

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held at the Sheraton International Hotel, BWI Airport, 7032 Elm Road, Maryland on January 3, 2003.

Members present:

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

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Robert L. Dean, Esq.
Hon. James W. Dryden
Hon. Ellen M. Heller
Harry S. Johnson, Esq.
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Joyce H. Knox, Esq.

Hon. William D. Missouri
Hon. John L. Norton, III
Anne C. Ogletree, Esq.
Debbie L. Potter, Esq.
Larry W. Shipley, Clerk
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Del. Joseph F. Vallario, Jr.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Allan J. Gibber, Esq.
Kathleen Masterton, Esq., Office of the Attorney General
Professor John A. Lynch, University of Baltimore School of Law
Kelley O'Connor, Court Information Office
Steven P. Lemmey, Esq., Investigative Counsel, Commission on
Judicial Disabilities
Elizabeth B. Veronis, Esq., Court Information Office
Sally W. Rankin, Administrative Office of the Courts
Tyson Bennett, Esq., Maryland State Bar Association

The Chair convened the meeting. He wished the Rules Committee members a happy new year. He said that the minutes of the meetings of September 6, 2002 and October 11, 2002 had been

distributed, including an errata sheet pertaining to both sets of minutes, and he asked if there were any additions or corrections to these minutes. Mr. Klein responded that he had prepared a correction sheet for page 54 of the October minutes. He moved that the September minutes be approved as presented and that his suggested changes be made to the October minutes. The motion was seconded, and it carried unanimously.

Agenda Item 1. Consideration of certain proposed rules changes pertaining to Title 6, Settlement of Decedents' Estates - Amendments to: Rule 6-105 (Definitions), Rule 6-122 (Petitions), Rule 6-209 (Notice of Appointment), Rule 6-211 (Proceedings After Publication) Rule 6-461 (Applicability of Title 2 Rules), New Rule 6-464 (Transfer of Jurisdiction to Circuit Court), and New Rule 6-465 (Striking of Notice of Appeal by Orphans' Court)

Mr. Sykes told the Committee that the amendments to the Probate Rules were the result of suggestions made by consultants to the Probate and Fiduciary Subcommittee.

Mr. Sykes presented Rule 6-105, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-105 to modify the definition of "certified mail" to drop the requirement of delivery being restricted to the addressee and to add a definition of "petition," as follows:

Rule 6-105. DEFINITIONS

The definitions contained in Code, Estates and Trusts Article, §1-101 apply in this Title. The following definitions also apply:

(a) Certified Mail

"Certified mail" means mail deposited with the United States Postal Service ~~as restricted delivery mail, with postage prepaid, and return receipt requested, addressed to the addressee at the address last known to the sender, with delivery restricted to the addressee.~~ with postage prepaid, and return receipt requested, addressed to the addressee at the address last known to the sender, with delivery restricted to the addressee.

Cross reference: Code, Estates and Trusts Article, §1-103 (a).

(b) Clerk

"Clerk" when used in any rule incorporated by reference into this Title means the register of wills.

(c) Code

"Code" means the Annotated Code of Public General Laws of Maryland as from time to time amended.

(d) Person

"Person" includes any individual, partnership, joint stock company, unincorporated association or society, municipal or other corporation, the State, its agencies or political subdivisions, any court, or any other governmental entity.

(e) Petition

"Petition" means an application to the court, including a motion, for an order. Committee note: Although the caption of an application to the court is not as important as its content, the definition of "petition" is not meant to refer to all motions in Title 2, but only to those permitted to be filed

pursuant to Title 6.

Rule 6-105 was accompanied by the following Reporter's Note.

The consultants to the Probate/Fiduciary Subcommittee are requesting that the definition of "certified mail" in section (a) of Rule 6-105 be conformed to the definition of "certified mail" in Rule 1-202, Definitions. The change would delete the requirement that the delivery of certified mail is restricted to delivery to the addressee. This will save probate estates money because the requirement that the mail must be delivered only to the addressee is a more expensive mailing procedure. The consultants point out that often the U.S. Post Office is not even able to effectuate the directed addressee procedure, so the modified procedure may result in more deliveries of the certified mail. The Rules that refer to "certified mail" include: Rules 6-105, 6-125, 6-210, 6-302, 6-317, 6-412, 6-432, and 6-452.

The consultants also request that a definition of "petition" be added to the Rule. Many papers filed in orphans' court are captioned either as a "motion" or as a "petition." The addition of the definition of the word "petition" is to make clear that either option is acceptable.

Mr. Sykes explained that the Subcommittee is proposing to eliminate the requirement in section (a) that the term "certified mail" must include restricted delivery to the addressee. The purpose of this change is to eliminate the expense of delivery to the addressee only, and to eliminate the frustration of being unable to deliver the mail to the addressee only. By consensus, the Committee approved the change to section (a).

Mr. Sykes pointed out that a new section (e) is being

proposed to clarify that a request to the court for action couched in terms of a "motion" instead of a "petition" is acceptable. The change is cosmetic. The Vice Chair commented that this change is not necessary, because section (a) of Rule 6-108, Register of Wills -- Acceptance of Papers, provides that a register of wills shall not refuse to accept for filing any paper on the ground that it is not in the form mandated by a Rule. Mr. Sykes remarked that the addition of section (e) to Rule 6-105 would be useful -- sometimes the orphans' court consists of laymen who are not lawyers, and the new provision will make it clear that a motion is equal to a petition. The Vice Chair expressed the view that the Committee note is confusing. Mr. Sykes responded that the Committee note clarifies that the motions referred to in the Rule are Title 6 motions. The Chair suggested that section (e) could begin as follows: "For purposes of this title, 'petition' means an application ...". Mr. Sykes said that the Style Subcommittee can redraft this provision, and the Committee note will clarify it. The Committee approved the Rule as presented, subject to style changes.

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

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 by adding a paragraph

to the end of section (a) before the affirmation clause and by adding new sections (c) and (d), as follows:

Rule 6-122. PETITIONS

(a) Initial Petition ~~for Probate~~

The Initial Petition ~~for Probate~~ shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF: _____ ESTATE NO: _____

FOR:

- | | | | |
|---|---------------------------------------|-------------------------------------|----------------------------------|
| <input type="checkbox"/> REGULAR ESTATE | <input type="checkbox"/> SMALL ESTATE | <input type="checkbox"/> WILL OF NO | <input type="checkbox"/> LIMITED |
| PETITION FOR PROBATE | PETITION FOR | ESTATE | <u>ORDERS</u> |
| <u>ADMINISTRATION</u> Estate | ADMINISTRATION | Complete | <u>Complete</u> |
| value in excess of | Estate value of | items 2 | <u>item 2 and</u> |
| \$30,000. (If spouse | \$30,000 or less. | and 5 | <u>attach</u> |
| Is sole heir or | (If spouse is | | <u>Schedule C</u> |
| legatee, \$50,000.) | sole heir or | | |
| Complete and attach | legatee, \$50,000.) | | |
| Schedule A. | Complete and attach | | |
| | Schedule B. | | |

The petition of:

Name

Address

Name

Address

Name

Address

Each of us states:

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

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

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

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

and I am not excluded by §5-105 (b) of the Estate and Trusts Article, Annotated Code of Maryland from serving as personal representative.

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

[] none exists; or

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

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

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

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

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

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

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

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

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

[] that only a limited order be issued;

[] that the following additional relief be granted: _____

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

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

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - A

Regular Estate

Estimated Value of Estate and Unsecured Debts

Personal property (approximate value)	\$ _____
Real property (approximate value)	\$ _____
Value of property subject to:	
(a) Direct Inheritance Tax of ____ %	\$ _____
(b) Collateral Inheritance Tax of ____ %	\$ _____
Unsecured Debts (approximate amount)	\$ _____

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

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

.....
(FOR REGISTER'S USE)

Safekeeping Wills _____ Custody Wills _____

Bond Set \$ _____ Deputy _____

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - B

Small Estate - Assets and Debts of the Decedent

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

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

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

2. Allowable funeral expenses are \$ _____; statutory

family allowances are \$ _____; and expenses of administration claimed are \$ _____.

3. Attached is a List of Interested Persons.

4. I acknowledge that, after the expiration of the time for filing claims and subject to the statutory order of priorities and the resolution of disputed claims by the parties or the court, I shall (1) pay all proper claims**, expenses, and allowances not previously paid; (2) if necessary, sell property of the estate in order to do so; and (3) distribute the remaining assets of the estate in accordance with the will, or if none, with the intestacy laws of this State.

Date Personal Representative

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

**NOTE: Proper claims shall be paid pursuant to the provisions of Code, Estates and Trusts Article, §§8-104 and 8-105.

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

Attorney Petitioner Date

Address Petitioner Date

Petitioner Date

Telephone Number Telephone Number (optional)

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

ESTATE NO. _____

SCHEDULE - C

Request for Limited Order

To Locate Assets

To Locate Will

1. The Limited Order is necessary for the following
reasons:

2. I am entitled to the issuance of a limited order
because I am:

a nominated personal representative or

a person interested in the proceedings by reason of

_____ .
The reason why a limited order should be granted is because

_____ .

I solemnly affirm under the penalties of perjury that the contents of the foregoing schedule are true to the best of my knowledge, information, and belief. I further acknowledge that this order may not be used to transfer assets.

