COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 & 6 of the Judicial Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on May 9, 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.
Mary Anne Day, 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.
Hon. Danielle M. Mosley
Scott G. Patterson, Esq.
Hon. W. Michel Pierson
Hon. Paul A. Price
Steven M. Sullivan, Esq.
Melvin J. Sykes, Esq.
Del. Joseph F. Vallario, Jr.
Hon. Julia B. Weatherly
Robert Zarbin, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Lawrencia C. Pierce, Esq., Maryland Department of Veterans Affairs
Jennifer Talley, Esq., Maryland Coordinator
David W. Weissert, Coordinator of Commissioner Activity, District Court of Maryland
John P. Cox, Esq., Baltimore County State's Attorney Office
Julia Bernhardt, Esq., Office of the Attorney General
Lorena SevillaSomoza, Program Services, Administrative Office of the Courts
Deborah A. Unitus, Director, Program Services, Administrative Office of the Courts
David R. Durfee, Jr., Esq., Director, Legal Affairs
Hon. Barbara Waxman, Baltimore City District Court
Hon. Alexandra N. Williams, Baltimore County District Court
Richard Montgomery, Esq., Maryland State Bar Association
Bruce P. Sherman, Esq., Assistant Sheriff, Maryland Sheriffs' Association
Jeremy M. McCoy, Esq., Assistant Attorney General
Allan Culver, Esq.

Drew Snyder, Esq., Government Relations, Court of Appeals
Kathleen Pennington, Esq.
Natasha E. Mehu, Esq.
Lisa K. Smith, Esq., Governor's Office of Crime, Control, and Prevention
Tammy Brown, Esq., Governor's Office of Crime, Control, and Prevention
Mary Bodley, Esq.
Mitchell Mirviss, Esq., Venable LLP
Edward Emokpae, Clerk, District Court of Maryland
Ms. Kelley O'Connor, Director, Intergovernmental Relations Office
Russell P. Butler, Esq., Maryland Crime Victims Resource Center
Hon. Wendy A. Cartwright, Conference of Orphans' Court Judges
Brian L. Zavin, Esq., Appellate Division, Office of the Public Defender
Roberta Warnken, Chief Clerk, District Court of Maryland
Hon. John Morrissey, Chief Judge, District Court of Maryland
Hon. Ben C. Clyburn
Mark Holtschneider, Esq., Lexington National Insurance Corp.
Ricardo Flores, Esq., Office of the Public Defender
Andrea Vaughn, Esq., Public Justice Center
Robb Holt, Administrative Office of the Courts
Diane Pawlowicz, Administrative Office of the Courts
P. Tyson Bennett, Esq.
James Watson, State Archives
Kim N. Doan, Esq., Circuit Court for Anne Arundel County
Robin Earnest, Esq.
Michael Schatzow, Esq.
Hon. Gerald V. Purnell, District Court for Worcester County
Benjamin Woolery, Esq.
Hon. JoAnn M. Ellinghaus-Jones, District Court for Carroll County
Del. Kathleen Dumais, Vice Chair, House Judiciary Committee
Elizabeth Embry, Esq., Baltimore City State's Attorney's Office
Lonni Summers, Esq., Access to Justice Commission
Hon. Audrey J. S. Carrion, Circuit Court for Baltimore City
Ms. Ksenia Bortsova, Program Services, Administrative Office of the Courts

The Chair convened the meeting. He welcomed the Honorable John P. Morrissey, who is the new designee as Chief Judge of the District Court, and the Honorable Kathleen M. Dumais, a member of the House of Delegates, who had been very helpful during the session with issues relating to the issue of the right to attorneys at initial appearances. He announced that the wife of

Christopher R. Dunn, Esq, who is a member of the Committee, had a heart attack but was progressing well. He also announced that Judge Love was taking an early retirement from the bench and would no longer be on the Committee. He commented that Judge Love will be missed.

The Chair said that a new member had been added to the staff of the Committee, Mary Bodley, Esq. who will be the new Deputy Director. She will be starting at the end of May.

Agenda Item 1. Consideration of proposed Rules changes pertaining to implementation of *DeWolfe v. Richmond* - Amendments to Rule 4-213 (Initial Appearance of Defendant), New Rule 4-213.1 (Appointment, Appearance, or Waiver of Attorney at Initial Appearance), Amendments to Rule 4-216 (Pretrial Release - Authority of Judicial Officer; Procedure), Amendments to Rule 4-202 (Charging Document - Content), Amendments to Rule 4-214 (Defense Counsel), Amendments to Rule 4-215 (Waiver of Counsel), Amendments to Rule 4-216.1 (Review of Commissioner's Pretrial Release Order), and Amendments to Rule 4-231 (Presence of Defendant)

The Chair said that the Rules in Agenda Item 1 resulted from *DeWolfe v. Richmond*, 434 Md. 444 (2013) and included Rule 4-213.1, Appointment, Appearance, or Waiver of Attorney at Initial Appearance, which is the heart of the changes to the Rules, and other Rules with conforming amendments. The Rules will be sent to the Court of Appeals as emergency measures in the 183rd Report of the Rules Committee, which the Chair planned to send to the Court no later than Monday, May 12, 2014. The Court would like this Report right away, so the discussion of the Rules must be completed at the meeting today. The Report will also include

conforming amendments to a number of other Rules, which the Committee had already approved and the Court of Appeals had approved as part of the 181st Report, but which had not yet been put into effect. Those Rules will be included in the 183rd Report, so that everything can be addressed in one Rules Order.

The Chair explained that the version of Rule 4-213.1 in the meeting materials had been approved by the Criminal Subcommittee of the Rules Committee. A number of events had happened since the Subcommittee meeting, including briefs filed and then the oral argument in the Court of Appeals, which occurred on May 6, 2014, pertaining to what is left of *Richmond* in the Court of Appeals at the moment. The discussion at the oral argument and some of the points made in the brief of the Public Defender gave the Chair and the Reporter pause as to reconsidering certain changes they had not made but that the Subcommittee had suggested. A revised version of Rule 4-213.1 had been handed out at the meeting in lieu of the version in the meeting materials. This was the version that the Committee was to look at.

The Chair said that he would explain Rule 4-213.1, and the changes to it, which were not extensive but were important. Comments had been received based on the version that was in the meeting materials from the Office of the Public Defender, from plaintiffs' counsel, Mr. Schatzo, from the Maryland Crime Victims' Resource Center, and from Michael Wein, Esq. Their written comments had been handed out at the meeting. The Chair told the Committee that he proposed to go through the material

beginning with Rule 4-213, then Rule 4-213.1 sequentially, and the comments could be addressed as the Committee looked at the material at the point where the comments became relevant.

The Chair noted that the context for these Rules was the fact that in its most recent session, the General Assembly had made no structural changes to the two-tiered system of appearances before a commissioner and then a judge. The legislature did restore a $10 million cut that had been tentatively made to the Judicial budget but directed that this money could be spent only to pay court-appointed attorneys to represent indigent defendants at initial hearings before commissioners. This is a one-year appropriation. It is not permanent, and the legislature made this very, very clear.

The Chair said that something will have to be done in the next session, whether it is to extend the appropriation or take some other action. If it is another action, the Committee will likely be drafting a new set of rules next year. To the extent that the $10 million does not cover the cost, an amendment to the Budget Reconciliation Act provides that the counties are going to have to pick up any cost over the $10 million, none of which had budgeted any funds for that, as far as the Chair knew. The Maryland Judiciary is doing everything that it possibly can to try to stretch that $10 million as far as it can be stretched to make it work.

The Chair presented Rule 4-213, Initial Appearance of Defendant, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213 by adding a new subsection (a)(1) referring to the procedure in a certain Rule to be followed when the defendant appears without an attorney, by amending the cross reference after subsection (a)(3) to update an internal Rule reference, and to make stylistic changes, as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

When a defendant appears before a judicial officer of the District Court pursuant to an arrest, the judicial officer shall proceed as follows:

(1) Appointment, Appearance, or Waiver of Attorney for Initial Appearance

If the defendant appears without an attorney, the judicial officer shall first follow the procedure set forth in Rule 4-213.1 to assure that the defendant either is represented by an attorney or has knowingly and voluntarily waived the right to an attorney.

~~(1)~~ (2) Advice of Charges

The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including mandatory penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

~~(2)~~ (3) Advice of Right to Counsel

The judicial officer shall require the defendant to read the notice to defendant required to be printed on charging documents in accordance with Rule 4-202 (a), or shall read the notice to a defendant who is unable for any reason to do so. A copy of the notice shall be furnished to a defendant who has not received a copy of the charging document. The judicial officer shall advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

Cross reference: See Rule~~s 4-216 (e)~~ 4-213.1 with respect to the right to an attorney at an initial appearance before a judicial officer and Rule 4-216.1 (b) with respect to the right to an attorney at a hearing to review a pretrial release decision of a commissioner.

~~(3)~~ (4) Advice of Preliminary Hearing

When a defendant has been charged with a felony that is not within the jurisdiction of the District Court and has not been indicted, the judicial officer shall advise the defendant of the right to have a preliminary hearing by a request made then or within ten days thereafter and that failure to make a timely request will result in the waiver of a preliminary hearing. If the defendant then requests a preliminary hearing, the judicial officer may either set its date and time or notify the defendant that the clerk will do so.

~~(4)~~ (5) Pretrial Release

The judicial officer shall comply with Rules 4-216 and 4-216.1 governing pretrial release.

~~(5)~~ (6) Certification by Judicial Officer

The judicial officer shall certify compliance with this section in writing.

~~(6)~~ (7) Transfer of Papers by Clerk

As soon as practicable after the initial appearance by the defendant, the judicial officer shall file all papers with the clerk of the District Court or shall direct that they be forwarded to the clerk of the circuit court if the charging document is filed there.

Cross reference: Code, Courts Article, §10-912. See Rule 4-231 (d) concerning the appearance of a defendant by video conferencing.

(b) In District Court

(1) Following Summons or Citation

When a defendant appears before the District Court pursuant to a summons or citation, the court shall proceed in accordance with Rule 4-301.

(2) Preliminary Inquiry

When a defendant has (A) been charged by a citation or served with a summons and charging document for an offense that carries a penalty of incarceration and (B) has not previously been advised by a judicial officer of the defendant's rights, the defendant may be brought before a judicial officer for a preliminary inquiry advisement if no attorney has entered an appearance on behalf of the defendant. The judicial officer shall inform the defendant of each offense with which the defendant is charged and advise the defendant of the right to counsel and the matters set forth in subsection ~~(a)(1), (2), and (3)~~ (a)(2), (3), and (4) of this Rule. The judicial officer shall certify in writing the judicial officer's compliance with this subsection.

(c) In Circuit Court Following Arrest or Summons

The initial appearance of the defendant in circuit court occurs when the defendant (1) is brought before the court by reason of execution of a warrant pursuant to Rule 4-212 (e) or (f)(2), or (2) appears in

person or by written notice of counsel in response to a summons. In either case, if the defendant appears without counsel the court shall proceed in accordance with Rule 4-215. If the appearance is by reason of execution of a warrant, the court shall (1) inform the defendant of each offense with which the defendant is charged, (2) ensure that the defendant has a copy of the charging document, and (3) determine eligibility for pretrial release pursuant to Rule 4-216.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 723.
Section (b) is new.
Section (c) is derived from former Rule 723 a.

Rule 4-213 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-213.1.

The Chair said that Rule 4-213 is the Rule that really sets forth what the commissioners do at the initial appearance. It provides the agenda and the sequence of the commissioners' actions. To some extent, the Rule incorporated by reference provisions in other rules. Currently, the first item of business under Rule 4-213, is to advise the defendant of the charges. A new subsection (a)(1) has been added, which is to advise the defendant of his or her right to an attorney.

In the previous Rules that had been sent to the Court of Appeals, the question of how to deal with attorneys had been addressed by a long addition to Rule 4-216, Pretrial Release - Authority of Judicial Officer; Procedure, which resulted in the Rule being incredibly long and bulky. As a matter of style, the decision was made to take all of the new material out of Rule 4-

216 and put it into Rule 4-213.1, which is self-contained. This shortened Rule 4-216 greatly. The only change to Rule 4-213 is a reference to new Rule 4-213.1.

By consensus, the Committee approved Rule 4-213 as presented.

The Chair presented Rule 4-213.1 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

ADD new Rule 4-213.1, as follows:

Rule 4-213.1 APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT INITIAL APPEARANCE

(a) Right to Representation by Attorney

(1) Generally

A defendant has the right to be represented by an attorney at an initial appearance before a judicial officer.

(2) Attorney

Unless the defendant waives that right in accordance with section (e) of this Rule or another attorney has entered an appearance, if the defendant is indigent within the meaning of Code, Criminal Procedure Article, §16-210 (b) and (c):

(A) the defendant shall be represented by the Public Defender if the initial appearance is before a judge; and

(B) the defendant shall be represented by an attorney appointed by the court in

accordance with section (b) of this Rule if the initial appearance is before a District Court commissioner.

(b) Appointment of Attorneys for Initial Appearance Before Commissioner

(1) Appointment

After consultation with the State and local bar associations and the Public Defender, the District Administrative Judges shall develop lists of attorneys willing to accept appointment to represent indigent defendants at initial appearances before District Court commissioners in the district on a pro bono basis or at fees equivalent to those paid by the Public Defender to panel attorneys. The District Administrative Judges shall appoint attorneys from the lists as needed for specific proceedings or to be available for blocks of time.

(2) Processing of Invoices

Invoices for fees due to court-appointed attorneys shall be processed in accordance with procedures adopted by the State Court Administrator.

(c) General Advice by Judicial Officer

If the defendant appears at an initial appearance without an attorney, the judicial officer shall advise the defendant that the defendant has a right to an attorney at the initial appearance and that, if the defendant is indigent, (1) the Public Defender will provide representation if the proceeding is before a judge, or (2) a court-appointed attorney will provide representation if the proceeding is before a commissioner.

(d) Proceeding Before Commissioner

(1) Determination of Indigence

(A) If, in an initial appearance before a commissioner, the defendant claims indigence and desires a court-appointed attorney for the proceeding, the defendant

shall complete a request and affidavit substantially in the form used by the Public Defender and, from those documents and in accordance with the criteria set forth in Code, Criminal Procedure Article, §16-210 (b) and (c), the commissioner shall determine whether the defendant qualifies for an appointed attorney.

(B) If the commissioner determines that the defendant is indigent, the commissioner shall provide a reasonable opportunity for the defendant and ~~the~~ a court-appointed attorney to consult in confidence.

(C) If the commissioner determines that the defendant is not indigent, the commissioner shall advise the defendant of the right to a privately retained attorney and provide a reasonable opportunity for the defendant to obtain the services of, and consult in confidence with, a private attorney.

(2) Inability of Attorney to Appear Promptly

The commissioner shall further advise the defendant that, unless the attorney, whether court appointed or privately retained, is able to participate, either in person or by electronic means or telecommunication, within a reasonable period of time, the initial appearance may need to be continued, in which event, subject to subsection (d)(3) of this Rule, the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented to the next available judicial officer with an attorney present.

(3) If Initial Appearance Continued

If pursuant to subsection ~~(d)(1)~~ (d)(2) of this Rule, the initial appearance needs to be continued ~~and the defendant was arrested without a warrant~~, the commissioner, before recessing the proceeding, shall proceed in accordance with this subsection.

(A) Arrest Without Warrant -

Determination of Probable Cause

If the defendant was arrested without a warrant, the commissioner shall determine whether there was probable cause for the charges and the arrest pursuant to Rule 4-216 (a). ~~A determination at this point that probable cause exists is without prejudice to that issue being reconsidered on request of the defendant when the initial appearance resumes with an attorney present.~~ If the commissioner finds no probable cause for the charges or for the arrest, the commissioner shall release the defendant on personal recognizance, with no other conditions of release. If the defendant is released pursuant to subsection (d)(3)(A) of this Rule, the Commissioner shall not make the determination otherwise required by subsection (d)(3)(B) of this Rule, but shall provide the advice required by subsection (d)(3)(C) of this Rule.

(B) Preliminary Determination Regarding Release on Personal Recognizance

Regardless of whether the defendant was arrested with or without a warrant, the commissioner shall make a preliminary determination regarding the commissioner's authority to release the defendant on personal recognizance and the appropriateness of such a release. If the commissioner's preliminary determination is that release on personal recognizance with no other conditions of release is authorized and appropriate, the commissioner shall release the defendant on that basis.

(C) Required Advice Before Release

Before releasing the defendant pursuant to subsection (d)(3)(A) or (B) of this Rule, the commissioner shall comply with the applicable provisions of Rules 4-213 and 4-216.

(D) Preliminary Determination Not to Release

Any preliminary determination by

the commissioner not to release the defendant on personal recognizance is without prejudice to the right of the defendant to seek release on personal recognizance when the proceeding resumes with the attorney present. If the proceeding resumes before the commissioner who made the preliminary determination not to release the defendant on personal recognizance, the commissioner, upon request of the defendant, shall recuse, and the proceeding shall be before another judicial officer.

~~Committee note: Because a defendant must be released on recognizance if the commissioner finds no probable cause, there is no harm to the defendant if the commissioner considers that issue, even in the absence of an attorney, so long as the issue may be reconsidered when the proceeding resumes with an attorney present.~~

(e) Waiver – Initial Appearance Before Judge or Commissioner

(1) If the defendant indicates a desire to waive the right to an attorney, the judicial officer shall advise the defendant (A) that an attorney can be helpful in explaining the procedure and in advocating that the defendant should be released immediately on recognizance or on bail with minimal conditions, (B) that it may be possible for the attorney to participate electronically or by telecommunication, and (C) that any waiver would be effective only for the initial appearance and not for any subsequent proceedings.

