in accordance with Rule 16-204 (b)(4)(B).

(2) In developing and implementing the case management plan, the County Administrative Judge shall (i) consult with the Administrative Office of the Courts and with other county administrative judges who have developed or are in the process of developing such plans in an effort to achieve as much consistency and

uniformity among the plans as is reasonably practicable, and (ii) seek the assistance of the county car association and such other interested groups and persons as the judge deems advisable.

(3) As part of the plan, the clerk shall make available to the parties, without charge, a form approved by the County Administrative Judge that will provide the information necessary to implement the case management plan. The information contained in the information report shall not be used for any purpose other than case management.

(4) The clerk of each circuit court shall make available for public inspection a copy of the current administrative order of the Chief Judge of the Court of Appeals exempting categories of actions from the information report requirement of Rule 2-111 (a).

Source: This Rule is former Rule 1211.

Rule 16-202 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 16-202 conforms the rule to requirements set forth in proposed new Rule 16-206 (b)(4)(B).

Mr. Bowen commented that Rule 16-202 needs to be conformed to the changes made in Rule 16-204, and the Committee agreed. Judge Kaplan referred to the September 3, 1997 memorandum from Judy Moran, a copy of which was distributed at today's meeting. In this memorandum, Ms. Moran suggested that the words "Case Intake Unit" be added to the heading of section b. of Rule 16-202. Judge Platt said that in his county, the case intake unit is not a subdivision of the clerk's office, and he added that he would not like to see the Rule

mandate this. The Chair pointed out that even if this language is not included in the heading, it does not prohibit the case intake unit from being part of the clerk's office. Judge Kaplan agreed that this language did not have to be added in.

Mr. Howell suggested that the order of Rules 16-203 and 16-204 be switched. The Reporter explained that the problem with doing this is that every time such a change is made, it confuses people. The Rules in Title 16 are unrevised and their order will be reexamined when Title 16 is revised. Mr. Howell withdrew his suggestion.

Mr. Bowen moved to adopt Rule 16-202 as it will be amended to conform to Rule 16-204. The motion was seconded, and it passed unanimously.

Agenda Item 2. Consideration of proposed new Rule 9-204.1 (Educational Seminar for Parents)

After the lunch break, the Vice Chair announced that she would be chairing the meeting until the Chair returned. Judge Rinehardt presented Rule 9-204.1, Educational Seminar for Parents, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT AND ALIMONY

ADD new Rule 9-204.1, as follows:

Rule 9-204.1. EDUCATIONAL SEMINAR FOR PARENTS

(a) Applicability

This Rule applies in actions in which child support, custody, or visitation are at issue and the court determines to send the parties to an educational seminar for parents designed to minimize disruptive effects of separation and divorce on the lives of children.

Cross reference: Code, Family Law Article, §7-103.2.

(b) Order to Attend Seminar

(1) Subject to subsection (b)(2) of this Rule and as allowed or required by the county's case management plan required by Rule 16-202 b., the court may order the parties to attend an educational seminar within the time set forth in the plan. The content of the seminar shall be as prescribed in section (c) of this Rule. If a party who has been ordered to attend a seminar fails to do so, the court may not use its contempt powers to compel attendance or to punish the party for failure to attend, but may consider the failure as a factor in determining custody and visitation.

(2) A party who (A) is incarcerated, (B) lives outside the State in a jurisdiction where a comparable seminar or course is not available, or (C) establishes good cause for exemption may not be ordered to attend the seminar.

Committee note: Code, Family Law Article, §7-103.2 (c)(2)(v) prohibits exemption based on evidence of domestic violence, child abuse, or neglect.

(c) Content

The seminar shall consist of two 3-hour sessions. Topics shall include:

(1) the emotional impact of divorce on children and parents;

(2) developmental stages of children and the effects of divorce on children at different stages;

(3) changes in the parent-child relationship;

(4) discipline;

(5) transitions between households;

(6) skill-building in

(A) parental communication with children and with each other,

(B) explaining divorce to children,

(C) problem-solving and decision-making techniques,

(D) conflict resolution,

(E) coping strategies,

(F) helping children adjust to family changes,

(G) avoiding inappropriate interactions with the children, and

(H) developing constructive parenting arrangements; and

(7) resources available in cases of domestic violence, child abuse, and neglect.

(d) Scheduling

The provider of the seminar shall establish scheduling procedures so that parties in actions where domestic violence, child

abuse, or neglect is alleged do not attend the seminar at the same time and so that any party who does not wish to attend a seminar at the same time as the opposing party does not have to do so.

(e) Costs

The fee for the seminar shall be set in accordance with Code, Courts Article, §7-202. Payment may be compelled by order of court and assessed among the parties as the court may direct. For good cause, the court may waive payment of the fee.

Source: This Rule is new.

Rule 9-204.1 was accompanied by the following Reporter's Note.

New Rule 9-204.1 is proposed to implement the provisions of Chapter 323, Laws of 1997 (Senate Bill 63), which added Code, Family Law Article, §7-103.2. Under the new law, a court may require parties to an action for divorce in which issues of child support, custody, or visitation are raised to participate in an educational seminar about the effects of divorce on the lives of children. Under the law, the content of the seminar, time for completion of it, sanctions for failure to attend, fee to be charged, and criteria for exemption are to be prescribed by rule.

The Family/Domestic Subcommittee reviewed information from several programs throughout the State that are considered successful. Most programs are presented in two 3-hour sessions. The topics set forth in subsections (c)(1) through (6) are the core topics that the Subcommittee believes should be included in every program.

Under subsection (b)(1) of the Rule, the time for completion of the seminar is as set

out in the county's case management plan. The sanction for failure to attend is that the court may consider the failure as a factor in its custody and visitation determination.

Under subsection (b)(2), the court must exempt from attendance at a seminar any party who is incarcerated, who lives outside the State in a jurisdiction where no comparable seminar or course is available, or who establishes good cause for exemption. The Subcommittee is concerned about the statutory prohibition of exemptions based on evidence of domestic violence, child abuse, or neglect. Accordingly, subsection (c)(7) regarding resources available in cases of domestic violence, child abuse, and neglect has been added to the required content of the seminar and a requirement that the provider of the seminar establish procedures so that parties in actions where domestic violence, child abuse, or neglect is alleged do not attend a seminar at the same time has been included in section (d).

The Subcommittee was advised that the cost of existing seminars throughout the State ranges from free to $75.00 per person for the two 3-hour sessions. The first sentence of section (e) of the Rule requires establishment of a fee in accordance with the provisions of Code, Courts Article, §7-202. The second and third sentences of section (e) track similar provisions in Rule 9-205 (g).

The Vice Chair asked if the seminars described in Rule 9-204.1 would also be for some persons who are not parents. Ms. Risa Garon, who is the director of the organization, Children of Separation and Divorce, explained that her organization conducts parenting seminars. Some counties require attendance at the seminars, and some make attendance optional. Mr. Sykes questioned

whether grandparents could be included. The Reporter noted that the Rule follows the terms set out in the legislation. Judge Vaughan observed that the statute clearly provides that it applies to an action for divorce in which issues of child support, custody, or visitation are raised. Judge Rinehardt commented that it appears that even if those issues are resolved, there can still be a requirement of seminar attendance. Mr. Sykes suggested that in section (a) the words "at issue" should be replaced by the word "involved." Senator Stone noted that the preamble to the statute refers to the effects of divorce on children, which effects may not necessarily be related to support, custody, or visitation issues. Judge Vaughan remarked that the words "at issue" indicate a disagreement. Judge Rinehardt said that section (a) of the statute provides that the issues of child support, custody, or visitation must be raised. The Vice Chair commented that Mr. Sykes' suggestion to change the words "at issue" to the word "involved" was a good idea, and the Committee agreed by consensus to this change.

Mr. Robinson inquired if the statute applies also to guardians. An amendment to the definition of the term "parent" may be needed. The statute does not appear to apply to anyone other than parents. The Reporter pointed out that the statute provides that it applies to an action for divorce. Mr. Hochberg observed that the Rule goes beyond this. Mr. Robinson suggested that the title of the Rule be changed. The Vice Chair commented that the title could be

"Educational Parenting Seminar." The Reporter noted that Aza Butler, who directs the seminars in Baltimore County, had expressed the view that the word "parenting" should not be in the title. Ms. Garon said that in Montgomery County, they are called "Divorce Education Programs." This broadens the population who participate in the programs. Mr. Robinson pointed out that this could include unmarried people. Mr. Manoly, of the Center for Children in Charles County, told the Committee that in his county, the seminars are not mandated. Using the word "parenting" in the title implies that people have to learn how to parent, instead of how to communicate. Mr. Sykes commented that skill-building, conflict resolution, and parental arrangements are part of parenting.

Ms. Garon said that she and the others in her organization would like to work with the legislature to create a law similar to the one in Delaware, which is mandated for all separating or divorcing parents. In the years ahead, there will be many restructured families, and judges will order new spouses to attend seminars as well. Mr. Hochberg noted that Baltimore County allows anyone to attend the seminars as long as there is room. This could include grandparents. The Vice Chair observed that legislative action is implementing the seminars. The first step for the Rules Committee is to conform the rule to the legislation.

Judge Rinehardt referred to the previous discussion as to what to title the Rule. Mr. Sykes remarked that the seminar has two parts

-- the effects of divorce on children and general parenting. The legislation is addressed to the effects of divorce. If the Rule broadens this, then there will be a larger group of people eligible to take the seminar. Senator Stone noted that the Rule has gone beyond the divorce situation. It does not refer to divorce.

Mr. Hochberg moved that the Rule be entitled "Educational Parenting Seminar." The motion was seconded, and it failed with two votes in favor.

Judge Vaughan suggested that the Rule be titled the same way the legislature titled the statute, "Educational Seminar on Effects on Children." Mr. Sykes expressed the view that the title should be broader, and he suggested the title, "Educational Seminar." The Committee agreed by consensus with this suggestion.

The Vice Chair drew the Committee's attention to subsection (b)(1) of the Rule that refers to Rule 16-202 (b). The Reporter noted that the Subcommittee had discussed the possibility of having a cross reference to Rule 9-204.1 following subsection (b)(1) of Rule 16-202. The Committee agreed that there should be a cross reference. The Reporter said that the Style Subcommittee can word the cross reference.