_____ <u>Attorney</u>	_____ <u>Petitioner</u>	_____ <u>Date</u>
_____ <u>Address</u>	_____ <u>Petitioner</u>	_____ <u>Date</u>
_____	_____ <u>Petitioner</u>	_____ <u>Date</u>
_____ <u>Telephone Number</u>	_____ <u>Telephone Number (optional)</u>	

.....

(b) Other Petitions

(1) Generally

Except as otherwise provided by the rules in this Title or permitted by the court, ~~an application to the court for an order shall be by petition filed with the register. The~~ and unless made during a hearing or trial, a petition shall be in writing, shall set forth the relief or order sought, and shall

state the legal or factual basis for the relief requested, and shall be filed with the Register of Wills. The petitioner may serve on any interested person and shall serve on the personal representative and such persons as the court may direct a copy of the petition, together with a notice informing the person served of the right to file a response and the time for filing it.

(2) Response

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

(3) Order of Court

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

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

(c) Limited Order to Locate Assets

Upon the filing of a verified petition pursuant to Rule 6-122 (a), the orphans' court may issue a limited order to search for assets titled in the sole name of a decedent. The petition shall contain the name, address, and date of death of the decedent and a statement as to why the limited order is necessary. The limited order to locate assets shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ QUALIFIED ORDER NO. _____

LIMITED ORDER TO LOCATE ASSETS

Upon the foregoing petition by a person interested in the
proceedings, it is this _____ day of _____,
by the Orphans' Court of _____
(county), Maryland, ordered that:

1. The following institutions shall disclose to

_____ the assets and the values
(Name of petitioner)

thereof, titled in the sole name of the above decedent:

_____ (Name of financial institution) _____ (Name of financial institution)

_____ (Name of financial institution) _____ (Name of financial institution)

_____ (Name of financial institution) _____ (Name of financial institution)

2. THIS ORDER MAY NOT BE USED TO TRANSFER ASSETS.

(d) Limited Order to Locate Will

Upon the filing of a verified petition pursuant to Rule
6-122 (a), the orphans' court may issue a limited order to a
financial institution to enter the safe deposit box of a decedent
in the presence of the Register of Wills or the Register's
authorized deputy for the sole purpose of locating the decedent's
will, and if it is located, to deliver it to the Register of

Wills or the authorized deputy. The limited order to locate a will shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ LIMITED ORDER NO. _____

LIMITED ORDER TO LOCATE WILL

Upon the foregoing Petition, it is this _____ day of
_____, _____ by the Orphans' Court of
_____ (County), Maryland, ordered that:

_____, located at
(Name of financial institution)

_____ enter the
(Address)

safe deposit box titled in the sole name of _____

_____, in the presence of
(Name of decedent)

the Register of Wills or the Register's authorized deputy for the
sole purpose of locating the decedent's will, and if the will is
located, deliver it to the Register of Wills.

Committee note: This procedure is not exclusive. Banks can rely
on this or on the procedure set out in Code, Financial
Institutions Article, §12-603.

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

A committee of consultants to the Probate/Fiduciary Subcommittee is recommending a reorganization of Rule 6-122 to include a section pertaining to limited orders, which are already in use in many jurisdictions. To put this into place, changes to section (a) are being proposed that would add (1) a new column listing "limited orders," as a choice on the petition which would now be titled as "Petition" instead of "Petition for Probate" and (2) a new listing in the "wherefore" clause at the end of the initial petition. New sections (c) and (d) and the pertinent forms pertaining to limited orders would be added.

Allan Gibber, Esq., one of the consultants, noted that in many cases, the registers are not able to close an estate because the personal representative has not indicated whether all of the claims have been paid and whether distribution of the estate has been made. The language added by the probate consultants to section (a) after the proposed Schedule C and before the affirmation clause provides for the personal representative to acknowledge that he or she has performed all of the necessary duties, so that the register can close an estate after the expiration of the time for filing claims. The language in the acknowledgment paragraph is derived from section (a) of Rule 6-211, Proceedings After Publication.

Mr. Sykes pointed out that section (a) has been changed, because the first petition filed in a probate estate is not always a petition for probate. The Subcommittee recommends adding the word "initial" before the word "petition." Mr. Sykes pointed out that under the caption "REGULAR ESTATE PETITION FOR ADMINISTRATION," the word "legatee" is misspelled. Besides the original three categories, it is also possible that a petition could ask for a limited order to search for a safe deposit box or

for a will. The hope is that petitioners will be handed a separate form pertaining to the appropriate request. A reference to a limited order has been added to the list of relief that the personal representative may request. This appears after the sentence beginning with the word "WHEREFORE."

Mr. Sykes noted that a significant amendment to the Rule is item #4 in Schedule B. The new language acknowledges all of the duties of the personal representative and is designed to take the place of the certificate of compliance filed pursuant to Rule 6-211, Proceedings After Publication. Many personal representatives are not filing these certificates. The new language clarifies that the personal representative's duties are subject to the statutory order of priorities and the resolution of disputed claims by the parties. Schedule C is new, providing a form for requesting a limited order to locate assets or to locate a will. Mr. Sykes pointed out that the form states at the beginning: "The limited order is necessary for the following reasons...", and it also provides "The reason why a limited order should be granted is because ...". It is not necessary to have both of these provisions. The Style Subcommittee can redraft Schedule B, deleting one of these. The Committee agreed by consensus to Mr. Sykes' suggestion.

Section (b) adds the concept that a motion made during a hearing or trial is exempted from the requirement that it be in writing, and it adds the requirement that a petition shall be filed with the Register of Wills.

Section (c) is new. It prescribes the form for the limited order to locate assets. The form makes it clear that it is not used to transfer assets.

Section (d) prescribes the form for the limited order to locate a will. There is another statutory procedure set out in Code, Financial Institutions Article, §12-603 that may be used to obtain access to bank safe deposit boxes, and the new provision clarifies that it is not exclusive. The arrangement generally is voluntary, as long as the bank is willing to cooperate. If the bank is not willing, the petitioner may need a court order.

The Chair suggested that in item 4, at the end of Schedule B, the first three words, "I acknowledge that," should be deleted so that the paragraph begins: "After the expiration of the time ... I shall" The deletion makes it clear that the paragraph is a pledge by the personal representative. The Committee agreed by consensus to this change.

The Committee approved the Rule as amended.

Mr. Sykes presented Rule 6-209, Notice of Appointment, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-209 (a) to change the time for filing an objection to the probate of a will, as follows:

Rule 6-209. NOTICE OF APPOINTMENT

(a) Notice

When notice of appointment is required to be published by the order of the register, the personal representative shall file the notice in duplicate in the following form:

(FILE IN DUPLICATE)

(name and address of
attorney)

SMALL ESTATE

NOTICE OF APPOINTMENT

Estate No. _____

NOTICE TO CREDITORS

NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____.

Notice is given that _____
(name and address)

was on _____ appointed personal
(date)

representative of the small estate of _____

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

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

All persons having any objection to the appointment ~~(or to the probate of the decedent's will)~~ shall file their objections with the Register of Wills within 30 days. All persons having an objection to the probate of the will shall file their objections with the Register of Wills within six months after the date of publication of this Notice.

All persons having claims against the decedent must serve their claims on the undersigned personal representative or file them with the Register of Wills with a copy to the undersigned on or before the earlier of the following dates:

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

(2) Thirty days after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that the claims will be barred unless the creditor presents the claim within thirty days from the mailing or other delivery of the notice. Any claim not served or filed within that time, or any extension provided by law, is unenforceable thereafter.

Personal Representative(s)

True Test Copy

Name and Address of Register
of Wills for _____

Name of newspaper designated by personal representative:

(b) Modification of Form

If the initial appointment is made under judicial probate, this form may be modified to delete reference to the notice of the right to object to the appointment of the personal representative or to the probate of the decedent's will, as applicable.

(c) Publication

The register shall cause the notice to be published once in a newspaper of general circulation in the county of appointment.

(d) Certificate of Publication

Within 60 days after publication, the personal representative shall cause to be filed with the register a certification that the required newspaper notice has been published.

Cross reference: Code, Estates and Trusts Article, §§7-103 and 5-604 (b); Rule 6-401.

Rule 6-209 was accompanied by the following Reporter's Note.

The consultants to the Probate Subcommittee recommend changing the time period for filing an objection to the probate of a will because the existing 30-day period is inconsistent with Code, Estates and Trusts Article, §5-207, which provides for six months to file a caveat proceeding.

Mr. Sykes explained that the suggested change is to section (a). The consultants requested this change, because the 30-day period for objecting to the probate of a will is inconsistent with Code, Estates and Trusts Article, §5-207. The new language changes the time for filing an objection to within six months after the date of notice of publication. The amendment will put the administration of a small estate on a par with a regular estate as to the time for objecting to the probate of the will.

