COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in the Rules Committee Conference Room of the People's Resource Center, 100 Community Place, Crownsville, Maryland, on February 6, 2004.

Members present:

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

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Robert L. Dean, Esq.
Hon. Ellen M. Heller
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Timothy F. Maloney, Esq.
Robert R. Michael, Esq.
Hon. John L. Norton, III
Debbie L. Potter, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Daniel J. O'Brien, Jr., Esq., Principal Counsel, Office of the Attorney General
David R. Morgan, Esq., Office of the Attorney General

The Chair convened the meeting. He said that the portion of the minutes of the Rules Committee meeting held on January 9, 2004 that pertained to Rule 4-345, Sentencing -– Revisory Power of Court, had been sent to the Committee. This part of the minutes will be sent to the Court of Appeals along with other sets of minutes pertaining to the same Rule. Mr. Bowen had pointed out several typographical errors, and Judge Norton noted that a reference to a 10-year prison term should have been eight

years. The minutes were approved as corrected.

The Chair told the Committee that since Mr. Sykes was unable to attend the meeting due to the weather conditions, Mr. O'Brien, Principal Counsel, Office of the Attorney General, and Mr. Morgan, Assistant Attorney General, would present Agenda Item 1.

Agenda Item 1. Consideration of proposed new Title 15, Chapter 1100 (Catastrophic Health Emergency) and a proposed conforming amendment to Rule 1-101 (Applicability)

Mr. Morgan explained that the Catastrophic Health Emergency Rules were drafted pursuant to Code, Health-General Article, §18-906, a statute that was enacted two years ago by the General Assembly. Other legislatures also enacted similar provisions following the events of September 11, 2001. Section (d) of §18-906 provides that the Court of Appeals shall develop emergency rules of procedure to facilitate the efficient adjudication of any proceedings brought under this section. The new law allows the Secretary of the Department of Health and Mental Hygiene ("the Department") or the Secretary's agent to issue a quarantine or isolation order to individuals in a catastrophic health emergency. The statute gives the individuals who are the subject of the order the right to request a hearing. The burden is on the State or the Department to show that the quarantine is necessary or reasonable. Subsection (b)(3) of the statute requires the court to conduct a hearing within three days after receipt of the request for a hearing. The new Rules have been

designed to facilitate the procedures in the statute.

Correspondence dated February 2, 2004 from Alice Neff Lucan, Esq., on behalf of the Maryland Delaware D.C. Press Association, concerning proposed new Rules 15-1101 - 15-1109 was distributed to the Committee. See Appendix 1.

Mr. Morgan presented Rule 15-1101, Construction, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1101, as follows:

Rule 15-1101. CONSTRUCTION

> The Rules in this Chapter are promulgated pursuant to Code, Health-General Article, §18-906 (d) and should be construed to facilitate the efficient adjudication of any proceedings brought pursuant to Code, Health-General Article, §§18-905 and 18-906. The Rules in this Chapter should not be construed to limit or suspend any relief that may be available to an individual pursuant to a petition for writ of habeas corpus.
>
> Source: This Rule is new.

Rule 15-1101 was accompanied by the following Reporter's Note.

> This Rule provides for the construction of these Rules, which apply to requests for, and the conduct of, emergency hearings under Code, Health-General Article, §18-906. This Rule also clarifies that habeas corpus relief

> shall not be limited by these Rules but shall remain available to an individual both before and after the expiration of the seven-day period for invoking the emergency hearing proceedings set forth in Rule 15-1103 (a).

Mr. Morgan pointed out that the Rule provides that the Rules in Chapter 1100 do not limit or suspend relief available by filing a writ of habeas corpus. The Vice Chair inquired as to whether this is provided in the statute, and Mr. Morgan replied that it is not in the statute. The Vice Chair asked if one of a group of people who have been quarantined would be able to file a writ of habeas corpus at the same time a petition for relief pursuant to Rule 15-1101 has been filed by the group. Mr. Morgan answered that the three-day period for holding a hearing provided for in the statute would be much faster than scheduling a hearing on a habeas corpus petition, because the latter has a 30-day response period. Judge Heller remarked that this could be shortened. The Vice Chair observed that if a hearing is held within the three-day statutory time period and the court decides that the group should not be released from confinement, this ruling could have a res judicata effect on a habeas corpus proceeding which an individual in the group then files. Mr. Morgan observed that the first decision may be binding, because the parties and the facts are the same for both proceedings.

The Chair commented that the Rule would be more accurate if it provided that the Rules do not prohibit an individual from seeking habeas corpus relief. Mr. Morgan pointed out that in the

30-day period before the habeas corpus hearing, additional developments may have occurred that would warrant the person's release. The Vice Chair expressed the view that the way the Rule is structured is a major morass. The petition for relief is filed in Anne Arundel County, but the confinement could be in Frederick County. The circuit court order may provide that confinement is appropriate for 30 days, while the habeas corpus proceeding in Frederick County may or may not say the same thing. Mr. Brault remarked that the habeas corpus proceeding checks the legality of the prior catastrophic health emergency proceeding. Judge Heller said that the basis of the proceeding could be either the illegal detainment of an individual or group or the merits of detainment based on the disease. Mr. Brault noted that if what is being considered is a medical issue, there is an estoppel argument available -– one judge cannot review the rulings of another judge. The Vice Chair questioned as to whether the judge in Frederick would even know what the ruling of the judge in Anne Arundel County was.

The Chair reiterated that the problem with the language of Rule 15-1101 is that it states expressly that proceeding under this Chapter does not prohibit someone from filing a petition for habeas corpus. Ms. Potter suggested that to avoid inconsistency, the petition for habeas corpus should be filed in the same jurisdiction as the petition filed pursuant to Rule 15-1103. The Chair suggested that the second sentence of Rule 15-1101 could read as follows: "The Rules in this Chapter do not prohibit an

individual from seeking habeas corpus relief." The Committee agreed by consensus to this change. The Committee approved the Rule as amended.

Mr. Morgan presented Rule 15-1102, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1102, as follows:

Rule 15-1102. DEFINITIONS

The definitions set forth in Code, Health-General Article, §§1-101 and 18-901, are incorporated in this Chapter by reference.

Source: This Rule is new.

Rule 15-1102 was accompanied by the following Reporter's Note.

Instead of repeating the applicable definitions from two Code sections, the Office of the Attorney General recommends incorporating them by reference.

Mr. Morgan explained that in lieu of repeating the definitions that are in Code, Health General Article, §§1-101 and 18-901, the Rule simply incorporates them by reference. The Committee approved the Rule as presented.

Mr. Morgan presented Rule 15-1103, Request for Relief, for

the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1103, as follows:

Rule 15-1103. REQUEST FOR RELIEF

(a) Made by Petition

An individual or group of individuals required to go to or remain in a place of isolation or quarantine by a directive of the Secretary, issued pursuant to Code, Health-General Article, §18-906 (a), may request a hearing in circuit court to contest the isolation or quarantine pursuant to Code, Health-General Article, §18-906 (b). A hearing under these Rules may be requested by filing a petition for relief with the clerk of the circuit court within seven days of the date that the Secretary's directive was served on the individual or group of individuals. The petition shall state the basis for the request for a hearing and for opposing the isolation or quarantine.

(b) Sealed Petition

Upon the filing of a petition, the clerk of the court shall seal the petition, which seal shall be subject to further order of the court.

Source: This Rule is new.

Rule 15-1103 was accompanied by the following Reporter's Note.

This Rule specifies the time and manner in which an emergency hearing under Code,

> Health-General Article, §18-906, may be requested in the circuit court and the duty of the clerk of the circuit court to seal the petition in the proceedings.

Mr. Morgan explained that the request for a hearing is made by filing a petition that contests the isolation or quarantine. The petition is to be filed within seven days of the date that the Secretary's directive was served on the individual or group of individuals. The Chair asked if seven days is too short a period of time. Mr. Brault remarked that from the perspective of someone locked up or confined, it is a long period of time. The Chair noted that there has to be enough time for medical testing and laboratory reports. Mr. Morgan said that the thinking behind this provision is that the quarantine would be based on the knowledge available at the time of the decision. The seven-day time period would emphasize a fairly quick review, and the order could last for 30 days. This could be changed to 15 days.