There was no discussion of subsection (b)(2). The Vice Chair drew the Committee's attention to section (c). She pointed out that there are two three-hour sessions provided for, and she inquired if the statute requires this. The Reporter answered that the statute

does not provide for this. This number was determined after surveying many jurisdictions. Ms. Garon told the Committee that three hours would not be a sufficient amount of time in which to conduct the seminar. Maryland is one of the more progressive jurisdictions, and its seminars tend to be longer. Three hours is not enough time to teach skills to parents who cannot communicate. The Reporter commented that some of the experts say that parents are more receptive in the second session, so it is important to have a break. Mr. Manoly explained that in Charles County, the seminar is one-day long, but there is a short morning break, and a lunch break. The participants show a more positive attitude later on in the session.

Mr. Bowen commented that the Rule should set limits, such as not more than two sessions for a total of six hours, to protect the people who have to pay for this. Mr. Lombardi pointed out that the Honorable Larnzell Martin, Jr., of the Circuit Court of Prince George's County, had written a letter, a copy of which was distributed today, in which he expressed the opinion that the seminar should be one three-hour session. Ms. Garon said that the evaluations of the seminars received by her organization indicate that the majority of parents want the sessions to be longer. After time, their anger dissipates, and they are able to focus more readily. Mr. Sykes reiterated that the seminars should be six hours. Ms. Garon remarked that she favors six hours. They use every

minute of their six-hour sessions. The seminars provide one of the greatest senses of hope for the families.

The Vice Chair suggested that the Rule could provide "one or more sessions not to exceed six hours." Judge Rinehardt expressed the opinion that the Rule should remain as two three-hour sessions. The Vice Chair referred to the letter from Ms. Moran, a copy of which was in the meeting materials, stating that requiring people to come twice poses problems for some people. These problems include day care and security issues when attendance is in the evening. Judge Vaughan suggested that the seminar be no less than six hours, with the individual jurisdictions determining the organization of the time. Ms. Garon cautioned that there should be some continuity of the sessions; six one-hour sessions would not work well. Two three-hour sessions work well, and the one-day program in Charles County does, also.

The Vice Chair commented that if the Rule is silent as to the number of hours, a judge could order 12-hour seminars. Mr. Hochberg observed that if the seminar is assigned and ordered early in the case, the judge may have no idea of the family's needs. Mr. Manoly responded that judges do not order the number of hours the seminar has to take. Mr. Robinson noted that the judges in Harford County are setting up the number of hours. They are generally maintaining the standard of six hours.

The Vice Chair suggested that the Rule provide that there be

one or two sessions, totaling six hours. The Committee agreed by consensus to this change. Mr. Hochberg asked about one six-hour session. Mr. Manoly explained that the session includes a morning, lunch, and afternoon break. The session takes place on Saturday, and prople available to provide child care. Mr. Robinson questioned whether something should be added to the Rule to allow someone to attend a session in a different jurisdiction, if the person cannot attend the one assigned, for a reason such as a religious prohibition. The Vice Chair responded that the person could explain his or her situation to the judge. Building in such exemptions into the Rule makes things more complicated. Mr. Hochberg remarked that this could be arranged at an early conference. Ms. Garon added that going to other counties for the seminars has not presented a problem.

The Chair returned to the meeting, and he announced with sadness that Bruce Kaufman, a well-respected lawyer in Baltimore, had passed away. Judge Johnson said that the judiciary had lost a good friend.

The Chairman resumed its discussion of Rule 9-204.1. The Vice Chair stated that section (c) would be changed to provide that the seminar shall consist of one or two sessions, totaling six hours. Mr. Bowen remarked that the session in Baltimore County is currently five hours, and the Vice Chair responded that that will have to be increased.

There was no discussion of section (d). The Vice Chair drew

the Committee's attention to section (e) of Rule 9-204.1. Judge Vaughan pointed out that section (e) of the statute provides: "Unless the parties stipulate otherwise, any information about a party, including statements or reports, obtained from an educational seminar required by this section, is not admissible during the action for divorce of that party." He asked if this should be included in the Rule. The Reporter replied that this is not necessary, since it is already in the statute, and the Rule cross references the statute. Mr. Lombardi added that it would be an evidentiary rule which does not belong in Rule 9-204.1. Mr. Robinson noted that Code, Courts Article, §10-204 provides that public records shall be received in evidence if certified as a true copy by the custodian. Judge Rinehardt remarked that the order to go to the seminar could be admissible, but she asked what reports would be included. Judge Vaughan said that the report of attendance at the seminar could be admissible. The Chair pointed out that the Educational Seminar statute takes care of this issue. Mr. Sykes expressed the opinion that the statutory language "any information about a party" will not be misconstrued. Senator Stone commented that the legislative intent of the statute was to exclude information pertaining to the parental education seminar from admissibility in the divorce action. Mr. Sykes stated that the Style Subcommittee can look at this issue when it considers the Rule.

Agenda Item 4. Consideration and reconsideration of certain

rules changes proposed by the Criminal Rules Subcommittee: (a) Reconsideration of proposed amendments to Rule 4-216 (Pretrial Release), (b) Consideration of proposed amendments to Rule 4-252 (Motions in Circuit Court), (c) Consideration of proposed amendments to Rule 4-341 (Sentencing--Presentence Investigation), (d) Consideration of proposed amendments to Rule 4-342 (Sentencing--Procedure in Non-Capital Cases), (e) Consideration of proposed amendments to Rule 4-343 (Sentencing --Procedure in Capital Cases), and (f) Reconsideration of proposed amendments to the rules and forms pertaining to expungement

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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 conform it to changes made to Code, Article 27, §616 1/2 by Chapters 305 and 306, Laws of 1997, and to Code, Courts Article, §3-828 by Chapter 390, Laws of 1997, as follows:

Rule 4-216. PRETRIAL RELEASE

(a) When Available

Unless ineligible for pretrial release under Code, Article 27, §616 1/2, (1) A defendant charged with an offense for which the maximum penalty is neither death nor life imprisonment is entitled to be released before verdict or pending a new trial in conformity with this Rule, and (2) a defendant charged with an offense for which the maximum penalty is death or life imprisonment may, in the discretion of the court, be released before verdict or pending a new trial in conformity

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

~~Committee note: Code, Article 27, §616 1/2 prohibits a District Court commissioner from releasing certain categories of persons; see subsections (c), (i), (j), and (l).~~

(b) 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.

(c) 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.

(d) Conditions of Release

A defendant charged with an offense for which the maximum penalty is neither death nor life imprisonment ~~shall~~ may be released before verdict or pending a new trial on personal recognizance unless the judicial officer determines that ~~that condition of release will not reasonably ensure the appearance of the defendant as required~~ neither suitable bail nor any condition or combination of conditions will reasonably assure that the defendant will not flee or pose a danger to another person or the community prior to trial. Upon determining to release a defendant charged with an offense for which the maximum penalty is death or life

imprisonment or to refuse to release a defendant charged with a lesser offense on personal recognizance the judicial officer shall state the reasons in writing or on the record and shall impose the first of the following conditions of release which will reasonably ~~ensure the appearance of the defendant as required~~ assure that the defendant will not flee or pose a danger to another person or to the community, or, if no single condition is sufficient, the judicial officer shall impose on the defendant that combination of the following conditions which is least onerous but which will reasonably ~~ensure the defendant's appearance as required~~ assure that the defendant will not flee or pose a danger to another person or to the community:

(1) Committing the defendant to the custody of a designated person or organization agreeing to supervise the defendant and assist in ensuring 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 which is an insurer or other surety in the full penalty amount;

(5) Subjecting the defendant to any other condition reasonably necessary to ~~ensure the appearance of the defendant as required~~ assure that the defendant will not flee or pose a danger to another person or to the community.

(e) Statement of Conditions

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) Factors Relevant to Conditions of Release

In determining which conditions of release will reasonably ensure the appearance of the defendant as required, the judicial officer, on the basis of information available or developed in a pretrial release inquiry, may take into account:

(1) 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 or the risk of danger to another person or to the community;

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

(3) 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;

(4) The recommendation of an agency which

conducts pretrial release investigations;

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

(6) Information presented by defendant's counsel;

(7) The danger of the defendant to himself or herself or others;

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

(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 thereon. 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.

(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 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.

~~Committee note: Code, Article 27, §616 1/2 prohibits a District Court commissioner from releasing certain categories of persons; see subsections (c), (i), and (j).~~

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 721 a and M.D.R. 721 a.
Section (b) is derived from former M.D.R. 721 b.
Section (c) is derived from former M.D.R. 723 b 4.
Section (d) is derived from former M.D.R. 721 c and Rule 721 b.
Section (e) is derived from former M.D.R. 721 d and Rule 721 c.
Section (f) is derived from former M.D.R. 721 e and Rule 721 d.
Section (g) is derived from former M.D.R. 721 f.
Section (h) is derived from former Rule 721 e.
Section (i) is derived from former Rule 721 f and M.D.R. 721 g.
Section (j) is derived from former Rule 721 g and M.D.R. 721 h.

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

Chapters 305 and 306, Laws of 1997 (S.B. 235/H.B. 497), change Code, Article 27, §616 1/2 to prohibit a District Court commissioner

> from releasing pretrial an individual previously convicted of a crime of violence if the individual is charged with committing another crime of violence. The Committee considered expanding the Committee notes that follow sections (a) and (j) to reflect this change, but opted instead to recommend deletion of the Committee notes as unnecessary.
>
> Amendments to sections (d) and (f) are recommended to conform these sections to Chapters 305 and 306 which clarify that a judge may allow pretrial release on either bail, certain conditions, or both bail and certain conditions, and which provide that a judge is to order the defendant to be detained if the judge determines that neither bail nor any condition or combination of conditions will assure that the defendant will not flee or pose a danger to others prior to the trial.
>
> An amendment to subsection (f)(8) is recommended to conform that subsection to Code, Courts Article, §3-828 (b)(5), which was added by Chapter 53, Laws of 1997 (H.B. 53). Under the new law, a judicial officer who is authorized to determine a defendant's eligibility for pretrial release may have access to and use for that purpose court records of adjudications of delinquency that occurred within three years of the date the individual is charged as an adult.

Judge Johnson explained that the legislature made some changes to procedures for pretrial release in Article 27, §616 1/2. The first change was to prohibit the District Court Commissioner from releasing pretrial anyone who has been charged with a crime of violence and who has a prior conviction of a crime of violence as defined under Code, Article 27, §643 B. There had been a proposed change to the Committee notes to sections (a) and (j) to reflect the

legislative change, but the Committee decided that the Code speaks for itself, and it deleted the notes entirely.

Mr. Sykes expressed the view that the Committee notes were helpful. They instruct the practitioner not to apply to the Commissioner for pretrial release. Judge Johnson remarked that at this early stage in the proceedings, the practitioner is not usually involved. Judge Rinehardt added that the practitioner often gets involved at the initial appearance.