Mr. Sykes noted that Code, Estates and Trusts Article, §5-607, Applicability of Other Provisions of Article, provides: "Except to the extent inconsistent with the letter and spirit of this subtitle, all other provisions of the estates of decedents law shall be applicable to a small estate." Mr. Sykes observed that another approach would be to strike the parenthetical language, "or to the probate of the will," and add a Committee note referring to Code, Estates and Trusts Article, §§5-207 and 5-607.

The Vice Chair asked about the notice in the newspaper. Mr. Gibber answered that without the proposed new language, people reading the notice in the newspaper would be confused. Mr. Sykes suggested that the language providing that objections to the appointment of the personal representative must be filed within 30 days should be retained. The language within the parentheses should be stricken, and the new language left in. The Vice Chair inquired as to the meaning of the language providing for the filing of objections within 30 days. The Rule

currently provides that objections should be filed within 30 days after the date of publication of the notice. Mr. Sykes commented that the Style Subcommittee can redraft this language. The Committee approved the Rule as presented subject to restyling to add in the language "after the date of publication of this Notice" after the 30-day time period.

Mr. Sykes presented Rule 6-211, Proceedings After Publication, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-211 by deleting sections (b) and (d), as follows:

Rule 6-211. PROCEEDINGS AFTER PUBLICATION

(a) Payments and Distribution

After the expiration of the time for filing claims and subject to the statutory order of priorities and the resolution of disputed claims by the parties or the court, the personal representative shall (1) pay all proper claims, expenses, and allowances not previously paid; (2) if necessary, sell property of the estate in order to do so; and (3) distribute the remaining assets of the estate in accordance with the will or, if none, with the intestacy laws of this State.

~~(b) Certificate of Compliance~~

~~Within 60 days after the expiration of the time for filing claims, the personal representative shall file a Certificate of Compliance with the register in the following~~

form:

{CAPTION}

~~SMALL ESTATE CERTIFICATE OF COMPLIANCE~~

~~The personal representative certifies as follows:~~

~~1. The required publication has been made as evidenced by:~~

~~[] the attached copy of the published newspaper notice; or~~

~~[] the certificate of publication filed or being filed by~~

~~the newspaper (_____).~~

~~Name of Newspaper~~

~~2. There are:~~

~~[] no claims not previously disclosed in this proceeding;~~

~~or~~

~~[] the following claims not previously disclosed, including~~

~~contingent and disputed claims.~~

~~3. All proper claims, expenses and allowances [] have been paid [] have not been paid.~~

~~4. Distribution of the remaining property of the estate [] has been made or [] will be made within thirty (30) days hereof in accordance with the will, or, if none, with the intestacy laws of this State.~~

~~5. The reasons why any of the above has not been completed are: _____~~

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

Date: _____
_____ Personal Representative

Attorney

Address

Telephone Number

Instructions:-

- ~~1. This form must be filed in every small estate proceeding in which publication is required. It shall be filed with the register no later than 60 days after the expiration of the time for filing claims.~~
- ~~2. If final distribution of the estate cannot be completed at the time this Certificate of Compliance is required to be filed, or within 30 days thereafter, a supplemental certificate shall be filed every 30 days until the estate is closed, unless the register or court otherwise directs.~~

~~(c)~~ (b) Objections and Disputed Claims

Objections or disputed claims that have not been resolved or settled by agreement may be pursued by the objecting party or claimant before the court. The court shall decide the objection or dispute after a hearing and shall direct payment from the estate of all proper claims, expenses and

allowances not previously paid, direct distribution of the net estate in accordance with the will or, if none, with the intestacy laws of this State, and take any action it deems necessary.

~~(d) Supplemental Certificate of Compliance~~

~~If final distribution of the estate cannot be completed at the time the initial Certificate of Compliance is required to be filed, or within 30 days thereafter, a supplemental certificate shall be filed every 30 days until the estate is closed, unless the register or court otherwise directs.~~

Cross reference: Code, Estates and Trusts Article, §5-604 (b).

Rule 6-211 was accompanied by the following Reporter's Note.

The addition of the language in section (a) of Rule 6-122, which provides for the personal representative to acknowledge that he or she has performed all of the duties necessary to terminate probate of an estate, eliminates the necessity of the personal representative to file a certificate of compliance and a supplemental certificate of compliance. The consultants to the Probate/Fiduciary Subcommittee therefore are recommending that sections (b) and (d) be deleted from Rule 6-211. The consultants point out that often personal representatives are failing to file these certificates of compliance under the current system.

Mr. Sykes explained that the Subcommittee is proposing to delete the requirement that a certificate of compliance be filed because it is being replaced by the pledge in Rule 6-122. It will eliminate a futile requirement. The Chair asked if the orphans' court judges and the registers of wills are in agreement with this. Mr. Gibber answered that they were the ones who

initiated this change. The Committee approved the Rule as presented.

Mr. Sykes presented Rule 6-461, Applicability of Title 2 Rules, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-461 to provide for the applicability of certain Rules in Title 2, as follows:

Rule 6-461. APPLICABILITY OF TITLE 2 RULES

(a) Discovery Rules

Discovery in accordance with the rules in Title 2, Chapter 400 is available in any court proceeding on a contested matter.

(b) Summary Judgment

Rule 2-501 shall apply to a proceeding in the orphans' court.

(c) Motions to Alter, Amend, or Revise a Final Order

Rules 2-534 and 2-535 shall apply to a final order issued by the orphans' court.

~~(b)~~ (d) Other Rules

In any proceeding in which an issue of law or fact is in controversy, the court, on petition of a party or on its own motion and after notice to all persons who may be affected by the proceeding and an opportunity to be heard, may apply other rules in Title 2. The petition and notice shall state the specific rules in Title 2 that the court is

requested to apply.

Cross reference: Code, Estates and Trusts
Article, §2-104 (a).

Rule 6-461 was accompanied by the following Reporter's Note.

The consultants to the Probate/Fiduciary Subcommittee recommend the addition of sections (b) and (c) to Rule 6-461 to clarify that motions for summary judgment and motions to alter, amend, or revise a final order may be filed in the orphans' court without the necessity of following the procedures in section (d).

Mr. Sykes explained that the addition of two new sections to the Rule incorporates the procedures of Title 2 that are appropriate for Title 6, including summary judgment and motions to alter, amend, or revise a final order.

The Vice Chair pointed out that Rules 2-534, Motion to Alter or Amend a Judgment -- Court Decision, and 2-535, Revisory Power, both contain a time frame after the entry of judgment. How does that apply to Rule 6-461? Does the orphans' court enter a final order like the circuit court? Mr. Gibber answered affirmatively. Mr. Sykes questioned as to whether there is a probate rule which provides the time period for when a judgment becomes effective. The Vice Chair answered that Rule 6-171, Entry of Order or Judgment, provides that the date that the register enters an order or judgment in writing on the file jacket, on a docket within the file, or in a docket book, is the date of the order or judgment. The Vice Chair suggested that the new language of section (c) could provide that Rules 2-534 and 2-535 apply to

orders entered pursuant to Rule 6-171. This would cure the problem with the new language. The Committee agreed by consensus with the Vice Chair's suggestion and approved the Rule as amended, subject to style changes to section (c).

Mr. Sykes presented Rule 6-464, Transfer of Jurisdiction to Circuit Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

ADD new Rule 6-464, as follows:

Rule 6-464. TRANSFER OF JURISDICTION TO
CIRCUIT COURT

(a) Generally

Any interested person may file a motion to transfer jurisdiction from the orphans' court to the circuit court in the county in which the estate is being probated.

(b) Staying of Orphans' Court Orders

Upon the filing of the motion, the circuit court may stay any orders of the orphans' court, pending a determination by the circuit court as to whether it will assume jurisdiction.

(c) Grounds for Transferring Jurisdiction

In making the determination as to whether to transfer jurisdiction, the circuit court shall consider:

(1) whether the parties have been afforded complete and adequate relief;

(2) whether the distribution of assets is complicated; and

(3) if the assumption of jurisdiction can prevent a multiplicity of lawsuits.

(d) Transfer of File to Circuit Court

If the circuit court assumes jurisdiction over the estate, the Register of Wills shall transfer the file to the circuit court, and all subsequent pleadings and papers shall be filed in the circuit court.

(e) Audit of Administration Accounts

After the circuit court assumes jurisdiction over the estate, within the court's discretion, the Register of Wills shall continue to audit administration accounts.

(f) Limitations and Time Periods

All applicable limitations and time periods of Title 6 shall apply to the proceeding.

Source: This Rule is new.

Rule 6-464 was accompanied by the following Reporter's Note.

Allan Gibber, Esq., pointed out a gap in the Probate Rules. There needs to be a procedure for transferring jurisdiction to a circuit court when the orphans' court has failed to provide the necessary relief in a probate matter. New Rule 6-464 closes the gap.

