COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held at the Marriott's Hunt Valley Inn, 245 Shawan Road, Hunt Valley, Maryland on May 10, 2002.

Members present:

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

Lowell R. Bowen, Esq.
Robert L. Dean, Esq.
Hon. James W. Dryden
Hon. G. R. Hovey Johnson
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Timothy F. Maloney, Esq.
Hon. John F. McAuliffe
Hon. William D. Missouri
Hon. John L. Norton, III
Larry W. Shipley, Clerk
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Arthur Delano, Jr., Esq., Office of the Public Defender

The Chair convened the meeting.

Agenda Item 1. Consideration of certain proposed rule changes recommended by the Attorneys Subcommittee: Amendments to: Rules 16-743 (Peer Review Process), 16-723 (Confidentiality), 16-735 (Dismissal or Other Termination of Complaint), 16-722 (Audit of Attorney Accounts and Records), 16-751 (Petition for Disciplinary or Remedial Action), 16-774 (Summary Placement on Inactive Status), 2-652 (Enforcement of Attorney's Liens), 16-811 (Client Protection Fund of the Bar of Maryland), 16-713 (Peer Review Committee), 16-714 (Disciplinary Fund), 16-722 (Audit of Attorney Accounts and Records), 16-724 (Service of Papers on Attorney), 16-742 (Peer Review panel), 16-753 (Service of Petition), 16-760 (Order Imposing Discipline or Inactive Status), 16-772 (Consent to Discipline or Inactive

Status), 16-775 (Resignation of

Attorney), 16-781 (Reinstatement), Bar Admission Rule 12 (Order of Admission; Time Limitation) Bar Admission Rule 13 (Out-of-State Attorneys), Bar Admission Rule 14 (Special Admission of Out-of-State Attorneys), Bar Admission Rule 15 (Special Authorization for Out-of-State Attorneys to Practice in this State)

Mr. Titus, a member of the Attorneys Subcommittee, presented Rule 16-743, Peer Review Process, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-743 to clarify the process for filing a Petition for Disciplinary or Remedial Action upon the recommendation of a Peer Review Panel, as follows:

Rule 16-743. PEER REVIEW PROCESS

(a) Purpose of Peer Review Process

The purpose of the peer review process is for the Peer Review Panel to consider the Statement of Charges and all relevant information offered by Bar Counsel and the attorney concerning it and to determine (1) whether the Statement of Charges has a substantial basis and there is reason to believe that the attorney has committed professional misconduct or is incapacitated, and, (2) if so, whether a Petition for Disciplinary or Remedial

Action should be filed or some other disposition is appropriate. The peer review process is not intended to be an adversarial one and it is not the function of Peer Review Panels to hold evidentiary hearings, adjudicate facts, or write full opinions or reports.

Committee note: If a Peer Review Panel concludes that the complaint has a substantial basis indicating the need for some remedy, some behavioral or operational changes on the part of the lawyer, or some discipline short of suspension or disbarment, part of the peer review process can be an attempt through both evaluative and facilitative dialogue, (A) to effectuate directly or suggest a mechanism for effecting an amicable resolution of the existing dispute between the lawyer and the complainant, and (B) to encourage the lawyer to recognize any deficiencies on his or her part that led to the problem and take appropriate remedial steps to address those deficiencies. The goal, in this setting, is not to punish or stigmatize the lawyer or to create a fear that any admission of deficiency will result in substantial harm, but rather to create an ambience for a constructive solution. The objective views of two fellow lawyers and a lay person, expressed in the form of advice and opinion rather than in the form of adjudication, may assist the lawyer (and the complainant) to retreat from confrontational positions and look at the problem more realistically.

(b) Scheduling of Meeting; Notice to Attorney

(1) The Chair of the Peer Review Committee, after consultation with the members of the Peer Review Panel, Bar Counsel, and the attorney, shall schedule a meeting of the Panel.

(2) If, without substantial

justification, the attorney does not agree to schedule a meeting within the time provided in subsection (b) (5) of this Rule, the Chair may recommend to the Commission that the peer review process be terminated. If the Commission terminates the peer review process pursuant to this subsection, the Commission may take any action that could be recommended by the Peer Review Panel under section (e) of this Rule.

(3) The Chair shall notify Bar Counsel, the attorney, and each complainant of the time, place, and purpose of the meeting and invite their attendance.

(4) The notice to the attorney shall inform the attorney of the attorney's right to respond in writing to the Statement of Charges by filing a written response with the Commission and sending a copy of it to Bar Counsel and each member of the Peer Review Panel at least ten days before the scheduled meeting.

(5) Unless the time is extended by the Commission, the meeting shall occur within 60 days after appointment of the Panel.

(c) Meeting

(1) The Peer Review Panel shall conduct the meeting in an informal manner. It shall allow Bar Counsel, the attorney, and each complainant to explain their positions and offer such supporting information as the Panel finds relevant. Upon request of Bar Counsel or the attorney, the Panel may, but need not, hear from any other person. The Panel is not bound by any rules of evidence, but shall respect lawful privileges. The Panel may exclude a complainant after listening to the complainant's statement and, as a mediative technique, may consult separately with Bar Counsel or the attorney. The Panel may meet in private to deliberate.

(2) If the Panel determines that the Statement of Charges has a substantial basis and that there is reason to believe that the attorney has committed professional misconduct or is incapacitated, the Panel may (A) conclude the meeting and make an appropriate recommendation to the Commission or (B) inform the parties of its determination and allow the attorney an opportunity to consider a reprimand or a Conditional Diversion Agreement.

(3) The Panel may schedule one or more further meetings, but, unless the time is extended by the Commission, it shall make a recommendation to the Commission within 90 days after appointment of the Panel. If a recommendation is not made within that time or any extension granted by the Commission, the peer review process shall be terminated and the Commission may take any action that could be recommended by the Peer Review Panel under section (e) of this Rule.

(d) Ex Parte Communications

Except for administrative communications with the Chair of the Peer Review Committee and as allowed under subsection (c) (1) as part of the peer review meeting process, no member of the Panel shall participate in an ex parte communication concerning the substance of the Statement of Charges with Bar Counsel, the attorney, the complainant, or any other person.

(e) Recommendation

The Peer Review Panel may **recommend to the Commission that a Petition for Disciplinary or Remedial Action be filed or** make any recommendation to the Commission that Bar Counsel may make under Rule 16-734 (a), (b), **or** (c)~~, or (e)~~. The Panel shall accompany its recommendation with a brief explanatory statement.

(f) Action by Commission

The Commission may **(1) approve the filing of a Petition for Disciplinary or Remedial Action, (2)** take any action on the **Panel's** recommendation that it may take on a similar recommendation made by Bar Counsel under Rule 16-734**, or (3) dismiss the Statement of Charges and terminate the proceeding**.

Source: This Rule is new.

Rule 16-743 was accompanied by the following Reporter's Note.

Deputy Bar Counsel Glenn Grossman brought to the attention of the Attorneys Subcommittee the need for a clarifying amendment to Rule 16-743.

Although it is clearly the intention of the Rules that one "appropriate recommendation" under Rule 16-743 (c)(2) is that a Petition for Disciplinary or Remedial Action be filed by Bar Counsel upon approval by the Commission (see Rule 16-751 (a)), the current structure of the Rules makes it difficult to see how that result is reached in a situation that does not involve the circumstances covered by Rule 16-771, 16-773, or 16-774. This is because sections (e) and (f) of Rule 16-743 refer back to Rule 16-734 (a), (b), (c), and (e). None of those sections contemplates the filing of a Petition for Disciplinary or Remedial Action, except under the limited circumstances set forth in Rules 16-771, 16-773, and 16-774.

The proposed amendment clarifies the process for filing a Petition for Disciplinary or Remedial Action upon the recommendation of a peer review panel.

Mr. Titus explained that the amendment to Rule 16-743 makes clear that the petition for disciplinary or remedial action can be filed upon the recommendation of a peer review panel. The Committee approved the Rule change by consensus.

Mr. Titus presented Rule 16-723, Confidentiality, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-723 by adding a new subsection (b)(5) pertaining to prior reprimands, as follows:

Rule 16-723. CONFIDENTIALITY

. . .