Mr. Brault pointed out that the time periods in the Rules are often multiples of five. The Vice Chair added that with the exception of time periods in depositions, this is generally correct. Mr. Morgan stated that the seven-day time period could be changed. The Vice Chair remarked that the Secretary of Health and Mental Hygiene could issue a directive; then five or six days later, more information could become available, and a new or amended directive would be issued. Mr. Morgan observed that if the directive for quarantine or isolation is for 30 days, it is conceivable that after 10 days, the Secretary could withdraw the

directive. The Vice Chair noted that the Secretary could also add a group to be included in the directive.

The Chair said that changing the seven-day period to 10 days would give the Secretary more time to adjust the directive. Mr. Brault asked if these Rules address epidemics such as the one where people had contracted Severe Acute Respiratory Syndrome ("SARS"). Mr. Morgan replied affirmatively. The Vice Chair questioned if the ricin threat is included. Mr. O'Brien pointed out that the statute applies only if there is an infectious or contagious element, so the ricin threat would not be included. The Vice Chair commented that she was bothered by the concept that the time period would be seven or 10 or 30 days. No remedy exists for a confined person –- it is similar to a statute of limitations on the ability to file for relief. Someone should be able to file for relief on the 23rd day. Mr. Michael observed that there is no limit on the number of directives that can be issued. Mr. O'Brien said that the directives can be continued, but each directive issued triggers the right of the person confined to file a petition.

The Vice Chair inquired as to why there has to be a time frame in the Rule at all. Judge Heller replied that the argument is that the rights of the petitioner are being protected by ensuring that an attorney is appointed to represent that person and that there is quick filing of the petition for relief requiring prompt attention to the person detained. Mr. Karceski remarked that most people would not want to be quarantined. If a

petition were filed on behalf of someone quarantined, the person would request an immediate ruling. The Chair noted that Rule 15-1106, Hearing and Record, covers the time for a hearing. Mr. Morgan added that this is taken directly from the statute. Mr. Karceski expressed the view that instead of quarantining someone directly after the person leaves an airplane and then waiting 30 days to decide if the quarantine is appropriate, it would be better to have the hearing at the time the decision is made to confine the person. Mr. Brault pointed out that this may involve a serious health problem, and the public must be protected. Mr. Karceski responded that his intention is not that a person quarantined would immediately be set free after a hearing but that the person would be assured an expedited hearing. The confined person cannot file the petition; obviously, someone has to file the petition on behalf of a person who is confined, and the petition should be heard promptly by the circuit court.

The Chair commented that this is similar to Rule 4-212, Issuance, Service, and Execution of Summons or Warrant, which requires that a defendant who is arrested shall be taken promptly before a judicial officer. Judge Kaplan commented that there had been a tuberculosis epidemic at the prison in Hagerstown, and an attempt was made to bring the prisoners into court, causing a very risky situation. Mr. Dean asked if the legislation addresses the involvement of the court, and Mr. Morgan answered in the affirmative. Mr. O'Brien drew the Committee's attention to section (b) of Code, Health-General Article, §18-906, which

states that an individual or group of individuals isolated or quarantined may request a hearing in circuit court contesting the isolation or quarantine. Mr. Brault noted that automatic review does not necessarily provide medical evidence relating to the petition.

Judge Heller expressed her agreement with the Vice Chair that the Rule should not contain a time requirement for filing the petition for relief. The Rule pertains to conditions that are unknown at this time, and it is not clear as to how the Rule will work. The fact that there is no time requirement for filing the petition should not cause any harm.

The Vice Chair moved that the following language be deleted from section (a) of Rule 15-1103: "within seven days of the date that the Secretary's directive was served on the individual or group of individuals. The petition shall," and that the word "state" be changed to the word "stating." The motion was seconded, and it passed unanimously.

Judge Heller commented that considering the experience in China with the recent SARS epidemic, even though there is a need to protect the individual privacy of someone who is ill, there is a concern about closing a proceeding that is not closed under statute. This raises one of the issues that emerged in China. The Maryland legislature did not enact a blanket closing of catastrophic health emergency proceedings. Mr. Brault commented that a petition contains medical information, which is subject to the privacy requirements of the Health Insurance Portability and

Accountability Act (HIPAA), Public Law 104-191 (1996). Judge Heller noted that the privacy of individuals can be protected without closing an entire case involving a disease such as SARS or bubonic plague. The Chair pointed out that the Rule provides that the clerk seals the petition, which is then subject to further order of the court. Code, Health-General Article §18-904 pertains to reporting requirements and confidentiality. Mr. O'Brien explained that the language in section (b) of Rule 15-1103 was drafted to address the concern expressed by Judge Heller that an entire proceeding under this statute does not necessarily have to be closed. It is up to the court to decide confidentiality.

The Vice Chair pointed out that the Fourth Circuit has proposed a rule that would provide that when a record comes into court, protected information contained in the record, such as social security numbers and addresses, is redacted. The issue of confidential medical information in a health care emergency is broader. The Chair said that the Court of Appeals is considering a set of rules pertaining to access to court records, and the same principles can be considered in the Rules being discussed today. When cases involving financial transaction documents are litigated, there may have already been testimony in open court before any records are sealed. The issue is the potential misuse of other people's identifying items. It might be preferable for the clerk to seal the documents immediately until the court can look them over. Mr. Morgan noted that in the case of *Baltimore*

Sun v. Thanos, 92 Md. App. 227 (1992), in the context of a pre-sentence investigation report, the Court of Special Appeals held that provisional sealing of the report is permitted, pending assessment of the justification of the request to seal. Mr. Brault remarked that if there is a threat to the health of the public, it is not necessary for the Secretary to identify anyone. Mr. Morgan pointed out that other concerns may come out in a hearing, such as an interest in national security. Judge Heller expressed the view that the language of section (b) should remain in the Rule and that the confidentiality provisions of §18-904 are confusing. Mr. Morgan observed that the language of the Rule is flexible. Judge Heller again expressed her concern that a judge should not presumptively close the hearing. Mr. Brault commented that other statutes in the Code contain exceptions to confidentiality, such as Code, Family Law Article §5-704, which requires health care practitioners, police officers, educators, and human service workers to disclose suspicions of child abuse. The required disclosure overrides confidentiality concerns.

The Vice Chair suggested that the language of section (b) be changed to read, as follows: "Upon the filing of a petition, the clerk of the court shall seal the petition on a provisional basis, subject to further order of the court." The Committee agreed by consensus to this change. By consensus the Committee approved the Rule as amended.

Mr. Morgan presented Rule 15-1104, Venue, for the

Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1104, as follows:

Rule 15-1104. VENUE

Any petition for relief under Rule 15-1103 shall be filed in the Circuit Court for Anne Arundel County, or an alternate venue designated by the Chief Judge of the Court of Appeals or that judge's designee.

Source: This Rule is new.

Rule 15-1104 was accompanied by the following Reporter's Note.

This Rule is intended to facilitate the consistent statewide disposition of petitions in emergency proceedings involving challenges to quarantine and isolation directives that may simultaneously affect individuals and the public health in multiple venues throughout the State. This Rule is also intended to facilitate the prompt and expeditious filing in and disposition by the appellate courts of circuit court orders pursuant to Code, Health-General Article, §18-906 and Rule 15-1109.