Mr. Sykes told the Committee that Rule 6-464 had generated some dissent within the Subcommittee. The Rule is new and is being proposed to fill a gap in the Probate Rules, which do not contain a procedure for transfer of jurisdiction to the circuit court in a matter in which the orphans' court failed to provide

the necessary relief. Mr. Sykes commented that he was not sure that this gap exists. The Honorable Theresa Lawler, Chief Judge of the Orphans' Court for Baltimore County and a consultant to the Subcommittee, was concerned that the Rule would encourage people to jump to judgment about the ability of the orphans' court. Mr. Sykes said that as he reads the law, the question is not whether the orphans' court failed to provide the necessary relief due to inability or lack of understanding. The question is whether the orphans' court has the power to provide the necessary relief. The circuit court has jurisdiction if the orphans' court is unable to grant effective relief due to the limited powers of the orphans' court. Jurisdiction should transfer if the limited powers of the orphans' court do not permit it to make a reasonable decision. The new Rule permits anyone to ask the circuit court to take jurisdiction.

Mr. Sykes questioned whether jurisdiction can be conferred upon the circuit court by rule. The Vice Chair pointed out that section (c) provides that in deciding whether to transfer jurisdiction, the circuit court must consider the three factors listed. It appears to be a power issue. The Chair suggested that in place of the language in subsection (c)(1) which reads "the parties have been afforded," the language "the orphans's court has jurisdiction to grant" should be substituted.

The Chair hypothesized a case where the orphans' court is not sure what to do, and the conflict in the matter is causing the assets of the estate to diminish rapidly. A party could ask

for a writ of mandamus so that jurisdiction can be transferred. Judge Heller remarked that in a highly contested case in Baltimore City, a judge granted a motion to transfer a probate case to the circuit court. The parties had written to Judge Heller to complain that the orphans' court judge had done something clearly contrary to law. The memorandum entitled "Equity Jurisdiction" enclosed with the meeting materials is very helpful. (See Appendix 1). Judge Heller noted that section (c) of the new Rule is dictated by case law. When a distribution is complicated, case law gives the right to the parties to ask the circuit court to take jurisdiction. The Vice Chair observed that the orphans' court could make a decision, and then the parties could appeal.

Mr. Titus said that he has had experience with complicated probate cases. He inquired as to whether a rule can supersede cases and the constitutional status of orphans' courts and circuit courts. He expressed the view that the Rule needs further study. Mr. Sykes pointed out that the cases cited in the memorandum, including Noel v. Noel, 173 Md. 147 (1937), provide that cases are transferred when the power of the orphans' court is inadequate to afford the parties complete and adequate relief. The cases are always couched in terms of jurisdiction. The legislature is better equipped to deal with the subject of jurisdiction. Mr. Sykes expressed his agreement with Mr. Titus that the Rule needs further study.

Mr. Gibber told the Committee that the purpose of the Rule

is to address a few limited cases. After her initial hesitation, Judge Lawler eventually had agreed that the Rule would be helpful. It would be used only in a very few cases, when the complexity of the case clearly exceeds the expertise of the orphans' court. Over the last few years, he has seen three or four of these cases. Many lay judges are not trained to respond to or to take control over complicated legal issues pertaining to an estate. It is not a question of jurisdictional power; it is that the orphans' court is unable to deal with the problems to be decided in the estate. The Chair commented that in the absence of a rule, mandamus is available to handle these situations. Mr. Gibber noted that when there is a petition for a writ of mandamus, the ruling will not be prompt. Removing the case from the orphans' court to the circuit court means that the circuit court judge can take immediate control. The circuit court clearly has jurisdiction to take the case. Historically, the circuit court has had jurisdiction when the orphans' court was unable to rule.

The Vice Chair remarked that she had read the memorandum, but she expressed some confusion as to whether the transfer situation is a matter of power issues or the inability of the court to handle the case. Language on page 6 of the memorandum states that complex cases should be resolved in the circuit court. Mr. Titus remarked that a substantial number of probate cases in Montgomery County are complex. Judge Heller commented that Susan Whiteford, Esq., the Assistant Attorney General

assigned to estates and trusts matters, who recently retired, and Mr. Gibber are of the view that the orphans' court should transfer the case when the issues are too complicated for it to handle. On the other hand, Judge Lawler had expressed her concerns about jurisdictional issues. Judge Heller stated that she felt that the Rule should not go farther than the case law. The Chair noted that the Rule goes beyond the cases. Subsection (c)(1) does not solve the problem pointed out by Mr. Gibber. The Chair inquired as to the meaning of the term "complicated." This language may open the floodgates of requests for transfer of probate cases from the orphans' courts to the circuit courts. Ms. Ogletree remarked that it depends on the orphans' court.

The Vice Chair said that she was in agreement with subsection (c)(3), but subsection (c)(2) causes problems. It troubled the Subcommittee and is troubling the full Committee. The Chair asked how the orphans' court judges feel about this. Mr. Gibber answered that he had spoken with Judge Lawler, who was in agreement with this language. The ultimate decision is by the circuit court in agreeing to assume jurisdiction. The Association of Orphans' Court Judges wanted to add to the Rule that the orphans' court itself, as well as interested persons, could also file a motion to transfer the case to the circuit court. The Chair agreed that a case should be transferred if the orphans' court is too slow in making its decision, and if the matter is very complicated. The Vice Chair pointed out that the tagline of section (c) is incorrect in using the word "grounds."

She also noted that the Rule is placed in Title 6, but it should be located in Title 2, because that is the circuit court in which the motion is filed.

Judge Dryden suggested that the Rule be remanded to the Subcommittee. The Chair suggested that it be considered by the Conference of Orphans' Court Judges, the Conference of Circuit Court Clerks, and the Conference of Circuit Judges to see if those groups agree as to when transfer is appropriate. A rule could be drafted which would not ignore the problems, yet not open up the floodgates to constant transfers. Mr. Titus observed that the memorandum refers to transfer with the parties' consent, but the Rule does not refer to consent. He suggested that representatives of the organizations to which the Chair referred should work with the Subcommittee and the consultants to redraft the Rule. Mr. Brault suggested that the Subcommittee should be asked to recommend legislation pertaining to transfer of jurisdiction from the orphans' court to the circuit court, in case any rule on this subject is later held to have no constitutional validity, jeopardizing title to land. The Chair stated that the Rule would be remanded to the Subcommittee.

Mr. Sykes presented Rule 6-465, Striking of Notice of Appeal by Orphans' Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

ADD new Rule 6-465, as follows:

Rule 6-465. STRIKING OF NOTICE OF APPEAL BY ORPHANS' COURT

(a) Generally

On motion or on its own initiative, the orphans' court may strike a notice of appeal (1) that has not been filed within the time prescribed by Rule 6-463, (2) if the Register of Wills has prepared the record pursuant to Code, Courts Article, §§12-501 and 12-502, and the appellant has failed to pay for the record, (3) if the appellant has failed to deposit with the Register of Wills the transcript costs or filing fee required by Code, Estates and Trusts Article, §2-206, or (4) if by reason of any other neglect on the part of the appellant the record has not been transmitted to the court to which the appeal has been taken within the time prescribed in Code, Courts Article, §12-502.

(b) Notice

Before the orphans' court strikes a notice of appeal on its own initiative, the Register of Wills shall serve on all interested persons pursuant to Rule 6-125 a notice that an order striking the notice of appeal shall be entered unless a response is filed within 15 days after service showing good cause why the notice of appeal should not be stricken.

Source: This Rule is new.

Rule 6-465 was accompanied by the following Reporter's Note.

Proposed new Rule 6-465 is based upon Rule 7-105 and allows the orphans' court to strike a notice of appeal under certain circumstances. This will address the problem occurring in various orphans' courts of a party filing a notice of appeal but then failing to pay the required fee or to transmit the record in a timely fashion. Under the existing Rules, there is no

provision authorizing the orphans' court to strike the notice of appeal.

Mr. Sykes explained that the Rule is new and provides a procedure for the orphans' court to strike a notice of appeal if the appellant has not filed it on time, has not paid for the record, or has neglected to see that the record has been transmitted to the court on time. The Rule tracks the language of Rule 7-105, Striking of Notice of Appeal by District Court. Rule 6-465 gives the orphans' court the same power. The Vice Chair noted that the Rule will require some style changes. The Committee approved the Rule as presented, subject to changes by the Style Subcommittee.

The Chair said that all of the Rules would be sent to the Style Subcommittee except for Rule 6-464, which will be reconsidered by the Subcommittee. The Chair thanked Mr. Gibber and Ms. Masterton, the Assistant Attorney General who took Ms. Whiteford's place, for their contributions to the Probate/Fiduciary Subcommittee.

Agenda Item 2. Consideration of amendments to Rule 16-101
(Administrative Responsibility) proposed by the Conference of
Circuit Judges

The Chair presented Rule 16-101, Administrative Responsibility, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE,
JUDICIAL DUTIES, ETC.

AMEND Rule 16-101 to add certain provisions concerning Circuit Administrative Judges and to clarify the authority of County Administrative Judges with respect to certain matters, as follows:

Rule 16-101. ADMINISTRATIVE RESPONSIBILITY

. . .

d. County Administrative Judge.

1. Designation.

Upon a recommendation of the Circuit Administrative Judge, The ~~the~~ Chief Judge of the Court of Appeals may appoint a judge of the Circuit Court for any county to be County Administrative Judge of the Circuit Court for that county. A County Administrative Judge shall serve in that capacity at the pleasure of the Chief Judge of the Court of Appeals.

