COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judiciary Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on March 14, 2014.

Members present:

Hon. Alan M. Wilner, Chair
Hon. Robert A. Zarnoch, Vice Chair

A Gillis Allen, II, Esq.
H. Kenneth Armstrong, Esq.
Robert R. Bowie, Jr., Esq.
James E. Carbine, Esq.
Mary Anne Day, Esq.
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Alvin I. Frederick, Esq.
Ms. Pamela Q. Harris
Hon. Joseph H. H. Kaplan
Hon. Thomas J. Love
Derrick William Lowe, Esq., Clerk
Timothy F. Maloney, Esq.
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Hon. W. Michel Pierson
Hon. Paula A. Price
Steven M. Sullivan, Esq.
Melvin J. Sykes, Esq.
Hon. Julia B. Weatherly
Robert Zarbin, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Deborah A. Unitus, Director, Program Services
Mary Denise Davis, Esq., Office of the Public Defender
Kathleen Wherthey, Esq., Deputy Director, Legal Affairs, Administrative Office of the Courts
Susan M. Erlichman, Esq., Executive Director, Maryland Legal Services Corporation
Nancy L. Harrison, Esq.
Debra Gardner, Esq., Legal Director, Public Justice Center
Kim Doan, Anne Arundel County Circuit Court
Scott MacGlashan, Clerk of the Circuit Court for Queen Anne's County
Sharon E. Goldsmith, Esq., Pro Bono Resource Center
Ksenia Boitsova, Program Services, Administrative Office of the Courts
Scott Curtis, Esq., Office of the Attorney General

Brian L. Zavin, Esq., Office of the Public Defender
Kimberle Early, Assistant Chief Deputy Clerk, Circuit Court for Anne Arundel County
Lonni Summers, Esq., Access to Justice Commission
Andrea Vaughn, Esq., Public Justice Center
Greg Hilton, Esq., Clerk, Court of Special Appeals
Kathy P. Smith, Clerk, Circuit Court for Calvert County
Rachel Dombrowski, Esq., Court of Special Appeals
Professor Michael A. Millemann, Esq., University of Maryland Law School
Pamela C. Ortiz, Esq., Director, Access to Justice Commission

The Chair convened the meeting. He told the Committee that the agenda was lengthy, and it was necessary to get through as much of it as possible. Coming up for consideration was a case that the Chair called "Richmond IV," a successor to prior cases including *DeWolfe v. Richmond,* 434 Md. 444 (2013) and *DeWolfe v. Richmond*, 434 Md. 403 (2012). The last action that the Court of Appeals took regarding this issue was a decision not to reconsider the prior decision that a defendant has a right to counsel at a hearing before a commissioner. The Court ordered reargument on what kind of injunction to issue, but they did not reconsider the right to counsel.

The Chair said that meanwhile, the legislature had been frantically trying to figure out how to address this issue. The Court had put the mandate on hold until June 4 or 5, which will be after the last day that the Governor can sign bills. After the legislature ends the session, it will be clear what they are going to do, and it will be clear by June 1 whether what they did will take effect. The Rules Committee will likely have to come up with a fourth set of rules to address whatever the legislature

does.

The Chair said that as a courtesy to Professor Michael Millemann, who was present, Agenda Item 6 would be considered first.

Agenda Item 6. Reconsideration of proposed amendments to: Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), Rule 1-321 (Service of Pleadings and Papers Other than Original Pleadings), Rule 1-324 (Notice of Orders), Rule 2-131 (Appearance), Rule 2-132 (Striking of Attorney's Appearance), Rule 3-131 (Appearance), and Rule 3-132 (Striking of Attorney's Appearance)

The Chair explained that Agenda Item 6 was the topic of unbundled legal services, which had been before the Committee previously.

The Chair presented amendments to Rule 1.2 of the Maryland Lawyers' Rules of Professional Conduct (Scope of Representation and Allocation of Authority Between Client and Lawyer) and Maryland Rules 1-321 (Service of Pleadings and Papers Other than Original Pleadings); 1-324 (Notice of Orders); 2-131 (Appearance); 2-132 (Striking of Attorney's Appearance); 3-131 (Appearance); and 3-132 (Striking of Attorney's Appearance), for the Committee's consideration.

NOTE: As part of the 178th Report, Part III, stylistic changes to Rule 1.2 are proposed, and the Rule is renumbered Rule 19-301.2. If the Committee approves of the proposed amendments below, the amendments will be blended into Rule 19-301.2.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT

CLIENT-RELATIONSHIP

AMEND Rule 1.2 to require that the scope and limitations of a limited scope representation by an attorney be specified in a written agreement and be in compliance with any applicable Maryland Rule and to add a new Comment 8 pertaining to limited scope representation, as follows:

Rule 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation in accordance with applicable Maryland Rules if (1) the limitation is reasonable under the circumstances and ~~the client gives informed consent~~ (2) with the client's informed consent, the scope and

limitations of the representation are clearly set forth in a written agreement between the lawyer and the client, **including any duty on the part of the lawyer under Rule 1-324 to forward notices to the client.**

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENT

Scope of Representation. - [1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or

other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16 (b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16 (a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities. - [5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation. - [6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may

exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] A lawyer and a client may agree that the scope of the representation is to be limited to clearly defined specific tasks or objectives, such as: (1) without entering an appearance, filing papers, or otherwise participating on the client's behalf in any judicial or administrative proceeding, (i) giving legal advice to the client regarding the client's rights, responsibilities, or obligations with respect to particular matters, (ii) conducting factual investigations for the client, (iii) representing the client in settlement negotiations or in private alternative dispute resolution proceedings, (iv) evaluating and advising the client with regard to settlement options or proposed agreements, or (v) drafting documents, performing legal research, and providing advice that the client or another attorney appearing for the client may use in a judicial or administrative proceeding; or (2)

in accordance with applicable Maryland Rules, representing the client in discrete judicial or administrative proceedings, such as a court-ordered alternative dispute resolution proceeding, a *pendente lite* proceeding, or proceedings on a temporary restraining order, a particular motion, or a specific issue in a multi-issue action or proceeding. Before entering into such an agreement, the lawyer shall fully and fairly inform the client of the extent and limits of the lawyer's obligations under the agreement, **including any duty on the part of the lawyer under Rule 1-324 to forward notices to the client.**

~~[8]~~ [9] All agreements concerning a lawyer's representation of a client must accord with the Maryland Lawyers' Rules of Professional Conduct and other law. See, e.g., Rule 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions. - ~~[9]~~ [10] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

~~[10]~~ [11] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is

criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16 (a). In some cases withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rules 1.6, 4.1.

~~[11]~~ [12] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

~~[12]~~ [13] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

~~[13]~~ [14] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Maryland Lawyers' Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4 (a)(4).

Model Rules Comparison. -- Rule 1.2 is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct except for wording changes in Rule 1.2 (a) and the retention of existing Maryland language in Comment [1].

Rule 1.2 was accompanied by the following Reporter's note.

The Maryland Access to Justice Commission and family law practitioners have requested that provisions concerning limited scope representation be added to the Maryland Rules. Amendments to Rules 1-321, 1-324, 2-131, 2-132, 3-131, and 3-132 and **[Rule 1.2] [Rule 19-301.2]** of the Maryland **[Lawyers'] [Attorneys']** Rules of Professional Conduct are proposed by the Attorneys and Judges Subcommittee to expressly authorize the entry of limited appearances in the District Court and circuit courts, to address the service of pleadings and papers after an attorney enters a limited appearance, to provide guidance regarding informed consent of the client when an attorney and a client wish to agree to limited scope representation, and to permit the filing of a notice of withdrawal of appearance after the proceeding for which the appearance was entered has concluded or the purpose of the limited representation has been accomplished.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-321 to add a new section (b) pertaining to service after entry of limited appearance and to make stylistic changes, as follows:

Rule 1-321. SERVICE OF PLEADINGS AND PAPERS OTHER THAN ORIGINAL PLEADINGS

(a) Generally

Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original

pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

(b) Service After Entry of Limited Appearance

Every document required to be served upon a party's attorney that is to be served after entry of a limited appearance shall be served upon the party and, unless the attorney's appearance has been stricken pursuant to Rules 2-132 or 3-132, **upon** the limited appearance attorney.

Cross reference: See Rule 1-324 with respect to the sending of notices by a clerk when a limited appearance has been entered.

~~(b)~~ (c) Party in Default - Exception

No pleading or other paper after the original pleading need be served on a party in default for failure to appear except a pleading asserting a new or additional claim for relief against the party which shall be served in accordance with the rules for service of original process.

~~(c)~~ (d) Requests to Clerk - Exception

A request directed to the clerk for the issuance of process or any writ need not be served on any party.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 306 a 1 and c and the 1980 version of Fed. R. Civ. P. 5 (a).
Section (b) is new.
Section ~~(b)~~ (c) is derived from former Rule 306 b and the 1980 version of Fed. R. Civ. P. 5 (a).
Section ~~(c)~~ (d) is new.

Rule 1-321 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1.2.

MARYLAND RULES OF PROCEDURE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 300 – GENERAL PROVISIONS

AMEND Rule 1-324 to provide for the sending of certain notices when an attorney has entered a limited appearance pursuant to Rule 2-131 or Rule 3-131, as follows:

Rule 1-324. NOTICE OF ORDERS

(a) Generally

Except as provided in section (b), ~~**Upon**~~ **upon** entry on the docket of any order or ruling of the court not made in the course of a hearing or trial, the clerk shall send a copy of the order or ruling to all parties entitled to service under Rule 1-321, unless the record discloses that such service has already been made.

(b) Notice When Attorney Has Entered Limited Appearance

If, in an action that is not an affected action as defined in Rule 20-101 (a), an attorney has entered a limited appearance for a party pursuant to Rule 2-131 or Rule 3-131 and the automated operating system of the clerk's office does not permit the sending of notice to both the party and the attorney, the clerk shall send the notice to the attorney as if the attorney had entered a general appearance. The clerk shall inform the attorney that, until the limited appearance is terminated, all notices in the action will be sent to the attorney and that it is the attorney's responsibility to forward to the client notices pertaining to matters not within the scope of the limited appearance. The attorney promptly shall forward to the client all such notices, including any received after termination of the limited appearance.

Committee note: If an attorney has entered a limited appearance in an affected action, section (a) of this Rule requires the MDEC system or the clerk to send all court notices to both the party and the party's limited scope attorney prior to termination of the limited appearance.

(c) Inapplicability of Rule

This Rule does not apply to show cause orders and does not abrogate the requirement for notice of a summary judgment set forth in Rule 2-501(f).

Source: This Rule is in part derived from former Rule 1219 and is in part new.

Rule 1-324 was accompanied by the following Reporter's note.

Proposed new section (b) of Rule 1-321 requires that, after entry of an attorney's limited appearance, service of documents is

to be made upon both the attorney and the party. Rule 1-324 requires the clerk to send certain court notices to "all parties entitled to service under Rule 1-321." Therefore, in an action in which a limited appearance is entered, the clerk would be required to send notices to both the attorney and the party.

The Committee is informed that the clerks' operating systems currently in use throughout the State do not permit notices to be sent to both the attorney and the attorney's client. The Committee also is informed that reprogramming the systems to permit service upon both the attorney and the attorney's client would create an undue fiscal burden and that the new MDEC system, which is scheduled to begin rolling out on a county-by-county basis in October 2014, can be programmed to permit service on both.

In non-MDEC counties, if the clerk's operating system does not permit the sending of notices to both the attorney and the attorney's client, new Rule 1-324 (b) requires the clerk to send the notice to the attorney, who is then required to forward to the client all notices pertaining to matters not within the scope of the limited appearance, even if the notice is received after the limited appearance has terminated.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-131 to permit the entry of a limited appearance under certain circumstances, to add a form of

acknowledgment of the scope of limited representation, and to add a cross reference pertaining to limited appearances, as follows:

Rule 2-131. APPEARANCE

(a) By an Attorney or in Proper Person

Except as otherwise provided by rule or statute: (1) an individual may enter an appearance by an attorney or in proper person and (2) a person other than an individual may enter an appearance only by an attorney.

(b) Limited Appearance

(1) Notice of Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with **[Rule 1.2 (c)] [Rule 19-301.2 (c)]** of the Maryland **[Lawyers'] [Attorneys']** Rules of Professional Conduct, may enter an appearance limited to participation in a discrete matter or judicial proceeding. The notice of appearance shall specify the scope of the appearance, which shall be for the specific purpose stated in the client's Acknowledgment of Scope of Limited Representation. The client's Acknowledgment of Scope of Limited Representation shall be in the form specified in subsection (b)(2) of this Rule and shall accompany the notice of appearance.

(2) Acknowledgment of Scope of Limited Representation

The limited scope attorney shall file with the court a signed acknowledgment of scope of limited representation substantially in the following form:

[CAPTION]

ACKNOWLEDGMENT OF SCOPE OF LIMITED REPRESENTATION

Client:

_____

Attorney:

_____

I have entered into a written agreement with the above-named attorney. I understand that the attorney will represent me for the following limited purposes (check all that apply):

- ❑ Arguing a motion or motions. (Please specify):
  _____.
- ❑ Attending a pretrial conference.
- ❑ Attending a settlement conference.
- ❑ Attending a court-ordered mediation or other court-ordered alternative dispute resolution proceeding for purposes of advising the client during the proceeding. (Please specify):
  _____.
- ❑ Acting as **my attorney** for a particular hearing, **[deposition?]**, or trial. (Please specify):
  _____
- ❑ With leave of court, **acting as my attorney with regard to the following** specific issue or a specific portion of a trial or hearing. (Please specify):
  _____.

I understand that except for the legal services specified above, I am fully responsible for handling my case, including complying with court Rules and deadlines. **I understand further that the court may discontinue sending court notices to me and may send all court notices only to my limited scope attorney. If the court discontinues sending notice to me, I understand that although my limited scope attorney is responsible for forwarding to me court notices pertaining to matters outside the scope of the limited representation, I remain responsible for keeping informed about my case.**

_____
Client

_____
Signature

_____
Date

Cross reference: See Maryland **[Lawyers']** **[Attorneys']** Rules of Professional Conduct, **[Rule 1.2, Comment 8] [Rule 19-301.2, Comment 8]**. For striking of an attorney's limited appearance, see Rule 2-132 (a).

~~(b)~~ (c) How Entered

Except as otherwise provided in section (b) of this Rule, ~~An~~ an appearance may be entered by filing a pleading or motion, by filing a written request for the entry of an appearance, or, if the court permits, by orally requesting the entry of an appearance in open court.

~~(c)~~ (d) Effect

The entry of an appearance is not a waiver of the right to assert any defense in accordance with these rules. Special appearances are abolished.

Cross reference: Rules 1-311, 1-312, 1-313; Rules 14, 15, and 16 of the Rules Governing Admission to the Bar. See also Rule 1-202 (t) for the definition of "person".

Source: This Rule is in part derived from former Rule 124 and in part new.

Rule 2-131 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1.2.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-132 to permit an attorney who has entered a limited appearance to file a notice of withdrawal under certain circumstances, as follows:

Rule 2-132. STRIKING OF ATTORNEY'S APPEARANCE

(a) By Notice

~~When the client has another attorney of record, an~~ An attorney may withdraw an appearance by filing a notice of withdrawal when (1) the client has another attorney of record; or (2) the attorney entered a limited appearance pursuant to Rule 2-131 (b), and the particular proceeding or matter for which the appearance was entered has concluded.

(b) By Motion

When ~~the client has no other attorney of record, an~~ an attorney is not permitted to withdraw an appearance by notice under section (a) of this Rule, the attorney wishing to withdraw an appearance shall file a motion to withdraw. Except when the motion is made in open court, the motion shall be accompanied by the client's written consent to the withdrawal or the moving attorney's certificate that notice has been mailed to the client at least five days prior to the filing of the motion, informing the client of the attorney's intention to move for withdrawal and advising the client to have another attorney enter an appearance or to notify the clerk in writing of the client's intention to proceed in proper person. Unless the motion is granted in open court, the court may not order the appearance

stricken before the expiration of the time prescribed by Rule 2-311 for responding. The court may deny the motion if withdrawal of the appearance would cause undue delay, prejudice, or injustice.

(c) Notice to Employ New Attorney

When, pursuant to section (b) of this Rule, the appearance of the moving attorney is stricken and the client has no attorney of record and has not mailed written notification to the clerk of an intention to proceed in proper person, the clerk shall mail a notice to the client's last known address warning that if new counsel has not entered an appearance within 15 days after service of the notice, the absence of counsel will not be grounds for a continuance. The notice shall also warn the client of the risks of dismissal, judgment by default, and assessment of court costs.

(d) Automatic Termination of Appearance

When no appeal has been taken from a final judgment, the appearance of an attorney is automatically terminated upon the expiration of the appeal period unless the court, on its own initiative or on motion filed prior to the automatic termination, orders otherwise.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is in part derived from former Rule 125 a and the last sentence of c 2 and is in part new.
Section (c) is derived from former Rule 125 d.
Section (d) is derived from former Rule 125 e.

Rule 2-131 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1.2.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-131 to permit the entry of a limited appearance under certain circumstances, to add a form of acknowledgment of the scope of limited representation, and to add a cross reference pertaining to limited appearances, as follows:

Rule 3-131. APPEARANCE

(a) By an Attorney or in Proper Person

Except as otherwise provided by rule or statute: (1) an individual may enter an appearance by an attorney or in proper person and (2) a person other than an individual may enter an appearance only by an attorney.

(b) Limited Appearance

(1) Notice of Appearance

An attorney, acting pursuant to an agreement with a client for limited representation that complies with **[Rule 1.2 (c)] [Rule 19-301.2 (c)]** of the Maryland **[Lawyers'] [Attorneys']** Rules of Professional Conduct, may enter an appearance limited to participation in a discrete matter or judicial proceeding. The notice of appearance shall specify the scope of the appearance, which shall be for the specific **purpose stated in the client's** Acknowledgment of Scope of Limited Representation. The client's Acknowledgment of Scope of Limited Representation shall be in the form specified in subsection (b)(2) of this Rule, **and shall accompany the notice of appearance.**

(2) Acknowledgment of Scope of Limited Representation

The limited scope attorney shall file with the court a signed acknowledgment of scope of limited representation substantially in the following form:

[CAPTION]

ACKNOWLEDGMENT OF SCOPE OF LIMITED

REPRESENTATION

Client: _____
Attorney: _____

I have entered into a written agreement with the above-named attorney. I understand that the attorney will represent me for the following limited purposes (check all that apply):

- ❑ Arguing a motion or motions. (Please specify): _____.
- ❑ Attending a pretrial conference.
- ❑ Attending a settlement conference.
- ❑ Attending a court-ordered mediation for purposes of advising the client during the proceeding. (Please specify): _____.
- ❑ Acting as **my attorney** for a particular hearing or trial. (Please specify): _____.
- ❑ With leave of court, **acting as my attorney with regard to the following** specific issue or a specific portion of a trial or hearing. (Please specify): _____.

I understand that except for the legal services specified above, I am fully responsible for handling my case, including complying with court Rules and deadlines. **I understand further that the court may discontinue sending court notices to me and may send all court notices only to my limited scope attorney. If the court discontinues sending notices to me, I understand that**

although my limited scope attorney is responsible for forwarding to me court notices pertaining to matters outside the scope of the limited representative, I remain responsible for keeping informed about my case.

_____
Client

_____
Signature

_____
Date

Cross reference: See Maryland **[Lawyers']** **[Attorneys']** Rules of Professional Conduct, **[Rule 1.2, Comment 8] [Rule 19-301.2, Comment 8]**. For striking of an attorney's limited appearance, see Rule 3-132 (a).

~~(b)~~ (c) How Entered

An appearance may be entered by filing a pleading, motion, or notice of intention to defend, by filing a written request for the entry of an appearance, or, if the court permits, by orally requesting the entry of an appearance in open court.

~~(c)~~ (d) Effect

The entry of an appearance is not a waiver of the right to assert any defense in accordance with these rules. Special appearances are abolished.

Cross reference: Rules 1-311, 1-312, 1-313; Rules 14 and 15 of the Rules Governing Admission to the Bar. See also Rule 1-202 (t) for the definition of "person", and Code, Business Occupations and Professions Article, §10-206 (b) (1), (2), and (4) for certain exceptions applicable in the District Court.

Source: This Rule is in part derived from

former Rule 124 and in part new.

Rule 3-131 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1.2.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-132 to permit an attorney who has entered a limited appearance to file a notice of withdrawal under certain circumstances, as follows:

Rule 3-132. STRIKING OF ATTORNEY'S APPEARANCE

(a) By Notice

~~When the client has another attorney of record, an~~ An attorney may withdraw an appearance by filing a notice of withdrawal when (1) the client has another attorney of record; or (2) the attorney entered a limited appearance pursuant to Rule 3-131 (b), and the particular proceeding or matter for which the appearance was entered has concluded.

(b) By Motion

When ~~the client has no other attorney of record, an~~ an attorney is not permitted to withdraw an appearance by notice under section (a) of this Rule, the attorney wishing to withdraw an appearance shall file a motion to withdraw. Except when the motion is made in open court, the motion shall be accompanied by the client's written consent to the withdrawal or the moving attorney's

certificate that notice has been mailed to the client at least five days prior to the filing of the motion, informing the client of the attorney's intention to move for withdrawal and advising the client to have another attorney enter an appearance or to notify the clerk in writing of the client's intention to proceed in proper person. Unless the motion is granted in open court, the court may not order the appearance stricken before the expiration of the time prescribed by Rule 3-311 for requesting a hearing. The court may deny the motion if withdrawal of the appearance would cause undue delay, prejudice, or injustice.

(c) Automatic Termination of Appearance

When no appeal has been taken from a final judgment, the appearance of an attorney is automatically terminated upon the expiration of the appeal period unless the court, on its own initiative or on motion filed prior to the automatic termination, orders otherwise.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 125 a.
Section (b) is in part derived from former M.D.R. 125 a and is in part new.
Section (c) is derived from former M.D.R. 125 b.

Rule 3-132 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1.2.

The Chair said that the amendments address unbundled legal services, where a client can obtain the services of a lawyer for two kinds of limited purposes. One does not involve the lawyer filing any kind of appearance in court. It may be to represent the party at a court-ordered mediation or just to give advice. The other is where there is a court proceeding and the client

would like the attorney to represent the client for some part of the proceeding but not all of it. What had been approved by the Committee previously was a minor amendment to the text of Rule 1.2 and a new Comment 8 to the Rule. The Committee addressed the issue of filing a limited appearance with the attorney being required to specify what part of the proceeding the attorney is in for.

The Chair noted that the Committee was faced with an unexpected dilemma, which concerned the clerk's duty to send notices of upcoming proceedings, orders that have been signed by a judge, etc. The Subcommittee had proposed that when there is a limited appearance, both the attorney and the party should get the notice. The Rules Committee agreed with that approach but was informed by the Director of the Judicial Information Systems (JIS), that the current system could not send notice to both. He stated that when the Maryland Electronic Courts System (MDEC) goes into effect, notifying both the attorney and the party will not be a problem. The current system is unable, however, to send notices to the client if an attorney has entered an appearance -- even a limited one -- and JIS does not have the resources to change the system, other than through MDEC, so that it can notify both. The Committee had a choice to make, and it decided that all of the notices in the non-MDEC situation would be sent to the attorney, who would have to see that the client got either all of the notices or the notices pertaining to the proceedings that the attorney was in the case for. This issue had been recommitted to

the Subcommittee to draft the Rule accordingly, and it is back before the Committee.

The Chair drew the Committee's attention to Rule 1.2. A version of this Rule had been distributed at the meeting containing one change in section (c) that is different from the version of the Rule in the meeting materials. The previous version had the language "..in a written agreement between the lawyer and the client." Someone proposed that in place of that language, the language should be: "in writing." Professor Millemann suggested that the word "written" be stricken, and the word "memorialize" be substituted to cover online agreements as opposed to written agreements. The wording of section (c) would be: "in a memorialized agreement." The Chair commented that this may be different than an agreement "in writing."

The Reporter noted that the language "in writing" had been suggested the last time Rule 1.2 had been discussed. The Chair pointed out that the Committee had approved that language at the last meeting. Also at the previous meeting, the Committee had decided to take out the language "in a written agreement between the lawyer and the client" and simply use the language "in writing." The Chair asked Professor Millemann if he was suggesting the language "memorialized agreement." Professor Millemann responded that his concern was how to capture electronic communications.

The Chair asked the Committee whether anyone had a motion to change the language "in writing" to something else. Mr.

Frederick commented that "informed consent" is a defined term in Rule 1.0., Terminology. In the same Rule in section (b), "confirmed in writing" is a defined term. He added that he had had experience with Bar Counsel, and the term "in writing" is going to be interpreted as Professor Millemann had asked for. He moved that the proposal by the Committee be adopted. The Chair responded that no motion was necessary, because the Committee had already approved that language. He asked if anyone had a motion to change the language. Professor Millemann said that he would withdraw his suggested change.

The Chair noted that the only addition to Rule 1.2 was in section (c) and pertained to something that is going to be in the Rule itself to implement the decision that the Committee had made, which was that the attorney should receive the notices from the court under Rule 1-324 and then be required to tell the client. The language in Rule 1.2 reads "...with the client's informed consent, the scope and limitations are clearly set forth ... including any duty on the part of the lawyer under Rule 1-324 to forward notices to the client." The agreement would make clear that this will be the duty of the attorney.

The Chair drew the Committee's attention to Rule 1-321, which covers the service of pleadings by another party. This Rule does not involve the court at least until MDEC goes into effect. The only addition to Rule 1-321 is a cross reference after section (b) to Rule 1-324, which has been amended and will be discussed shortly. Notices from the clerk are going to be

sent to the attorney, who will have to see that the client gets the ones that the client needs -- those not within the scope of the attorney's limited appearance.