(b) Other Confidential Proceedings and Records

Except as otherwise provided in these Rules, the following records and proceedings are confidential and not open to inspection:

(1) the records of an investigation by Bar Counsel;

(2) the records and proceedings of a Peer Review Panel;

(3) information that is the subject of a protective order;

(4) the contents of a warning issued by Bar Counsel pursuant to Rule 16-735 (b), except the fact that a warning was issued shall be disclosed to the complainant;

(5) the contents of a prior private reprimand or Bar Counsel reprimand pursuant to the Attorney Disciplinary Rules in effect prior to July 1, 2001, except that the fact that a private or Bar Counsel reprimand was issued and the facts underlying the reprimand may be disclosed to a peer review panel in a proceeding against the attorney when relevant to a complaint based upon similar misconduct;

~~(5)~~ **(6)** the contents of a Conditional Diversion Agreement entered into pursuant to Rule 16-736, except the fact that an attorney has signed such an agreement shall be public;

~~(6)~~ **(7)** the records and proceedings of

the Commission on matters that are confidential under this Rule;

~~(7)~~ **(8)** a Petition for Disciplinary or Remedial Action based solely on the alleged incapacity of an attorney and records and proceedings other than proceedings in the Court of Appeals on that petition; and

~~(8)~~ **(9)** a petition for an audit of an attorney's accounts filed pursuant to Rule 16-722 and records and proceedings other than proceedings in the Court of Appeals on that petition.

. . .

Rule 16-723 was accompanied by the following Reporter's Note.

The Office of Bar Counsel pointed out a gap in the revised Attorney Disciplinary Rules because the revised Rules do not refer to private reprimands or Bar Counsel reprimands issued under the prior set of Attorney Disciplinary Rules which have now been superseded. It was suggested that these reprimands be referenced in Rules 16-723 and 16-735 in a manner similar to disclosure of warnings pursuant to Rule 16-735 (c)(2).

Because of the addition of a new subsection to section (b) and renumbering of current subsections (b)(5) through (b)(8), conforming amendments to Rules 16-722, 16-751, and 16-774 also are proposed.

Mr. Titus explained that there had been a gap in the revised Attorney Discipline Rules because in the list of confidential proceedings and records, there is no reference to

private reprimands or Bar Counsel reprimands issued under the previous set of Attorney Discipline Rules. The amended language is derived from the language pertaining to disclosure of warnings pursuant to Rule 16-735 (c)(2). The Committee approved the Rule change by consensus.

Mr. Titus presented Rule 16-735, Dismissal or Other Termination of Complaint, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-735 to add language providing that the fact that a warning was issued and the facts underlying the warning may be disclosed in a subsequent proceeding against the attorney, as follows:

Rule 16-735. DISMISSAL OR OTHER TERMINATION OF COMPLAINT

. . .

(c) Effect of Dismissal or Termination

(1) Except as provided in subsection (c)(2) of this Rule, a dismissal or a termination under this Rule, with or without a warning, shall not be disclosed by Bar Counsel in response to any request for information as to whether an attorney has been the subject of a disciplinary or remedial proceeding. The nature and existence of a proceeding terminated under

this Rule, including any investigation by Bar Counsel that led to the proceeding, need not be disclosed by an attorney in response to a request for information as to whether the attorney has been the subject of a disciplinary or remedial proceeding.

(2) The fact that a warning was issued in conjunction with the termination of a complaint shall be disclosed to the complainant and **the fact that a warning was issued and the facts underlying the warning** may be disclosed in a subsequent proceeding against the attorney when relevant to a subsequent complaint based on similar misconduct.

Source: This Rule is new.

Rule 16-735 was accompanied by the following Reporter's Note.

See the Reporter's Note to proposed amendments to Rule 16-723.

Mr. Titus explained that the change to Rule 16-735 was made in conjunction with the change to Rule 16-723. It clarifies that the fact that a warning was issued and the facts underlying the warning may be disclosed in a subsequent proceeding against the attorney. The Committee approved the change to the Rule by consensus.

Mr. Titus presented Rules 16-722, Audit of Attorney Accounts and Records; 16-751, Petition for Disciplinary or Remedial Action; and 16-774, Summary Placement on Inactive Status for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-722 by correcting an internal reference and conforming it to a proposed amendment to Rule 16-723, as follows:

Rule 16-722. AUDIT OF ATTORNEY ACCOUNTS AND RECORDS

. . .

(h) Duty of Clerk to Preserve Confidentiality

The clerk shall maintain a separate docket with an index for proceedings under this Rule. Pleadings and other papers filed in the proceedings shall be sealed in accordance with Rule 16-723 ~~(b)(7)~~ **(b)(9)** at the time they are filed. The docket, index, and papers in the proceedings shall not be open to inspection by any person, including the parties, except upon order of court after reasonable notice and for good cause shown.

. . .

Rule 16-722 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-723.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-751 by conforming an internal reference to a proposed amendment to Rule 16-723, as follows:

Rule 16-751. PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

(a) Commencement of Disciplinary or Remedial Action

Upon approval of the Commission, Bar Counsel shall file a Petition for Disciplinary or Remedial Action in the Court of Appeals.

Cross reference: See Rule 16-723 ~~(b)(7)~~ **(b)(8)** concerning confidentiality of a petition to place an incapacitated attorney on inactive status.

(b) Parties

The petition shall be filed in the name of the Commission, which shall be called the petitioner. The attorney shall be called the respondent.

(c) Form of Petition

The petition shall be sufficiently clear and specific to inform the respondent of any professional misconduct charged and the basis of any allegation that the

respondent is incapacitated and should be placed on inactive status.

Source: This Rule is derived from former Rules 16-709 (BV9) and 16-711 b 2 (BV11 b 2).

Rule 16-751 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-723.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-774 by conforming an internal reference to a proposed amendment to Rule 16-723, as follows:

Rule 16-774. SUMMARY PLACEMENT ON INACTIVE STATUS

(a) Grounds

An attorney may be summarily placed on inactive status for an indefinite period if the attorney has been judicially determined to be mentally incompetent or to require a guardian of the person for any of the reasons stated in Code, Estates and Trusts Article, §13-705 (b), or, in

accordance with law, has been involuntarily admitted to a facility for inpatient care treatment of a mental disorder.

(b) Procedure

(1) Petition for Summary Placement; Confidentiality

Bar Counsel, with the approval of the Commission, may file in accordance with Rule 16-751 a petition to summarily place an attorney on inactive status. The petition shall be supported by a certified copy of the judicial determination or involuntary admission. The petition and all other papers filed in the Court of Appeals shall be sealed and stamped "confidential" in accordance with Rule 16-723 ~~(b)(7)~~ **(b)(8)**.

. . .

Rule 16-774 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-723.

Mr. Titus explained that all three Rules have been changed to conform an internal reference to the proposed amendment to Rule 16-723. By consensus the Committee approved all three Rules as presented.

Mr. Titus presented Rule 2-652, Enforcement of Attorney's Liens, for the Committee's consideration.

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-652 to conform to Chapter ___ (HB 1381), Acts of 2002, as follows:

Rule 2-652. ENFORCEMENT OF ATTORNEY'S LIENS

(a) Retaining Lien

Except as otherwise provided by the Maryland Rules of Professional Conduct, an attorney who has a common-law retaining lien for legal services rendered to a client may assert the lien by retaining the papers of the client in the possession of the attorney until the attorney's claim is satisfied.

Cross reference: Maryland Rules of Professional Conduct 1.8, 1.15, and 1.16.

(b) Statutory Lien

An attorney who has a lien under Code, Business Occupations and Professions Article, §10-501, may assert the lien by serving a written notice by certified mail or personal delivery upon the client and upon any person against whom the lien is to be enforced. The notice shall claim the lien, state the attorney's interest in the action, proceeding, **settlement,** judgment, or award, and inform the client or other person to hold any money payable or property passing to the client relating to the action, proceeding, **settlement,** judgment, or award.

Cross reference: Code, Business Occupations and Professions Article, §10-501(d).

(c) Adjudication of Rights and Lien Disputes

(1) When a Circuit Court Action Has Been Filed

If a lien asserted pursuant to this Rule relates to an action that has been filed in a circuit court of this State, on motion filed by the attorney, the attorney's client in the action, or any person who has received a notice pursuant to section (b) of this Rule, the court shall adjudicate the rights of the parties in relation to the lien, including the attorney's entitlement to a lien, any dispute as to the papers subject to a lien under section (a) of this Rule, and the amount of the attorney's claim.

(2) When No Circuit Court Action Has Been Filed

If a lien is asserted pursuant to this Rule and a related action has not been filed in a circuit court of this state, the attorney, the attorney's client, or any person who has received a notice pursuant to section (b) of this Rule may file a complaint with a circuit court to adjudicate the rights of the parties in relation to the lien, including the attorney's entitlement to a lien, any dispute as to the papers subject to a lien under section (a) of this Rule, and the amount of the attorney's claim.
Cross reference: For venue of a complaint filed pursuant to this section, see Code, Courts and Judicial Proceedings Article, §6-201 - 204.

Source: This Rule is new.

Rule 2-652 was accompanied by the following Reporter's Note.