The Chair asked why the venue of choice is Anne Arundel County. If one is quarantined in Oakland, it may be inconvenient to file the petition in Anne Arundel County. Ms. Potter commented that service of the petition by the next day may be a

burden. Mr. Morgan responded that this could be accomplished by video conferencing. The Chair suggested that after the word "County," the following language should be added: "or in the circuit court for the county in which the petitioner is quarantined." Mr. O'Brien explained that the reason for this provision is the concern about the threat to communities and about protecting courthouses and their personnel. The Vice Chair inquired as to how someone even gets to a courthouse if he or she has been quarantined. Mr. O'Brien noted that the statute does not provide that a quarantined person does not have the right to come to court. Mr. Michael observed that the case could be filed in Anne Arundel County and then transferred. Ms. Potter remarked that this may take too much time. Judge Heller added that transferring a habeas corpus case takes some time. Code, Courts Article, Title 3, Subtitle 7, Habeas Corpus, has no limitation on time. She asked why there is a limitation in the catastrophic health emergency cases. Mr. O'Brien observed that although it could be difficult to go across the state for legal proceedings and the logistics of moving patients and physicians have to be taken into consideration, the case must be heard expeditiously.

The Chair suggested that a *forum non conveniens* safety valve be built into the Rule that would allow consolidation of cases. Judge Kaplan pointed out that there is a danger when more than one court participates, because it could involve a large number of people who are not familiar with the law or the problems, and

it could result in inconsistent decisions. During the savings and loan crisis, lawsuits were filed in numerous counties, but all of the cases were heard in one court. Mr. Morgan commented that there could be a 24- to 48- hour period where relatively similar outbreaks of a disease occur that are possibly linked in some way. This may be grounds for consolidating the cases, avoiding the risk of inconsistent decisions and effectuating an expedited appellate process. There are often delays in transmitting the record to appellate courts. Given the urgency of the issues at stake, these cases must proceed quickly. Consolidated cases on appeal can proceed through the appellate process more quickly than numerous individual cases can proceed.

Judge Heller pointed out that section (e) of Rule 15-1106 pertains to consolidation of claims. She remarked that it is not always difficult to transfer records. The Chair said that Rule 2-327, Transfer of Action, could accomplish what Mr. Morgan had discussed. Either Rule 15-1104 should reference Rule 2-327, or a Committee note that refers to the Rule 15-1106 should be added. The language of the Rule or the note should state that Rule 2-327 is clearly applicable in situations where more than one jurisdiction is involved. It is difficult for someone in Garrett County to go to Anne Arundel County. Mr. Brault observed that if someone is quarantined, the person cannot go anywhere.

The Chair suggested that the following language be added after the words “Anne Arundel County” in Rule 15-1104: “or in the circuit court for the county in which the petitioner is

quarantined." Mr. Maloney inquired as to why venue must be specified in the Rule. Ms. Potter remarked that the hearing could be conducted via telephone or video conferencing, and the parties would not have to come into court at all. If a catastrophic health event occurred, it is possible that the physicians involved could be quarantined.

The Chair referred to Mr. Maloney's suggestion that no venue be listed in the Rule. This would run the risk that the petition could be filed in the wrong court. The Rule should contain some direction as to venue, subject to the case being transferred, pursuant to Rule 2-327, Transfer of Action. Ms. Potter questioned whether the same venue provision should be applied to cases where a petition for habeas corpus has been filed. The Chair said that those cases can be filed anywhere. Mr. Maloney suggested that the catastrophic health emergency cases should be filed wherever the cause of action arose. The Chair pointed out that the proposed Rule provides that the Chief Judge of the Court of Appeals can designate an alternate venue. He suggested that the Rule require that the petition be filed with the Clerk of the Court of Appeals, and the Chief Judge can decide where the hearing should take place. This is similar to Rule 16-752, Order Designating Judge, which provides that when a petition for disciplinary or remedial action is filed in an attorney discipline case, the Court of Appeals enters an order designating a judge of any circuit court to hear the action. Language similar to the language of Rule 16-752 can be used in Rule 15-

1104. The Committee agreed by consensus to this suggestion. By consensus, the Committee approved the Rule as amended.

Mr. Morgan presented Rule 15-1105, Service of Petition, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1105, as follows:

Rule 15-1105. SERVICE OF PETITION

(a) Service Required

A petition for relief shall be served by the petitioner, or the petitioner's authorized representative, on the Secretary or other official designated by the Secretary to receive service. Service shall be made by the close of business on the day following the date when the petition was filed with the court. If service as provided in this section is not feasible, the petitioner or the petitioner's representative may request, or the court shall direct, that service be provided in an alternative manner.

(b) Notice by Clerk

[By the most expeditious means available**]** **[**As promptly as practicable**]**, the clerk of the circuit court shall provide the Secretary or other official designated by the Secretary, and counsel to the Department of Health and Mental Hygiene, with a notice of the filing of the petition and a copy of the petition.

Source: This Rule is new.

Rule 15-1105 was accompanied by the following Reporter's Note.

> This Rule is intended to provide for the prompt and effective service of a petition for an emergency hearing under Code, Health-General Article, §18-906.

Mr. Morgan explained that the Rule provides for expedited notice of the filing of the petition. The Chair pointed out that section (b) of the Rule provides that the clerk of the circuit court shall provide the Secretary and counsel with a copy of the petition. Does this include a reference to the time of the hearing? Mr. Morgan suggested that the language from section (a) which reads "by the close of business on the day following ..." be added to section (b) as "no later than the close of business on the day following ... ." The Chair suggested that section (b) read as follows: "The Clerk of the Court of Appeals shall provide the Secretary or other official designated by the Secretary and counsel to the Department of Health and mental Hygiene, with a notice of the filing of the petition and a copy of the petition." The Committee agreed by consensus to this suggestion. The Chair suggested that the clerk should provide notice as to when the hearing takes place. A second sentence could be added to section (b) which reads, as follows: "The clerk also shall notify the parties of the circuit court to which the action is assigned as to the date and time of the hearing." The Committee agreed by consensus to this addition.

The Reporter asked whether section (a) is necessary. Ms.

Potter suggested that it be deleted. Mr. Brault suggested that the Rule provide for the petitioner to give notice as well as file the petition, but the Vice Chair disagreed, stating that this puts too great a burden on the petitioner. Mr. Brault commented that notice could be given by e-mail or telephone, and the next day the copy of the petition could be served. The Vice Chair responded that the Rule does not contemplate giving notice by e-mail, and notice is not allowed to be given by fax. The Chair noted that Rule 1-351, Order upon Ex Parte Application Prohibited–Exceptions, provides that the moving party has certified in writing that all parties who will be affected by an ex parte order have been given notice of the time and place of presentation of the application to the court or that specified efforts commensurate with the circumstances have been made to give notice. He suggested that section (a) be deleted and that a Committee note be added to Rule 15-1105 which would state that the best practice is to notify the Secretary that the petition will be filed. By consensus, the Committee approved this change. By consensus, the Committee approved the Rule as amended.

Mr. Morgan presented Rule 15-1106, Hearing and Record, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1106, as follows:

Rule 15-1106. HEARING AND RECORD

(a) Response to Petition

The Secretary or other official designated by the Secretary may file an answer or other response to the petition.

(b) Time for Hearing

The court shall conduct a hearing on the record on a petition for relief within three days from the date that the petition is filed with the court.

(c) Extension of Time

The court may extend the time for the hearing:

(1) upon a request of the Secretary or other official designated by the Secretary, for good cause;

(2) upon a request by a petitioner who is unrepresented by counsel, to afford the petitioner an opportunity to retain counsel;

(3) to effectuate the consolidation of proceedings in connection with claims pending before the court in two or more petitions; or

(4) for other good cause.

(d) Waiver of Counsel

If a petition has been filed pursuant to Rule 15-1103 by a person or group not represented by counsel, the petitioner may waive counsel individually or through an authorized representative.

Cross reference: For the right to counsel in these proceedings, see Code, Health-General Article, §18-906 (c).

(e) Consolidation of Claims

In any proceedings brought under this Chapter, the court may order the consolidation of individual claims or group claims that are asserted in one or more

petitions for relief into a single group claim and proceeding for relief where:

(1) the number of individuals, groups of individuals, petitions, or claims for relief involved renders the participation of all individuals or the individual adjudication of all unconsolidated claims impractical;

(2) there are questions of law or fact common to some or all of the individual claims or rights to be determined; or

(3) the group claims or rights to be consolidated and determined are typical of the affected individual's claims or rights; and

(4) the entire group would be adequately represented in the consolidated proceedings.