Judge Johnson told the Committee that sections (d) and (f) have been conformed to the legislation. The changes involve the factors which the judge may consider in deciding on pretrial release. In section (d), the word "shall" has been changed to the word "may" in the first sentence to indicate that the decision to release the defendant is discretionary. Mr. Colvin pointed out that the statute lists four categories of crimes with which the defendant is charged when the judge can consider whether the defendant poses a danger to another person or to the community. The crimes are (1) crimes of violence, (2) being a drug kingpin, (3) stalking, and (4) persons charged who are already on bail for another crime. The standard of posing a danger only applies to those four items. The Chair questioned whether this standard applied across the board. Judge Rinehardt and Judge Kaplan also questioned the applicability of the standard to only four categories.

The Vice Chair expressed her disagreement with changing the

word "shall" to "may" in the first sentence of section (d). This change allows a judge to deny a defendant pretrial release even if the judge finds the defendant will not flee or pose a danger to another person or the community. She questioned whether discretion beyond that can be granted. The Chair noted that section (a) of Rule 4-216 provides that a defendant charged with an offense for which the maximum penalty is neither death nor life imprisonment is entitled to be released. Since section (d) provides that a defendant may be released, there is an inconsistency. Judge Johnson explained that if the entire section (d) is read, it provides that a defendant may be released unless the judicial officer determines that neither suitable bail nor any condition or combination of conditions will reasonably assure that the defendant will not flee or pose a danger.

The Vice Chair pointed out that the statute is organized grammatically in a different manner. The Rule has always used the word "shall," and the statutory change is not related to the use of that word. She expressed the opinion that the Rule should go back to using the word "shall". Judge Johnson said that the Subcommittee had recommended this change, and the Rules Committee could decide otherwise. Mr. Bowen pointed out that there is a problem with the structure of the language which has been added. The previous language provided that the condition of release would not ensure the appearance of the defendant. This has been changed to provide that neither suitable bail nor any condition or combination of conditions

will reasonably assure that the defendant will not flee or pose a danger. The latter is a different procedure. The Chair commented that originally the procedure was that the defendant applied to the judicial officer to be released on personal recognizance. Judge Johnson noted that Delegate Vallario, a member of the Criminal Subcommittee, felt that this language was consistent with the statute.

Mr. Bowen suggested that the deleted language be put back in section (d). The Chair suggested that the first sentence of section (d) be changed to read as follows: "A defendant charged with an offense for which the maximum penalty is neither death nor life imprisonment is entitled to be released before verdict or pending a new trial unless the judicial officer determines that (1) no condition of release will reasonably ensure the appearance of the defendant as required or (2) neither suitable bail nor any condition or combination of conditions will reasonably assure that the defendant will not flee or pose a danger to another person or the community prior to the trial". Mr. Sykes pointed out the language "flee or" is not needed, because fleeing is only one of the categories addressed by section (1) of the sentence. The Committee agreed by consensus to delete the words "flee or" from the first sentence of section (d).

Judge Rinehardt remarked that the Chair's suggested change skirts the issue of whether the Rule should be couched in terms of

"may" or "shall." Mr. Bowen noted that the suggested change to the first sentence deletes the reference to the language "personal recognizance," but in the second sentence of section (d), the same language appears. The Chair suggested that it be taken out there, also. Mr. Sykes inquired if bail is set when someone is charged with shoplifting. Judge Rinehardt replied that that happens all the time. The Chair observed that someone charged with a crime for which the maximum penalty is death or life imprisonment should not be released on personal recognizance. The Chair said that the first reference to "personal recognizance" should be deleted. Mr. Sykes asked about the new language in the first sentence which reads "[a] defendant....is entitled to be released...". Does this mean that the defendant will not be released if he or she is charged with a crime for which the maximum penalty is death or life imprisonment? The Chair explained that this authorizes a judge to release a defendant charged with a crime for which the maximum penalty is death or life imprisonment, but it is fair to ask the judge to state the reasons on the record for releasing the defendant. Should the judge be required to explain on the record why the defendant who is charged with a lesser crime is released? Judge Rinehardt responded that currently when someone is released on personal recognizance, judges are not putting the reasons on the record. Judge Johnson pointed out that doing this would be a change in the present law. The Chair commented that this obligation to state the reasons for release for the serious offenses is imposed

on the commissioners as well as the judges. Senator Stone observed that most judges make some explanation on the record. Judge Johnson noted that there may be one or two defendants released on personal recognizance in the circuit court, but in the District Court, these are done en masse. Mr. Robinson remarked that without an explanation, there is little ability for the defendant to appeal. Judge Johnson said that there is a printout of the District Court Commissioner actions available before the trial. The Vice Chair pointed out an inconsistency in the last sentence of section (d) which begins "Upon determining to release a defendant," but the remainder of the sentence deals with how to make the determination.

There was no discussion of section (e). Judge Johnson drew the Committee's attention to section (f). The Vice Chair pointed out that this section is using the language "ensure the appearance of the defendant". Judge Johnson said that the only change to this section is in subsection (f)(8) which allows the judicial officer to consider the defendant's juvenile record within the past three years. Judge Rinehardt expressed her agreement with this change.

Mr. Bowen commented that it would be better to leave the issues of bail and personal recognizance alone. Judge Rinehardt noted that rarely is no bail set in a case; usually the bail is high. Mr. Bowen observed that the statute provides that the defendant is not entitled to release if certain conditions occur. The Chair said that the statutory scheme is that (1) certain kinds of people are not

entitled to bail or personal recognizance, (2) other people are entitled to bail or personal recognizance if the judge makes certain findings, and (3) some people are entitled to bail or personal recognizance if certain conditions will ensure that the defendant will appear and there is no threat of danger to others. Mr. Sykes questioned whether under the statutory scheme, a defendant who has been previously convicted of a crime of violence cannot get personal recognizance at all and can only get bail if conditions reasonably ensure the defendant will appear and not pose a threat to others. The Chair noted that the Rule could provide which persons are eligible and which are ineligible for pretrial release. Mr. Dean suggested that this could be a separate rule, but the Chair said that it could go into a separate section of Rule 4-216. He commented that the Vice Chair had pointed out that the last sentence of section (d) needs some work. The Rule needs to be redrafted, and it will go back to the Criminal Subcommittee.

Agenda Item 6. Consideration of proposed rules changes pertaining to the Rules in Title 6: Proposed amendments to: Rule 6-108 (Register of Wills--Acceptance of Papers), Rule 6-311 (Notice of Appointment), Rule 6-312 (Bonds), Rule 6-403 (Appraisal), Rule 6-404 (Information Report), Rule 6-414 (Notice of Proposed Payment to Personal Representative's Commissions), Rule 6-417 (Accounts), Rule 6-454 (Special Administration), and proposed new Rule 6-455 (Modified Administration)

Mr. Lombardi, Chair of the Probate Subcommittee, introduced the consultants who were present at the meeting to discuss the Probate

Rules: Margaret Phipps, Register of Wills for Calvert County; George Nutwell, Register of Wills for Anne Arundel County; Susan Whiteford, Esq., Assistant Attorney General; Allan Gibber, Esq. and Alexander Lewis, Esq., two practitioners in the area of estates and trusts. Mr. Lombardi explained that the Probate Rules were drafted five years ago with the help of Mr. Gibber and Mr. Lewis. There are some recent legislative changes which have affected some of the Probate Rules. Members of the bar and some of the registers of wills have requested some other changes.

Mr. Lombardi presented Rule 6-108, Register of Wills--Acceptance of Papers for the Committee's consideration.

AMEND Rule 6-108 to allow the registers of wills to accept photocopies and facsimile copies of documents for filing, by adding a new section (c), as follows:

Rule 6-108. REGISTER OF WILLS--ACCEPTANCE OF PAPERS

(a) Generally

Except as otherwise provided in section (b) of this Rule, a register of wills shall not refuse to accept for filing any paper on the ground that it is not in the form mandated by a Rule in this Title.

(b) Papers Requiring Proof of Service

The register shall not accept for filing any petition or paper requiring service unless it is accompanied by (1) a signed certificate showing the date and manner of service as prescribed in Rule 6-125 or (2) a signed statement that, for reasons set forth in the statement, there is no person entitled to service. A certificate of service is prima facie proof of service.

(c) Photocopies; Facsimile Copies

A photocopy or facsimile copy of a pleading or paper, once filed with the court, shall be treated as an original for court purposes. The attorney or party filing the copy shall retain the original from which the filed copy was made for production to the court or register upon the request of the court, register, or any party. No filing of a pleading or paper may be made by transmitting

it directly to the court or register by electronic transmission, except pursuant to an electronic system approved under Rule 16-307.

Rule 6-108 was accompanied by the following Reporter's Note.

Section (c) is derived from Rule 1-322 and is being recommended for inclusion in Rule 6-108 to allow the registers to accept for filing photocopies and facsimile copies of documents.

Mr. Lombardi explained that the proposed language conforms the Rule to Rule 1-322. The Title 1 Rules do not apply to the Probate Rules. There was no discussion of Rule 6-108 and was approved as presented.

Mr. Lombardi presented Rule 6-122, Petitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 to add a Petition for Probate form in conformity with Chapter 693 (H.B. 762), Laws of 1997, as follows:

Rule 6-122. PETITIONS~~--GENERALLY~~

(a) Petition for Probate

The Petition for Probate shall be in the following form:

IN THE ORPHANS' COURT FOR
(OR)
BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

IN THE ESTATE OF:

_____ ESTATE NO: _____

FOR:

☐ REGULAR ESTATE
PETITION FOR PROBATE
Estate value in excess of $20,000. Complete and attach Schedule A.

☐ SMALL ESTATE
PETITION FOR ADMINISTRATION
Estate value of $20,000 or less. Complete and attach Schedule B

☐ WILL OF NO ESTATE
Complete items 2 and 5

The petition of:

_____ _____
Name Address

_____

_____ _____
Name Address

_____

_____ _____
Name Address

_____

Each of us states:

1. I am (a) at least 18 years of age and either a citizen of the United States or a permanent resident alien spouse of the decedent or (b) a trust company or any other corporation authorized by law to act as a personal representative.

2. The Decedent, _____, was domiciled in _____, (County) State of _____ and died on the _____ day of _____, _____, at _____. (place of death)

3. If the decedent was not domiciled in this county at the time of death, this is the proper office in which to file this petition because: _____ _____.

4. I am entitled to priority of appointment as personal representative of the decedent's estate pursuant to §5-104 of the Estates and Trusts Article, Annotated Code of Maryland because:_____ _____ and I am not excluded by §5-105 (b) of the Estate and Trusts Article, Annotated Code of Maryland from serving as personal representative.