(2) If, upon this advice, the defendant still wishes to waive the right to an attorney and the judicial officer finds that the waiver is knowing and voluntary, the judicial officer shall announce and record that finding.

(3) A waiver pursuant to section (e) of this Rule is effective only for the initial appearance and not for any subsequent proceeding.

(4) Notwithstanding an initial decision not to waive the right to an attorney, a defendant may waive that right at any time during the proceeding, provided that no attorney has already entered an appearance.

(f) Participation by Attorney by Electronic or Telecommunication Means

(1) By State's Attorney

The State's Attorney may participate in the proceeding, but is not required to do so. When the physical presence of the State's Attorney is impracticable, the State's Attorney may participate electronically or by telecommunication if the equipment at the judicial officer's location and the State's Attorney's location provides adequate opportunity for the State's Attorney to participate meaningfully in the proceeding.

(2) By Defense Attorney

When the physical presence of a defense attorney is impracticable, the attorney may consult with the defendant and participate in the proceeding electronically or by telecommunication if the equipment is at the judicial officer's location and the defense attorney's location provides adequate opportunity for the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

(g) Provisional and Limited Appearance

(1) Provisional Representation by Public Defender

Unless the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance shall be provisional. For purposes of this section, eligibility for provisional representation shall be determined by the Public Defender at the time of the proceeding.

(2) Limited Appearance

> Unless a general appearance has been entered pursuant to Rule 4-214, an appearance by a court-appointed or privately retained attorney shall be limited to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that stage of the criminal action.
>
> (3) Inconsistency with Rule 4-214
>
> Section (g) of this Rule prevails over any inconsistent provision in Rule 4-214.
>
> Source: This Rule is new but is derived, in part, from amendments proposed to Rule 4-216 in the 181st Report of the Standing Committee on Rules of Practice and Procedure.

The Chair explained that Rule 4-213.1 is the heart of the proposal. Section (a) addresses the right to representation by an attorney. It follows what the Court of Appeals had said in *Richmond* and what the legislature had said about representation by the Public Defender in proceedings before a judge. Since the term "judicial officer" includes judges as well as commissioners, the proceedings could be before a judge but in the District Court the great majority of initial appearances are before a commissioner. Initial appearances in the circuit courts will be before a judge. The Rule had to take account of proceedings both before a commissioner as well as before a judge. If the initial appearance is before a judge, then the Public Defender will be representing the indigent defendant. If the proceeding is before a commissioner, a court-appointed attorney will be representing the defendant.

The Chair said that subsection (a)(1) restates the right to counsel. Subsection (a)(2) provides that unless the defendant has an attorney, if he or she is indigent within the meaning of Code, Criminal Procedure Article, §16-210 (b) and (c), which sets forth the criteria for indigence under the Public Defender law, the defendant is entitled to court-appointed counsel. If the indigent person is before a judge, the attorney is a Public Defender; if the person is before a commissioner, counsel is court-appointed.

The Chair noted that Code, Criminal Procedure Article, §16-210 defines the term "indigence" in two ways. The first and hopefully the main one, is whether the person is within the federal poverty guidelines. If the person is within them, he or she is indigent. If he or she is not within the guidelines, the issue is whether the person can afford a private attorney. The Public Defender has developed some guidelines for that, but their application to initial appearances is questionable. Some other guidelines may have to be developed but not by the Rules Committee.

The Chair commented that no changes had been made to section (b) of Rule 4-213.1 from the draft in the meeting materials. Subsection (b)(1) provides a method for soliciting and appointing attorneys. The Honorable Mary Ellen Barbera, Chief Judge of the Court of Appeals, had issued an Administrative Order in November 2013, which provided a process of developing lists of attorneys willing to accept appointment to represent indigent defendants at

initial appearances before commissioners, and this process is already underway.

The Chair said that Mr. Schatzow had submitted a comment regarding Rule 4-213.1. On page 3 of his letter (Appendix 1), he suggested that the Public Defender not be precluded from representing people at the commissioner level, because eventually this may happen. The Chair observed that the problem is that the new procedures are for FY 2015, and the Public Defender will not be doing this in 2015. The Judiciary is on its own with a one-year appropriation. It is not a good idea to clutter up the Rule with a possible scenario that cannot happen this year.

Mr. Schatzow commented that no one knows what is going to happen. He expressed the view that the provisional Rules that were adopted by the Court of Appeals on November 6, 2013, should have a provision for Public Defender representation and non-Public Defender representation. The Chair responded that at that time, it was possible for the General Assembly, which was just about to come into session, to fund the Public Defender, but it did not fund them.

Judge Morrissey stated that the position of the District Court was that if the Public Defenders would like to step up and take over a shift, Judge Morrissey and his colleagues would be happy to have them at initial appearances. The Chair remarked that the language "unless the Public Defender enters an appearance for the defendant" could be added to subsection (a)(2)(B) of Rule 4-213.1. By consensus, the Committee approved

this change.

Judge Morrissey referred to the second sentence of subsection (b)(1), which begins with the language "The District Administrative Judge shall appoint attorneys from the lists...". Judge Morrissey suggested that the language should be "Attorneys shall be appointed from the lists...". This offers more flexibility for Judge Morrissey as to who shall do the appointing. By consensus, the Committee approved this change.

Mr. Baxter told the Committee that he was present on behalf of the Maryland State Bar Association. He had a question about the interpretation of section (b) of Rule 4-213.1, particularly as to the list of attorneys willing to accept appointment to represent indigent defendants at the initial appearances. He asked if the Rule contemplates that attorneys would be permitted to accept the appointment either on a pro bono basis or on a fee basis. The Chair answered that attorneys would definitely be permitted to accept on a pro bono basis as well as a fee basis.

Mr. Baxter inquired whether attorneys, who are willing to accept the appointment on a fee basis, can get on the list without stating their willingness to accept appointment on a pro bono basis. The Chair responded affirmatively. Judge Morrissey remarked that the District Court takes the position that pro bono activity is to be encouraged. On the invoice and in the initial materials that will be sent out by the District Court, the attorneys will be given an option to either request the fee of $50 per hour or waive that fee, and the service will be credited

as pro bono service. The Chair pointed out that the language of subsection (b)(1) is that the attorneys will accept the appointment on a pro bono basis or on a fee basis.

The Chair asked if anyone had a comment on section (c) of Rule 4-213.1. There being none, he drew the Committee's attention to section (d). He said that section (d) is the heart of the new procedure. If the defendant would like to have an attorney, the first action that the commissioner must take is to determine whether or not the defendant is indigent. This is in subsection (d)(1)(A). As the Chair had indicated before, the determination will be based on the statutory criteria used by the Public Defender. The defendant will complete a request and affidavit substantially in the form used by the Public Defender.

The Chair remarked that a number of suggestions had been made both by Mr. Schatzow and the Public Defender that this process of filling out the form should take place before the defendant actually appears at the commissioner's office, because it will shorten the procedure. District Court commissioners are attempting to figure out administratively ways to accomplish filling out the form. There are some issues with this. The police should not be able to access any financial information of the defendant nor should they be able to say whether the defendant should or should not get an attorney.

The Chair said that another question is the confidentiality of some of this information. Should Rule 4-213.1 address this other than the fact that the defendant has to complete the form,

or should the District Court commissioners work this out? It may vary from jurisdiction to jurisdiction as to whether the defendant is sitting in a police precinct station, in a detention center, or in a lockup. Mr. Weissert commented that the commissioners would prefer to have as much flexibility as possible to implement these complex issues. It will be different from jurisdiction to jurisdiction. He expressed the view that Rule 4-213.1 is worded appropriately.

Judge Morrissey noted that the District Court has been reaching out to their law enforcement partners in an effort to effectuate the most efficient. This is an issue that had been discussed. The District Court is in favor of the commissioners having the paperwork before the defendant is presented. The District Court is aware of the issues with respect to the security of the information being transferred. They will work this out. Judge Morrissey expressed the opinion that Rule 4-213.1 does not need to be changed.

Mr. Zavin told the Committee that he was from the Office of the Public Defender. He had sent in a comment letter that had been handed out at the meeting (Appendix 2). He expressed the view that Rule 4-213.1 as written would not provide the flexibility to work out the procedures. It indicates that the waiver and the defendant filling out the form would take place at the initial appearance. The Rule specifies when this would take place. The Chair responded that he did not interpret the language of Rule 4-213.1 that way. The Rule simply requires that

the defendant must complete a request and affidavit.

Mr. Zavin pointed out that the language of subsection (d)(1)(A) of Rule 4-213.1 is: "If, in an initial appearance before a commissioner, the defendant claims indigence...". This suggests that this happens at the initial appearance. The Chair asked if Mr. Zavin was suggesting that the language "in an initial appearance before a commissioner" be eliminated. Judge Morrissey said that the District Court had no objection to deleting that language.

Mr. Maloney asked when in this process the assertion of indigency should take place. Mr. Zavin responded that ideally, this should happen after the defendant is taken into custody, while the defendant is waiting to see the commissioner, which could take several hours in some jurisdictions. The ideal situation would be that attorneys are available, and the attorney would qualify the defendant to see if he or she is eligible for a court-appointed attorney. The defendant would then fill out the form, with the help of the attorney, who would then give the form to the commissioner's staff for the commissioner to process.

Judge Morrissey commented that the Public Defender has not been in many of the jurisdictions. The commissioner is bound with the responsibility of conducting an indigency review, and the jails are not going to allow defense attorneys to ramble through the jail facility. The District Court has procedures that aid in the processing of the paperwork. The commissioner is part of this procedure. The use of the commissioner is what

Judge Morrissey and his colleagues are trying to analyze now as to the most effective ways to keep the flow going as expeditiously as possible. If one commissioner could take the form and make a determination of indigency, then tell the attorney who is on staff that the form is there and show the attorney his or her next client, this would eliminate the commissioner actually being there and having to conduct an indigency determination and then sending the defendant back into the queue. The law enforcement partners do not want that to happen, and Judge Morrissey does not want that to happen.

Mr. Maloney inquired whether there were potentially two appearances before the commissioner. One would be an indigency inquiry, and the second would be a determination as to bail and probable cause. Judge Morrissey answered that he and the Public Defenders agree that if the indigency determination can be done before the initial appearance, and a determination is made, counsel could be provided to that individual, and the case could flow. Mr. Maloney asked again whether everything will happen at one time, or whether the defendant is going to go before the commissioner to be interrogated about possible indigency, and then if he or she is, the defendant is sent back to consult with a Public Defender, then brought back for a second hearing.

Judge Morrissey answered that it could happen either way. He noted the wide differences between intake in Baltimore City, which can be potentially 50 initial appearances a shift, to what happens in Cumberland, where there may only be one commissioner

in one initial appearance per day. Judge Morrissey added that he has the ability to have a second commissioner make the determination of indigency. In Baltimore City, this may be because multiple commissioners and multiple attorneys are there. It probably will not be like that in Cumberland. Mr. Maloney moved that Rule 4-213.1 should be modified slightly to provide the District Court as much flexibility as possible. Judge Morrissey responded that he and the Public Defender are in agreement on that.

Mr. Zavin remarked that given the need for flexibility in Rule 4-213.1, it opens the possibility that in some jurisdictions, law enforcement officials may be giving out the request and affidavit forms. The Rule should include a provision that the information provided is confidential and not to be used against the defendant in any way. The Chair commented that this raises the question of how it could be confidential if the form is going to be filled out while the defendant is in the police station or in the custody of police. Mr. Zavin replied that the main point to make in the Rule is that the information cannot be used against the defendant. Mr. Maloney hypothesized a situation where someone charged with dealing drugs fills out an affidavit that lists various assets that might be subject to forfeiture. What is in the law or in Rule 4-213.1 that prevents a police officer from using that information?

Mr. Sherman told the Committee that he was present on behalf of the Montgomery County Sheriffs' Association. One of the

concerns regarding confidentiality is that once the information is revealed, it cannot be withdrawn. If the Rule provides that the financial information is confidential, but the officer finds out about it, how does the officer tell later that the information was derived from this investigation after the arrest? This is basically setting up the law enforcement officer to fail by providing that the confidential information cannot be used. The officer may obtain a search warrant based on that information and would have no defense.

The Chair asked if there was a second to Mr. Maloney's motion to modify Rule 4-213.1 to provide flexibility to the District Court as to procedures pertaining to commissioners. No one seconded the motion.

The Chair asked Judge Morrissey if he approved of the suggestion to take out the language from subsection (d)(1)(A) that read "in an initial appearance before a commissioner." Judge Morrissey expressed his approval. By consensus, the Committee approved this deletion.

Judge Morrissey said that he had another issue for the Committee to consider. There may be an instance where the defendant is not cooperative about filling out the form and is recalcitrant. Judge Morrissey and his colleagues asked whether the Committee would consider adding a provision that the lack of cooperation by the defendant constitutes a waiver of indigency. The only option would be to recommit the uncooperative defendant on a temporary basis until he or she decides to cooperate, which

would obviously increase the defendant's jail time.

The Chair inquired whether determining what constitutes a waiver is substantive. Could this be accomplished by rule? Mr. Sykes asked if Rule 4-213.1 should have a clear provision as to whose responsibility it is to supply these forms to defendants. The Chair responded that this is a problem, because it could be that this is what those involved in the process are trying to work out. The police, detention center employees, etc. could be the ones giving out the forms. Judge Morrissey had asked that this be flexible. The forms are available. They were done by the District Court based on the Public Defender forms. Judge Morrisey said that the District Court has no objection to Rule 4-213.1 providing that any of the information obtained by the commissioner at the initial appearance would otherwise not be permitted to be used.

Mr. Maloney asked Judge Morrissey if he thought that Mr. Sherman had made a very good point. Is there not something fundamentally wrong with the arresting officer or law enforcement being involved in any way in a communication with a defendant as to his or her assets or qualification for counsel? Judge Morrissey replied that this is a consideration. He agreed with Mr. Maloney. The goal was the best way to accomplish that without any defendant disclosing his or her information to law enforcement. Judge Morrissey and his colleagues would like the flexibility to address this situation.

Judge Morrissey noted that one possibility would be that the

form would be given to the defendant and then sealed in an envelope without any communication between the defendant and law enforcement. That confidential envelope would be given to the commissioner without anyone reviewing it. Judge Morrissey added that he was open to suggestions. The Chair commented that this process may not need to be spelled out in Rule 4-213.1, but if someone gives the police a form that is in an envelope, there is no reason why the police would have to see it. Judge Morrissey reiterated that this is a reason for maximum flexibility. It may very be that in the queue of people who are being presented to the commissioners, which they would know in advance is coming up, a commissioner could go to the third person who is in the queue and tell him or her that the person needs to fill out the appropriate paperwork and return it. The position of the District Court is that they would like to have maximum flexibility while taking into consideration the confidential nature of those types of documents but with whatever format the particular jurisdiction requires.

Judge Weatherly expressed the concern that many people who come to court are not very literate. Someone is given a form to fill out, and the form is then put into an envelope. Judge Weatherly sees many people who cannot fill out a form on their own. The Chair added that a problem exists with people who do not speak English. Mr. Patterson asked why any of this should happen before the defendant is in front of the commissioner. The Chair responded that the form is one page and is very simple

to fill out. If the form is filled out in advance, the commissioner does not have to take his or her time to go through it. The comments that had been made were to that effect, indicating that this would shorten the proceeding.

Mr. Patterson inquired how much of the commissioner's time would be expended if the form was filled out while the defendant was in front of the commissioner. The issue seems to be accessibility to information by people who should not have the information, such as a police officer or a prosecutor, or anyone else who should not have it. If the commissioner is considered a judicial officer and makes a decision as to pretrial release based on information concerning the defendant's possible indigence or whatever, it is all matters that are handled by commissioners. Why should it fall on anyone other than the commissioner to do this? The Chair noted that at this point, the commissioner is not doing anything. The defendant is filling out a form.

Mr. Patterson pointed out that the form has to be handed to somebody. The police officer could give the defendant the form and tell him or her not fill it out until the defendant is in front of the commissioner. Judge Morrissey explained that the concern is that if the defendant comes in before an attorney can be appointed, there has to be a determination of indigency. To keep the flow going, Judge Morrissey and his colleagues would like for the determination of indigency to be made before the initial appearance, so that an attorney has the ability to

discuss the case with the client before the client is presented to the commissioner. Otherwise, the commissioner will have to review the indigency determination and then issue a temporary commitment back to whoever the law enforcement partners are. Then the defendant will meet with counsel, and the defendant will have to come back for another initial appearance.

Judge Morrissey again reiterated that he would like the flexibility for that determination of indigency with the provision that the records will be safeguarded. It may not work, but if it does, it will improve the flow, because no defendant should be in jail for one minute more than he or she has to be.

Mr. Patterson remarked that he understood Judge Morrissey's concerns, but the issue is the determination of the right to counsel before the defendant has even been formally charged. The defendant is formally charged when he or she appears before the commissioner. The Chair responded that this may not be the case. These are people who have been arrested. Mr. Patterson said that these individuals have been taken into custody, but that does not necessarily mean the people will go through the court system. The person is taken into custody by a police officer for an alleged offense, but then the commissioner may find that there was no probable cause.