Chapter ___ (HB 1381), Acts of 2002,

adds to Code, Business Occupations and Professions Article, a provision that an attorney has a lien on certain settlements. The proposed amendment to Rule 2-652 conforms the Rule to the legislation.

Mr. Titus explained that Chapter 422, Acts of 2002 (HB 1381) added a provision to the Business Occupations and Professions Article stating that an attorney has a lien on certain settlements, so the Subcommittee is proposing to amend the Rule to refer to settlements. By consensus, the Committee approved the Rule as presented.

Mr. Titus presented Rules 16-811, Client Protection Fund of the Bar of Maryland; 16-713, Peer Review Committee; 16-714, Disciplinary Fund; 16-722, Audit of Attorney Accounts and Records; 16-724, Service of Papers on Attorney; 16-742, Peer Review Panel; 16-753, Service of Petition; 16-760, Order Imposing Discipline or Inactive Status; 16-772, Consent to Discipline or Inactive Status; 16-775, Resignation of Attorney; 16-781, Reinstatement; 12, Order of Admission; Time Limitation; 13, Out-of-State Attorneys; 14, Special Admission of Out-of-State Attorneys; and 15, Special Authorization for Out-of-State Attorneys to Practice in this State, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-811 to reflect the renaming of the Clients' Security Trust Fund of the Bar of Maryland as the Client Protection Fund of the Bar of Maryland, thereby rendering the reference to Chapter 779, Acts of 1965 obsolete, and to renumber provisions, as follows:

Rule 16-811. ~~CLIENTS' SECURITY~~ **CLIENT PROTECTION** FUND **OF THE BAR OF MARYLAND**

~~a. Promulgation of Rule~~

~~This Rule, to be known as the "Clients' Security Fund Rule of the Court of Appeals of Maryland," is promulgated pursuant to Chapter 779, Laws of Maryland (1965).~~
~~Cross reference: See Code, BOP §§10-310 et seq.~~

~~b.~~ **a.** Creation, Operation, and Purpose ~~of Trust Fund~~

1. Creation

A trust fund, to be known as the "~~Clients' Security Trust~~ **Client Protection** Fund of the Bar of Maryland" (hereinafter referred to **in this Rule** as "the ~~trust~~ fund"), is hereby authorized and created.

Cross reference: See Code, Business Occupations and Professions Article, §§10-310 et seq.

2. Operation

The ~~trust~~ fund shall be operated and administered in accordance with this Rule by nine trustees, appointed as hereinafter provided. The trustees shall be known as

the "Trustees of the ~~Clients' Security Trust~~ **Client Protection** Fund of the Bar of Maryland."

3. Purpose

The purpose of the ~~trust~~ fund shall be to maintain the integrity and protect the good name of the legal profession by reimbursing, to the extent authorized by this Rule and deemed proper and reasonable by the trustees, losses caused by defalcations of members of the Bar of the State of Maryland or out-of-state attorneys authorized to practice in this State under Rule 15 of the Rules Governing Admission to the Bar, acting either as attorneys or as fiduciaries (except to the extent to which they are bonded).

~~c.~~ **b.** Appointment and Compensation of Trustees and Officers

1. Number

There shall be nine trustees appointed by this Court, eight to be members of the Bar of this State, and one who shall not be a member of the Bar.

2. Appointment

One trustee who is a member of the Bar of this State shall be appointed from each of the seven appellate judicial circuits. The eighth trustee who is a member of the Bar and the trustee who is not a member of the Bar shall be appointed at large. Each appointment shall be for a term of seven years.

3. Officers

The trustees shall from time to time elect from their membership a chairman, a treasurer and such other officers as they deem necessary or appropriate.

4. Removal

A trustee may be removed by the Court at any time in its discretion.

5. Vacancies

Vacancies shall be filled by appointment by the Court for the unexpired term.

6. Compensation

The trustees shall serve without compensation, but shall be entitled to reimbursement from the ~~trust~~ fund, if no other source of funds is available, for their expenses reasonably incurred in performance of their duties as trustees, including transportation costs.

~~d.~~ **c.** Powers and Duties of Trustees

1. Additional Powers and Duties

In addition to the powers granted elsewhere in this Rule, the trustees shall have the following powers and duties:

(i) To receive, hold, manage, and distribute, pursuant to this Rule, the funds raised hereunder, and any other monies that may be received by the ~~trust~~ fund through voluntary contributions or otherwise.

(ii) To authorize payment of claims in accordance with this Rule.

(iii) To adopt regulations for the administration of the ~~trust~~ fund and the procedures for the presentation, consideration, recognition, rejection and payment of claims, and to adopt bylaws for conducting business. A copy of such regulations shall be filed with the clerk of this Court, who shall mail a copy of them to the clerk of the circuit court for

each county and to all Registers of Wills.

(iv) To enforce claims for restitution, arising by subrogation or assignment or otherwise.

(v) To invest the ~~trust~~ fund, or any portion thereof, in such investments as they may deem appropriate, and to cause funds to be deposited in any bank, banking institution or federally insured savings and loan association in this State, provided however, that the trustees shall have no obligation to cause the ~~trust~~ fund or any portion thereof to be invested.

(vi) To employ and compensate consultants, agents, legal counsel and employees.

(vii) To delegate the power to perform routine acts which may be necessary or desirable for the operation of the ~~trust~~ fund, including the power to authorize disbursements for routine operating expenses of the ~~trust~~ fund, but authorization for payments of claims shall be made only as provided in section i (Claims) of this Rule.

(viii) To sue or be sued in the name of the ~~trust~~ **fund** without joining any or all individual trustees.

(ix) To comply with the requirements of Rules 16-713 (e), 16-714 (b), 16-724 (a), and 16-753.

(x) To perform all other acts necessary or proper for fulfillment of the purposes of the ~~trust~~ fund and its efficient administration.

2. Report and Audit - Filing

At least once each year, and at such additional times as the Court may order, the trustees shall file with this Court a

written report, which shall include the audit made pursuant to subsection 3 of section j (Powers of Court of Appeals - Audits) of this Rule of the management and operation of the ~~trust~~ fund.

~~e.~~ **d.** Meetings and Quorum

1. Time

Meetings of the trustees shall be held at the call of the chairman or a majority of the trustees, and shall be held at least once each year, upon reasonable notice.

2. Number

Five trustees shall constitute a quorum. A majority of the trustees present at a duly constituted meeting may exercise any powers held by the trustees, except to the extent that this Rule provides otherwise.

~~f.~~ **e.** Payments to Fund

1. Definition

In this section, "local Bar Association" means (A) in Baltimore City, the Bar Association of Baltimore City; or (B) in each county, the bar association with the greatest number of members who are residents of the county and who maintain their principal office for the practice of law in that county.

2. Payment Required as Condition of Practice; Exception

Except as otherwise provided in this section, each lawyer admitted to practice before this Court or issued a certificate of special authorization under Rule 15 of Rules Governing Admission to Bar, shall, as a condition precedent to the practice of law (as from time to time defined in Code,

Business **Occupations** and Professions Article) in this State, pay annually to the treasurer of the ~~trust~~ fund the sum, including any late charges, this Court may fix. The trustees may provide in their regulations reasonable and uniform deadline dates for receipt of payments of assessments or applications for change to inactive/retired status. A lawyer on inactive/retired status may engage in the practice of law without payment to the ~~trust~~ fund if (A) the lawyer is on inactive/retired status solely as a result of having been approved for that status by the trustees and not as a result of any action against the attorney pursuant to Title 16, Chapter 700 of these Rules and (B) the lawyer's practice is limited to representing clients without compensation, other than reimbursement of reasonable and necessary expenses, as part of the lawyer's participation in a legal services or pro bono publico program sponsored or supported by a local Bar Association, the Maryland State Bar Association, **Inc.,** an affiliated bar foundation, or the Maryland Legal Services Corporation.

3. Change of Address

It is the obligation of each lawyer to give written notice to the trustees of every change in the lawyer's resident address, business address, or telephone numbers within 30 days of the change. The trustees shall have the right to rely on the latest information received by them for all billing and other correspondence.

4. Due Date

Payments for any fiscal year shall be due on July 1st of each such year.

5. Dishonor

If any check to the ~~trust~~ fund in payment of an annual assessment is

dishonored, the treasurer of the ~~trust~~ fund shall promptly notify the attorney of the dishonor. The attorney shall be responsible for all additional charges assessed by the trustees.

~~g.~~ **f.** Enforcement

1. List by Trustees of Unpaid Assessments

As soon as practical after January 1, but no later than February 15 of each calendar year, the trustees shall prepare, certify, and file with the Court of Appeals a list showing:

(i) the name and account number, as it appears on their records, of each lawyer who, to the best of their information, is engaged in the practice of law and without valid reason or justification has failed or refused to pay (a) one or more annual assessments, (b) penalties for late payment, (c) any charge for a dishonored check, or (d) reimbursement of publication charges; and

(ii) the amount due from that lawyer to the ~~trust~~ fund.