(f) Appearance at and Conduct of the Hearing

In the event that one or more of the parties, their counsel, or witnesses are unable to appear personally at the hearing, and where the fair and effective adjudication of the proceedings permits, the court, in the interest of justice, may:

(1) accept pleadings and admit documentary evidence submitted or proffered by courier, facsimile, or electronic mail;

(2) relax or suspend some or all of the rules of evidence set out in Title 5 of these Rules; and

(3) if feasible, hear testimony and argument and rule on issues of fact and law, by means of a telephonic conference call, live closed circuit television, live internet or satellite video conference transmission, or other available means of communication that reasonably permit the parties or their authorized representatives to fully participate in the proceedings.

Source: This Rule is new.

Rule 15-1106 was accompanied by the following Reporter's Note.

> This Rule is intended to provide for the efficient and effective administration of court proceedings and hearings during a potential catastrophic health emergency. Much of the language is derived from Code, Health-General Article, §18-906.

The Vice Chair pointed out that the Rules in Title 2 apply to these proceedings to the extent that they are not inconsistent. The language "or other response" refers elsewhere in the Rules to a motion to dismiss. The use of that language in Rule 15-1106 appears to bring in circuit court pleading practices. Mr. Morgan remarked that if a petition alleging the need for quarantine is filed, counsel to the Department talks with the Secretary and files a motion for disposition. The Vice Chair said that if the answer is sent by mail, it would be difficult to hold a hearing within three days from the date that the petition is filed with the court. The Chair suggested that the phrase "or other response" be deleted. The Vice Chair noted that to the extent that no answer is filed, everything filed in the petition is deemed admitted. The Chair said that there is language in other rules that provides that the failure to file an answer does not constitute an admission of what is in the petition. The Reporter noted that Rule 11-107, Responsive Pleading or Motion, one of the Juvenile Rules, contains similar language. She suggested that the following sentence be added to section (a) of Rule 15-1106: "To the extent that an answer is not

filed, the petition shall be deemed denied." By consensus, the Committee approved this change.

Mr. Michael referred to the use of the word "shall" in section (b) and asked what the sanction is if the hearing is not held within three days from the date that the petition is filed with the court. The Chair answered that there is no specific sanction. Judge Norton added that subsection (b)(2) of §18-906 provides that the court shall conduct a hearing within three days from receipt of the request for a hearing.

Mr. Morgan pointed out that section (c) provides for an extension of time with standard grounds. The Vice Chair suggested that the petitioner should be able to request an extension of time for good cause. She said that she was not sure whether there should be a separate consolidation provision. Provisions similar to those of Rule 16-203, Special Docket for Asbestos Cases, could be added to Rule 15-1106. Judge Heller noted that subsection (b)(7) of §18-906 provides for consolidation of cases. The Vice Chair observed that if the statutory provision is covered by Rule 2-327, it is not necessary for section (e) to be in the Rule. Mr. Brault remarked that consolidation of cases is covered by section (d) of Rule 2-327. The Chair suggested that in place of section (e), the following language should be substituted: "Consolidation of cases is governed by Rule 2-327." The Committee agreed by consensus to this modification.

The Vice Chair pointed out that subsection (b)(4)(i) of

§18-906 states that the court may extend the time for a hearing upon a showing by the Secretary or other designated official that extraordinary circumstances exist that justify the extension. The standard is not simply good cause. She noted that this supersedes the statute. The Reporter suggested that if "good cause" is used, there should be a cross reference or a Committee note concerning the difference between the Rule and the statute. The Vice Chair pointed out that the statute allows an extension of time for the hearing only at the request of the Secretary or other designated official. It does not appear that counsel for the petitioner can request an extension. What if the petitioner needs another day to obtain his or her witnesses? The standards applicable to the State and to the petitioner seem inconsistent.

Judge Heller noted that the statute contains the factors the court is to consider in granting or denying the extension, and she suggested that the Rule reference those factors. Mr. Morgan suggested that subsections (b)(4)(i) and (ii) be referenced in the Rule. The Vice Chair commented that it is difficult to be required to go to another source besides the Rules. The Chair commented that the statute is unique and unusual. It is not likely that someone would not read it. He pointed out that Rule 5-412, Sex Offense Cases; Relevance of Victim's Past Behavior, a rule of evidence, refers to the applicable statute. Mr. Morgan suggested that the Rule provide that the court may extend the time pursuant to Code, Health-General Article, §18-906 (b)(4)(i) and (ii). The Chair remarked that it would be unnecessarily

duplicative to list all of the factors in the Rule. He added that the hearing judge would probably want to look also at the statute. The Committee approved Mr. Morgan's suggestion by consensus.

The Vice Chair said that the Rule not only allows the Secretary to request a postponement, but also the petitioner. This is different from the statutory language. The Reporter pointed out that the Rule allows the petitioner to request a postponement, so that he or she can obtain an attorney. The Chair suggested that subsection (c)(2) read as follows: "upon a request by a petitioner who is unrepresented by counsel, to afford the petitioner an opportunity to retain counsel or other good cause." The Committee agreed by consensus to this change.

Ms. Potter noted that section (d) of the Rule provides that the petitioner may waive counsel, but the statute provides in section (c) that the court shall appoint counsel to represent individuals or a group of individuals who are not otherwise represented by counsel. The Chair said that the petitioner is entitled to discharge counsel who has been appointed to represent the petitioner. Ms. Potter observed that nothing in the Rule alerts the judge that he or she must appoint counsel for the petitioner. The Vice Chair commented that the cross reference after section (d) is not broad enough. Counsel should not be waived. The Chair reiterated that a person has the right to discharge counsel but not to waive counsel.

Ms. Potter asked who the "authorized representative"

referred to in section (d) is. The Chair replied that it is a term used in the statute. Judge Heller inquired as to who pays for counsel. Mr. Maloney answered that the Secretary pays. The Reporter questioned whether the case can go forward if the petitioner has no attorney, particularly since a petitioner who is quarantined probably would not be able to appear in court to represent himself or herself. The Vice Chair suggested that the Rules of Procedure be searched to find the phrase "the court shall appoint counsel" to discover how other Rules handle this issue. Some of the Rules provide that the costs shall be borne by the State. The Reporter pointed out that this cannot be effectuated by rule; it is usually provided for by statute. Ms. Potter remarked that in a catastrophic situation, counsel may do the work *pro bono*.

The Chair questioned whether the recommendation of the Committee is that the petitioner not be permitted to waive counsel. Mr. Brault responded that waiving counsel may not pass constitutional muster. Judge Kaplan said that criminal defendants often represent themselves. Judge Heller remarked that in a criminal case, the trial judge examines the defendant to make sure the waiver of counsel is knowing. Ms. Potter pointed out that in a catastrophic health emergency, someone could be on life support and not be able to knowingly waive counsel. The Reporter suggested that the Rule cite the appropriate provision in §18-906 (c) of the Code, and that the

references to the word “waiver” be changed to the word “appointment.” The Committee agreed by consensus to this change.

The Chair asked whether section (f) of the Rule is taken directly from the statute. Mr. Morgan responded that this is new language. The Chair observed that §18-906 (b)(6) of the statute addresses this issue. Mr. Morgan added that the provisions of §18-906 lead up to the language of the Rule. Mr. Brault expressed the opinion that subsection (f)(3) is worded appropriately because it allows other available means of communication. The Chair pointed out that the beginning of section (f) provides that the court “may” take the actions listed in the subsections of the Rule. The use of the word “may” allows flexibility. By consensus, the Committee approved the Rule as amended.