The Chair pointed out that if the arrest was warrantless, the commissioner would determine probable cause. Mr. Patterson agreed, noting that he understood Judge Morrissey's comment that no one should be incarcerated for any more time than is

necessary, but the purpose of *Richmond* is not to get people out of jail. It is to make sure that each person's right to counsel when the person is being considered for pretrial detention or being placed on bail is held inviolate. It is a decision that involves constitutional rights.

The Chair asked if there was any harm in having the defendant, who may be in the police station, look at the form and think about it before he or she actually sees the commissioner. Mr. Patterson answered that there is no harm in that, but what happens if the police officer neglects to give the defendant that form? The Chair replied that the commissioner would have to do it. The commissioner has to make the determination as to whether the defendant is indigent. It will be based on the form and affidavit that the defendant has to fill out and sign. Does it make any difference whether the defendant signs the form at one place or another as long as the police are not involved in helping the defendant fill out the form? Mr. Patterson acknowledged that the police should not be involved, but as Mr. Sherman from the Montgomery County Sheriffs' Association had pointed out, the law enforcement officer watches the defendant fill out the form. Does this put the officer in a difficult position?

Mr. Weissert said that he and his colleagues had been looking at different concepts. The idea was never to have anyone else but the defendant fill out the form. The commissioner would then make the decision as to indigency. If the information can

be gathered so that the decision can be made at the presentment before the commissioner, then the commissioner would know immediately if the defendant qualified for court-appointed counsel, and if not, the commissioner could explain how to obtain private counsel.

Mr. Flohr told the Committee that was the legal director of the Lawyers at Bail Project. For a year, he and his colleagues had done nothing but bail review hearings. He said that he was very familiar with Baltimore City procedures. He was now in private practice and had done a number of hearings around the State. He expressed the concern that in Baltimore City, the first time that the defendant goes before the commissioner, the attorney does not look for a "clear out the jails" provision, but the issue is when will the defendant be in the queue. Often, there are seven people in a tiny cell waiting to see the commissioner there, but the commissioner will say that once he or she has determined if the defendant is indigent, the defendant needs time to see an attorney. The typical wait time is 24 hours, and it may be 48 hours before the hearing in front of the commissioner. The ideal would be that only the commissioner sees the form filled out by the defendant. Mr. Flohr acknowledged the good points made earlier by Mr. Sherman.

Mr. Flohr expressed the view that Judge Morrissey's suggestion to transmit the form via a sealed envelope is a good idea. It sets up a process that is fair to law enforcement and fair to the defense. Mr. Flohr added that he strongly

recommended that the first time that the indigency decision is made should not be allowed to be when the person is before the court. Some counties do not have a large lag time, but in Prince George's County and in Baltimore City, this would wreak havoc, and the earlier that the defendant can get in the queue, the better off the defendant is.

Mr. Flohr said that he had been a public defender in New York, and this process of addressing these concerns early was required there. There was a legal decision requiring the process to be completed within 24 hours, and routinely, the indigency decision was made while the defendant was in the lockup before the person ever got to see the judge. Judge Morrissey asked who gave the forms to the defendant. Mr. Flohr answered that it was a separate agency. He expressed the view that it might be a good idea to have a separate agency participate in the process in Maryland.

Mr. Schatzow expressed his agreement with Mr. Flohr and Judge Morrissey. If people are going to be required to appear in front of the commissioner twice in Baltimore City, it will not be done within 24 hours. Mr. Schatzow said that he had one minor disagreement with Judge Morrissey on the issue of someone who refuses to fill out the form. Mr. Schatzow expressed the opinion that the Rule should not reflect what constitutes involuntary waiver. The commissioner has to make that determination.

The Chair commented that he did not know the answer to this issue. It had been discussed at one of the many prior meetings

on this subject. If a person refuses to sign or give information, then the commissioner cannot conclude whether the defendant is indigent, and the defendant would not get a court-appointed attorney. Mr. Schatzow responded that he was referring to a situation where the defendant has never seen a commissioner. The defendant gets a form and refuses to fill it out. That fact, according to the commissioner, cannot result in a waiver. If the person refuses, understanding the consequences of refusal, and the commissioner has a record, then that is a different situation.

The Chair asked Mr. Zavin what the Public Defender does if the defendant refuses to fill out the forms. Mr. Zavin replied that technically, the Public Defender might not represent the person, but they have an intake step that assists with this. However, Mr. Zavin added that he did not think that the Public Defender was allowed by statute to represent the person. They could represent someone provisionally if they have reason to believe that the person is indigent. Otherwise, they would not.

Judge Morrissey noted that the District Court agreed with Mr. Schatzow. The District Court did not intend to suggest that if the commissioner got a form that had not been filled out, the commissioner would not follow up and tell the person that he or she may have to go back in the process. They were just trying to streamline the process but protect the rights of everyone.

The Chair asked whether anything needed to be added to Rule 4-213.1 about the defendant filling out the form before seeing

the commissioner, or whether the District Court should be able to work it out with local law enforcement as best they can. Mr. Patterson moved that this not be referred to in Rule 4-213.1. The motion was seconded, and it carried unanimously.

Mr. Sherman told the Committee that before he was a sheriff, he used to be a public defender. If there is a group of people getting ready to fill out the forms, is the sheriff to hand them pens to hold in their cells? He asked that on behalf of law enforcement, the indigency determination should be left out of the hands of law enforcement. The Chair responded that Rule 4-213.1 will not refer to it. Mr. Sherman expressed the view that having an interview staff is the best way to handle this.

The Chair drew the Committee's attention to subsections (d)(1)(B) and (C) of Rule 4-213.1, which is where the commissioner has to provide a reasonable opportunity for the defendant to consult with an attorney. This is true whether the attorney is court-appointed or private. The Chair's understanding was that private attorneys are rare. There are only four or five of them a year. Mr. Weissert confirmed this.

The Chair noted that the District Court has been very active in trying to figure out ways to avoid delays by attempting to get attorneys to represent the defendants by working shifts wherever possible, so that the attorneys are present all of the time. The idea is to stack the defendants, so that they are handled one after the other, with no waiting time in between. The District

Court is trying administratively to make this process as efficient as possible. But there will be times when the attorney cannot be there. The question is how is this handled. The commissioner would have to tell the defendant that he or she has the right to an attorney, and one will be appointed, but the attorney is not able to be with the defendant at that time, or the attorney cannot participate even remotely, which is permitted. The defendant will be told that he or she has to wait until the attorney can get there. The defendant will not be waiting at the commissioner's office but will have to go somewhere else.

The Chair said that subsections (d)(2) and (3) of Rule 4-213.1 are for situations that hopefully will not happen too often. One possibility is to use remote appearances wherever possible. However, the defendant has to understand that if that does not work, the proceeding will have to be continued, because the bail review cannot proceed without an attorney, unless the defendant has waived an attorney. The Criminal Subcommittee concluded that even in that event, a commissioner should proceed to determine whether there is probable cause for the arrest. The reason for this was that this causes no harm to the defendant.

The Chair pointed out that if the commissioner were to conclude that there is no probable cause, then the defendant is released on his or her own recognizance without any conditions. This is in Rule 4-216. If the commissioner finds probable cause, but then has to recess the proceeding, when it resumes, and the

defendant has an attorney, the issue can be raised again. The attorney can try to convince the commissioner that no probable cause exists. The Subcommittee's point of view was "no harm, no foul."

The Chair pointed out that the new language added to subsection (d)(3)(B) was proposed for the Committee's consideration based in part on the oral arguments in the Court of Appeals last Tuesday and on the brief submitted by the Public Defender. The issue is when the commissioner has found probable cause, so the defendant is not going to be released. No attorney is there and one will not be able to get there, so the proceeding will be continued. The defendant will go back to jail to wait for the attorney to show up. The proposal is that in this situation, if the commissioner looking at the record before him or her can make a preliminary determination that the defendant should be released on personal recognizance without conditions, then the commissioner can release the defendant. The theory is the same as with probable cause. If the defendant is released, there is no harm.

The Chair explained that the problem arises if the situation is reversed. The commissioner decides that the defendant cannot be released. Either the commissioner is not authorized to release the defendant, because Code, Criminal Procedure Article, §5-202 provides that the crime the defendant is accused of does not allow him or her to be released by a commissioner, or the commissioner feels that release on personal recognizance is not

advisable. What happens when the defendant comes back with an attorney? The Rule provides that when the defendant comes back, the issue of release can be raised again, and the attorney can try to convince the commissioner that the defendant should be released.

The Chair commented that there remains the issue of the defendant arguing that he or she was in front of the same commissioner who had decided previously that the defendant could not be released, and the defendant then asks for a different commissioner. The Rule provides that in this situation, the defendant is entitled to a hearing in front of a different commissioner.

The Chair said that he had not discussed this with Judge Morrissey or the Honorable Ben Clyburn, outgoing Chief Judge of the District Court. The Rule absolutely preserves protection for the defendant, so that he or she gets a new chance in front of a different commissioner. On the other hand, this requires two different commissioners.

Judge Morrissey said that he estimated that 47% to 50% of all of the people who come through the commissioner's office are released on personal recognizance. The District Court is in favor of the procedure in subsection (d)(3)(D). The recusal provision seems reasonable. It may create an additional flow through the jail, but any delay necessitated by recusal is offset by releasing people who otherwise would have been released on personal recognizance. The Chair commented that this had been

recommended in the Public Defender's brief in the Court of Appeals. In response to a question from the Honorable Lynne Battaglia, Associate Judge of the Court of Appeals, Mr. Schatzow seemed to agree with it as long as no conditions were imposed on the release.

Judge Price remarked that in her jurisdiction, Somerset County, there is only one commissioner. The Chair said that in that case, the defendant can go before the judge. Judge Morrissey noted that the position of the District Court was that in a county where there is only one commissioner, the defendant would be brought before a judge the next day or whenever one is available.

Mr. Zavin told the Committee that this was not the position that the Public Defender had taken in their brief. Their position was that anyone who is eligible for release and who appears before a commissioner but counsel is not available, should be released on personal recognizance. The Chair remarked that the Rule is not going to go that far. Mr. Zavin noted that the problem with this is that this would encourage violation of the right to counsel into the Rule, because when the decision on pretrial incarceration is being made, the defendant has a right to counsel. The Rule is telling the commissioner to go ahead and make the determination without counsel present. The Chair pointed out that the defendant is being released. Mr. Zavin said that for everyone else, it violates the right to counsel. When the right to counsel is being violated, it is not a cure.

Mr. Maloney asked whether Mr. Zavin was concerned that this would be a violation of *Richmond* for those who do not get personal recognizance, and the determination would be made without counsel. Mr. Zavin replied affirmatively. Judge Morrissey noted that the recusal provision covers this. If the defendant is not satisfied, the defendant will be brought in front of another commissioner who has not been party to any of the proceedings and who will make an independent determination.

Judge Morrissey referred to Mr. Richmond, who is the named party in the case, and asked whether Mr. Richmond would have liked to have sat in jail for six or seven additional hours when otherwise he would have been released. There needs to be practicality in this approach. Mr. Schatzow remarked that he agreed with Judge Morrissey. This addresses a relatively small universe, people for whom there is not appointed counsel available in the very short term. In all likelihood, the situation is one where the arresting officer tells the commissioner that the defendant does not have to be detained. The commissioner is looking at the facts of the case and whatever else he or she may know to see if a determination can be made. If the exception swallowed the Rule, then Mr. Schatzow said that he would be concerned about it. The Rule is addressing a relatively small universe. The commissioner is not doing an interrogation of an indigent defendant, and this does not cause a problem. As a practical matter, if a person is going to get released, this should take place quickly.

The Chair reiterated that this provision affords an opportunity to release some percentage of defendants who otherwise would remain in jail. Delegate Vallario remarked that this travels along the lines of what is termed "filling the gap," which passed in the House of Delegates but not the Senate, because it was too late for a vote in the Senate. Basically, what the House had said was that anyone who was charged with a crime that carried a punishment of 18 months or less would be released on personal recognizance, no matter what the crime was. This would release a great amount of people.

Delegate Vallario noted that the legislature had added some other crimes, including one that was somewhat controversial, which was simple possession of narcotics. The people who are charged with this crime will go before the commissioner, who tells them what the charge is and has to release the person on personal recognizance. If the commissioners come up with a set of guidelines of the offenses for which someone should be released, it would be helpful. The Chair expressed the opinion that the Rule should not have in it what did not pass in the legislature.

The Chair asked if the provision pertaining to release should be taken out. Delegate Vallario commented that some people are charged with relatively minor offenses. If someone is charged with disorderly conduct, that person should not have to stay in jail. Judge Love suggested that this provision be left in, and the Committee agreed.

The Chair said that the rest of Rule 4-213.1 had already been approved by the Committee in the 181st Report and had been approved by the Court of Appeals.

Mr. Butler referred to section (f) of Rule 4-213.1. Mr. Butler had submitted a comment letter (Appendix 3). The Chair had e-mailed a letter to Mr. Butler (Appendix 4), and in it, the Chair had stated that the public, including victims, always has the right to attend initial appearance proceedings. In many areas of the State, because of security issues, it may be difficult to accommodate members of the public.

Mr. Butler agreed with this. He said that the statute, Code, Criminal Procedure Article, §5-201, provides victims with the right to request reasonable protections. Because of these concerns and because of victims not knowing when the initial appearance proceedings are, the Rules should not disadvantage victims from their rights to be able to request those protections. The same provisions that the Rules Committee proposes in Rule 4-213.1 to protect others and those previously adopted to allow victims or their counsel to request to participate should be added. He noted that Delegate Vallario had referred to this. When the House of Delegates drafted their bills, they specifically provided that victims should not lose their right. This was in a statutory provision that will allow victims to request the protection for safety if they file their application for a statement of charges. Unfortunately, this does not resolve the issue, because it could be the law enforcement

officer or someone else filing the application, and the arrest of the defendant could have been with or without a warrant.

Mr. Butler remarked that he and his colleagues think that at a minimum in terms of fairness, because victims do have these rights, that they be allowed to at least attempt to participate remotely in proceedings. Just as the State or private defense counsel would be able to do so, both sides, the court, and the victim would have either the telecommunications or the telephone to be able to do this. This is fair and somewhat protects the victim. Mr. Butler and his colleagues hoped that the Rules Committee would allow this.

The Chair said that the problem with this, which had been raised before, was the word "participation." The statute requires the commissioner to consider any request by a victim for no contact. This should be able to be communicated to a commissioner. The Chair did not read the statute to mean that victims have a right to "participate" in a proceeding, because they do not. Mr. Butler responded that as to bail reviews, his organization has represented victims, and they have asked the court to consider reasonable protections. This would be a way to accommodate that. Mr. Butler did not mean that the victim would be able to participate as a party but could assert his or her rights. There needs to be a mechanism and currently, there is none. Mr. Butler expressed the view that since new Rule 4-213.1 has accommodated private defense counsel and prosecutors, it should equally allow victims to make this request, through use of

the telephone or electronically.

Judge Morrissey said that the position of the District Court would be that this could be accomplished by communication with the State's Attorney's Office. Mr. Butler respectfully disagreed. Many counties will not have prosecutors there. How would the prosecutor even know how to contact the victim? This is not feasible, at least at this time. The Chair commented that he could see the real problem was the fact that this happens so quickly and the fact that the victim may not have the form to request notification. The victim cannot tell anyone he or she would like to be at the hearing.

Mr. Butler responded that one reason is that the forms only currently apply in the circuit court. This is one of the reasons he had stated in his letter to the Committee. He had extracted from what the House of Delegates had passed in House Bill 1186, which provided that the forms for an application for a statement of charges and a confidential supplement to an application for a statement of charges shall provide that a victim may request no contact by the defendant with the alleged victim or the alleged victim's premises or place of employment. The Chair pointed out that this is only if the victim applies for a statement of charges. The applicant can request no contact only if there is an application or a police report to communicate that the victim requests no contact. Mr. Butler noted that the proposed language of the House of Delegates used the term "applicant," because it could have been that the law enforcement officer asked for the

statement of charges, and the officer could have included the no contact request as well.

The Chair commented that Mr. Butler was interested in getting the information to the commissioner that if there is a victim, he or she requests no contact. Mr. Butler agreed, noting that the Rules should provide that the statute should be able to be implemented and that victims would have these rights. As part of this process, victims' participation should be facilitated just like counsel's participation. The Chair pointed out that counsel is required. The Chair stated that something should not be put into the Rule that for whatever reason cannot be implemented, and then an argument made that the Rule provides that this has to happen, but it is not allowed to. Would this make the proceeding invalid?

Mr. Butler responded that the suggestion was to include the language "if practicable." He and his colleagues understand that everything cannot be perfect, but if the victim can be accommodated at least some of the time, it is better than this never happening. How will the District Court commissioner know that the victim would like the condition of "no contact?" There needs to be some procedure available either at the time the application for a statement of charges is filed or when these matters are heard by a commissioner. Mr. Butler added that it seemed to him it should be one or the other or both.

The Chair inquired if anyone had a motion to amend Rule 4-213.1. Delegate Vallario noted that subsection (d)(3)(A)

provides that the defendant shall be released on personal recognizance with no other conditions. If the commissioner saw an assault and battery situation, Delegate Vallario was not sure whether the commissioner could set a condition of no unlawful contact, which is not allowed anyway, but at least the commissioner could issue some form of a warning. The Chair commented that once conditions are added to subsection (d)(3)(A) of Rule 4-213.1, this will not comport with *Richmond*, and it would not be permissible. This is why when Rule 4-213.1 was crafted, it was designed so that the defendant suffers no penalty.

