COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1.514 of the People's Resource Center, 100 Community Place, Crownsville, Maryland on September 6, 2002.

Members present:

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

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Robert L. Dean, Esq.
Hon. Ellen M. Heller
Hon. G. R. Hovey Johnson
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Hon. William D. Missoui
Hon. John L. Norton, III
Larry W. Shipley, Clerk
Sen. Norman R. Stone
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Albert "Buz" Winchester, M.S.B.A., Office of Legislative Relations
Steven P. Lemmey, Esq., Investigative Counsel, Commission on Judicial Disabilities
Elizabeth B. Veronis, Esq., Court Information Office
Pamela J. White, Esq.
M. Peter Moser, Esq.
Professor John A. Lynch, Jr., University of Baltimore School of Law
Rachel Wohl, Esq.
Frank Broccolina, State Court Administrator

The Chair convened the meeting. He told the Committee that Professor Byron Warnken had sent in some material regarding Rule 4-216, Pretrial Release, on September 3, 2002 which would be discussed later on in the meeting. He said that the minutes of the May 10, 2002 and June 21, 2002 Rules Committee meetings had

been sent out to the Committee on August 28, 2002. He asked if there were any additions or corrections to both sets of minutes. There being none, Mr. Klein moved to adopt the minutes as presented, the motion was seconded, and it passed unanimously.

The Vice Chair introduced Professor John A. Lynch of the University of Baltimore Law School, who had assisted her with the third edition of the book, Maryland Rules Commentary, which she co-authored.

Agenda Item 1. Reconsideration of the proposed revised Maryland Code of Judicial Conduct, in light of Republican Party of Minnesota v. White, 536 U.S. ___, 122 S .Ct. 2528 (2002): Revised Rule 16-813 (Maryland Code of Judicial Conduct), Revised Rule 16-813A (Ethics – Committee; General Provisions), and Amendments to Rule 8.2 of the Maryland Lawyers' Rules of Professional Conduct

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The Chair presented Canon 5 of proposed revised Rule 16-813, Maryland Code of Judicial Conduct. He drew the Committee's attention to subsection (b)(1)(f), Political Conduct of Judge Who is Candidate.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-813, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

. . .

CANON 5

Political Activity

A. POLITICAL CONDUCT OF JUDGE WHO IS NOT CANDIDATE.-

(1) A judge who is not a candidate for election or re-election to or retention in a judicial office shall not engage in any partisan political activity.

(2) (A) Except as otherwise provided in Canon 5A (2), a judge shall resign when the judge becomes a candidate for a non-judicial office.

(B) A judge may continue to hold judicial office while a candidate for election to, or delegate in, a Maryland constitutional convention.

Committee note: ABA Code (2000), Canon 5A (2) allows a judge to serve as a state constitutional convention delegate if allowed by law. Such a delegate does not hold an "office," which Md. Declaration of Rights, Article 33 would prohibit a judge from holding. *See Board v. Attorney General*, 246 Md. 417 (1967).

B. POLITICAL CONDUCT OF JUDGE WHO IS CANDIDATE.-

(1) A judge who is a candidate for election or re-election to or retention in a judicial office may engage in partisan political activity allowed by law with respect to such candidacy, except that the judge:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the independence and integrity of the judiciary;

(b) shall not act as a leader or hold an office in a **political organization**;

(c) shall not make a speech for a **political organization** or candidate or publicly endorse a candidate for non-judicial office;

(d) shall not allow any other person to do for the judge what the judge is prohibited from doing;

(e) shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; and

~~(f) shall not announce the judge's views on cases, controversies, or issues likely to come before the judge; and~~

COMMENT

~~Canon 5B (1)(f) prohibits a judge-candidate from making statements that appear to commit the candidate regarding cases, controversies, or issues likely to come before the judge. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Canon 3A (8), the general rule on public comment by judges.~~ Canon 5B (1)(e) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. ~~Nor does Canon 5B (1)(f) prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. Canon 5B (1)(f) applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the Md. Rules of Professional Conduct.~~

~~(g)~~ (f) shall not misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact.

(2) A judge shall not publicly endorse

a candidate for public office by having the judge's name on the same ticket.

(3) A candidate for a judicial office may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 5B (1)~~(f)~~.

Committee note: The Judicial Ethics and Rules Committees disagree with the proposition in ABA Code (2000), Canon 5A (3)(a), which states that family members of a judge should adhere to the same standards of political conduct as a judge who is a candidate for judicial office. The Committees believe that family members should be free to engage, in their own right, in political activity that is not related to the judge's office.

Although ABA Code (2000), Canon 5A (1)(b) probably is broad enough even to prohibit a judge from endorsing another judge who is also a candidate, public endorsement by one judicial candidate of another judicial candidate has long been permitted in Maryland. *See* Md. Judicial Ethics Opinion No. 20 (issued 4/25/74).

~~The first paragraph of the Comment to Canon 5B (1) is consistent with Md. Judicial Ethics Opinion No. 109 (issued 2/14/86).~~

ABA Code (2000), Canon 5A (1)(d), which bars attendance of a judge-candidate at political gatherings, is omitted as not consistent with Md. Judicial Ethics Opinion No. 63 (issued 5/8/78), which recognized that "any potential opponents ... would clearly take advantage of this type of exposure [and] ... it is neither desirable nor necessary that you, as a candidate for election, be denied similar opportunity".

ABA Code (2000), Canon 5A (1)(e) and C (2) prohibits a judge from personally soliciting or accepting campaign funds or personally soliciting publicly stated support; however, a judge may establish "committees of responsible persons" to do these things for the judge. The Judicial

Ethics and Rules Committees believe that this prohibition may be too restrictive, since it puts a judge at a political disadvantage to active opposition. Maryland law does require all campaign funds to be publicly reported by the campaign treasurer.

ABA Code (2000), Canon 5A (3)(b) requires that a judge prohibit public officials and employees subject to the judge's direction and control from doing for the judge what the judge is prohibited from doing. The Committees believe that this is redundant and may even imply that a judge must terminate the employment of an individual who does not follow the judge's admonitions – a result which may be unreasonable under the circumstances.

C. STATUS OF JUDGE OR LAWYER AS CANDIDATE.-

"Candidate" applies to an individual seeking to be elected to or to retain judicial office:

(1) as to a newly appointed judge, from the date of taking the oath of office until the general election pertaining to that judge's election or initial retention;

(2) as to any other incumbent judge, from the earlier of:

(a) the date two years prior to the general election pertaining to that judge's re-election or subsequent retention; or

(b) the date on which a newly appointed judge to that court becomes a "candidate" in the same general election;

(3) as to a judge who is seeking election to another judicial office, the earlier of:

(a) the date on which the judge files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office; or

(b) the date on which a newly appointed judge to that court becomes a "candidate" in the same general election; and

(4) as to a lawyer who is seeking judicial office, the date on which the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office.

Committee note: Md. Judicial Ethics Opinion No. 14 (issued 5/23/74) allows a judge to begin campaigning as a candidate immediately upon assumption of office. The longest possible campaign period would be one day less than three years. *See* Md. Constitution, Article IV, §5. Md. Judicial Ethics Opinion No. 34 (issued 7/7/75), which had allowed an incumbent judge to campaign for re-election only from January 1 of the year of the election, was found to be too restrictive, so Md. Judicial Ethics Opinion No. 57 (issued 11/28/77) changed the period to "times which are reasonable under the particular circumstances of each case." The Judicial Ethics Committee believed that the latter standard was too vague, and the Court of Appeals permitted an incumbent judge to campaign as soon as the preceding general election ended, which is a two-year period, or earlier if a newly appointed judge, who will be a running mate of the incumbent judge, already has become a candidate.

A judge should be permitted to engage in political activity regarding the judge's candidacy for judicial office only if the judge's intention to pursue that candidacy is clear. An incumbent judge's candidacy for election or re-election is fairly obvious, but a judge's intention to seek another judicial office is not as clear; therefore, the filing of a certificate of candidacy is required in the latter situation.

D. APPLICABILITY.-

Canon 5 generally applies to all incumbent judges and judicial candidates. A

successful candidate, whether or not an incumbent, or an unsuccessful judicial candidate is subject to judicial discipline for his or her campaign conduct. A lawyer who is an unsuccessful candidate for judicial office is subject to Rule 8.2 (b) of the Maryland Rules of Professional Conduct.

Source: Canon 5A is derived from former Canon 5A of the Md. Code of Judicial Ethics.

Canon 5B (1)(a) is derived from ABA Code (2000), Canon 5A (3)(a).

Canon 5B (1)(b) is derived from ABA Code (2000), Canon 5A (1)(a).