2. Duties.

Subject to the supervision of the ~~Chief Judge of the Court of Appeals~~ Circuit Administrative Judge, a County Administrative Judge shall be responsible for the administration of justice and for the administration of the court for that county. The duties shall include:

(i) supervision of all judges, officers, and employees of the court, including the authority to assign judges within the court pursuant to Rule 16-103 (Assignment of Judges);

(ii) supervision and expeditious disposition of cases filed in the court and

the control of the trial calendar and other calendars, including the authority to assign cases for trial and hearing pursuant to Rule 16-102 (Chambers Judge) and Rule 16-202 (Assignment of Actions for Trial);

(iii) preparation of the court's budget;

(iv) ordering the purchase of all equipment and supplies for the court and its ancillary services, such as master, auditor, examiner, court administrator, court stenographer, jury commissioner, staff of the medical and probation offices, and all additional court personnel other than personnel comprising the Clerk of Court's office;

(v) subject to the approval of a majority of the judges of the court, supervision of and responsibility for the employment, discharge and classification of court personnel and personnel of its ancillary services and the maintenance of personnel files. In the event a majority of judges is not attained in such matters, the final decision in these matters rests with the County Administrative Judge. However, each judge (subject to budget limitations) shall have the exclusive right to employ and discharge the judge's personal secretary and law clerk; and

Committee note: Article IV, §9, of the Constitution gives the judges of any court the power to appoint officers and, thus, requires joint exercise of the personnel power. A similar provision was included in the July 17, 1967 Administrative and Procedure Regulation.

(vi) implementation and enforcement of all policies, rules and directives of the Court of Appeals, its Chief Judge, and the State Court Administrator, and performance of any other duties necessary for the effective administration of the judicial business of the court and the prompt disposition of litigation.

Cross reference: See also Rule 16-102 (Chambers Judge); Rule 16-103 (Assignment of Judges); Rule 16-201 (Motion Day - Calendar); Rule 16-202 (Assignment of Actions for Trial).

3. Power to Delegate.

(i) A County Administrative Judge may delegate to any judge, to any committee of judges, or to any officer or employee any of the administrative responsibilities, duties and functions of the County Administrative Judge.

(ii) In the implementation of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), a County Administrative Judge may authorize (A) with the approval of the Chief Judge of the Court of Appeals, one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for jury trial, and (B) not more than one judge at a time to postpone all other criminal cases.

4. Single Judge Counties.

In a county that has only one resident judge of the Circuit Court, that judge shall exercise the power and authority of a County Administrative Judge.

Source: This Rule is derived from former Rule 1200.

Rule 16-101 was accompanied by the following Reporter's Note.

The amendments to Rule 16-101 are proposed at the request of the Conference of Circuit Judges which, at its November meeting, unanimously adopted the proposed revisions. The amendments (1) provide for the recommendation of the Circuit Administrative Judge in the appointment process of county administrative judges, (2) clarify the supervisory role of the Circuit

Administrative Judge, and (3) clarify present language relating to the appointment and discharge of court personnel in the event a majority of a bench is not attained in such matters.

The Chair told the Committee that the Conference of Circuit Judges proposed the changes to the Rule, and he asked Judge Missouri to explain the changes. Judge Missouri said that it had been brought to the attention of the Conference that there was no provision for the circuit administrative judge to provide input to the Chief Judge of the Court of Appeals when the Chief Judge is appointing a county administrative judge. Therefore, the Conference is recommending the addition of the new language in subsection d 1.

Mr. Titus commented that he had proposed an amendment to subsection d 1, which appears in the meeting materials. The amendment would clarify that the Chief Judge has to consider the recommendation of the circuit administrative judge, but the Chief Judge is not obligated to follow the recommendation. Judge Heller expressed her agreement with the amended language. Judge Missouri added that Mr. Titus' language would accomplish the goal of the Conference in changing the Rule. The Chair also agreed with the amended language. The Committee agreed by consensus, subject to stylistic changes.

Judge Missouri noted that a further change is being proposed in subsection d 2 (v). The new language provides that a final decision on court personnel rests with the county administrative

judge if a majority of judges cannot be attained. The Vice Chair remarked that subsection (v) could be shortened. Mr. Titus suggested that the first clause of section (v) should be deleted, and the following language substituted: "Unless a majority of the judges of the court disapproves ...". The Vice Chair pointed out that in a two-judge jurisdiction, there is no majority.

Judge Norton commented that Mr. Titus' suggested change is a good one. The Reporter asked if Mr. Titus' suggestion to change the beginning of the proposed new second sentence of subsection d 2 (v) from: "In the event a majority of judges is not attained in such matters, ..." to "Unless a majority of judges of the court disapproves, ..." is a matter of style or a substantive change. Mr. Bowen noted that the Conference of Circuit Judges voted for the proposed language that appears in the Rule in the meeting materials. Judge Missouri added that the vote was unanimous. The Chair remarked that Mr. Titus' proposed change seems to be consistent with the goals of the Conference. Judge Missouri said that he would inform the Conference about the proposed change. The Rule can then go to the Style Subcommittee for restyling. Mr. Bowen added that the Style Subcommittee would not like to overrule any changes the Conference would like made to the Rule.

The Committee approved the Rule as amended.

Agenda Item 3. Consideration of certain proposed amendments to:
Rule 16-406 (Access to Videotape and Audiotape Recordings of
Proceedings in the Circuit Court) and Rule 16-504 (Recording of
Proceedings; Access to Recordings)

The Chair presented Rule 16-406, Access to Videotape and
Audiotape Recordings of Proceedings in the Circuit Court and Rule
16-504, Recording of Proceedings; Access to Recordings, for the
Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT
AND OTHER PERSONS

AMEND Rule 16-406 to change the title,
to add language to sections a and d referring
to audiotape recording, to add language to
section b providing for access by the public
to audiotape and videotape recordings of
proceedings in the circuit court, and to add
a new provision to section c allowing the
Commission on Judicial Disabilities or its
designee access to copies of audiotape and
videotape recordings, as follows:

Rule 16-406. ACCESS TO VIDEOTAPE AND
AUDIOTAPE RECORDINGS OF PROCEEDINGS IN THE
CIRCUIT COURT

a. Control - In General.

Videotape recordings made pursuant to Rule
16-405 and audiotape recordings made pursuant
to Rule 16-404 e are under the control of the
court having custody of them. Access to and
copying of those recordings are subject to
the provisions of this Rule.

Cross reference: Code, State Government
Article, §10-615.

b. Direct Access.

No person other than a duly authorized court official or employee shall have direct access to or possession of an official audiotape or videotape recording except (1) that any member of the public may be permitted to view or listen to a recording of a proceeding at such time and at such places as the administrative judge of the county in which the proceeding took place shall determine to be appropriate and (2) if the county administrative so allows, audiotapes of proceedings are available for purchase Transcripts of circuit court proceedings are available for purchase.

c. Right to Copy; Restrictions.

1. Upon written request and the payment of reasonable costs, the authorized custodian of an official audiotape or videotape recording shall make a copy of the recording, or any part requested, available to:

(A) a party to the action or the party's attorney; ~~and~~

(B) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript from the recording; and

(C) the Commission on Judicial Disabilities, or its designee.

2. Unless authorized by an order of court, a person who receives a copy of a audiotape or videotape recording pursuant to this section shall not (A) make or cause to be made any additional copy of the recording or (B) except for a non-sequestered witness or an agent, employee, or consultant of the attorney, make the recording available to any person not entitled to it pursuant to this section.

d. Other Persons.

1. This section does not apply to the videotape of (A) a criminal proceeding, (B) a revocation of probation proceeding, or (C) the audiotape or videotape of any proceeding that is confidential by law. The right to obtain a copy of ~~a~~ an audiotape or videotape in those proceedings is governed solely by section c of this Rule.

2. A person not entitled to a copy of ~~a~~ an audiotape or videotape recording pursuant to section c of this Rule may file a request to obtain a copy pursuant to this section. The person shall file the request with the clerk of the circuit court in which the proceeding was conducted and shall serve a copy of the request pursuant to Rule 1-321 on each party to the action.

3. A party may file a written response to the request within five days after being served with the request. Any other interested person may file a response within 5 days after service of the request on the last party to be served.

4. The clerk shall refer the request and all responses to the judge who conducted the proceeding.

5. If the action is still pending in the court, the court shall deny the request unless (A) all parties have affirmatively consented and no interested person has filed a timely objection or (B) the court finds good cause to grant the request. If the action has been transferred to another circuit court, the court shall transfer the matter to that court. If judgment has been entered in the action, the court shall grant the request unless it finds good cause to the contrary, but the court may delay permission to obtain the copy until either all appellate proceedings are completed or the right to further appellate review has lapsed.

Source: This Rule is former Rule 1224B.

Rule 16-406 was accompanied by the following Reporter's Note.