The Chair drew the Committee's attention to Rule 1-324. This contains most of the new language. It appears in section (b). It applies where the operating system of the clerk's office does not permit sending notice to both the attorney and the party -- the non-MDEC counties. The clerk will send the notice to the attorney as though the attorney had entered a general appearance. The attorney is then responsible for notifying the client. This had been the decision of the Committee the last time this Rule was discussed. Mr. Lowe drew the Committee's attention to the sentence in section (b) of Rule 1-324 that reads: "The clerk shall inform the attorney that, until the limited appearance is terminated, all notices in the action will be sent to the attorney and that it is the attorney's responsibility to forward to the client notices pertaining to matters not within the scope of the limited appearance." Mr. Lowe said that he had spoken with other clerks, and they could not figure out why that sentence was in Rule 1-324. The way the clerks' offices operate is that if a party is represented, then all of the notices go to the attorney. Once the attorney's appearance is stricken, then all of the notices go to the party. Mr. Lowe expressed the view that the sentence he had pointed out was not necessary. He moved to strike the second sentence in section (b) of Rule 1-324. The motion was seconded.

Judge Weatherly commented that this was a matter of education. In the family cases, if an attorney enters an appearance for a *pendente lite* hearing, the addition of section (b) of Rule 1-324 was an attempt by the Subcommittee to make sure that the attorney, while in the case for a limited purpose, is responsible for giving the client any notices that the attorney receives. This seems to be a matter of educating the attorneys. Mr. Lowe remarked that this is implied. The attorney of record, even if it is a limited scope appearance, will be getting all of the court notices, and to stop this, the attorney has to strike his or her appearance. Then the clerk will start sending notices to the parties rather than the attorneys.

The Reporter observed that this language was added because some attorneys practice in a number of counties. MDEC may be in use in one county, but not in other counties. This helps the attorneys keep straight what their particular duty is in a given county. When MDEC becomes effective in Anne Arundel County, the attorney would not have to notify the client when the clerk sends notices to the attorneys, because Anne Arundel County would already be sending out those notices. In a county in which MDEC has not yet been instituted, this language reinforces the duty on the part of the attorney to pass the notice along to the client. Mr. Lowe said that if an attorney keeps getting notices, even though his or her representation is over, the attorney will realize that his or her appearance will need to be stricken. Then the clerk's office will begin to send notices to the parties

instead of the attorneys.

The Chair pointed out that the second sentence of section (b) of Rule 1-324 provides that all notices in the action will be sent to the attorney until the attorney's appearance is terminated. Mr. Lowe responded that it is implied that the attorney of record will get all of the court notices. The Chair commented that the concern was that attorneys may not forward the notices to the parties when the attorney is representing the party for a limited purpose. Limited appearances are a fairly new concept. The concern was that if the attorney is going to enter into a limited representation, the attorney has to understand what he or she is getting into. The attorney may be getting notices that are not related to any matter in which the attorney is involved, but the attorney has the duty to notify the client.

Judge Weatherly remarked that if mailing the notices is required, and they are automatically mailed, the costs each time a notice is filed could add up. If someone files a paper at the counter in the clerk's office, the clerk may be able to hand the person a notice and save the cost of mailing it. The Chair pointed out that the clerk would have to send a notice now anyway to someone; the question is to whom the clerk sends it. Mr. Lowe noted that in his office, if someone is represented, the notice is sent to that person's attorney, and if the person is unrepresented, the notice goes to the party. The Chair commented that the attorney who is in the case for a limited purpose should

be treated as though the attorney were in the case for the entire time until the appearance is stricken. Judge Pierson noted that section (b) provides that the clerk has to inform the attorney about this. The Reporter explained that because limited representation is somewhat new and there is so much that could go wrong, it is a good idea to inform the attorney that he or she has to pass all notices along to the client.

The Chair said that there was a motion on the floor that had been seconded to delete the second sentence of section (b) of Rule 1-324. The Chair called for a vote on the motion, and the motion was defeated with only two in favor.

Judge Pierson expressed the view that the prefatory language that had been added to section (a) is unnecessary. Section (a) is the general obligation of the clerk's office to send out orders to the parties, and currently, section (a) provides that a copy of the order is sent to the parties, not to the attorneys. It states that the clerk has to send out copies of all orders to the parties. Section (b) is not really an exception to this. It provides a specific way to notify the parties where there is a limited appearance. Judge Pierson moved that the language at the beginning of section (a) that read: "Except as provided in section (b)" should be stricken. The motion was seconded. The motion carried by a majority vote.

Ms. Gardner, who was with the Public Justice Center, asked to return to the issue of adding the language "in writing" to section (c) of Rule 1.2. She expressed the concern that this

language would be read to prohibit legal services programs throughout the State from providing brief telephone advice to large numbers of people without anything in writing or memorialized about the limited scope of the representation. It is not really representation, but legal advice has been provided. This is common practice among legal services providers, such as the Public Justice Center or the Legal Aid Bureau. Proponents of the change to Rule 1.2 had assured Ms. Gardner that the Rule is not intended to affect or limit that practice or to require any kind of writing or memorialization. The brief telephone advice is all that is agreed to being provided. It would be very helpful if the record of this meeting were to reflect that prohibiting this kind of advice is not the intent of Rule 1.2. Otherwise it is conceivable that it would shut off that practice, which is very common, very widespread, and very useful.

The Chair said that he thought that the intent of Rule 1.2 was not to have every communication in writing, but if an attorney is going to represent a party for a limited purpose that there be an agreement as to what that is, so that both parties understand what their obligations are and what they are not. Professor Millemann commented that he would distinguish two situations. Comment 8 of Rule 1.2 lists the kind of activities that the Rule applies to. He expressed the view that for those kinds of activities the Rule would appropriately require the writing. What Ms. Gardner was referring to was a different situation. An example would be that a client calls the attorney,

telling the attorney that the client has a foreclosure problem. The hearing is the next day, and the client asks the attorney to give the client a sketch of how the procedure works and what the client might be able to argue. The attorney then answers that question in a 15-minute conversation. Professor Millemann said that he hoped that this conversation would not require a writing.

The Chair pointed out that Comment 8 would require a writing. The language of the Comment is:"...without entering an appearance....giving legal advice to the client regarding the client's rights...". Professor Millemann responded that it may depend on the distinction between legal information and advice. This has been an elusive distinction for years. He expressed the opinion that there should be some flexibility. Ms. Gardner suggested that Professor Millemann's original proposal using the word "memorialize" would solve the problem, because she and her colleagues would memorialize in their files. Professor Millemann remarked that he had withdrawn the motion. Ms. Gardner said that her recollection was that it been withdrawn as unnecessary, because what Professor Millemann had been discussing earlier was whether e-mail communications constituted a written agreement. Where there is no written communication and no electronic communication but only telephone communication with the client, and the sum total of the representation is brief, limited advice on the telephone, she and her colleagues would memorialize in their file that the client had been advised that this was the scope of the representation. Otherwise, there would be no

writing, no written communication, and no written agreement, and if this Rule would apply to that circumstance, it would create a problem.

The Chair inquired if anyone had a motion to change the language of Rule 1.2. The earlier motion had been withdrawn. The Reporter asked Ms. Gardner if she considered the person she would speak with by telephone to be her client. In a divorce situation, first the wife calls, and then two weeks later, the husband calls and gets a different person on the hotline or telephone. Are those people the clients of the attorney at the Public Justice Center?

Ms. Gardner replied that the programs that provide hotline advice are under a separate rule, Rule 6.5, Nonprofit and Court-annexed Limited Legal Services Programs, which does not require a writing to give hotline information. The Public Justice Center does not fit under that rule, because they have a much broader program. They would fall under Rule 1.2. They commonly give limited legal advice, not just information. They will discuss the facts of a case and the law that applies. This could not be considered only legal information. If a tenant calls them, saying that the person is having a problem with rodents in the home and asking what to do, the attorney from the Public Justice Center would discuss remedies, procedures, and timing. Substantial legal advice can be given in 15 to 30 minutes. The attorney does not see the client in person or communicate with the client in writing. The Reporter remarked that the attorney

would keep track of who the person is. Ms. Gardner confirmed this. The attorney would make a record and do an intake.

The Chair pointed out that this is the procedure of the Public Justice Center. However, Rule 1.2 applies to all attorneys in the State, most of whom are taking a fee for this. Rule 1.2 was intended to provide some protection, both for the attorney as well as for the client or the putative client. Everyone would know what the attorney has agreed to do and what the fee is. It is a slippery slope to try to draw a distinction between advice and information. If this is able to be accomplished, then giving legal information would not fall under Rule 1.2.

The Reporter commented that if the attorney would get all the information from the client and then send him or her a form letter, this would be memorializing the agreement in writing. The original draft of Rule 1.2 that did pass the last time the Rule was considered had the language "the scope and limitations of the representation are clearly set forth in writing...". It does not have to be the actual signed agreement. The attorney would send out a letter noting that the telephone conversation took place and that this is what the representation entails.

Mr. Carbine asked Ms. Gardner how the intake is done. She answered that the telephone intake is the only case file that her organization has. Mr. Carbine inquired whether Ms. Gardner and her colleagues take at face value what the financial condition is of the person on the telephone. Ms. Gardner responded that this

is entirely permissible. Some organizations send a letter of confirmation, but for other programs in the State, that would be a tremendous burden.

Ms. Ortiz pointed out that the original proposal of the Commission on Access to Justice suggested that a limited scope practice should be memorialized, so that a writing existed that would indicate informed consent. Legal services providers in the State provide a large percentage of their services by giving advice, some of which is transmitted by telephone. For example, the self-help centers serve thousands of people and give out a large amount of information and assistance over the telephone. There are techniques the providers can use to memorialize the agreements, and the District Court self-help centers often have a solution to that, but not all programs do this currently. She expressed the opinion that it would be a burden for many legal services providers to have to enter into a formal retainer agreement for every client interaction.

The Chair inquired as to what Ms. Ortiz was suggesting. She answered that she was not sure. When it had been discussed previously, she thought that the requirement of a writing would not be so onerous. The programs giving legal advice do not have to check for conflicts with the Rule 6.5 programs, and they do not retain client information, but Rule 1.2 still applies to them. Professor Millemann noted that the way Rule 1.2 is now written, the scope and limitations of representation are clearly set forth in writing. The Reporter confirmed this. Professor

Millemann remarked that an attorney can tell a client who calls on the telephone what the attorney can and cannot do for him or her. Once the telephone call has ended, the attorney can do a memorandum, which is put into the client file, and memorializes the agreement. Ms. Ortiz observed that there may not be a file. Professor Millemann said that the attorney can still do a memorandum to memorialize the agreement.

Ms. Erlichman told the Committee that she is the Director of the Maryland Legal Services Corporation ("MLSC"). MLSC funds 35 legal aid programs throughout the State. The programs have very limited resources, and the need for legal services is overwhelming. The programs have engaged in limited scope representation for a long time. Over 150,000 clients were served last year, and 70% of those were referrals for free information and advice. A rule that would require that for every telephone call, a memorandum has to be filed, or something has to be mailed to the client would result in their system coming to a screeching halt. There is significant documentation of clients served.

Ms. Erlichman said that in speaking for the programs her organization funds, for every MLSC grantee, the program documents the client and the nature of the service. Many years ago, there was a hotline, and the MLSC used to require every caller to be screened for income. They had procured a letter of advice from the Attorney General many years ago. The Attorney General had said that, given the circumstances and the limited resources, it makes no sense to spend more resources on qualifying someone.

Guidelines were put in place to ensure that MLSC funds are used for the benefit of income-eligible people.

Ms. Erlichman said that she is very much in favor of the rules pertaining to limited scope representation. The way legal service programs operate should not be changed, because they are working well. A framework for private attorneys to engage in the this type of practice should be provided for by the rules.

Judge Pierson told the Committee that he has a proposal to present. It seemed to him that the problem is that these types of brief exchanges in which only advice is given are not the circumstance to be covered by Rule 1.2. A written agreement is necessary where there will be some ongoing representation. In that case, the client should be on notice in writing as to what the attorney is and is not going to do for the client. What about treating this as an exception to the rule for requiring a written agreement when the interaction with the client is a one-time consultation? A proviso could be included that would except this situation, which could be memorialized another way.

The Chair agreed, but he added that the issue was how to frame that exception. He recollected that the Subcommittee had discussed the issue of attorneys agreeing to draft documents or pleadings for the party who would then proceed *pro se*, so that the attorney would not be in the case, but the attorney would be doing much more than offering a single piece of advice. Judge Pierson pointed out that no general rule exists that requires a written agreement between an attorney and a client. The change

to Rule 1.2 goes much farther. The Chair agreed, noting that this is a limit on the obligations of an attorney. Judge Pierson remarked that before the unbundling of legal services came in, if an attorney gave advice to a client, no written agreement or any agreement limiting that was necessary. The Chair asked if that was true if the attorney was charging a fee.

Mr. Frederick said that he understood the concerns expressed, particularly the concern of Judge Pierson. Rule 1.18, Duties to Prospective Client, delineates the duties that an attorney might have to a prospective client. It is not unusual for an attorney to receive a telephone call and essentially screen the call. Mr. Frederick expressed the opinion that this does constitute rendering advice on the law, but it is not necessarily an engagement. Certainly, if the advice is wrong, and the person relied on the advice, the person has civil remedies available and probably has remedies relating to discipline of the attorney. The Rule already covers this. He said that the concerns raised today might be addressed. If the attorney gets a call from a tenant who has a rodent problem in the property he or she is renting, the attorney would tell the tenant what his or her options are. If none work, then the client is told to come in to talk to the attorney. This entails duties to a prospective client. Even though the client has not signed a retainer agreement, the attorney is still rendering services to someone, and this is all protected. Mr. Frederick felt that the way Rule 1.2 was drafted by the Subcommittee is

appropriate.

Ms. Gardner commented that unfortunately, she had talked about exactly the opposite situation where the attorney tells the client what he or she can do, what the options are, what the remedies are, and how the attorney analyzed the legal problems of the client. The attorney may say that this is all that the attorney can do for the client. If the suggestions do not work, the attorney may tell the client not to call the attorney again. Ms. Gardner expressed the view that this is not covered by Rule 1.18.

Professor Millemann said that to move the issue along, the consultants who were present could meet somewhere outside of the meeting room to try to come up with some appropriate language for Rule 1.2. He asked if the Committee could approve the remainder of Rule 1.2, pertaining to unbundled legal services. Mr. Carbine asked if there was a motion to change the existing Rule. Judge Pierson moved to change the Rule to try to adopt a proviso that carves out a limited exception. The Chair said that if there is an interest in amending Rule 1.2, it will be based on whether the Committee approves of what is going to replace it. It would be better to stay this discussion for now until the consultants can come up with some new language that would solve their problem without affecting the remaining focus of the Rule.

Professor Millemann asked if there were any other issues involving Rule 1.2. The Chair responded that the only other changes were simply conforming amendments. Rule 2-131 has a form

added to it, which is entitled "Acknowledgment of Scope of Limited Jurisdiction." This is intended to cover more than just a telephone call. Ms. Gardner pointed out that this would apply only where something has to be filed in court. The Chair noted that the fifth box on the form had the word "deposition" bolded and in brackets indicating that there had to be a decision on whether that word should be included.

The Chair said that the other issue was a comment from Wendy Widmann, Esq., which was in a letter distributed at the meeting. (See Appendix 1). She wrote that sometimes at the request of the court, she prepares Qualified Domestic Relations Orders (QDRO's) in domestic cases for both parties. She objected to the language "with leave of court" in the sixth box on the form. She expressed the view that an attorney should not have to have leave of court to be able to file a limited appearance in court. She had asked how and when must leave of court be obtained. She expressed the concern that if leave of court is not obtained or overlooked by the court, it would invalidate the court's actions. This is in the context of doing the QDRO's.

Judge Pierson commented that this issue had been thoroughly discussed the last time the Rules pertaining to unbundled legal services had been considered. The idea was that attorneys who are coming in and out of cases for various purposes should be able to be monitored. The Chair asked if anyone had a motion to change Rule 2-131. No motion was forthcoming. The Chair asked about the addition of the word "deposition" to the form in Rule

2-131. By consensus, the Committee agreed to add the word "deposition."

By consensus, the Committee approved Rule 2-131 as amended and Rule 3-131 as presented.

Agenda Item 1. Consideration of proposed amendments to Rules pertaining to Judicial Review of a Decision of the Workers' Compensation Commission: Rule 7-202 (Method of Securing Review), Rule 7-206 (Record - Generally), New Rule 7-206.1 (Record - Judicial Review of Decision of the Workers' Compensation Commission), and Conforming amendments to: Rule 2-603 (Costs) and Rule 7-204 (Response to Petition)

The Vice Chair explained that the next agenda item involved cases pertaining to the Workers' Compensation Commission ("WCC"), particularly cases that come up on de novo review and record appeals. There are many more de novo cases than review on the administrative record. The Honorable Leo Green of the Circuit Court for Prince George's County had raised the issue of an excessive amount of items in the record on a de novo review that should not be there. The files are too big, and much of the contents are unnecessary.

The Vice Chair presented Rule 7-202, Method of Securing Review, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF

ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-202 to require identification of any issue to be reviewed on the record of the Workers' Compensation Commission, to require certain attachments to the petition under certain circumstances, to require service of the petition and attachments on the Attorney General under certain circumstances, to permit electronic service of a certain notice under certain circumstances, and to make stylistic changes, as follows:

Rule 7-202. METHOD OF SECURING REVIEW

(a) By Petition

A person seeking judicial review under this chapter shall file a petition for judicial review in a circuit court authorized to provide the review.

(b) Caption

The Petition shall be captioned as follows:

IN THE CIRCUIT COURT FOR _____	*	
	*	
PETITION OF _____	*	
[name and address]	*	
	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE	*	CIVIL
	*	ACTION
_____	*	No. _____
[name and address of administrative agency that made the decision]	*	
	*	
	*	
IN THE CASE OF _____	*	
[caption of agency proceeding, including agency case number]	*	

(c) Contents of Petition; Attachments

(1) Contents

The petition shall:

(A) request judicial review~~,~~;

(B) identify the order or action of which review is sought~~,~~; ~~and~~

(C) state whether the petitioner was a party to the agency proceeding~~.~~, and ~~If~~ if the petitioner was not a party~~, the petition shall~~ to the agency proceeding, state the basis of the petitioner's standing to seek judicial review~~.~~; and

(D) ~~If~~ if the ~~judicial~~ review sought is of a decision of the Workers' Compensation Commission ~~is sought~~, state whether any issue is to be reviewed on the record before the Commission and, if it is, identify the issue. No other allegations are necessary.

Committee note: The petition is in the nature of a notice of appeal. The grounds for judicial review, required by former Rule B2 e to be stated in the petition, are now to be set forth in the memorandum filed pursuant to Rule 7-207.

(2) Attachments–Review of Workers' Compensation Commission Decision

If review of a decision of the Workers' Compensation Commission is sought, the petitioner shall attach to the petition:

(A) a certificate that copies of the petition and attachments were served pursuant to subsection (d)(2) of this Rule, and

(B) if no issue is to be reviewed on the record before the Commission, copies of (i) the employee claim form, (ii) the employer's first report, (iii) the wage statement, and (iv) all of the Commission's orders in the petitioner's case.

(d) Copies; Filing; Mailing

(1) Notice to Agency

Upon filing the petition, the petitioner shall deliver to the clerk a copy of the petition for the agency whose decision

is sought to be reviewed. The clerk shall promptly mail a copy of the petition to the agency, informing the agency of the date the petition was filed and the civil action number assigned to the action for judicial review.

(2) Service by Petitioner in Workers' Compensation Cases

Upon filing a petition for judicial review of a decision of the Workers' Compensation Commission, the petitioner shall serve a copy of the petition, together with all attachments, by first-class mail on the Commission and each other party of record in the proceeding before the Commission. If the petitioner is requesting judicial review of the Commission's decision regarding attorneys' fees, the petitioner also shall serve a copy of the petition and attachments by first-class mail on the Attorney General.

Committee note: The first sentence of ~~This~~ this subsection is required by Code, Labor and Employment Article, §9-737. It does not relieve the clerk from the obligation under subsection (d)(1) of this Rule to mail a copy of the petition to the agency or the agency from the obligation under subsection (d)(3) of this Rule to give written notice to all parties to the agency proceeding.

(3) By Agency to Parties

(A) Generally

Unless otherwise ordered by the court, the agency, upon receiving the copy of the petition from the clerk, shall give written notice promptly by ~~ordinary~~ first-class mail or, if permitted by subsection (d)(3)(B), electronically to all parties to the agency proceeding that:

~~(A)~~ (i) a petition for judicial review has been filed, the date of the filing, the name of the court, and the civil action number; and

~~(B)~~ (ii) a party wishing to oppose the

petition must file a response within 30 days after the date the agency's notice was mailed unless the court shortens or extends the time.

(B) Electronic Notification in Workers' Compensation Cases

The Commission may give the written notice required under subsection (d)(3)(A) of this Rule electronically to a party to the Commission proceeding if the party has subscribed to receive electronic notices from the Commission.

(e) Certificate of Compliance

Within five days after mailing, the agency shall file with the clerk a certificate of compliance with section (d) of this Rule, showing the date the agency's notice was mailed and the names and addresses of the persons to whom it was mailed. Failure to file the certificate of compliance does not affect the validity of the agency's notice.

Source: This Rule is in part derived from former Rule B2 and is in part new.

The Vice Chair told the Committee that Rule 7-202 requires that for a record review, the party petitioning must set forth the issues that were reviewed before the Commission and are now going to be considered by the Court. It also requires certain attachments in a case where the review is de novo. This is found in subsection (c)(2) of Rule 7-202. Some of the material that would be transmitted includes the employee claim form, the employer's first report, the wage statement, and all of the Commission orders in the petitioner's case. This has stirred up some concern by Chesapeake Employers' Insurance Company, formerly

known as IWIF. The Chair said that a letter from Chesapeake had been distributed at the meeting. (See Appendix 2).

Mr. Zarbin pointed out a possible error in the letter from Chesapeake. The letter stated that their company handles 250-300 reviews per month in the circuit courts in Maryland. Mr. Zarbin disputed this. He said that this amount would be more likely in a year. Mr. Curtis, who is the Assistant Attorney General representing the WCC, told the Committee that he had spoken with Joan Adelman, Esq., the Director of Legal Services for Chesapeake. The company only has about 235 appeals per year. There are only 2000 appeals from the WCC total per year. Ms. Adelman's complaint was that it would be onerous to provide all of the attachments to the notice. This requirement was put in by the employer insurers. Their representative on the Appellate Subcommittee was Frank Lipshultz, Esq. This language was put in to provide something useful for the circuit court, and Judge Green had agreed with it.

Mr. Curtis said that the second issue was about the transcript. His agency's standard operating procedure would have been and will be to require the production of a transcript anyway. The goal is not the production of the record, the assembling of the record, or the transmission of the record to the circuit court. This is Judge Green's concern about the papers coming into the court. They would anticipate that they would still be the record, which would include the transcript. As a matter of practice, 98% of the parties would have requested

a transcript anyway, so they were going to operate under the standard operating procedure that a transcript would be prepared in the judicial action. It is available electronically on the WCC website and available to the parties once it is created. A party can use it for impeachment purposes or other purposes.

Mr. Curtis noted that the other part that had been discussed previously was the question of what happens with the transcript that is actually sent to the circuit court and made part of the record. Nothing happens to that transcript. The parties do not use that one for impeachment purposes. On behalf of the WCC, they do not have an opinion on the first issue, and on the second issue, their concern was the transmission of the record, not the creation of it.

Ms. Harrison told the Committee that she practices worker's compensation defense work and had been a past chair of the Negligence, Insurance, and Worker's Compensation Section of the Maryland State Bar Association as well as co-chair of the Maryland Defense Counsel's Committee on Worker's Compensation. She thought that the Committee had a letter from the Neglience, Insurance, and Worker's Compensation Section indicating that they take no position on the issues. There had been a great amount of discussion on the concept that if someone would like a transcript, the court can order one. From the defense side, the transcript needs to be prepared. It does not have to be transmitted. She understood Judge Green's point that there should not be too much paper involved. She had drafted a

sentence to be added to Rule 7-202 that would state that the transcript has to be prepared and will be made available electronically to the parties along with other Commission documents. The transcript would have to be prepared and put on the website.

Ms. Harrison commented that there is an unintended consequence of not preparing the transcript at the time that the judicial review action is filed even with the proviso that the court can order it if someone needs it. The way that it works is that when the appeal is filed, and the transcript is requested, the party has to pay for it. The WCC court reporters do those transcripts on their own time and get paid for them separately from what they get paid for during the Commission hearings to take down the testimony. The court reporters want to get paid before they prepare the transcript. They prefer not to wait until some time later when the case is over, and the costs are assessed. If someone would have a question about the transcript that had not come up before, the transcript would not be available in 20 minutes. The transcript needs to be prepared when the appeal is filed.

Mr. Curtis commented that for the benefit of the circuit court judges who were present, there is no CourtSmart system in WCC hearings. People are present to transcribe the testimony at the hearing. Some of the places where the hearing is held cannot accommodate the CourtSmart system. The testimony is not electronically recorded and then transcribed later. The Vice

Chair pointed out that the issue of transcription will be considered in a later rule. He said that he had not heard any objection to including the items in subsection (c)(2)(B) of Rule 7-202.

Mr. Zarbin remarked that he had no objection to attaching a claim form with the employer's first report and attaching the wage statement and the Commission's orders. One issue to discuss is adding the words "if any." Very often, the employer's first report is prepared by the employer, and the wage statement is prepared by the employer and the carrier. Many instances occur where the wage statement is not prepared. The claim form exists, because otherwise there would be no hearing. However, the employer's first report and the wage statement would be helpful, but often they do not appear. It might be helpful to add the words "if any" after the employer's first report and the wage statement.