Canon 5B (1)(c) is derived from ABA Code (2000), Canon 5A (1)(b) and (c).

Canon 5B (1)(d) is derived from ABA Code (2000), Canon 5A (3)(b).

Canon 5B (1)(e) ~~through (g)~~ is derived from ABA Code (2000), Canon 5A (3)(d)(i) ~~through (iii), respectively~~.

Canon 5B (1)(f) is derived from ABA Code (2000), Canon 5B (3)(d)(iii).

~~The first paragraph of Canon 5B (1) is derived from the Commentary to ABA Code (2000), Canon 5A (3)(d).~~

Canon 5B (2) is derived from the fifth paragraph of the Commentary to ABA Code (2000), Canon 5A (1) and is consistent with Md. Judicial Ethics Opinion No. 109 (issued 2/14/86).

Canon 5B (3) is derived from ABA Code (2000), Canon 5A (3)(e).

The Comment to Canon 5B (1) (e) is derived from the Commentary to ABA Code (2000), Canon 5A (3)(d)(i).

Canon 5C is derived from former Canon 5C of the Md. Code of Judicial Ethics.

> Canon 5D is new and is identical to the language of ABA Code (2000), Canon 5E.

Canon 5 was accompanied by the following Reporter's Note.

> The Judicial Ethics and Rules Committees have restated Canon 5A as mandatory, using the word "shall" instead of the word "should," and updated the Committee notes.
>
> The Committees have restated Canon 5B as mandatory, using the word "shall" instead of "should," as well as restyling it and updating the Committee notes.
>
> The Committees had approved additional language in Canon 5B (1) which read, "[the judge] shall not announce the judge's views on cases, controversies, or issues likely to come before the judge." A conforming amendment to Rule 8.2 (b) of the Maryland [Lawyers'] Rules of Professional Conduct also was approved by the Committees. In light of Republican Party of Minnesota v. White, 536 U.S. ___ (No. 01-521, October Term, 2001, filed June 27, 2002), the Committees reluctantly deleted the additional language from both Rules.
>
> The Committees have modified Canon 5C to include the status of lawyers as candidates and deleted the sixth and seventh sentences of the ABA Code (1990), Canon 7A (2), as unnecessary.
>
> Canon 5D is new and is identical to the language of ABA Code (2000), Canon 5E.

The Chair explained that the proposed changes to the Code of Judicial Conduct are a result of the decision in the case of Republican Party of Minnesota v. White, 122 S.Ct. 2528 (2002). At a meeting on August 1, 2002, the *Ad Hoc* Subcommittee to Review the Judicial Ethics Committee's Recommendations for the Code of Judicial Conduct, chaired by the Honorable John F. McAuliffe, had

recommended that the language of Canon 5B (1)(f) be deleted. That language reads as follows: "A judge who is a candidate for election or re-election to or retention in a judicial office may engage in partisan political activity allowed by law with respect to such candidacy, except that the judge ... shall not announce the judge's views on cases, controversies, or issues likely to come before the judge ...". The decision to delete this language (the "announce" clause) stems from the interpretation of the case. The question is whether in light of the Supreme Court decision, any restriction is to be placed on a candidate for judicial office. The Chair said that his recollection is that the Subcommittee was unanimous in its decision to delete the language of Canon 5B (1)(f). As beneficial as a rule governing statements by candidates for judicial office might be, it will not pass muster under the White decision.

Judge Heller, who had attended the Subcommittee meeting, commented that those present at that meeting found that there was no choice but to delete the language. Judge Missouri agreed with Judge Heller, and Mr. Titus expressed the view that he was not enthusiastic about the decision.

The Chair said that M. Peter Moser, Esq., an expert on judicial ethics who had been a consultant to the Subcommittee, had attended the Subcommittee meeting and was present today to discuss this issue. Mr. Moser stated that the conclusion reached by the Subcommittee to delete the language in Canon 5B(1)(f) was correct. The corresponding American Bar Association (ABA) 2000

Code provision, known as the "commit" clause, which reads: "A candidate for a judicial office: shall not ... make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court" is different from the "announce" clause, but it will probably be eliminated by the Supreme Court, also. The language in Canon 5B (1)(e), which reads: "...shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;" (the "pledges or promises" clause) is not that different from the "announce" clause, but the Supreme Court has left it in the Code of Judicial Conduct. The ABA task force looking at this issue has decided to eliminate the black letter "commit" clause but retain the "pledges or promises" clause. The "commit" clause may be modified to be part of the comment, but the Maryland version of Canon 5B (1)(f) should go forward without being delayed to wait for that to happen.

The Chair stated that the Rules Committee accepts the Subcommittee's recommendation to delete the "announce" clause from Canon 5B. The Committee approved the Rule as presented.

The Chair presented Rule 8.2, Judicial and Legal Officials, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

APPENDIX - THE MARYLAND RULES OF

PROFESSIONAL CONDUCT

AMEND Rule 8.2 (b) and the accompanying Comment to conform them to the language of proposed revised Canon 5B of Rule 16-813, Code of Judicial Conduct, as follows:

Rule 8.2. JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A candidate for judicial ~~position~~ office shall not (1) make ~~or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he shall not announce in advance his conclusions of law on disputed issues to secure class support, and he shall do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination~~ pledges or promises of conduct in office other than the faithful and impartial performance of the duties of that office; ~~announce the candidate's views on cases, controversies, or issues likely to come before the court to which the lawyer seeks to be elected;~~ or misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact.

COMMENT

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid

opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Code Comparison.-- With regard to Rule 8.2 (a), DR 8-102 (A) provides that "A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office." DR 8-102 (B) provides that "A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer."

Rule 8.2 (b) is identical to Canon ~~XXIX of the Canons and Rules of Judicial Ethics~~ 5B (1)(e) and (1)(f) of Rule 16-813 of the Maryland Code of Judicial Conduct, which is applicable to judges who are candidates for judicial office. ~~Although the Maryland Disciplinary Rules have no counterpart to Rule 8.2 (b), DR 8-103 of the Model Code, adopted by the ABA after the Code was adopted in Maryland, is the same as Rule 8.2 (b) in substance.~~

Rule 8.2 was accompanied by the following Reporter's Note.

During the consideration of the revision of the Code of Judicial Conduct (Rule 16-813), M. Peter Moser, Esq., a consultant who is an expert in legal and judicial ethics, suggested that Rule 8.2 (b) should be conformed to the standards in proposed revised Canon 5B of Rule 16-813 of the Maryland Code of Judicial Conduct pertaining to candidates for judicial office.

The Chair told the Committee that Mr. Moser had prepared a separate draft of Rule 8.2 (b) for their consideration.

Rule 8.2. JUDICIAL AND LEGAL OFFICIALS

. . .

(b) A lawyer who is a candidate for judicial office (i) shall comply with the provisions of Canon 5B (Political Conduct or Judge Who is Candidate) of the Maryland Code of Judicial Conduct, and (ii) is subject to the provisions of Canon 5C (4) and Canon 5D of the Maryland Code of Judicial Conduct.

Mr. Moser explained that the purpose of the change to Rule 8.2 is to prohibit a non-judicial candidate for judicial office from making pledges or promises and from misrepresenting his or her identity or qualifications. Sections (e) and (f) of Canon 5B apply to judges. As it is written now, section (b) of Rule 8.2 creates a playing field which is not level. Mr. Moser said that his draft of Rule 8.2 (b) simply provides that an attorney who is a candidate for judicial office is made subject to the appropriate provisions in the Code of Judicial Conduct, which are Canons 5B, 5C (4), and 5D.

The Chair asked what happens to an attorney running for judicial office who speaks out inappropriately and then wins the election. Mr. Moser replied that this would come under the jurisdiction of the Commission on Judicial Disabilities. The Vice Chair added that prior to the election, it would be a matter for the Attorney Grievance Commission. Mr. Moser suggested that a Committee note could be added which would explain what the provisions of Canons 5B, 5C(4), and 5D are. Judge Heller inquired if the version of Rule 8.2 which currently exists is being replaced, and Mr. Moser answered that his version of Rule

8.2 would replace the current version.

The Chair suggested that Rule 8.2 could provide that the attorney must "comply with the appropriate provisions of Canon 5." Mr. Moser responded that this language is too vague; it would be preferable to refer to the specific provisions of Canon 5. Mr. Titus questioned whether the Rule is consistent with the Constitution if it prohibits a candidate from holding an office in a political organization. The Vice Chair pointed out that this provision is Canon 5B (1)(b).