Chief Judge Robert M. Bell requested clarification from the Rules Committee as to how access to audiotape recordings in circuit court should be handled. Currently, the Rules of Procedure do not refer to access to audiotape recordings either in circuit court or District Court. The General Court Administration Subcommittee recommends that language be added to Rule 16-406 to cover access to audiotape recordings in the circuit court and that a new section b, which is derived from a District Court Administrative Regulation, be added to Rule 16-504 to cover access to audiotape recordings in the District Court.

Steven P. Lemmey, Esq., Investigative Counsel to the Commission on Judicial Disabilities, has requested a change to Rule 16-406 c, which would permit the Commission access to videotape recordings of proceedings in the Maryland circuit courts. Mr. Lemmey points out that the Committee note to Rule 16-805, Complaints; Preliminary Investigations, provides that Investigative Counsel may obtain transcripts of court proceedings. He states that after reading written transcripts, listening to audiotapes, or viewing videotapes, the Commission is often able to determine that the complaint against a judge lacks merit, and the case is dismissed. Some Maryland jurisdictions are not making the videotapes available to the Commission, and the requested change to Rule 16-406 would make it clear that the Commission has a right to obtain a copy of the videotapes of proceedings in circuit court.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 500 - COURT ADMINISTRATION - DISTRICT COURT

AMEND Rule 16-504 to change the title, to add a tagline to section a, and to add a new section b providing for access to audiotape recordings, as follows:

Rule 16-504. RECORDING OF PROCEEDINGS;
ACCESS TO RECORDINGS

a. Recording of Proceedings

All trials, hearings, and other proceedings before a judge in open court shall be recorded verbatim by an audio recording device provided by the court. The Chief Judge of the District Court may authorize recording by additional means. The recording shall be filed among the court records.

b. Access to Recordings

A party to any case, or the attorney for any party, may be permitted to listen to the audiotape recording or to any other type of recording of a trial in the District Court, at such times and such places as a judge of the District Court shall determine to be appropriate.

Cross reference: See Rule 16-404 b concerning regulations and standards applicable to court reporting in all courts of the State.

Source: This Rule is former M.D.R. 1224.

Rule 16-504 was accompanied by the following Reporter's Note.

See the first paragraph of the Reporter's Note to Rule 16-406.

The Chair told the Committee that Steven P. Lemmey, Esq., Investigative Counsel, was present to discuss his request to change Rule 16-406. Mr. Lemmey thanked the Committee for the prompt response to his letter. He said that the Honorable Sally Adkins, Chair of the Commission on Judicial Disabilities, regretted that she was unable to be present at the meeting. The letter that Mr. Lemmey had written, which is included in the meeting materials (See Appendix 2), explained that when he requests to view videotapes of judicial proceedings, there is a variance among jurisdictions as to granting his request. Access to the videotapes allows him to dismiss many of the complaints against judges without even notifying the judges and needlessly alarming them. Being required to subpoena the tapes opens up the matter to the public. On a regular basis in the United States, at least 90% of complaints against judges resulted in dismissals. The videotape or a transcript provides one of the best tools to determine whether there has been judicial misconduct. The Commission on Judicial Disabilities does not notify judges early in complaint proceedings, and the transcript is often dispositive.

The Chair said that a letter from David R. Dawson and Valerie M. Dawson, who are court reporters from the First Judicial Circuit, had been distributed at the meeting today. (See Appendix 3). The letter contains suggestions for further

changes to Rule 16-406. Ms. Rankin, Court Information Officer, noted that in the meeting materials, there is a memorandum from the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, to circuit administrative judges asking for clarification of Rule 16-406 as it applies to requests by the media to view videotapes. (See Appendix 4). Judge Heller remarked that there has been an issue in Baltimore City and an interpretation by the Attorney General that this Rule meets the concerns of journalists. The Commission on Judicial Disabilities should be able to get a copy of a videotape, which is provided for in proposed new subsection c 1 (C), and the amendment to section b will allow the media to view the videotapes at a place designated by the administrative judge. It is an accepted practice for the media to view videotapes, but not to receive copies, and the proposed changes to the Rule validate this practice.

Judge Heller inquired about access to audiotapes. Ms. Ogletree remarked that Caroline County uses audiotapes, and Mr. Lemmey added that Montgomery County also has audiotapes. The Chair pointed out that in their letter, the Dawsons suggest amending the proposed language of section b to provide that "... (2) if the county administrative judge so allows, videotapes and audiotapes of proceedings are available for purchase ...". Judge Heller expressed her opposition to this idea. She said that this would put a burden on the administrative judge to refuse requests by television stations. It would not be a good idea for the

television stations to run parts of the court videotapes as part of the evening news.

The Chair suggested that in section b, the number "(1)" should be deleted, and the sentence should end with the word "appropriate," with the rest of the language after that being deleted. Mr. Titus pointed out that this would change the present practice in Montgomery County which has provided audiotapes for 18 years. Anyone can go to the technical services office and pay for court testimony on audiotape, receiving the tape very promptly. The provisions pertaining to access to videotapes and audiotapes should not be blended in the Rule. Judge Norton commented that the District Court clerical staff handles access to audiotapes. The Chair asked if the tapes can be purchased, and Judge Norton replied in the affirmative. Mr. Karceski observed that any attorney, whether or not he or she represents a party to a proceeding, can fill out a form and give it to the District Court clerk to obtain access to an audiotape. Baltimore County no longer uses audiotapes. Rather, compact discs are used and take about six weeks to obtain. Mr. Titus added that there is a waiting period to obtain the audiotapes in Montgomery County. Mr. Karceski observed that the media would not have access to the tapes the day of the proceeding.

The Chair expressed the opinion that it is not sensible to distinguish access to audiotapes from access to videotapes. Delegate Vallario pointed out that putting videotapes of court proceedings on television would circumvent existing law.

Maryland has already rejected the idea of cameras in the courtroom. The Chair commented that videotaping proceedings is a disruptive process. If a county decided to use video cameras in place of court reporters, the county made its choice and can provide tapes to the general public. Mr. Titus added that another reason the videotaping is disruptive is the effect it could have on a sensitive witness who sees his or her testimony on the evening news. The Chair noted that as the proposed Rule is written, the county administrative judge has the discretion as to whether or not to allow the purchase of audiotapes. Judge Missouri remarked that he would not release videotapes to the media. The Vice Chair asked Judge Missouri if he would release audiotapes. He answered that he would, except in family cases, where the tapes are only accessible to the parties and their attorneys.

The Vice Chair commented that it would be difficult to control who gets the audiotapes. The Chair inquired if audiotapes are available in Baltimore City. Judge Heller replied that they are not available, but people can obtain transcripts. She expressed her opposition to the wholesale sale of videotapes, especially in criminal matters. Television cameras have not been allowed in trial courts. Three-quarters of the docket in Baltimore City is comprised of felony cases. If videotapes are available, the public would be able to see the witnesses, defendants, and prosecutors, and this could have a detrimental effect on the criminal justice system.

The Chair expressed the opinion that it may have been a mistake removing court reporters in favor of videotape of courtroom proceedings. He suggested that the proposed language of section b be left in, except for deleting the language which reads: "if the county administrative judge so allows," in part (2). Mr. Titus noted that audiotapes may not exist in some jurisdictions. The Vice Chair said that the ability to buy audiotapes should be placed elsewhere in the Rules. Mr. Titus observed that the Rule needs redrafting. The Vice Chair added that the language pertaining to transcripts should also be placed somewhere else. The Chair responded that there may be no other Rule in which that language can go, and it does not hurt to refer to transcripts in Rule 16-406.

Mr. Titus said that the goal of the Rule is provide uniformity throughout the State. The Chair added that the circuit court procedure should be consistent with the District Court procedure. Mr. Karceski remarked that the fact that anyone can get an audiotope in Montgomery County takes the meaning out of a sequestration order. This would make it convenient for the members of a conspiracy to obtain the testimony in a trial and to give it out to the other members. The Vice Chair noted that the press is not putting audiotapes on television. Mr. Brault remarked that Montgomery County has provided access to audiotapes for a long time, and there have not been any problems. Mr. Karceski commented that if audiotapes were available in Baltimore City, they would be widely distributed.

The Chair expressed the concern that distinguishing between audiotapes and videotapes in the Rule could be held to be unlawful. He suggested that direct access to both should be left in, and the language providing that copies of audiotapes are available for purchase should also be left in. Transcripts could be dealt with elsewhere in the Rules. Mr. Titus suggested that in subsections c 1 and c 2, the proposed language "audiotape or" should be deleted. The Chair added that the same language could be deleted from the rest of the Rule, and this would conform it to District Court practice. It would protect the integrity of the videotape and entitle the public to audiotapes. The Reporter asked what the control over the tapes would be if witnesses are sequestered. The Chair answered that protective orders can be used.

Mr. Brault asked if the faces of the jurors appear on the videotapes. Judge Heller replied that the jurors' faces do not appear, but the faces of the witnesses are shown. The Chair commented that the witnesses' addresses do not have to be given out. Mr. Sykes noted that in a criminal case, the only people entitled to a copy of the tape are the parties. The Reporter cautioned that, as to the release of videotapes of proceedings in criminal actions, the Rule should be drafted to conform to the legislative intent of Code, Criminal Procedure Article, §1-201. Judge Heller pointed out that there is a difference between videotapes authorized in lieu of court reporters and other kinds of videotaping. The Vice Chair pointed out that subsection d 1

excludes criminal cases. Mr. Sykes remarked that a "hit man" should not be allowed to look at a videotape. The Chair commented that there has to be a way for someone who wants to see a videotape to be able to listen to the audiotape portion only. Mr. Titus responded that the newer technology of DVD recordings should facilitate this.