The Chair said that no motion had been made to change the Rule. He told Mr. Butler that the Rule as read was not to prohibit in any way the victim from communicating his or her desire to the commissioner if it can be done. The victim can do this now. Mr. Butler asked how the victim is going to do that. Mr. Butler remarked that he had represented a defendant at one of the hearings, which to him had more historically been an interview. It was very difficult for him as counsel for the defendant to be able to get to that hearing. The fact is that these hearings are going to be held in detention centers or in secure areas of the courthouses. People are not going to know how to get there. If there is no motion to change Rule 4-213.1 today, it may come up in other ways. Mr. Butler expressed the view that the Rules should facilitate access to justice, and he asked that someone move to change Rule 4-213.1.

Delegate Vallario moved to strike the language in subsection (d)(3)(A) that read: "with no other conditions of release." For example, a defendant is charged with theft at a drugstore, and after reading the statement of charges, the commissioner tells the defendant that he or she will be released on the condition that the defendant does not go to that drugstore. The language "with no other conditions of release" is not necessary. The motion was seconded.

The Chair pointed out that this goes squarely back into *Richmond*. If the defendant has asked for counsel and has none, the commissioner would be putting a condition on a release that the defendant may object to. The commissioner may tell the defendant that he or she is released but is not allowed to go home. Delegate Vallario withdrew his motion and the person seconding agreed to withdraw it.

The Chair told Mr. Butler that it may be possible for Judge Morrissey to figure out some way in which victims could communicate their wishes, even if it is in a police report. Judge Price commented that she had never seen conditions of release without protection for a victim in it. There is always a requirement of no contact with the victim. The commissioners are very cognizant of this and are very diligent in putting those conditions in. The Chair observed that if the commissioners are not willing to release without conditions, the defendant will not be released.

Judge Morrissey thanked the Committee for the opportunity to

be heard and for the difficult work that they had done in drafting the Rules. The District Court is committed to full implementation of the Rules as agreed to by the Court of Appeals. The District Court will implement that decision to the best of their ability. He asked that attorneys consider signing up to represent defendants at the initial hearings before commissioners. The Chair said that Rule 4-213.1 is just "the tip of the iceberg." The amount of work and effort that Judge Clyburn, Judge Morrissey, Mr. Weissert, people from the Administrative Office of the Courts, and the District Court administrative staff put into drafting the Rules cannot be calculated. It was an incredible effort to see that the new procedure works. It is important to avoid ruining the procedure by adding a rule that creates a problem.

By consensus, the Committee approved Rule 4-213.1 as amended.

The Chair presented Rules 4-216, 4-202, 4-214, 4-215, 4-216.1, and 4-231 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 by adding language to section (a) referring to completing the requirements in certain Rules, by making a stylistic change to the cross reference after section (a), by deleting section (e), by deleting a reference to part of section (e) in subsection (h)(4) and replacing it

with a reference to a certain Rule, and by making stylistic changes, as follows:

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

(a) Arrest Without Warrant

If a defendant was arrested without a warrant, upon the completion of the requirements of Rules 4-213 (a) and 4-213.1, the judicial officer shall determine whether there was probable cause for each charge and for the arrest and, as to each determination, make a written record. If there was probable cause for at least one charge and the arrest, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause for any of the charges or for the arrest, the judicial officer shall release the defendant on personal recognizance, with no other conditions of release, and the remaining sections of this Rule are inapplicable.

Cross reference: See Rule 4-213 ~~(a)(4)~~ (a)(5).

(b) Communications with Judicial Officer

Except as permitted by Rule 2.9 (a)(1) and (2) of the Maryland Code of Conduct for Judicial Appointees or Rule 2.9 (a)(1) and (2) of the Maryland Code of Judicial Conduct, all communications with a judicial officer regarding any matter required to be considered by the judicial officer under this Rule shall be (1) in writing, with a copy provided, if feasible, but at least shown or communicated by the judicial officer to each party who participates in the proceeding before the judicial officer, and made part of the record, or (2) made openly at the proceeding before the judicial officer. Each party who participates in the proceeding shall be given an opportunity to respond to the communication.

Cross reference: See also Rule 3.5 (a) of

the Maryland Lawyers' Rules of Professional Conduct.

(c) Defendants Eligible for Release by Commissioner or Judge

In accordance with this Rule and Code, Criminal Procedure Article, §§5-101 and 5-201 and except as otherwise provided in section (d) of this Rule or by Code, Criminal Procedure Article, §§5-201 and 5-202, a defendant is entitled to be released before verdict on personal recognizance or on bail, in either case with or without conditions imposed, unless the judicial officer determines that no condition of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

(d) Defendants Eligible for Release only by a Judge

A defendant charged with an offense for which the maximum penalty is life imprisonment or with an offense listed under Code, Criminal Procedure Article, §5-202 (a), (b), (c), (d), (e), (f) or (g) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

~~(e) Attorney~~

~~(1) Generally~~

~~(A) Right to Representation by Attorney~~

~~(i) A defendant has the right to be represented by an attorney at an initial appearance before a judicial officer.~~
~~(ii) Unless the defendant waives that right, if the defendant is indigent within the~~

~~meaning of the Public Defender Act (Code, Criminal Procedure Article, §16-201) and no other attorney has entered an appearance for the defendant, the defendant shall be represented by the Public Defender or, at a proceeding before a District Court commissioner, by an attorney appointed for that purpose by the District Court pursuant to subsection (e)(1)(A)(iii) of this Rule if the Public Defender does not provide representation.~~

~~(iii) Unless the Public Defender has agreed to represent eligible defendants at initial appearance proceedings before a commissioner, the District Administrative Judges of the District Court shall appoint attorneys to represent such defendants at those proceedings in the various districts and charge the fees and expenses for such representation against the State of Maryland. Fees and expenses shall be governed by the schedule used by the Public Defender for panel attorneys.~~

~~(B) Entry of Appearance~~

~~The appearance of an attorney representing a defendant at an initial appearance may be entered in writing, electronically, or by telecommunication. If the entry is not in written form, the judicial officer shall note in the record of the proceeding the appearance and the method by which it was received.~~

~~(C) Appearance Separate and Distinct~~

~~For purposes of section (e) of this Rule, an initial appearance before a judicial officer shall be separate and distinct from any other stage of a criminal action. This stage commences with the appearance of the defendant before the judicial officer and ends when (i) the defendant is released, or (ii) the judicial officer has complied with all applicable requirements of sections (f) and (g) of this Rule.~~

~~(2) Duty of Public Defender or Appointed Attorney~~

~~(A) Provisional Representation by Public Defender~~

~~Unless the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance of the defendant shall be provisional. For purposes of this Rule, eligibility for provisional representation shall be determined by the Office of the Public Defender as of the time of the proceeding.~~

~~Cross reference: See Code, Criminal Procedure Article, §16-210 (c)(4) concerning provisional representation by the Public Defender.~~

~~(B) Entry of Limited Appearance~~

~~Provisional representation by the Public Defender or representation by a court-appointed attorney shall be limited to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that stage of the criminal action, unless representation by the Public Defender is extended or renewed pursuant to Rule 4-216.1.~~

~~(C) Effect of Conflict with Rule 4-214~~

~~Section (e) of this Rule prevails over any inconsistent provision in Rule 4-214.~~

~~(3) Waiver~~

~~(A) Unless an attorney has entered an appearance, the judicial officer shall advise the defendant that:~~

~~(i) the defendant has a right to an attorney at the initial appearance and for any proceeding under Rule 4-216.1;~~

~~(ii) an attorney can be helpful in advocating that the defendant should be released immediately on recognizance or on bail with minimal conditions and restrictions;~~

~~(iii) if the defendant is eligible, the Public Defender or a court-appointed attorney will represent the defendant at the initial appearance;~~

~~(iv) if the defendant is represented by a court-appointed attorney, the representation is only for the purpose of the initial appearance, but the defendant will be represented by the Public Defender in any proceeding under Rule 4-216.1;~~

~~(v) unless the Public Defender determines otherwise, the Public Defender will not further represent the defendant unless the defendant timely applies for such representation and the Public Defender determines that the defendant is an indigent individual, as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210;~~

~~(vi) if the defendant waives representation, the waiver is effective only for the initial appearance and not for subsequent proceedings;~~

~~(vii) if it is impracticable for an attorney to be present in person, the attorney will be able to consult privately with the defendant and participate in the proceeding by electronic means or by telecommunication; and~~

~~(viii) if the defendant desires to be represented by a private attorney retained by the defendant and that attorney is not able to be present in person or able to participate by electronic means or telecommunication, the hearing may need to be postponed, in which event the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented to the next available judicial officer.~~

~~Committee note: Rule 4-213 (a)(2) requires the judicial officer to advise the defendant of the right to an attorney generally. In providing that advice, the judicial officer should explain that it pertains to the right to an attorney for all proceedings after the~~

~~initial appearance under this Rule and any review hearing under Rule 4-216.1.~~

~~(B) If, after receiving this advice, the defendant indicates a desire to waive the right to an attorney at the initial appearance and the judicial officer finds that the waiver is knowing and voluntary, the judicial officer shall announce and record that finding and proceed pursuant to sections (f) and (g) of this Rule.~~

~~(C) Any waiver found under this Rule is applicable only to the initial appearance under this Rule.~~

~~(4) Electronic or Telecommunication Appearance~~

~~(A) By State's Attorney~~

~~The State's Attorney may participate in the proceeding, but is not required to do so. When the physical presence of the State's Attorney is impracticable, the State's Attorney may participate in the proceeding electronically or by telecommunication if the equipment at the judicial officer's location and the State's Attorney's location provides adequate opportunity for the State's Attorney to participate meaningfully in the proceeding.~~

~~(B) By Defense Attorney~~

~~When the physical presence of a defense attorney is impracticable, the attorney may consult with the defendant and participate in the proceeding electronically or by telecommunication if the equipment at the judicial officer's location and the defense attorney's location provides adequate opportunity for the attorney to consult privately with the defendant and participate meaningfully in the proceeding.~~

~~(f)~~ (e) Duties of Judicial Officer

(1) Consideration of Factors

In determining whether a defendant

should be released and the conditions of release, the judicial officer shall take into account the following information, to the extent available:

(A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;

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

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

(D) any recommendation of an agency that conducts pretrial release investigations;

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

(F) any information presented by the defendant or defendant's attorney;

(G) the danger of the defendant to the alleged victim, another person, or the community;

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

(I) any other factor bearing on the risk of a wilful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

(2) Statement of Reasons - When Required

Upon determining to release a

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

(3) Imposition of Conditions of Release

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

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

(B) protect the safety of the alleged victim by ordering the defendant to have no contact with the alleged victim or the alleged victim's premises or place of employment or by other appropriate order, and

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

(4) Advice of Conditions; Consequences of Violation; Amount and Terms of Bail

The judicial officer shall advise the defendant in writing or on the record of the conditions of release imposed and of the consequences of a violation of any condition. When bail is required, the judicial officer shall state in writing or on the record the amount and any terms of the bail.

~~(g)~~ (f) Conditions of Release

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

(1) committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in 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 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.

~~(h)~~ (g) Temporary Commitment Order

If an initial appearance before a commissioner cannot proceed as scheduled, the commissioner may enter a temporary commitment order, but in that event the defendant shall be presented at the earliest opportunity to the next available judicial officer for an initial appearance. If the judicial officer is a judge, there shall be no review of the judge's order pursuant to Rule 4-216.1.

Committee note: Section ~~(h)~~ (g) of this Rule is intended to apply to a narrow set of compelling circumstances in which it would be inappropriate or impracticable to proceed with the initial appearance as scheduled, such as the illness, intoxication, or disability of the defendant or the inability of a private attorney selected by the defendant to appear within a reasonable time.

~~(i)~~ (h) Record

The judicial officer shall make a brief written record of the proceeding, including:

(1) whether notice of the time and place of the proceeding was given to the State's Attorney and the Public Defender or any other defense attorney and, if so, the time and

method of notification;

(2) if a State's Attorney has entered an appearance, the name of the State's Attorney and whether the State's Attorney was physically present at the proceeding or appeared remotely;

(3) if an attorney has entered an appearance for the defendant, the name of the attorney and whether the attorney was physically present at the proceeding or appeared remotely;

(4) if the defendant waived an attorney, a confirmation that the advice required by ~~subsection (e)(3) of this~~ Rule 4-213.1 (e) was given and that the defendant's waiver was knowing and voluntary;

(5) confirmation that the judicial officer complied with each requirement specified in section ~~(f)~~ (e) of this Rule and in Rule 4-213 (a);

(6) whether the defendant was ordered held without bail;

(7) whether the defendant was released on personal recognizance; and

(8) if the defendant was ordered released on conditions pursuant to section ~~(g)~~ (f) of this Rule, the conditions of the release.

~~(j)~~ (i) Title 5 Not Applicable

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

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

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

See the Reporter's note to Rule 4-213.1.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-202 by adding to the notice in the charging document in section (a) new language providing that the defendant may be eligible for representation by the Public Defender or a court-appointed attorney at certain proceedings, as follows:

Rule 4-202. CHARGING DOCUMENT - CONTENT

(a) General Requirements

A charging document shall contain the name of the defendant or any name or description by which the defendant can be identified with reasonable certainty, except that the defendant need not be named or described in a citation for a parking violation. It shall contain a concise and definite statement of the essential facts of the offense with which the defendant is charged and, with reasonable particularity, the time and place the offense occurred. An allegation made in one count may be incorporated by reference in another count. The statute or other authority for each count shall be cited at the end of the count, but error in or omission of the citation of authority is not grounds for dismissal of the charging document or for reversal of a conviction.

A charging document also shall contain a notice to the defendant in the following form:

TO THE PERSON CHARGED:

1. This paper charges you with committing a crime.

2. If you have been arrested and remain in custody, you have the right to have a

judicial officer decide whether you should be released from jail until your trial.

3. If you have been served with a citation or summons directing you to appear before a judicial officer for a preliminary inquiry at a date and time designated or within five days of service if no time is designated, a judicial officer will advise you of your rights, the charges against you, and penalties. The preliminary inquiry will be cancelled if a lawyer has entered an appearance to represent you.

4. You have the right to have a lawyer.

5. A lawyer can be helpful to you by:

(A) explaining the charges in this paper;

(B) telling you the possible penalties;

(C) helping you at trial;

(D) helping you protect your constitutional rights; and

(E) helping you to get a fair penalty if convicted.

6. Even if you plan to plead guilty, a lawyer can be helpful.

7. If you are eligible, the Public Defender or a court-appointed attorney will represent you at any initial appearance before a judicial officer and at any proceeding under Rule 4-216.1 to review an order of a District Court commissioner regarding pretrial release. If you want a lawyer for any further proceeding, including trial, but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.

8. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk

as soon as possible.

9. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

(b) Signature on Charging Documents

(1) Requirement – Who Must Sign

(A) Before a citation is issued, it shall be signed by the peace officer who issues it.

Cross reference: See Rule 4-102 (h) for definition of "peace officer."

(B) A Statement of Charges shall be signed by the peace officer or judicial officer who issues it.

(C) An indictment shall be signed by the foreperson or acting foreperson of the grand jury and also may be signed by a State's Attorney.

(D) A criminal information shall be signed by a State's Attorney.

(2) Method of Signing

(A) A charging document filed in paper form shall contain either the handwritten signature of the individual who signed the document or a facsimile signature of that individual affixed in a manner that assures the genuineness of the signature.

(B) Subject to the Rules in Title 20, a charging document filed electronically shall contain a facsimile or digital signature of the individual purporting to be the signer, which shall be affixed in a manner that assures the genuineness of the signature.

(C) If an indictment or criminal information is not signed personally by the elected or appointed State's Attorney for the county but is properly signed by another individual authorized to sign the document,

the typed name of the elected or appointed State's Attorney may also appear on the document.

(3) Waiver of Objection

A plea to the merits waives any objection that the charging document is not signed.

(c) Specific Requirements

(1) Citation

(A) A citation shall be (i) under oath of the peace officer who signs it, or (ii) accompanied by a Statement of Probable Cause signed under oath by the same or another peace officer.

(B) A citation shall contain a command to the defendant to appear in District Court when required.

(2) Statement of Charges

A Statement of Charges shall include or be accompanied by (A) a Statement of Probable Cause signed under oath, or (B) an Application for Statement of Charges signed under oath, which is sufficient to establish probable cause.

(3) Indictment

An indictment shall conclude with the words "against the peace, government, and dignity of the State."

(4) Summons in District Court

A District Court summons shall contain a command to the defendant to appear in District Court as directed.

Cross reference: See Section 13 of Article IV of the Constitution of Maryland and *State v. Dycer*, 85 Md. 246, 36 A. 763 (1897).

(d) Matters Not Required

A charging document need not negate an exception, excuse, or proviso contained in a statute or other authority creating or defining the offense charged. It is not necessary to use the word "feloniously" or "unlawfully" to charge a felony or misdemeanor in a charging document. In describing money in a charging document, it is sufficient to refer to the amount in current money, without specifying the particular notes, denominations, coins, or certificates circulating as money of which the amount is composed.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 711 a and Rule 711 a.
Section (b) is derived from former M.D.R. 711 b 2 and Rule 711 c.
Section (c) is derived from former M.D.R. 711 b 1 and Rule 711 b.
Section (d) is derived from former Rule 711 d and e and M.D.R. 711 c and d.