Mr. Morgan presented Rule 15-1107, Disposition and Order, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1107, as follows:

Rule 15-1107. DISPOSITION AND ORDER

(a) Determination

At the conclusion of a hearing on a petition for relief, the court shall

determine by a preponderance of the evidence whether the isolation or quarantine directive of the Secretary, as applied to the petitioner or, in the case of consolidated proceedings, to the individuals or group of individuals similarly situated to the petitioner, is necessary and reasonable under the circumstances to prevent or reduce the spread of the disease or outbreak believed to have been caused by exposure to a deadly agent.

(b) Factors to be Considered

In stating the basis for its determination and ruling on the record, the court may consider all evidence of record concerning but not limited to:

(1) the means of transmission of the disease or outbreak that is believed to be caused by exposure to the deadly agent;

(2) the degree of contagion that is associated with exposure to the deadly agent;

(3) the degree of public exposure to the disease or outbreak;

(4) the risk and severity of the possible result from infection, injury, or death of an individual or group of individuals by the deadly agent;

(5) the basis for believing that the petitioner or the group of individuals similarly situated to the petitioner may have been exposed to the deadly agent;

(6) the potential risk to the public health of an order enjoining the Secretary's directive or otherwise requiring the immediate release of the petitioner, or of an individual or group of individuals similarly situated to the petitioner, from isolation or quarantine; and

(7) other facts or reasons that were material to the decision of the Secretary to issue the isolation or quarantine directive.

(c) Authorization and Relief

If the court determines that the isolation or quarantine directive of the Secretary is necessary and reasonable under the circumstances to prevent or reduce the spread of the disease or outbreak believed to have been caused by exposure to the deadly agent, the court shall deny the petition and issue an order authorizing the continued isolation or quarantine of the individual or group of individuals. If the court determines that the isolation or quarantine directive of the Secretary is not necessary and reasonable under the circumstances to prevent or reduce the spread of the disease or outbreak believed to have been caused by the deadly agent, the court may enjoin the isolation or quarantine directive or provide other equitable relief that the court determines to be appropriate under the circumstances.

Committee note: This Rule clarifies the standard of proof and the mandatory factors to be considered by the circuit court reaching a determination in an emergency hearing conducted under Code, Health-General Article, §18-906.

(d) Order

An order of the court that authorizes the isolation or quarantine of an individual or group of individuals, or is otherwise dispositive of the petition for relief, shall:

(1) be in writing;

(2) reasonably identify the isolated or quarantined individual or group of individuals by name or by shared characteristics;

(3) specify all material findings of fact and conclusions of law that warrant the authorization of continued isolation or quarantine of the individual of group of individuals, or other equitable relief as determined appropriate by the court;

(4) be given to the parties or their counsel of record;

(5) if the order authorizes continued isolation or quarantine of the individual or group,

(A) be effective for a specific period of time not to exceed 30 days;

(B) be served by the Secretary or the Secretary's designee on the individual or group of individuals specified in the order, unless such service is impractical due to the number of geographical dispersion of the affected individuals, in which case the court shall insure that the affected individuals are informed using the best means available; and

(6) if the order enjoins the isolation or quarantine directive or provides other equitable relief, be served by the petitioner, or by the petitioner's counsel, on the individual or group of individuals specified in the order, unless such service is impractical due to the number or geographical dispersion of the affected individuals, in which case the court shall insure that the affected individuals are informed using the best means available.

(e) Relief Available

A directive issued by the Secretary pursuant to Code, Health-General Article, §18-906 (a), may be enjoined by an order of the court that is:

(1) issued following a hearing on the petition, pursuant to Code, Health-General Article, §18-906 (b)(3); and

(2) dispositive of the merits of the petition, pursuant to Code, Health-General Article, §18-906 (b)(5).

Source: This Rule is new.

Rule 15-1107 was accompanied by the following Reporter's

Note.

> This Rule is intended as an aid in the drafting and service of orders dispositive of issues presented in a petition for emergency hearing under Code, Health-General Article, §18-906, and in determining proper authorization or relief in specific cases.

Mr. Morgan explained that this Rule provides general guidance to the court to make its determination, and the factors listed in section (b) help the court articulate its decision as to whether a quarantine is necessary. The Vice Chair noted that the language of section (a) which reads "the court shall determine by a preponderance of the evidence whether the isolation or quarantine directive of the Secretary ... is necessary and reasonable under the circumstances to prevent or reduce the spread of the disease or outbreak believed to have been caused by exposure to a deadly agent" implies that the burden is on the petitioner to get out of quarantine, but the statute provides in subsection (b)(5)(i)1 that "the court shall grant the request for relief unless the court determines that the isolation or quarantine directive is necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to a deadly agent." Mr. Morgan inquired as to whether these two standards are inconsistent. The Vice Chair replied that normally a petitioner has the burden of proof, but the statute shifts the burden to the Secretary by requiring the court to release provides the petitioner from quarantine unless the court makes the

determination that the quarantine directive is necessary and reasonable.

The Chair suggested that section (a) read as follows: "At the conclusion of a hearing on a petition for relief, the court shall grant the petition unless the court finds by a preponderance of the evidence that the isolation or quarantine directive ...". Mr. Maloney added that the language of subsection (b)(5)(i)1 of the statute can be tracked. The Committee agreed by consensus to this change.

The Vice Chair inquired as to whether the standard in the Rule should be "by a preponderance of the evidence." This is the burden in cases involving petitions for a writ of habeas corpus. The Chair replied that this should continue to be the standard. The statute does not address the burden of proof. The Vice Chair added that it is a good idea to address the burden of proof in the Rules making it consistent with the burden of proof in a habeas corpus case. Judge Heller remarked that this clarifies that this is not agency review, so it should be retained.

Mr. Brault asked what the phrase "deadly agent" means. Mr. O'Brien answered that it refers to a series of diseases that are life-threatening and contagious or infectious. The statute gives examples of these diseases. The Vice Chair commented that section (b) appears to be very State-oriented. Judge Kaplan responded that it has to be this way; the State has an obligation to protect the general public. The Chair suggested that the word "may" in the first sentence of section (b) should be changed to

the word “shall.” Judge Kaplan observed that the Termination of Parental Rights (TPR) Statute, Code, Family Law Article §5-313 has a provision listing the factors that the court must consider. The Chair suggested that the TPR statute and Rules be reviewed for language to direct the court to make a factual finding based on consideration of a list of factors. The Vice Chair pointed out that the structure of the introductory language to section (b) appears to assume that there is evidence, even though in reality, none may exist. Mr. Morgan suggested that the word “any” could be added in place of the word “all.” The Vice Chair suggested that the first sentence could read as follows: “...the court shall weigh the following factors ...”.

The Chair observed that subsection (c)(2) of Rule 9-109, Hearing on Merits, provides: “...the court shall determine on the record whether...”. Judge Heller asked about the necessity of stating the reasons on the record. Mr. Morgan expressed the view that this is beneficial. Mr. Michael suggested that the language of section (b) could read as follows: “... the court shall consider all evidence of record along with ...”. Judge Heller inquired if this means that the judge must expressly address each factor listed. Mr. Klein said that considering the evidence of record is not the same as stating the reasons on the record. Mr. Morgan suggested that the language could be: “the court shall consider all evidence of record and determine ...”. Judge Heller referred to the Chair’s comment that the judge may not be able to make a determination as to each factor. The Chair

pointed out the language of subsection (d)(1) of Rule 4-216, Pretrial Release, which reads as follows: “In determining whether a defendant should be released and the conditions of release, the judicial officer shall take into account the following information, to the extent available ...”. Mr. Brault remarked that stating the basis for the determination on the record requires a finding on the record.

The Chair suggested that the language of section (a) of Rule 2-522, Court Decision–Jury Verdict, be used. It reads as follows: “... the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision...”. Mr. Morgan asked about the list of factors. The Chair suggested that the following language be used: “The court shall take into account the following information, to the extent available: ... . The court shall state the basis for its determination and ruling on the record.” The Committee approved this suggestion by consensus.