2. Notice of Default by Trustees

(i) The trustees shall give notice of delinquency promptly to each lawyer on the list by first class mail addressed to the lawyer at the lawyer's last address appearing on the records of the trustees. The notice shall state the amount of the obligation to the ~~trust~~ fund, that payment is overdue, and that failure to pay the amount to the ~~trust~~ fund within 30 days following the date of the notice will result in the entry of an order by the Court of Appeals prohibiting the lawyer from practicing law in the State.

(ii) The mailing by the trustees of

the notice of default shall constitute service.

3. Additional Discretionary Notice

In addition to the mailed notice, the trustees may give any additional notice to the lawyers on the delinquency list as the trustees in their discretion deem desirable. Additional notice may include publication in one or more newspapers selected by the trustees; telephone, facsimile, or other transmission to the named lawyers; dissemination to local bar associations or other professional associations; posting in State court houses; or any other means deemed appropriate by the trustees. Additional notice may be statewide, regional, local, or personal to a named lawyer as the trustees may direct.

4. Certification of Default by Trustees; Order of Decertification by the Court of Appeals

(i) Promptly after expiration of the deadline date stated in the mailed notice, the trustees shall submit to the Court of Appeals a proposed Decertification Order stating the names and account numbers of those lawyers whose accounts remain unpaid. The trustee also shall furnish additional information from their records or give further notice as the Court of Appeals may direct. The Court of Appeals, on being satisfied that the trustees have given the required notice to the lawyers remaining in default, shall enter a Decertification Order prohibiting each of them from practicing law in the State. The trustees shall mail by first class mail a copy of the Decertification Order to each lawyer named in the order at the lawyer's last address as it appears on the records of the trustees. The mailing of the copy shall constitute service of the order.

(ii) A lawyer who practices law after having been served with a copy of the Decertification Order may be proceeded against for contempt of court in accordance with the provisions of Title 15, Chapter 200 (Contempt) and any other applicable provision of law or as the Court of Appeals shall direct.

(iii) Upon written request from any Maryland lawyer, judge, or litigant to confirm whether a Maryland lawyer named in the request has been decertified and has not been reinstated, the trustees shall furnish confirmation promptly by informal means and, if requested, by written confirmation. On receiving confirmation by the trustees that a Maryland lawyer attempting to practice law has been and remains decertified, a Maryland judge shall not permit the lawyer to practice law in the State until the lawyer's default has been cured.

5. Payment

Upon payment in cash or by certified or bank official's check to the ~~trust~~ fund by a lawyer of all amounts due by the lawyer, including all related costs that the Court of Appeals or the trustees may prescribe from time to time, the trustees shall remove the lawyer's name from their list of delinquent lawyers and, if a Decertification Order has been entered, request the Court of Appeals to rescind its Decertification Order as to that lawyer. If requested by a lawyer affected by the action, the trustees shall furnish confirmation promptly.

6. Bad Check; Interim Decertification Order

(i) If a check payable to the ~~trust~~ fund is dishonored, the treasurer of the ~~trust~~ fund shall notify the lawyer immediately by the quickest available

means. Within 7 business days following the date of the notice, the lawyer shall pay to the treasurer of the ~~trust~~ fund, in cash or by certified or bank official's check, the full amount of the dishonored check plus any additional charge that the trustees in their discretion shall prescribe from time to time.

(ii) The treasurer of the ~~trust~~ fund promptly (but not more often than once each calendar quarter) shall prepare and submit to the Court of Appeals a proposed interim Decertification Order stating the name and account number of each lawyer who remains in default of payment for a dishonored check and related charges. The Court of Appeals shall enter an interim Decertification Order prohibiting the practice of law in the State by each lawyer as to whom it is satisfied that the treasurer has made reasonable and good faith efforts to give notice concerning the dishonored check. The treasurer shall mail by first class mail a copy of the interim Decertification Order to each lawyer named in the order at the lawyer's last address as it appears on the records of the trustees, and the mailing of the copy shall constitute service of the order.

7. Notices to Clerks

The Clerk of the Court of Appeals shall send a copy of a Decertification Order and rescission order entered pursuant to this Rule to the clerk of the Court of Special Appeals, the clerk of each Circuit Court, the Chief Clerk of the District Court, and the Register of Wills for each county.

~~h.~~ **g.** Treasurer's Duties

1. Separate Account

The ~~trust~~ fund shall be maintained by the treasurer in a separate account.

2. Disbursements

The treasurer shall disburse monies from the ~~trust~~ fund only upon the action of the trustees pursuant to this Rule.

3. Bond

The treasurer shall file annually with the trustees a bond for the proper execution of the duties of the office of treasurer of the ~~trust~~ fund in an amount established from time to time by the trustees and with such surety as may be approved by the trustees.

4. Other Duties

The treasurer shall comply with the requirements of Rules 16-713 (e), 16-714 (b), 16-724 (a), and 16-753.

~~i.~~ **h.** Claims

1. Power of Trustees

The trustees are invested with the power to determine whether a claim merits reimbursement from the ~~trust~~ fund, and if so, the amount of such reimbursement, the time, place, and manner of its payment, the conditions upon which payment shall be made, and the order in which payments shall be made. The trustees' powers under this section may be exercised only by the affirmative vote of at least five trustees.

2. No Rights in Fund

No claimant or other person or organization has any right in the ~~trust~~ fund as beneficiary or otherwise.

3. Exercise of Discretion - Factors

In exercising their discretion the trustees may consider, together with such other factors as they deem appropriate, the following:

(i) The amounts available and likely to become available to the ~~trust~~ fund for payment of claims.

(ii) The size and number of claims which are likely to be presented in the future.

(iii) The total amount of losses caused by defalcations of any one attorney or associated groups of attorneys.

(iv) The unreimbursed amounts of claims recognized by the trustees in the past as meriting reimbursement, but for which reimbursement has not been made in the total amount of the loss sustained.

(v) The amount of the claimant's loss as compared with the amount of the losses sustained by others who may merit reimbursement from the ~~trust~~ fund.

(vi) The degree of hardship the claimant has suffered by the loss.

(vii) Any negligence of the claimant which may have contributed to the loss.

4. Additional Powers of Trustees

In addition to other conditions and requirements the trustees may require each claimant, as a condition of payment, to execute such instruments, to take such action, and to enter such agreements as the trustees may desire, including assignments, subrogation agreements, trust agreements and promises to cooperate with the trustees in making and prosecuting claims or charges against any person.

5. Investigation of Claims - Assistance

The trustees may request individual lawyers, bar associations, and other organizations of lawyers to assist the trustees in the investigation of claims.

~~j.~~ **i.** Powers of Court of Appeals

1. To Change Rule

This Court may amend, modify, or repeal this Rule at any time without prior notice, and may provide for the dissolution and winding up of the affairs of the ~~trust~~ **fund**.

2. Judicial Review

A claimant aggrieved by a final determination of the trustees denying his claim may, within 15 days thereafter, file exceptions in the Court of Appeals. The decision of the trustees shall be deemed prima facie correct and the exceptions shall be denied unless it is shown that the decision was arbitrary or capricious, or unsupported by substantial evidence on the record considered as a whole, or was not within the authority vested in the trustees, or was made upon unlawful procedure, or was unconstitutional or otherwise illegal. In any case in which the Court does not deny the exceptions, it may, with or without a hearing, vacate the decision of the trustees and remand the matter thereto for further proceedings, including where appropriate the taking of additional evidence, as may be specified in the Court's remand order.

3. Arrange Audit

The trustees shall arrange for auditing of the accounts of the ~~trust~~ fund by state or private auditors, and this Court may at any time arrange for such an audit to be made. The cost of any such audit shall be paid by the ~~trust~~ fund if no other source of funds is available.

4. Interpret Rule

The trustees may apply to this Court for interpretation of this Rule and for

advice as to their powers and as to the proper administration of the ~~trust~~ **fund**. Any final order issued by this Court in response to any such application shall finally bind and determine all rights with respect to the matters covered therein.

Source: This Rule is former Rule 1228.

Rule 16-811 was accompanied by the following Reporter's Note.

Rule 16-811 is amended to change the name of the "Clients' Security Trust Fund of the Bar of Maryland" to "Client Protection Fund of the Bar of Maryland" in accordance with Chapter 33, (HB 115) Acts of 2002. Conforming amendments are also made to Rules 16-713, 16-714, 16-722, 16-724, 16-742, 16-753, 16-760, 16-772, 16-775, 16-781, and Bar Admission Rules 12, 13, 14, and 15.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-713 (e) for conformity with recent legislation, as follows:

Rule 16-713. PEER REVIEW COMMITTEE

. . .