Mr. Zarbin commented that what concerned him was that the petitioner may want to file a judicial review action but does not have the employer's first report and the wage statement, because the employer or the insurer had not provided the petitioner with the documents. Would the petitioner not be allowed to continue the case, because he or she did not attach those documents?

The Reporter inquired whether the documents would be in the Commission's files. Mr. Zarbin responded that if the documents are not filed with the Commission, they are not available. Very often, he gets to a hearing, and those documents are not

available. They may not have been prepared, even though they were supposed to be filed. Not filing the documents harms the employer and insurer, because that is what starts the statute of limitations running. Judge Pierson asked why the employer's first report and wage statement are necessary. How many cases are there where the average weekly wage has been at issue in the court proceeding?

Ms. Harrison said that there may not be an employer's first report if the employer alleges that whatever action is being contested never happened. There are many reasons why there may not be a first report. A wage statement would not necessarily be filed with the Commission. It may be filed later.

The Chair asked if anyone had a motion to add the words "if any" after subsections (c)(2)(B)(ii) and (iii) of Rule 7-202. Mr. Zarbin moved to add those words, and the motion was seconded. Ms. Day remarked that if the documents exist, they are available. She suggested that the new language should be "if available." Mr. Zarbin responded that he was concerned about using the words "if available," because then an issue would arise as to why it is not available. If someone else has it, but the petitioner does not, then it is not available. Mr. Sullivan noted that it would be in the record of the proceeding. Mr. Zarbin observed that it does not have to be in the record. Mr. Sullivan said that if it is in the record, then it has to be provided. Mr. Zarbin remarked that the petitioner would like the first report if it has not been provided.

Judge Eaves asked if the new language should be "if any is available." Mr. Zarbin replied affirmatively. Ms. Harrison pointed out that the case could be dismissed. Mr. Zarbin remarked that he did not want someone to file a motion to dismiss, because the four items in subsection (c)(2)(B) were not attached. The Chair asked if the wage statement is provided by the employer. Mr. Zarbin answered that both the first report and the wage statement are completely within the control of the employer. It appeared that Mr. Lipshultz had wanted this in the Rule, because he represents the employers. Mr. Zarbin added that he could do without these documents, because what is important to him as a petitioner is the award from the Commission in the petition.

The Chair commented that if the motion on the floor carried, subsections (c)(2)(B)(i) and (c)(2)(B)(iv) would be listed first, because those items have to be supplied. The other two items in subsection (c)(2)(B) would have the language "if in the record before the Commission" after them. Or should the language be "if available?" Mr. Zarbin suggested that the new language should be "if any are available." Judge Pierson inquired whether Mr. Zarbin would allow an amendment to his motion to eliminate subsections (c)(2)(B)(ii) and (iii). Mr. Zarbin replied that he would accept that amendment. The amended motion was seconded. The motion passed by a majority vote.

The Vice Chair told the Committee that the next issue addressed in Rule 7-202 was what happens when the petitioner or

someone else challenges an award of attorneys' fees. The petitioner will have to indicate in his or her petition that this is an issue and that a copy of it is being sent to the attorney for the Commission. This appears in subsection (d)(2). Subsection (d)(3) provides that upon receiving the copy of the petition from the clerk, the agency shall give notice by first-class mail or electronically if that method is available. Electronic notice is addressed in subsection (d)(3)(B). The Chair asked whether under section (e) in the first sentence, the language "or electronically transmitted" should be added after the language "[w]ithin five days after mailing," after the language "the date the agency's notice was mailed" and after the language at the end of the sentence that read "was mailed." By consensus, the Committee agreed to add this language.

By consensus, the Committee approved Rule 7-202 as amended.

The Vice Chair presented Rule 7-206, Record - Generally, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF

ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-206 by making it inapplicable to judicial review of decisions of the Workers' Compensation Commission except under certain circumstances, as follows:

Rule 7-206. RECORD – GENERALLY

(a) Applicability

This Rule does not apply to judicial review of a decision of the Workers' Compensation Commission, except as otherwise provided by Rule 7-206.1.

~~(a)~~ (b) Contents; Expense of Transcript

The record shall include the transcript of testimony and all exhibits and other papers filed in the agency proceeding, except those papers the parties agree or the court directs may be omitted by written stipulation or order included in the record. If the testimony has been recorded but not transcribed before the filing of the petition for judicial review, the first petitioner, if required by the agency and unless otherwise ordered by the court or provided by law, shall pay the expense of transcription, which shall be taxed as costs and may be apportioned as provided in Rule 2-603. A petitioner who pays the cost of transcription shall file with the agency a certification of costs, and the agency shall include the certification in the record.

~~(b)~~ (c) Statement in Lieu of Record

If the parties agree that the questions presented by the action for judicial review can be determined without an examination of the entire record, they may sign and, upon approval by the agency, file a statement showing how the questions arose and were decided and setting forth only those facts or allegations that are essential to a decision of the questions. The parties are strongly encouraged to agree to such a statement. The statement, any exhibits to it, the agency's order of which review is sought, and any opinion of the agency shall constitute the record in the action for judicial review.

~~(c)~~ (d) Time for Transmitting

Except as otherwise provided by this Rule, the agency shall transmit to the clerk of the circuit court the original or a certified copy of the record of its proceedings within 60 days after the agency receives the first petition for judicial review.

~~(d)~~ (e) Shortening or Extending the Time

Upon motion by the agency or any party, the court may shorten or extend the time for transmittal of the record. The court may extend the time for no more than an additional 60 days. The action shall be dismissed if the record has not been transmitted within the time prescribed unless the court finds that the inability to transmit the record was caused by the act or omission of the agency, a stenographer, or a person other than the moving party.

~~(e)~~ (f) Duty of Clerk

Upon the filing of the record, the clerk shall notify the parties of the date that the record was filed.

Committee note: Code, Article 2B, §175 (e)(3) provides that the decision of a local liquor board shall be affirmed, modified, or reversed by the court within 90 days after the record has been filed, unless the time is "extended by the court for good cause."

Source: This Rule is in part derived from former Rule B7 and in part new.

The Vice Chair pointed out that section (a) had been amended to refer to new Rule 7-206.1, which addresses only appeals involving the Workers' Compensation Commission. Rule 7-206.1 refers back to Rule 7-206 for appeals on the record. The amendment to Rule 7-206 was merely a "housekeeping" amendment.

By consensus, the Committee approved Rule 7-206 as

presented.

The Vice Chair presented Rule 7-206.1, Record - Judicial Review of Decision of the Workers' Compensation Commission, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF

ADMINISTRATIVE AGENCY DECISIONS

ADD new Rule 7-206.1, as follows:

Rule 7-206.1. RECORD – JUDICIAL REVIEW OF DECISION OF THE WORKERS' COMPENSATION COMMISSION

(a) Applicability

This Rule applies only in a action for judicial review of a decision of the Workers' Compensation Commission.

(b) If Review is on the Record

Subject to section (d) of this Rule, Rule 7-206 governs the preparation and filing of the record if judicial review of an issue is on the record of the Commission.

(c) If Review is *De Novo*

If no issue is to be reviewed on the record of the Commission, the record of the proceedings before the Commission shall not be transmitted to the circuit court unless the court, on motion of a party or on the court's own initiative, enters an order requiring the preparation and filing of all or part of the record in accordance with the

provisions of Rule 7-206 and section (d) of this Rule.

Committee note: Section (c) of this Rule does not preclude a party from obtaining from the Commission a transcript of testimony or copies of other parts of the record upon payment by the party of the cost of the transcript or record excerpt.

(d) Electronic Transmission

If the Commission is required by section (b) of this Rule or by order of court to transmit all or part of the record to the court, the Commission shall file electronically if the court to which the record is transmitted is the circuit court for an "applicable county" as defined in Rule 20-101 (c).

Cross reference: See Code, Labor and Employment Article, §9-739.

Source: This Rule is new.

The Vice Chair explained that Rule 7-206.1 is the basis of all of the proposed changes to the Title 7 Rules. It provides for different paperwork to be transmitted when it is a *de novo* review as opposed to a review on the record. Section (b) provides that a review on the record has to comply with all of the requirements of Rule 7-206. *De novo* review is governed by section (c) of Rule 7-206.1. Section (b) provides that the record of the proceedings before the Commission shall not be transmitted to the circuit court unless the court, on motion of a party or on the court's own initiative, enters an order requiring the preparation and filing of the record.

Mr. Zarbin said that it is very important that the

transcript be prepared in a timely fashion. Whether or not it gets filed with the court is another question. If it were available electronically, which is what happens now, the court reporter transcribes the transcript and then sends copies to the parties and files a copy online. It is always online in the Commission, but both sides should have the transcript prepared in a timely fashion. People's memories are different than what they had testified to, and it explains to the trier of fact what happened. Often in a workers' compensation judicial review action, the judge reads the transcript beforehand, so he or she has knowledge of what the case is about. It is important that the transcript be prepared and be available electronically.

Mr. Zarbin noted that it is a different issue as to whether it gets filed with the court. A proposed amendment for section (c) could be: "A transcript of the proceedings before the Commission shall in all cases be prepared in accordance with Rule 7-206 (b) and shall be made available to all parties electronically in the same manner as other Commission documents. Costs are to be borne by the petitioner." The petitioner always has to pay for this.

The Vice Chair inquired where this proposed new language would be placed. Mr. Zarbin answered that it could be a second paragraph of section (c). Section (c) would then be divided into subsections (c)(1) and (c)(2). The Chair commented that courts have held that proceedings in circuit court are essentially *de novo*, but they really are not entirely *de novo*. There is a

presumption of correctness, and Code, Labor and Employment Article, §9-745 limits the jury or the trier of fact to answering only three questions. In practice, this is not done. However, Code, Labor and Employment Article, §9-745 states that the trier of fact shall determine whether the Commission (1) justly considered all the facts about the accidental personal injury, occupational disease, or compensable hernia, (2) exceeded the powers granted to it, and (3) misconstrued the law and facts applicable in the case decided. Mr. Zarbin said that the workers' compensation bar gets along very well. They generally agree as to the issues.

The Chair asked if the term "*de novo*" should be used in a Rule when the proceeding is not entirely *de novo*. Mr. Sullivan pointed out that the term "*de novo*" does not appear in the statute. The workers's compensation bar has turned the statute around and presumes that the case will be on the record, except for the issues that are heard by a jury. The reality is that the parties' presumptions actually seem to be that everything will go to the jury unless certain issues are specified. The Chair added that this is what happens. Mr. Zarbin noted that a great amount of appellate case law provides this. The Reporter said that the tagline of section (c) can be changed to match the first phrase of section (c), which read "[i]f no issue is to be reviewed on the record of the Commission."

Judge Pierson expressed the view that the proposed new language should have a time limit, which is in Rule 7-206 (d).

Judge Pierson said that it should refer to section (d) as well as to section (b). Mr. Zarbin clarified that the new language would be "... shall in all cases be prepared in accordance with Rule 7-206 (b) and (d) and shall be made available to all parties electronically...". The new language that he had suggested would be: "A transcript of the proceedings before the Commission shall in all cases be prepared in accordance with Rule 7-206 (b) and (d) and shall be made available to all parties electronically in the same manner as other Commission documents. Costs are to be borne by the petitioner." He moved to add this language to Rule 7-206.1 as a new subsection (c)(2). The motion was seconded, and it carried on a majority vote.

By consensus, the Committee approved new Rule 7-206.1 as amended.

The Vice Chair presented Rules 2-603, Costs, and 7-204, Response to Petition, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-603 to conform an internal reference to amendments to Rule 7-206, as follows:

Rule 2-603. COSTS

. . .

(b) Assessment by the Clerk

The clerk shall assess as costs all fees of the clerk and sheriff, statutory fees actually paid to witnesses who testify, and, in proceedings under Title 7, Chapter 200 of these Rules, the costs specified by Rule 7-206 ~~(a)~~ (b). On written request of a party, the clerk shall assess other costs prescribed by rule or law. The clerk shall notify each party of the assessment in writing. On motion of any party filed within five days after the party receives notice of the clerk's assessment, the court shall review the action of the clerk.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF

ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-204 to conform a reference in a Committee note to amendments to Rule 7-206, as follows:

Rule 7-204. RESPONSE TO PETITION

. . .

(b) Preliminary Motion

A person may file with the response a preliminary motion addressed to standing, venue, timeliness of filing, or any other matter that would defeat a petitioner's right to judicial review. Except for venue, failure to file a preliminary motion does not

constitute waiver of an issue. A preliminary motion shall be served upon the petitioner and the agency.

Committee note: The filing of a preliminary motion does not result in an automatic extension of the time to transmit the record. The agency or party seeking the extension must file a motion under Rule 7-206 ~~(d)~~ (e).

. . .

The Vice Chair told the Committee that Rules 2-603 and 7-204 contain a conforming amendment to the changes made to Rule 7-206.

By consensus, the Committee approved Rules 2-603 and 7-204 as presented.

Agenda Item 2. Consideration of proposed amendments to: Rule 8-605 (Reconsideration) and Rule 8-207 (Expedited Appeal)

The Vice Chair presented Rules 8-605, Reconsideration and 8-207, Expedited Appeal, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 600 - DISPOSITION

AMEND Rule 8-605 to add a new section (b) providing the content of a motion for reconsideration or a response to it and to make stylistic changes, as follows:

Rule 8-605. RECONSIDERATION

(a) Motion; Response; No Oral Argument

Except as otherwise provided in Rule 8-602 (c), a party may file pursuant to this Rule a motion for reconsideration of a decision by the Court that disposes of the appeal. The motion shall be filed (1) before issuance of the mandate or (2) within 30 days after the filing of the opinion of the Court, whichever is earlier. A response to a motion for reconsideration may not be filed unless requested on behalf of the Court by at least one judge who concurred in the opinion or order. Except to make changes in the opinion that do not change the decision in the case, the Court ordinarily will not grant a motion for reconsideration unless it has requested a response. There shall be no oral argument on the motion.

(b) Content

A motion or response ordinarily shall be limited to addressing one or more of the following:

(1) whether the Court's opinion or order did not address a material factual or legal matter raised in the lower court and argued by a party in its submission to the Court, and if not, a brief statement as to why it was not raised or argued;

(2) whether a material change in the law occurred after the case was submitted and was not addressed in the Court's opinion or order;

(3) if the motion or response is filed in the Court of Appeals, whether and how the Court's opinion or order is in material conflict with a decision of the United States Supreme Court or a decision of the Court of Appeals; or

(4) if the motion or response is filed in the Court of Special Appeals, whether and how the Court's opinion or order is in conflict with a decision of the United States Supreme Court or the Court of Appeals or a reported opinion of the Court of Special Appeals.

~~(b)~~ (c) Length

A motion or response filed pursuant to this Rule shall not exceed 15 pages.

~~(c)~~ (d) Copies - Filing

(1) In Court of Special Appeals

In the Court of Special Appeals, the original of the motion and any response shall be filed together with four copies if the opinion of the Court was unreported or 13 copies if reported.

(2) In Court of Appeals

In the Court of Appeals, the original and seven copies of the motion and any response shall be filed.

~~(d)~~ (e) Mandate to be Delayed

A motion for reconsideration shall delay issuance of a mandate, unless otherwise ordered by the Court.

~~(e)~~ (f) Disposition of Motion

A motion for reconsideration shall be granted only with the consent of at least half the judges who concurred in the opinion. If a motion for reconsideration is granted, the Court may make a final disposition of the appeal without reargument, restore the appeal to the calendar for argument, or make other orders, including modification or clarification of its opinion, as the Court finds appropriate.

Source: This Rule is derived from former Rules 1050 and 850.

Rule 8-605 was accompanied by the following Reporter's note.

An attorney pointed out that Rule 8-605 offers practitioners no guidance concerning the contents of a motion for reconsider-ation in contrast with the federal rules.

The Appellate Subcommittee proposes to add a new section to Rule 8-605, which provides some criteria to include in a motion for reconsideration, based on the criteria in the federal rules. However, since the federal rules do not address filing a motion for reconsideration when the opinion below went in an unanticipated direction, the Subcommittee recommends adding language to subsection (b)(1) stating that if a motion raised a factual or legal matter not raised in the lower court, the person filing the motion shall include in a brief statement why the factual or legal matter had not been raised.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-207 (a)(6) to change an internal reference, as follows:

Rule 8-207. EXPEDITED APPEAL

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

. . .

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

> the Court of Special Appeals shall issue the mandate upon the expiration of 15 days after the filing of the court's opinion or order.
>
> . . .

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

> Because of the proposed addition to Rule 8-605, the reference to "Rule 8-605 (d)" in subsection (a)(6) of Rule 8-207 would need to be changed to "Rule 8-605 (e)" if the addition to Rule 8-605 is approved.

The Vice Chair explained that the proposed change to Rule 8-605 resulted from an article in The Daily Record by Andrew Baida, Esq. in his appellate practice column. He had pointed out that there are no standards for a motion for reconsideration as to why the court decision should be reconsidered. What are the standards for granting a motion for reconsideration? Sometimes a party will file a motion, and the reasons given are the same reasons that were in the appellate brief. The motions get denied routinely because of this. The proposed new language sets forth a standard based somewhat on the federal rules. The standards were set forth in proposed section (b) of Rule 8-605. From a style perspective, some changes to subsection (b)(1) may be necessary.

The Vice Chair noted that one of the issues for a motion for reconsideration or a response to the motion, subsection (b)(2), was whether a material change in the law had occurred after the case was submitted and had not been addressed in the Court's opinion or order. That does not happen very often, but it might

be a reason for the Court to grant the motion. Subsection (b)(3) pertains to a Court decision or order in material conflict with a decision of the U.S. Supreme Court or of the Court of Appeals. Subsection (b)(4) has the same language pertaining to a conflict with the U.S. Supreme Court or the Court of Appeals, but it also includes a conflict with a reported decision of the Court of Special Appeals. The word "material" modifying the word "conflict" had been left out of subsection (b)(4), and it should be added back in.

Mr. Zavin told the Committee that he is from the Office of the Public Defender. He suggested an additional reason for granting a motion for reconsideration, which was that the court relied on a material statement of fact or law which had been misstated. The Chair asked Mr. Zavin to explain this. Mr. Zavin answered that an example would be that the court suggested that the legislative history was something that it really was not. These kind of mistakes do happen. It may be that the court's interpretation of a statute that was relied on in the opinion was incorrect. It is not rearguing the brief; it is suggesting that there was a mistake in the opinion.

The Vice Chair inquired whether this would include the court simply ignoring a fact that had been raised in the brief. What makes it material? The court often does not address every fact in the brief but only the ones the court finds to be relevant in terms of deciding the case. How would it be material just because the court ignored it or got it wrong? Mr. Zavin asked

about the situation where the court ignored the fact. The Vice Chair said that this would be saying that the court had ignored the fact in the brief, and the person filing the motion is bringing it up again. This is the kind of category that is preferable to omit from Rule 8-605. Mr. Zavin responded that it is a fine line.

The Chair said that he understood why Mr. Zavin was bringing up his point, but it sounded like a broad reason for rearguing what had not been argued at all in the brief or had been argued unpersuasively the first time. Mr. Zavin responded that he was not asking for a second opportunity to persuade the court on an issue that the court had rejected, but he had seen cases on appeal where a transcript had not been given to the court when it considered the case initially. The Vice Chair asked Mr. Zavin to state his proposed language again. Mr. Zavin answered that the language would be: "that the court relied upon a material mistake of fact or law." Mr. Zavin said that he understood this language was open-ended. Ms. McBride pointed out that the proposed change in section (b) of Rule 8-605 begins with the language: "[a] motion or response ordinarily (emphasis added) shall be limited to...". Would other issues be available if someone wanted to argue them? The language is not "[a] motion or response shall be limited ...". The Chair agreed that this allows some flexibility.

Mr. Carbine noted that every now and then appellate courts make mistakes. The correction of a mistake that everyone agrees

is a mistake is not covered by the four new reasons proposed for addition to Rule 8-605. The Chair pointed out that these standards were taken from Rule 40 (b) of the Rules of the Fourth Circuit and from Rule 44 of the U.S. Supreme Court Rules. If the goal is to limit motions for reconsideration and not reargue what was in the briefs, which 80% of the motions for reconsideration do and which is why the motions are not granted, then the new language should not encourage reargument of the same issues. Mr. Carbine commented that for the court to find that the points in the brief were reargued is different from the court not allowing the motion to be filed. Practitioners need a little more room to correct an obvious mistake.

Mr. Zarbin remarked that he had gotten an opinion from an appellate court where both sides agreed that there had been a mistake. In a case like that, a motion for reconsideration would be filed stating that an error had been made, and this may be the situation to which Mr. Zavin had referred. It is not likely that the court would not consider this, but Mr. Carbine was correct that there is no mechanism for this situation.

The Vice Chair pointed out that subsection (b)(4)(A) of Rule 8-606, Mandate, the last appellate Rule to be discussed, has the language "delay issuance of the mandate." It is delayed if the Court denies the motion for reconsideration or grants it solely to make changes in the opinion that do not change the principal decision in the case. That will stay the mandate every time there is the kind of issue that would change the result. In that

situation, the court will make the changes in the opinion, and then the mandate will be issued right away. Mr. Carbine responded that he had no problem with this, but his concern was that the door is shut before he even can file the brief. The motion for reconsideration can only address one of the four items listed in section (b) of Rule 8-605.

Mr. Maloney suggested adding another item to section (b), which would be a motion for reconsideration granted for an evident mistake. The Chair said that his recollection was that motions for reconsideration are occasionally filed, pointing out a specific error in the facts or possibly a mistaken citation of a case. The Court of Appeals would deny the motion but correct the opinion. The Court of Special Appeals may grant the motion and correct the mistake, but it does not affect the outcome. It is in their interest to do this.

Mr. Maloney remarked that he had been involved in *State v. Crescent Cities Jaycees*, 330 Md. 460 (1993). In that case, the Court of Appeals included a paragraph that did not change the outcome of the case, but it was incorrect. It was going to have a substantial effect on Prince George's County regulatory issues. The attorneys filed a motion for reconsideration, which the Court granted in two weeks. It issued an opinion taking out the erroneous paragraph. This situation is not really covered by the four criteria in section (b) of Rule 8-605. The Chair cautioned that any addition to section (b) should not be too broad. Mr. Maloney added that the case should not be relitigated.

Mr. Sullivan pointed out that the Subcommittee's view seemed to be that if standards are to be added, and the most meritorious of motions could be omitted, then this does not do a service to the court and to the bar. He suggested a standard on which the court would look most favorably, and this is where the court's opinion or order addresses an issue not raised in briefs by the parties, which sometimes happens. The argument in the motion would be that the court would benefit from a briefing from the parties, because the court had ventured into an area which the parties had not addressed in their case. The court may not necessarily agree that more briefing would be needed, but they certainly might. Another aspect is where the opinion may not be wrong in and of itself, but it may have failed to take into account that it is going to have collateral consequences elsewhere that the court did not focus on. The court was focused on the record and the specific facts of the case, and it may be that the decision causes other statutes that were not before the court to apply, and it would create factual difficulties. Mr. Sullivan added that he was speaking from the experience of the Office of the Attorney General. One case decided may create many ripple effects.

The Chair commented that the motion for reconsideration was tried in the various decisions in *DeWolfe v. Richmond*, 434 Md. 403 (2012), 434 Md. 444 (2013) without success. Mr. Sullivan noted that the mandate still has not issued in that case. This is something that the court would be able to take into account

before the case is reported, and the consequences become the law of Maryland. If this can be avoided by changing an opinion slightly on a motion for reconsideration, the four criteria in section (b) of Rule 8-605 do not take this situation into account unless one of the consequences was a decision of the U.S. Supreme Court.

The Chair asked why this situation would not be covered in subsection (b)(1). It is whether the Court's opinion or order did not address a material, factual, or legal matter raised in the lower court and argued by a party. Mr. Sullivan answered that subsection (b)(1) does not address the situation he referred to, because the first part of what he had said was that the court itself had come up with it. The second part of his statement was that there had been consequences that had not been anticipated and that were not briefed, because the parties had been focused on the facts of their particular case, and the court is focused on that. However, once the opinion is issued, someone who was not involved in the case and is more specialized in another area realizes that the court may have unknowingly created the following difficulties with complying with other parts of the law as a result of the opinion.

The Chair pointed out that the court has answered the issues raised in the case but does not refer to the consequences of its decision, because the court does not think there are going to be any. Mr. Sullivan asked why the court would want to blind itself, but the Chair responded that the court may not be

blinding itself. The court may simply not agree. Mr. Carbine noted that this is why the court denies the motion. Mr. Sullivan expressed the view that the Rule in stating four standards should not by implication exclude what could be something important for the court to look at. The Chair said that if the broad language is added to section (b) of Rule 8-605, it would authorize the very thing that the courts do not want. Mr. Sullivan remarked that he thought that judges would want to know the collateral consequences of an opinion. The Chair noted that if the language is hinged on a topic on which the court has gone off on its own and that had never been addressed in the briefs, this is different than the court answering an issue and not speaking about the consequences, because the court does not think that it needs to.

Mr. Maloney asked which of the four criteria in section (b) of Rule 8-605 would apply to the reconsideration of *Tracey v. Soleskey*, 427 Md. 627 (2012), which is the case requiring strict liability for owners of pit bulls. The Vice Chair reiterated that the introductory language of section (b) uses the word "ordinarily." Another possibility would be to add a Committee note that would focus on the word "ordinarily." The note would explain that the four criteria are not exclusive and could give examples of situations that would fit under the category of "ordinarily." Mr. Maloney agreed with this. The Chair expressed the opinion that this should go into the body of the Rule. Why should the note provide that this is a non-exclusive list,

because then anything can be put into the motion or response?