The Chair asked about the use of the word “basis” in subsection (b)(5). Judge Heller suggested that subsection (b)(5) read as follows: “whether the petitioner or the group of individuals similarly situated to the petitioner may have been exposed to the deadly agent.” By consensus, the Committee approved this change.

The Chair asked about the wording of subsection (b)(7). He expressed the view that it is appropriate to have a “catchall”

category, but that the facts or reasons material to the decision of the Secretary to issue the isolation or quarantine directive are not relevant. He suggested that subsection (b)(7) read as follows: "any other material facts." The Committee approved this change by consensus.

Mr. Morgan explained that section (c) is an attempt to clarify what happens if the court determines that the directive is reasonable and what happens if the court determines the directive is not reasonable. Judge Heller remarked that section (c) is confusing.

The Vice Chair pointed out that in section (a), the language "the court shall determine by a preponderance of the evidence" has been changed to "the court shall grant the petition unless the court finds by a preponderance of the evidence." The second sentence of section (c) should be conformed. Mr. Maloney suggested that section (c) be deleted entirely. Mr. O'Brien commented that someone may be released, for example, to take care of his or her children, but other activities may be limited. This happened in the SARS epidemic in Toronto recently. Mr. Maloney inquired as to whether the statute allows this. Mr. O'Brien answered that the statute does not allow this specifically. The Chair suggested that the second sentence of section (c) read as follows: "[i]f the court grants the petition, the court may provide other equitable relief that the court determines to be appropriate under the circumstances." Mr. Michael noted that similar language appears in subsection (d)(3).

Mr. Maloney noted that section (d) is appropriate if the order denies the petitioner's relief. Judge Heller added that section (d) parallels the statute.

The Reporter said that the suggestion has been made to eliminate section (c), and she asked whether an introductory clause should be added to section (d) that would state simply "An order shall: ...", listing the five items currently in section (d). The Chair suggested that the word "generally" should introduce section (d) and should be added in after the tagline. The Vice Chair asked why the court has to issue an order if the court agrees with the State and denies the petition. That would leave the order of the Secretary in place. Judge Heller responded that the statute requires this. Mr. Morgan noted that there is a typographical error in subsection (d)(5)(B); the phrase "number of" should be "number or."

The Chair suggested that subsection (d)(3) be divided up into parts. The first would read as follows: "specify all material findings of fact and conclusions of law." The second would read as follows: "order the authorization of continued isolation or quarantine of the individual or group of individuals." The Committee approved this change by consensus.

The Chair remarked that the order continues for no more than 30 days. The Vice Chair pointed out that section (a) of Rule 15-1107 has been modified to state that the court shall grant the petition unless the court finds that the directive is necessary and reasonable. Should there be another provision which says

that the court may grant or deny the petition? It has been suggested that section (c) should be deleted, but this contains language which states that the court may provide other equitable relief that the court determines to be appropriate under the circumstances. The Chair responded that language should go in section (c) that provides that if the court determines that a quarantine is necessary, the court enters an order (more than just denying the petition). If the court grants the petition, but the Secretary appeals, the Rule should provide that the court can do something to preserve the status quo pending the appropriate action. Section (c) should be left in the Rule. The first part of section (d) should provide what each order of the court must include, and the second part should provide what an order authorizing continued isolation or quarantine must include.

Judge Norton inquired as to the authority of the court to order equitable relief. Is it derived from the appeals provision that allows the court can set conditions pending appeal? The Chair said that the situation would be that the judge disagrees with the decision of the Secretary. The judge may award counsel fees or issue a stay if the Secretary wants to appeal. Is this equitable relief? Mr. O'Brien responded that other equitable relief may be required, such as in a situation where the court agrees that some restriction other than a full quarantine is appropriate. Mr. Maloney noted that the statute does not create a quasi-quarantine. Judge Heller asked whether a rule has the authority to circumscribe liberty. Mr. Dean answered that the

legislature did not offer an intermediate remedy. Mr. Brault remarked that the order issued by the Secretary may contain alternatives, such as house quarantine. The Chair said that since the Secretary can negotiate with the person and work out an arrangement, the Rule should give the court power to enter a consent order if the parties are able to work something out. This could be placed in a Committee note. Mr. Brault pointed out that this is within the general equitable powers of the court.

The Chair stated that there is no express provision for the judge to enter other appropriate relief. He suggested that a stay provision be added to the Rule, so the Secretary can get prompt appellate review of the court's decision. The Committee agreed by consensus to this suggestion. Judge Kaplan noted that this would be an exception to the certiorari rule. During the crisis involving the savings and loan institutions, the cases pertaining to their difficulties were heard directly by the Court of Appeals. Mr. Karceski observed that section (c) of §18-906 provides for the Court of Appeals to develop emergency rules of procedure to facilitate the efficient adjudication of the proceedings brought under the statute. The Vice Chair commented that this may be creating jurisdiction in the Court of Appeals.

Mr. Brault pointed out that subsection (d)(5)(B) of Rule 15-1107 provides that the court shall ensure that the affected individuals are informed using the best means possible. He noted a situation where, in a matter involving injunctions of teachers, the teachers were notified of proceedings by the use of

television pursuant to section (d) of Rule 15-502, Injunctions–General Provisions. Judge Heller added that subsection (b)(5)(ii)1.C. of the statute provides that an order authorizing the isolation or quarantine must be in writing, but if that is impracticable, subsection (b)(5)(ii)2. states that the court shall insure that the affected individuals are fully informed of the order using the best possible means. The Chair said that if the court grants the petition and issues an order ending the isolation, this is the granting of the application, not the issuance of an injunction.

Mr. Morgan noted that a *pro se* petitioner may not know how to word the petition. Judge Heller remarked that this would not be a problem if someone were represented by an attorney. The Chair reiterated that the statute provides an "all or nothing" approach. Either the person in confinement stays there, or he or she is released. Mr. Morgan asked if the court is divested of equitable jurisdiction. The Chair responded that the court has jurisdiction, but once the petition is filed, the court does not have the authority to take actions that it could have taken had it had received a complaint requesting equitable relief. Habeas corpus relief is available, as is equitable relief. A petition filed under the Catastrophic Health Emergency Rules is for the limited purpose of determining whether or not the person stays in quarantine or isolation. Mr. Brault suggested that the Rules should provide that no jury trial is available.

Mr. Karceski pointed out that although section (b) of Rule 15-1106 provides that the court shall conduct a hearing on the record within three days from the date that the petition is filed with the court, this is unrealistic. Mr. Brault remarked that someone could appeal based on the jury trial issue. He suggested that section (a) of Rule 15-1107 could provide as follows: "... in the exercise of its equitable power, the court shall grant the petition...". The Chair said that this is a policy question. The Rule could provide that at the hearing, the court can grant equitable relief or that equitable relief is available under the equity rules. Judge Heller remarked that this could be an invitation to suits for a writ of mandamus. The Rule should not invite actions for equitable relief. The Chair pointed out that the statute does not provide that the court has the authority to grant equitable relief.

Mr. Brault asked if it is possible that jury trials would be available by the incorporation doctrine. The Reporter inquired as to whether there should be a Committee note explaining that jury trials are not available. Judge Heller remarked that there are other ways to review the directives of the Secretary. The Chair noted that section (e) provides what relief is available. A petitioner can try to obtain an injunction. It would be better to state that these Rules do not involve requests for equitable relief, which can always be sought. The Chair suggested that section (e) should be deleted. Judge Kaplan suggested that the Rule could provide that the relief available is set forth in the

statute.

The Vice Chair pointed out that section (c) provides that the court may determine that the isolation or quarantine directive of the Secretary is necessary and reasonable under the circumstances. The Reporter questioned whether section (c) has been deleted from the Rule. The Chair answered that the first sentence of section (c) stays in, but the second sentence has been deleted. The Vice Chair asked what happens if the court grants the petition. The Chair replied that if the court grants the petition, the matter is over. Judge Heller inquired as to whether the stay provision will be added to the Rule, and the Chair responded affirmatively. The Reporter questioned whether section (e) will remain in the Rule, and the Committee agreed by consensus to delete it.