(e) Procedure for Appointment

Before appointing members of the Peer Review Committee, the Commission shall notify bar associations and the general public in the appropriate circuit and consider any applications and recommendations that are timely submitted. The Commission shall prepare a brief notice informing attorneys how they may apply to serve on the Peer Review Committee and deliver the notice to the Trustees of the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland**, who at least once a year shall send a copy of the notice to each attorney who is required to pay an annual fee to the Fund.

. . .

Rule 16-713 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-714 (b) for conformity with recent legislation, as follows:

Rule 16-714. DISCIPLINARY FUND

. . .

(b) Collection and Disbursement of Disciplinary Fund

The treasurer of the ~~Clients' Security Trust~~ **Client Protection** Fund of the Bar of Maryland shall collect and remit to the Commission the sums paid by attorneys to the Disciplinary Fund.

. . .

Rule 16-714 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-722 (a) for conformity with recent legislation, as follows:

Rule 16-722. AUDIT OF ATTORNEY ACCOUNTS AND RECORDS

(a) Action for Audit

Bar Counsel or the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland** may file a petition requesting an audit of the accounts and records that an

attorney is required by law or Rule to maintain. The petition may be filed in the circuit court in any county where the attorney resides or has an office for the practice of law. If the attorney has no established office and the attorney's residence is unknown, the petition may be filed in any circuit court.

. . .

Rule 16-722 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-724 for conformity with recent legislation, as follows:

Rule 16-724. SERVICE OF PAPERS ON ATTORNEY

(a) Statement of Charges

A copy of a Statement of Charges filed pursuant to Rule 16-741 shall be served on an attorney in the manner prescribed by Rule 2-121. If after reasonable efforts the attorney cannot be served personally, service may be made upon the treasurer of the ~~Clients' Security~~

~~Trust~~ **Client Protection** Fund **of the Bar of Maryland**, who shall be deemed the attorney's agent for receipt of service. The treasurer shall send, by both certified mail and ordinary mail, a copy of the papers so served to the attorney at the address maintained in the ~~Trust~~ Fund's records and to any other address provided by Bar Counsel.

(b) Service of Other Papers

Except as otherwise provided in this Chapter, other notices and papers may be served on an attorney in the manner provided by Rule 1-321 for service of papers after an original pleading.

Committee note: The attorney's address contained in the records of the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland** may be the attorney's last known address.

Cross reference: See Rule 16-753 concerning service of a Petition for Disciplinary or Remedial Action.

Source: This Rule is in part derived from former Rule 16-706 (BV6) and in part new.

Rule 16-724 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-742 (b) for conformity with recent legislation, as follows:

Rule 16-742. PEER REVIEW PANEL

. . .

(b) Composition of Panel

The Peer Review Panel shall consist of at least three members of the Peer Review Committee. A majority of the members of the Panel shall be attorneys, but at least one member shall not be an attorney. If practicable, the Chair shall appoint to the Panel members from the circuit in which the attorney who is the subject of the charges has an office for the practice of law or, if there is no such office, the circuit in which the last known address of the attorney, as reflected on the records of the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland**, is located.

. . .

Rule 16-742 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-753 for conformity with recent legislation, as follows:

Rule 16-753. SERVICE OF PETITION

A copy of a Petition for Disciplinary or Remedial Action filed pursuant to Rule 16-751, and the order of the Court of Appeals designating a judge pursuant to Rule 16-752, shall be served on an attorney in the manner prescribed by Rule 2-121 or in any other manner directed by the Court of Appeals. If after reasonable efforts the attorney cannot be served personally, service may be made upon the treasurer of the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland**, who shall be deemed the attorney's agent for receipt of service. The treasurer shall send, by both certified mail and ordinary mail, a copy of the papers so served to the attorney at the address maintained in the ~~Trust~~ Fund's records and to any other address provided by Bar Counsel.

Source: This Rule is in part derived from former Rule 16-709 (BV9) and in part new.

Rule 16-753 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-760 for conformity with recent legislation, as follows:

Rule 16-760. ORDER IMPOSING DISCIPLINE OR INACTIVE STATUS

. . .

(e) Duties of Clerk

On the effective date of an order that disbars, suspends, or places the respondent on inactive status, the Clerk of the Court of Appeals shall strike the name of the respondent from the register of attorneys in that Court and shall certify that fact to the Trustees of the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland** and the clerks of all courts in this State.

. . .

(h) Conditions

An order entered under this Rule may impose one or more conditions to be satisfied by the respondent, whether as a condition precedent to reinstatement or a condition of probation after reinstatement, including a requirement that the respondent: (1) demonstrate, by the report of a health care professional or other proper evidence, that the respondent is mentally and physically competent to resume the practice of law;

(2) upon reinstatement, engage an

attorney satisfactory to Bar Counsel to monitor the respondent's legal practice pursuant to section (i) of this Rule;

(3) prove that every former client has been reimbursed for any part of fees paid in advance for legal services that were not completed;

(4) satisfy any judgment or reimburse the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland** for any claim that arose out of the respondent's practice of law;

(5) make restitution to any client of any sum found to be due to the client;

(6) limit the nature or extent of the respondent's future practice of law;

(7) pay all costs assessed by the order and any mandate of the Court of Appeals;

(8) participate in a program tailored to individual circumstances that provides the respondent with law office management assistance, lawyer assistance or counseling, treatment for alcohol or substance abuse, psychological counseling, or specified courses in legal ethics, professional responsibility, or continuing legal education;

(9) issue an apology; and

(10) take any other corrective action that may be reasonable and appropriate.

. . .

Rule 16-760 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-772 (d) for conformity with recent legislation, as follows:

Rule 16-772. CONSENT TO DISCIPLINE OR INACTIVE STATUS

. . .

(d) Duty of Clerk

When an attorney has been disbarred, suspended, or placed on inactive status under this Rule, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys in that Court and shall certify to the Trustees of the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland** and the clerks of all courts in this State that the attorney's name has been so stricken.

. . .

Rule 16-772 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-775 (e) for conformity with recent legislation, as follows:

Rule 16-775. RESIGNATION OF ATTORNEY

. . .

(e) Duty of clerk

When the Court enters an order accepting an attorney's resignation, the Clerk of the Court of Appeals shall strike the name of the attorney from the register of attorneys in that Court and shall certify that fact to the Trustees of the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland** and the clerks of all courts in this State.

. . .

Rule 16-775 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-781 (l) for conformity with recent legislation, as follows:

Rule 16-781. REINSTATEMENT

. . .

(l) Duties of Clerk

(1) Attorney Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner admitted by the Court of Appeals to the practice of law, the Clerk of the Court of Appeals shall place the name of the petitioner on the register of attorneys in that Court and shall certify that fact to the Trustees of the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland** and to the clerks of all courts in the State.

(2) Attorney Not Admitted to Practice

Upon receiving a reinstatement notice authorized by section (e) of this Rule, or on the effective date of an order or notice that reinstates a petitioner not admitted by the Court of Appeals to practice law, the Clerk of the Court of Appeals shall remove the petitioner's name from the list maintained in that Court of non-admitted attorneys who are ineligible to practice law in this State, and shall certify that fact to the Board of Law Examiners and the clerks of all courts in the State.

. . .

Rule 16-781 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Bar Admission Rule 12 for conformity with recent legislation, as follows:

Rule 12. ORDER OF ADMISSION; TIME LIMITATION

When the Court has determined that a candidate is qualified to practice law and is of good moral character, it shall enter an order directing that the candidate be admitted to the Bar on taking the oath required by law. A candidate who has passed the Maryland bar examination may not take the oath of admission to the Bar later than 24 months after the date that the Court of Appeals ratified the Board's report for that examination. For good cause, the Board may extend the time for taking the oath, but the candidate's failure to take action to satisfy admission requirements does not constitute good cause. A candidate who fails to take the oath within the required time period shall reapply for admission and retake the bar examination.

Cross reference: See Code, Business Occupations and Professions Article, §10-212, for form of oath. See also Maryland Rule 16-811 ~~f~~ **e** (~~Clients' Security~~ **Client Protection** Fund **of the Bar of Maryland** - Payments to Fund) and Maryland Rule 16-714 (Disciplinary Fund), which require persons admitted to the Maryland Bar, as a condition precedent to the practice of law in this State, to pay an annual assessment to the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland** and the Attorney Grievance Commission Disciplinary Fund.

Source: This Rule is in part derived from former Rule 13 and is in part new.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE

BAR OF MARYLAND

AMEND Bar Admission Rule 13 for conformity with recent legislation, as follows:

Rule 13. OUT-OF-STATE ATTORNEYS

. . .