Judge Heller expressed the view that section b should not be changed. The Vice Chair inquired as to how the press could view the videotapes if the Rule were not changed. The Chair suggested that in the proposed new language in section b, the words "view or" should be deleted. The Vice Chair asked why the press has to view videotapes. Judge Heller responded that the transcripts may be too long to read. The problem is not with members of the press, but there could be issues of security and disruption of trials. The Chair observed that if the press is allowed to view videotapes, then anyone would be able to do so. Judge Heller commented that she does not want to be required to refuse the press. Judge Missouri expressed the opinion that the press should not be able to view the videotapes. Mr. Johnson agreed with Judge Missouri, noting that the Rule was developed as a pilot program for Baltimore City and Prince George's County. He expressed his concern that the proposed changes will open the door to cameras in the courtrooms. The only changes to section b should be for audiotapes. Ms. Potter pointed out that this is an issue of judicial administration, and the Conference of Circuit Court Judges should be consulted.

The Chair asked Mr. Johnson what his proposal is. Mr. Johnson answered that there should be a separate rule dealing with audiotapes, and section b of Rule 16-406 should only pertain to the official videotape recording. The Chair said that the Rule should take into account the current practices around the State. The procedure in Montgomery County District Court has worked well. Mr. Titus suggested that references to audiotapes be removed from Rule 16-406 and moved to another rule and that Mr. Lemmey's suggested changes be left in the Rule. Mr. Brault commented that in Montgomery County, the tapes are made by a firm with whom the County has a contract. He asked who has the original tape. Ms. Veronis replied that under section b of Rule 16-406, only court reporters and videographers have access to the master videotape. There is a committee of court reporters, which includes the Dawsons from the First Judicial Circuit, and the Rule should be circulated to them. The comments from the Dawsons in their letter may not reflect the views of the other members of the committee.

Ms. Ogletree noted that practices vary from jurisdiction to jurisdiction. In Caroline County, copies of audiotapes are not permitted. One can only hear the original tape. There is no real court reporter, nor is there one in Talbot or Queen Anne's Counties. She cautioned that the Rule should not require practices that a county is unable to perform. Mr. Titus suggested that the new language beginning with the word "except" should be deleted, and a new section pertaining to access to

videotapes and audiotapes should be added.

Judge Missouri commented that the memorandum dated July 26, 2002 from Chief Judge Bell is directed to the Circuit Administrative Judges. This issue has not been before the Conference of Circuit Court Judges. The Chair pointed out that many people are interested in this issue, including the press and court reporters. The procedures used by the District Court for handling audiotapes works well. Baltimore City allows the press to view videotapes. Mr. Titus said that the Rule should be sent to the Court of Appeals with Mr. Lemmey's changes. Other provisions could be drafted to deal with the issue of access to copies of audiotapes and videotapes, which could be sent to the Conference of Circuit Judges and to the press. The Chair said that it is not a good idea to send the Rule to the Court of Appeals with only Mr. Lemmey's changes. The Rule could be redrafted for the next Rules Committee meeting, but it should not be sent to the Court two separate times. Mr. Lemmey remarked that he and the Judicial Disabilities Commission can wait a few more months for their requested change to the Rule. If the other revisions take a long time, he may change his position.

The Chair stated that the procedures for access to audiotapes can be similar to the access provided by the Montgomery County District Court. The Rule can be changed to protect videotapes of trials, and it will be reconsidered by the Committee. Mr. Klein suggested that the various jurisdictions should be asked if they have the capacity to block out the video

portion of a tape and merely play or copy the audio portion. Mr. Brault added that there are security issues to consider. The Chair said that the administrators of the various jurisdictions around the State will be consulted. Judge Dryden suggested that a questionnaire be sent to the administrative clerks around the State.

The Chair stated that Rule 16-406 will be remanded to the General Court Administration Subcommittee. In light of the remand of Rule 16-406, Rule 16-504 was not considered today by the Rules Committee. It too will be reconsidered by the General Court Administration Subcommittee.

Agenda Item 4. Reconsideration of proposed new rules concerning the performance of marriage ceremonies by judges: Rule 16-821 (Performance of Marriage Ceremonies by Judges - Applicability of Rules), Rule 16-822 (Scheduling), Rule 16-823 (Judicial Action), and Rule 16-824 (Restriction)

The Chair explained that the Conference of Circuit Judges has recommended proposed Rules dealing with the performance of marriages by judges. Judge Missouri said that the Rules were approved unanimously by the Conference.

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

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-821, as follows:

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

Rules 16-821 through 16-824 apply to all Maryland judges of the District Court, Circuit Court, Court of Special Appeals, and Court of Appeals, including retired judges eligible for recall as defined by the Court of Appeals of Maryland, who wish to perform marriage ceremonies.

Cross reference: Code, Family Law Article §2-406.

Source: This Rule is new.

The Vice Chair referred to the letter in the meeting materials from the Honorable Daniel M. Long, which states that the marriage ceremony rules include a more specific definition of a "retired judge" as those eligible for recall. (See Appendix 5). She remarked that she did not see this in the Rules. Delegate Vallario inquired as to whether this definition is in the statute, Code, Family Law Article, §2-406 (a). The Chair answered that it is not in the statute. Delegate Vallario questioned as to why the Rule should be limited. Judge Missouri noted that Ms. Veronis had drafted an amendment to the statute for the legislature to consider (See Appendix 6) and the proposed Rules conform to that draft. Delegate Vallario asked if the amendment includes a list of judges, and the Chair replied that it does not include this list. Ms. Potter noted that the word "wish" should be changed to the word "willing" in Rule 16-821.

The Vice Chair said that the Rule would be sent to the Style Subcommittee. The Committee approved the Rule by consensus, subject to style changes.

The Chair presented Rule 16-822, Scheduling, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-822, as follows:

Rule 16-822. SCHEDULING

(a) Clerk's Responsibilities

A judge who has agreed to perform a marriage ceremony shall notify the clerk of the circuit court for the county in which the ceremony is to take place. The clerk is responsible for recording and reporting the marriage. The parties are responsible for making all other arrangements.

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

(b) Non-Interference with Court Functions

Ceremonies shall be scheduled so as not to interfere with the prompt disposition of cases and other judicial and administrative duties of the judge, and the use of judicial public resources shall be reasonable and consistent with the security of the courthouse.

(c) Place of Ceremony

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

(d) Time of Ceremony

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

Source: This Rule is new.

The Chair told the Committee that the clerks approved the Rule, and Mr. Shipley expressed his agreement. Judge Missouri added that the Conference feels that the clerks' issues have been addressed in the Rules. Mr. Sykes noted that the word "agreed" in the first sentence of section (a) is preferable to "wish" or "willing," words previously referred to in Rule 16-821. The Committee approved the Rule by consensus, subject to style changes.

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

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-823, as follows:

Rule 16-823. JUDICIAL ACTION

(a) Ceremony

A judge who performs a marriage ceremony shall include substantially the form of ceremony used by the clerk of the circuit

court for the county where the marriage is to be performed. If the parties request, the ceremony may include religious references. A judge may perform the ceremony in conjunction with an official of a religious order or body.

(b) License

A judge may not perform a marriage ceremony unless a license has been issued by the clerk of the circuit court in the county where the ceremony is to be performed and the fee for performing the ceremony has been paid to the clerk of the circuit court. A judge who performs a marriage ceremony shall (1) complete the certificate of marriage, (2) provide a copy of the certificate to the parties, and (3) return the completed certificate to the issuing clerk of court for recordation and reporting of the marriage as required by law. A judge who grants a request for the issuance of a marriage license under Code, Family Law Article, §2-405 (d) also may perform the marriage.

(c) Refusal to Perform Ceremony

A judge may decline to perform any particular marriage ceremony.

Source: This Rule is new.

The Vice Chair inquired as to whether a judge can supplement the form of ceremony used by the clerk of the court. Judge Heller responded that she had performed a marriage ceremony and had added her own words. Ms. Potter suggested that in section (c), the words "any particular" should be changed to something else. Mr. Sykes proposed that the sentence should read, "A judge may decline to perform a marriage ceremony." The Committee agreed by consensus to this proposal. Ms. Potter suggested that section (c) should be moved to another Rule. The Vice Chair

commented that it could be moved into Rule 16-821, and that the Style Subcommittee would consider the placement of each section in the new Rules. By consensus, the Committee approved the Rule as amended.

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

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-824, as follows:

Rule 16-824. RESTRICTIONS

(a) Judge's Own Ceremony

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

(b) Compensation

A judge may receive no compensation or reimbursement for performing a marriage ceremony.

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

(c) Advertising or Other Solicitations

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

Source: This Rule is new.