Mr. Morgan asked if the language suggested by Judge Kaplan, which is that relief is available pursuant to the statute, should be added to the Rule. The Vice Chair responded that the Rule already provides what relief is available in section (a), as follows: "[a]t the conclusion of a hearing on a petition for relief, the court shall grant the petition unless the court finds by a preponderance of the evidence that the isolation or quarantine directive of the Secretary ... is necessary and reasonable under the circumstances to prevent or reduce the spread of the disease or outbreak believed to have been caused by exposure to a deadly agent."

Mr. Morgan commented that hypothetically the petition could

ask that the Secretary be jailed, and since the Rule states "the court shall grant the petition unless ...," it could mean that the court will order incarceration of the Secretary. The Chair said that the Rule will provide that the court shall order that the petitioner be released from quarantine. A Committee note could be added which would state that no other relief is available under this Chapter and also state what is potentially available. Mr. Maloney suggested that what is potentially available should not be included in a note. By consensus, the Committee approved the Rule as amended.

Mr. Morgan presented Rule 15-1108, Motion to Continue Order, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1108, as follows:

Rule 15-1108. MOTION TO CONTINUE ORDER

Prior to the expiration of a court order authorizing or continuing the authorization of the isolation or quarantine of an individual or group of individuals, the Secretary may move for a continuation of the order for another period not to exceed 30 days. If a motion for continuation is filed, any party to the proceedings may file a response to the motion as promptly as practicable, but no later than 15 days after the motion was filed. The filing of a motion for continuation shall stay the expiration of the court order pending disposition of the

motion.

Source: This Rule is new.

Rule 15-1108 was accompanied by the following Reporter's Note.

> This Rule is intended to facilitate a circuit court's prompt and effective review of continuing proceedings involving the parties without requiring the filing by and service on the parties of additional directives and petitions.

Mr. Morgan pointed out that subsection (b)(5)(iv)1. of the statute provides that prior to the expiration of an order, the Secretary or designated official may move to continue isolation or quarantine for subsequent 30-day periods. Mr. Brault observed that the statute puts no limit on the number of additional 30-day periods. Mr. Maloney said that the burden is on the Secretary to get the hearing set before quarantine order expires. The Vice Chair questioned as to why this provision would be needed.

The Chair said that the Secretary is given the power to move for a continuation of the isolation or quarantine not to exceed 30 days. Language could be added to the Rule stating that the court shall hold a hearing on the motion no later than three days after the motion is filed. Mr. Karceski reiterated that the three-day time period may not be realistic. The Chair responded that this is in the statute. Mr. Karceski remarked that the statute provides that the court may extend the time for the hearing upon a showing by the Secretary or other designated

official that extraordinary circumstances exist. Mr. Brault observed that the statute does not provide for the petitioner to ask for an extension of the time for a hearing. Mr. Karceski expressed the view that there should be such a provision. This is analogous to domestic violence cases where a temporary three-day order is signed and within five days, the parties must appear in court. It may not be a good idea for a quarantined party to appear in court. Within three days, other action can be taken, such as setting up a hearing via the telephone, television, or satellite to decide on an extension of the quarantine. The petitioner may need to be quarantined for 30 days or 60 days or longer.

The Chair said that the decision is not made on the papers filed, but after the court has attempted to hear from all of the people involved. Mr. Karceski commented that there may be no response from the petitioner. Mr. Maloney noted that no continuation order should be entered without a hearing being held. The Chair responded that this is a good idea. Judge Heller observed that granting a continuation order after holding a hearing is much different than granting one without a hearing. The Chair commented that this is similar to a juvenile status hearing.

The Chair suggested that the first sentence of Rule 15-1108 be retained and the rest of the Rule deleted. Language should be added providing that a continuation order may not be granted without a hearing. The Vice Chair inquired as to why the rest of

the Rule should be deleted. She suggested that the Rule provide that parties have 15 days to respond to the motion. Mr. Maloney pointed out that this would be inconsistent with the three-day period for the hearing. The Chair commented that if there must be a hearing, it does not matter whether an answer is filed.

The Vice Chair asked whether the last sentence should remain in the Rule. Mr. O'Brien remarked that this is important if there is a mass quarantine. If a second or third hearing is held, there already has been a full hearing. In the interest of public health, it would not be beneficial for the quarantine order to expire before the hearing is held.

Mr. Maloney commented that filing a motion for continuation should not trigger an indefinite, automatic stay of the expiration of the order. Mr. Morgan stated that the Secretary could move for a stay. The Chair suggested that this not be built into the Rule. The court can do what it thinks appropriate. Judge Kaplan observed that no extension can be granted without a hearing, and the hearing must be held before the expiration of the original order. The Chair added that it is not necessary to state in the Rule that once the order expires, the quarantine is over. Mr. Morgan expressed the view that the Secretary should be able to ask for a stay.

The Vice Chair said that if she represented someone who had been quarantined, and the Rule did not have a provision for the power of the court to grant a stay, she would argue that there is no authority to grant a stay, because other rules do have

language giving the power to grant a stay. Mr. Morgan suggested that the Rule could provide that the Secretary may request and the court can grant a stay. The Chair commented that the Rule should clarify that the request for a hearing should be filed with the judge who entered the quarantine or isolation order, and a request for a stay pending the hearing could be included. No motion for a continuation order should be granted without a hearing.

Judge Heller pointed out that section (c) of Rule 15-504, Temporary Restraining Order, provides that the court may extend the expiration date for a temporary restraining order for one additional like period on motion filed pursuant to Rule 1-204 unless the person against whom the order is directed consents to an extension for a longer period. Mr. Maloney noted that the parties in a quarantine case could agree to a consent order. The Chair said that the Rule does not provide for this. Mr. Brault suggested that language could be added which would provide that the Secretary may move for a continuation of the order for another period not to exceed 30 days unless the petitioner consents to a continuation. The Chair suggested that the remainder of the Rule after the first sentence read as follows: "The motion shall be filed in the court that entered the quarantine order and may include a request for a stay pending the hearing. Unless the petitioner consents to the entry of an order for continuation, no order shall be granted without a hearing." By consensus, the Committee agreed to this change. By consensus,

the Committee approved the Rule as amended.

Mr. Morgan presented Rule 15-1109, Expedited Review, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1109, as follows:

Rule 15-1109. EXPEDITED REVIEW

> Any party adversely affected by the court's ruling on a petition for relief or on a subsequent motion to continue an order authorizing isolation or quarantine may file an application for leave to appeal pursuant to Rule 8-204 within five days of the ruling by the circuit court. The filing of an application for leave to appeal shall not stay or enjoin a circuit court ruling authorizing an isolation or quarantine directive or continuing an order authorizing a directive.
>
> Source: This Rule is new.

Rule 15-1109 was accompanied by the following Reporter's Note.

> This Rule is intended to facilitate the orderly but expeditious review of rulings affecting the rights of emergency hearing petitioners under Code, Health-General Article, §18-906, and the interests of the Secretary in protecting the public health in a potential catastrophic health emergency.

The Vice Chair referred to the "application for leave to

appeal" in the first sentence of the Rule and inquired as to whether this is taken from the statute. Mr. Morgan replied that it is not from the statute. Mr. Karceski added that section (d) of §18-906 states that the Court of Appeals shall develop emergency rules of procedure to facilitate the efficient adjudication of proceedings brought under the section. Mr. Maloney asked if the existing expedited appellate review process would be applicable, and Mr. Brault replied that the matter would be moot if the timetable in Rule 8-207 were followed. The Vice Chair noted that the Rule refers to Rule 8-204, Application for Leave to Appeal to Court of Special Appeals. It is a good idea to have expedited review of these cases, but not by rule. Mr. Brault remarked that Rule 8-204 is applicable where there is no appeal of right. The Chair questioned as to whether there is an appeal of right. Mr. Maloney commented that the legislature did not provide an appeal mechanism. The Chair said that since the legislature provided that the Court of Appeals could adopt rules for catastrophic health emergency cases, there is authority to include an application for leave to appeal.