Cross reference: See Code, Business Occupations and Professions Article, §10-212 for form of oath. See also Maryland Rule 16-811 ~~f~~ **e** (~~Clients' Security~~ **Client Protection** Fund **of the Bar of Maryland** - Payments to Fund) and Maryland Rule 16-714 (Disciplinary Fund), which

require persons admitted to the Maryland Bar, as a condition precedent to the practice of law in this State, to pay an annual assessment to the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland** and the Attorney Grievance Commission Disciplinary Fund.

. . .

Bar Admission Rule 13 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Bar Admission Rule 14 for conformity with recent legislation, as follows:

Rule 14. SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEYS

. . .

Committee note: The Committee has not recommended a numerical limitation on the number of appearances pro hac vice to be allowed any attorney. Specialized expertise of out-of-state attorneys or other special circumstances may be important factors to be considered by judges in assessing whether Maryland litigants have access to effective representation. This Rule is not intended, however, to permit extensive or systematic practice by attorneys not licensed in Maryland. The Committee is primarily concerned with assuring professional responsibility of attorneys in Maryland by avoiding circumvention of Rule 13 (Out-of-State Attorneys) or *Kemp Pontiac Cadillac, Inc. et al v. S & M Construction Co., Inc.*, 33 Md. App. 516 (1976). The

Committee also noted that payment to the ~~Clients' Security Trust~~ **Client Protection** Fund of the Bar of Maryland by an attorney admitted specially for the purposes of an action is not required by existing statute or rule of court.

. . .

Bar Admission Rule 14 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE

BAR OF MARYLAND

AMEND Bar Admission Rule 15 for conformity with recent legislation, as follows:

Rule 15. SPECIAL AUTHORIZATION FOR OUT-OF-STATE ATTORNEYS TO PRACTICE IN THIS STATE

. . .

(f) Special Authorization Not Admission

Out-of-state attorneys authorized to practice under this Rule are not, and shall not represent themselves to be members of the Bar of this State, except in connection with practice that is authorized under this Rule. They shall be required to make

payments to the ~~Clients' Security Trust~~ **Client Protection** Fund **of the Bar of Maryland** and the Disciplinary Fund.

. . .

Bar Admission Rule 15 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 16-811.

Mr. Titus explained that 2002 legislation changed the name of the "Clients' Security Trust Fund of the Bar of Maryland" to the "Client Protection Fund of the Bar of Maryland." This will entail amending the previous 15 Rules listed in this paragraph. Judge McAuliffe commented that since it is not appropriate to create a new trust fund, which could possibly cause tax problems, it would be better to provide in Rule 16-811 that the Clients' Security Trust Fund was promulgated pursuant to the previous law and after July 1, 2002 shall be known as the "Client Protection Fund of the Bar of Maryland." This would avoid the appearance that the former fund has been destroyed. The Committee agreed by consensus to this suggestion. Mr. Bowen said that the Style Subcommittee can redraft Rule 16-811. By consensus, the Committee approved Rule 16-811 as amended and the other Rules in the package as presented.

Agenda Item 2. Consideration of certain proposed rule changes

recommended by the Appellate Subcommittee: Amendments to: Rule 8-422 (Stay of Enforcement of Judgment) and Rule 7-203 (Time for Filing Action)

Mr. Titus presented Rule 8-422, Stay of Enforcement of Judgment, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-422 to provide in section (a) a reference to stay of enforcement of a criminal judgment as pertaining to civil proceedings, to make section (b) applicable to both civil and criminal cases, and to add language to section (b) allowing the appellate court to remand a case to the lower court for that court to state on the record the reason for its action, as follows:

Rule 8-422. STAY OF ENFORCEMENT OF JUDGMENT

(a) ~~Generally~~ **Civil Proceedings**

Except as otherwise provided in the Code or Rule 2-632, an appellant may stay the enforcement of a civil judgment, other than for injunctive relief, from which an

appeal is taken by filing a supersedeas bond under Rule 8-423, alternative security as prescribed by Rule 1-402 (e), or other security as provided in Rule 8-424. The bond or other security may be filed with the clerk of the lower court at any time before satisfaction of the judgment, but enforcement shall be stayed only from the time the security is filed. Stay of an order granting an injunction is governed by Rules 2-632 and 8-425. **Stay of enforcement of a criminal judgment is governed by Rule 4-349 and section (b) of this Rule.**

Cross reference: For provisions permitting a stay without the filing of a bond, see Code, Criminal Procedure Article, §7-109; Family Law Article, § 5-518; Courts Article, §12-701 (a) (1). For provisions limiting the extent of the stay upon the filing of a bond, see Code, Article 2B, §16-101, Courts and Judicial Proceedings Article, §12-701 (a) (2); Code, Insurance Article §2-215 (j)(2); Tax-Property Article, §14-514. For general provisions governing bonds filed in civil actions, see Title 1, Chapter 400 of these rules.

(b) Review of Lower Court Action by the Court of Special Appeals

Upon motion of a party, the Court of Special Appeals may review a decision of the lower court in a criminal case made pursuant to Rule 4-349. Upon motion of a party, the Court of Special Appeals may review the action of the lower court in fixing or refusing to fix the amount of a supersedeas **or criminal appeal** bond, approving or disapproving the surety or security on the bond, or approving other security. A panel of the Court of Special Appeals, with or without a hearing in the discretion of the Court, may increase, decrease, or fix the amount of the supersedeas **or criminal appeal** bond, enter an order as to the surety or security on the bond, ~~or~~ enter an order as to the other

security**, or enter an order for further proceedings as the court may direct**.

(c) When Security Filed After Partial Execution

If a supersedeas bond or other security is filed after partial execution on the judgment, the clerk of the lower court shall issue a writ directing the sheriff who has possession of any property attached to stay further proceedings and surrender the property upon payment of all costs of the execution that have accrued.

(d) Death of Appellant

The bond or other security filed shall not be voided by the death of the appellant pending the appeal.

(e) Continuation in Court of Appeals of Previously Filed Security

A bond or other security previously filed to stay enforcement of a judgment of the lower court shall continue in effect pending review of the case by the Court of Appeals. On motion, the Court of Appeals, with or without a hearing in the discretion of the Court, may order the amount of the bond, any security on the bond, or any other security increased or decreased if the Court determines that the bond or other security is inadequate or excessive.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 1017 a and c.
Section (b) is derived from former Rule 1020 d.
Section (c) is derived from former Rule 1017 d.
Section (d) is derived from former Rule 1017 f.
Section (e) is derived from former Rule 816.

Rule 8-422 was accompanied by the following Reporter's Note.

> After a remand from the Rules Committee, the Appellate Subcommittee reconsidered the issue of how to place in the Rules a procedure by which the appellate court in a criminal appeal can review the bail decision of the lower court without the defendant being required to initiate habeas corpus proceedings, a cumbersome procedure described in Long v. State, 16 Md. App. 371 (1972). The Rules Committee had recommended a change to one of the Title 8 Rules instead of a change to Rule 4-349, which the Subcommittee had initially proposed.
>
> The Subcommittee is recommending that Rule 8-422 be amended. It already provides in section (b) that the Court of Special Appeals may review the action of the lower court in fixing or refusing to fix the amount of a supersedeas bond, and the Subcommittee is recommending that the scope of section (b) be expanded to include criminal appeal bonds. The Subcommittee at Chief Judge Murphy's suggestion, is proposing to add language at the end of section (b) to give the appellate court authority to remand a case to the lower court, so the lower court can state on the record the reasons for its action.

Mr. Titus explained that this Rule emanated from the Appellate Subcommittee and has been before the Rules Committee previously. The present practice is that someone who has been convicted of a crime has to file a petition for habeas corpus and not be successful before his or her bail can be reviewed by the appellate court. It would be preferable to streamline this procedure. Initially, the Subcommittee suggested

changing Rule 4-349, Release after Conviction, but the Rules Committee sent the Rule back to the Subcommittee, recommending that Rule 8-422 be amended instead.

The Subcommittee is proposing to amend section (a) to provide that a stay of enforcement of a criminal judgment is governed by Rule 4-349 and section (b) of Rule 8-422. Current section (b) has been changed to apply to both criminal as well as civil cases. The new first sentence clarifies that a decision made by a lower court pursuant to Rule 4-349 may be reviewed by the Court of Special Appeals.