5. I have made a diligent search for the decedent's will and to the best of my knowledge:

☐ none exists; or

☐ the will dated _____ (including codicils, if any, dated _____)

accompanying this petition is the last will and it came into my hands in the following manner:_____

_____

and the names and last known addresses of the witnesses are:

_____ _____

_____ _____

_____ _____

6. Other proceedings, if any, regarding the decedent or the estate are as follows: _____

_____

7. If any information required by paragraphs 2 through 6 has not been furnished, the reason is: _____

_____

8. If appointed, I accept the duties of the office of personal representative and consent to personal jurisdiction in any action brought in this State against me as personal representative or arising out of the duties of the office of personal representative.

WHEREFORE, I request appointment as personal representative of the decedent's estate and the following relief as indicated:

☐ that the will and codicils, if any, be admitted to administrative probate;

☐ that the will and codicils, if any, be admitted to judicial probate;

☐ that the will and codicils, if any, be filed only;

☐ that the following additional relief be granted: _____

_____

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

_____ _____
Attorney Petitioner Date

_____ _____
Address Petitioner Date

_____ _____
Petitioner Date

_____ _____
Telephone Number Telephone Number (optional)

IN THE ORPHANS' COURT FOR
(OR) _____, MARYLAND
BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - A

Regular Estate
Estimated Value of Estate and Unsecured Debts

Personal property (approximate value) ..... $_____

Real Property (approximate value) ..... $_____

Value of property subject to:

(a) Direct Inheritance Tax of 1% ..... $_____

(b) Collateral Inheritance Tax of 10% ..... $_____

Unsecured Debts (approximate amount) ..... $_____

_____

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

_____ _____
Attorney Petitioner Date

_____ _____
Address Petitioner Date

_____ _____
Petitioner Date

_____ _____
Telephone Number Telephone Number (optional)

.....

(FOR REGISTER'S USE)

Safekeeping Wills _____ Custody Wills _____
Bond Set $ _____ Deputy _____

IN THE ORPHANS' COURT FOR
(OR) _____, MARYLAND
BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - B
Small Estate - Assets and Debts of the Decedent

1. I have made a diligent search to discover all property and debts of the decedent and set forth below are:

(a) A listing of all real and personal property owned by the decedent, individually or as tenant in common, and of any other property to which the decedent or estate would be entitled, including descriptions, values, and how the values were determined:

_____

_____

_____

(b) A listing of all creditors and claimants and the amounts claimed, including secured*, contingent and disputed claims:

_____

_____

2. Allowable funeral expenses are $_____; statutory family allowances are $_____; and expenses of administration claimed are $_____.

3. Attached is a List of Interested Persons.

* NOTE: §5-601 (c) of the Estates and Trusts Article, Annotated Code of Maryland "For the purpose of this subtitle - value is determined by the fair market value of property less debts of record secured by the property as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt."

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

_____	_____
Attorney	Petitioner Date
_____	_____
Address	Petitioner Date
_____	_____
	Petitioner Date
_____	_____
Telephone Number	Telephone Number (optional)

~~(a)~~ (b) Other Petitions

(1) Generally

Except as otherwise provided by the rules in this Title or permitted by the court, an application to the court for an order shall be by petition filed with the register. The petition shall be in writing, shall set forth the relief or order sought, and shall state the legal or factual basis for the relief requested. ~~Except for an initial Petition for Probate filed pursuant to Rules 6-201 and 6-301,~~ The petitioner may serve on any interested person and shall serve on the personal representative and such persons as the court may direct a copy of the petition, together with a notice informing the person served of the right to file a response and the time for filing it.

~~(b)~~ (2) Response

Any response to the petition shall be filed within 20 days after service or within such shorter time as may be fixed by the court for good cause shown. A copy of the response shall be served on the petitioner and the personal representative.

~~(c)~~ (3) Order of Court

The court shall rule on the petition and enter an appropriate order.

Cross reference: Code, Estates and Trusts Article, §§2-102 (c), 2-105, 5-201 through 5-206, and 7-402.

Rule 6-122 was accompanied by the following Reporter's Note.

The legislature passed Chapter 693 (H.B. 762), Laws of 1997, which combined three separate forms, a petition for a regular estate, a petition for a small estate, and a form for a will of no estate, into one form. To conform to the legislation, the Committee added the new form to Rule 6-122.

Mr. Lombardi explained that the recent legislation combined into one form the petitions for administration of a regular estate, a small estate, and a will of no estate. Mr. Gibber added that the proposed form is the same as the one that has been added to the statute, Code, Estates and Trusts Article, §5-206. The only change is that a verification has been added to Schedule A. Mr. Bowen questioned the language "will of no estate," but Mr. Gibber responded that this is taken directly from the statute. Mr. Bowen asked about statement number 5 in the form. Mr. Lewis answered that the will is not operative until it has been admitted to probate. Ms. Phipps added that statement number 5 replaces a similar statement on the old form. There being no further discussion, the Rule was approved as presented.

Mr. Lombardi presented Rule 6-201, Petition for Administration

of a Small Estate, and Rule 6-301, Petition for Probate, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-201 to remove the form of the Petition for a Small Estate in conformity with Chapter 693 (H.B. 762), Laws of 1997, as follows:

Rule 6-201. PETITION FOR ADMINISTRATION OF A SMALL ESTATE

(a) Form of Petition

A petition for administration of a small estate ~~shall be in the following form and~~ shall be filed (1) with the register if administrative probate is requested or (2) with the court if judicial probate is requested or required. The form of the petition is set forth in Rule 6-122 (a).

~~[CAPTION]~~

~~PETITION FOR ADMINISTRATION OF A SMALL ESTATE~~

~~The Petition of:~~

_____, _____
~~Name~~ ~~Address~~

_____

_____

_____, _____
~~Name~~ ~~Address~~

_____

_____

_____, _____
~~Name~~ ~~Address~~

_____

_____

Each of us states:

1. I am (a) as least 18 years of age and either a citizen of the United States or a permanent resident alien spouse of the decedent or (b) a trust company or any other corporation authorized by law to act as a personal representative.

2. The decedent, _____, was domiciled in _____ (county) State of _____ and died on the _____ day of _____, 19 ____, at _____ _____. (place of death)

3. If the decedent was not domiciled in this county at the time of death, this is the proper office in which to file this petition because: _____ _____.

4. I am entitled to priority of appointment as personal representative of the decedent's estate pursuant to Code, Estates and Trusts Article, §5-104 because: _____ _____; and I am not excluded by Code, Estates and Trusts Article, §5-105 (b) from serving as personal representative.

5. I have made a diligent search for the decedent's will and to the best of my knowledge:

[ ] none exists; or

[ ] the will dated _____ (including codicils, if any, date _____) accompanying this petition is the last will and it came into my hands in the following manner: _____

_____,

and the names and last know addresses of the witnesses are:

_____ _____

_____ _____

_____ _____

6. Attached is a List of Interested Persons.

7. Other proceedings, if any, regarding the decedent or the estate are as follows: _____

_____.

8. If any information required by paragraphs 2 through 7 has not been furnished, the reason is: _____

_____.

9. I have made a diligent search to discover all property and debts of the decedent and set forth below are:

(a) A listing of all real and personal property owned by the decedent, individually or as tenant in common, and of any other property to which the decedent or estate would be entitled, including descriptions, values, and how the values were determined:

_____

_____
_____

_____
_____.

(b) A listing of all known creditors and claimants and the amounts claimed, including contingent and disputed claims: _____

_____
_____

_____
_____.

10. Allowable funeral expenses are $_____; statutory family allowances are $_____; and expenses of administration claimed are $_____.

11. If appointed, I accept the duties of the office of personal representative and consent to personal jurisdiction in any action brought in this State against me as personal representative or arising out of the duties of the office of personal representative.

WHEREFORE, I request appointment as personal representative of the decedent's estate and the following relief as indicated:

[ ] that the will and codicils, if any, be admitted to administrative probate;

[ ] that the will and codicils, if any, by admitted to judicial probate;

[ ] that the will and codicils, if any, be filed only;

[ ] that the following additional relief be granted: _____

_____
_____.

I solemnly affirm under the penalties of perjury that the contents of the foregoing petition are true to the best of my

~~knowledge, information, and belief.~~

~~Date: _____~~ ~~_____~~
~~Petitioner~~

~~_____~~
~~Petitioner~~

~~_____~~
~~Petitioner~~

~~_____~~
~~Telephone Number (optional)~~

~~_____~~
~~Attorney~~

~~_____~~
~~Address~~

~~_____~~

~~_____~~
~~Telephone Number~~

Cross reference: Code, Estates and Trusts Article, ~~§§5-201, 5-202, and~~ 5-602.

(b) Additional Documents

A Petition for Administration of a Small Estate shall be accompanied by a List of Interested Persons (Rule 6-202), and, if required: a Consent to Appointment of Personal Representative (Rule 6-203), or Renunciation of Right to Letters (Rule 6-204), an Appointment of a Resident Agent (Rule 6-205), a Notice of Appointment in duplicate (Rule 6-209), and a Proof of Execution of Will (Rule 6-152).

Rule 6-201 was accompanied by the following Reporter's Note.

Because the legislature combined the forms of the Petition for Administration of a Small Estate, the Petition for Administration of a Regular Estate, and the form for a Will of No

Estate, and the combined form is now being included in Rule 6-122 (a), there is no need for the form of the Petition for the Administration of a Small Estate in Rule 6-201. See the Reporter's Note to Rule 6-122.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-301 to remove the form of the Petition for Probate in conformity with Chapter 693 (H.B. 762), Laws of 1997, as follows:

Rule 6-301. PETITION FOR PROBATE

(a) Form of Petition

A petition for probate, whether administrative or judicial, shall be filed with the register in the ~~following~~ form~~:~~ set forth in Rule 6-122 (a).

~~[CAPTION]~~

~~PETITION FOR PROBATE~~

~~The Petition of:~~

_____, _____

~~Name~~ ~~Address~~

_____

_____

_____, _____
Name Address

_____
_____, _____
Name Address

_____

Each of us states:

1. I am (a) as least 18 years of age and either a citizen of the United States or a permanent resident alien spouse of the decedent or (b) a trust company or any other corporation authorized by law to act as a personal representative.

2. The decedent, _____, was domiciled in _____, (county) State of _____ and died on the _____ day of _____, 19 ____, at _____ _____. (place of death)

3. If the decedent was not domiciled in this county at the time of death, this is the proper office in which to file this petition because: _____ _____.