Mr. Maloney suggested that a review of the case law where the court has reconsidered cases should be done. A few cases that reflect the court's history could be cited. The Rule should reflect the practice of what the court has done. Mr. Sullivan remarked that the Rule should state that attorneys should not bother to file a motion for reconsideration, because this will be the gist of most of the review of the cases.

The Chair pointed out that Rule 44 of the U.S. Supreme Court does not include the consequences of decisions as a standard for a motion for reconsideration. Mr. Sullivan noted that U.S. Supreme Court practice often has *amicus curiae* briefs filed from all over the United States, so the Court will have a much more extensive body of knowledge to work with than the appellate courts in Maryland typically have. The Chair commented that the Court of Appeals gets many *amicus* briefs in cases. Mr. Sullivan argued that the numbers are a fraction of the *amicus* briefs the U.S. Supreme Court receives.

The Chair asked the Committee if they wished to add a fifth item to the list in section (b) of Rule 8-605, and if so, what it should say. The Vice Chair asked if a Committee note should be added. Judge Price inquired whether the list is needed at all. The Chair said that the language proposed for section (b) was taken from Local Rule 40 (b) of the U.S. Court of Appeals for the Fourth Circuit. However, it does not have to be followed religiously. Mr. Sullivan remarked that Judge Price's comment

about the necessity of this was reminiscent of someone at the Subcommittee meeting at which Rule 8-605 had been discussed describing the possible addition of criteria as "a solution in search of a problem." Judge Pierson commented that a fifth standard could be added, and the Rule could be recast to require the motion to state which of the five categories the motion falls into. The Chair noted that to avoid a malpractice action the movant will state that the motion applies to all five categories.

Mr. Carbine moved that Rule 8-605 be recommitted to the Appellate Subcommittee to come up with a well-defined, narrow exception that allows for a motion for reconsideration on a basis other than the four categories proposed for addition to the Rule. The motion was seconded, and it carried by a majority vote. The Vice Chair said that the proposed addition to Rule 8-207, Expedited Appeal, would not need to be discussed, because the addition to Rule 8-605 had not been approved.

Agenda Item 3. Consideration of proposed amendments to: Rule 8-606 (Mandate)

The Vice Chair presented Rule 8-606, Mandate, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 600 - DISPOSITION

AMEND Rule 8-606 (b)(4) to add language providing when the clerk shall delay issuance of the mandate and when the clerk shall issue the mandate, as follows:

Rule 8-606. MANDATE

(a) To Evidence Order of the Court

Any disposition of an appeal, including a voluntary dismissal, shall be evidenced by the mandate of the Court, which shall be certified by the Clerk under the seal of the Court and shall constitute the judgment of the Court.

(b) When Issued

(1) Generally

Subject to subsections (b)(2), (3), and (4) of this Rule, unless the Court orders otherwise, the Clerk shall issue the mandate upon the expiration of 30 days after the filing of the Court's opinion or entry of the Court's order.

(2) Voluntary Dismissal

Upon a voluntary dismissal, the Clerk shall issue the mandate immediately.

(3) Court of Special Appeals - Expedited Appeal

In any appeal proceeding under Rule 8-207 (a), issuance of the mandate shall be as provided in Rule 8-207 (a)(6).

(4) Motion for Reconsideration

If a timely motion for reconsideration is filed, ~~issuance of the mandate ordinarily shall be delayed, as provided in Rule 8-605 (d)~~ unless the Court orders otherwise:

(A) the Clerk shall delay issuance of the mandate until the filing of (i) a

withdrawal of the motion, or (ii) an order of the Court deciding the motion;

(B) if the Court denies the motion or grants it solely to make changes in the opinion or previous order that do not change the principal decision in the case, the Clerk shall issue the mandate immediately upon the filing of the order; or

(C) if the Court order, with or without an accompanying new opinion, grants the motion in such manner as to change the principal decision in the case, the Clerk shall issue the mandate upon the expiration of 30 days after the filing of the order.

(c) To Contain Statement of Costs

The mandate shall contain a statement of the order of the Court assessing costs and the amount of the costs taxable to each party.

(d) Transmission - Mandate and Record

(1) Generally

Except as provided in subsection (d)(2) of this Rule, upon issuance of the mandate, the Clerk shall transmit it to the appropriate lower court. Unless the appellate court orders otherwise, the original papers comprising the record shall be transmitted with the mandate.

(2) Court of Special Appeals - Delayed Return

If a petition for a writ of certiorari is filed pursuant to Rule 8-303 while the record is in the possession of the Court of Special Appeals, the Clerk of the Court of Special Appeals shall not return the record to the lower court until (A) the petition is denied, or (B) if the petition is granted, the Court of Special Appeals takes action in accordance with the mandate of the Court of Appeals.

(e) Effect of Mandate

> Upon receipt of the mandate, the clerk of the lower court shall enter it promptly on the docket and the lower court shall proceed in accordance with its terms. Except as otherwise provided in Rule 8-611 (b), the assessment of costs in the mandate shall not be recorded and indexed as provided by Rule 2-601 (c).
>
> Cross reference: Code, Courts Article, §6-408.
>
> Source: This Rule is derived from former Rules 1076, 1077, 876, and 877.

Rule 8-606 was accompanied by the following Reporter's note.

> The Court of Appeals adopted amendments to Rule 8-606. During its open meeting on Rule 8-606, the Court requested that the Rules Committee study the issue of the timing of the issuance of a mandate and make proposals to clarify the existing provisions.
>
> The Appellate Subcommittee recommends adding language to subsection (b)(4) that would clarify when the mandate is to be issued if a timely motion for reconsideration has been filed unless the court orders otherwise. The Clerk shall delay issuance of the mandate until the filing of a withdrawal of the motion on an order of the court deciding the motion. If the motion is denied or is granted but does not change the principal decision, the clerk shall issue the mandate immediately upon the filing of the order. If the motion is granted and changes the principal decision in the case, the clerk shall issue the mandate upon the expiration of 30 days after the filing of the order.

The Chair told the Committee that he would give them some history on the proposed changes to Rule 8-606. Ordinarily, the mandate is issued 30 days after the opinion unless a motion for reconsideration is filed in which event the issuance is delayed.

This had not been a problem until *DeWolfe v. Richmond*. In that case, the Court of Appeals' first opinion said that parties were entitled to counsel at the initial appearance before District Court commissioners. The circuit court had ruled that this is required by the Public Defender statute, Code, Criminal Procedure Article, §16-204, and the Constitution. The case was argued before the Court of Appeals, and the first time the case was heard, the Court had decided that this was provided for in the statute and therefore it did not address the constitutional issue. The Chair said that the 2012 legislature amended the Public Defender statute to overturn the part of the Court's decision that required counsel at the commissioner level. There was a motion for reconsideration filed in the Court of Appeals before the legislature acted but while they were in session. The motion was filed by the plaintiffs who asked the Court to address the constitutional issue, and 18 months later, the Court did so. The Court issued an opinion on the motion for reconsideration (it was not a new appeal) saying that there was a right to counsel under the Maryland Constitution.

The Chair explained that the Office of the Attorney General, representing the State, wanted to file a motion to reconsider that ruling. They thought that they had 30 days to file the motion, so they did not do anything right away. On the 22nd day after the ruling, the Court issued the mandate, and the Office of the Attorney General was unable to go forward, because they could not file a motion for reconsideration after the mandate has been

issued. They filed a motion to recall the mandate, so that they could file a motion for reconsideration.

In early November, the Chair and the Reporter presented to the Court of Appeals the Rules necessary to implement the second *Richmond* decision. The Court adopted those Rules but did not assign them an effective date. That was the day that the Court denied the State's motion to recall the mandate. The denial eliminated the right to file a motion for reconsideration. Rule 8-606 is silent on this, and obviously, the Office of the Attorney General, in thinking that it had 30 days to file a motion to reconsider the granting of the plaintiffs' motion to reconsider, had guessed wrong. At the Court of Appeals, the Chair and the Reporter asked whether Rule 8-606 should address this, because the Rule is silent. The Court answered affirmatively. This is where the proposed changes to Rule 8-606 come from. It all stems from one case, but it was a live issue anyway. What happens with a motion for reconsideration that either does or does not change the decision in the case?

The Vice Chair explained that the proposed change was not complicated. The proposal was to add language providing that the issuance of the mandate shall be delayed until the filing of either a withdrawal of the motion for reconsideration or an order of the Court deciding the motion. The second scenario is that if the Court denies the motion or grants it solely to make changes in the opinion or previous order that do not change the principal decision in the case, the mandate issues right after the Court

denies the motion. If the Court grants the motion so that the principal decision is changed, the mandate issues upon the expiration of 30 days after the filing of the order. The Rule sets forth these three scenarios.

Mr. Sullivan asked whether the clerk decides if the changes in the opinion or previous order changed the principal decision in the case. Should the Rule indicate that the change was from an affirmance to a denial? The Chair pointed out that subsection (b)(4) states: "unless the Court orders otherwise." The court can decide in any case whether to delay the issuance of the mandate further or not. It can change one of the holdings, but not the bottom line.

Mr. Sullivan remarked that it seemed that whichever option the clerk will follow, subsection (b)(4)(B) or subsection (b)(4)(C), depends on what the principal decision is. The Vice Chair responded that it does not work that way. The author of the opinion as well as the other judges who sat on the case will get the motion, and even the Chief Judge may get it. It is never the clerk's sole decision as to whether the principal decision is changed or not. Mr. Sullivan inquired whether the Rule should provide that the Court will indicate in its decision whether the principal decision is affected. Typically, it is judges who make that kind of determination.

The Chair suggested that Rule 8-606 (b)(4)(B) could state: "...solely to make changes in the opinion or previous order that the Court finds do not change the principal decision in the

case...". A similar change would be made to subsection (b)(4)(C). It would read "... in such manner that the Court finds does not change the principal decision in the case." By consensus, the Committee agreed to these changes. Mr. Sullivan observed that 90% or more of the time, the court's action on a motion for reconsideration does not change the principal decision in the case. The Chair agreed.

By consensus the Committee approved Rule 8-606 as amended.

Agenda Item 4. Consideration of proposed amendments to Rule 4-326 (Jury - Review of Evidence - Communications) and Rule 2-521 (Jury - Review of Evidence - Communications)

Mr. Maloney presented Rule 4-326 , Jury - Review of Evidence - Communications, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-326 (d) by adding subsection (d)(1) to provide for juror communication using juror numbers, by adding the words "or a juror" to subsection (d)(2)(A), by adding language to subsection (d)(2)(B) providing for certain actions by a judge who receives a juror communication, by adding a Committee note after subsection (d)(2)(B), by adding language to subsection (d)(2)(C) providing for a judicial determination of a juror communication, and by amending subsection (d)(3) pertaining to how the clerk handles a juror communication, as follows:

Rule 4-326. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and on request of any party shall, provide paper notepads for use by sworn jurors, including any alternates, during trial and deliberations. The court shall maintain control over the jurors' notes during the trial and promptly destroy the notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the author. If a sworn juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

(b) Items Taken to Jury Room

Sworn jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take the charging document and exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and the consent of the court. Electronically recorded instructions or oral instructions reduced to writing may be taken into the jury room only with the permission of the court. On request of a party or on the court's own initiative, the charging documents shall reflect only those charges on which the jury is to deliberate. The court may impose safeguards for the preservation of the exhibits and the safety of the jury.

Cross reference: See Rule 5-802.1 (e).

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

(1) Instruction to Use Juror Number

The judge shall instruct the jury, in any preliminary instructions and in instructions given prior to jury deliberations that, in any written communication from a juror, the juror shall be identified only by juror number.

~~(1)~~ (2) Notification of Judge; Duty of Judge

(A) A court official or employee who receives any written or oral communication from the jury or a juror shall immediately notify the presiding judge of the communication.

(B) ~~If~~ The judge shall determine whether the communication pertains to the action~~,~~. If the judge determines that the communication does not pertain to the action, the judge may respond as he or she deems appropriate.

Committee note: Whether a communication pertains to the action is defined by case law. *See*, for example, *Harris v. State*, 428 Md. 700 (2012) and *Grade v. State*, 431 Md. 85 (2013).

(C) If the judge determines that the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication ~~(A)~~ in writing, or ~~(B)~~ orally in open court on the record.

~~(2)~~ (3) Duty of Clerk

~~The clerk shall (A) record on any written communication the date and time it was received by the judge, and (B) enter on the docket (i) any written communication and the nature of any oral communication, (ii) the date and time the communication was~~

~~received by the judge, (iii) that the parties were notified and had an opportunity on the record to state their position on any response, (iv) how the communication was addressed by the judge, and (v) any written response by the judge to the communication.~~

(A) The clerk shall enter on the docket (i) the date and time that each communication from the jury or a juror was received by or reported to the judge, (ii) whether the communication was written or oral, and, if oral, the nature of the communication, (iii) whether the judge concluded that the communication pertained to the action, and (iv) if so, whether the parties and attorneys were notified and had an opportunity on the record to state their position on any response.

(B) The clerk shall enter in the electronic or paper file each written communication from the jury and each written response by the judge. Any identification of a juror other than the juror number shall be redacted.

(C) In any entry made by the clerk, a juror shall be identified only by juror number.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 758 a and b and 757 e.
Section (c) is derived from former Rule 758 c.
Section (d) is derived in part from former Rule 758 d and is in part new.

Rule 4-326 was accompanied by the following Reporter's note.

The Court of Appeals decided a number of cases involving notes sent by jurors sitting in a case (e.g., *Perez v. State*, 420 Md. 57 (2011); *State v. Harris*, 428 Md. 700 (2012). Most of the cases were reversed. The Court requested that Rules 2-521 and 4-326 be expanded to address this issue. The Committee proposed amendments to clarify how

jurors' notes are to be handled. The amendments were sent to the Court in the 174th Report. Prior to the Court's open hearing on them, the Court filed its opinion in *Black v. State*, 426 Md. 328 (2012), which raised an additional issue that the Court believed should be addressed in Rules 2-521 and 4-326, requiring court employees to inform the judge of any communication from a juror. The Rules were remanded to the Committee, which recommended changes to them and resubmitted them in the 177th Report. The Court then asked for clarification of the meaning of the language "pertaining to the action," which appeared in both Rules, and referred the Rules back to the Committee.

To address the Court's request, the Criminal Subcommittee suggests adding a Committee note after subsection (d)(2)(B) of Rule 4-326, which would also be added to Rule 2-521. The Subcommittee's view was that although it is not necessary to notify the parties of every communication by a juror, clerks should be required to docket all communications received from jurors. A judge sent in a comment expressing the concern that this would burden the docket and result in invasion of jurors' privacy if their identifying information is placed in the record. The Subcommittee recommends that all juror communications be docketed but suggests the addition of language requiring that jurors identify themselves only by their juror number when they submit a written communication during a trial.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-521 (d) by adding subsection (d)(1) to provide for juror

communication using juror numbers, by adding the words "or a juror" to subsection (d)(2)(A), by adding language to subsection (d)(2)(B) providing for certain actions by a judge who receives a juror communication, by adding a Committee note after subsection (d)(2)(B), by adding language to subsection (d)(2)(C) providing for a judicial determination of a juror communication, and by amending subsection (d)(3) pertaining to how the clerk handles a juror communication, as follows:

Rule 2-521. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and on request of any party shall, provide paper notepads for use by sworn jurors, including any alternates, during trial and deliberations. The court shall maintain control over the jurors' notes during the trial and promptly destroy the notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the author. If a sworn juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

(b) Items Taken to Jury Room

Sworn jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and consent of the court. Written or electronically recorded instructions may be taken into the jury room only with the permission of the court.

Cross reference: See Rule 5-802.1 (e).

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

(1) Instruction to Use Juror Number

The judge shall instruct the jury, in any preliminary instructions and in instructions given prior to jury deliberations that, in any written communication from a juror, the juror shall be identified only by juror number.

~~(1)~~ (2) Notification of Judge; Duty of Judge

(A) A court official or employee who receives any written or oral communication from the jury or a juror shall immediately notify the presiding judge of the communication.

(B) ~~If~~ The judge shall determine whether the communication pertains to the action~~,~~. If the judge determines that the communication does not pertain to the action, the judge may respond as he or she deems appropriate.

Committee note: Whether a communication pertains to the action is defined by case law. *See*, for example, *Harris v. State*, 428 Md. 700 (2012) and *Grade v. State*, 431 Md. 85 (2013).

(C) If the judge determines that the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication (A) in writing, or (B) orally in open court on the record.

~~(2)~~ (3) Duty of Clerk

~~The clerk shall (A) record on any written communication the date and time it was received by the judge, and (B) enter on the docket (i) any written communication and the nature of any oral communication, (ii) the date and time the communication was received by the judge, (iii) that the parties were notified and had an opportunity on the record to state their position on any response, (iv) how the communication was addressed by the judge, and (v) any written response by the judge to the communication.~~

(A) The clerk shall enter on the docket (i) the date and time that each communication from the jury or a juror was received by or reported to the judge, (ii) whether the communication was written or oral, and, if oral, the nature of the communication, (iii) whether the judge concluded that the communication pertained to the action, and (iv) if so, whether the parties and attorneys were notified and had an opportunity on the record to state their position on any response.

(B) The clerk shall enter in the electronic or paper file each written communication from the jury and each written response by the judge. Any identification of a juror other than the juror number shall be redacted.

(C) In any entry made by the clerk, a juror shall be identified only by juror number.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rules 558 a, b and d and 758 b.
Section (c) is derived from former Rule 758 c.
Section (d) is derived in part from former Rule 758 d and is in part new.

Rule 2-521 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-326.

Mr. Maloney told the Committee that Rule 4-326 pertains to notes from the jury. The Court of Appeals remanded the Rule to the Committee after the decision in *Black v. State*, 426 Md. 328 (2012). In that case, after the trial, the defense attorney found a note from the jury which stated that the jury was hopelessly deadlocked. Defense counsel said that they had never seen the note. The trial judge signed an affidavit saying that he had never seen the note. The trial judge's affidavit was persuasive, because there were 12 previous notes that he had seen that were in the file that ranged from requests about jurors' personal needs to questions about the law. Apparently, someone in the clerk's office had not forwarded to the trial judge the note found later.

Mr. Maloney noted that the Court would like the Rule to reflect what the duties of the clerk are with respect to what happens when the clerk receives a note from the jury. This raised the issue as to when the court is required to tell the parties that it has received a note. For example, if the court receives a note asking for lunch from a certain restaurant, must the court inform the parties about the note? This differs from the note in *State v. Harris*, 428 Md. 700 (2012), which stated that the juror's grandmother was ill, and if she died, the juror would have to go to the funeral. The Court of Appeals had held that the latter is a note "pertaining to the case."

Mr. Maloney said that the Criminal Subcommittee had recommended a solution to this issue, so that the clerks do not have any discretion about it. All notes of any kind will be docketed and sent to the judge without exception. Once that occurs, the judge will make a determination as to whether the note "pertains to the case." There is a great deal of recent case law on the meaning of the language "pertains to the case." If the note pertains to the case, then the court will be required to share the note with all parties on the record and get their reactions to it. If it does not pertain to the case, the note will still be filed in the court file. The Rule will memorialize this procedure.

Mr. Maloney noted that another issue raised was concerns about the names of jurors being in the public record. New language had been added to Rule 4-326 (d)(1), which provides that jurors will be instructed at the beginning of the case that if they send a note, they are not to use their names, they are to use their juror numbers and to refer to themselves throughout the proceedings by this number.

The changes to Rule 4-326 are the following: (1) the clerk will be required to docket all of the juror notes, (2) the judge will make the determination as to whether the note pertains to the case, and if it does, all parties will be informed of it, and (3) the jury will be instructed that any notes they send must be signed only with their juror number and not their name. Also, a Committee note has been added after subsection (d)(2)(B) that

refers to the recent case law on the meaning of the language "pertains to the case." The Chair stated that this change would also be made to Rule 2-521, Jury - Review of Evidence - Communications, the corresponding civil Rule.

By consensus, the Committee approved Rule 4-326 as presented.

Continuation of Agenda Item 6

Ms. Ortiz told the Committee that she and the other consultants present for Agenda Item 6, the Rules pertaining to limited scope representation by attorneys, had consulted with William Hornsby, Esq., who is staff counsel at the American Bar Association and who directs that organization's efforts to promote limited scope representation, to find out what other states have done on this. Mr. Hornsby had told them that 40 states have adopted changes to Rule 1.2 (c) that permit limited scope practice by attorneys with informed consent without a writing required. Maryland needs to find a solution that enables practitioners as well as legal services providers to provide advice that people can depend upon in a limited scope representation.

Ms. Ortiz remarked that the first proposal of her colleagues and her would be that the language of Rule 1.2 (c) end after the words "informed consent." Their original proposal did not include the requirement of a writing. However, if the Rules Committee felt strongly that a writing is necessary for the informed consent, then Ms. Ortiz and her colleagues would propose

to add a subsection (3) to section (c) of Rule 1.2. Section (c) would then read: "A lawyer may limit the scope of the representation in accordance with applicable Maryland Rules (1) if the limitation is reasonable under the circumstances, (2) with the client's informed consent, and (3) if the scope and representation beyond an initial consultation or brief advice provided without a fee are clearly set forth in a writing." Professor Millemann had reminded her that if section (c) ends after the words "informed consent" and does not reference a writing, a statement could be included in the Comment that it would be the best practice for lawyers to memorialize the scope of the relationship in writing.

Judge Weatherly expressed her agreement with the language suggested for Rule 1.2. Mr. Frederick suggested that in place of the language "in writing," the language "confirmed in writing" could be substituted to be consistent and so that everyone knows what that language means. Subsection (c)(2) would read "...informed consent, confirmed in writing." The Chair asked how this would fit with subsection (c)(3). Ms. Ortiz said that section (c) could read "...(2) with the client's informed consent, confirmed in writing, and (3) the scope and representation beyond an initial consultation or brief advice provided without a fee is confirmed in writing."

Ms. Gardner explained that she and her colleagues felt that the language that is currently in the Rule for subsection (c)(3) could be used with some added language. It would read: "the

scope and limitations of the representation, beyond an initial consultation or brief advice provided without a fee, are clearly set forth in writing." By a majority vote, the Committee approved this language.

By consensus, the Committee approved Rules 1.2, 1-324, and 2-131 as amended and Rules 1-321, 2-132, 3-131, and 3-132 as presented.

Agenda Item 9. Consideration of proposed amendments to: Rule 1-333 (Court Interpreters)

The Chair said that the next Rule for discussion would be Rule 1-333 pertaining to interpreters, because so many interested persons were present.

The Chair presented Rule 1-333, Court Interpreters, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

ADD new Rule 1-333, as follows:

Rule 1-333. COURT INTERPRETERS

(a) Definitions

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

(1) Certified Interpreter

"Certified Interpreter" means an

interpreter who is certified by:

(A) the Maryland Administrative Office of the Courts;

(B) ***any*** member of the Council for Language Access Coordinators***, provided that, if the interpreter was not approved by the Maryland member of the Council, the interpreter has completed the orientation program required by the Maryland member of the Council***; or

Committee note: The Council for Language Access Coordinators is a unit of the National Center for State Courts.

(C) the Administrative Office of the United States Courts.

(2) Individual Who Needs an Interpreter

"Individual who needs an interpreter" means a party, attorney, witness, or victim who is deaf or unable adequately to understand or express himself or herself in spoken or written English and a juror or prospective juror who is deaf.

(3) Interpreter

"Interpreter" means an adult who has the ability to render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written and without explanation.

(4) Interpreter Eligible for Certification

"Interpreter eligible for certification" means an interpreter who is not a certified interpreter but who:

(A) has submitted to the Maryland Administrative Office of the Courts a completed Maryland State Judiciary Information Form for Spoken and Sign Language Court Interpreters and a statement swearing or affirming compliance with the Maryland

Code of Conduct for Court Interpreters;

(B) has attended the Maryland Judiciary's orientation workshop on court interpreting; and

(C) does not have, in a state or federal court of record, a pending criminal charge or conviction on a charge punishable by a fine of more than $500 or imprisonment for more than six months unless ***the interpreter has been*** pardoned or ***the conviction has been overturned or*** expunged in accordance with law.

(5) Non-certified Interpreters

"Non-certified interpreter" means an interpreter other than a certified interpreter or an interpreter eligible for certification.

(6) Victim

"Victim" includes a victim's representative as defined in Code, Criminal Procedure Article, §11-104.

(b) Spoken Language Interpreters

(1) Applicability

This section applies to spoken language interpreters. It does not apply to sign language interpreters.

Cross reference: For the procedure to request a sign language interpreter, see Rule 1-332.

(2) Application for the Appointment of an Interpreter

An individual who needs an interpreter shall file an application for the appointment of an interpreter. To the extent practicable, the application shall be filed not later than ~~30~~ **15** days before the proceeding for which the interpreter is requested on a form approved by the Court of Appeals and available from the clerk of the

court and on the Judiciary website. If a timely and complete application is filed, the court shall appoint an interpreter in accordance with section (c) of this Rule.

Query: Is the suggested 15-day notification period sufficient? If so, should the 30-day notification provision in Rule 1-332, Accommodations under the Americans With Disabilities Act) be changed to 15 days, too?

(3) When Additional Application Not Required

(A) Party

If a party who is an individual who needs an interpreter includes on the application a request for an interpreter for all proceedings in the action, the court shall provide an interpreter for each proceeding without requiring a separate application prior to each proceeding.

Committee note: A nonparty who may qualify as an individual who needs an interpreter must timely file an application for each proceeding for which an interpreter is requested.