Mr. Sykes expressed the opinion that the principle of incorporation by reference should not apply to Rule 8.2. It is better to examine each provision of the Code of Judicial Conduct as it applies to attorneys running for judicial office and import the language into Rule 8.2. Mr. Titus noted that sections (b) and (c) of Canon 5B(1) are problematical in applying to attorneys running for judicial office. The Vice Chair pointed out that Canon 5B (1)(a) and (d) should be applicable to attorneys as well as judges. Referring to Mr. Titus' comment about an attorney not being permitted to hold an office in a political organization, the Vice Chair questioned as to whether a judge is prohibited from being a leader in a political organization. The Chair responded affirmatively. The Vice Chair then asked why an attorney running for judicial office should be allowed to hold an office in a political organization if a judge cannot. Mr. Titus answered that the attorney is not burdened with the cloak of constitutional office. Mr. Sykes added that the attorney at this

point is not yet a judge. The Vice Chair again asked why the attorney who seeks to become a judge should not be bound by the same restrictions as a judge. Mr. Bowen remarked that an attorney who runs a political club has an advantage in getting himself or herself elected as a judge.

Mr. Moser suggested that until Canon 5B (1)(b) is held to be unconstitutional, an attorney who is a candidate for judicial office should be on a level playing field with a judge who is running again for judicial office. The same rules apply if appropriate. The Chair inquired as to which rules apply. Mr. Moser answered that all of the provisions under Canon 5B should apply. Mr. Brault remarked that if one assumes that it is unconstitutional to prohibit an attorney who is running for judicial office to hold office in a political organization because of the constitutional right of freedom of association, then this would apply to judges as well. The rules controlling judicial behavior may be lost. Mr. Titus cautioned that if the White case allows candidates to fully express their views as to what they will do as judges, then attorney-candidates should be allowed to hold a political office. Mr. Brault said that he sees things differently than Mr. Titus. If an attorney who is a judicial candidate is allowed to hold a political office, but judges are not, then a judge may challenge the rule by disobedience. It is better to keep it even and restrict the attorneys, also. Mr. Moser added that an equal protection argument could exist as well.

Mr. Bowen moved that Rule 8.2 be amended to contain the entire substance of Canon 5B. The motion was seconded. The Vice Chair pointed out that Mr. Moser's proposed rule also incorporated Canons 5C (4) and 5D, and these should be included as part of the motion. Mr. Bowen accepted the Vice Chair's amendment, which was seconded. The Reporter questioned whether Canons 5C (4) and 5D should be written out in Rule 8.2, or if the Rule should provide that a lawyer is "subject to" those provisions. Mr. Moser replied that sections (1), (2), and (3) of Canon 5B should be written out as black letter law, and the applicable provisions of Canons 5C (4) and 5D could be paraphrased in the comment. The Chair pointed out that Canon 5D provides that it applies to attorneys, but the Canon is not easily accessible to attorneys who may be looking in the Lawyers' Rules of Professional Conduct, rather than in the Code of Judicial Conduct. Mr. Moser responded that it would be adequate to paraphrase Canon 5D in the Comment to Rule 8.2.

The Chair called for a vote on the motion to amend Rule 8.2, and it passed unanimously. The Vice Chair asked that the record reflect that the Style Subcommittee should look at whether the added language should be part of the Comment, the Rule, or a combination of the two. Mr. Sykes noted that the first sentence of Canon 5D is no longer necessary. The Committee approved the Rule as amended.

Agenda Item 2. Consideration of proposed amendments to certain rules in Title 17 to implement alternative dispute resolution

in the proposed new Business and Technology Case Management Program: Rule 17-102 (Definitions), Rule 17-104 (Qualifications and Selection of Mediators), Rule 17-105 (Qualifications and Selection of Persons Other than Mediators), Rule 17-107 (Procedure For Approval), Rule 17-108 (Fee Schedules), and Rule 17-109 (Mediation Confidentiality)

The Vice Chair explained that changes to the Alternative Dispute Resolution (ADR) Rules pertaining to the Business and Technology Program had been suggested at an ADR Subcommittee meeting on August 1, 2002. The Vice Chair presented Rule 17-102, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-102 to correct a typographical error and to add a new section (g) providing for a definition of the term "neutral expert," as follows:

Rule 17-102. DEFINITIONS

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

(a) Alternative Dispute Resolution

"Alternative dispute resolution" means the process of resolving matters in pending litigation through a settlement conference, neutral case evaluation, neutral fact-finding, arbitration, mediation, other non-judicial dispute resolution process, or combination of those processes.

Committee note: Nothing in these Rules is

intended to restrict the use of consensus-building to assist in the resolution of disputes. Consensus-building means a process generally used to prevent or resolve disputes or to facilitate decision making, often within a multi-party dispute, group process, or public policy-making process. In consensus-building processes, one or more neutral facilitators may identify and convene all stakeholders or their representatives and use techniques to open communication, build trust, and enable all parties to develop options and determine mutually acceptable solutions.

(b) Arbitration

"Arbitration" means a process in which (1) the parties appear before one or more impartial arbitrators and present evidence and argument supporting their respective positions, and (2) the arbitrators render a decision in the form of an award that is not binding, unless the parties agree otherwise in writing.

Committee note: Under the Federal Arbitration Act, the Maryland Uniform Arbitration Act, at common law, and in common usage outside the context of court-referred cases, arbitration awards are binding unless the parties agree otherwise.

(c) Fee-for-service

"Fee-for-service" means that a party will be charged a fee by the person or persons conducting the alternative dispute resolution proceeding.

(d) Mediation

"Mediation" means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of the dispute or issues in the dispute. A mediator may identify issues and options, assist the parties or their attorneys in exploring the needs underlying their

respective positions, and, upon request, record points of agreement reached by the parties. While acting as a mediator, the mediator does not engage in arbitration, neutral case evaluation, neutral fact-finding, or other alternative dispute resolution processes and does not recommend the terms of an agreement.

(e) Mediation Communication

"Mediation communication" means speech, writing, or conduct made as part of a mediation, including communications made for the purpose of considering, initiating, continuing, or reconvening a mediation or retaining a mediator.

(f) Neutral Case Evaluation

"Neutral case evaluation" means a process in which (1) the parties, their attorneys, or both appear before an impartial person and present in summary fashion the evidence and arguments supporting their respective positions, and (2) the impartial person renders an evaluation of their positions and an opinion as to the likely outcome of the dispute or issues in the dispute if the action is tried.

(g) Neutral Expert

"Neutral expert" means someone who because of his or her expertise has been selected by the parties or the court to provide technical background information and/or an opinion in a specific area.

~~(g)~~ (h) Neutral Fact-finding

"Neutral fact-finding" means a process in which (1) the parties, their attorneys, or both appear before an impartial person and present evidence and arguments supporting their respective positions as to particular disputed factual issues, and (2) the impartial person makes findings of fact as to those issues. Unless the parties otherwise agree in writing, those findings are not binding.

~~(h)~~ (i) Settlement Conference

"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial person to discuss the issues and positions of the parties in the action in an attempt to resolve the dispute or issues in the dispute by agreement or by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial person may recommend the terms of an agreement.

Source: This Rule is new.

Rule 17-102 was accompanied by the following Reporter's Note.

Due to the nature of mediation involving business and technology issues, the Implementation Committee of the Maryland Business and Technology Case Management Program has recommended that a definition of "neutral expert" be added to Rule 17-102. The neutral expert provides the Alternative Dispute Resolution professional and/or the parties with technical background information or an opinion on specific issues related to the dispute. Originally, the Implementation Committee suggested that the confidentiality aspect of such experts be dealt with in Rule 17-102, but the Alternative Dispute Resolution Subcommittee is recommending that a Committee note concerning confidentiality be added to Rule 17-109.

The Vice Chair said that proposed Rule 16-205, Business and Technology Case Management Program, is pending before the Court of Appeals in the 151st Report. The consultants to the ADR Subcommittee suggested the addition of section (c) to Rule 17-105, Qualifications and Selection of Persons Other than Mediators. The new section provides that in a case being

administered by the Business and Technology Case Management Program, the ADR practitioner, with the consent of the parties and at their expense, may consult with a neutral expert. The definition of "neutral expert" is being proposed for Rule 17-102 because of the addition of section (c) to Rule 17-105. The Vice Chair pointed out that the language in new section (g) which provides that the neutral expert "... has been selected by the parties or the court" does not conform with the language of section (c) of Rule 17-105, which provides that the expert is "... chosen by the ADR practitioner and agreed to by the parties."