4. I am entitled to priority of appointment as personal representative of the decedent's estate pursuant to Code, Estates and Trusts Article, §5-104 because: _____ _____;

and I am not excluded by Code, Estates and Trusts Article, §5-105 (b) from serving as personal representative.

5. I have made a diligent search for the decedent's will and to the best of my knowledge:

[ ] none exists; or

[ ] the will dated _____ (including codicils, if any, date _____) accompanying this petition is the last will and it came into my hands in the following manner: _____

_____,

and the names and last know addresses of the witnesses are:

_____ _____

_____ _____

_____ _____

6. Other proceedings, if any, regarding the decedent's estate are as follows: _____

_____

_____.

7. If any information required to be furnished in this petition has not been furnished, the reason is: _____

_____.

8. If appointed, I accept the duties of the office of personal representative and consent to personal jurisdiction in any action

brought in this State against me as personal representative or arising out of the duties of the office of personal representative.

WHEREFORE, I request that I be appointed as personal representative of the decedent's estate, that the will and codicils, if any, be admitted to:

[ ] administrative probate;

[ ] judicial probate,

and that the following additional or alternative relief be granted:

_____.

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

Date: _____ _____
Petitioner

_____ _____
Petitioner

_____ _____
Petitioner

_____ _____
Telephone Number (optional)

_____
_____
Attorney

_____
_____
Address

_____
_____

_____
_____
Telephone Number

~~Personal property (approximate estimated value) $_____~~

~~Real property (approximate estimated value) $_____~~

~~Value of property subject to:~~
~~(a) Direct Inheritance Tax of ___% $_____~~
~~(b) Collateral Inheritance Tax of ____% $_____~~
~~Unsecured Debts (approximate amount) $_____~~

~~---~~

~~FOR REGISTER'S USE~~
~~Safekeeping Wills _____ Custody of Wills _____~~
~~Bond Set $_____ Deputy _____~~

Cross reference: Code, Estates and Trusts Article, §§5-104, 5-105, ~~5-201 through 5-206,~~ 5-301, and 5-401.

(b) Modification of Form

The form set forth in ~~section (a) of this~~ Rule 6-122 (a) shall be appropriately modified if the petitioner for judicial probate is not requesting appointment as personal representative.

(c) Additional Documents -- Administrative Probate

A petition for administrative probate shall be accompanied by a Notice of Appointment in duplicate (Rule 6-311), a Bond (Rule 6-312 (a) or (b)), and, if required: a Consent to Appointment of Personal Representative (Rule 6-313), a Renunciation of Right to Letters (Rule 6-314), and Appointment of Resident Agent (Rule 6-315), and a Proof of Execution of Will (Rule 6-152). The List of Interested Persons (Rule 6-316) may be filed by the petitioner at this time and, if not so filed, shall be filed by the personal representative within 20 days after appointment.

(d) Additional Documents -- Judicial Probate

A petition for judicial probate shall be accompanied by a List of Interested Persons

(Rule 6-316), including all legatees under any will or codicil offered for probate, and if required: a Personal Representative's Acceptance and Consent (Rule 6-342), a Consent to Appointment of Personal Representative (Rule 6-313), a Renunciation of Right to Letters (Rule 6-314), and an appointment of Resident Agent (Rule 6-315).

Rule 6-301 was accompanied by the following Reporter's Note.

See the Reporter's Notes to Rule 6-122 and Rule 6-201.

Mr. Lombardi explained that the addition of the combined form in Rule 6-122 means that the forms that were in Rules 6-201 and 6-301 are no longer necessary. There was no discussion of the deletion of the forms in the two Rules. The Subcommittee's recommended deletions were approved.

Mr. Lombardi presented Rule 6-311, Notice of Appointment, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-311 to add a new sentence to section (b) to clarify how to handle stale claims where creditors' rights have expired, as follows:

Rule 6-311. NOTICE OF APPOINTMENT

(a) Form of Notice

The petitioner shall file with the register, in duplicate, a notice of appointment in the following form:

(FILE IN DUPLICATE)

_____

_____

_____
(name and address of attorney)

NOTICE OF APPOINTMENT

NOTICE TO CREDITORS

NOTICE TO UNKNOWN HEIRS

Estate No.____

TO ALL PERSONS INTERESTED IN THE ESTATE OF

_____.

Notice is given that _____
(name and address)

_____

was on _____ appointed personal representa-
(date)

tive of the estate of _____

who died on _____, (with) (without) a will.
(date)

Further information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the personal representative or the

attorney.

All persons having any objection to the appointment (or to the probate of the decedent's will) shall file their objections with the Register of Wills

on or before the _____ day of_____,
(6 months from date of appointment)
19_____.

Any person having a claim against the decedent must present the claim to the undersigned personal representative or file it with the Register of Wills with a copy to the undersigned on or before the earlier of the following dates:

(1) Six months from the date of the decedent's death, except if the decedent died before October 1, 1992, nine months from the date of the decedent's death; or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that the claim will be barred unless the creditor presents the claims within two months from the mailing or other delivery of the notice. A claim not presented or filed on or before that date, or any extension provided by law, is unenforceable thereafter. Claim forms may be obtained from the Register of Wills.

_____

_____

_____
Personal Representative(s)

True Test Copy
Name and Address of Register
of Wills for _____

Name of newspaper designated by personal representative: _____

(b) Modification of Form

If the initial appointment is made under judicial probate, this form may be modified to delete reference to the notice of the right to object to the appointment of the personal representative or to the probate of the decedent's will, as applicable. If there was a prior small estate proceeding, the form shall be modified to state that fact. If the initial appointment was made more than six months after the decedent's death, the form may be modified to eliminate the reference to persons having a claim against the estate.

Cross reference: Code, Estates and Trusts Article, §§7-103 and 8-104; Rule 6-401.

Rule 6-311 was accompanied by the following Reporter's Note.

The Subcommittee suggests the addition of a sentence to section (b) of Rule 6-311 to clarify some confusion as to how to handle stale claims where creditors' rights have expired.

Mr. Lombardi explained that the sentence was added to section (b) to clarify how to handle stale claims where creditors' rights have expired. There was no discussion of Rule 6-311, and it was

approved as presented.

Mr. Lombardi presented Rule 6-312, Bonds, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-312 to add language to section (b) to include registers' fees as part of the obligation of the nominal bond, as follows:

Rule 6-312. BONDS

(a) Form of Personal Representative's Bond

Unless exempted by law or excused from giving a bond, the personal representative shall file a bond substantially in the following form:

Estate No. _____

BOND OF PERSONAL REPRESENTATIVE

As of this _____ day of _____, 19 _____,

_____,

personal representative of the Estate of _____

_____, as principal and

_____

as surety are obligated to the State of Maryland for the benefit of

all interested persons and creditors in the sum of

_____ Dollars.

If the personal representative shall perform the duties of the office of the personal representative of the estate of the decedent according to law, and in all respects shall discharge the duties without any injury or damage to any person interested in the faithful performance of the office, then the obligation shall be void.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

_____ _____(SEAL)

Address _____

_____

Surety _____(SEAL)

By: _____

Cross reference: Code, Estates and Trusts Article, §6-102.

(b) Form of Nominal Bond

A personal representative who is excused by the will or by all interested persons from giving a bond shall file a nominal bond substantially in the following form unless exempted by law.

Estate No. _____

NOMINAL BOND OF PERSONAL REPRESENTATIVE

As of this _____ day of _____, 19 _____,

_____, personal representative of

the Estate of _____ as principal and _____ as surety are obligated to the State of Maryland in the sum of _____ Dollars.

This obligation shall be void if the personal representative pays from the estate the debts due by the decedent, the Maryland inheritance tax, ~~and~~ court costs, and registers' fees.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

_____ _____(SEAL)

Address _____

_____

Surety: _____(SEAL)

By: _____

(c) Form of Waiver of Bond

Interested persons may waive the giving of a bond, other than the bond required by section (b) of this Rule, by filing their consent in the following form:

[CAPTION]

WAIVER OF BOND

We, interested persons with respect to the Estate of _____ _____, consent that _____ shall serve

as personal representative without a bond except as required by law.

DATE	SIGNATURE	NAME (typed or printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____
Attorney

_____
Address

_____

_____
Telephone Number

(d) Enforcement

The liability of a surety on a bond may be enforced pursuant to Rule 1-404.

Cross reference: Code, Estates and Trusts Article, §6-102.

Rule 6-312 was accompanied by the following Reporter's Note.

> The Rules Committee proposes adding registers' fees to the list of payments the personal representative has to make which would void the obligation of the nominal bond.

Mr. Lombardi explained that the modification to Rule 6-312 allows the registers' fees to be included in the obligations of the

personal representative which must be fulfilled in order for the personal representative to avoid giving a nominal bond. There was no discussion of Rule 6-312. It was approved as presented.

Mr. Lombardi presented Rule 6-403, Appraisal, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-403 to conform it to Code, Estates and Trusts Article, §7-202 (c) added by Chapter 693 (H.B. 762), Laws of 1997, as follows:

Rule 6-403. APPRAISAL

(a) Required Content

When an appraisal is required, ~~an~~ the appraisal shall be prepared and executed by each appraiser named in the Inventory, other than the personal representative. The appraisal shall (1) describe briefly the appraiser's qualifications, (2) list in columnar form each item appraised and its market value as of the date of death of the decedent and (3) be verified substantially in the following form:

I solemnly affirm under the penalties of perjury that I appraised the property listed in this appraisal on the ____ day of _____, 19 ____, and that the appraisal was done impartially and to the best of my skill and judgment.

_____
Appraiser

_____
Address

_____

(b) Basis of Appraisal

The basis of appraisal need not be set forth in the appraisal, but, upon request of the register or order of the court, the personal representative shall produce the basis for inspection by the register.

Cross reference: Code, Estates and Trusts Article, §§2-301 through 2-303, and §7-202.

Rule 6-403 was accompanied by the following Reporter's Note.

The Probate and Fiduciary Subcommittee is proposing to amend Rule 6-403 because of Chapter 693 (H.B. 762), Laws of 1997, which is adding a new provision to Code, Estates and Trusts Article, §7-202. The new section provides an alternate method to value certain property. Instead of the fair market value, certain property may also be valued at the full cash value for property tax purposes.

Mr. Lombardi explained that a statutory change in Code, Estates and Trusts Article, §7-202 allows the personal representative to value real estate at the full cash value used for property tax purposes, instead of requiring an appraisal. The change to the Rule conforms to the statutory change. There is a cross reference to the statute. Mr. Gibber suggested that the Reporter's note be changed so that the second sentence reads as follows: "The new section provides

an alternate method to value certain property". The Committee agreed by consensus to this change and approved the Rule as presented.