(B) Postponed Proceedings

***Subject to subsection (b)(5)(B) of this Rule,* if an individual who needs an interpreter filed a timely application and the proceeding for which the interpreter was requested is postponed, the court shall provide an interpreter for the proceeding without requiring the individual to file an additional application.**

~~(3)~~ **(4)** Where Timely Application Not Filed

If ~~a timely~~ **an** application is ~~not~~ filed**, but not timely filed** pursuant to subsection (b)(2) of this Rule**, or** ~~and~~ an individual who may qualify as an individual

who needs an interpreter appears at a proceeding **without having filed an application**, the court ~~**shall**~~ **may either appoint an interpreter pursuant to section (c) of this Rule or** determine the need for an interpreter as follows:

(A) Examination ~~**of Party or Witness**~~ **on the Record**

To determine whether an interpreter is needed, the court, on request or on its own initiative, shall examine a party, attorney, witness, or victim on the record. The court shall appoint an interpreter if the court determines that:

(i) the party does not understand English well enough to participate fully in the proceedings and to assist ~~**counsel**~~ ***the party's attorney***, or

(ii) the party, attorney, witness, or victim does not speak English well enough to readily understand or communicate the spoken English language.

(B) Scope of Examination

The court's examination of the party, witness, or victim should include questions relating to:

(i) identification;

(ii) active vocabulary in vernacular English; and

(iii) the court proceedings.

Committee note: Examples of matters relating to identification are: name, address, birth date, age, and place of birth. Examples of questions that elicit active vocabulary in vernacular English are: How did you come to court today? What kind of work do you do? Where did you go to school? What was the highest grade you completed? What do you see in the courtroom? Examples of questions relating to the proceedings are: What do you

understand this case to be about? What is the purpose of what we are doing here in court? What can you tell me about the rights of the parties to a court case? What are the responsibilities of a court witness? Questions should be phrased to avoid "yes or no" replies.

(5) Withdrawal of Request for Interpreter

(A) Generally

If an individual who had requested an interpreter withdraws the request, the court, after an appropriate inquiry, may permit the individual to proceed without an interpreter if the court finds that (i) the withdrawal of the request was knowing and voluntary and (ii) the individual speaks English well enough that the appointment of an interpreter is not required pursuant to the standards set forth in subsection (b)(4) of this Rule.

(B) For a Specific Proceeding

If an individual who needs an interpreter will not be present at a proceeding for which an interpreter had been requested, *including a proceeding that had been postponed*, the individual, the individual's attorney, or the party or attorney who subpoenaed or otherwise requested the appearance of the individual shall notify the court as far in advance as practicable that an interpreter is not needed.

(c) Selection and Appointment of Interpreters

(1) Certified Interpreter Required; Exceptions

When the court determines that an interpreter is needed, the court shall make a diligent effort to obtain the services of a certified interpreter. If a certified interpreter is not available, the court shall

make a diligent effort to obtain the services of an interpreter eligible for certification. The court may appoint a non-certified interpreter only if neither a certified interpreter nor an interpreter eligible for certification is available. A person related by blood or marriage to a party or to the person who needs an interpreter may not act as an interpreter.

Committee note: The court should be cautious about appointing a non-certified interpreter and should consider carefully the seriousness of the case and the availability of resources before doing so.

(2) Inquiry of Prospective Interpreter

Before appointing an interpreter under this Rule, the court shall conduct an appropriate inquiry of the prospective interpreter on the record.

Committee note: The court should use the interpreter inquiry questions promulgated by the Maryland Judicial Conference Advisory Committee on Interpreters and published, together with suggested responses, in the October 20, 1998 Report of the Advisory Committee. The questions and suggested responses are reprinted as an Appendix to these Rules.

(3) Oath

Upon appointment by the court and before acting as an interpreter in the proceeding, the interpreter shall swear or affirm under the penalties of perjury to interpret accurately, completely, and impartially and to refrain from knowingly disclosing confidential or privileged information obtained while serving in the proceeding. If the interpreter is to serve in a grand jury proceeding, the interpreter also shall take and subscribe an oath that the interpreter will keep secret all matters and things occurring before the grand jury.

(4) Multiple Interpreters in the Same Language

At the request of a party or on its own initiative, the court may appoint more than one interpreter in the same language to ensure the accuracy of the interpretation or to preserve confidentiality if:

(A) the proceedings are expected to exceed three hours;

(B) the proceedings include complex issues and terminology or other such challenges; or

(C) an opposing party requires an interpreter in the same language.

Committee note: To ensure accurate interpretation, an interpreter should be granted reasonable rest periods at frequent intervals.

(d) Removal from Proceeding

A court interpreter may be removed from a proceeding by a judge or judicial appointee within the meaning of Rule 18-200.3 (a)(1), who shall then notify the Maryland Administrative Office of the Courts that the action was taken.

(e) Compensation of Court Interpreters

Compensation for interpreters shall be in accordance with a schedule adopted by the State Court Administrator consistent with Code, Criminal Procedure Article, §§1-202 and 3-103 and Code, Courts Article, §9-114.

(f) Sanctions

(1) Late Request for Interpreter

If a party or the party's witness is an individual who needs an interpreter and a request for an interpreter for the individual is made so late that it is not feasible to provide an interpreter for the proceeding *or that a premium rate of compensation for an interpreter would be required because of the lateness*, the court shall give the party an

opportunity to explain the reason for the late request. If the court finds that there is no good reason for the late request, the court may (A) postpone the proceeding and assess costs against the party, (B) proceed without the testimony of the witness, or (C) take other appropriate action as justice requires.

(2) Failure to Appear after Requesting Interpreter

If, without good cause, and without providing the notification required by subsection (b)(5)(B) of this Rule, a party, a party's witness, or a victim for whom an interpreter was requested fails to appear at a proceeding for which an interpreter is provided for the individual, the court may assess the cost of the interpreter as justice requires.

Committee note: Code, Courts Article, §9-114 provides for the appointment of interpreters for certain parties and witnesses, generally. Code, Criminal Procedure Article, §§1-202 and 3-103 provide for the appointment of interpreters for certain defendants in criminal proceedings and proceedings under Title 3 of that Article.

Source: This Rule is derived from former Rule 16-819 (2013).

The Chair said that many suggestions had been made for Rule 1-333. A proposal for the Rule was in the meeting materials along with a form for requesting a spoken language interpreter. Within the past two days and up to this morning, new materials had been added. One was an internal audit within the Administrative Office of the Courts ("AOC"), which has complained about some aspects of the current practice. This morning, the

Chair had been given a pamphlet dated February, 2014 from the Civil Rights Division of the U.S. Department of Justice entitled "Language Access Planning and Technical Assistance Tool For Courts" part of which addresses what court rules are supposed to provide. (See Appendix 3). This had been presented by Ms. Deborah Unitus, who is the Program Director for Interpreters in the AOC. This also has an effect on Rule 1-333. The end result may be recommitting the Rule again to the General Court Administration Subcommittee.

Ms. Unitus told the Committee that the U.S. Department of Justice is looking into language access in the courts for the limited-English proficient ("LEP") individuals across the country in every state. They have come up with specific guidelines about what should be included in programs that deal with the LEP population in this country. She had received their most recent document, to which the Chair had just referred. It had been issued by the Federal Coordination and Compliance Section of the Civil Rights Division of the U.S. Department of Justice dated February 20, 2014. In it are specific questions that should be addressed in any court rule regarding language programs for the LEP population. Some of this is covered in the Maryland Rules, and some of it is not. She and her colleagues had just brought this information to the Chair's attention this morning. This should be looked at more closely before the Rule is changed further.

The Chair commented that he was prepared for the Rule to be

adopted today, but it should be recommitted to the Subcommittee to look at in light of what the Department of Justice is probably going to require. Ms. Gardner and Ms. Ortiz may want to look at this, because the way the Chair had read some of the material, it is not entirely consistent with some of their ideas for the language of the Rule. This can be worked out. Everyone who has an interest in this topic needs to be involved with it.

The Reporter said that this issue should be acted upon very quickly, because it is part of the overall 178th Report, which the Court will consider soon. The Chair expressed the view that it should not be difficult to redraft Rule 1-333. Mr. Lowe commented that from the perspective of the clerk, he had been asked to review the procedures in the clerk's office and to canvas the clerk's offices all around the State. With regard to how a request for an interpreter is handled, he had found a wide range of methods. Some clerks treat the request as a standing request until the end of the case. Other clerks use each request for an interpreter as a trigger mechanism to make sure that an interpreter is provided for that case. Another issue is the suggestion to change the deadline for filing the request from 30 to 15 days before the proceeding for which the interpreter is needed. This is a difficult proposition for some of the courts, because interpreters are not readily accessible and not easily scheduled. There are a number of issues from the clerks' perspective that need to be discussed.

The Chair agreed that the clerks need to be involved. Ms.

Unitus said that she and her colleagues agreed with Mr. Lowe's comments. The Chair noted that some of the issues are in the internal audit report as well. The Reporter asked if the internal audit would be released outside of the Judiciary. Ms. Harris responded that she would give the Subcommittee a copy of the audit.

The Chair stated that Rule 1-333 would be recommitted to the General Court Administration Subcommittee.

Agenda Item 7. Reconsideration of proposed amendments to: Rule 1-325 (Waiver of Costs Due to Indigence), Conforming amendments to: Rule 2-603 (Costs), Rule 7-103 (Method of Securing Appellate Review), Rule 8-201 (Method of Securing Review - Court of Special Appeals), Rule 8-303 (Petition for Writ of Certiorari - Procedure), Rule 8-505 (Briefs - Indigents), and Rule 10-107 (Assessment and Waiver of Fees and Costs - Guardianships)

Mr. Dunn presented Rule 1-325, Waiver of Costs Due to Indigence, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-325 to revise provisions pertaining to the waiver of certain costs, as follows:

Rule 1-325. ~~FILING FEES AND COSTS - INDIGENCY~~ WAIVER OF COSTS DUE TO INDIGENCE

~~(a) Generally~~

~~A person unable by reason of poverty to pay any filing fee or other court costs ordinarily required to be prepaid may file a request for an order waiving the prepayment of those costs. The person shall file with the request an affidavit verifying the facts set forth in that person's pleading, notice of appeal, application for leave to appeal or request for process, and stating the grounds for entitlement to the waiver. If the person is represented by an attorney, the request and affidavit shall be accompanied by the attorney's signed certification that the claim, appeal, application, or request for process is meritorious. The court shall review the papers presented and may require the person to supplement or explain any of the matters set forth in the papers. If the court is satisfied that the person is unable by reason of poverty to pay the filing fee or other court costs ordinarily required to be prepaid and the claim, appeal, application, or request for process is not frivolous, it shall waive by order the prepayment of such costs.~~

~~Committee note: The term "other court costs" in section (a) of this Rule includes the compensation, fees, and costs of a master or examiner. See Rules 2-541 (i), 2-542 (i), 2-603 (e), and 9-208 (j).~~

(a) Scope

Sections (b) through (f) of this Rule apply only to civil actions in a circuit court or the District Court.

(b) Definition

In this Rule, except as provided in section (g), "prepaid costs" means costs that, unless prepayment is waived pursuant to this Rule, must be paid prior to the clerk's docketing or accepting for docketing a pleading or paper or taking other requested action.

(c) No Fee for Filing Request

No filing fee shall be charged for the

filing of the request for waiver of prepaid costs pursuant to section (d) or (e) of this Rule.

(d) Waiver of Prepaid Costs by Clerk

On request, the clerk shall waive the prepayment of prepaid costs, without the need for a court order, if:

(1) the party is represented (A) by an attorney retained through a pro bono or legal services program that is on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided that an authorized agent of the program provides the clerk with a statement that (i) names the program, attorney, and party; (ii) states that the party is being represented in the matter by an attorney associated with the program and meets the financial eligibility criteria of the Corporation; and (iii) attests that the payment of filing fees is not subject to Code, Courts Article, §5-1002 (the Prisoner Litigation Act), or (B) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

(2) the attorney certifies that, to the best of the attorney's knowledge, information, and belief, there is a good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Committee note: The Public Defender represents indigent individuals in a number of civil actions. See Code, Criminal Procedure Article, §16-204 (b).

(e) Waiver of Prepaid Costs by Court

(1) Request for Waiver

A person unable by reason of poverty to pay a prepaid cost and not subject to a waiver under section (d) of this Rule may file a request for an order waiving the

prepayment of the prepaid cost. The request shall be accompanied by (A) an affidavit substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices, and (B) if the person is represented by an attorney, by the attorney's certification that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, appeal, application, or request for process and it is not interposed for any improper purpose or delay.

(2) Review by Court; Factors to be Considered

The court shall review the papers presented and may require the [individual] [person] to supplement or explain any of the matters set forth in the papers. In determining whether to grant a prepayment waiver, the court shall consider:

(A) whether the [individual] [person] has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year [as posted on the Judiciary website]; and

(B) any other factor that may reflect on the [individual's] [person's] ability to pay the prepaid cost.

(3) Order

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the claim, appeal, application, or request for process does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. In its order, the court shall state the basis for granting or denying the request for waiver.

(f) Award of Costs at Conclusion of Action

(1) Generally

At the conclusion of an action, the court and the clerk shall allocate and award costs as required or permitted by law.

Cross reference: See Rules 2-603, 3-603, 7-116, and *Mattison v. Gelber*, 202 Md. App. 44 (2011).

(2) Waiver

(A) Request

At the conclusion of an action, a party may seek a waiver of final costs, including any appearance fee, by filing a request for the waiver, together with (i) an affidavit substantially in the form prescribed by subsection (e)(1)(A) of this Rule, or (ii) if the party was grant a waiver of prepayment of prepaid costs by court order pursuant to section (e) of this Rule and remains unable to pay the costs, an affidavit that recites the existence of the prior waiver and the party's continued inability to pay.

(B) Determination by Court

In an action under Title 9, Chapter 200 of these Rules or Title 10 of these Rules the court shall waive final costs if the requirements of Rules 2-603 (e) or 10-107 (b), as applicable, are met. In all other civil matters, the court may waive final costs if the party against whom the costs are assessed is unable to pay them by reason of poverty [and the fact of the assessment would be a hardship to the party] [and the court finds that the party is not likely to be able to pay any significant part of those costs within the succeeding twelve years].

Query: Should the waiver only apply to costs as to which prepayment was waived? What about other open costs? What about costs actually paid by the opposing party?

(g) Waiver of Prepaid Appellate Costs

(1) Scope of Section

This section applies to appeals from an order or judgment of the District Court to a circuit court and to appeals, applications for leave to appeal, and petitions for certiorari or other extraordinary relief seeking review in the Court of Special Appeals or the Court of Appeals from an order or judgment of a circuit court in a civil action.

(2) Definition

In this section, "prepaid costs" means (A) the fee charged by the clerk of the trial court for assembling the record, including the cost of the transcript in the District Court, and (B) the filing fee charged by the clerk of the appellate court.

Cross reference: See the schedule of appellate court fees following Code, Courts Article, §7-102 and the schedule of circuit court fees following Code, Courts Article, §7-202.

(3) Waiver

(A) Generally

Waiver of prepaid costs under this section shall be governed generally by sections (d) or (e) of this Rule, as applicable, except that:

(i) the request for waiver of both the trial and appellate court costs shall be filed in the trial court within 10 days after entry of judgment;

(ii) waiver of the fee charged for assembling the record shall be determined in the trial court;

(iii) waiver of the appellate court filing fee shall be determined by the appellate court, but the appellate court may rely on a waiver of the fee for assembling the record ordered by the trial court;

(iv) both fees shall be waived if the appellant received a waiver of prepaid costs

under section (d) of this Rule, will be represented in the appeal by an eligible attorney under that section, and the attorney certifies that the appeal is meritorious and that the appellant remains eligible for representation in accordance with section (d); and

(v) if the appellant received a waiver of prepaid costs under section (e) of this Rule, the trial court and appellate courts may rely upon a supplemental affidavit of the appellant attesting that the information supplied in the affidavit provided under section (e) of this Rule remains accurate and that there has been no material change in the appellant's financial condition or circumstances.

(B) Procedure

(i) If an appellant requests the waiver of the prepaid costs in both the trial and appellate courts, the trial court, within five days after the filing of the request, shall act on the request for waiver of its prepaid cost and transmit to the appellate court the request for waiver of the appellate court prepaid cost and a copy of the request and order regarding the waiver of the trial court prepaid cost.

(ii) The appellate court shall act on the request for the waiver of its prepaid cost within five business days after receipt of the request from the trial court.

(iii) If either court denies, in whole or in part, a request for the waiver of its prepaid cost, it shall permit the appellant, within 10 days, to pay the unwaived prepaid cost. If, within that time, the appellant pays the full amount of the unwaived prepaid cost, the appeal or application shall be deemed to have been filed on the day the request for waiver was filed in the trial court.

~~(b)~~ (h) Appeals Where Public Defender Representation Denied - Payment by State

The court shall order the State to pay the court costs related to an appeal or an application for leave to appeal and the costs of preparing any transcript of testimony, brief, appendices, and record extract necessary in connection with the appeal, in any case in which (1) the Public Defender's Office is authorized by these rules or other law to represent a party, (2) the Public Defender has declined representation of the party, and (3) the party is unable by reason of poverty to pay those costs.

Source: This Rule is derived as follows:
Section (a) ~~is derived from former M.D.R. 102 and Courts Article §7-201~~ is new.
Section (b) is new.
Section (c) is new.
Section (d) is new.
Section (e) is new.
Section (f) is new.
Section (g) is new.
Section ~~(b)~~ (h) is derived from former Rules 883 and 1083 b.

Mr. Dunn explained that costs in appeals to the two appellate courts and civil appeals from District Court to circuit court had been included in new section (g) of Rule 1-325. The costs of transcript preparations in appeals from the District Court had also been added as costs that can be waived. The Rule was still silent as to transcript costs in a civil appeal from the circuit court to the Court of Special Appeals. Another issue was appearance fees, which can be waived at the end of an action pursuant to subsection (f)(2)(A).

Mr. Dunn said that the third change was the addition of the language providing that the attorney certifies that there are good grounds to support the claim, application, or request for

process and that it is not interposed for improper purpose or delay, which had been proposed for subsection (d)(2) of Rule 1-325 and is applicable to all attorneys seeking waiver of prepayment costs. It had been limited to pro bono attorneys.

Mr. Dunn noted that the fourth change that was made to Rule 1-325 was that the provision for final waiver at the conclusion of the case had been redrafted. What, if any, standards the court should apply in exercising its discretion had been discussed. This was in subsection (f)(2). Subsection (f)(2)(B) stated "...the court shall waive final costs if the requirements of Rules 2-603 (e) or 10-107 (b), as applicable, are met. In all other civil matters, the court may waive final costs...". The query after subsection (f)(2)(B) asked if the waiver should apply only to costs as to which prepayment was waived. It also asked if the waiver should apply to other open costs and to costs actually paid by the opposing party.

Ms. Ortiz inquired whether appearance fees are part of the prepaid costs. The Reporter replied that appearance fees may not necessarily be a prepaid cost if they pertain to a defendant. She asked whether the clerks require that those fees be paid before someone is allowed to file the lawsuit. Ms. Ortiz answered affirmatively. The Reporter commented that any fee required to be paid before the suit can be filed is covered. If an appearance fee is required to be paid when the suit is filed, the fee is covered automatically. She suggested that a Committee note could be drafted to state this. Ms. Ortiz said that if this

point was considered by definition, no further change to the Rule would be necessary. She asked about the bracketed language in subsection (f)(2)(B), which pertained to the final waiver of costs. She expressed the concern that although the Rule generally is based on the decisions made the last time it had been discussed, some supplemental language, which was the language in brackets, had been added. This would limit the judge's discretion in making a decision on the final waiver. It would require the judge to consider beyond whether the person is unable to pay by reason of poverty.

The Reporter noted that the debate the last time that Rule 1-325 had been considered was whether there should be any standard that the court must use when the court determines the final waiver. The position of the Access to Justice Commission ("Commission") was to end the second sentence in subsection (f)(2)(B) after the word "poverty." The language in brackets were thoughts that had been generated by Committee members at the previous meeting as to what the standard should be if a standard is going to be incorporated into the Rule.

The Reporter commented that one suggestion had been "and the fact of the assessment would be a hardship to the party." Another suggestion for a standard that the court would have to apply was "and the court finds that the party is not likely to be able to pay any significant part of those costs within the succeeding twelve years." The question of whether there should be any stated standard was left open at the last meeting, as well

as what that standard should be. The Committee needs to decide at this point whether to choose the recommendation of the Commission to end subsection (f)(2)(B) of Rule 1-325 after the words "by reason of poverty," or whether to add a specific standard.

Ms. Ortiz told the Committee that the original proposal of the Commission was that in determining the final waiver, a judge would exercise discretion by evaluating whether, in light of the Maryland Legal Services Corporation Guidelines, a person could pay. Ms. Gardner said that she wanted to speak in favor of leaving out the language in subsection (e)(1), which has the standard of being unable to pay by reason of poverty. Either of the additional alternatives for a standard were extraordinarily problematic. As to the first, if the person is unable to pay by reason of poverty, that is a hardship. Adding that language just invites further inquiry or rumination by judges, who may be disinclined to grant waivers on the basis of poverty. She could not think of a circumstance in which a person who is unable to pay would not find the additional costs to be a hardship. This would not be covered by the language "unable to pay" by reason of poverty.

Ms. Gardner said that as to the second standard, she could not imagine how a judge would be able to determine, other than arbitrarily, whether a person is going to be unlikely to be able to pay a significant part of the costs within the next twelve years. The Chair explained that this language came from a

criminal rule, Rule 4-353, Costs, that was intended to clarify for the special costs required by statute where the money goes to the victims of crime as to what the term "indigence" means. The Committee and ultimately the Court of Appeals had decided that these were only limited amounts, and the standard should be whether the costs could be paid within twelve years. Some courts had been holding that if a Public Defender was in a case, then the defendant was obviously indigent and should not have to pay the costs. However, the legislature enacted a law, Code, Courts Article, §7-409, stating that the defendant has to pay.

Ms. Gardner pointed out that in the civil context, there is not going to be an entry of judgment, so as to the twelve-year figure, there is not a rational relationship at all to the issue under consideration. She asked whether the judge has to hold a hearing, because the paperwork will not address either of these questions. The Chair asked whether Ms. Gardner's suggestion was to put a period after the word "poverty" in subsection (f)(2)(B). Ms. Gardner answered affirmatively.

Mr. Carbine inquired about the status of the Rule that pertains to the person who files many lawsuits with no support for them. The Reporter replied that this person is termed a "vexatious litigant." The Rule pertaining to that issue was remanded to the Subcommittee, which has not completed revision of it. Mr. Carbine noted that until the Rule pertaining to vexatious litigants is completed, if a litigant is vexatious and poor, he or she would not have to pay costs. The Reporter

observed that the standards built into the front end of Rule 1-325 in subsection (d)(2) would mean that if that a party is represented by an attorney, the attorney would have to certify that to the best of his or her knowledge, information, and belief, good grounds exist to support the claim, application, or request for process and that it is not imposed for any improper purpose or delay. Subsection (e)(1)(B) provides this, also.

Judge Pierson pointed out that current Rule 1-325 provides that the court can deny the waiver of costs if the case is frivolous. Courts always have the power to deny this if a case is frivolous. The Reporter remarked that the attorney is responsible. If someone is represented by the Legal Aid Bureau, he or she gets an automatic waiver by the court, but the attorney is responsible, because he or she is certifying that good grounds exist for filing the suit. Mr. Carbine noted that the vexatious litigant would not necessarily have an attorney. The Reporter responded that the unrepresented vexatious litigant would be under section (e) of Rule 1-325, the waiver of prepaid costs by the court.

Ms. Day asked whether private counsel would be expected to investigate the client's income or if the client's representation alone would be sufficient. The Chair responded that the idea was that if someone needs a court order because the person does not get an automatic waiver due to the fact that he or she is represented by Legal Aid or one of the other qualifying groups, then there is a form that the State Court Administrator has to

approve that lays out what information must be supplied to the judge. It is not a lengthy form. This would contain an attorney's certificate, if the person is represented by an attorney, that there are good grounds to support the claim, appeal, application, or request for process. The form would give the basic financial information and permit a finding as to whether or not the person falls within the MLSC Guidelines. The Committee does not have to approve this form. There could be a request for a waiver on the form.

The Reporter said that she would address Mr. Carbine's comment about vexatious litigants. Subsection (e)(3) of Rule 1-325 read, as follows: "If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the claim, appeal, application, or request for process does not appear, on its face, to be frivolous...". This is the standard of being frivolous, and the court does not have to grant the prepayment waiver. Once the Rules pertaining to vexatious litigants are sent back to the Committee, the language of subsection (e)(3) could be conformed to the language of the Rules pertaining to vexatious litigants. Mr. Carbine noted that if the costs are not waived, and the vexatious litigant cannot pay the costs, then the hapless defendant does not have to pay for a defense. The judge must have some flexibility in this situation.

Mr. Dunn pointed out that in subsection (e)(2) of Rule 1-325, the words "individual" and "person" have been bracketed. The Chair said that he did not know if this Rule was ever

intended to allow corporations to claim poverty. Corporations would be included if the word "person" was used. The Reporter suggested that the word "individual" would be the word used throughout Rule 1-325 and not the word "person." The original draft had used the word "person." By consensus, the Committee agreed with this suggestion.

Judge Pierson expressed the view that in subsection (f)(2)(B), the second sentence should end with the words "by reason of poverty." If this is supposed to be correlative to using a prepaid waiver, should the standard not be the same as to what a frivolous claim is? This is only for a party who is unable to pay. Judge Eaves remarked that the second sentence states that the court may waive final costs.

Judge Pierson said that he had a second issue to bring up. He asked if subsection (f)(2)(B) applies only to the assessment of costs at the end of the action. Would this have no relationship to an award of costs as part of the judgment? The Chair responded that this is an issue, and he was not sure where the Committee stood on that. It started with the situation where there had been a waiver of the prepaid costs. At the end of the case, the plaintiff, who had the prepaid costs waived, either wins or loses the case. If the plaintiff wins, the defendant will have to pay the costs, which raises another issue. What if the defendant is impoverished? If the plaintiff loses the case, ordinarily he or she would have to pay the costs. Should this be waived?