The Chair pointed out that Rule 5-706, Court Appointed Experts, provides that the court may enter an order to show cause why expert witnesses should not be appointed. The Vice Chair commented that she does not believe that the court appoints a neutral expert for an ADR proceeding; the appointment is a result of agreement of the ADR practitioner and the parties. To reflect the language of Rule 17-105 (c), the language "or the court" should be deleted from section (g) of Rule 17-102. Judge Heller noted that Rule 17-105 (c) concludes with language providing that the neutral expert is not subject to discovery and is chosen by the ADR practitioner and agreed to by the parties. The Vice Chair remarked that the Style Subcommittee can change the definition of "neutral expert" so that it provides that the neutral expert is selected by the ADR practitioner with the consent of the parties. Section (c) of Rule 17-105 states: "...

the designated ADR practitioner, with the consent of the parties and at their expense, may consult with an expert chosen by the ADR practitioner and agreed to by the parties...". The Committee agreed to a change to section (g) of Rule 17-102 to conform it to section (c) of Rule 17-105. The Committee approved the Rule as amended.

The Vice Chair presented Rule 17-104, Qualifications and Selection of Mediators, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-104 to add a new section (c) providing for additional qualifications for mediators in the Business and Technology Case Management Program, as follows:

Rule 17-104. QUALIFICATIONS AND SELECTION OF MEDIATORS

(a) Qualifications in General

To be designated by the court as a mediator, other than by agreement of the parties, a person must:

(1) unless waived by the court, be at least 21 years old and have at least a bachelor's degree from an accredited college or university;

Committee note: This subsection permits a waiver because the quality of a mediator's skill is not necessarily measured by age or formal education.

(2) have completed at least 40 hours of mediation training in a program meeting the requirements of Rule 17-106;

(3) complete in every two year period eight hours of continuing mediation-related education in a program meeting the requirements of Rule 17-106;

(4) abide by any standards adopted by the Court of Appeals;

(5) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and

(6) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-203 b. relating to diligence, quality assurance, and a willingness to accept a reasonable number of referrals on a reduced-fee or pro bono basis upon request by the court.

(b) Additional Qualifications - Child Access Disputes

To be designated by the court as a mediator with respect to issues concerning child access, the person must:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) have completed at least 20 hours of training in a family mediation training program meeting the requirements of Rule 17-106; and

(3) have observed or co-mediated at least eight hours of child access mediation sessions conducted by persons approved by the county administrative judge, in addition to any observations during the training program.

(c) Additional Qualifications - Mediators of Cases Referred from the Business and Technology Case Management Program of the Circuit Courts

To be designated by the court as a mediator of Business and Technology Program cases, other than by agreement of the parties, the person must:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) within the two years preceding application for approval pursuant to Rule 17-107 have completed at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity (A) at least two of which are among the types of cases that are assigned to the Business and Technology Case Management Program or (B) in addition to having co-mediated, on a non-paid basis, two cases from the Business and Technology Case Management Program with a mediator already approved to mediate these cases;

(3) agree, once approved as a mediator of Business and Technology Case Management Program cases pursuant to Rule 17-107, to serve as co-mediator with at least two mediators each year who seek to meet the requirements of subsection (c)(3) of this Rule.

(4) agree to complete any specific substantive law and/or continuing education training required by the Circuit Administrative Judge or that judge's designee.

~~(c)~~ (d) Additional Qualifications - Marital Property Issues

To be designated by the court as a mediator in divorce cases with marital property issues, the person must:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) have completed at least 20 hours of skill-based training in mediation of marital property issues; and

(3) have observed or co-mediated at least

eight hours of divorce mediation sessions involving marital property issues conducted by persons approved by the county administrative judge, in addition to any observations during the training program.

Source: This Rule is new.

Rule 17-104 was accompanied by the following Reporter's Note.

Since the cases being referred to the Business and Technology Case Management Program are by definition complex cases, the mediators being assigned these cases should have more experience and some demonstrated competency over and above the basic 40 hours mediation training required by Rule 17-104 (a). While the completion of five mediations does not insure that the mediator has the necessary substantive background to mediate all of the cases that will be assigned to this program, it does give a good indication that the mediator is able to apply theory to practice. Many mediators have gained their experience mediating cases in the federal courts, administrative agencies like EEOC or the US Postal Service, or privately. Where the experience was obtained is not the concern, only that the mediator is experienced.

Since the Business and Technology Case Management Program will be statewide and the judges designated by the Circuit Administrative Judges, it is anticipated that there will be a Case Management Coordinator specially assigned to this program who will be responsible for reviewing the applications of the mediators pursuant to Rule 17-107 and insuring that they meet the requirements set forth in Rule 17-104 (c)(2).

If the parties to the mediation prefer to select an individual without these qualifications, that Rule clearly permits it. *Cf.* Rule 17-103 (b)(2) and (c)(4) of these Rules.

> At the present time it is not clear what special substantive law training mediators approved for this track will need. Rather than a specific prerequisite for substantive training, the requirement for continuing education as mandated by the court will allow the court to assess these needs once the program has been in operation. It is also anticipated that the Case Management Coordinators will maintain the background and specific substantive knowledge of each approved mediator so that the parties, their counsel, and the public may know that mediators are trained and selected on the basis of their education and experience that the process is open to anyone who is qualified and/or willing to become so.

The Vice Chair explained that the ADR consultants believe that an ADR practitioner in Business and Technology Program cases must have minimal additional experience beyond that of general practitioners. A new section (c) is being proposed to address this. The Vice Chair asked about the meaning of part (B) of subsection (c)(2). Ms. Wohl stated that in addition to having mediated five non-domestic court cases or five non-domestic non-circuit court cases of comparable complexity, a person has to have co-mediated two Business and Technology Program cases if, of the five mediated cases, less than two were among the types of cases assigned to the Business and Technology Program.

Mr. Sykes asked if the word "or" after part (A) of subsection (c)(2) should be changed to the word "and." Ms. Wohl answered that the word "or" should remain. Mr. Karceski commented that by leaving subsection (c)(2) in the disjunctive, it provides an ADR practitioner the opportunity to mediate

Business and Technology cases. Otherwise, he or she may not be able to make the list, because the requirements would be so onerous. Mr. Bowen clarified that someone has to mediate five cases, and if two of the five are not specialized, then the person has to co-mediate two Business and Technology cases. The Style Subcommittee will redraft this provision to make it clear.

Mr. Klein pointed out that subsection (c)(2) does not clearly state that a person has to have served as a mediator; the way the subsection is worded, it could refer to a party. The Vice Chair said that the intent is to require that the person has mediated, and the Rule should state this.

The Vice Chair pointed out an error in subsection (c)(3) -- the reference to "subsection (c)(3)" should be "subsection (c)(2)." The Committee agreed by consensus to this change.

Turning to subsection (c)(4), the Vice Chair explained that the subject matter is too broad and varied to set forth the specifics of the required training. The Reporter inquired as to whether this would be incorporated into the case management plan. The Vice Chair replied affirmatively, noting that although it is possible that requirements may vary for different jurisdictions, this provision is still somewhat vague. The Chair expressed the concern that it is onerous to revise the differentiated case management plans. Judge Heller agreed and added that this is not really a matter of different jurisdictions, but more a matter of different types of cases having different educational needs.

The Reporter commented that it is a question of how to find

out what specific substantive law or continuing education training is required by the Circuit Administrative Judge. The Vice Chair responded that the County Administrative Judge could be consulted. Judge Missouri remarked that the County Administrative Judges should articulate this kind of information for everyone's edification. Ms. Wohl noted that the Judicial Institute is planning to offer a course for judges and one for the mediators, also. The Vice Chair stated that there is a minor problem with the wording of subsection (c)(4) -- it sounds as if substantive law and continuing education training requirements are unrelated. The wording should be: "agree to complete any continuing education or training...". The Committee agreed by consensus to this change.

Mr. Titus said that he did not like Rule 17-104. The Rule contains so many requirements that it creates a very small class of mediators. Subsection (c)(4) adds another layer of requirements that may exclude good mediators. Montgomery County has a very good mediation program in place, and more restrictions placed on it may interfere with it.

The Vice Chair expressed the view that the requirements of the Rule are not burdensome. Judge Norton noted that the language of the Rule allows the parties to pick any mediator they want. There are many good mediators who do not have the requisite qualifications. Judge Heller commented that the system in Baltimore City works well. They categorize their mediators based on the State application the mediators have to fill out.

This gives the court assurance that the mediators have the minimum expertise necessary, and the parties can choose their own mediator. Mr. Brault agreed with Mr. Titus that the program in Montgomery County works very well. The Honorable Paul H. Weinstein, who is the Administrative Judge in Montgomery County, is familiar with the mediators on the list. Judge Heller noted that the Rules pertaining to the court list are already in existence and are not onerous. The Committee approved the Rule as amended.