Mr. Lombardi presented Rule 6-404, Information Report, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-404 to include an inquiry about leasehold property in Question 1. a and to add another question to the Information Report about foreign property, as follows:

Rule 6-404. INFORMATION REPORT

Within three months after appointment, the personal representative shall file with the register an information report in the following form:

[CAPTION]

Date of Death _____

[ ] With [ ] Without Will

INFORMATION REPORT

1. a. At the time of death did the decedent have any interest as a joint owner (other than with a surviving spouse) in any real or leasehold property located in Maryland or any personal property, including accounts in a credit union, bank, or

other financial institution?

[ ] No **[ ]** Yes If yes, give the following information as to all such jointly owned property:

Name, Address, and Relationship of Joint Owner	Nature of Property	Total Value of Property
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

1. b. At the time of death did the decedent have any interest in any real or leasehold property located outside of Maryland either in the decedent's own name or as a tenant in common?

[ ] No **[ ]** Yes If yes, give the following information as to such property:

~~Name, Address and Relationship of Tenant in Common~~ Address, and Nature of Property	~~Address and Nature of Property~~ Case Number, Names, and Location of Court Where Any Court Proceeding Has Been Initiated With Reference to the Property	~~Total Value of Property~~
_____	_____	
_____	_____	
_____	_____	
_____	_____	

2. Within two years before death did the decedent make any transfer, other than a bona fide sale, of any material part of the

decedent's property in the nature of a final disposition or distributi including any transfer that resulted in joint ownership of property?

[ ] No **[ ]** Yes If yes, give the following information as to each transfer.

Date of Transfer	Name, Address, and Relationship of Transferee	Nature of Property Transferred	Total Value of Property
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. At the time of death did the decedent have (a) any interest less than absolute in real or personal property over which the decedent retained dominion while alive, including a P.O.D. account, (b) any interest in any annuity or other public or private employee pension or benefit plan that is taxable for federal estate tax purposes, (c) any interest in real or personal property for life or for a term of years, or (d) any other interest in real or personal property less than absolute, in trust or otherwise?

[ ] No **[ ]** Yes If yes, give the following information as to each such interest:

Description of Interest and Amount or Value	Date and Type of Instrument Establishing Interest	Name, Address, and Relationship of Successor, Owner, or Beneficiary
_____	_____	_____

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

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

Date:_____ _____

_____
Personal Representative(s)

_____
Attorney

_____
Address

_____

_____
Telephone Number

Cross reference: Code, Tax General Article §§7-201 and 7-224. See Code, Estates and Trusts Article, §1-401 and Code, Financial Institutions Article, §1-204 concerning transfers on death of funds in multiple party accounts, including P.O.D. accounts. See in particular §1-204 (b)(7) and (b)(9), defining multiple party and P.O.D. accounts.

Rule 6-404 was accompanied by the following Reporter's Note.

> The Subcommittee recommends (1) amending the first question of the Information Report to inquire about the decedent's interest as a joint owner in leasehold as well as real property and (2) adding another question to the

Information Report so that the personal representative gives information as to any foreign real or leasehold property owned by the decedent alone or as a tenant in common.

Mr. Gibber explained that an issue had arisen as to where to report foreign real property. One suggestion was to put it in the inventory form, but since foreign property does not have to be valued as part of the probate process, placing this on the inventory form was too confusing. The Subcommittee decided to put the question about the decedent's foreign real property on the Information Report. The Subcommittee also added a question about the decedent's leasehold property in Maryland. The Rule was approved as presented.

Mr. Lombardi presented Rule 6-414, Notice of Proposed Payment to Personal Representative or Attorney, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-414 to clarify when an order must be filed, as follows:

Rule 6-414. NOTICE OF PROPOSED PAYMENT TO PERSONAL REPRESENTATIVE OR ATTORNEY

(a) Scope of Notice

Before making a proposed payment to the personal representative or the attorney for the

estate for a claimed debt existing prior to the death of the decedent, the personal representative shall serve a notice on each unpaid creditor who has filed a claim and on each interested person and shall file a copy with the register.

(b) Contents of Notice

The notice shall state the amount of the proposed payment, the basis for the payment in reasonable detail, and a statement that each unpaid creditor and interested person has 20 days after service to file with the court written exceptions and to request a hearing.

(c) Exception

An exception shall be filed with the court within 20 days after service of the notice and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(d) ~~Order~~ Disposition

If exceptions have been timely filed, ~~After the time for filing exceptions has expired,~~ the court shall hold a hearing, if requested, ~~resolve any exceptions filed,~~ and enter an order determining the amount of payment allowed. If exceptions are not timely filed, payment may be made as proposed without further order of court.

Cross reference: Code, Estates and Trusts Article, §7-502 (a).

Rule 6-414 was accompanied by the following Reporter's Note.

The Subcommittee is recommending that section (d) of Rule 6-414 be modified to clarify that a court order is required only if exceptions have been filed. The current provision seems to indicate that an order is to be filed in every case.

Mr. Lombardi explained that the Subcommittee is recommending that section (d) of Rule 6-414 be amended to clarify that a court order is required before a payment is made to the personal representative or the attorney only if exceptions have been filed. There was no discussion of Rule 6-414, and the Rule was approved as presented.

Mr. Lombardi presented Rule 6-416, Attorney's Fees or Personal Representative's Commissions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-416 to conform it to Code, Estates and Trusts Article, 7-604, added by Chapter 693 (H.B. 762), Laws of 1997, as follows:

Rule 6-416. ~~PETITION FOR~~ ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

(a) Subject to Court Approval

(1) Contents of Petition

When ~~A~~a petition for the allowance of attorney's fees or personal representative's commissions is required, it shall be verified and shall state: ~~(1)~~ (A) the amount of all fees or commissions previously allowed, ~~(2)~~ (B) the amount of fees or commissions that the petitioner reasonably anticipates will be requested in the future, ~~(3)~~ (C) the amount of

fees or commissions currently requested, ~~(4)~~ (D) the basis for the current request in reasonable detail, and ~~(5)~~ (E) that the notice required by ~~section (c)~~ subsection (a)(3) of this Rule has been given.

~~(b)~~ (2) Filing--Separate or Joint Petitions

Petitions for attorney's fees and personal representative's commissions shall be filed with the court and may be filed as separate or joint petitions.

~~(c)~~ (3) Notice

The personal representative shall serve on each unpaid creditor who has filed a claim and on each interested person a copy of the petition accompanied by a notice in the following form:

NOTICE OF PETITION FOR ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

You are hereby notified that a petition for allowance of attorney's fees or personal representative's commissions has been filed. You have 20 days after service of the petition within which to file written exceptions and to request a hearing.

~~(d)~~ (4) Allowance by Court

Upon the filing of a petition, the court, by order, shall allow attorney's fees or personal representative's commissions as it considers appropriate, subject to any exceptions.

~~(e)~~ (5) Exception

An exception shall be filed with the court within 20 days after service of the petition and notice and shall include the grounds therefor in reasonable detail. A copy

of the exception shall be served on the personal representative.

~~(f)~~ (6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's commissions becomes final. Upon the filing of timely exceptions, the court shall set the matter for hearing and notify the personal representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing.

(b) Consent in lieu of Court Approval

(1) Conditions for Payment

Payment of attorney's fees and personal representative's commissions may be made without court approval if:

(A) the combined sum of all payments of attorney's fees and personal representative's commissions does not exceed the amounts provided in Code, Estates and Trusts Article, §7-601; and

(B) a written consent stating the amounts of the payments signed by (i) each creditor who has filed a claim that is still open and (ii) all interested persons, is filed with the register in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

IN THE ESTATE OF:

_____ Estate No. _____

CONSENT TO COMPENSATION FOR
PERSONAL REPRESENTATIVE AND/OR ATTORNEY

I consent to the following payments of compensation to the

personal representative and/or attorney and acknowledge that these payments are not subject to review or approval by the Court. I also understand that the total compensation does not exceed the amounts provided in Estates and Trusts Article, §7-601 which are 9% of the first $20,000 of the gross estate plus 3.6% of the excess over $20,000.

Amount	To	Name of Personal Representative/Attorney
_____		_____
_____		_____
_____		_____
_____		_____

Consented to by:

Date	Signature	Name (Typed or Printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ _____
Attorney Personal Representative

_____ _____
Address Personal Representative

_____
Address

_____

Telephone

(2) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§7-502, 7-601, ~~and~~ 7-602, and 7-604.

Rule 6-416 was accompanied by the following Reporter's Note.

The Probate and Fiduciary Subcommittee is proposing to amend Rule 6-416 to conform it to Chapter 693 (H.B. 762), Laws of 1997, which is adding a new provision to Estates and Trusts Article, §7-604. This new statute provides for a mechanism to pay personal representatives' commissions and attorneys' fees without the necessity of petitioning the court for its approval.

Mr. Lombardi explained that a new provision has been added to Code, Estates and Trusts Article, §7-604, which provides for a procedure to pay personal representatives' commissions and attorneys' fees without the necessity of petitioning the court for approval. This provides for a more rapid payment of the fees. The Rule has been conformed to the new statutory language. There was no discussion of Rule 6-416, and it was approved as presented.

Mr. Lombardi presented Rule 6-417, Accounts, for the

Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-417 (a) to allow additional time for filing certain accounts, as follows:

Rule 6-417. ACCOUNTS

(a) Time for Filing

The personal representative shall file with the register an initial account (1) within nine months after the date of the appointment of the personal representative or (2) if the decedent died before October 1, 1992, within the later of ten months after the decedent's death or nine months after the date of the first publication. The personal representative shall file subsequent accounts ~~at intervals of six months thereafter~~ until the estate is closed at intervals of the first to occur of: six months after the prior account is approved or nine months after the prior account is filed.

(b) Contents of Account

A personal representative's account shall include the following items, to the extent applicable to the accounting period:

(1) In an initial account, the total value of the property shown on all inventories filed prior to the date of the account; and in the case of a subsequent account, the total value of any assets retained in the estate as shown in the last account, together with the total value of the assets shown in any inventory filed since the last account.

(2) An itemized listing of all estate receipts during the accounting period, setting forth the amount, and a brief description of each receipt, including:

(A) each receipt of principal not included in an inventory of the estate;

(B) each purchase, sale, lease, exchange, or other transaction involving assets owned by the decedent at the time of death or acquired by the estate during administration, setting forth the gross amount of all gains or losses and otherwise stating the amount by which the transaction affects the gross value of the estate;

(C) each receipt of income including rents, dividends, and interest.