Rule 4-202 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-213.1.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-214 by deleting a reference to a certain Rule and adding a reference to a certain Rule in the cross references after section (a) and section (d), as follows:

Rule 4-214. DEFENSE COUNSEL

(a) Appearance

Counsel retained or appointed to represent a defendant shall enter an appearance in writing within five days after accepting employment, after appointment, or after the filing of the charging document in court, whichever occurs later. An appearance entered in the District Court will automatically be entered in the circuit court when a case is transferred to the circuit court because of a demand for jury trial. In any other circumstance, counsel who intends to continue representation in the circuit court after appearing in the District Court must re-enter an appearance in the circuit court.

Cross reference: See Rules ~~4-216 (e)~~ 4-213.1 and 4-216.1 (b) with respect to the automatic termination of the appearance of the Public Defender or court-appointed attorney upon the conclusion of an initial appearance before a judicial officer and upon the conclusion of a hearing to review a pretrial release decision of a commissioner if no general appearance under this Rule is entered.

(b) Extent of Duty of Appointed Counsel

When counsel is appointed by the Public Defender or by the court, representation extends to all stages in the proceedings, including but not limited to custody, interrogations, preliminary hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal. The Public Defender may relieve appointed counsel and substitute new counsel for the defendant without order of court by giving notice of the substitution to the clerk of the court. Representation by the Public Defender's office may not be withdrawn until the appearance of that office has been stricken pursuant to section (d) of this Rule. The representation of appointed counsel does not extend to the filing of subsequent discretionary proceedings including petition for writ of certiorari, petition to expunge records, and petition for post conviction relief.

(c) Inquiry into Joint Representation

(1) Joint Representation

Joint representation occurs when:

(A) an offense is charged that carries a potential sentence of incarceration;

(B) two or more defendants have been charged jointly or joined for trial under Rule 4-253 (a); and

(C) the defendants are represented by the same counsel or by counsel who are associated in the practice of law.

(2) Court's Responsibilities in Cases of Joint Representation

If a joint representation occurs, the court, on the record, promptly and personally shall (A) advise each defendant of the right to effective assistance of counsel, including separate representation and (B) advise counsel to consider carefully any potential areas of impermissible conflict of interest arising from the joint representation. Unless there is good cause to believe that no impermissible conflict of interest is likely to arise, the court shall take appropriate measures to protect each defendant's right to counsel.

Cross reference: See Rule 1.7 of the Maryland Lawyers' Rules of Professional Conduct.

(d) Striking Appearance

A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court. If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving

counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215.
Cross reference: Code, Courts Article, §6-407 (Automatic Termination of Appearance of Attorney). See Rules ~~4-216 (e)~~ 4-213.1 and 4-216.1 (b) providing for a limited appearance by the Public Defender or court-appointed attorney in initial appearance proceedings before a judicial officer and hearings to review a pretrial release decision by a commissioner if no general appearance under this Rule is entered.

Source: This Rule is in part derived from former Rule 725 and M.D.R. 725 and in part from the 2009 version of Fed. R. Crim. P. 44.

Rule 4-214 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-213.1.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-215 by updating a Rule reference in the cross reference after section (e), as follows:

Rule 4-215. WAIVER OF COUNSEL

(a) First Appearance in Court Without Counsel

At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:

(1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.

(2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.

(3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.

(4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

(5) If trial is to be conducted on a subsequent date, advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

(6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.

The clerk shall note compliance with this section in the file or on the docket.

(b) Express Waiver of Counsel

If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant's express waiver of counsel. After there has been an express waiver, no postponement of a scheduled trial or hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

(c) Waiver by Inaction - District Court

In the District Court, if the defendant appears on the date set for trial without counsel and indicates a desire to have counsel, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time, comply with section (a) of this Rule, if the record does not show prior compliance, and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the trial only if (1) the defendant received a copy of the charging document containing the notice as to the right to counsel and (2) the defendant either (A) is charged with an

offense that is not punishable by a fine exceeding five hundred dollars or by imprisonment, or (B) appeared before a judicial officer of the District Court pursuant to Rule 4-213 (a) or (b) or before the court pursuant to section (a) of this Rule and was given the required advice.

(d) Waiver by Inaction - Circuit Court

If a defendant appears in circuit court without counsel on the date set for hearing or trial, indicates a desire to have counsel, and the record shows compliance with section (a) of this Rule, either in a previous appearance in the circuit court or in an appearance in the District Court in a case in which the defendant demanded a jury trial, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.

(e) Discharge of Counsel - Waiver

If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court

may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

Cross reference: See Rule ~~4-216 (e)~~ 4-213.1 with respect to waiver of an attorney at an initial appearance before a judge and Rule 4-216.1 (b) with respect to waiver of an attorney at a hearing to review a pretrial release decision of a commissioner.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 723 b 1, 2, 3 and 7 and c 1.
Section (b) is derived from former Rule 723.
Section (c) is in part derived from former M.D.R. 726 and in part new.
Section (d) is derived from the first sentence of former M.D.R. 726 d.
Section (e) is new.

Rule 4-215 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-213.1.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216.1 by making a stylistic change in section (c), as follows:

Rule 4-216.1. REVIEW OF COMMISSIONER'S PRETRIAL RELEASE ORDER

(a) Generally

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody after a commissioner has determined conditions of release pursuant to Rule 4-216 shall be presented immediately to the District Court if the court is then in session, or if not, at the next session of the court.

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

(b) Attorney for Defendant

(1) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to an attorney for purposes of the review hearing in accordance with this section, the Public Defender shall provide representation to an eligible defendant at the review hearing.

(2) Waiver

(A) Unless an attorney has entered an appearance, the court shall advise the defendant that:

(i) the defendant has a right to an attorney at the review hearing;

(ii) an attorney can be helpful in advocating that the defendant should be released on recognizance or on bail with minimal conditions and restrictions; and

(iii) if the defendant is eligible, the Public Defender will represent the defendant at this proceeding.

Cross reference: For the requirement that the court also advise the defendant of the right to counsel generally, see Rule 4-215

(a).

(B) If, after the giving of this advice, the defendant indicates a desire to waive an attorney for purposes of the review hearing and the court finds that the waiver is knowing and voluntary, the court shall announce on the record that finding and proceed pursuant to this Rule.

(C) Any waiver found under this Rule is applicable only to the proceeding under this Rule.

(3) Waiver of Attorney for Future Proceedings

For proceedings after the review hearing, waiver of an attorney is governed by Rule 4-215.

(c) Determination by Court

The District Court shall review the commissioner's pretrial release determination and take appropriate action in accordance with Rule 4-216 ~~(f) and (g)~~ (e) and (f). If the court determines that the defendant will continue to be held in custody after the review, the court shall set forth in writing on the record the reasons for the continued detention.

(d) Juvenile Defendant

If the defendant is a child whose case is eligible for transfer to the juvenile court pursuant to Code, Criminal Procedure Article, §4-202 (b), the District Court, regardless of whether it has jurisdiction over the offense charged, may order that a study be made of the child, the child's family, or other appropriate matters. The court also may order that the child be held in a secure juvenile facility.

(e) Title 5 Not Applicable

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

Source: This Rule is derived from former section (a) of Rule 4-216.1 (2012).

Rule 4-216.1 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-213.1.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-231 by deleting a reference to a certain Rule and adding a reference to a certain Rule in subsection (d)(1), as follows:

Rule 4-231. PRESENCE OF DEFENDANT

(a) When Presence Required

A defendant shall be present at all times when required by the court. A corporation may be present by counsel.

(b) Right to be Present - Exceptions

A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248.

Cross reference: Code, Criminal Procedure Article, §11-303.

(c) Waiver of Right to be Present

The right to be present under section (b) of this Rule is waived by a defendant:

(1) who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; or

(2) who engages in conduct that justifies exclusion from the courtroom; or

(3) who, personally or through counsel, agrees to or acquiesces in being absent.

(d) Video Conferencing in District Court

In the District Court, if the Chief Judge of the District Court has approved the use of video conferencing in the county, a judicial officer may conduct an initial appearance under Rule 4-213 (a) or a review of the commissioner's pretrial release determination under Rule 4-216.1 with the defendant and the judicial officer at different locations, provided that:

(1) the defendant's right to counsel under Rules ~~4-216 (e)~~ 4-213.1 and 4-216.1 is not infringed;

(2) the video conferencing procedure and technology are approved by the Chief Judge of the District Court for use in the county; and

(3) immediately after the proceeding, all documents that are not a part of the District Court file and that would be a part of the file if the proceeding had been conducted face-to-face shall be electronically transmitted or hand-delivered to the District Court.

Committee note: Except when specifically covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to exhaust all situations.

Source: Sections (a), (b), and (c) of this Rule are derived from former Rule 724 and M.D.R. 724. Section (d) is new.

Rule 4-231 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-213.1.

The Chair explained that the changes to Rules 4-216, 4-202, 4-214, 4-215, 4-216.1, and 4-231 contained amendments to conform to Rule 4-213.1 and had been approved previously.

By consensus, the Committee approved Rules 4-216, 4-202, 4-214, 4-215, 4-216.1, and 4-231 as presented.

Agenda Item 2. Consideration of proposed amendments to: Rule 20-101 (Definitions), Rule 20-102 (Application of Title to Courts and Actions), Rule 20-106 (When Electronic Filing Required; Exceptions), Rule 16-307 (Electronic Filing of Pleadings, Papers and Real Property Instruments), and Rule 16-506 (Electronic Filing of Pleadings and Papers)

The Reporter presented Rules 20-101, Definitions; 20-102; Application of Title to Courts and Actions; and 20-106, When Electronic Filing Required: Exceptions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-101 to add a sentence to section (a), as follows:

Rule 20-101. DEFINITIONS

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

(a) Affected Action

"Affected action" means an action to which this Title is made applicable by Rule 20-102. "Affected action" does not include an action in a category exempted by the State Court Administrator pursuant to subsection (a)(2)(C) of that Rule.

Cross reference: For the definition of an "action" see Rule 1-202.

. . .

Rule 20-101 was accompanied by the following Reporter's note.

Some categories of actions, such as certain landlord/tenant actions, citations for parking violations, and civil citations resulting from the operation of red light cameras or speed cameras, are not currently included in the case management system of the District Court.

MDEC is scheduled to begin in Anne Arundel County in the fall of 2014, and implementation issues have arisen as to categories of actions that are not currently in the District Court's case management system.

Proposed amendments to Rules 20-101, 20-102, and 20-106 allow the State Court Administrator to exempt from MDEC categories of actions in the District Court. It is anticipated that most categories of actions will not be exempted, but that those categories of actions not in the current system will be exempted temporarily from MDEC and added at a later date.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-102 (a) to permit the State Court Administrator to exempt from the application of Title 20 certain categories of actions in the District Court, as follows:

Rule 20-102. APPLICATION OF TITLE TO COURTS AND ACTIONS

(a) Trial Courts

(1) Applicable Counties and Dates

(A) Anne Arundel County is an applicable county from and after [date to be set by further Order of the Court of Appeals].

(B) There are no other applicable counties.

Committee note: The MDEC Program will be installed sequentially in other counties over a period of time. As additional counties become applicable counties, they will be listed in new subsections (a)(1)(B) through (a)(1)(X).

(2) Actions, Submissions, and Filings

(A) New Actions and Submissions

On and after the applicable date, except as otherwise provided by subsection (a)(2)(C) of this Rule, this Title applies to (i) new actions filed in a trial court for an applicable county, (ii) new submissions in actions then pending in that court, (iii) new submissions in actions in that court that were concluded as of the applicable date but were reopened on or after that date, (iv) new

submissions in actions remanded to that court by a higher court or the United States District Court, and (v) new submissions in actions transferred or removed to that court.

(B) Existing Documents; Pending and Reopened Cases

With the approval of the State Court Administrator, (i) the County Administrative Judge of the circuit court for an applicable county, by order, may direct that all or some of the documents that were filed prior to the applicable date in a pending or reopened action in that court be converted to electronic form by the clerk, and (ii) the Chief Judge of the District Court, by order, may direct that all or some of the documents that were filed prior to the applicable date in a pending or reopened action in the District Court be converted to electronic form by the clerk. Any such order shall include provisions to ensure that converted documents comply with the redaction provisions applicable to new submissions.

(C) Exempted Categories of Actions in the District Court

The State Court Administrator may exempt categories of actions in the District Court from the applicability of this Title. The State Court Administrator shall post on the Judiciary website a list of the exempted categories of actions. Any additions to or deletions from the list shall be posted at least 30 days before the effective date of the change.

(b) Appellate Courts

This Title applies to appeals and other proceedings in the Court of Special Appeals or Court of Appeals seeking the review of a judgment or order entered in any action to which section (a) of this Rule applies. If so ordered by the Court of Appeals in a particular matter or action, the Title also applies to (1) a question certified to the Court of Appeals pursuant to the Maryland Uniform Certification of

Questions of Law Act, Code, Courts Article, §§12-601 - 12-613; and (2) an original action in the Court of Appeals allowed by law.

(c) Applicability of Other Rules

Except to the extent of any inconsistency with the Rules in this Title, all of the other applicable Maryland Rules continue to apply. To the extent there is any inconsistency, the Rules in this Title prevail.

Source: This Rule is new.

Rule 20-102 was accompanied by the following Reporter's note.

See the Reporter's not to Rule 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-106 to add a Committee note, as follows:

Rule 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

. . .

(c) Submissions

(1) Generally

Except as otherwise provided in

subsection (c)(2) of this Rule, the requirement of electronic filing in section (a) applies to all submissions that are capable of being converted into electronic format and that, in electronic form, may be converted into a legible paper document.

(2) Exceptions

Except with court approval, the following submissions shall not be filed electronically:

(A) A single document comprising more than 300 pages;

Committee note: A single document comprising more than 300 pages may be submitted electronically by dividing the document into shorter segments.

(B) Oversized documents, such as blueprints, maps, and plats;

(C) Documents offered as evidence in open court at a trial or other judicial proceeding pursuant to Rule 20-402;

(D) An item that is impracticable to be filed electronically because of the item's physical characteristics; and

(E) Any other category of submissions that the State Court Administrator exempts from the requirement of electronic filing.

Committee note: Subsection (c)(2)(E) of this Rule pertains to the exemption of categories of submissions in an affected action. For the exemption of categories of actions from the definition of "affected action," see Rules 20-101 (a) and 20-102 (a)(2)(C).

(3) Required Retention of Certain Original Documents

Original wills and codicils, property instruments that have been or are subject to being recorded, and original public records, such as birth certificates, that contain an official seal may be scanned and filed electronically so long as the original

document is maintained by the filer pursuant to Rule 20-302.

Cross reference: See Rule 20-204, which requires a registered user to file a "Notice of Filing Tangible Item" under certain circumstances.

. . .

Rule 20-106 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 20-101.

The Reporter told the Committee that non-controversial amendments were required for Rules 20-101, 20-102, and 20-106 to implement the Maryland Electronic Courts system ("MDEC"). These changes need to be made for the October 1, 2014 implementation date of MDEC in Anne Arundel County. The proposed changes allow the State Court Administrator to exempt from MDEC certain categories of actions in the District Court that are not currently included in the case management system of the District Court. These include some landlord/tenant actions, citations for parking violations, and civil citations resulting from the operation of red-light cameras or speed cameras. These actions are handled manually.

The Reporter said that Rule 20-101 clarifies that an affected action does not include an action in a category exempted by the State District Court Administrator. Rule 20-102 provides in subsection (a)(2)(C) that the State Court Administrator can designate certain categories of actions in the District Court as

exempt from the application of Title 20. The Reporter asked if any actions in the circuit court were exempted, and the Chair answered that none were exempted. The list of exempted actions will be posted on the Judiciary's website. Rule 20-106 clarifies what a submission is. The Committee note after subsection (c)(2)(E) of Rule 20-106 provides that the subsection pertains to the exemption of categories of submissions. The note refers to Rules 20-101 (a) and 20-102 (a)(2)(C) to explain the categories of actions exempted from the definition of "affected action."

The Reporter explained that a motion to accept the proposed changes was necessary, since no Subcommittee had suggested them. Judge Weatherly moved to accept the proposed changes. The motion was seconded, and it carried by a majority vote.

The Reporter told the Committee that two more Rules had been proposed to be changed. These were Rules 16-307, Electronic Filing of Pleadings, Papers, and Real Property Instruments; and 16-506, Electronic Filing of Pleadings and Papers.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-307 a. to add the words "or the Rules in Title 20," as follows:

Rule 16-307. ELECTRONIC FILING OF PLEADINGS, PAPERS AND REAL PROPERTY INSTRUMENTS

a. Applicability; Conflicts with Other Rules

This Rule applies to the electronic filing of pleadings and papers in a circuit court and to the electronic filing of instruments authorized or required by law to be recorded and indexed in the land records. A pleading, paper or instruction may not be filed by direct electronic transmission to the court except in accordance with this Rule or the Rules in Title 20. To the extent of any inconsistency with any other Rule, this Rule and any administrative order entered pursuant to it shall prevail.

Committee note: Code, Real Property Article, §3-502.

. . .

Rule 16-307 was accompanied by the following Reporter's note.

Amendments to Rules 16-307 a. and 16-506 (a) resolve an apparent conflict between those two Rules and Rule 20-102 (c). Each Rule purports to prevail over other Rules "to the extent of any inconsistency."