The language added at the end of the Rule gives the Court of Special Appeals latitude to send the case back to the lower court to articulate the reasons for its decision as to the defendant's bail. The Chair explained that the appellate court may be unable to make an informed judgment because there are no factual findings. The case law requires that the attorney representing the defendant who would like a bail review has to file a habeas corpus proceeding. This is spelled out in the case of Long v. State, 16 Md. App. 371 (1972). It is unfair to the person who has been convicted to be required to file a writ of habeas corpus in order to get his or her bail reviewed when the Court of Special Appeals has the jurisdiction to consider the merits of the appeal. The appellate review may be a problem because the appellate court

may not have much of the record to look at. The new language at the end of section (b) provides the authority to the appellate court to send the case back for a hearing on the factors relevant to conditions of release pursuant to Rule 4-349.

Other factors for consideration are spelled out in Rule 4-216, Pretrial Release. Until a person is sentenced and an appeal is filed, the Court of Special Appeals has no jurisdiction.

The Vice Chair asked whether Rule 8-422 covers only judgments. It may pertain only to a stay of enforcement of a judgment. The Chair responded that the first sentence of section (b) provides that the Court of Special Appeals may review a decision of the lower court. The Vice Chair inquired as to the relationship between the new first sentence and the sentence that follows it. Does the first sentence add anything? Judge Missouri inquired as to which decision the first sentence refers. The Chair replied that the intent is that the proposed amendments to Rule 8-422 allow the defendant to obtain a review of the denial of bail or the setting of a high bail pursuant to Rule 4-349.

Judge Missouri asked if, after the jury verdict, the decision of the judge to revoke bond pending sentencing can be reviewed. The Chair replied that this should not be subject

to review pursuant to Rule 8-422. Rule 8-422 applies only after there is a final judgment, and an appeal has been noted. If the defendant has not been sentenced, there is no final judgment, and the Court of Special Appeals has no jurisdiction to consider the matter. The word "decision" may create an ambiguity and should be revised.

Mr. Titus suggested that the first sentence of section (b) could be deleted, and the second sentence could be amended to make clear that what can be reviewed is the fixing or refusal to fix a bond after a defendant has been sentenced. The Vice Chair noted that in the civil arena, a judge may refuse to stay an injunction or grant a stay with conditions added. The Rule needs language which will provide that whatever the lower court did after the judgment pending appeal is reviewable by the Court of Special Appeals. Mr. Titus pointed out that the word "stay" is in the title of the Rule. He suggested that the language "or other conditions imposed pending appeal" be added to the title. The Vice Chair commented that the Style Subcommittee could look at the title of the Rule.

The Vice Chair suggested that the first sentence of section (b) should refer to whatever action the lower court took with relation to the stay, including setting any conditions. Mr. Sykes expressed the view that the amended

language should stay in, but the second sentence of section (b) should be deleted. The Vice Chair commented that the first sentence of section (b) does not relate to civil cases. The second sentence should not be eliminated, because it pertains to civil cases. Mr. Karceski observed that both the first and second sentences begin with the language "[u]pon motion of a party," and he suggested that the two sentences could be collapsed into one sentence. There would be no need for the language "or criminal appeal bond" to be added in. The language referring to Rule 4-349 would have to be retained.

Mr. Bowen suggested that section (a) could pertain to proceedings generally, including both civil and criminal. Section (b) could be revised to pertain only to civil proceedings without the shaded language at the end. Section (c) could apply only to criminal proceedings. The Vice Chair suggested that section (c) could also provide that the appellate court can review (1) the amount of the bond, (2) whether or not the surety is approved, and (3) the kind of security. Judge Missouri questioned as to why this is necessary. Even if the Court of Special Appeals asks the lower court judge if he or she has considered imposing any conditions, the lower court judge will probably not change his or her initial decision regarding bail.

The Chair hypothesized a situation where the defendant is sentenced to three weekends in the Prince George's County Detention Center. The defendant files an appeal, and the trial judge denies any stay pending the appeal and does not set bail. The case is pending in the Court of Special Appeals. Even though it is a minor sentence of three weekends in prison, the defendant should be able to appeal the case, including appealing an improper condition imposed by the judge, such as 90 days in an alcohol rehabilitation facility. The defendant should not have to file a habeas corpus petition in order to be able to appeal the decision.

Mr. Karceski commented that it is difficult to convince a circuit court judge that his or her colleague on the same circuit court has set unreasonable conditions. The requirement of filing a habeas corpus petition causes the defendant to jump through several hoops in order to get to the Court of Special Appeals. He said that in his practice, when he files a petition for habeas corpus, it rarely succeeds. Judge McAuliffe remarked that he is a member of the Appellate Subcommittee, and when the Rule was discussed, he had stated that he had some problems with the proposed changes. The changes are not intended to suggest a presumption in favor of release. The trial judge has already turned down the request for an appeal bond, and the burden of persuasion should not be

put on the wrong foot. There should be wide discretion on the part of the trial judge. While the habeas corpus hoop is not the best solution, it does provide a method of shifting the burden to the defendant. Judge McAuliffe added that he hopes that the Court of Special Appeals will treat the decision of the trial judge with deference. Judge Missouri inquired whether it is intended that the amendments to Rule 8-422 would apply to appeals from the District Court. Mr. Dean answered that it is not. The Chair clarified that Rule 8-422 is an appellate rule applying to appeals from the circuit court.

Mr. Titus expressed the view that the Rule should not be sent back again to the Subcommittee to revise. He suggested that the last sentence of section (a) could be moved to a new section (b), which would apply to criminal proceedings. The section would refer to decisions pursuant to Rule 4-349, to fixing or refusing to fix the amount of a bond, and to any conditions imposed with relation to the stay. The other sections would be relettered.

Judge McAuliffe pointed out that the review is not for all determinations made pursuant to Rule 4-349, but only for those made after the sentence has been imposed. The Chair suggested that the first sentence of the new section needs to make clear that the decisions referred to are not post-verdict, pre-sentence decisions. Mr. Dean inquired as to

whether this Rule would have any effect on the merits or jurisdiction of a court hearing the habeas corpus petition. Does this mean someone can have two bites of the apple? Mr. Karceski commented that there are two ways to approach the review -- the defendant can file the habeas corpus petition if he or she feels confident that the second judge will change the decision, or the defendant can proceed pursuant to this Rule. Judge McAuliffe remarked that once the defendant gets one bite at the apple and loses, the chances are not good that the defendant would prevail using the other procedure.

The Chair noted that a defendant can also request in banc review pursuant to Rule 4-352, In Banc Review. Judge McAuliffe said that he was not sure that an in banc panel could consider this. Article IV, §22 of the Maryland Constitution provides that in banc review is available in any case where the party could have taken an appeal. Requesting a review of bail is not an appeal. The Vice Chair said that the in banc procedure has to be preserved under the Constitution. Judge Missouri remarked that he would deny a request for in banc review of the fixing or refusal to fix a bond.

The Reporter asked Mr. Titus to explain his suggested changes to Rule 8-422. He replied that there would be a new section which would allow review of post-sentence decisions, of decisions fixing or refusing to fix the amount of a

supersedeas or criminal appeal bond, and of conditions imposed in connection with the stay. Mr. Klein pointed out that section (e) of Rule 2-632, Stay of Enforcement, contains language which is parallel to the language suggested for Rule 8-422. It might be helpful to look at Rule 2-632 (e). The Committee approved the changes suggested by Mr. Titus by consensus. The Committee approved Rule 8-422 as amended.

Mr. Titus presented Rule 7-203, Time for Filing Action, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-203 to add a cross reference to Code, Labor and Employment Article, §9-726, as follows:

Rule 7-203. TIME FOR FILING ACTION

(a) Generally

Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

(1) the date of the order or action of which review is sought;

(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or

Cross reference: See Code, Labor and Employment Article, §9-726 governing appeals from Workers' Compensation Commission decisions in cases in which a rehearing request has been filed.

(3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party

If one party files a timely

petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

Committee note: The provisions of former Rule B4 concerning the shortening and extending of time are not carried forward. The time for initiating an action for judicial review is in the nature of a statute of limitations, which must be specifically raised either by preliminary motion under Rule 7-204 or in the answering memorandum filed pursuant to Rule 7-207.

Source: This Rule is derived from former Rule B4.

Rule 7-203 was accompanied by the following Reporter's Note.

Legislation pertaining to the Workers' Compensation Commission was passed by the 2001 General Assembly which extended the time for taking an appeal (1) from the date on which the Commission denies a motion for a rehearing to the date on which the Commission mails notice of the denial of the motion and (2) from the date on which the Commission passes an order granting a motion for rehearing to the date on which the Commission mails notice of the order. The Subcommittee felt that a cross reference to the statute would be helpful to practitioners to call attention to the statute, since it extends the time for taking an appeal while a rehearing motion is pending.