The Vice Chair presented Rule 17-105, Qualifications and Selections of Persons Other than Mediators, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-105 by adding a new section (c) which provides for consultation with experts in cases in the Business and Technology Case Management Program, as follows:

Rule 17-105. QUALIFICATIONS AND SELECTIONS OF PERSONS OTHER THAN MEDIATORS

(a) Generally

Except as provided in section (b) of this Rule, to be designated by the Court to conduct an alternative dispute resolution proceeding other than mediation, a person, unless the parties agree otherwise, must:

(1) abide by any standards adopted by the Court of Appeals;

(2) submit to periodic monitoring of court-ordered alternative dispute resolution proceedings by a qualified person designated by the county administrative judge;

(3) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-203 b. relating to diligence, quality assurance, and a willingness to accept a reasonable number of referrals on a reduced-fee or pro bono basis upon request by the court;

(4) either (A) be a member in good standing of the Maryland bar and have at least five years experience in the active practice of law as (i) a judge, (ii) a practitioner, (iii) a full-time teacher of law at a law school accredited by the American Bar Association, or (iv) a Federal or Maryland administrative law judge, or (B) have equivalent or specialized knowledge and experience in dealing with the issues in dispute; and

(5) unless waived by the court, have completed a training program that consists of at least eight hours and has been approved by the county administrative judge.

(b) Judges and Masters

A judge or master of the court may conduct a non-fee-for-service settlement conference.

(c) Consultation With Expert

When a person designated by the court to conduct an Alternative Dispute Resolution (ADR) proceeding in a case being administered in the Business and Technology Case Management Program believes that, because of the technical complexity of the subject matter of the case, it would be helpful to have the assistance of an expert to educate the designated person about the technical areas involved, the designated ADR

practitioner, with the consent of the parties and at their expense, may consult with an expert chosen by the ADR practitioner and agreed to by the parties. Unless otherwise agreed by the parties, the consultation shall not exceed two hours, and the ADR practitioner shall be compensated at an agreed-upon hourly rate. Any expert consulted pursuant to this Rule shall be bound by the confidentiality requirements of Rule 17-109 and is not subject to the discovery provisions of Rule 5-706 or the requirements to testify in court or to advise the court of the expert's opinion.

Cross reference: See Rules 16-813, Canon 4H and 16-814, Canon 4H.

Source: This Rule is new.

Rule 17-105 was accompanied by the following Reporter's Note.

The variety and complexity of the cases being referred to mediation from the Business and Technology Case Management Program make it difficult to provide a comprehensive, substantive training program that would accommodate all cases. In some cases, the parties may select a mediator they feel already has the substantive competency to mediate the matter. In other cases, the parties may feel that they can provide the necessary substantive background to the mediator without the need for an expert. Or the parties may choose to hire an agreed-upon expert as set forth in this Rule. Since the consent of the parties is required before an expert is selected, there is no need to maintain minimum qualifications for the expert. *Cf.* Md. Rule 5-706.

The Vice Chair explained that section (c) is new and provides for a neutral expert to be chosen by the ADR practitioner with the consent of the parties and at their

expense. This raises the issue of whether this provision should not be limited to ADR in the Business and Technology Case Management Program. Judge Heller agreed that the "neutral expert" should apply to all ADR proceedings. The Chair suggested that the reference in section (c) to the "Business and Technology Case Management Program" could be deleted, and the Committee agreed by consensus with this suggestion.

The Vice Chair expressed the opinion that the second sentence of section (c) is not necessary and neither is the third sentence, the principle of which is already expressed in Rule 17-109, Mediation Confidentiality. The Reporter pointed out that the confidentiality to which Rule 17-109 refers only applies to mediation. Ms. Wohl said that mediation is the only process that must be confidential. The Chair remarked that the situation may arise where the expert requires information from the parties to help the expert express an opinion or make a recommendation. If there is no confidentiality, the expert would be permitted to provide information to someone who may take advantage. This does not have to be limited to mediation. The Vice Chair inquired as to how, in the context of arbitration, the arbitrator would acquire confidential information from the parties if an expert is brought in at the request of the arbitrator with the consent of the parties. The Chair commented that in a Business and Technology ADR proceeding which is not a mediation, there may be an issue of the value of stock or the financial stability of a company, and the expert should not have carte blanche to give out

information. Sealing the lips of the expert may be important. Confidentiality of experts ought to apply to any ADR proceeding, even if the parties agree to the expert.

Mr. Brault remarked that in Montgomery County, the cases involving experts are covered by protective orders or agreements made applicable to experts. The Chair responded that this is careful lawyering, but not all of these situations are covered by protective orders or agreements. Mr. Brault said that he viewed arbitration as an alternative to trial but subject to the same rules and requirements as a trial in court. If no one raises the question of protecting information, it is his or her own fault. The Chair stated that the Rule should not be drafted to allow a gain to an individual at someone else's expense. Judge Heller pointed out that because Rule 17-109 provides confidentiality only in mediation proceedings, it is not redundant to retain the last sentence of Rule 17-105 (c).

The Vice Chair asked Ms. Wohl if a provision pertaining to any kind of confidentiality, including that related to experts and witnesses who appear in any ADR proceeding, should be added to the ADR Rules. Mr. Brault then questioned as to whether arbitration is as public as a trial. The Chair replied that it might or might not be. Often parties agree to arbitration to avoid going to court. Mr. Brault remarked that anyone can walk into the American Arbitration Association hearing rooms. He asked if the transcripts or testimony of those hearings are confidential. If an expert testifies at a hearing, can someone

get the transcript of the hearing to impeach the expert in another case? Judge Heller noted that neutral case evaluation, settlement conferences, and mediation are considered confidential as distinguished from arbitration, which is not.

Ms. Wohl said that there is an evidentiary exclusion rule pertaining to settlement conferences. The Chair added that it is Rule 5-408, Compromise and Offers of Compromise. Mr. Brault commented that negotiations for settlement, although not admissible, are not totally confidential for other purposes. The Chair observed that pursuant to Rule 5-408, if a case does not settle, nothing said in the conference is admissible at trial. Technical information is in the hands of an expert, who should be prohibited from sharing that information if it would prejudice the parties. Less sophisticated attorneys may not take this into consideration. An expert who receives trade secrets should be prohibited from giving those secrets to anyone without the consent of the parties. The Vice Chair said she does not disagree with this, but her concern is that the Rule is inferentially excluding other types of ADR from confidentiality requirements. She inquired as to whether neutral case evaluations have to be confidential. Mr. Brault commented that in Montgomery County, all the people involved in the ADR proceeding sign a confidentiality agreement. In the District of Columbia, the ADR proceeding cannot begin until a confidentiality agreement is signed.

The Vice Chair stated that mediation and settlement

conferences are confidential. She asked if this is true for arbitration and neutral case evaluation. Ms. Wohl replied that arbitration is not confidential. Mr. Brault added that the parties could agree to make it confidential. Ms. Wohl said that neutral case evaluation involves getting an opinion. The parties either want confidentiality, or they do not.

The Chair suggested that Rule 17-105 (c) be rewritten to include the following statement: "Unless the parties agree otherwise, any expert consulted pursuant to this Rule shall be bound by the confidentiality requirements of Rule 17-109." The Vice Chair suggested that this issue should go back to the Subcommittee. The Chair noted that the persons interested in the Business and Technology Case Management Program are concerned with this issue. The Vice Chair stated that they will be invited to the Subcommittee meeting.

The Vice Chair presented Rule 17-107, Procedure for Approval, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-107 to add references to clerks and judges in the Business and Technology Case Management Program and to add a Committee note, as follows:

Rule 17-107. PROCEDURE FOR APPROVAL

(a) Application

A person seeking designation to conduct alternative dispute resolution proceedings pursuant to Rule 2-504 shall file an application with the clerk of the circuit court and/or with the clerk of the Business and Technology Case Management Program from which the person is willing to accept referrals. The application shall be substantially in the form approved by the State Court Administrator and shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule 17-104, if the person is applying for designation as a mediator, or Rule 17-105 (a), if the person is applying for designation to conduct alternative dispute resolution proceedings other than mediation. The State Court Administrator may require the application and documentation to be in a form that can be stored in a computer.

(b) Approved Lists

After any investigation that the county administrative judge and/or the Business and Technology Case Management Program Judge chooses to make, the county administrative judge and/or the Business and Technology Case Management Program Judge shall notify each applicant of the approval or disapproval of the application and the reasons for a disapproval. The clerk shall prepare a list of mediators found by the county administrative judge and/or the Business and Technology Case Management Program Judge to meet the qualifications required by Rule 17-104 and a separate list of persons found by the county administrative judge and/or the Business and Technology Case Management Program Judge to meet the qualifications required by Rule 17-105 (a) for conducting other alternative dispute resolution proceedings. Those lists, together with the applications of the persons on the lists, shall be kept current by the clerk and be available in the clerk's office to the public.