(3) The total gross value of the estate's assets to be accounted for in the account.

(4) An itemized listing of all payments and disbursements related to the satisfaction of estate liabilities during the accounting period, setting forth the amount, and a brief description of each payment or disbursement, including: funeral expenses; family allowance; filing fees to the register; court costs; accounting fees; expenses of sale; federal and state death taxes; personal representative's commissions; attorney's fees; and all other expenses of administration.

(5) The total amount of payments and disbursements reported in the account, and the amount of the net estate available for distribution or retention.

(6) Distributions and proposed distributions to estate beneficiaries from the net estate available for distribution, including adjustments for distributions in kind, and the amount of the inheritance tax due with respect to each distribution.

(7) The value of any assets to be retained

in the estate for subsequent accounting, with a brief explanation of the need for the retention.

(8) The total amount of the estate accounted for in the account, consisting of all payments, disbursements, distributions, and the value of any assets retained for subsequent accounting, and equaling the amount stated pursuant to subsection (3) of this section.

(9) The personal representative's verification pursuant to Rule 6-123 that the account is true and complete for the period covered by the account; together with the personal representative's certification of compliance with the notice requirements set forth in section (d) of this Rule. The certification shall contain the names of the interested persons upon whom notice was served.

(c) Affidavit in Lieu of Account

If an estate has had no assets during an accounting period, the personal representative may file an affidavit of no assets in lieu of an account.

Committee note: In some cases an estate may be opened for litigation purposes only and there is no recovery to or for the benefit of the estate.

(d) Notice

At the time the account or affidavit is filed the personal representative shall serve notice pursuant to Rule 6-125 on each interested person who has not waived notice. The notice shall state (1) that an account or affidavit has been filed, (2) that the recipient may file exceptions with the court within 20 days from the court's order approving the account, (3) that further information can be obtained by reviewing the estate file in the office of the Register of Wills or by contacting the person representative or the attorney, (4) that upon request the personal representative shall furnish a copy of the

account or affidavit to any person who is given notice, and (5) that distribution under the account as approved by the court will be made within 30 says after the order of court approving the account becomes final.

(e) Audit and order of Approval

The register shall promptly audit the account and may require the personal representative to furnish proof of any disbursement or distribution shown on the account. Following audit by the register and approval of the account by the court, the court immediately shall execute an order of approval subject to any exceptions.

(f) Exception

An exception shall be filed within 20 days after entry of the order approving the account and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the person representative.

(g) Disposition

If no timely exceptions are filed, the order of the court approving the account becomes final. Upon the receipt of exceptions, the court shall set the matter for hearing and notify the personal representative and such other persons as the court deems appropriate of the date, time, place, and purpose of the hearing.

Cross reference: Code, Estates and Trusts Article, §§7-301, 7-303, 7-305, 7-501, and 10-101 (a).

Rule 6-417 was accompanied by the following Reporter's Note.

Section (a) is proposed to be changed at the request of some members of the private bar to deal with the time for filing accounts in estates where disputes have arisen. The six-month intervals after the filing of the initial

account are sometimes too rigid, since it may take more than six months for an account to be approved if exceptions are filed, or other matters regarding the estate are pending before the register or court. The proposed change would add another three months for the accounts to be approved.

Mr. Gibber explained that when the personal representative files an account, if exceptions are filed, it may take more than six months from the date of filing of the account for the account to be approved. When the next account is due six months later, the prior one may not have been approved. The proposed change would add three more months from the time of filing the accounts. Mr. Lombardi added that the registers would like this change to be approved. Mr. Lewis remarked that this is a procedural change. Mr. Gibber pointed out that the Reporter's note needs to have one change made -- the final word should be "filed" instead of "approved." The Committee agreed by consensus to the change in the Reporter's note. The Rule was approved as presented.

Mr. Lombardi presented Rule 6-454, Special Administration, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-454 to add a provision allowing the court, with the consent of the

register, to eliminate the requirement that a special administrator comply with the bond provisions of Rule 6-312, as follows:

Rule 6-454. SPECIAL ADMINISTRATION

(a) Appointment of Special Administrator

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

(b) Contents of Petition

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

(c) Bond

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

(d) Specified Duties

The special administrator shall assume

any unperformed duties required of a personal representative concerning the preparation and filing of inventories, accounts, and notices of filing accounts, and proposed payments of fees and commissions. The special administrator shall collect, manage, and preserve property of the estate and shall account to the personal representative subsequently appointed. The special administrator shall have such further powers and duties as the court may order.

(e) Notice

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

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

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

The Subcommittee suggests that language be added to Rule 6-454 to allow the court, with the consent of the Register of Wills, to excuse a special administrator from giving the bond which Rule 6-312 requires.

Mr. Lombardi explained that the proposed amendment of Rule 6-454 would allow the court, with the consent of the register, to eliminate the requirement that a special administrator comply with the bond provisions of Rule 6-312. Mr. Gibber noted that the statute requires a bond. The Vice Chair said that the Subcommittee decided to recommend this change. There was no other discussion of the Rule, and it was approved as presented.

Mr. Lombardi presented Rule 6-455, Modified Administration, for

the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

ADD new Rule 6-455, as follows:

Rule 6-455. MODIFIED ADMINISTRATION

(a) Generally

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

(b) Form of Election

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

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No. _____

ELECTION OF PERSONAL REPRESENTATIVE FOR

MODIFIED ADMINISTRATION

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

(a) The decedent died on _____ ☐ with a will or

☐ without a will.

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

(c) ☐ All residuary legatees named in the will or ☐ all heirs of the intestate decedent are limited to:

☐ The personal representative, ☐ a surviving spouse,

☐ children of the decedent.

(d) Consents of the persons referenced in 1 (c) are

☐ filed herewith or ☐ were previously filed.

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

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

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

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

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

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

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

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

_____ _____
Attorney Personal Representative

_____ _____
Address Personal Representative

_____
Address

_____
Telephone

(c) Consent

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

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No._____

CONSENT TO ELECTION FOR
MODIFIED ADMINISTRATION

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

1. Instead of filing a formal Inventory and Account, the personal representative will file a verified Final Report Under Modified Administration no later than 10 months after the date of appointment.
2. Upon written request to the personal representative by any legatee not paid in full or any heir-at-law of a decedent who died without a will, a formal Inventory and Account shall be provided by the personal representative to the legatees or heirs of the estate.
3. At any time during administration of the estate, I may revoke Modified Administration by filing a written objection with the Register of Wills. Once filed, the objection is binding on the estate and cannot be withdrawn.
4. If Modified Administration is revoked, the estate will proceed under Administrative Probate and the personal representative shall file a formal Inventory and Account, as required, until the estate is closed.
5. Unless I waive notice of the verified Final Report Under

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

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

_____	_____
Signature of Residuary Legatee or Heir	☐ Surviving Spouse ☐ Child ☐ Residuary Legatee or Heir serving as Personal Representative
_____	
Type or Print Name	
_____	_____
Signature of Residuary Legatee or Heir	☐ Surviving Spouse ☐ Child ☐ Residuary Legatee or Heir serving as Personal Representative
_____	
Type or Print Name	
_____	_____
Signature of Residuary Legatee or Heir	☐ Surviving Spouse ☐ Child ☐ Residuary Legatee or Heir serving as Personal Representative
_____	
Type or Print Name	

(d) Final Report

(1) Filing

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

(2) Copies to Interested Persons

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

(3) Contents

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

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No._____

Date of Death _____ Date of Appointment of Personal Representative _____

FINAL REPORT UNDER MODIFIED ADMINISTRATION
(Must be filed within 10 months after the date of appointment)

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

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

2. Attached are the following Schedules and supporting attachments:

Total Schedule A: Reportable Property ..... $_____

Total Schedule B: Payments and Disbursements..... $(_____)

Total Schedule C: Distribution of Net Reportable Property ..... $_____

3. I acknowledge that:

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

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

(c) If Modified Administration is revoked, the estate shall proceed under Administrative Probate, and I will file a formal Inventory and Account, as required, until the estate is closed.

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

_____ _____
Attorney Signature Personal Representative Date

_____ _____
Address Personal Representative Date

_____ _____
Address Personal Representative Date

_____
Telephone

CERTIFICATE OF SERVICE OF
FINAL REPORT UNDER MODIFIED ADMINISTRATION

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

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____

_____ Attorney

_____ Address

_____ City, State, Zip Code

_____ Telephone Number

_____ Personal Representative

_____ Personal Representative

_____

_____

FOR REGISTER OF WILLS USE

Distributions subject to collateral tax at 11.111% _____ Tax thereon _____

Distribution subject to collateral tax at 10% _____ Tax thereon _____

Distribution subject to direct tax at 1.0101% _____ Tax thereon _____

Distribution subject to direct tax at 1% _____ Tax thereon _____

Exempt distributions to spouse _____

Exempt distributions to charities _____

Exempt distributions to persons
not exceeding $150 (decedents dying prior to 1/1/98) _____

not exceeding $1,000 (decedents dying on or after 1/1/98) _____

Total Inheritance Tax due _____

Total Inheritance Tax paid _____

Gross estate _____ Probate Fee & Costs Collected _____

FINAL REPORT UNDER MODIFIED ADMINISTRATION
SUPPORTING SCHEDULE A
REPORTABLE PROPERTY

ESTATE OF _____ Estate No. _____

Item No.	Description	Basis of Valuation	Value

TOTAL REPORTABLE PROPERTY OF THE DECEDENT $_____
(Carry forward to Schedule C)

INSTRUCTIONS

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

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

2. The personal representative may value: Debts owed to the decedent, including bonds and notes; bank accounts, building, savings and loan association shares, money and corporate stocks listed on a national or regional exchange or over the counter securities.

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

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION
SUPPORTING SCHEDULE B
Payments and Disbursements

ESTATE OF _____ Estate No. _____

Item No.	Description	Amount Paid

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

INSTRUCTIONS

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

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

and attorney compensation, probate fee and other administration expenses of the estate.