Implementation of MDEC is scheduled to begin in Anne Arundel County in the fall of 2014, which may be prior to the adoption of proposed revisions to the Rules in Title 16 contained in the 178th Report of the Rules Committee. Therefore, current Rules 16-307 a. and 16-506 (a) are proposed to be amended by the addition of a reference to the Rules in Title 20.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 500 - COURT ADMINISTRATION - DISTRICT COURT

AMEND Rule 16-506 (a) to add the words "or the Rules in Title 20," as follows:

Rule 16-506. ELECTRONIC FILING OF PLEADINGS AND PAPERS

(a) Applicability; Conflicts with Other Rules

This Rule applies to the electronic filing of pleadings and papers in the District Court. A pleading or paper may not be filed by direct electronic transmission to the Court except in accordance with this Rule or the Rules in Title 20. This Rule and any administrative order entered pursuant to it prevail if inconsistent with any other Rule.

. . .

Rule 16-506 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 16-307.

The Reporter said that some of revised Title 16 is pending before the Court of Appeals. To resolve a conflict with some of the MDEC Rules, changes are being proposed to Rules 16-307 and 16-506. Each Rule purports to prevail over other Rules "to the extent of any inconsistency." To avoid the conflict between the two Title 16 Rules and Rule 20-102 (c), the proposal was to add a reference to Title 20 in the two Title 16 Rules that indicates

that the Rules in Title 20 are excepted from the prohibition against filing by direct electronic transmission to the court.

Judge Weatherly moved to approve the changes to Rules 16-307 and 16-506. The motion was seconded, and it passed on a majority vote.

Agenda Item 3. Discussion of issues pertaining to the issuance of summonses for service of original process under MDEC - New Rule 20-204.1 (Issuance of Original Process - Civil)

The Chair presented Rule 20-204.1, Issuance of Original Process - Civil, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

ADD new Rule 20-204.1, as follows:

Rule 20-204.1. ISSUANCE OF ORIGINAL PROCESS - CIVIL

(a) Applicability

This Rule applies to the issuance of process on an electronically filed complaint or other submission in a civil action requiring service by original process.
Committee note: This Rule does not apply to a paper submission, even if it is to be served by original process or is filed by a registered user pursuant to an exception listed in Rule 20-106.

(b) Inapplicability of Rules 2-111 (b) and 3-111 (a).

The filer of a complaint or other submission requiring service by original process shall not furnish any paper copies to the clerk.

Committee note: The filer of a paper submission must comply with Rule 2-111 (b) or 3-111 (a) by furnishing to the clerk the appropriate number of paper copies.

(c) Issuance of Process

For each summons, the clerk shall comply with Rule 2-112 or 3-112, as applicable, by issuing the summons and providing it electronically to the filer through the MDEC system. Unless otherwise ordered by the court, the clerk is not required to deliver process to any person other than the filer.

(d) Paper Copies of Process

For each person to be served, the filer shall print a paper copy of the summons and each paper to be served with the summons and shall deliver the summons, papers, and any required fee to the sheriff or other person who will be serving process.

(e) Responsibility of Filer for Service and Return of Process

The filer shall be responsible for service and return of process in accordance with the applicable Rules in Title 2 or 3.
Cross reference: For persons authorized to serve or execute process, see Rules 2-123 and 3-123.

Source: This Rule is new.

Rule 20-204.1 was accompanied by the following Reporter's note.

As the Judiciary prepares for the implementation of MDEC scheduled to begin in

Anne Arundel County in the fall of 2014, Judiciary personnel have requested clarification of the procedures preceding service of process.

New Rule 20-204.1 has been drafted to provide that clarification.

For an electronically filed civil action, it would be impracticable for the clerk to issue paper summonses on each e-filed complaint and match those summonses with paper copies of the complaint provided by the plaintiff pursuant to Rule 2-111 (b) or 3-111 (a). Therefore, those two Rules have been made inapplicable to a submission that is electronically filed in MDEC.

In MDEC, instead of the current procedure for issuance of original process, Rule 20-204.1 requires the clerk to issue the summons electronically and provide it to the filer through the MDEC system. The filer then is responsible for service and return of process under the applicable Rules in Title 2 or Title 3.

No comparable Rule applicable to the issuance of original process in a criminal action is proposed for adoption at this time. During the initial phase of implementation of MDEC, it is anticipated that a charging document that has not yet been served upon the defendant will be a submission that, pursuant to Rule 20-106 (c)(2)(E), the State Court Administrator excludes from the requirement of electronic filing. During the initial phase of implementation of MDEC, a criminal action is entered into the MDEC system only ***after*** the defendant has been served or the clerk scans into MDEC a paper copy of a charging document that has not been served.

The Chair explained that under the current Rules, for each summons to be issued in a civil case, the plaintiff shall furnish to the clerk a copy of the complaint, a copy of each exhibit or

other paper filed with the complaint, and a copy of the information report. Under MDEC, complaints are electronically filed, and there are no paper copies. In the circuit court, service is made by the sheriff or by a private process server. In the District Court, service is made by the sheriff or by certified mail. Under MDEC, the clerk will create a summons electronically and send it electronically back to the filer, who then has to print out the summons and serve it. This is what Rule 20-204.1 provides. This keeps the clerks from having to print paper.

Mr. Sullivan referred to section (b) of Rule 20-204.1, which is titled "Inapplicability of Rules 2-111 (b) and 3-111 (a)," each of which is referenced in the Committee note that follows section (b) of Rule 20-204.1. The Committee note states that the filer must comply with Rules 2-111 (b) or 3-111 (a). The Chair pointed out that this refers to the filer of paper submissions. Mr. Sullivan said that it is unclear whether someone would have to comply with section (b) of Rule 20-204.1, because the Committee note states that Rules 2-111 (b) and 3-111 (a) must be complied with. Should section (b) of Rule 20-204.1 state: "Unless otherwise required by Rules 2-111 (b) and 3-111 (a), the filer of a complaint..."? The Chair responded that this would swallow up the differentiation.

The Reporter noted that the idea was to cover this in the overall applicability provision in section (a). The Rule "...applies to the issuance of process on an electronically filed

complaint (emphasis added) or other submission in a civil action requiring service by original process." If someone is going to be a paper filer, he or she can stop reading at section (a). The Committee note was intended to clarify the confusion that Mr. Sullivan had expressed.

Mr. Sullivan said that someone reading this Rule would have to be aware that the word "electronically" in section (a) of Rule 20-204.1 modifies everything that follows. It is not clear whether the language "or other submission" is modified by the word "electronically." The Chair suggested that the language "electronically filed" could be moved after the word "submission" in section (a). Mr. Lowe suggested that the title of Rule 20-204.1 could be "Electronic Issuance of Original Process - Civil." Mr. Zarbin moved to approve these two changes. The motion was seconded, and it carried by a majority vote.

By consensus, the Committee approved Rule 20-204.1 as amended.

Agenda Item 4. Consideration of proposed amendments to Rule 16-301 (Personnel in Clerks' Offices)

The Chair presented Rule 16-301, Personnel in Clerks' Offices, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-301 to include discipline of an employee in subsection d. (4), to permit the State Court Administrator to grant interim relief during the pendency of a grievance procedure, and to add a Committee note following subsection d. (4), as follows:

Rule 16-301. PERSONNEL IN CLERKS' OFFICES

a. Chief Deputy Clerk

(1) The clerk may appoint a chief deputy clerk. The appointment is not subject to subsection (d)(3) of this Rule.

(2) Subject to paragraph (3) of this section, a chief deputy clerk serves at the pleasure of the clerk.

(3) The appointment, retention and removal of a chief deputy clerk shall be subject to the authority and approval of the Chief Judge of the Court of Appeals, after consultation with the County Administrative Judge.

b. Other Employees

All other employees in the clerk's office shall be subject to a personnel system to be established by the State Court Administrator and approved by the Court of Appeals. The personnel system shall provide for equal opportunity, shall be based on merit principles, and shall include appropriate job classifications and compensation scales.

c. Certain Deputy Clerks

Persons serving as deputy clerks on July 1, 1991 who qualify for pension rights under Code, State Personnel and Pensions Article, §23-404 shall hold over as deputy clerks but shall have no fixed term and shall in all respects be subject to the personnel system established pursuant to section (b) of this Rule.

d. Personnel Procedures

(1) The State Court Administrator shall develop standards and procedures for the selection and appointment of new employees and the promotion, reclassification, transfer, demotion, suspension, discharge or other discipline of employees in the clerks' offices. These standards and procedures shall be subject to the approval of the Court of Appeals.

(2) If a vacancy occurs in a clerk's office, the clerk shall seek authorization from the State Court Administrator to fill the vacancy.

(3) The selection and appointment of new employees and the promotion, reclassification, transfer, demotion, suspension, discharge or other discipline of employees shall be in accordance with the standards and procedures established by the State Court Administrator.

(4) The State Court Administrator may review the selection, ~~or~~ promotion, or discipline of an employee to ensure compliance with the standards and procedures established pursuant to this Rule.

(5) An employee grievance shall be resolved in accordance with procedures established by the State Court Administrator. The clerk shall resolve a grievance within the clerk's office, but appeals of the grievance to the State Court Administrator or a designee of the State Court Administrator shall be allowed and shall constitute the final step in the grievance procedure. During the pendency of the grievance procedure, the State Court Administrator may grant interim relief, which, after consultation with the county administrative judge, may include the transfer of an employee.

Committee note: The State Court Administrator may seek appropriate judicial relief to enforce a final determination and directive. See Rule 1-201 (a).

(6) The Administrative Office of the Courts shall prepare the payroll and time and attendance reports for the clerks' offices. The clerks shall submit the information and other documentation that the Administrative Office requires for this purpose.

Source: This Rule is former Rule 1212.

Rule 16-301 was accompanied by the following Reporter's note.

Three amendments to Rule 16-301 are proposed.

An amendment to subsection d. (4) permits the State Court Administrator to review the discipline of an employee in a clerk's office to ensure compliance with established standards and procedures.

An amendment to subsection d. (5) permits the State Court Administrator to grant interim relief during the pendency of a grievance procedure. The relief may include transfer of an employee, after consultation with the county administrative judge.

A Committee note pertaining to enforcement of the State Court Administrator's final determination and directive is proposed to be added following subsection d. (5).

The Chair told the Committee that the proposed changes to Rule 16-301 were intended to clarify the authority of the State Court Administrator to review and address personnel grievance issues in the circuit court clerks' offices. There had been some question about this, and the proposed changes to Rule 16-301 were an attempt to clarify that authority. This issue had come up quickly. It would take a motion to approve it.

Judge Weatherly moved to approve the changes to Rule 16-301, and the motion was seconded. It carried on a majority vote. Mr. Maloney abstained from voting.

Agenda Item 5. Reconsideration of proposed new Rule 1-333 (Court Interpreters)

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 successfully 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 successfully completed 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) Proceeding

"Proceeding" means (A) any trial, hearing, argument on appeal, or other matter held in open court in an action, and (B) any event not conducted in open court at which an individual who needs an interpreter is required by court order or otherwise by law to attend in connection with an action and at which an interpreter will not otherwise be provided.

(7) 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 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 free of charge in court proceedings in accordance with section (c) of this Rule. The appointment shall be subject to sanctions in accordance with section (f) of this Rule.

(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) 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.

(4) Where Timely Application Not Filed

If an application is filed, but not timely filed pursuant to subsection (b)(2) of this Rule, or an individual who may qualify as an individual who needs an interpreter appears at a proceeding without having filed an application, the court may either appoint an interpreter pursuant to section (c) of this Rule or determine the need for an interpreter as follows:

(A) Examination 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 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) Notice When Interpreter is Not Needed

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 for that proceeding.

(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. An individual related by blood or marriage to a party or to the individual 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, 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) 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).

REPORTER'S NOTE

New Rule 1-333 carries forward the provisions of current Rule 16-819, with changes recommended by the General court Administration Subcommittee, after having heard from representatives of the Public Justice Center, the Access to Justice Commission, and the Department of Justice. The General Court Administration Subcommittee also has drafted a proposed amendment to Rule 2-415 concerning interpreters at depositions, which will be on the agenda of the next meeting of the Discovery Subcommittee.

Mr. Sykes inquired if there were any provisions in the Rules for interpreters to assist people in filling out a statement of eligibility. The Chair replied that he did not know of such a requirement unless it is for a criminal action. Mr. Sykes noted that a big gap exists if a defendant has to fill out a form to determine eligibility for an interpreter and does not know the language on the form. The Chair commented that the form is required to be given to a District Court commissioner, who is a judicial officer in a criminal case. The defendant would have a right to an interpreter or translator. The Reporter remarked that at a minimum, the application form should be translated.

Ms. Unitus, Director of Program Services for the Administrative Office of the Courts ("AOC"), expressed her preference for a translated form rather than having an interpreter available. Judge Weatherly said that she has a

concern about the level of indigency of the general population and not just that of litigants. Many non-English speaking litigants are illiterate in their own language. These people are often using the Language Line, a telephonic interpretation service of the Judiciary, to communicate. Ms. Unitus added that the District Court commissioners do that, also, when the defendants before them have a language issue.

The Chair said that the Committee had been looking at the requirement to produce court documents that can have a significant impact, such as show cause orders in Termination of Parental Rights cases, and the requirement that those documents be translated into the language that the individual can understand. This does not apply to every court document, but to those which may result in someone losing substantial rights. This would likely apply in criminal cases. This does not involve an interpreter, unless the defendant would like an interpreter at the hearing before the commissioner.

The Chair commented that Rule 1-333 had been considered by the Committee previously. It had been sent back to the General Court Administration Subcommittee. The day of the previous Rules Committee meeting at which Rule 1-333 had been considered, the Committee had been given an audit report from the AOC and pertinent documents from the U.S. Department of Justice ("DOJ"). It had been too much for the Committee to consider at that previous meeting, so Rule 1-333 was sent back to the Subcommittee, which met and went over these issues.

The Chair said that it had seemed initially that it would be easy to modify the Rule based on the new information, but representatives of the Public Justice Center, the Access to Justice Commission, the Legal Aid Bureau, and the DOJ all had attended the Subcommittee meeting with concerns and requests. The Subcommittee tried to do what they thought was right to make it easier for persons who need an interpreter to get one free, but the Subcommittee did not agree with some of the particular proposals of the interested organizations.

The Chair noted that what the Subcommittee had agreed to and what had been before the Committee previously to achieve better access to interpreters was that: (1) if someone filed a timely application for an interpreter, the person got one, and (2) if it was a party who had asked for an interpreter for all proceedings, the party got one. It appeared that there were essentially three issues. One was that under the current Rule, an application has to be filed at least 30 days before the first proceeding for which the person needs an interpreter to give the court time to locate and obtain an interpreter. A proposal had been made to reduce that to 15 days. Initially, the Subcommittee went along with this, because for a number of languages this time period was not a problem. However, the clerks asked that it not be changed, because they might need 30 days to address this, due to the volume and the fact that there are some languages for which there are not many interpreters. After listening to both sides, the Subcommittee voted to retain the 30 days. The Public Justice

Center, the Legal Aid Bureau, and the Access to Justice Commission are still pressing for the 15-day time period.

The Chair referred to the letter, which was in the meeting materials sent by the Public Justice Center. (See Appendix 5). They had asked to change subsection (b)(4) of Rule 1-333. It concerns what happens if someone does not file an application for an interpreter within the required time period. They requested that subsection (b)(4) read: "...the court shall make diligent efforts to secure the appointment of an interpreter and may either appoint an interpreter pursuant to section (c) of the Rule free of charge or determine the need for an interpreter as follows...". This could solve the problem of how to handle this if the time period is 30 days.

The Chair pointed out that another issue concerned the definition of the word "proceeding" in subsection (a)(6) of Rule 1-333. The Subcommittee was of the view that any matter that is held in open court and any event not conducted in open court at which an individual who needs an interpreter is required to attend is a proceeding. The Public Justice Center, the Legal Aid Bureau, and the Access to Justice Commission wanted to expand the second part of the definition of "proceeding" to include outside events which the court offers but does not require. This was the second issue to discuss.

The Chair said that a final issue raised by the various groups pertained to section (f) of Rule 1-333. This came up because of the audit, which had noted payments to interpreters

when they were not needed. The question asked by the Subcommittee was what should happen if someone makes a late request for an interpreter, and one is not available because of the late request. Should the proceeding be postponed, or should there be some sanctions?

The Chair commented that the Subcommittee's view was to put in language borrowed from Rule 2-433, Sanctions, which provided that a party would be given an opportunity to explain why the request for an interpreter was late. If the court finds that there is no good reason, then it has available the menu of options. It can postpone the proceeding, proceed without the testimony of the person who needs an interpreter, or take other appropriate action as justice may require.

The Chair noted that the view of the various groups was that Rule 1-341, Bad Faith – Unjustified Proceeding, could be applied in this situation rather than having a separate sanctions provision in Rule 1-333. The Subcommittee's view was that Rule 1-341 may or may not apply, but in any event, it is cumbersome, requiring a motion, a response, and a hearing. This is unnecessary. If there is a court proceeding, and a witness needs an interpreter, but nobody requested one, the situation can be addressed at that time.

Ms. Vaughn told the Committee that she was from the Public Justice Center. She thanked those who had put so much time into working on Rule 1-333. She noted that the view of her colleagues and her was as the Chair had stated. Additional sanctions

provisions would be duplicative, because Rule 1-341 already has provisions in it to punish purposeful delays in requesting an interpreter. Including a sanctions provision would result in making it more sanctionable to be a person who is limited-English proficient ("LEP") than any other party or witness.