Ms. Veronis explained that this Rule had been redrafted. Originally, it had provided that a judge may receive expenses for performing a marriage ceremony. The Judicial Council's view was that there should be a proscription against any fee, except for the clerks' fees. The Chair noted that the clerk will collect a fee for the marriage ceremony, and Judge Missouri added that the fee will go into the county coffers.

The Vice Chair pointed out that section (b) states that the judge may receive no reimbursement. She asked if section (c) is necessary. The Chair replied that section (c) should stay in the Rule. He remarked that the Conference of Circuit Judges did an excellent job on the Rules. Judge Missouri stated that the Honorable Dana M. Levitz was the Chair and other members of the Conference committee, who worked on the Rules, were the Honorable William S. Horne and the Honorable John Grason Trumbull, II.

The Vice Chair commented that advertising and solicitations are covered in the statute, Code, Family Law Article, §2-408. She inquired if section (c) could be replaced by a cross reference to the statute. The Chair responded that he prefers that this stay in the Rule. The Vice Chair noted that the language of the Rule does not track the language of the draft legislation. Delegate Vallario questioned as to whether the Rule applies to judges from other states. Ms. Knox replied that it should, if the judge is performing a ceremony in Maryland. Mr.

Klein said that Code, Family Law Article, §2-410 provides "... a clerk or deputy clerk may not receive any fee, remuneration, or gift for performing a marriage ceremony." He noted that the Rule has no reference to "gifts." Mr. Sykes pointed out that judges can be paid a fee in Cecil County. Ms. Veronis responded that the redrafted legislation refers to a \$30 fee paid in Cecil County regardless of to whom. The remainder of the draft legislation describes where the fees go after they are paid.

Mr. Klein suggested that the word "gift" be added to section (b). The Chair stated that section (b) could conform to the statute, as follows: "A judge may receive no fee, remuneration, or gift for performing a marriage ceremony." The Committee agreed by consensus to this change.

By consensus, the Committee approved the Rule as amended.

Agenda Item 5. Reconsideration of a proposed amendment to Rule 2-541 (Masters)

Mr. Johnson presented Rule 2-541, Masters, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-541 by adding the word "only" to section (b) to clarify that no domestic relations matter may be referred to a master except in accordance with Rule 9-208, as follows:

Rule 2-541. MASTERS

(a) Appointment -- Compensation

(1) Standing Master

A majority of the judges of the circuit court of a county may appoint a full time or part time standing master and shall prescribe the compensation, fees, and costs of the master. No person may serve as a standing master upon reaching the age of 70 years.

(2) Special Master

The court may appoint a special master for a particular action and shall prescribe the compensation, fees, and costs of the special master and assess them among the parties. The order of appointment may specify or limit the powers of a special master and may contain special directions.

(3) Officer of the Court

A master serves at the pleasure of the appointing court and is an officer of the court in which the referred matter is pending.

(b) Referral of Cases

(1) Referral of domestic relations matters to a master shall be in accordance with Rule 9-208 and shall proceed only in accordance with that Rule.

(2) On motion of any party or on its own initiative, the court, by order, may refer to a master any other matter or issue not triable of right before a jury.

(c) Powers

Subject to the provisions of any order of reference, a master has the power to regulate all proceedings in the hearing, including the powers to:

(1) Direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;

(2) Administer oaths to witnesses;

(3) Rule upon the admissibility of evidence;

(4) Examine witnesses;

(5) Convene, continue, and adjourn the hearing, as required;

(6) Recommend contempt proceedings or other sanctions to the court; and

(7) Recommend findings of fact and conclusions of law.

(d) Hearing

(1) Notice

The master shall fix the time and place for the hearing and shall send written notice to all parties.

(2) Attendance of Witnesses

A party may procure by subpoena the attendance of witnesses and the production of documents or other tangible things at the hearing.

(3) Record

All proceedings before a master shall be recorded either stenographically or by an electronic recording device, unless the making of a record is waived in writing by all parties. A waiver of the making of a record is also a waiver of the right to file any exceptions that would require review of the record for their determination.

(e) Report

(1) When Filed

The master shall notify each party of the proposed recommendation, either orally at the conclusion of the hearing or thereafter by written notice served pursuant to Rule 1-321. Within five days from an oral notice or from service of a written notice, a party intending to file exceptions shall file a notice of intent to do so and within that time shall deliver a copy to the master. If the court has directed the master to file a report or if a notice of intent to file exceptions is filed, the master shall file a written report with the recommendation. Otherwise, only the recommendation need be filed. The report shall be filed within 30 days after the notice of intent to file exceptions is filed or within such other time as the court directs. The failure to file and deliver a timely notice is a waiver of the right to file exceptions.

(2) Contents

Unless otherwise ordered, the report shall include findings of fact and conclusions of law and a recommendation in the form of a proposed order or judgment, and shall be accompanied by the original exhibits. A transcript of the proceedings before the master need not be prepared prior to the report unless the master directs, but, if prepared, shall be filed with the report.

(3) Service

The master shall serve a copy of the recommendation and any written report on each party pursuant to Rule 1-321.

(f) Entry of Order

(1) The court shall not direct the entry of an order or judgment based upon the master's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions.

(2) If exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the master.

(g) Exceptions

(1) How Taken

Within ten days after the filing of the master's written report, a party may file exceptions with the clerk. Within that period or within three days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) Transcript

Unless a transcript has already been filed, a party who has filed exceptions shall cause to be prepared and transmitted to the court a transcript of so much of the testimony as is necessary to rule on the exceptions. The transcript shall be ordered at the time the exceptions are filed, and the transcript shall be filed within 30 days thereafter or within such longer time, not exceeding 60 days after the exceptions are filed, as the master may allow. The court may further extend the time for the filing of the transcript for good cause shown. The excepting party shall serve a copy of the transcript on the other party. Instead of a transcript, the parties may agree to a statement of facts or the court by order may accept an electronic recording of the proceedings as the transcript. The court may dismiss the exceptions of a party who has not complied with this section.

(h) Hearing on Exceptions

The court may decide exceptions without a hearing, unless a hearing is requested with the exceptions or by an opposing party within five days after service of the exceptions. The exceptions shall be decided on the evidence presented to the master unless: (1) the excepting party sets forth with particularity the additional evidence to be offered and the reasons why

the evidence was not offered before the master, and (2) the court determines that the additional evidence should be considered. If additional evidence is to be considered, the court may remand the matter to the master to hear the additional evidence and to make appropriate findings or conclusions, or the court may hear and consider the additional evidence or conduct a de novo hearing.

(i) Costs

Payment of the compensation, fees, and costs of a master may be compelled by order of court. The costs of any transcript may be included in the costs of the action and assessed among the parties as the court may direct.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 596 b.

Section (b) is derived in part from former Rule 596 c.

Section (c) is derived in part from former Rule 596 d.

Subsections (6) and (7) are new but are consistent with former Rule 596 f 1 and g 2.

Section (d) is in part new and in part derived from former Rule 596 e.

Section (e) is derived from former Rule 596 f.

Section (f) is new.

Section (g) is derived from former Rule 596 h 1, 2, 3, 4 and 7 except that subsection 3 (b) of section h of the former Rule is replaced.

Section (h) is derived from former Rule 596 h 5 and 6.

Section (i) is derived from former Rule 596 h 8 and i.

Rule 2-541 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 2-541 clarifies that any referral of a domestic relations matter to a master must be in accordance with Rule 9-208 and may not be made under Rule 2-541. The proposed change

is recommended by the Rules Committee in response to a letter dated September 19, 2001 from Chief Judge Robert M. Bell, concerning a potential loophole in Rule 2-541 that could provide a way around the limitations imposed by Rule 9-208.

Mr. Johnson told the Committee that Rule 2-541 had been approved in February, 2002, but further revisions had been suggested by Mr. Titus. The change to subsection (b)(1) was to address the concern of Chief Judge Bell as expressed in his letter to the Chair dated September 19, 2001, a copy of which is in the meeting materials. (See Appendix 7). The Chair commented that the concern is that referral of domestic relations matters can only be effected pursuant to Rule 9-208. He asked Judge Missouri if he agreed with the proposed change. Judge Missouri answered that he feels that the addition of the word "only" takes care of Chief Judge Bell's problem. No other changes should be made to Rule 2-541, so as not to vitiate the power of circuit court judges to use a master in special circumstances. The Vice Chair pointed out that section (b), in theory, allows the court to refer to a master an entire case which is not triable of right before a jury. Ms. Ogletree remarked that she reads subsection (b)(2) to mean that issues which would not ordinarily be referred to a master can be so referred. An example would be a case with only damages to be determined.

The Vice Chair noted that the parties have a right to request that a judge hear the case. Ms. Ogletree observed that these cases referred to masters are generally default cases, and

the case is referred by motion. Judge Dryden commented that a judge is designated to hear the case, but this is accomplished through an agent, the master. The Vice Chair disagreed with Judge Dryden. The Chair said that this is a philosophical concern, but referral to a master expedites many cases. Judge Heller noted that the master can only make recommendations, and there is a procedure for exceptions. The ultimate decision-maker is the judge.

The Committee approved Rule 2-541 as presented.

The Chair adjourned the meeting.