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION
SUPPORTING SCHEDULE C
Distributions of Net Reportable Property

1. ~~TOTAL NET~~ SUMMARY OF REPORTABLE PROPERTY ~~(Schedule A - Schedule B)~~

Total from Schedule A ..... _____

Total from Schedule B ..... _____

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

2. SPECIFIC BEQUESTS (If Applicable)

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

3. DISTRIBUTION OF BALANCE OF ESTATE

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

Total Reportable Distributions $_____
~~and~~ Inheritance Tax $_____

_____

ATTACH ADDITIONAL SCHEDULES AS NEEDED

(4) Inventory and Account

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

(e) Revocation

(1) Causes for Revocation

A modified administration shall be revoked by:

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

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

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

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

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

(2) Notice of Revocation

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

(3) Consequences of Revocation

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

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

> This Rule is new and it conforms to Chapter 596 (S.B. 510), Laws of 1997, which provides for a new type of probate procedure, a modified administration, to be used only (1) when the legatees and heirs are the decedent's personal representative, surviving spouse, and children; (2) the estate is solvent and sufficient assets exist to satisfy all testamentary gifts; (3) a verified final report is filed within 10 months from the date of appointment of the personal representative; (4) final distribution can occur within 12 months from the date of appointment of the personal representative; and (5) all the legatees and heirs consent to the modified administration. The personal representative has to file an election for modified administration within three months from the date of the personal representative's appointment, and the estate must be closed not later than 13 months from the date of the personal representative's appointment, with final distribution to occur within 12 months of the date of the personal representative's appointment.

Mr. Lombardi told the Committee that this Rule is new and was added to conform to new legislation. Mr. Gibber pointed out that the legislation, which adds a new section to the Code, Estates and Trusts Article, §5-701, provides for a new procedure, a modified

administration. This allows an abbreviated probate procedure in certain limited circumstances. The heirs and legatees can only be the personal representative, a surviving spouse, or the children of the decedent, and all of them have to consent to the modified administration. The estate must be solvent and the assets sufficient to satisfy all specific legacies. Distribution is to be made within 12 months of the date of appointment of the personal representative. There is no need to file an inventory or account. The personal representative can elect the modified administration with the appropriate consents of the legatees and heirs. At any time the modified administration process can be halted, and the estate changed to the regular probate procedure. The Rule contains all the necessary forms. There was no discussion of Rule 6-455. The Rule was approved as presented.

Agenda Item 5. Consideration of a proposed amendment to Rule 2-326 (Transfers from District Court on Demand for Jury Trial)

Mr. Brault presented Rule 2-326, Transfers from District Court on Demand for Jury Trial, for the Committee's consideration.

SUBCOMMITTEE RECOMMENDATION

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-326 to add a certain notice requirement, to eliminate the distinction between actions that are within the exclusive original jurisdiction of the District Court and actions that are not, and to require the filing of a certain answer or response, as follows:

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

(a) Notice

Upon entry on the docket of an action transferred from the District Court pursuant to a demand for jury trial, the clerk shall send to the ~~parties notice of~~ plaintiff and each party that has been served in the District Court action a notice that states the date of entry and the assigned docket reference~~.~~ and includes a "Notice to Defendant" in substantially the following form:

Notice to Defendant

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

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

~~(b) Action Within Exclusive Original Jurisdiction of the District Court~~

~~When the action transferred is one over which the District Court has exclusive original jurisdiction (1) subsequent pleadings and discovery in the circuit court shall be governed, unless the court orders otherwise, by the rules of Title 3, other than the limitation of Rule 3-331 (f), or (2) if a counter-claim, cross-claim, or amended pleading exceeding the exclusive original jurisdiction of the District Court is filed, the action shall thereafter be governed by the rules of this Title. The court may, by order, permit discovery in a landlord-tenant or grantee action as it deems appropriate.~~

~~(c) Action Not Within Exclusive Original~~

~~Jurisdiction of the District Court~~

~~When the action transferred is one over which the District Court does not have exclusive original jurisdiction, a complaint complying with Rules 2-303 through 2-305 shall be filed within 30 days after the date the clerk sends the notice required by section (a) of this Rule. The complaint shall be served pursuant to Rule 1-321. The defendant shall file an answer or other response within 30 days after service of the complaint.~~

(b) Answer or Other Response; Subsequent Proceedings

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

Source: This Rule is new.

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

The proposed amendment to Rule 2-326 eliminates the distinction between actions that are "within the exclusive original jurisdiction of the District Court" and actions that are "not within the exclusive original jurisdiction of the District Court," in light of a Constitutional amendment and statutory change that raised to $5,000 the minimum amount in controversy that must be exceeded for a party to be entitled to a jury trial.

The proposed amendment also eliminates the requirement of a new complaint in a transferred

case. It does, however, require a defendant (including a counter-defendant, cross defendant, and third-party defendant) to file new answer or other response, even if the defendant had filed one in the District Court. This requirement facilitates the computation of the times specified in other Title 2 Rules (e.g., Rules 2-331 and 2-332). The Subcommittee considered the alternative of requiring the plaintiff in each case to file a new complaint, but concluded that the requirement of a new complaint is overly burdensome to the pro se plaintiff who had gone to the District Court for ease of access to the judicial system. The requirement of a new answer (usually a general denial) is not overly burdensome to the defendant who, most likely, was the party who had requested the jury trial that moved the case to the circuit court. To alert the defendant to this requirement, a "Notice to Defendant" concerning the requirement has been added to section (a) of the Rule.

Mr. Brault also offered an alternative to the Subcommittee's proposal.

ALTERNATE PROPOSAL

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-326 to add a certain notice requirement, to eliminate the distinction between actions that are within the exclusive original jurisdiction of the District Court and actions that ar not, and to require the filing of a new complaint in each action, as follows:

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

(a) Notice

Upon entry on the docket of an action transferred from the District Court pursuant to a demand for jury trial, the clerk shall send to ~~the parties notice of~~ each party a notice that states the date of entry and the assigned docket reference~~.~~ and includes a "Notice" in substantially the following form:

Notice

Within 30 days after the date of this notice, the plaintiff shall file a new complaint in the circuit court complying with Rules 2-303 through 2-305. The complaint shall be served pursuant to Rule 1-321. The defendant shall file an answer or other response within 30 days after service of the complaint.

~~(b) Action Within Exclusive Original Jurisdiction of the District Court~~

~~When the action transferred is one over which the District Court has exclusive original jurisdiction (1) subsequent pleadings and discovery in the circuit court shall be governed, unless the court orders otherwise, by the rules of Title 3, other than the limitation of Rule 3-331 (f), or (2) if a counter-claim, cross-claim, or amended pleading exceeding the exclusive original jurisdiction of the District Court is filed, the action shall thereafter be governed by the rules of this Title. The court may, by order, permit discovery in a landlord-tenant or grantee action as it deems appropriate.~~

~~(c) Action Not Within Exclusive Original Jurisdiction of the District Court~~

~~When the action transferred is one over which the District Court does not have~~

~~exclusive original jurisdiction,~~

(b) Pleadings and Procedures in the Circuit Court

The plaintiff shall file a complaint complying with Rules 2-303 through 2-305 ~~shall be filed~~ within 30 days after the date the clerk sends the notice required by section (a) of this Rule. The complaint shall be served pursuant to Rule 1-321. The defendant shall file an answer or other response within 30 days after service of the complaint. The action shall thereafter proceed as if originally filed in the circuit court.

Source: This Rule is new.

The Alternate Proposal was accompanied by the following Reporter's Note.

This amendment is an alternative to the proposed amendment to Rule 2-326 recommended by the Process, Parties & Pleading Subcommittee.

Mr. Brault explained that the Subcommittee originally redrafted Rule 2-326 over a year ago. They were trying to correct the difficulties resulting when cases are transferred from the District Court to the circuit court. There have been problems with filing the statement of claims and conforming the pleadings to the circuit court standards. After a case has been transferred to the circuit court, the District Court plaintiff has 30 days to file a complaint which conforms to the circuit court rules. The defendant has 30 days to file an answer in conformance with the circuit court rules. The Chair received letters, including one from the Honorable

Howard S. Chasanow, a Court of Appeals judge, which stated that the requirement for filing a new complaint in the circuit court has caused problems. The requirement of a new complaint can create a trap situation, especially for pro se litigants.

The impetus behind many transfers from the District Court to the circuit court is the fact that in the more populous jurisdictions, jurors have not been awarding any money to plaintiffs in automobile tort litigation unless the plaintiff has substantial injuries. The result is that the plaintiffs are filing many more cases in the District Court. The defendant's insurance company then demands a jury trial, so the case is transferred to the circuit court. If the plaintiff is represented by counsel, this is not difficult, but many plaintiffs do not have attorneys.

The Subcommittee discussed this situation and considered several alternatives, two of which are presented today. They decided that the better method to solve the problems would be to eliminate the requirement of a new complaint in a transferred case. However, the defendant would have to file a new response in the circuit court. Difficulties still exist if there are several defendants and only one gets served before the case is transferred to the circuit court. The unserved defendants would have to be served at the circuit court level.

The Vice Chair noted that this Rule allows a defendant to file an answer, and it permits a motion to dismiss if the complaint is

poor. Mr. Brault responded that pleadings in automobile tort cases are simple. The Vice Chair countered that this Rule does not apply to only automobile tort litigation. Mr. Brault explained that the great majority of the cases involved are auto tort cases. Other cases could be subject to a motion to dismiss in front of a judge. Judge Kaplan commented that the judge could allow the plaintiff's leave to amend the complaint.

The Chair pointed out that some of these problems happen to attorneys, also. The attorney on the other side prays a jury trial, and the plaintiff attorney misses a deadline. There were several cases like this in the Court of Special Appeals where there was a perfectly good claim filed in the District Court, and the other side had a technical defense. Problems arise when there are several defendants, and one does not get served. The Subcommittee's recommended draft of the Rule satisfies Judge Chasanow's concerns. Mr. Brault remarked that since it is the defendant who transferred the case to the circuit court, it is appropriate that the burden is on the defendant. The Vice Chair observed that there is the potential for the defense attorney to forget to file a new answer after the case has been transferred to the circuit court. This Rule makes it clear that the plaintiff can ask for an order of default.

The Vice Chair inquired how the clerks will handle the situation of a defendant who was not served initially, but then is served with the District Court complaint, and does not know about the

circuit court case. Judge Vaughan said that most likely in that situation, the initial summons has expired, but the Vice Chair argued that it may not have expired, since there is a 60-day period during which the summons may be served. Judge Vaughan commented that when the return goes to the District Court, the clerk will transfer the case. The Vice Chair noted that sometimes no return is filed. The Chair reiterated that where a return is filed, the District Court clerk will transmit the return of service to the circuit court. The matter plays out as a circuit court case with unserved defendants. The burden is on the plaintiff to serve all the defendants.

Judge Kaplan moved to adopt the Rule with the amendments recommended by the Subcommittee. The motion was seconded, and it passed on a majority vote.

The Chair asked if there were any additions or corrections to the minutes of the June meeting. There being none, the minutes were approved as read.

The Chair adjourned the meeting.