Judge Pierson noted that costs include two different things. It is open costs that would be waived, or it is the other party's costs. The Chair said that it could be either one. He recollected that Ms. Ortiz and Ms. Gardner were of the view that if the plaintiff had the prepayment of costs waived, and the plaintiff's status has not changed, then the plaintiff should not have to pay the costs at the end of the case, either. Judge Pierson clarified that this refers to the open costs, and the Chair agreed. Judge Pierson observed that this would not affect the other party's recovery of his or her costs. The Chair responded that he was not sure where Ms. Ortiz and Ms. Gardner were on that issue. It would be like anyone else with an uncollectible judgment.

Judge Pierson asked about the situation where someone gets a judgment but is not awarded costs. It does not seem to make sense. Ms. Ortiz explained that the proposed Rule as written in subsection (f)(1) provides that at the conclusion of the action, the court and the clerk shall allocate and award costs as required or permitted by law. The goal of the Commission is to address this access to justice issue by allowing people to waive costs based on their indigency to get their day in court. The court still has the power to dispose of the costs for equity purposes as it does now.

The Chair said that there are two situations. One is that the plaintiff's prepayment of prepaid costs was waived, so there are open costs due to the clerk. The plaintiff loses the case.

Should the plaintiff have to pay those costs to the clerk? The clerk is the one who is out the money. The other is the situation in which the plaintiff paid the costs, but the defendant lost, and the defendant is claiming poverty. Ms. Ortiz said that the Commission's primary goal is to provide guidance in the form of a rule. Part of the purpose is to make sure that the prepayment process, which is confusing, is clear that the automatic waivers are institutionalized and honored and that judges have guidance by giving them standards when they are considering a waiver of final costs. The Rule provides for this. The goal was not to affect the judgment process.

Judge Pierson remarked that Ms. Ortiz' comments seem to indicate that Rule 1-325 is not intended to affect the recovery of costs by the other party in the normal judgment process. It is intended to enable the court to carry forth the waiver of costs charged by the clerk at the end of the case to the same extent as it does in the beginning of the case. However, Judge Pierson expressed the opinion that Rule 1-325 could lead to confusion. There is a definition of the term "prepaid costs" in section (b), but there is no definition of the term "final costs." If a definition is added, it could clarify that the term "final costs" means the charging of costs at the end of the case. The way the Rule reads now, it could lead someone to believe that this somehow affects the award of costs for the judgment.

The Chair pointed out that the definition of the term "prepaid costs" was easy to draft, because it is whatever a party

has to pay in order to move to the next step in the legal process. The issue is what is left at the end of the case. Judge Pierson responded that what is left are open costs, unpaid costs, or both. The Chair observed that if prepayment of costs is waived up front, those costs are open. The costs have not been waived; only the prepayment of them has been waived.

Ms. Davis told the Committee that she works for the Office of the Public Defender ("OPD"). She asked the Committee for some guidance. Does the waiver apply only to the initial prepayment of costs, or are Rules 2-603 and 3-603, Costs, still operative? She was not sure how Rule 1-325 fit in with those Rules. She said that she handles most of the expungements for the OPD. She was trying to understand how Rule 1-325 would apply to her practice, because the way that she reads the Rule is that in every single expungement case, even though the waiver of the prepayment of the filing fee has been granted, Rule 1-325 allows someone to file for a waiver of fees at the end of the proceeding. However, with an expungement, she does not know when the judge signs the order, unless there is a hearing, and most expungements do not have hearings. All of this court procedure is happening without her clients' and her knowledge. She may get the order a week after the judge signs it, or it may be four months later. She was not sure when this waiver comes about.

The Chair responded that an attorney would get an automatic waiver up front, because Rule 1-325 provides that if someone is represented by a Public Defender in a civil case, the prepayment

is waived. Ms. Gardner said that she had been speaking with Carolyn Johnson, Esq. of the Homeless Persons' Representation Project, about this issue. Ms. Gardner remarked that she thought that the answer was that where the expungement is granted, the costs are not going to be assessed against the plaintiff. Where an objection is filed, there is a hearing, and if the plaintiff loses, then the attorney will know that he or she needs to file a waiver.

Ms. Davis expressed the view that Rule 1-325 needs to be clear about this. The Reporter pointed out that Ms. Gardner had indicated that this problem takes care of itself, because if the attorney has to go to a hearing, then the attorney will know about the costs. If the client wins, and an expungement is granted, costs are charged to the State.

Judge Pierson moved to add a definition of the term "final costs" to be open costs. The Chair noted that there are open costs at other points in the action. The Reporter suggested that the definition could be "final open costs." The Chair suggested that "final costs" could mean "open costs at the end of the case or when a cost assessment is made." Ms. Gardner suggested the language "a final waiver of open costs." The Reporter asked if this definition worked everywhere the term "final costs" appears.

Mr. Zavin noted that subsection (g)(3)(i) reads as follows: "the request for waiver of both trial and appellate court costs shall be filed in the trial court within 10 days after entry of judgment." Normally, a request for an appeal is filed within 30

days after entry of judgment. Ms. Gardner commented that she and Ms. Ortiz were also going to raise this issue. The Chair asked whether the request for waiver would be within 10 days after a notice of appeal is filed. Mr. Zavin responded that it could be filed the same time that a notice of appeal is filed. It is difficult to make the decision about whether to request a waiver until the decision about whether to file an appeal is made.

The Chair said that the request for a waiver should be triggered by the filing of a notice of appeal. The record will have to be assembled fairly quickly. Ms. Gardner remarked that in reality, the request for waiver will have to be filed with the notice of appeal. If a notice of appeal is filed without either paying the fees or requesting waiver, it is not going to be accepted. It makes no sense to file a waiver request before the decision is made as to whether to appeal.

The Chair commented that this applies to civil cases, not to criminal cases. It probably should be triggered by the filing of a notice of appeal. Mr. Dunn suggesting changing the number "10" to the number "30" in subsection (g)(3)(i). The Chair suggested that subsection (b)(3)(i) could read: "shall be filed in the trial court with the notice of appeal." Mr. Dunn said that the problem with this is what happens when an appeal is not filed. Ms. Gardner responded that then no waiver of appellate costs would be sought. Mr. Carbine remarked that the request for waiver should be made prior to the notice of appeal, because someone would have to know if the fees have been waived before he

or she filed a notice of appeal. If, on the 30th day, a notice of appeal and a request for waiver is filed, and the waiver is denied, the appeal may be rejected. Ms. Gardner noted that Rule 1-325 accounts for that later, because it allows 10 days to pay the costs, and then the notice of appeal can be filed.

The Reporter observed that the queries after subsection (f)(2)(B) have been taken care of by using the language "final waiver of open costs." Judge Pierson asked if subsection (f)(1) was necessary. This is related to Rule 2-603. It leads to confusion as to whether or not this applies to award of costs. The Chair noted that the court does have to allocate the award of costs. The party may want them to be waived. Judge Pierson pointed out this is already in Rule 2-603 (a), which provides for the court to allocate the costs among the parties. The Chair explained that the purpose of subsection (f)(2)(B) is to make sure that nothing in Rule 1-325 is inconsistent with the provisions in Rule 2-603. Someone does not have to ask for a waiver until he or she finds out what the allocation is. First, the court allocates the costs as it must, then the question of whether anyone needs a waiver is addressed. The Reporter added that the other side may have paid certain costs, and this should not be affected by Rule 1-325. The Chair noted the cross reference to Rule 2-603 at the end of subsection (f)(1) of Rule 1-325.

The Reporter asked if subsection (f)(2)(B) would end after the words "by reason of poverty." By consensus, the Committee

agreed that it would end with those words.

By consensus, the Committee approved Rule 1-325 as amended.

Mr. Dunn presented Rules 2-603, 7-103, 8-201, 8-303, 8-505, and 10-107 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-603 to conform with amendments to Rule 1-325 concerning waiver of prepayment of prepaid costs, as follows:

Rule 2-603. COSTS

. . .

(e) Waiver of Costs in Domestic Relations Cases - Indigency

In an action under Title 9, Chapter 200 of these Rules, the court shall waive final costs, including any compensation, fees, and costs of a master or examiner if the court finds that the party against whom the costs are assessed is unable to pay them by reason of poverty. The party may seek the waiver at the conclusion of the case by filing a request for waiver of final costs, together with (1) an affidavit substantially in the form prescribed by Rule 1-325 (e)(1)(A), or (2) if ~~in accordance with Rule 1-325 (a). If~~ the party was granted a waiver of prepayment of prepaid costs by court order pursuant to ~~that~~ Rule 1-325 (e) and remains unable to pay the costs, ~~the~~ an affidavit ~~required by Rule 1-325 (a) need only~~ that recites the existence of the prior waiver and the party's continued inability to pay.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-103 to conform with amendments to Rule 1-325 concerning waiver of prepayment of prepaid costs, as follows:

Rule 7-103. METHOD OF SECURING APPELLATE REVIEW

(a) By Notice of Appeal

The only method of securing appellate review in the circuit court is by the filing of a notice of appeal with the clerk of the District Court within the time prescribed in Rule 7-104.

(b) District Court Costs

Unless the prepayment of prepaid costs has been waived in accordance with Rule 1-325, before ~~Before~~ the clerk transmits the record pursuant to section (d) of this Rule, the appellant shall pay to the clerk of the District Court the cost of preparation of a transcript, if a transcript is necessary to the appeal.

Cross reference: Rule 7-113 (b).

(c) Filing Fee

Within the time for transmitting the record under Rule 7-108, the appellant shall deposit the fee prescribed by Code, Courts Article, §7-202 with the clerk of the District Court unless:

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been

waived in accordance with Rule 1-325; or

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or ~~unless~~ the appellant is represented by ~~(1)~~ the Public Defender's Office~~, (2) an attorney assigned by Legal Aid Bureau, Inc., or (3) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency. The filing fee shall be in the form of cash or a check or money order payable to the clerk of the circuit court~~.
~~Cross reference: Rule 1-325.~~

(d) Transmittal of Record

After all required fees have been paid, the clerk shall transmit the record as provided in Rules 7-108 and 7-109. The filing fee shall be forwarded with the record to the clerk of the circuit court.

Committee note: When a notice of appeal is filed, the clerk should check the docket to see if it contains the entry of a judgment in compliance with Rules 3-601 and 3-602, and if not, advise the parties and the court. This note is not intended to authorize the clerk to reject a notice of appeal or to place a mandatory duty on the clerk, or to relieve counsel of their responsibility to assure that there is an appealable order or judgment properly entered on the docket before noting an appeal.

Source: This Rule is derived from former Rule 1311.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-201 to conform with amendments to Rule 1-325 concerning waiver of prepayment of prepaid costs, as follows:

Rule 8-201. METHOD OF SECURING REVIEW - COURT OF SPECIAL APPEALS

(a) By Notice of Appeal

Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202. The notice shall be filed with the clerk of the lower court or, in an appeal from an order or judgment of an Orphans' Court, with the register of wills. The clerk or register shall enter the notice on the docket.

(b) Filing Fees

At the time of filing a notice of appeal in a civil case, or within the time for transmitting the record under Rule 8-412 in a criminal case, an appellant shall deposit the fee prescribed pursuant to Code, Courts Article, §7-102 with the clerk of the lower court unless:

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325; or

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or ~~unless~~ the appellant is represented by ~~(1)~~ the Public Defender's

~~Office, (2) an attorney assigned by Legal Aid Bureau, Inc., or (3) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency~~.

~~Cross reference: Rule 1-325.~~

(c) Transmittal of Record

After all required fees have been deposited, the clerk shall transmit the record as provided in Rules 8-412 and 8-413. The fee shall be forwarded with the record to the Clerk of the Court of Special Appeals.

Committee note: When a notice of appeal is filed, the clerk should check the docket to see if it contains the entry of a judgment in compliance with Rules 2-601 and 2-602, and if not, advise the parties and the court. This note is not intended to authorize the clerk to reject a notice of appeal, to place a mandatory duty on the clerk, or to relieve counsel of their responsibility to assure that there is an appealable order or judgment properly entered on the docket before noting an appeal.

Source: This Rule is derived from former Rule 1011 with the exception of the first sentence of section (a) which is derived from former Rule 1010.

AMEND Rule 8-303 to conform with amendments to Rule 1-325 concerning waiver of prepayment of prepaid costs, as follows:

Rule 8-303. PETITION FOR WRIT OF CERTIORARI - PROCEDURE

(a) Filing

A petition for a writ of certiorari, together with seven legible copies, shall be filed with the Clerk of the Court of Appeals. The petition shall be accompanied by the filing fee prescribed pursuant to Code, Courts Article, §7-102 unless:

(1) if the petition is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325; or

(2) if the petition is in a criminal action, the fee has been waived by an order of court or unless the petitioner is represented by ~~(1)~~ the Public Defender's Office~~, (2) an attorney assigned by Legal Aid Bureau, Inc., or (3) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency~~.

~~Cross reference: Rule 1-325.~~

. . .

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-505 to conform with amendments to Rule 1-325, as follows:

Rule 8-505. BRIEFS - INDIGENTS

When the lower court has ordered that costs be paid by the State of Maryland pursuant to Rule 1-325 ~~(b)~~ (h) or in any case in which a party to the appeal is represented by the Public Defender, that party's brief, reply brief, and other documents required to be filed by that party in the appellate court shall be reproduced under the supervision of the Public Defender.

Source: This Rule is derived from Rules 831 f and 1031 e.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-107 to conform with amendments to Rule 1-325 concerning waiver of prepayment of prepaid costs, as follows:

Rule 10-107. ASSESSMENT AND WAIVER OF FEES AND COSTS - GUARDIANSHIPS

(a) Assessment

Upon a determination on the merits of a petition to appoint a guardian, the court may assess the filing fee and other court costs against the assets of the fiduciary estate or against the petitioner.

(b) Waiver

The court shall waive final costs and fees if the court finds that the person against whom the costs are assessed is unable to pay them by reason of poverty. The person may seek the waiver at the conclusion of the case by filing a request for waiver of final costs, together with (1) an affidavit substantially in the form prescribed by Rule 1-325 (e)(1)(A), or (2) if ~~in accordance with Rule 1-325 (a). If~~ the person was granted a waiver of prepayment of prepaid costs by court order pursuant to ~~that~~ Rule 1-325 (e) and remains unable to pay the costs, ~~the~~ an affidavit ~~required by Rule 1-325 (a) need only~~ that recites the existence of the prior waiver and the person's continued inability to pay.

Source: This Rule is in part new and in part derived from Rule 2-603 (e).

Mr. Dunn explained that Rules 2-603, 7-103, 8-201, 8-303, 8-505, and 10-107 contained amendments to conform to the changes proposed for Rule 1-325.

By consensus, the Committee approved the Rules as presented.

Agenda Item 5. Consideration of proposed amendments to: Rule 4-217 (Bail Bonds), Form 4-217.2 (Bail Bond), and Rule 4-216 (Pretrial Release - Authority of Judicial Officer; Procedure)

Mr. Maloney presented Rule 4-217, Bail Bonds and Form 4-217.2, Bail Bond, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 to add a cross reference after subsection (e)(1)(A) pertaining to orders setting cash bail or cash bond and to make stylistic changes, as follows:

Rule 4-217. BAIL BONDS

. . .

(e) Collateral Security

(1) Authorized Collateral

A defendant or surety required to give collateral security may satisfy the requirement by:

(A) depositing with the person who takes the bond the required amount in cash or certified check, or pledging intangible property approved by the court; or

Cross reference: See Code, Criminal Procedure Article, §§5-203 and 5-205, permitting certain persons to post a cash bail or cash bond when an order specifies that the bail or bond may be posted only by the defendant.

(B) encumbering one or more parcels of real estate situated in the State of Maryland, owned by the defendant or surety in fee simple absolute, or as chattel real subject to ground rent. No bail bond to be secured by real estate may be taken unless ~~(1)~~ (i) a Declaration of Trust of a specified parcel of real estate, in the form set forth at the end of this Title as Form 4-217.1, is executed before the person who takes the bond and is filed with the bond, or ~~(2)~~ (ii) the bond is secured by a Deed of Trust to the

State or its agent and the defendant or surety furnishes a verified list of all encumbrances on each parcel of real estate subject to the Deed of Trust in the form required for listing encumbrances in a Declaration of Trust.

(2) Value

Collateral security shall be accepted only if the person who takes the bail bond is satisfied that it is worth the required amount.

(3) Additional or Different Collateral Security

Upon a finding that the collateral security originally deposited, pledged, or encumbered is insufficient to ensure collection of the penalty sum of the bond, the court, on motion by the State or on its own initiative and after notice and opportunity for hearing, may require additional or different collateral security.

. . .

Rule 4-217 was accompanied by the following Reporter's note.

Chapter 487, Laws of 2013 (SB 505) allows an individual or a surety to post a cash bail or cash bond even when an order specifies that the bail or bond may be posted only by the defendant. The sole exception to this is a cash bail or cash bond in a case involving failure to pay support. The Criminal Subcommittee recommends adding a cross reference to the statute after Rule 4-217 (e)(1)(A) and adding a new category to Form 4-217.2 providing that an individual may secure payment on a bail bond.

MARYLAND RULES OF PROCEDURE

BAIL BONDS FORMS

AMEND Form 4-217.2 to add the words "cash or other" before the descriptions of collateral security, to add language providing that collateral security can be greater than a certain percentage but less than the full penalty amount, to add a category indicating that to secure payment on a bail bond an individual has deposited a certain amount of money, to add a line pertaining to the payor of a fee or premium, and to make a stylistic change, as follows:

Form 4-217.2. BAIL BOND

(Caption)

BAIL BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That I/we, the undersigned, jointly and severally acknowledge that I/we, our personal representatives, successors, and assigns are held and firmly bound unto the State of Maryland in the penalty sum of ..... Dollars ($ .....):

[ ] without collateral security;

[ ] with cash or other collateral security equal in value to the greater of $25.00 or .....% of the penalty sum;

[ ] with cash or other collateral security equal in value to a percentage greater than 10% (___%) but less than the full penalty amount;

[ ] with the obligation of the corporation ..... which is an insurer or other surety in the full penalty amount.

To secure payment the [ ] defendant [ ] surety [ ] individual has:

[ ] deposited [ ] in cash or [ ] by certified check the amount of $..... .

[ ] pledged the following intangible personal property:
.....

[ ] encumbered the real estate described in the Declaration of Trust filed herewith, or in a Deed of Trust dated the ..... day of ....., ..., from the undersigned surety to
(month) (year)

....., to the use of the State of Maryland.

THE CONDITION OF THIS BOND IS that the defendant personally appear, as required, in any court in which the charges are pending, or in which a charging document may be filed based on the same acts or transactions, or to which the action may be transferred, removed, or, if from the District Court, appealed.

IF, however, the defendant fails to perform the foregoing condition, this bond shall be forfeited forthwith for payment of the above penalty sum in accordance with law.

IT IS AGREED AND UNDERSTOOD that this bond shall continue in full force and effect until discharged pursuant to Rule 4-217.

AND the undersigned surety covenants that the only compensation chargeable in connection with the execution of this bond consisted of a [ ] fee, [ ] premium, [ ] service charge for the loan of money, or other (describe) .....
.....
in the amount of $ ..... .

[ ] Fee or premium paid by .....
(address) .....

AND the undersigned surety covenants that no collateral was or will be deposited, pledged, or encumbered directly or indirectly in favor of the surety in connection with the execution of this bond except: .....

IN WITNESS WHEREOF, these presents have been executed under seal this ..... day of ....., ...
(month) (year)

..... (SEAL) .....
Defendant Address of Defendant

..... (SEAL) .....
Personal Surety/Individual Address of Surety

..... (SEAL) .....
Surety-Insurer Address of Surety-Insurer

By: ..... (SEAL) .....
Bail Bondsman Power of Attorney No.

SIGNED, sealed, and acknowledged before me:

.....
Commissioner/Clerk/Judge of the

.....Court for

.....County/City

Form 4-217.2 was accompanied by the following Reporter's note.

> A District Court Administrator requested that Form 4-217.2 be changed to conform to the bail bond form used by the District Court. The Criminal Subcommittee suggests adding the words "cash or other" before the descriptions of collateral security in the first part of the Form to indicate that collateral security could be in the form of cash. The Subcommittee also recommends adding language that would indicate that collateral security can be equal in value to a percentage that is more than 10% but less than the full penalty amount of the bond.
>
> The suggested addition to the form of the identity and address of the payor of a "fee or premium" facilitates compliance with Rule 4-217 (h), which provides for the refund of the fee or premium to the payor under certain circumstances.
>
> See the Reporter's note to Rule 4-217 for the reason for the addition of the word "individual" to the Form.

Mr. Maloney told the Committee that a minor issue with respect to bail bonds had arisen. There has been a practice among some judges when ordering a bond to restrict it to a cash bond posted by the defendant only as opposed to a bond posted by a surety. In response to this practice, the General Assembly enacted Senate Bill 505, which provided that notwithstanding any decision of the judge restricting the bond, if an order setting "cash bail" or "cash bond" specified that it may be posted by the defendant only, the "cash bail" or "cash bond" may be posted by the defendant, by an individual, or by a private surety acting for the defendant.

The Chair remarked about a possible violation of the separation of powers. Mr. Maloney said that the Criminal Subcommittee had made the decision to ignore the glaring separation of powers issue, and they had recommended that no change be made to Rule 4-217, except for the addition of a cross reference to the new statute, and they had recommended a change to Form 4-217.2. The change to the form would add the words "cash or other" before the words "collateral security" and add the word "individual" in several places.

Ms. Libber, an Assistant Reporter, observed that the District Court had commented that their form, CC-DC-CR-008, and the form in the Maryland Rule book should match. The third box on the District Court form added the language "a percentage greater than 10% (____) but less than" after the language "with collateral security in value to" and before the language "the

full penalty amount."

The Reporter explained that this form gives the commissioner guidance as to setting the bail. The commissioners have to follow whatever the law is, and the language "cash or other collateral" covers all possible permutations. The District Court form does not cover the possibility of the full penalty amount as collateral security. The "10%" language is not necessary. Using the form that has been in the Rule book, if the bail bond is 10%, the commissioner would write that on the form. Whatever the percentage is, the commissioner would write it on the form. The "10%" on the District Court form is not needed. The form in the Rule book is simple to read.

Mr. Maloney remarked that the issue is guidance for the commissioner. The percentage does not belong in the form. The Reporter pointed out that it is in Code, Criminal Procedure Article, §5-205. Mr. Maloney asked the Reporter if her point was that the form in the Rule book is correct. The Reporter answered affirmatively.

By consensus, the Committee approved Rule 4-217 and Form 4-217.2 as presented.

Mr. Maloney presented Rule 4-216, Pretrial Release - Authority of Judicial Officer; Procedure, for the Committee's consideration.

AMEND Rule 4-216 (g)(4)(B) to change the amount of collateral security from $100.00 to $25.00, as follows:

Rule 4-216. PRETRIAL RELEASE - AUTHORITY OF JUDICIAL OFFICER; PROCEDURE

. . .

(g) Conditions of Release

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

(1) committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in 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 ~~$100.00~~ $25.00 or 10% of the full penalty amount, and if the judicial officer sets bail at $2500 or less, the judicial officer shall advise the

defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;

(C) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to a percentage greater than 10% but less than the full penalty amount;

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

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

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

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

(B) protect the safety of the alleged victim, and

(C) ensure that the defendant will not pose a danger to another person or to the community; and

(6) imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, Criminal Law Article, §9-304 reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, Criminal Law Article, §9-302, 9-303, or 9-305.

Cross reference: See Code, Criminal Procedure Article, §5-201 (a)(2) concerning protections for victims as a condition of release. See Code, Criminal Procedure Article, §5-201 (b), and Code, Business Occupations and Professions Article, Title 20, concerning private home detention monitoring as a condition of release.

. . .

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

> Code, Criminal Procedure Article, §§5-203 and 5-205 provide that to post a bail bond a defendant or private surety may deposit with the clerk of court the greater of 10% of the penalty amount or $25.00. To conform to the Code, the Criminal Subcommittee suggests changing the amount of the collateral security in subsection (g)(4)(B) of Rule 4-216 from $100.00 to $25.00.

Mr. Maloney explained that the change to Rule 4-216 was to conform the Rule to Code, Criminal Procedure Article, §§5-203 and 5-205, which provide that to post a bail bond, the defendant or private surety may deposit with the clerk of court the greater of 10% of the penalty amount or $25.00. To conform to the Code, the Criminal Subcommittee recommends changing Rule 4-216 from stating that the collateral security is equal in value to the greater of $100.00 or 10% of the full penalty amount to stating that the collateral security is equal in value to the greater of $25.00 or 10% of the full penalty amount.

By consensus, the Committee approved the change to Rule 4-216 as presented.

Agenda Item 8. Consideration of proposed new Rules: Rule 19-504 (Pro Bono Attorney), Rule 19-505 (List of Pro Bono and Legal Services Programs), Rule 19-215 (Special Authorization for Out-of-State Attorneys Affiliated with Programs Providing Legal Services to Low-Income Individuals), and Rule 19-605 (Obligation of Attorneys)

After the lunch break, the Reporter told the Committee that the version of Rule 19-504, Pro Bono Attorney, and Rule 19-215,

Special Authorization for Out-of-State Attorneys Affiliated with Programs Providing Legal Services to Low-income Individuals, being considered had the word "REVISED" in the footer in the left corner of the Rules. The Title 19 Rules will be part of the 178th Report to the Court of Appeals, Part III. Two of the Rules that are being considered at the meeting are new Rules. The other two are part of current Bar Admission Rule 15, Special Authorization for Out-of-State Attorneys to Practice in this State, and current Rule 16-811.5, Client Protection Fund. The two new Rules are Rules 19-504, Pro Bono Attorney, and 19-505, List of Pro Bono and Legal Services Programs.