Ms. Vaughn said that in addition to that, the DOJ had expressed concerns about what it means to have a sanctions provision and the practical effect it would have in discouraging LEP individuals from requesting an interpreter. The LEP individuals may be worried about possible repercussions if they request an interpreter, and then it turns out that they do not need one, or the proceeding gets postponed, and the LEP individual finds out too late to cancel the interpreter. It is important to keep in mind the real barriers to accessing the court system.

Mr. Maloney inquired if someone can be sanctioned for an intentional failure to request an interpreter on a timely basis or a negligent failure to do so. Ms. Vaughn answered that the language of Rule 1-341 is: "...the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification..." Practically, if a *pro se* litigant needed an interpreter but did not request one for whatever reason, how does this play out when the judge asks the litigant why he or she did not timely request an interpreter? No interpreter is present in the courtroom to help the litigant answer the question.

Mr Maloney inquired what would happen if a litigant asked for an interpreter but one was not needed. Would sanctions be issued for that? What if the litigant turned out to be fluent in English? Ms. Vaughn responded that this brought up another issue concerning waiver language. Previously, there had been waiver language in Rule 1-333 that allowed a litigant to officially make a waiver of an interpreter's services on the record. The judge was required to make sure that the waiver was knowing and intelligent. The sanction is not included for someone who is waiving his or her rights to an interpreter.

Judge Carrion, a judge on the Circuit Court for Baltimore City, told the Committee that she had written down some of the issues that were of particular concern to her. When the original Rule was drafted, she had been involved. The Rule had been approved by the Rules Committee. The main goal of the Rule was as it should be to continue to provide access to the courts in Maryland for people who are LEP. Judge Carrion said that she truly understood the frustration of LEP's when a court matter has to be continued due to a lack of an interpreter. This may give an advantage to another party. If proposed sanctions are included in the Rule, it may result in the intentional frustration of access to the courts in Maryland by individuals whom the courts are charged with serving.

Judge Carrion expressed her concern about subsection (f)(1) of Rule 1-333 as it relates to sanctions where there is a late request for an interpreter, in particular proceeding without the

testimony of the party's witness. It may be said that the sanction imposes a responsibility upon the court. It is a mandatory responsibility to determine if good reason exists for the late request. The Rule also uses language, such as "may," "so late," and "not feasible," which, in her opinion, is vague. She has had experience with this issue for over 10 years. She could not foresee many situations in which it would be much easier for the trier of fact to proceed without the interpreter or the witness.

Judge Carrion expressed the opinion that access to courts should not be limited when the need of the LEP individual to access to the courts is balanced against the inconvenience of postponing a case due to the lack of an interpreter or a witness. Judge Carrion also had a question as to how the sanctions provision would affect criminal matters. Finally, she said that she was especially troubled by subsection (f)(1) for two additional reasons. The first was that the notice to the LEP community regarding the ability of interpreter services is not perfect. Notices, summonses, and subpoenas do not include notices within them which relate to the ability to request an interpreter.

Secondly, Judge Carrion echoed her concerns about considering the aims of the DOJ on this issue. In her view, this result is not ameliorated by the argument that it is the witness for the party, and not the party, who can be excluded. The exclusion affects the party's case. It limits the party's

access to the Maryland courts, or contrary to the goals of Rule 1-333, encourages a party to proceed with the presentation of his or her case without competent interpretation. Practically, how can an LEP individual show any good reason pursuant to subsection (f)(1) of Rule 1-333 when the LEP individual does not speak English?

Judge Pierson told the Committee that he and Judge Carrion had been discussing this matter. Two subsections of Rule 1-333 were intended to address two separate concerns. Subsection (f)(2) was intended to address the issue that arises frequently where there is a request for an interpreter, and the proceeding does not happen. The court is given no warning in advance that the proceeding is not going to happen. What is occurring is that when an interpreter is in court, whether he or she interprets or not, the person has to be paid a minimum to come to court. It becomes very costly, so subsection (f)(2) was intended to permit the court to shift the costs to the party who does not appear.

Judge Pierson expressed his concern about subsection (f)(1), which was not intended to punish people with limited English proficiency. It is limited to witnesses. The objection he had heard was that in any case where an interpreter for a witness is needed, the party who is requesting the presence of that witness is an LEP party, and that is not necessarily the case.

Judge Pierson remarked that subsection (f)(1) was intended to address the circumstance where in terms of docket management, there is a situation where someone without any good reason says

at the last minute that he or she needs an interpreter for a witness. A paradigm example is where the other side has brought an expert witness from California, who was very costly, and the court has no alternative but to postpone the proceeding. Something should be added to Rule 1-333 that gives the court some power to deal with this. However, a later request for sanctions is not an adequate tool for the court to use to address this.

The Reporter said that she had looked at Rule 1-341, which seems to pertain only to the court finding that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification. This does not seem to cover the situation where someone is gaming the system to try to get a postponement. This is an example of what subsection (f)(1) was trying to address. She was not sure what the remedy would be. Should Rule 1-341 somehow be modified, or should some change be made to Rule 1-333 to avoid the situation that Judge Pierson had just described?

Judge Carrion remarked that the situation described by Judge Pierson does not happen very often. The Rule should address the majority of situations. The majority occur in District Court in criminal cases, and in family cases. These are the three scenarios that should be addressed. The expensive witness who comes from California is rare.

The Chair pointed out that in the District Court, if someone has taken off from work or has to put a child in child care to be able to come to court, and the case has to be postponed because

the judge finds that the interpreter had not been requested in time with no good reason for the late request, it can cause hardship to the person who came to court. Judge Carrion responded that she understood this, but the problem is whether the individual knew that he or she was able to obtain an interpreter. Judge Carrion thought that there could be an issue with the notification.

The Chair said that there may have been a good reason for the late request. Subsection (f)(1) of Rule 1-333 provides that the court may issue sanctions if the court finds that there is no good reason for the late request. Judge Carrion remarked that this has to be balanced with the aims of the DOJ. The Rule discourages individuals who are LEP from coming in, and this is not the goal of the Rule.

The Chair commented that a representative of the DOJ had been present at the Subcommittee meeting, and he had referred to many requirements of the Civil Rights Division of the DOJ. The Chair had asked him how the federal courts handle this. He had replied that no one gets interpreters in federal court unless the United States is a party. In diversity cases, the federal courts do not employ interpreters. If this is a civil right that the Civil Rights Division of the DOJ thinks the state courts have to enforce, why is that the federal courts do not have to as well?

Mr. Maloney asked whether there were any other state court rules that explicitly provide for sanctions based on this failure to notify an interpreter, or whether Maryland would be the first

in the country to have a rule like this. Ms Vaughn answered that she was not sure whether any other state had such a provision, but it was the first she had seen. Ms. Unitus added that she had never heard of any other state with a sanctions provision.

Ms. Ortiz noted that the DOJ has a set of standards and model rules for interpreter programs that can be looked at. She observed that subsection (f)(1) puts the onus on LEP's to make a timely request, and the sanction for a late request is particularly difficult with the 30-day requirement. The other issue to consider is that a request requires individuals in need of an interpreter services to file that application. This may not be necessary. Many of the courts in Maryland have interpreters for certain languages, such as Spanish, available in the courthouse every day, or they allow court staff to note that an interpreter is required.

Ms. Ortiz commented that when MDEC becomes effective, it will be a person-based system that flags when an interpreter is needed. The need for an interpreter will be associated with the person, rather than with the case. This should enhance the administration of the requirement that the request only needs to be made once, and the system only needs to find out once if the person needs an interpreter. This will require that courts adopt practices that allow them to verify the need for an interpreter, but an interpreter will be assigned whether or not the person asks for an interpreter. Mandating that the person files a request in each case when an interpreter is needed may not match

with what will happen with MDEC.

Mr. Maloney pointed out that sanctions are referred to in the Rules of Procedure so infrequently. Even Rule 1-341 is difficult to administer. To create these extensive sanctions, which may be some of the only ones in the country, when there are other ways to address this, seems inappropriate, especially when a late request for an interpreter does not happen often. Attorneys have been assessed judicial fines for being late for other court events. It seemed to Mr. Maloney that if the situation would be really egregious, the court has the inherent authority to take action. He moved to delete section (f) from Rule 1-333, the motion was seconded, and it passed by a majority vote.

Ms. Unitus told the Committee that she works with the Maryland Court Interpreter Program, and accompanying her was Ms. Ksenia Boitsova, who is an interpreter specialist with the Court Interpreter Program. Their concern was the language in subsection (a)(6) of Rule 1-333 that read: "...any event not conducted in open court at which an individual who needs an interpreter is required by court order or otherwise by law to attend in connection with an action and at which an interpreter will not otherwise be provided." At the last meeting, Ms. Unitus had referred to a memorandum issued by the Honorable Robert M. Bell, who was then Chief Judge of the Court of Appeals, regarding events for which court interpreters were available. If the Rule does not specify in some way which events are intended to apply,

it could cause the Court Interpreter Program problems. For example, if a judge orders someone who is LEP to attend a meeting of Alcoholics Anonymous, would an interpreter be appointed for that person at the meeting? The Court Interpreter Office would not pay for that. They had come up with a specific list of what they could and could not pay for. For them to administer the program, they need a definitive list.

The Chair asked Ms. Unitus what she was recommending. She answered that she would recommend that they incorporate or even expand the list that Chief Judge Bell had come up with. The Chair inquired if the list should be part of the Rule. Ms. Unitus replied that it might be better in an administrative order. Chief Judge Bell had written an administrative order dated October 19, 2012 on the operations of the entire Court Interpreter Program. This order could be modified.

The Reporter suggested that the State Court Administrator could provide a list, and then the Rule would reference the fact that a list is posted on the Judiciary website. Ms. Harris commented that this would be much clearer. Ms. Unitus noted that it would be clearer and helpful to the Court Interpreter Program. The Chair inquired if it would be better in an administrative order. Ms. Harris responded that it would be.

Ms. Vaughn referred to the concern that had been raised in the letter from the Public Justice Center regarding the definition of the word "proceedings." If Chief Judge Bell's memorandum was fully incorporated into Rule 1-333, that would

address their concern. The Chair asked if anyone had an objection to putting the list of appropriate proceedings for which an interpreter would be paid by the State into an administrative order, and no one objected. By consensus, the Committee approved putting this list into an administrative order.

The Chair said that another issue to be decided was the time period in subsection (b)(2) for an individual to file an application for the appointment of an interpreter. It had been suggested that instead of the application being filed no later than 30 days before the proceeding for which the interpreter is requested, the time period should be 15 days. The recommendation of the Subcommittee was to keep it at 30 days. Mr. Lowe remarked that he was speaking on behalf of the clerks and many of the court administrators around the State. They had agreed with the recommendation to keep the time period at 30 days, because many of the rural counties have difficulty finding interpreters and getting them scheduled. The extra 15 days is a big help to many of the more rural counties in obtaining interpreters.

The Chair asked if anyone had a motion to change the time period in subsection (b)(2) of Rule 1-333 for filing an application for the appointment of an interpreter. Ms. Vaughn explained that the concern of the Public Justice Center was that many of the actions that are brought to trial occur less than 30 days after they are filed, including most landlord-tenant actions. She asked whether there could be a compromise on the

issue of the time period where the number of days would be lowered to reflect the reality of the practice. The Chair pointed out that subsection (b)(2) requires the application to be filed not later than 30 days before the proceeding for which the interpreter is requested to the extent practicable (emphasis added). Ms. Vaughn acknowledged the problems in the rural counties and suggested that the time period could be lowered to 15 days. Then language could be included in subsection (b)(2) that would provide that this would be to the extent that the court is able to provide an interpreter, and if not, the time could be extended. The Chair pointed out that this would be building in an appellate issue.

The Reporter commented that with the deletion of the sanctions provision and with the language "to the extent practicable," the application could be filed two days ahead of the proceeding. Ms. Unitus said that the request could be made at the last minute, because her office would do everything they can to provide an interpreter.

Ms. Vaughn remarked that in its letter, the Public Justice Center had suggested some language about what happens when a request comes in late. She asked if Rule 1-333 could clarify what is implied in subsection (b)(4), which is that the court will make diligent efforts to appoint an interpreter, since the time period will be not later than 30 days before the proceeding for which the interpreter is requested. She added that she was aware that this is already the practice, but the Rule should not

imply that if a request comes in late, no interpreter will be assigned. If this minor change could be made, it would be clearer that every effort should be made to secure an interpreter.

The Chair said that the new language to be added to subsection (b)(4) would be: "The court shall make diligent efforts to secure an interpreter." By consensus, the Committee approved the addition of this language.

Ms. Vaughn told the Committee that she had one more request. Earlier in the meeting she had referred to the issue of waiver. She reiterated that the Model Interpreter Act, which is from the National Center for State Courts and the American Bar Association, as well as many other states have the waiver language, which ensures that there is a knowing and intelligent waiver on the record of the withdrawal of the services of an interpreter. This would be if an interpreter had been requested, and then the person requesting one withdraws the request.

Ms. Vaughn said that the Subcommittee had originally included waiver language in Rule 1-333, but it had been deleted by the Rules Committee at a previous meeting. She remarked that she wanted to bring this issue up again and asked the Committee to consider putting the language back into the Rule. The concern is LEP individuals being pressured not to obtain the services of an interpreter. The language would be a safeguard to ensure that the waiver is knowing and intelligent.

The Chair noted that the Subcommittee had been concerned

about what has happened when Rule 4-215, Waiver of Counsel has been applied. The Rule provides for the court to conduct a waiver inquiry, and if one question is missed, the case often will be reversed. The Subcommittee did not want to build this into Rule 1-333. The Chair asked if anyone had a motion to put waiver language back into the Rule. None was forthcoming.

Ms. Unitus brought up the issue of notification again. When the court interpreter program originally started, it was on the basis of a person having to request an interpreter. Times have changed. A possible way to resolve this issue concerning requests for interpreters is that the court could send out some kind of form or notice indicating that interpreters are available if they are needed. The Chair inquired how the people needing interpreters would notify the court. Ms. SevillaSomoza replied that the notice could state that if someone needs an interpreter, he or she should call a specific telephone number or fill out a form. The Chair said that no rule is necessary to institute that procedure.

Ms. Ortiz expressed the view that Rule 1-333 should be changed to permit people to file a form rather than to require it. Ms. Unitus remarked that this would be another option so that people know that the court is as accessible as possible. Ms. Ortiz suggested that in subsection (b)(2), the first sentence could use the language "...may file an application..." instead of "...shall file an application...". If a court employee became aware that someone needed an interpreter, the employee could

request one, or if the court itself became aware, the court could arrange for an interpreter.

The Chair pointed out how difficult it would be to get this information about requesting an interpreter as a legend on summonses and other forms. It can be done administratively, but in the past when this had been suggested, the answer was that there is no more room on the forms. The same issue came up regarding notification about cell phones in the courthouse. The AOC said that it could not be done, because there was no room on their forms to put anything else. Ms. SevillaSomoza asked why a form for requesting an interpreter could not be sent with the other court paperwork. The Chair inquired how useful this would be if the person getting the form did not speak English. Ms. SevillaSomoza responded that the person would not be able to read any of the court documents, and usually what happens is that the person asks a neighbor to read the documents to him or her. The Chair reiterated that no change to the Rule is necessary.

Mr. Zarbin said that he wanted to put everyone's minds at ease, especially those who are not that familiar with the courthouses. In a majority of the courthouses, even when people do not timely request interpreters, many of them are already in the courthouse. Prince George's County has an excellent group of interpreters. Judge Weatherly clarified that Mr. Zarbin's comments apply only to interpreters of Spanish.

Mr. Zarbin noted that when the need arises for an interpreter in a more unique language, many of the people who

require one have an attorney who knows how to handle this situation. If the attorney is late in requesting an interpreter, it would have to be addressed. In a Workers' Compensation Commission case, the attorneys have to send an e-mail requesting an interpreter in their case. If the attorney does not timely request an interpreter, often the attorneys cooperate to deal with the problem. Mr. Zarbin added that he did not want people to think that this is a huge problem.

Ms. Day remarked that in the rural counties, the judges bend over backwards to make sure that people in court understand what is going on. Mr. Zarbin added that this is true for the courts on the Eastern Shore of Maryland as well. Judge Price commented that no judge wants to have litigants and witnesses not understanding the proceedings when they are before the judge. The judge will make every effort to ensure that the litigants and witnesses comprehend.

Ms. Vaughn thanked the Committee for their attention.

By consensus, the Committee approved Rule 1-333 as amended.

Agenda Item 5. Consideration of proposed new Rule 19-215.1 (Special Authorization for Military Spouse Attorneys) and amendments to proposed new Rule 19-605 (Obligations of Attorneys)

The Chair presented new Rules 19-215.1, Special Authorization for Military Spouse Attorneys and 19-605, Obligations of Attorneys, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 200 - ADMISSION TO THE BAR

ADD new Rule 19-215.1, as follows:

Rule 19-215.1. SPECIAL AUTHORIZATION FOR MILITARY SPOUSE ATTORNEYS

(a) Definition

As used in this Rule, a "military spouse attorney" means an attorney admitted to practice in another state but not admitted in this State, who is married to an active duty servicemember of the United States Armed Forces and who resides in the State of Maryland due to the servicemember's military orders for a permanent change of station to Maryland or a state contiguous to Maryland.