Committee note: The list of mediators approved pursuant to Rule 17-104 (c) to mediate cases referred from the Business and Technology Case Management Program shall include information about the mediators' qualifications, experience, background, and any other information that would be helpful to litigants selecting an individual best qualified to mediate a specific case.

(c) Removal from List

After notice and a reasonable opportunity to respond, the county administrative judge and/or the Business and Technology Case Management Program Judge shall remove a person from a list if the person ceases to meet the applicable qualifications of Rule 17-104 or Rule 17-105 (a) and may remove a person for other good cause.

Source: This Rule is new.

Rule 17-107 was accompanied by the following Reporter's Note.

The amendments to Rule 17-107 provide the Business and Technology Case Management Program the same authority to manage ADR practitioners in its program as the County Administrative Judges presently have. Since the mediator requirements for the Business and Technology Case Management Program are more stringent, it is appropriate that the program maintain its own lists and monitor its own program.

The Vice Chair explained that references to various aspects of the Business and Technology Case Management Program have been added to Rule 17-107. She suggested that the Rule be rewritten so that the first part refers to alternative dispute resolution proceedings, in general, and the second part refers to the

Business and Technology Case Management Program. The Reporter asked if this Rule should be sent back to the Subcommittee, or if the Style Subcommittee can make the changes. The Vice Chair expressed the opinion that this can be handled by the Style Subcommittee, and the Committee agreed to this by consensus. The Committee approved the Rule as presented.

The Vice Chair presented Rule 17-108, Fee Schedules, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-108 to add a new section (b) pertaining to fee schedules for mediators in the Business and Technology Case Management Program, as follows:

Rule 17-108. FEE SCHEDULES

(a) Circuit Court Programs

Subject to the approval of the Chief Judge of the Court of Appeals, the county administrative judge of each circuit court may develop and adopt maximum fee schedules for persons conducting each type of alternative dispute resolution proceeding other than on a volunteer basis. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified persons willing to provide those services and the ability of litigants to pay for those services. A person designated by the court, other than on the agreement of the parties, to conduct an alternative dispute resolution proceeding

under Rule 2-504 may not charge or accept a fee for that proceeding in excess of that allowed by the schedule. Violation of this Rule shall be cause for removal from all lists.

(b) Business and Technology Case Management Program

The Circuit Administrative Judge or that judge's designee may develop and adopt maximum fee schedules for persons conducting each type of alternative dispute resolution proceeding other than on a volunteer basis in the Business and Technology Case Management Program.

Source: This Rule is new.

Rule 17-108 was accompanied by the following Reporter's Note.

Rule 17-108 (b) gives authority to the Circuit Administrative Judge or that judge's designee to set fee schedules for persons conducting alternative dispute resolution proceedings in the Business and Technology Case Management Program. This authority is currently given to each county administrative judge in other cases. It is recommended that the fee set for mediators be $200 per hour unless the parties agree otherwise. The recommended rate is higher than that set in most circuit courts, but given the complexity of the cases referred to this Program and the added experience required of the mediator, the higher rate is warranted.

The Vice Chair explained that a new section (b) has been added pertaining to fee schedules for the Business and Technology Case Management Program. She pointed out that since the Business and Technology Case Management Program is also in the circuit court, the tagline to section (a) will have to be changed. The authority to set fee schedules is given to the circuit

administrative judge or that judge's designee.

Mr. Brault questioned as to whether section (b) runs afoul of antitrust laws. The Chair remarked that the court can adopt a fee schedule as to court-referred ADR, but the court cannot tell someone the highest fee that person can charge. Mr. Zarnoch commented that the Rule does not violate antitrust laws, because of the state action doctrine, which exempts legitimate actions of the state from the antitrust laws. Judge Heller observed that under the current system, unless the parties agree to their own mediator, if the court orders mediation, the mediator cannot charge more than the maximum fee schedule adopted by the circuit court.

The Vice Chair noted that there had been a dispute about ordering parties to pay for mandated alternative dispute resolution. The Court of Appeals decided that parties could not be ordered to pay. To encourage the use of ADR, the cost should not be too high. Ms. Wohl pointed out that this does not apply to the cost of experts. Judge Heller added that the parties can choose their own mediator. Under the current schedule, a person conducting ADR may not charge more than $150 per hour.

Mr. Klein noted that section (b) is structured differently. Section (a) refers to a person conducting ADR by agreement of the parties, but section (b) does not. The Chair inquired as to why section (b) is necessary. Ms. Wohl replied that what is being contemplated is two different fee schedules -- those for court-ordered programs and those for Business and Technology Case

Management Programs. The Vice Chair suggested that the two sections could be collapsed into one, taking into account the approval by the county administrative judge and the circuit administrative judge. Judge Heller commented that the Rule should require either the approval of the county or the circuit administrative judge. Mr. Sykes asked if a judge is permitted to fix different fees for different cases. A literal reading of the Rule could be that the fee schedules are discretionary. Judge Heller responded that a person designated by the court to conduct ADR could not charge more than the maximum fee listed in the schedule. This is not true for persons selected by the parties to conduct ADR.

The Vice Chair suggested that section (b) be deleted from the Rule and section (a) be left as it appears now, because it covers the ability of the court to set fee schedules. The question is whether the county administrative judge or the circuit administrative judge should develop and adopt fee schedules. Judge Missouri commented that in some instances, it may not matter which judge it is, because the circuit administrative judge is the county administrative judge for his or her county. The problem is that a one-judge county will not have a judge in the Business and Technology Case Management Program. Therefore, the Rule should provide that the circuit administrative judge or that judge's designee may develop and adopt maximum fee schedules. The designee could be the county administrative judge. This will provide greater uniformity. The

Committee agreed by consensus to change the language in section (a) from "the county administrative judge" to "the circuit administrative judge" and to delete section (b) entirely.

Mr. Klein pointed out that the third sentence in the Reporter's note referring to a $200 fee for mediators should be deleted. The Reporter remarked that the Reporter's notes disappear and stated that this note will be revised. She suggested that a Committee note be added providing that the fee schedules reflect the complexity of cases and any additional experience that is required of the mediator. The Chair suggested that the following language be put into the Rule after the word "services" the second time it appears: "the complexity of cases, and the additional experience required by the mediator." The word "and," which is now before the word "the" and after the word "services" the first time it appears in the Rule, would be deleted.

Mr. Brault noted that the parties can agree to a different fee. The Chair said that the language "unless the parties agree otherwise" could be added in. The concern is that the mediator could raise the fee. The mediator could tell the parties that the mediation was supposed to be three sessions for two hours each, but since it is being changed to eight sessions at three hours each, the fee will be higher. Judge Heller remarked that under the court order, only two sessions of mediation are required. She said that she had a grave concern that abuse and pressure could give the mediators the opportunity to raise the

fees if additional sessions are needed in a particular case. Mr. Brault inquired as to whether the mediator could refuse the case. The Vice Chair answered affirmatively, but she pointed out that mediation can be mandated over the objection of the parties. If the judge states that the maximum fee is two sessions at $150 per hour, that is the fee, and there is no opportunity to change it later. The Reporter observed that except in proceedings under Rule 9-205, the parties can opt out of mediation. Judge Heller added that in Baltimore City, the mediation program is very successful, and there are very few motions to opt out.

The Chair suggested that the language in the third sentence which reads: "other than on the agreement of the parties" should be stricken. The Vice Chair added that it should be permissible for the court to designate someone chosen by the parties who charges more than the fee schedule. The Chair suggested that, subject to styling, the third sentence of the Rule read as follows: "Unless the parties have agreed to recommend that the court designate a particular ADR practitioner, a person designated by the court may not charge or accept a fee for that proceeding in excess of that allowed by the schedule." Mr. Sykes pointed out that the wording should be "... a person selected and designated by the court..." If the court chooses the mediator and the parties do not, the mediator is bound by the fee schedules. The Committee agreed by consensus that this is the intended meaning and that the Style Subcommittee could revise the Rule to clarify it. The Committee approved the Rule as amended.

The Vice Chair presented Rule 17-109, Mediation Confidentiality, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-109 to add a Committee note following section (a), as follows:

Rule 17-109. MEDIATION CONFIDENTIALITY

(a) Mediator

Except as provided in sections (c) and (d) of this Rule, a mediator and any person present at the request of the mediator shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

Committee note: The confidentiality requirements of this section are applicable to neutral experts.

(b) Parties

Subject to the provisions of sections (c) and (d) of this Rule, (1) the parties may enter into a written agreement to maintain the confidentiality of all mediation communications and to require any person present at the request of a party to maintain the confidentiality of mediation communications and (2) the parties and any person present at the request of a party may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(c) Signed Document

A document signed by the parties that reduces to writing an agreement reached by the parties as a result of mediation is not

confidential, unless the parties agree in writing otherwise.