The Reporter said that the four Rules are designed to implement recommendations of the Access to Justice Commission ("Commission"). The recommendations are in the meeting materials. One recommendation pertains to obtaining additional pro bono participation from retired/inactive Maryland attorneys. Rule 19-504 highlights the fact that, under the Client Protection Fund Rule, retired/inactive attorneys can handle pro bono cases. The Rule is designed to encourage these attorneys to do so. Another recommendation pertains to out-of-state active attorneys, who, at this point, cannot do pro bono work in Maryland. The new Rules will enable them to do so and allow Maryland to compete with the District of Columbia for their services. The D.C. rule is Rule 49, Unauthorized Practice of Law. A copy of this Rule is in the meeting materials. D.C. allows out-of-state attorneys to do pro bono work. Many attorneys living in Maryland are licensed

to practice in D.C., and they would like to be able to devote their pro bono services to their home state.

The Reporter said that before its current chair, the Attorneys Subcommittee had been chaired by Albert D. Brault, Esq. When these Rules had first been considered, he had been the Chair. The directive of the Subcommittee had been to do what the Commission had recommended. There have been several iterations of these Rules. The Reporter organized the Rules, and the result is the Rules for consideration today.

The Reporter presented Rule 19-504, Pro Bono Attorney, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

Rule 19-504. PRO BONO ATTORNEY

(a) Definition

As used in this Rule, "pro bono attorney" means an attorney who is authorized by Rule 19-215 or 19-605 (a)(2) to represent clients, without compensation other than reimbursement of reasonable and necessary expenses, and whose practice is limited to providing such representation. "Pro bono attorney" does not include ***(1)*** an active member of the Maryland Bar in good standing ***or (2) an attorney whose certificate of authorization to practice under Rule 19-215 permits the attorney to receive compensation for the practice of law under that Rule***.

Cross reference: For the professional

responsibility of an active member of the Maryland Bar to render pro bono publico legal service, see Rule 19-306.1, Pro Bono Publico Service (6.1) of the Maryland Attorneys' Rules of Professional Conduct.

(b) Authorization to Practice as a Pro Bono Attorney

To practice as a pro bono attorney, an out-of-state attorney shall comply with Rule 19-215 and a retired/inactive member of the Maryland Bar shall comply with Rule 19-605 (a)(2).

(c) Recovery of Attorneys' Fees

If the substantive law governing a matter in which a pro bono attorney is providing representation permits the recovery of attorneys' fees, the pro bono attorney may seek attorneys' fees ***in accordance with the Rules in Title 2, Chapter 700 or Rule 3-741*** ~~**and**~~ ***but*** shall remit to the legal services or pro bono publico program that referred the matter to the attorney all attorneys' fees that are recovered.

(d) Reports

Upon request by the Administrative Office of the Courts, a pro bono attorney shall timely file an IOLTA Compliance Report in accordance with Rule 19-409 and a Pro Bono Legal Service Report in accordance with Rule 19-503.

Source: This Rule is new.

The Reporter said that Rule 19-504 provides that to be a "pro bono attorney" as defined in Rule 19-504, the attorney either is an out-of-state attorney who is a member in good standing of the bar of another state, or is an inactive/retired member of the Maryland bar, who has been approved for inactive/retired status in accordance with the Client Protection

Fund Rule. An attorney who is an active member of the Maryland bar already can provide as much pro bono service as the attorney wishes, and the attorney is encouraged to do so by Rule 19-306.1, Pro Bono Service. After section (a) of Rule 19-504, there is a cross reference to Rule 19-306.1, which is current Rule 6.1.

An out-of-state attorney who will be working for Legal Aid for compensation can do so under the current Rules, and the attorney would not be considered to be a "pro bono attorney" under Rule 19-504, because the attorney is earning money. A "pro bono attorney" is neither an active member of the Maryland bar, nor an out-of-state attorney who will practice for compensation under Rule 19-215.

Rule 19-504 (b) provides how an attorney becomes authorized to practice as a "pro bono attorney" by referring to Rules 19-215, for an out-of-state attorney, and 19-605 (a)(2) for an in-state attorney who is retired and is authorized only to engage in pro bono practice.

The Reporter pointed out that section (c) of Rule 19-504 provides that an attorney is not precluded from seeking recovery attorneys' fees from the other side in a case, but the attorney is not allowed to keep any fees so recovered. He or she would have to give them to the organization under whose auspices the attorney is practicing.

Section (d) of Rule 19-504 provides that, if requested by the Administrative Office of the Courts, the attorney must file an Interest on Lawyer Trust Accounts (IOLTA) compliance report

and a Pro Bono Legal Service Report, which an active attorney also has to file. The Reporter said that the Rule is drafted so that the pro bono attorney does not have an absolute responsibility to file the reports, because these attorneys should not be decertified if they fail to file the reports *sua sponte*. They may not have even known about the requirement, and they should not be obligated to go to the Judiciary website to figure out if they have to file the reports.

Judge Weatherly expressed the view that Rule 19-504 could result in a major "sea change" regarding the pro bono practice of law. If an attorney in private practice takes a pro bono case, the attorney would consider himself or herself to be a pro bono attorney. The definition of "pro bono attorney" does not cover the licensed attorney who takes one pro bono case. The Reporter explained that the phrase, "pro bono attorney," is a short-hand term that is being use in the Rules to refer to individuals who, although not authorized to practice law in Maryland for remuneration, may provide pro bono legal services for law-income individuals under the auspices of a recognized organization or program that provides such services. She said that Rule 19-504 is in the Pro Bono Legal Services section of the Rules. The placement of this is in the same part of the new Title 19 that has the requirement to fill out the pro bono reporting form and that covers the statewide pro bono committees and the local committees. If someone only wants to be a "pro bono attorney," this is the logical place to find the appropriate Rules. This is

why the Reporter had added the cross reference, which provides that if someone is an active member of the bar, he or she is encouraged to look at Rule 6.1 in the Maryland Attorneys' Rules of Professional Conduct. Perhaps the "pro bono attorney" label could be changed to something else, but since the individual is functioning solely as a "pro bono attorney," Rule 19-504 would contain the applicable provisions pertaining to that individual. There are consequences to being a "pro bono attorney," which will be discussed later. A significant consequence is that the attorney does not have to pay the Client Protection Fund or the Disciplinary Fund. An active member of the Maryland bar must make these payments, even if the attorney devotes many hours per year to pro bono practice.

By consensus, the Committee approved Rule 19-504 as presented.

The Reporter presented Rule 19-505, List of Pro Bono and Legal Services Programs.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 500 – PRO BONO LEGAL SERVICES

Rule 19-505. LIST OF PRO BONO AND LEGAL SERVICES PROGRAMS

At least once a year, the Maryland Legal Services Corporation shall provide to the State Court Administrator a current list of all grantees and other pro bono and legal services programs known to the Corporation

that serve low-income individuals who meet the financial eligibility criteria of the Corporation. The State Court Administrator shall post the current list on the Judiciary website.
Cross reference: See Rules 1-325, 19-215, and 19-605.

Source: This Rule is new.

The Reporter told the Committee that the Maryland Legal Services Corporation ("MLSC") has agreed to provide to the State Court Administrator a current list of all grantees and other pro bono and legal services programs known to the Corporation that serve low-income individuals. The Reporter had noticed that pursuant to Rule 1-325, that list is expected to be generated and posted on the Judiciary website. Rules 19-215 and 19-605, Obligations of Attorneys, provide for this list to be generated and posted on the website. Therefore, a separate Rule on this would be helpful. The Access to Justice report had it as a footnote, but it really needs to be transparent, so people know about the list that is to be provided by the MLSC and posted on the Judiciary website. Posting the list is helpful not only to attorneys who may wish to become "pro bono attorneys," but also to regular active attorneys who are looking for an organization from which the attorney may want to take cases. They will be able to see these programs listed on the Judiciary website.

The Reporter pointed out that the word "nonprofit" needs to be added to Rule 19-505. She will add it in the appropriate place in that Rule. By consensus, the Committee agreed with

this. The Reporter remarked that Rule 19-505 applies to the MLSC grantees plus other pro bono and legal services programs that serve low-income individuals who meet the MLSC financial criteria. Representatives from the MLSC will be working with the Pro Bono Resource Center and others to generate the list, which will include programs that are grantees of MLSC, as well as programs that are not grantees of that organization.

By consensus, the Committee approved Rule 19-505 subject to the addition of the word "nonprofit" in an appropriate place.

The Reporter presented Rule 19-215, Special Authorization for Out-of-State Attorneys Affiliated with Programs Providing Legal Services to Low-income Individuals, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~15.~~ 19-215. SPECIAL AUTHORIZATION FOR OUT-OF-STATE ATTORNEYS ~~TO PRACTICE IN THIS STATE~~ AFFILIATED WITH **PROGRAMS PROVIDING** LEGAL SERVICES **TO LOW-INCOME INDIVIDUALS**

(a) Definition

As used in this Rule, "legal services program" means a program (1) operated by a nonprofit entity that provides legal services to low-income individuals in Maryland who meet the financial eligibility requirements of the Maryland Legal Services Corporation and (2) is on a list of such programs provided by the Corporation to the State Court Administrator and posted on the

Judiciary website pursuant to Rule 19-505.

Cross reference: For the definition of "State," see Rule 19-101 (i).

~~(a)~~ **(b)** Eligibility

~~Subject to the provisions of~~ Pursuant to this Rule, a member of the Bar of another state who is employed by or associated with ~~an organized~~ **a** legal services program ~~that is sponsored or approved by Legal Aid Bureau, Inc.~~ may practice in this State pursuant to that ~~organized legal services~~ program~~,~~ if (1) the individual is a graduate of a law school meeting the requirements of Rule ~~4 (a)(2)~~ 19-201 (a)(2)~~, (2) the legal services program provides legal assistance to indigents in this State,~~ and ~~(3)~~ **(2)** the individual will practice under the supervision of a member of the Bar of this State.

~~(b)~~ **(c)** Proof of Eligibility

To obtain authorization to practice under this Rule, the out-of-state attorney shall file with the Clerk of the Court of Appeals a written request accompanied by (1) evidence of graduation from a law school as defined in Rule ~~4 (a)(2)~~ 19-201 (a)(2), (2) a certificate of the highest court of another state certifying that the attorney is a member in good standing of the Bar of that state, and (3) a statement signed by the Executive Director of ~~Legal Aid Bureau, Inc.,~~ **the legal services program that includes (A) a certification** that the attorney is currently employed by or associated with ~~an approved organized legal services~~ **the** program**, (B) a statement as to whether the attorney is receiving any compensation other than reimbursement of reasonable and necessary expenses, and (C) an agreement that, within [five] [ten] days after cessation of the attorney's employment or association, the Executive Director will file the Notice required by section (e) of this Rule**.

~~(c)~~ **(d)** Certificate of Authorization to Practice

Upon the filing of the proof of eligibility required by this Rule, the Clerk of the Court of Appeals shall issue a certificate under the seal of the Court certifying that the attorney is authorized to practice under this Rule**, subject to the automatic termination provision of section (e) of this Rule**. The certificate shall ~~contain~~ state ***(1)*** the effective date***, (2) whether the attorney (A) is authorized to receive compensation for the practice of law under this Rule or (B) is authorized to practice exclusively as a pro bono attorney pursuant to Rule 19-504,*** and ***(3)*** **any** expiration date of the special authorization to practice. **If the attorney is receiving compensation for the practice of law under this Rule,** the expiration date shall be no later than two years after the effective date. **If the attorney is receiving no compensation other than reimbursement of reasonable and necessary expenses, no expiration date shall be stated.**

Committee note: An attorney who intends to practice law in Maryland for compensation for more than two years should apply for admission to the Maryland Bar.

~~(d)~~ **(e)** Automatic Termination ~~**Before Expiration**~~

Authorization to practice under this Rule is automatically terminated ~~**before its expiration date**~~ if the attorney ceases to be employed by or associated with ~~**an approved organized**~~ **the** legal services program ~~**in this State**~~. Within **[five] [ten]** days after cessation of the attorney's employment or association, the Executive Director of ~~**Legal Aid Bureau, Inc.**~~ **the legal services program** shall file with the Clerk of the Court of Appeals notice of the termination of authorization.

(f) Disciplinary Proceedings in Another

Jurisdiction

Promptly upon the filing or disposition of a disciplinary proceeding in another jurisdiction, an out-of-state attorney authorized to practice under this Rule shall notify Bar Counsel and the Clerk of the Court of Appeals of the disciplinary matter. ~~(e)~~

(g) Revocation or Suspension

At any time, the Court, in its discretion, may revoke or suspend an attorney's authorization to practice under this Rule ~~either~~ by written notice to the attorney. ~~or by~~ By amendment or deletion of this Rule, the Court may modify, suspend, or revoke the special authorizations of all out-of-state attorneys issued pursuant to this Rule.

~~(f)~~ **(h)** Special Authorization not Admission

Out-of-state attorneys authorized to practice under this Rule are not, and shall not represent themselves to be, members of the Bar of this State, except in connection with practice that is authorized under this Rule. They ~~shall be~~ **are** required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund**, except that an attorney who is receiving no compensation other than reimbursement of reasonable and necessary expenses is not required to make the payments**.

(i) Rules of Professional Conduct

An attorney authorized to practice under this Rule is subject to the Maryland Attorneys' Rules of Professional Conduct until the authorization is terminated.

Source: This Rule is derived in part from former ~~Rule 19~~ Rule 15 of the Rules Governing Admission to the Bar of Maryland (2013) and is in part new.

The Reporter said that Rule 19-215 shows the changes from Bar Admission Rule 15, Special Authorization for Out-of-State Attorneys to Practice in this State. A definition of the "legal services program" had been added. It is a nonprofit program that provides legal services to low-income individuals and is on the list that the Reporter had just referred to. The cross reference to the definition of the word "State" is important, because the definition in Rule 19-101, Definitions, includes the District of Columbia. If a person is licensed to practice law in D.C., he or she can qualify under Rule 19-215, as long as the person meets the other requirements.

Mr. Sullivan commented that it is not immediately clear why one needs to look at the definition of the word "State." The Reporter responded that the cross reference should be after section (b), because that contains the word "state." The Reporter said that section (c) covers both the employees and the pro bono attorneys. It is basically the same process whether the attorney is employed by the legal services program or just affiliated with it and working as a pro bono attorney. The attorney has to be a graduate of a law school that meets the requirements in the Bar Admission Rules and has to practice under the supervision of a member of the bar of this State. This is in current Rule 15.

The Reporter commented that to prove eligibility, the attorney has to meet the requirements of section (c) of Rule 19-215, which are the same requirements as in current Rule 15, but

the term "Legal Aid Bureau" will be changed to the term "the legal services program," which is the program that the attorney will be working for. The Legal Aid Bureau would not know about someone who is working for the Public Justice Center. This is a change from the current Rule, which has the Legal Aid Bureau as the authorizing entity and which was drafted before the MLSC and the Public Justice Center were formed. The legal services program is the correct entity to do the certification. The statement as to whether the attorney is receiving compensation or no compensation other than reimbursement of expenses had been added to Rule 19-215.

The Reporter noted that subsection (c)(2)(C) requires that the attorney file an agreement that within either five or ten days after cessation of the attorney's employment or association with the organization, the Executive Director of the organization for whom the attorney had worked will file the notice required by section (e) of Rule 19-215. Two different drafts had been proposed. One provided for a five-day time period; one provided for a ten-day time period. This is a policy decision for the Committee.

The Reporter said that regarding the certification of the authorization to practice under Rule 19-215 (d), an automatic termination is provided for in section (e) of Rule 19-215. Someone is automatically terminated if he or she is not working for or affiliated with the program any longer. The Clerk of the Court of Appeals will state the effective date.

The Reporter commented that the certification itself states whether the attorney is authorized to receive compensation, because he or she will be working for the legal services program, or whether the attorney is not going to receive any compensation, because he or she is a "pro bono attorney" pursuant to Rule 19-504. It also states whether there is any expiration date. The Access to Justice Commission did not want any expiration date for the attorneys. However, if the history of Rule 15, which used to be Rule 19, is tracked, the Rules Committee preferred a two-year expiration period. An attorney working for money needs to become a Maryland attorney by taking the attorney's examination or the regular examination, whichever is applicable.

The Reporter said that section (e) Rule 19-215 provided that if the attorney ceases to be employed by or affiliated with the legal services program, then the Executive Director notifies the Clerk of the Court of Appeals that the authorization should be terminated. Under section (f), the attorney is required to notify both the Clerk of the Court of Appeals and Bar Counsel if the attorney has been disciplined in the other jurisdiction or a disciplinary action has been filed in the other jurisdiction. Section (g) provides that, at any point in time, the Court of Appeals can revoke the attorney's authorization to practice, and Bar Counsel may be interested in pursuing disciplinary action, depending on what the discipline in the other jurisdiction was.

Mr. Frederick suggested that section (f) of Rule 19-215 refer to section (a) of Rule 16-773, Reciprocal Discipline or

Inactive Status, because it is not clear what a "filing or disposition of a disciplinary proceeding in another jurisdiction" means. Someone could argue that a letter to the Attorney Grievance Commission in Maryland might be the filing of a disciplinary proceeding. About 2,000 of these letters are filed every year, and about 76% of them are dismissed with no action taken. The way the Rule is written now, an attorney who is a member of the Maryland bar and the bar of another jurisdiction, and who gets disbarred, suspended, or otherwise disciplined or resigns from the bar while disciplinary or remedial action is threatened or pending in the other jurisdiction, must inform Bar Counsel in Maryland. If Bar Counsel has to be told about the filing of some complaint in another state, it creates a great amount of paperwork and difficulty for an attorney, who is "presumed innocent until proven guilty." It is more likely than not that the attorney is found not to have committed an act that would subject the attorney to discipline. The wording of section (f) should be consistent with the wording of Rule 16-773 (a). The Reporter asked about the duty of the attorney. Mr. Frederick said that this is for an in-state attorney. If this takes place in Maryland, Bar Counsel will know about it.

The Reporter read section (a) of Rule 16-773, as follows: "An attorney who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary action or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status

based on incapacity shall inform Bar Counsel promptly of the discipline, resignation, or inactive status." The Chair inquired if there is a difference for a Maryland attorney who is also admitted in another state. The mere fact that someone files a complaint in another state does not necessarily trigger a response in Maryland. It could if Bar Counsel finds out about it.

Mr. Frederick noted that, generally, if the disciplinary officer in the other jurisdiction thinks that the public is in danger by virtue of what is in the complaint, he or she ordinarily will contact Bar Counsel. The disciplinary officers around the country have a network. The Chair said that this refers to an out-of-state attorney who is admitted in Maryland. Mr. Frederick added that this attorney would be subject to the Maryland Rules by virtue of being under Rule 8.5, Disciplinary Authority; Choice of Law. The Chair agreed, pointing out that this would be true if anything problematic is going on in Maryland.

Mr. Frederick observed that the attorney may be subject to Rule 8.5, even if the problematic behavior is going on in the other jurisdiction. The Chair noted that the reciprocal discipline is only if the behavior is in another state. Mr. Frederick read from Rule 8.5 (a) as follows: "A lawyer admitted by the Court of Appeals to practice in this State is subject to the disciplinary authority of this State, regardless of where the lawyer's conduct occurs." The practice is that if the attorney

is sanctioned, as the term is used in Maryland, in the other jurisdiction, that is the trigger, not the filing of the complaint.

The Chair asked whether there is a difference when the attorney who is being reviewed in Maryland is someone who is not admitted to practice in Maryland at all except by Rule 19-215, and the only state where the attorney is admitted is pursuing disciplinary action for some behavior of the attorney. Mr. Frederick said that subsection (a)(2) of Rule 8.5 states: "A lawyer not admitted to practice in this State is also subject to the disciplinary authority of this State if the lawyer (i) provides or offers to provide any legal services in this State, (ii) holds himself or herself out as practicing law in this State or (iii) has an obligation to supervise or control another lawyer practicing law in this State whose conduct constitutes a violation of these Rules." Mr. Carbine remarked that once someone participates in one of these legal services programs, the attorney is practicing law. The Reporter said that the person is practicing law and is subject to the Maryland Attorneys' Rules of Professional Conduct, but the person is not considered to be, and shall not represent himself or herself to be, a member of the bar of this State. This is under section (h) of Rule 19-215.

Mr. Carbine commented that he did not see the distinction. The Chair asked whether Bar Counsel should be involved under Rule 19-215 simply because someone has a complaint filed elsewhere. Should the pro bono agency that is employing the attorney, who

can only practice under Rule 19-215, have the ability to tell the attorney that the agency no longer desires his or her services based on what the agency has heard about the attorney in another state? It is not that the attorney is going to be disciplined, but that the agency is not comfortable with employing him or her. Judge Price observed that by the time the attorney is disciplined, it may be too late to avoid the damage that the attorney may be doing in Maryland.

The Chair noted that the attorney is presumed innocent until found guilty. Mr. Frederick pointed out that the attorney is required to notify his or her employer. If the attorney notifies the disciplinary authority, they must open a file. If the employer is notified, the employer can decide whether to keep the attorney on. This is the distinction. The Chair said that Mr. Frederick's concern is with notifying Bar Counsel. The Reporter suggested that this could be a two-step process. If there is a filing, the employee should notify his or her employer or the executive director of whatever program the person is working for, but if there is actual discipline, that is different. The attorney should notify Bar Counsel and the Clerk of the Court of Appeals. The Chair said that this is required. Mr. Frederick pointed out that Rule 16-773 requires it. He reiterated that Rule 19-215 should be consistent. The Reporter suggested that the attorney would notify the employer if there is any filing and notify Bar Counsel and the Clerk of the Court in accordance with the standards of Rule 16-773.

The Chair asked Ms. Erlichman if she would want notice if a complaint had been filed in another state against a pro bono attorney working for her organization. Ms. Erlichman answered that her organization, the MLSC, would not be involved in that process. Ms. Goldsmith responded that her organization, the Pro Bono Resource Center, would appreciate notice. Ms. Ortiz questioned whether the Clerk's office would need notice of a disciplinary matter if it does not affect the ability of the attorney to practice unless Bar Counsel takes action. The Reporter remarked that this procedure flows from the Clerk giving this almost automatic permission to practice. It seemed like a good idea to have both Bar Counsel and the Clerk notified of the disciplinary matter.

The Chair asked Mr. Frederick if he wanted to delete the requirement to notify Bar Counsel in section (f) of Rule 19-215. Mr. Frederick answered that he would, unless it was within the parameters of Rule 16-773. The Reporter commented that the responsibility would be put on the attorney to do the notifications, because otherwise the other jurisdiction would probably not know that one of their attorneys is working pro bono in Maryland. The Chair suggested that a cross reference to Rule 16-773 be added after section (f).

The Reporter told the Committee that she would break section (f) into two parts. One would be notifying the Executive Director of the legal services program as to the filing of a disciplinary action, and then the other would be notifying Bar

Counsel and the Clerk of the Court as to an actual Rule 16-773 (a) situation. The Chair inquired if anyone had an objection to this. By consensus, the Committee approved of the proposed changes to section (f).

The Reporter said that the current Rule provides that special authorization to practice does not authorize the attorney to be a member of the bar of this State. It diverges based on whether the attorney is paid or not. If the attorney is being paid to work for one of the legal services programs, the attorney has to pay the Client Protection Fund. If the attorney is only working pro bono, the attorney does not have to pay. This was the recommendation of the Access to Justice Commission. The attorney is subject to the Rules of Professional Conduct.

Ms. Ortiz asked about the choice of five or ten days in section (c) of Rule 19-215. This would be the time period after cessations of the attorney's employment or association, when the Executive Director of the legal services programs files a notice of the termination of authorization. Ms. Goldsmith suggested that the time period should be ten days. The Reporter noted that the issue is that once the legal services program either is no longer employing the attorney or does not have any more pro bono work for that attorney and has ceased its affiliation with that attorney, the organization needs to notify the Clerk of the Court of Appeals.

Mr. Carbine observed that giving the organization an extra five days makes it easier clerically to get the notification

done. The Reporter reiterated that the current rule, Rule 15, provides that Legal Aid has to give that notice, and Legal Aid would not know about what other legal services programs, such as the Public Justice Center, are doing. Ten days seems to make some sense to give the legal services program a chance to file this notice. By consensus, the Committee agreed to make the time period ten days after cessation of the attorney's employment or association for the Executive Director to notify the Clerk of the Court about the termination of the attorney's authorization to practice.

By consensus, the Committee approved Rule 19-215 as amended.

The Reporter presented Rule 19-605, Obligations of Attorneys, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

Rule ~~16-811.5~~ 19-605. OBLIGATIONS OF ATTORNEYS

(a) Conditions Precedent to Practice

(1) Generally

Except as otherwise provided in this section **or Rule 19-215 (h)**, each attorney admitted to practice before the Court of Appeals or issued a certificate of special authorization under Rule ~~15 of the Rules Governing Admission to the Bar of Maryland~~ 19-215, as a condition precedent to the practice of law in this State, shall (A) provide to the treasurer of the Fund the

attorney's Social Security number, (B) provide to the treasurer of the Fund the attorney's federal tax identification number or a statement that the attorney has no such number, and (C) pay annually to the treasurer of the Fund the sum, and all applicable late charges, set by the Court of Appeals.