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

(b) Eligibility

Subject to the conditions of this Rule, a military spouse attorney may practice in this State if the individual:

(1) is a graduate of a law school meeting the requirements of Rule 19-201 (a)(2);

(2) is a member in good standing of the Bar of another State;

(3) will practice under the direct supervision of a member of the Bar of this State;

(4) has not taken and failed the Maryland bar examination or attorney examination;

(5) has not had an application for admission to the Maryland Bar or the Bar of any State denied on character and fitness

grounds;

(6) certifies that the individual will comply with the requirements of Rule 19-605; and

(7) certifies that the individual has read and is familiar with the Maryland Rules of civil and criminal procedure, the Maryland Rules of Evidence, and the Maryland Attorneys' Rules of Professional Conduct, as well as the Maryland laws and Rules relating to any particular area of law in which the individual intends to practice.

Cross reference: See Rule 19-305.1 for the responsibilities of a supervising attorney.

(c) Proof of Eligibility

To obtain authorization to practice under this Rule, the military spouse 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 19-201 (a)(2);

(2) a list of states where the military spouse attorney is admitted to practice, together with a certificate of the highest court of each such state certifying that the attorney is a member in good standing of the Bar of that state;

(3) a copy of the servicemember's military orders reflecting a permanent change of station to a military installation in Maryland or a state contiguous to Maryland;

(4) a copy of a military identification card that lists the military spouse attorney as the spouse of the servicemember;

(5) a statement signed by the military spouse attorney certifying that the military spouse attorney:

(A) resides in Maryland;

(B) has not taken and failed the

Maryland bar examination or attorney examination;

(C) has not had an application for admission to the Maryland Bar or the Bar of any State denied on character and fitness grounds;

(D) will comply with the requirements of Rule 19-605; and

(E) has read and is familiar with the Maryland Rules of civil and criminal procedure, the Maryland Rules of Evidence, and the Maryland Attorneys' Rules of Professional Conduct, as well as the Maryland law and Rules relating to any particular area of law in which the individual intends to practice; and

(6) a statement signed by the supervising attorney that includes a certification that (A) the military spouse attorney is or will be employed by or associated with the supervising attorney's law firm or the agency or organization that employs the supervising attorney, and (B) an agreement that within ten days after cessation of the military spouse attorney's employment or association, the supervising attorney will file the notice required by section (e) of this Rule and that the supervising attorney will be prepared, if necessary, to assume responsibility for open client matters that the individual no longer will be authorized to handle.

(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 for a period not to exceed two years, subject to the automatic termination provisions of section (e) of this Rule. The certificate shall state the effective date and the expiration date of the special authorization to practice.

(e) Automatic Termination

(1) Cessation of Employment

Authorization to practice under this Rule is automatically terminated upon the earlier of (A) the expiration of two years from the issuance of the certificate of authorization, or (B) the expiration of ten days after the cessation of the military spouse attorney's employment by or association with the supervising attorney's law firm or the agency or organization that employs the supervising attorney unless, within the ten day period, the military spouse attorney files with the Clerk of the Court of Appeals a statement signed by another supervising attorney who is a member of the Bar of this State in compliance with subsection (c)(6) of this Rule. Within ten days after cessation of the military spouse attorney's employment or association, the supervising attorney shall file with the Clerk of the Court of Appeals notice of the termination of authorization.

(2) Change in Status

A military spouse attorney's authorization to practice law under this Rule automatically terminates 30 days after (A) the servicemember spouse is no longer a member of the United States Armed Forces, (B) the servicemember and the military spouse attorney are divorced or their marriage is annulled, or (C) the servicemember receives a permanent transfer outside Maryland or a state contiguous to Maryland, except that a servicemember's assignment to an unaccompanied or remote assignment does not automatically terminate the military spouse attorney's authorization, provided that the military spouse attorney continues to reside in Maryland. The military spouse attorney promptly shall notify the Clerk of the Court of Appeals of any change in status that pursuant to this subsection terminates the military spouse attorney's authorization to practice in Maryland.

Committee note: A military spouse attorney who intends to practice law in Maryland for more than two years should apply for admission to the Maryland Bar. The bar examination process may be commenced and completed while the military spouse attorney is practicing under this Rule.

(f) Disciplinary Proceedings in Another Jurisdiction

Promptly upon the filing of a disciplinary proceeding in another jurisdiction, a military spouse attorney shall notify the supervising attorney of the disciplinary matter. A military spouse attorney who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel and the Clerk of the Court of Appeals promptly of the discipline, resignation, or inactive status.

(g) Revocation or Suspension

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

(h) Special Authorization not Admission

Military spouse attorneys authorized to practice under this Rule are not, and shall not represent themselves to be, members of the Bar of this State.

(i) Rules of Professional Conduct; Required Payments

A military spouse attorney authorized to practice under this Rule is subject to the

Maryland Attorneys' Rules of Professional Conduct and is required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund.

(j) Reports

Upon request by the Administrative Office of the Courts, a military spouse attorney authorized to practice under this Rule 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.

Rule 19-215.1 was accompanied by the following Reporter's note.

An organization of attorneys married to members of the United States Armed Forces has requested a change to the Maryland Bar Admission Rules to admit without examination qualified attorneys who are married to active duty servicemembers stationed in Maryland or a nearby jurisdiction. Qualifications include that the attorney be admitted to the bar of at least one other state and be in good standing in all states in which he or she is admitted.

The Attorneys and Judges Subcommittee recommends the addition of a Rule permitting qualified military spouse attorneys to practice law in Maryland for a period not to exceed two years without being admitted to the bar provided that they are under the supervision of an attorney who is a member of the Maryland bar.

Requirements and other provisions included in proposed new Rule 19-215.1 are based upon requirements applicable to out-of-state attorneys employed by programs providing legal services to low-income individuals pursuant to Rule 19-215, L.R. 701 of the Rules of the United States District Court for the District of Maryland, and

provisions suggested by the proponents of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

AMEND Rule 19-605 (a)(1) to add a reference to Rule 19-215.1, as follows:

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 (i), 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 or 19-215.1, 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) of this Rule 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.

See the Reporter's note to Rule 19-215.1.

The Chair told the Committee that there is a national organization of attorneys who are married to active duty members of the armed forces, the Military Spouse J.D. Network ("The Network"). Representatives of this organization had made a presentation to the Attorneys and Judges Subcommittee. Their point was that military personnel get reassigned every two to three years, and his or her spouse and family are constantly moving. If the spouse is an attorney who is admitted to practice in some state and the military spouse gets transferred to Maryland, once the family moves to Maryland, the attorney spouse cannot practice law here. The spouse may not have been barred in the state he or she last practiced in for the requisite time to take the attorney's examination in Maryland. The military spouses want to be able to practice in Maryland for up to two years under certain conditions, so long as the spouse is stationed in Maryland.

The Chair said that Governor O'Malley, Lieutenant Governor

Brown, and eight members of the House of Delegates sent letters to the Committee in support of the Military Spouse J.D. Network's position. Several of the attorney spouses came to the meeting and made a very effective presentation. What is before the Committee is a proposed Rule allowing for military spouse attorneys to practice in Maryland.

Jennifer Talley, Esq., told the Committee that she was at the Rules Committee meeting with Lawrencia Pierce, Esq. and Kathleen Pennington, Esq. They are all part of the the Network. Ms. Talley said that she was from New Jersey and had come to Maryland about a year ago. She still worked for her law firm in New Jersey by telecommuting. Many military spouse attorneys do not have that flexibility. When they come to a new state, they do not have a network of contacts. The biggest problem for them is that they have to apply to take the bar exam. In Maryland, the military spouse would have to wait until February or July to take the exam. By the time the person takes the exam, a great amount of time has gone by. Then in the next year or two, it is time to move to another jurisdiction.

Ms. Talley remarked that she and the other military spouse attorneys were very appreciative of the time that the Subcommittee had spent on this issue. They were very happy with how quickly the draft rule came out. The time and the attention that had been spent on the rule was incredible. They were grateful to be at the meeting today and were available to answer questions.

Mr. Bowie said that he presumed that with the safeguards that would be built into Rule 19-215.1, since the person who would be allowed to practice has been admitted to the bar of another state and has had no disciplinary issues, the Rule is not really an exception to practice requirements in Maryland. One aspect of this that had occurred to Mr. Bowie was that if the attorney spouse gets divorced from the spouse serving in the military, the ability to practice law in Maryland would be eliminated.

Mr. Bowie commented that there are two separate issues. One is that the attorney spouse is allowed to practice law in Maryland for the two-year time period at which point the person would have to take the Maryland bar. If the spouses get divorced, the military spouse attorney would no longer be allowed to practice, but this would not be on the merits. Ms. Talley commented that she had not been able to attend the Subcommittee meeting. Ms. Pierce had attended, and she may be able to speak on this issue. The position of the Network would be that if the servicemember is in Maryland on orders, that is when the Rule applies.

Ms. Pierce asked if Mr. Bowie's concern was the exception or the fact that if the spouses get divorced, then the Rule no longer applies. Mr. Bowie replied that his concern was that the Rule reflects a tight system with an exception, but it is not a major exception, because the military spouse attorneys are so qualified elsewhere. A qualified attorney is getting admitted

with a slightly streamlined step. This makes a great deal of sense, because the military spouse attorneys have to move so frequently. What does not make sense is that if someone is given this right to practice because of their abilities, it becomes punitive if the fact of the divorce takes away this right. If the military spouse attorney can practice for two years, and then he or she has to take the Maryland bar, this solves the problem, and the divorce becomes irrelevant.

Ms. Pierce remarked that when Rule 19-215.1 had been discussed at the Subcommittee meeting, this issue had been raised. The way that they had explained it was that since they are part of the Network, they try to make sure that the attorney spouses are represented, and they compromise to safeguard that interest. They had agreed that the divorce aspect of this is punitive, but in the past, this issue had resulted in problems in getting this type of rule approved, so they had compromised on this point. Another issue is when the military servicemember retires or becomes a wounded warrior. The divorce aspect of the Rule was an effort to compromise on the part of the Network attorneys. They agreed that the military spouse attorneys should not be penalized if the servicemember spouse is wounded or retires.

Mr. Bowie noted that the compromise seemed to be designed to facilitate this special exception. It acknowledges to the Court of Appeals that if the military spouse attorneys are given the right to practice, they had compromised to allow the right to be

withdrawn in the event of a divorce. Ms. Pierce explained that in some other states, the argument had been made that the right was attached to the fact that the military spouse attorney was present in the state with the servicemember spouse. Their concern was that if the individual is admitted to practice, but within a year or two, the couple is divorced, the right is automatically eliminated, because the rule is attached to that status. It does not go toward the safeguard, which is the overall purpose of the Rule, but it has been the basis for most of the opposition to this type of rule. They would be very much interested in having this part of Rule 19-215.1 stricken, but it has caused opposition in the past, and there has not been a great deal of evidence to justify that it would impede the public interest.

The Chair pointed out that if the divorce aspect is eliminated from the Rule, the definition of "military spouse attorney" would have to be changed, because it requires that the attorney is married to an active duty service member.

Mr. Frederick commented that the presentation before the Subcommittee had indicated that the predicate for allowing this type of practice was that when someone is a spouse of an active duty military person and he or she has been ordered to go to Maryland or to a contiguous jurisdiction, those orders are not like getting a corporate promotion. However, there are existing Rules, such as Rule 5.5, Unauthorized Practice of Law; Multijurisdictional Practice of Law; and Rule 8.5, Disciplinary

Authority; Choice of Law, that refer to attorneys admitted in other jurisdictions coming in to Maryland. The State Board of Law Examiners had presented a plethora of reasons that Maryland should not be so liberal in allowing in attorneys admitted in other jurisdictions.

Mr. Frederick noted that Rule 19-215.1 was an outstanding compromise and was extraordinarily well-drafted. It reflected the sense of the Subcommittee. He remembered discussing with the Chair that Mr. Frederick had thought that it was unfortunate that if something were to happen with the servicemember spouse, the right of the other spouse to practice law would be eliminated. Divorce does not happen automatically. When there are problems, the spouses have some idea that it may be impending, and it takes some time to get through the courts. It takes nine months to apply for, take, and pass the Maryland bar examination and then get sworn in. Rule 19-215.1 gives people the right to practice in Maryland for two years under clearly defined rules, because supervising attorneys have obligations that are set forth in Rule 5.1, Responsibilities of Partners, Managers, and Supervisory Lawyers. Those who are being supervised have obligations that are set forth in Rules 5.2, Responsibilities of a Subordinate Lawyer, and 5.3, Responsibilities Regarding Nonlawyer Assistants. The Court of Appeals decision in *Attorney Grievance v. Kimmel and Silverman*, 405 Md. 647 (2008) delineates with particularity what the obligations are. The Subcommittee was of the view that Rule 19-215.1 is a fair compromise.

Ms. Pierce responded that the aspect of this that had been of concern was the overall safety of the public. She and her colleagues wanted to reiterate that the majority of the military spouse attorneys fall into a certain age group and are barred in at least two other states. Whenever they come in to another state, they go through another character and fitness examination. Not only are the attorneys in good standing in the other states, there is the additional safeguard of them having undergone the character and fitness examinations of those states.

Mr. Sullivan asked how many military spouse attorneys would be eligible under proposed Rule 19-215.1 to practice in Maryland. Ms. Talley responded that their Network has about 1,000 members across the entire United States. In Maryland, there may be about 80 to 100 military spouse attorneys. Many of their members are government employees, and they are sometimes able to transfer within the government. Getting into private practice in a new jurisdiction can be difficult. Rule 19-2l5.1 eliminates one barrier. What is beneficial about the Rule is that it provides that the attorney can practice for two years. During that time, the attorney can study and take the Maryland bar exam if the person would like to continue practicing law in Maryland. The Rule alleviates the time gap where the attorney would be unemployed. It gives military spouse attorneys the opportunity to do part-time work or full-time work while they are studying for the bar exam.

By consensus, the Committee approved Rule 19-215.1 as

presented.

Agenda Item 7. Consideration of amendments to proposed new Rule 16-204 (Reporting of Criminal and Motor Vehicle Information)

The Chair presented Rule 16-204, Reporting of Criminal and Motor Vehicle Information, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

AMEND Rule 16-204 (a)(2) to add a new subsection (B) pertaining to the reporting of a conviction under a certain law and a citation issued under a certain law, to add the reporting of a certain crime to subsection (C), and to add a new subsection (E) pertaining to the reporting of adjudications of delinquency and findings that a child has committed a delinquent act by reason of a violation of certain motor vehicle laws, as follows:

Rule 16-204. REPORTING OF CRIMINAL AND MOTOR VEHICLE INFORMATION

(a) Reporting Requirements

A clerk or the Judicial Information Systems unit of the Administrative Office of the Courts, from data retrieved from the trial courts case management systems, shall:

(1) send to the Central Repository of Criminal History Record Information of the Department of Public Safety and Correctional Services reportable events, as defined in Code, Criminal Procedure Article, §10-215, with respect to the list of offenses agreed

to by the Secretary of the Department of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals, or their respective designees, for purposes of completing criminal history record maintained by Central Repository of Criminal History Record Information; and

(2) report to the State Motor Vehicle Administration (A) each conviction, acquittal, forfeiture of bail, or dismissal of an appeal in a case involving a violation of the Maryland Vehicle Law or other traffic law or ordinance; (B) each conviction under Code, Criminal Law Article, §7-104 and each citation issued under Code, Criminal Law Article, §10-119 for a violation of Code, Criminal Law Article, §10-113; ~~(B)~~ (C) each conviction of manslaughter, life-threatening injury, or assault committed by means of a motor vehicle; ~~and~~ ~~(C)~~ (D) each conviction of a felony involving the use of a motor vehicle; and (E) each adjudication of delinquency and finding that a child has committed a delinquent act by reason of a violation of a law involving the use of motor vehicles pursuant to Code, Courts Article, §3-8A-23.

(b) Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings

Criminal history record information contained in court records of public judicial proceedings is subject to inspection in accordance with Rules 16-901 through 16-911.

Cross reference: See Code, Courts Article, §§2-203 and 13-101 (d) and (f), Criminal Procedure Article, §§10-201, 10-214, 10-217, and State Government Article, §§10-612 through 10-619. For the definition of "court records" for expungement purposes, see Rule 4-502 (d). For provisions governing access to court records generally, see Title 16, Chapter 900.

Committee note: This Rule does not contemplate the reporting of parking violations.

> Source: This Rule is derived from former Rules 16-308 and 16-503 (2013).

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

> This Rule is a consolidation of former Rules 16-308 and 16-503; reporting requirements are slightly different for the circuit courts and the District Court because of difference in the matters handled by the respective courts. The lengthy cross reference and the current Committee note are suggested for deletion. A sentence is added to the other cross reference to call attention to the new rules on access to "court records."
>
> An attorney pointed out that Rule 16-204 does not include some statutory provisions requiring the court to report to the Motor Vehicle Administration motor vehicle-related crimes as well as adjudications of delinquency and findings that a child has committed a delinquency act by reason of violations of motor vehicle laws. Proposed amendments to the Rule fill in the missing information.

The Chair explained that the purpose of the changes to Rule 16-204 was to comply with some new statutory requirements. The Rule also combines Rules 16-308, Court Information System, and 16-503, Court Information System, into one Rule. Ms. Libber, an Assistant Reporter, told the Committee that she had searched through the statutes looking for provisions requiring the court to report certain motor vehicle-related crimes to the Motor Vehicle Administration. This matter had been raised by a member of the bar. The prior Rules did not have all of the statutory references.

By consensus, the Committee approved Rule 16-204 as presented.

Judge Love thanked the Committee for allowing him to serve as a Committee member. He particularly thanked the Reporter; Ms. Libber; Cathy Cox, Administrative Assistant to the Committee; and the Chair for their help during his service on the Committee.

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