Cross reference: See Rule 9-205 (d) concerning the submission of a memorandum of the points of agreement to the court in a child access case.

(d) Permitted Disclosures

In addition to any disclosures required by law, a mediator and a party may disclose or report mediation communications to a potential victim or to the appropriate authorities to the extent that they believe it necessary to help:

(1) prevent serious bodily harm or death, or

(2) assert or defend against allegations of mediator misconduct or negligence.

Cross reference: For the legal requirement to report suspected acts of child abuse, see Code, Family Law Article, §5-705.

(e) Discovery; Admissibility of Information

Mediation communications that are confidential under this Rule are privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Source: This Rule is new.

Rule 17-109 was accompanied by the following Reporter's Note.

The Implementation Committee of the Maryland Business and Technology Case Management Program recommended the addition of a definition of "neutral expert" with language clarifying that the expert is to be bound by confidentiality requirements. The Alternative Dispute Resolution Subcommittee is proposing to add a Committee note at the end of section (a) of Rule 17-109 drawing

attention to the confidentiality of neutral experts.

The Vice Chair explained that a Committee note has been added to section (a). The Reporter added that this Rule applies only to mediations. Mr. Sykes suggested that the language of the Committee note should be added to the text of section (a). The Vice Chair questioned about the use of an expert in a mediation. Ms. Wohl commented that in Business and Technology cases, the parties may agree to have the mediator meet with the neutral expert for an hour or two before the mediation so the mediator is educated about the technological aspects of the dispute. The Vice Chair pointed out that in that situation, the neutral expert is not present in the mediation, yet the expert should maintain confidentiality. She suggested that the word "present" in section (a) should be changed to the word "included." This broadens the language, and the Committee note serves as a further reminder.

The Chair agreed with Mr. Sykes that the language of the Committee note should be moved into the body of the Rule. Mr. Sykes suggested that the language "or otherwise participating..." be added after the word "present." The Chair observed that if this change is made, the Committee note could remain as such. The Committee approved Mr. Sykes' change by consensus. The Committee approved the Rule as amended.

Agenda Item 3. Consideration of proposed new rules concerning the performance of marriage ceremonies by judges: Rule 16-821

(Performance of Marriage Ceremonies by Judges - Applicability of Rules), Rule 16-822 (Registry of Judges), Rule 16-823 (Scheduling), Rule 16-824 (Judicial Action), and Rule 16-825 (Restrictions)

The Chair presented Rule 16-821, Performance of Marriage Ceremonies by Judges -- Applicability of Rules, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-821, as follows:

Rule 16-821. PERFORMANCE OF MARRIAGE CEREMONIES BY JUDGES – APPLICABILITY OF RULES

Rules 16-821 through 16-825 apply to all Maryland judges, including retired judges, who wish to perform marriage ceremonies. Cross reference: Code, Family Law Article, §2-406.

Source: This Rule is new.

Rule 16-821 was accompanied by the following Reporter's Note.

Chapter 207, Acts of 2002 (HB 106), adds judges to the list of persons authorized to perform marriage ceremonies in Maryland. The General Court Administration Subcommittee recommends that a set of rules be effected to provide some procedural guidelines for judges who wish to perform marriage ceremonies. Until the revision and reorganization of Title 16 is completed, the Rules are proposed to be added as Chapter 900 of that Title.

The Rules are proposed to be numbered 16-821 through 16-825 until the revision and reorganization of the Rules in Title 16 can be completed.

The Chair explained that retired judges have specifically been allowed to perform marriage ceremonies, which is consistent with the unwritten legislative history of House Bill 106. The Committee deferred approval of the Rule, pending consideration of all of the rules in Agenda Item 3.

The Chair presented Rule 16-822, Registry of Judges, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-822, as follows:

Rule 16-822. REGISTRY OF JUDGES

(a) Registration by Judge

The State Court Administrator shall compile a list of judges who are willing to perform a marriage ceremony. The Administrative Office of the Courts shall maintain a registry of these judges.

(b) Dissemination of Names

The State Court Administrator shall disseminate a list of the names of judges in the registry to the Clerk of the Circuit Court for each county, the Chief Clerk of the District Court, and other interested persons. The State Court Administrator shall determine the manner in which the list is disseminated

and may impose appropriate restrictions concerning the list.
Committee note: Appropriate restrictions may include restrictions on non-consensual disclosure of a judge's home address and telephone number and restrictions designed to avoid the appearance of personal benefit by a judge.

(c) Failure to Register

The failure of a judge to register with the Administrative Office of the Courts does not invalidate an otherwise lawful marriage.

Committee note: The failure to comply with a requirement of this Chapter or other provision of law concerning marriages may be a violation of the Code of Judicial Conduct.

Source: This Rule is new.

Rule 16-822 was accompanied by the following Reporter's Note.

See the Reporter's Note to proposed new Rule 16-821.

The Chair told the Committee that at the General Court Administration Subcommittee meeting, Judge McAuliffe had expressed the concern that a judge, who is not listed on the registry, should be able to perform marriages for friends. The Chair suggested that section (c) should be rewritten to make this point clear, and he asked if the Style Subcommittee could do so. Judge McAuliffe also had suggested two registries -- a general one to be disseminated to members of the general public who are looking for a judge to perform a ceremony, and a limited one,

consisting of the names of judges who perform marriage ceremonies occasionally for people they know. The Chair did not agree with the idea of creating two separate lists.

Mr. Titus suggested that language could be added to section (c) which would explain the purpose of the registry so that judges who do not register are not evading the law when they perform marriages. Mr. Bowen recommended that section (c) should be rewritten to provide that a judge who has not registered with the Administrative Office of the Courts is authorized to perform marriages. Ms. Veronis suggested that judges who are not registered can be referred to in Rule 16-825. The Chair said that Rule 16-822 should expressly provide that judges can perform marriages whether or not they are listed in the registry. Judge Heller inquired as to why there has to be a registry. Mr. Titus asked if the purpose of the registry is to give judges the ability to perform marriages or to inform the public that the judges are available. Judge Johnson responded that it is the latter purpose.

Ms. Veronis pointed out that the legislation that authorizes judges to perform marriage ceremonies is not limited in applicability to Maryland judges. Out-of-state judges and federal judges can also perform the ceremonies. Judge Norton observed that the virtue of section (c) is that judges who do not wish to participate are not constantly put in the position of refusing people who ask them to perform marriage ceremonies. He expressed his preference for the language of section (c), as

originally drafted. Judge Missouri expressed the view that the word "failure" in section (c) has a negative connotation. Judge Norton remarked that this could be stated affirmatively. Mr. Klein suggested that the sentence could read: "An otherwise lawful marriage performed by a judge who is not registered is valid." Judge Heller commented that Judge McAuliffe had stated that although he might not want his name to be on the registry, he might be interested in conducting a ceremony occasionally. He would not like to feel that he had not fulfilled his obligations because he did not register. Mr. Karceski noted that it may be difficult to take one's name off of the list if a judge changes his or her mind. The Committee deferred approval of the Rule, pending consideration of all of the Rules in Agenda Item 3.

The Chair presented Rule 16-823, Scheduling, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-823, as follows:

Rule 16-823. SCHEDULING

(a) Clerks' Responsibilities

Parties who wish to have a judge perform a marriage ceremony shall contact the appropriate Clerk of the Circuit Court for the county in which the ceremony is to take place and provide the information that the

Clerk requests. The Clerk is responsible for making the arrangements required by law for the performance of the ceremony and for recording and reporting the marriage. The parties are responsible for making all other arrangements.

Committee note: Except for communications necessary to determine a judge's willingness and availability to perform the ceremony, a judge's staff should not be used to make arrangements for a marriage ceremony and should refer inquiries to the appropriate Clerk of Court.

(b) Non-Interference with Court Functions

Ceremonies shall be scheduled so as not to interfere with the prompt disposition of cases and other judicial and administrative duties of the judge. The Clerk shall ensure that the use of public resources, including court personnel and courthouse facilities, is reasonable in relation to the performance of a marriage ceremony and is consistent with the security of the courthouse.

(c) Place of Ceremony

A judge may perform a marriage ceremony at a location other than in a courthouse.

(d) Time of Ceremony

A judge may perform a marriage ceremony at any time, including on a court holiday or after regular court hours.

Source: This Rule is new.

Rule 16-823 was accompanied by the following Reporter's Note.

See the Reporter's Note to proposed new Rule 16-821.