(2) Exception

Upon timely application by an attorney, the trustees of the Fund may approve an attorney for inactive/retired status. By regulation, the trustees may provide a uniform deadline date for seeking approval of inactive/retired status. An attorney on inactive/retired status may engage in the practice of law without payment to the Fund if (A) the attorney is on inactive/retired status solely as a result of having been approved for that status by the trustees of the Fund and not as a result of any action against the attorney pursuant to ~~the Rules in Title 16, Chapter 700~~ Chapter 700 of this Title, and (B) the attorney's practice is limited to representing clients without compensation, other than reimbursement of reasonable and necessary expenses, as part of the attorney's participation in a legal services or pro bono publico program sponsored or supported by a local bar association, the Maryland State Bar Association, Inc., an affiliated bar foundation, or the Maryland Legal Services Corporation.

(3) Bill; Request for Information; Compliance

For each fiscal year, the trustees by regulation shall set dates by which (A) the Fund shall send to an attorney a bill, together with a request for the information required by subsection (a)(1) of this Rule, and (B) the attorney shall comply with subsection (a)(1) by paying the sum due and providing the required information. The date set for compliance shall be not earlier than 60 days after the Fund sends the bill and requests the information.

(4) Method of Payment

Payments of amounts due the Fund shall be by check or money order, or by any additional method approved by the trustees.

(b) Change of Address

Each attorney shall give written notice to the trustees of every change in the attorney's resident address, business address, e-mail address, telephone number, or facsimile number within 30 days of the change. The trustees shall have the right to rely on the latest information received by them for all billing and other correspondence.

Source: This Rule is derived from former ~~Rule 16-811~~ Rule 16-811.5 (2013).

Rule 19-605 was accompanied by the following Reporter's note.

Rule 19-605 is derived verbatim from Rule 16-811.5 contained in the 180th Report of the Rules Committee, except for renumbering of the Rule, modification of internal references as necessary, and the addition of a reference to Rule 19-215 (f).

The Reporter explained that Rule 19-605 is currently Rule 16-811.5. The only change is the reference to Rule 19-215 (h) added in the first sentence to also encompass the out-of-state attorneys who are practicing under that Rule and who do not have to pay the Client Protection Fund. The rest of the changes are to update the Rule with the correct references to the Rules in the 178th Report, Part III.

By consensus, the Committee approved Rule 19-605 as presented.

Agenda Item 10. Reconsideration of proposed amendments to Rules pertaining to entry of judgments: Rule 1-327 (Entry of Judgements, Orders, and Notices), Rule 2-601 (Entry of Judgment), Rule 3-601 (Entry of Judgment), Rule 7-104 (Notice of Appeal - Times for Filing), Rule 8-202 (Notice of Appeal - Times for Filing), and Rule 8-302 (Petition for Writ of Certiorari - Times for Filing) - (See Appendix 4)

Mr. Lowe said that at the end of the November, 2013 Rules Committee meeting, the Committee adopted a new Rule regarding the entry of judgments, Rule 1-327, Entry of Judgments, Orders, and Notices. The Rule sets forth specific language that the clerks physically type in to a docket entry when the judgment was entered. At the time that this Rule was adopted, Mr. Lowe and several other clerks were working with the Judicial Information Systems ("JIS") to come up with a technical solution to this problem of when is a judgment entered. They had not had enough time to work out all of the details before the November meeting. This is essentially a two-part process to correct this issue. One is capturing the date that the judgment is entered. This is the date that the clerk literally pushes the "enter" button, and the judgment is entered. This has nothing to do with an index date. The second part is how to accurately and clearly display the judgment entry date to all parties involved, so that they know when the judgment was "entered."

Mr. Lowe commented that in speaking with JIS, he and his colleagues realized that JIS can virtually show or not show any date that is in the Uniform Case System ("UCS"). The problem was the clerks had never been on the same wavelength as JIS to know

exactly what was needed. As a result of this process, Mr. Lowe and his colleagues now understand the system. In UCS, when a judgment is entered, the program is hard-wired to capture this date. Once the date is captured, no one can alter, amend, or do anything to it. It is a fixed point in time. The technical piece of this is already available.

Mr. Lowe told the Committee that the second part of addressing this problem is how to actively display the date the judgment is entered. He and his colleagues had worked with JIS and had put solutions in place which were that when a judgment is entered, the judgment screens in Case Search, which pulls its data from UCS, will indicate "Judgment entered _____." The blank will have a date filled in. Previously, there had been some confusion about an indexing date or a temporary date. This had been a concern of the Chair's.

Mr. Lowe noted that these dates have been removed from the display screen. Now, once a judgment is entered, Case Search will pull that date from UCS, and it will indicate that a judgment has been entered and the date of entry. This is a date that is automatic in the clerks' system and cannot be altered or amended. A group of clerks had met to work on this issue, and Mr. Lowe and the other clerks thought that this was an appropriate solution to the problem. It eliminates the need for clerks to manually type in dates of entry. If the clerks were to begin typing in dates of entry, there is the possibility of typing in the wrong date. For instance, the clerk may type in

the date that the judge signed the judgment. This will no longer be possible because of automatically capturing that critical moment in time when the clerk pushes the "enter" button, and the judgment becomes "entered."

Mr. Lowe commented that at the back of the memorandum he had written dated February 14, 2014, a copy of which is in the meeting materials, the changes that had been made were displayed. The page entitled "Changes to Judgment Component on Case Search" shows a current Case Search judgment screen and a proposed Case Search judgment screen. Mr. Lowe and his colleagues had removed references to "judgment ordered" date, and/or "entry" or "index" date. This was replaced with the simple language "Judgment Entered Date." The date filled in will automatically appear.

Mr. Lowe remarked that regarding the date of motions, he and his colleagues had removed a "close" date and adopted the language "entered" date. When the motion or an order pertaining to the motion is filed, it automatically picks up that date and displays it. It is the same with the "Proposed Judgments and Liens Application" screen. Any reference to an index date is removed, so that only the actual date of final entry appears. Based on what Mr. Lowe and his colleagues had accomplished with the technical aspect of this, they proposed changes to the Rules approved in November. They thought that there was no need for new Rule 1-327. By making the technical changes Mr. Lowe had just referred to, no other steps are required for the clerks. The system automatically picks up these dates and displays them.

The Chair cautioned that this would be true as long as the clerks keep up this procedure. Mr. Lowe agreed, but he noted that once they enter the date, even if they decide to use the index system, that will not be affected. The index date will not show up. Only the date of final entry will be displayed.

Mr. Lowe said that some of the language in Rule 2-601 (b)(2) was incorrect. The clerks no longer write the date of judgment on the file jacket, on a docket within the file, or in a docket book. Changes had been made to reflect that electronic case management systems are being used now, and that the clerk shall enter a judgment by making an entry of it on the docket along with such description of the judgment as the clerk deems appropriate. Similar changes are being proposed for other Rules as well.

Mr. Carbine referred to the language at the bottom of the attachment to Mr. Lowe's memorandum, which reads: "Changes to Judgment Component on Case Search." The language reads "Judgment Entered Date = (Date supervisor committed the order)." Is there a possibility of confusion if it is received, stamped in, and entered into the system on different dates, or is it only the supervisor's action that is the end point? Mr. Lowe replied that only the final step will be displayed. Mr. Hilton said that the commitment itself is a process for verification by the supervisor if the judgment is correct. When the supervisor commits, this is what enters the judgment on the docket for purposes of Rule 2-601.

Mr. Carbine noted that the supervisor will always commit the judgment in the clerks' offices that have this supervisor review, and in the courts that do not have it, there will be a way that the clerk presses the button. Mr. Hilton remarked that for UCS, there is no process. There is always a subordinate clerk typing in the information. This does not vary court by court. It is the technical process in UCS. Mr. Carbine asked if any ambiguities were being created. Mr. Lowe answered that none were being created.

Mr. Carbine referred to the highlighted language in subsection (b)(2) of the Proposed Clerk's Alternative version of Rule 2-601, which was attached to Mr. Lowe's memorandum and which reads: "...along with such description of the judgment as the clerk deems appropriate." Mr. Lowe responded that the reason he had included this language has nothing to do with the date the judgment is entered, but it pertains to practices in the clerks' offices. Some clerks will enter the text of a motion or the text of an order into UCS, and that is what the language "along with such description" provides. Mr. Carbine commented that Rule 2-601 does not provide that the clerk's office has to type in the language "judgment entered." If the clerk's office has to type in that language, it just means that the entry has to show it. He expressed his preference for keeping that language in. Whether it is done manually or automatically by computer, there is a Rule that backs up the process.

Mr. Lowe explained that once that entry is complete, then in

all situations the language "judgment entered" will be shown. It is automatically pulled from UCS by Case Search and displayed. Mr. Carbine said that he only differed with Mr. Lowe's comments in that Mr. Carbine had suggested that the language "judgment entered" be left in Rule 2-601, and the notation "judgment entered" will be on the docket. This does not mean that the clerks have to manually type that language in. It means that the system will be able to do it.

Mr. Hilton remarked that the issue is that when there is a money judgment entered by a jury, that is a separate process from a divorce decree which has to be manually typed into UCS, so that all of the information can be captured. A money judgment is automatically processed, and it results in a notice to the parties that judgment was entered in favor of the plaintiff and includes the amount of the judgment, all of which is typed in by the clerk. This is a separate field in UCS for display as well as on Case Search. A motion for summary judgment, which may have an opinion and an order, has to be typed in by the clerk. There are no form orders for those situations. The concern is that if certain form language is required to be put in as a line item, the problem may be that the clerk is being asked to judge whether this is a judgment, a notice, or an order. The descriptive part of it may confuse the clerk even further. There are situations in which there is an interlocutory judgment, which may or may not be appealable. The issue is the entry date and not necessarily whether what is docketed is a judgment, because the clerk is

being asked to decide whether it is a judgment, a notice, or an order.

Mr. Carbine said that what is needed is a system that produces a single, unambiguous judgment date. It makes no difference whether the clerk enters the information manually or whether the computer does it automatically. The "judgment entered" date has to be on the docket. The docket on UCS should look the same as the entries on Case Search. If the clerk has to make a judgment, that decision will have to be made. Mr. Hilton commented that the differences are whether Rule 2-601 uses specific words that cannot be modified. UCS ties the motions to orders that are entered. A motion for summary judgment is a written document that is docketed, and an order attached to that is located with it, because they usually carry the same index number with the notation "/1, /2, /3". They are tied to each other, so that more orders are coming from a motion for summary judgment. This is the concluding event and is well known in the system as it exists. The confusion on Case Search was that it was not pulling the date that the judgment was actually entered. It falls on the attorneys to decide whether the judgment is an appealable judgment.

Mr. Carbine reiterated that there has to be one unambiguous docket entry that has one unambiguous date. Mr. Hilton responded that this is not possible, because of the fact that divorce decrees are sometimes pages and pages long. The entry that has to be put in the docket is not the words "judgment entered." Mr.

Carbine asked why the court order cannot state: "Judgment entered, date, description of the divorce decree."

Judge Pierson pointed out that what is necessary is the date of entry. This is the date that has to be displayed on the system. It is not necessary to indicate whether it is an order, judgment, or notice. It does not matter what the language is, it is the date of entry. Mr. Zarbin remarked that the date could be wrong. Judge Pierson noted that subsection (b)(3) of Rule 2-601 states: "...the date of the entry shall be available to the public...".

Mr. Carbine asked why the Rule cannot provide that the notation has to state "judgment entered." Mr. Lowe responded that this date is already being picked up automatically. Mr. Carbine said that this assumes everything works technically, but there is no force of rule behind it. Mr. Hilton observed that the problem had technically been solved without a rule change. The confusion that occurred was technically solved in the transition from UCS to Case Search, which is not the program of record. UCS is the program of record, and it is the docket. The problem in the proposal is that the clerk is being bound to this particular language. The clerks do not do this, because that creates a non-final judgment when the reality is that the final judgment is the date that the judgment that has been appealed from is placed on the docket. It is not the language used in UCS or Case Search.

Judge Pierson commented that the language in Rule 2-601

(b)(3) could be "... the date of the entry shall be displayed on the docket and made available to the public...". Would this cover what is being done with UCS? The date eventually will be on the docket, so this would accomplish the same thing. The Chair said that what is shown on the screen is appropriate. It reads "Judgment Entered." The Rule does not have that magic language, but the screen does.

The Chair asked Mr. Hilton about his comment regarding judgments that are not final. They are not judgments under the Rules. A "judgment" is defined as one that is final. Rule 2-602, Judgments Not Disposing of Entire Action, makes it clear that anything that is not final is not a judgment. Mr. Hilton responded that it is not an appealable judgment. The Chair clarified that it is not a judgment. Section (o) of Rule 1-202, Definitions, reads: "'Judgment' means any order of court final in its nature entered pursuant to these rules." If it is not final in its nature, it is not a judgment.

Mr. Hilton hypothesized that there could be an interlocutory summary judgment against Party C in a three-party case and that judgment becomes final when the claim against Party B resolves as to Party A. The Chair agreed that this is when it becomes final. Mr. Hilton remarked that some interlocutory orders are appealable at the entry of final judgment. The Chair said that they are appealable, but they are not judgments.

Mr. Hilton explained that the distinction that he was trying to draw was that there are many ways of characterizing these

orders, and the items that are entered could create more confusion if the focus is on the language rather than on the date. The Chair agreed, pointing out that a judge granting summary judgment in favor of Defendant A, but with Defendant B still in the case, may have called it a "summary judgment," and the clerk puts this on the docket. It is not a judgment under the Rules.

Mr. Hilton added that likewise there are orders that are interlocutory but appealable, which are not themselves defined as "judgments." The Chair commented that something can be appealed if it is appealable by statute or under the collateral order doctrine, even though it is not technically a judgment. Mr. Zarbin noted that a change of venue is automatically appealable even though it is not a judgment. Mr. Carbine observed that the attorneys have to think about this.

Mr. Sullivan said that he hesitated to make his proposal, because it is the fourth time that the Committee had discussed this issue, but since the proposal before the Committee eliminates the Rules that the Committee had initially approved, he suggested that this matter be recommitted to the Judgments Subcommittee, which can process all of this information and then make a recommendation to the full Committee whether this suggested change by the clerks does solve the problem. The original proponent for this proposal, Mr. Maloney, was not present at this time. Mr. Sullivan added that he could not be confident that all of the concerns that led this Committee to

approve Rule 1-327 and the remainder of the Rules that went along with it had been successfully resolved by the proposal before the Committee today. Those concerns had not been discussed by the Subcommittee.

Mr. Carbine noted that the reason that the problem arose was accidental. The Vice Chair had proposed adding the word "electronic" to the list of ways of making a docket entry. When the Committee had considered this idea, they found out that there was the order date, the index date, and the date that was actually on the docket. The way that the clerks would like the Rules to read is go back to using all of these different dates.

The clerks present at the meeting indicated that they did not agree with Mr. Carbine. Mr. Carbine quoted from subsection (b)(2) of Rule 2-601 as follows: "The clerk shall enter a judgment by making an entry of it on the docket of the electronic case management system used by that court along with such description of the judgment as the clerk deems appropriate."

Mr. MacGlashan commented that the docket entry information may be different from the date. He recollected that the date entered is the date issued. This had been fixed. Mr. Carbine pointed out that Rule 2-601 did not state that there is only one date. Mr. MacGlashan remarked that section (d) of Rule 2-601 stated this. The inconsistency seemed to be between what is entered in UCS and what is entered in Case Search. This had been fixed. Mr. Carbine responded that the people attending the meeting would know this, but there is no force of rule behind it.

The Chair suggested that both problems could be solved. Subsection (b)(2) of Rules 2-601 and 3-601 is entitled "Applicability - Method of Entry - Availability to the Public." The Chair proposed the following language: "The clerk shall enter a judgment by entering on the docket of the electronic case management system used by that court the term 'judgment entered' along with such description of the judgment as the clerk deems appropriate." He asked if this would solve the clerks' problem. Ms. Smith said that the clerk would have to make a determination as to whether or not the judgment is a final judgment. Mr. Carbine remarked that this is not the job of the clerk, it is the job of the attorney. The job of the clerk is to enter the judgment on the docket. It is not necessarily a final, appealable judgment; it is simply a judgment.

The Chair commented that he had thought that the issue was as Mr. Carbine had described it. There had been different dates and different descriptions indexed. The screen is clear under the clerks' proposal. The Subcommittee and Mr. Maloney in particular had been anxious for the Rule to have the magic words "judgment entered." This was the one uniform descriptive term, and the clerks have put this on the screen. The magic words are not in the Rules. This seemed to be Mr. Carbine's concern. No conflict between the two exists.

Mr. Hilton noted that there is one difference. In a money judgment, the magic words appear, because JIS created the words for a money judgment in that part of the report for a money

judgment. The problem is the non-money judgment entered on the docket itself in a sequential way that could be a four-page divorce decree or a one-line statement. The term "interlocutory judgment" had just been referred to at the meeting. It may not be a judgment by definition, but now it will be referred to as a "judgment," even though it is not really appealable. It requires the clerk to make a decision as to whether it is a judgment. The Chair pointed out that the interlocutory judgment is not only not appealable, it is not a lien on property. It is nothing.

Mr. Hilton noted that under the definition of what a "judgment" is, an interlocutory order could be tied in as "judgment entered." The Chair responded that this would be misstating what a judgment is. Mr. Hilton agreed, explaining that the clerks would have to make a determination of whether there has been a judgment, and it could be wrong. The other way to write the Rule is to provide that the clerks should make an entry indicating that the judge ordered that something had happened. Whether that is appealable is not stated in the entry. The Chair said that he remembered that when the Committee put the definition of "judgment" in Rule 1-202, it was intended to define a "judgment" as only what the Court of Appeals had said that a judgment was, final in nature. The problem is that everyone outside of the seven judges on the Court of Appeals has been labeling other decisions as a "judgment," and they are not. Should this be followed, or should the Rules be followed? The Chair was not sure how the interlocutory judgments should be

handled. Are they simply an interlocutory order? The Committee had suggested at the last meeting adding to the appropriate Rules the magic words "judgment entered." This would be entered on the screen, but the words do not appear in the Rule, which means presumably that JIS the next day could do something else if they wanted to.

Mr. Carbine suggested a compromise - using Mr. Lowe's proposed language in Rules 2-601 and 3-601, which is: "by making an entry" and following it with the language "and by making a single date." If the labeling is the problem, it does not have to be labeled, but it is important that there only be one date. Mr. Lowe remarked that the idea is to get away from physically typing in the date. It seemed to the clerks that this was superfluous, because when they type it in and hit the "enter" button, this is captured by UCS. Mr. Carbine noted that the Rule does not care if it is manual or computer-generated. Mr. Lowe said that it will always be automatic. This is what the screen is showing. Mr. Carbine stated that the Rule has to provide this.

Judge Pierson suggested that subsection (b)(2) of Rules 2-601 and 3-601 could state "by making an entry which shall contain a date...". It is important that this results in a single date. Mr. Hilton pointed out that the problem with UCS is that there is not a single date. The issue that came up in the Subcommittee was that Case Search did not display the same date as UCS.

Judge Pierson asked whether there is a final date on UCS.

Mr. Hilton answered that there are other dates that relate to internal data management for UCS, but what is entered on UCS as the entry date that is the date that the clerk actually enters it on the docket. This is what is transmitted to Case Search. Mr. Lowe remarked that the other dates are internal tracking mechanisms that JIS no longer pulls. It is only the final entry date that is displayed.

Judge Pierson recalled that UCS used to have the file date and the docket date for each filing. He asked whether it still has that. Does it still have that for a judgment or an order? Does it create a single date entry? The Chair said that what was being sought was a single date of entry. Ms. Smith noted that the entry date is no longer manual. It is always going to be automatic. Mr. Sykes observed that the language "final judgment" indicates that there may be other kinds of judgments. For example, in a three-party case, there may be a summary judgment in favor of one party. How does UCS label this now? The Chair replied that it is probably labeled as "judgment." Mr. Zarbin added that Mr. Sykes' comment indicated that the words "final judgment" are not used.

Mr. Carbine said that he was not concerned about how this is labeled. As long as the Rule provides that the docket that is generated by UCS, put in a file, and sent to Case Search has one date, and one date only, it is clear. The point had been made that for purposes of appeal, the date in Case Search could not be relied upon. This has now been fixed. Mr. MacGlashan added that

if what is being suggested is automatic language, flexibility is needed. Fortunately, many judges tell the clerks what the language of the docket entry should be. This is necessary.

Mr. Zarbin expressed the opinion that attorneys know what a final judgment is. If an attorney gets a change of venue motion, which states "judgment entered," the attorney would know that this is not a final judgment, but it is appealable. Only at the end of a case, would a judgment be labeled as "final." Mr. Sykes asked about entering an appealable interlocutory order. The Chair stated that the problem is a semantic one that the Committee and the Court of Appeals discussed many years ago. The definition of "judgment" in Rule 1-202 is not the definition of "final judgment." The Court and the Committee thought that this was appropriate, because it is not a judgment unless it is final. It is not necessary to use the label "final judgment." This seems to be causing the problem of interlocutory "judgments" which are not judgments. They look like judgments, they are labeled "judgments," but under the Rules, they are not judgments for any purpose.

Mr. Zarbin commented that putting the onus on the clerk's office to figure out whether the judgment is appealable, not appealable, and final may be too much for the clerks. It is not a good idea to ask the clerk if a change of venue judgment is a final judgment. The Vice Chair inquired about a timely filed 10-day post-trial motion that suspends the appeal time. Are the judgment that is being stayed and the judgment entered on the

post-trial motion both "judgments," or are they just one judgment? The Chair asked if the Vice Chair referred to the motion or to the decision. The Vice Chair replied that a judgment has been entered, but within 10 days a post-trial motion is filed that suspends the ability to appeal that judgment until the conclusion of the ruling on the motion. Mr. Sullivan stated that there is a judgment, but it is not an enrolled judgment. The Chair added that there would be a judgment, and then the docket would indicate that 10-day a motion to revise had been filed. At some point, the court will decide that motion, either denying or granting it.

Judge Price suggested that in subsection (b)(2) of Rules 2-601 and 3-601, either language could be added or a Committee note could be added providing that the date shall be noted on UCS as the date entered. The Chair responded that if this were to be done, it should be part of the Rule. Mr. Hilton said that the Rule should not give the clerk the discretion to put a different date on UCS. This would cause the problem that the clerk may backdate something that would create liability for the attorneys.

Judge Price explained that her suggestion was not that the clerk would type in something else, but the date that the clerk enters the judgment is noted on Case Search as the date that the judgment was entered. If Case Search is going to pick up that one date, or tie it to the Rule as saying it will be the "judgment entered" date, state at the end of subsection (b)(2) of Rules 2-601 and 3-601 that that date will show up on Case Search

as the "judgment entered" date. Mr. Hilton pointed out that Case Search is not subject to the Maryland Rules, but UCS is. By defining that as the appropriate date creates more risks than leaving it the way that it is. UCS is the docket for the clerks. Case Search is not. The Rules provide a way that the information is properly transferred to UCS, but it does not create Case Search as the official record.

Mr. Bowie asked if orders could be entered, and the attorneys would decide what the orders mean. Mr. Hilton responded that this is what happens currently. The Chair asked what the docket entry would be for a summary judgment that is entered for one of several defendants, and the others are still in the case. Mr. Hilton answered that some clerks put in the language "partial summary judgment granted." The Chair noted that it might not be a partial summary judgment, it could be a full summary judgment for that defendant. Mr. Hilton said that this would be as to the entire case.

Mr. Zarbin suggested the language "judgment pursuant to Rule 2-501 for Defendant X." This would recognize that it is a summary judgment, and that it is Defendant X. The Chair pointed out that there are other kinds of judgments. There is dismissal of one defendant that is not a summary judgment. Mr. Zarbin observed that this is a problem. He had been trying to figure out if there was a way electronically to put in some boxes that would indicate what kind of judgment it is, but the problem is that then the judge would have to put this in the order for the

clerk to know what box to check.

The Chair acknowledged that a problem exists, and everyone seemed to be in agreement that it needed to be fixed. For purposes of the screen and what the public sees, JIS has fixed the problem. The only omission is in the Rule itself. Mr. Hilton pointed out that Rule 2-601 provides that "[t]he clerk shall enter a judgment." This had been the existing Rule prior to the proposed changes. He reiterated that the date that the judgment is entered is the date that the clerk pushes the button. It is a known, certain date.

The Chair stated that what was before the Committee was a proposal to amend a Rule that the Committee had approved previously. It was a motion, and the Chair asked if there was a second to the motion. It was seconded. Mr. Sullivan commented that the Committee cannot tell the Court of Appeals with confidence that all of the questions posed by the proposed amendment to the previously adopted amendment had been answered. The Rules before the Committee today are not in the normal posture after the discussion has been exhausted. The Reporter agreed, because the Committee had not addressed Title 4, orders, notices, and all other things that would need to be addressed if Rule 1-327 is eliminated. The relationship between the appellate Rules and many of the other Rules is not addressed and needs to be considered.

Mr. Carbine said that although he was in favor of keeping the Rules as they had been amended previously, this matter should

not be put off any longer, because the existing text of the relevant Rules as they now read is a disaster. Mr. Lowe's solution fixes that disaster just as much as Mr. Carbine's does. They have differences of opinion as to how to do it. The Chair noted that the current Rules are not being used any way by any clerk.

The Chair said that there had been an unseconded motion to recommit the Rules to the Subcommittee. A seconded motion to adopt Mr. Lowe's version is on the floor. The latter motion passed on a majority vote. The Chair noted that this decision is without prejudice. Anyone can come to the Court of Appeals hearing and express an opinion. This gets the Rules off dead center. Mr. Lowe commented that he had carried his suggested changes throughout the set of Rules that had been presented.

By consensus, the Committee approved Rules 2-601, 3-601, 7-104, 8-202, and 8-302 as presented in Mr. Lowe's memorandum. By consensus, the Committee approved the deletion of proposed Rule 1-327.

There being no further business before the Committee, the Chair adjourned the meeting.