Mr. Morgan observed that if there is right to appeal these cases, once the appeal is noted, the circuit court may be divested of power. Judge Heller asked whether the trial judge can rule if the Secretary moves to extend the order. The Vice Chair commented that the petitioner may file an appeal five days after the first order. Judge Heller noted that this does not necessarily divest the trial court of continuing jurisdiction.

Mr. Brault remarked that in equity cases, the trial court retains jurisdiction to act even if an appeal is pending. The Vice Chair responded that this is not true with respect to the matter on appeal. The effect is granting a further stay pending appeal. Mr. Maloney added that the trial judge still has jurisdiction, even if five days after the court issues the order of quarantine, the physician states that the quarantined person no longer is contagious. The Vice Chair said that the case goes back to the trial court to dismiss the appeal. She cautioned against the concept that a rule could create a right to appeal. The Chair responded that not referring to the right of appeal would leave people in the dark. Mr. Morgan added that there is a common law inherent right to appeal.

The Chair said that the Rule should provide for appellate review, which triggers the appellate rules. A party can ask for a stay from the circuit court and from the appellate court. The Reporter asked about the language to provide for this. The Chair suggested that the Rule read as follows: “Any party adversely affected by the court’s ruling on a petition for relief or on a subsequent motion to continue an order authorizing isolation or quarantine shall have the right of appellate review.” The remainder of the Rule can be deleted. The Committee agreed by consensus with this suggestion.

The Chair stated that after the changes discussed today have been made to proposed new Title 15, Chapter 1100, the Committee would review the Rules at another meeting.

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

The Reporter presented Rules 2-251, and 4-326, Jury - Review of Evidence - Communications, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-521 to add language to section (d) providing that the clerk is to stamp the date and time of any communication from the jury, as follows:

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

(a) Jurors' Notes

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

(b) Items Taken to Jury Room

Jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and

consent of the court. Written or electronically recorded instructions may be taken into the jury room only with the permission of the court.

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

(c) Jury Request to Review Evidence

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

(d) Communications With Jury

The court shall notify the parties of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. <u>The clerk shall stamp the date and time of any communication received from the jury.</u>

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

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

At the Court of Appeals conference on the 152nd Report, the Court added the following language to section (d) of Rules 2-521 and 4-326: "as promptly as practicable and in any event." The Court then suggested that a provision requiring the clerk to stamp the date and time of any communication from the jury should be added to section (d) of

the two Rules. The Trial Subcommittee recommends that section (d) of Rules 2-521 and 4-326 be changed accordingly.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-326 to add language to section (d) providing that the clerk is to stamp the date and time of any communication from the jury, as follows:

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

(a) Jurors' Notes

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

(b) Items Taken to Jury Room

Jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take the charging document and exhibits which have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and the consent of the court. Electronically recorded instructions or oral instructions reduced to

writing may be taken into the jury room only with the permission of the court. On request of a party or on the court's own initiative, the charging documents shall reflect only those charges on which the jury is to deliberate. The court may impose safeguards for the preservation of the exhibits and the safety of the jurors.

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

(c) Jury Request to Review Evidence

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

(d) Communications With Jury

The court shall notify the defendant and the State's Attorney of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. <u>The clerk shall stamp the date and time of any communication received from the jury.</u>

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

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

See the Reporter's note to Rule 2-521.

The Reporter explained that upon consideration of the proposed Rules changes in the 152nd Report, the Court of Appeals had adopted amendments to Rules 2-521 and 4-326. At the hearing, the Court had suggested that language should be added to the Rules requiring the clerk to stamp the date and time of any communication from the jury. Judge Kaplan suggested that in place of the word "stamp," the Rules should provide that the clerk or the court can write the date and time of any communication received from the jury. The Reporter suggested that the following language be added to the end of section (d) in each Rule: "The clerk or the court shall note in writing on the communication the date and time of any communication received from the jury." By consensus, the Committee agreed with this change. By consensus, the Committee approved the Rules as amended.

Agenda Item 3. Consideration of proposed amendments to Rule 12-207 (Trial)

The Assistant Reporter presented Rule 12-207, Trial, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 200 - CONDEMNATION

AMEND Rule 12-207 (b) by adding language referring to the exclusion of "quick take" condemnation proceedings and by adding a cross reference at the end, as follows:

Rule 12-207. TRIAL

(a) Trial by Jury Unless Otherwise Elected

An action for condemnation shall be tried by a jury unless all parties file a written election submitting the case to the court for determination. All parties may file a written election submitting an issue of fact to the court for determination without submitting the whole action.

Committee note: The issue of the plaintiff 's right to condemn is a question of law for the court. *Bouton v. Potomac Edison Co.,* 288 Md. 305 (1980).

(b) Opening Statement

Each party to the action may make an opening statement to the trier of fact. If the action for condemnation is not a "quick-take" pursuant to Maryland Constitution, Art. III, §§40A-40C, the opening statement may be made before the trier of fact views the property sought to be condemned. A plaintiff may reserve the opening statement until after ~~the~~ any view. A defendant may reserve the opening statement until after ~~the~~ any view or until the conclusion of the evidence offered by the plaintiff.

Cross reference: See *Bern-Shaw Limited Partnership v. Mayor and City Council of Baltimore*, 377 Md. 277 (2003) in which the court held that section (c) of this Rule does not apply to a "quick-take" condemnation proceeding.

(c) View

Before the production of other evidence, the trier of fact shall view the property sought to be condemned unless the court accepts a written waiver filed by all parties or unless the condemnation is a "quick-take" proceeding. In a jury trial, each party shall inform the court, before the

jury leaves for the view, of the name of the person to speak for that party at the view. Only one person shall represent all of the plaintiffs and only one person shall represent all of the defendants, unless the court orders otherwise for good cause. Only those persons shall be permitted to make any statement to the jury during the view, and the court shall so instruct the jury. These persons shall point out to the jury the property sought to be condemned, its boundaries, and any adjacent property of the owner claimed to be affected by the taking. They may also point out the physical features, before and after the taking, of the property taken and of any adjacent property of the owner claimed to be affected by the taking. The judge shall be present at and shall supervise the view unless the court accepts a written waiver filed by all parties.

The parties, their attorneys, and other representatives may be present during a view. A jury shall be transported to and attend a view as a body under the charge of an officer of the court, and the expense of transporting the jury shall be assessed as costs.

Source: This Rule is derived from former Rules U15, U17, and U18.

Rule 12-207 was accompanied by the following Reporter's Note.

The Court of Appeals held in *Bern-Shaw Limited Partnership v. Mayor and City Council of Baltimore*, 377 Md. 277 (2003) that views of property in condemnation actions pursuant to Rule 12-207 are not appropriate for "quick-take" proceedings because the property is taken immediately for public use, and the Rule refers to property "sought to be condemned." The purpose of a "quick-take" condemnation is to permit the condemning authority to immediately alter or demolish the premises, leaving little time for a viewing at the time of the trial. The

Property Subcommittee recommends additional

language in section (b) and (c) and a cross reference at the end of section (b) to clarify the holding in the case.

The Assistant Reporter explained that the Property Subcommittee proposes that language be added to the Rule to comply with the holding in the case of *Bern-Shaw Limited Partnership v. Mayor and City Council of Baltimore*, 377 Md. 277 (2003) in which the Court of Appeals pointed out that a mandatory view of property in a condemnation action pursuant to Rule 12-207 is not appropriate in a "quick-take" proceeding, because the condemning authority immediately alters or demolishes the property, and a view of a demolished property may be unfairly prejudicial to the former owner. The addition of the proposed language to sections (b) and (c) and the cross reference after section (b) will address this issue. Mr. Brault expressed his agreement with the proposed language, and by consensus, the Committee approved the Rule as presented.

The Chair adjourned the meeting.