Mr. Dean asked about the clerk making the arrangements for the marriage ceremony, which is provided for in section (a). Mr. Shipley noted that several of the e-mails critiquing the proposed Rules expressed opposition to the clerk arranging the marriage ceremony that is to be conducted by a judge. Judges from outside of a particular county may be performing marriages in that county, and it could be difficult to contact those judges. Mr. Shipley stated that if he performs a marriage outside of the courthouse, his staff does not arrange the ceremony. Requiring the clerk to arrange the ceremony creates too much of a burden for the clerk's office. Judge Heller said that she had e-mailed a comment that the clerks should not be responsible for scheduling the marriage ceremonies conducted by judges.

The Chair suggested that the procedure should be that the judge who agrees to perform a marriage should contact the clerk. He asked if it is appropriate for the clerk to be responsible for recording and reporting the marriage, and Mr. Shipley replied in the affirmative, adding that the clerks' objection is to scheduling the ceremony. Ms. Veronis commented that one of the concerns is that an individual judge scheduling a wedding ceremony might cause a conflict with the use of the courthouse facilities. Putting the clerk in charge of scheduling gives some control in the process. Mr. Bowen remarked that the person who wants a judge to perform a marriage ceremony would apply to the clerk who assigns the time and courtroom. The clerk knows the

schedule. Judge Heller pointed out that the clerk does not know the courtroom schedules in Baltimore City. Mr. Titus questioned as to why the clerk has to be contacted at all. When a member of the clergy performs a marriage, the clerk is not involved in the scheduling. The Chair remarked that an out-of-state judge may want to schedule a marriage ceremony in the courthouse chapel and has to check with the clerk to find out if the chapel is already in use.

Mr. Sykes noted that the statute authorizes judges to perform marriage ceremonies, just as it authorizes ministers. Why should more attention be paid to judges than to members of the clergy? Why must there be a registry of judges? The Chair responded that the Court of Appeals would like some rules to flesh out the statute and provide judges with some direction. Mr. Sykes commented that there should not be any rules beyond providing for a registry. A judge can let the clerk know to record the marriage.

Mr. Bowen said that a substantive question exists as to recalling retired judges. The Chair pointed out that certain judges retire before the Commission on Judicial Disabilities removes the judge for ethical violations. Mr. Bowen observed that the statute provides that retired judges from out-of-state can perform marriages. How can an out-of-state judge be recalled pursuant to the Maryland Rules? Judge Heller noted that section (b) of proposed new Rule 16-825, Restrictions, provides: "A retired judge may not perform a marriage ceremony unless the

judge has been recalled in accordance with Code, Courts Article, §1-302."

The Chair commented that the Court of Appeals may not want a retired judge who was removed from office for ethical violations to perform marriage ceremonies. Senator Stone remarked that he did not think that the legislature focused on this aspect when it passed the legislation. Mr. Bowen expressed the view that it does not make any difference as to the reason that the judge retired. The statute provides that any retired judge can perform a marriage. The Chair said that it is a question of the appearance of certain retired judges, such as those who have become senile.

Senator Stone reiterated that a retired judge from another state can perform a marriage in Maryland. Ms. Veronis told the Committee that some judicial ethics opinions from other states have held that performing marriages is a judicial function. The Chair disagreed with this. Mr. Sykes again suggested that the Rules provide only for a registry. The Chair referred to the draft administrative order written by Ms. Veronis upon which the Rules pertaining to judges performing marriages are based. Ms. Veronis explained that the draft order contains some issues which may need resolution. The administrative order did not go to the full Court of Appeals. Chief Judge Robert M. Bell had asked the Rules Committee Chair to present the matter to the Rules Committee.

Mr. Sykes expressed the view that the General Court

Administration Subcommittee should discuss the proposed Rules further. The Chair said that the proposed Rules could be discussed at the next meeting of the Judicial Council. The Reporter added that the Judicial Ethics Committee will be meeting next week and also could discuss the proposed Rules. Judge Missouri stated that the Judicial Council will meet on October 17, 2002. The Chair commented that he will ask that the proposed Rules be part of the agenda of the Judicial Council meeting. He and Judges Missouri and Heller will attend the meeting. Ms. Veronis can report back to the Rules Committee as to the Judicial Ethics Committee's response.

Judge Missouri stated that the Conference of Circuit Judges is meeting on October 23, 2002. The Chair remarked that this could be placed on the agenda for that meeting. Some of the issues to consider are recalling retired judges to perform marriages and whether the clerk should schedule marriage ceremonies performed by a judge. Judge Heller added that another issue is whether a judge can charge for performing a marriage ceremony on his or her lunch hour. The Reporter commented that there may be an influx of requests for judges to perform marriage ceremonies. The clerks who perform these ceremonies are paid a statutory fee. If ceremonies by judges are free, the public will seek the less costly option. Ms. Veronis observed that in other states, marriages performed by judges during business hours are free. As for marriages performed on the weekends, some states allow judges to charge, and some do not. The Chair referred to

section (b) of proposed Rule 16-823, which is entitled "Non-interference with Court Functions." The Vice Chair remarked that she did not envision allowing the resources of an already strained judicial system to be taken up with performing marriage ceremonies. She had envisioned judges performing the ceremonies on the weekends. Judge Missouri observed that some judges will conduct ceremonies in the middle of the workday. The Committee deferred approval of the Rule, pending consideration of all of the Rules in Agenda Item 3.

The Chair presented Rule 16-824, Judicial Action, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-824, as follows:

Rule 16-824. JUDICIAL ACTION

(a) Ceremony

A judge who performs a marriage ceremony shall use substantially the form of ceremony used by the Clerk of the Circuit Court in the county where the marriage is to be performed. If the parties request, the ceremony may include religious references. A judge may perform the ceremony in conjunction with an official of a religious order or body.

(b) License

A judge who performs a marriage

ceremony shall (1) complete the marriage license, (2) provide a copy of the license to the parties, and (3) return the completed license to the issuing clerk of court for recordation and reporting of the marriage as required by law. A judge who grants a request for the issuance of a marriage license under Code, Family Law Article, §2-405 (d) also may perform the marriage.

(c) Refusal to Perform Ceremony

A judge may decline to perform any particular marriage ceremony.

Source: This Rule is new.

Rule 16-824 was accompanied by the following Reporter's Note.

See the Reporter's Note to proposed new Rule 16-821.

The Vice Chair expressed the opinion that judges should not be limited to using the ceremony used by the clerk, which is provided for in section (a) of Rule 16-824. The Chair said that the judge can add language to the ceremony. The Vice Chair suggested that the first sentence of section (a) should be revised. Mr. Brault suggested that the language could indicate that the form of the ceremony shall include the form used by the clerk.

The Chair inquired as to whether section (b) correctly states all that a judge is supposed to do when performing a marriage ceremony. Mr. Shipley replied affirmatively, adding that this is what ministers do when performing marriage ceremonies. The Committee deferred approval of the Rule, pending

consideration of all of the Rules in Agenda Item 3.

The Vice Chair presented Rule 16-825, Restrictions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES AND ATTORNEYS

CHAPTER 900 - MISCELLANEOUS

ADD new Rule 16-825, as follows:

Rule 16-825. RESTRICTIONS

(a) Judge's Own Ceremony

A judge may not perform his or her own marriage ceremony.

(b) Recall of Retired Judges

A retired judge may not perform a marriage ceremony unless the judge has been recalled in accordance with Code, Courts Article, §1-302.

(c) Compensation

A judge may receive no compensation for performing a marriage ceremony other than the compensation permitted by Rule 16-813, Maryland Code of Judicial Conduct, Canon 4E [proposed revised Canon 4H].

Committee note: See Code, Family Law Article, §2-410 as to the fees a clerk or deputy clerk may charge for performing a marriage ceremony.

(d) Advertising or Other Solicitations

A judge may not give or offer to give any reward to any person as an inducement to have the judge perform a marriage ceremony. A judge may not advertise or otherwise

solicit individuals contemplating marriage to choose the judge to perform the ceremony.

Source: This Rule is new.

Rule 16-825 was accompanied by the following Reporter's Note.

See the Reporter's Note to proposed new Rule 16-821.

The Committee did not discuss the Rule.

The Chair stated that Rules 16-821 through 16-825 would be held pending their consideration by the other committees.

Mr. Karceski asked about the letter from Professor Warnken, which requests a reconsideration of Rule 4-216, Pretrial Release. (See Appendix 1). The Reporter suggested that if Rule 4-216 is to be reconsidered, those persons interested in the subject should be invited to the meeting where it will be discussed. The Chair commented that this Rule has been before the Committee many times, and it should go to the Court of Appeals for its consideration. Anyone wishing to make comments will have an opportunity when the Court hears the matter. The Committee agreed by consensus that Rule 4-216 would not be reconsidered by the Committee.

The Chair adjourned the meeting.