Mr. Titus explained that the Subcommittee had debated changing the language in the body of the Rule to include the exception provided for in Code, Labor and Employment Article,

§9-276 pertaining to appeals from Workers' Compensation cases, but the Subcommittee decided it would be appropriate to add a cross reference to the statute instead. This warns the attorney that the statute exists. The Vice Chair asked if the statute provides that the time for taking the appeal is from the date of the order or from the date of the decision. Mr. Titus answered that the statute is poorly written. It involves a review of a denial for a rehearing, but it is convoluted. The Vice Chair said that the problem with ruling on a request for a rehearing is the underlying judgment. Mr. Titus remarked that there may be other variations in other statutes. Mr. Maloney observed that the beginning language of section (a) which is "[e]xcept as otherwise provided in this Rule or by statute" will cover this. Mr. Titus added that this language provides a safety valve. The Committee agreed by consensus to add the cross reference to Rule 7-203.

Agenda Item 3. Consideration of a policy question concerning the use of Summary Judgment

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Mr. Titus explained that a joint meeting of the Trial, Discovery, and Management of Litigation Subcommittees was held to discuss the topic of summary judgment. Although the federal and Maryland rules pertaining to summary judgment are similar, the federal courts grant summary judgment much more

often than the courts in Maryland. An intern in the Rules Committee Office did a study of appellate decisions to determine if there was statistical proof of the problems with summary judgment in Maryland cases, but the findings did not produce the supporting statistics, because the intern was only able to look at reported cases. It is by unreported opinions that trial judges are reversed too often and are reluctant to grant summary judgment.

The combined Subcommittees also considered the issue of "sham affidavits" as it affects the resolution of cases by summary judgment. Summary judgment is among the tools available to better manage litigation and is better than alternative dispute resolution to efficiently resolve cases. The more cases capable of resolution by summary judgment, the more available the courts are for cases that can only be resolved by trial.

Mr. Titus told the Committee that the question is what to do to encourage judges to grant summary judgments. One possibility is educational programs for judges, and another is members of the Rules Committee speaking out in favor of summary judgment. Would it be appropriate for a member of the Rule Committee to speak at a Judicial Institute program? Mr. Titus said that he had been counsel in a case in which summary judgment was granted in favor of his client but was

then reversed. When the case was tried, it ended up with the same result as the original summary judgment. This was time-consuming and expensive.

Mr. Sykes expressed the view that the action of the trial judge does not depend on a statistical analysis. The issue is that if the judge decides to deny summary judgment under the current rules, the judge cannot be reversed, but if the judge grants a motion for summary judgment, the judge may be reversed. Judges prefer to avoid reversal. The decision to deny summary judgment allows the saving of the judge's time at that point, especially when there is not a one-judge-per-case assignment. The problem is judicial attitudes. Mr. Sykes said that he is not convinced that an educational program will change attitudes. It depends on the character of the judge and how much he or she is personally concerned about the score card.

The Chair stated that at a new trial judge orientation program, a related issue was discussed -- when the plaintiff submits large amounts of paper, alleging that there is no dispute as to any material fact, and the defendant claims that all of the paper work shows that there is a dispute. The judge should not have to search through the voluminous materials to find a potential dispute, or lack of dispute, as to material facts. Summary judgment motions under these

circumstances often are denied.

Judge Dryden asked about the statistics that had been collected, and Mr. Titus answered that the published decisions in State courts are not that dramatically different from the federal experience. The intern catalogued one or two years of published appellate decisions. Mr. Titus remarked that he had expected a bigger disparity. The Reporter noted that the unreported opinions could not be surveyed, because the Court of Special Appeals catalogues them differently.

Mr. Titus noted that rules in some courts mandate that an answer to a motion for summary judgment itemize the disputed material facts. Now that discovery materials are not filed, it is more difficult to point out the disputed facts. It is necessary to include excerpts of transcripts. He suggested that when a party opposes a motion for summary judgment, that party should enumerate the material facts in dispute. Judge Missouri commented that when a party articulates the disputed facts, it is easier for the judge to make a decision.

Mr. Sykes observed that the Honorable Frederic N. Smalkin, of the U.S. District Court for the District of Maryland, includes language in his orders which states that a party opposing a motion for summary judgment must submit a concise list of the material facts he or she contends are in

genuine dispute, referencing an exact place in the paperwork submitted by the party where the dispute is evident. The Vice Chair noted that what is intended to be required in the party's response to the motion is identification with particularity of the material facts that show that there is a genuine dispute.

Mr. Sykes suggested that language from Judge Smalkin's order could be added to Rule 2-501, Motion for Summary Judgment. Judge Missouri added that educating judges would be helpful, also. The Chair referred to the Judicial Institute as a method of educating judges. Mr. Titus questioned as to whether a Rules Committee member could speak to the judges participating in the Judicial Institute on the topic of summary judgment. Judge McAuliffe answered that a member of a Court of Appeals committee cannot speak on behalf of that committee. Mr. Titus asked if Rules Committee members are allowed to speak at all to the judges. Mr. Sykes responded that members of the Rules Committee have their own credentials notwithstanding their membership on the Rules Committee, and each could speak on his or her own behalf. The Chair said that the language of Judge Smalkin's order could be considered by the Rules Committee as an addition to Rule 2-501. The topic of summary judgment could be recommended to the Judicial Institute for inclusion in its program.

Agenda Item 4. Consideration of a proposed amendment to Rule 9-203 (Financial Statements)

The Reporter presented Rule 9-203, Financial Statements, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-203 to conform to Chapter ____ (HB 993), Acts of 2002, as follows:

Rule 9-203. FINANCIAL STATEMENTS

(a) Financial Statement — General

Unless section (b) of this Rule applies, a Financial Statement required by Rule 9-202 shall be in substantially the following form:

[caption of case]

FINANCIAL STATEMENT OF _____
(Name)
(General)

CHILDREN	**AGE**

MONTHLY EXPENSES

Item	SELF	CHILDREN	TOTAL
A. PRIMARY RESIDENCE			
Mortgage			
Insurance (homeowners)			
Rent/Ground Rent			
Taxes			
Gas & Electric			
Electric Only			
Heat (oil)			
Telephone			
Trash Removal			
Water Bill			
Cell Phone/Pager			
Repairs			
Lawn & Yard Care (snow removal)			
Replacement Furnishings/Appliances			
Condominium Fee (not included elsewhere)			
Painting/Wallpapering			
Carpet Cleaning			
Domestic Assistance/Housekeeper			
Pool			
Other:			

SUB TOTAL			

B. SECONDARY RESIDENCE (i.e. Summer Home/Rental)			
Mortgage			
Insurance (homeowners)			
Rent/Ground Rent			
Taxes			
Gas & Electric			
Electric Only			
Heat (oil)			
Telephone			
Trash Removal			
Water Bill			
Cell Phone/Pager			
Repairs			
Lawn & Yard Care (snow removal)			
Replacement Furnishings/Appliances			
Condominium Fee (not included elsewhere)			
Painting/Wallpapering			
Carpet Cleaning			
Domestic Assistance/Housekeeper			
Pool			
Other:			
SUB TOTAL			

C. OTHER HOUSEHOLD NECESSITIES			
Food			
Drug Store Items			
Household Supplies			
Other:			
SUB TOTAL			

D. MEDICAL/DENTAL			
Health Insurance			
Therapist/Counselor			
Extraordinary Medical			
Dental/Orthodontia			
Opthamologist/Glasses			
Other:			
SUB TOTAL			

E. SCHOOL EXPENSES			
Tuition/Books			
School lunch			
Extracurricular activities			
Clothing/Uniforms			
Room & Board			
Daycare/Nursery School			
Other:			
SUB TOTAL			

F. RECREATION & ENTERTAINMENT			
Vacations			

Videos/Theater			
Dining Out			
Cable TV/Internet			
Allowance			
Camp			
Memberships			
Dance/Music Lessons etc.			
Horseback Riding			
Other:			
SUB TOTAL			

G. TRANSPORTATION EXPENSE			
Automobile Payment			
Automobile Repairs			
Maintenance/Tags/Tires/etc.			
Oil/Gas			
Automobile Insurance			
Parking Fees			
Bus/Taxi			
Other:			
SUB TOTAL			

H. GIFTS			
Holiday Gifts			
Birthdays			
Gifts to others			
Charities			

SUB TOTAL			
I. CLOTHING			
Purchasing			
Laundry			
Alterations/Dry Cleaning			
Other:			
SUB TOTAL			
J. INCIDENTALS			
Books & Magazines			
Newspapers			
Stamps/Stationary			
Banking Expense			
Other:			
SUB TOTAL			
K. MISCELLANEOUS/OTHER			
Alimony/Child Support (from a previous Order)			
Religious Contributions			
Hairdresser/Haircuts			
Manicure/Pedicure			
Pets/Boarding			
Life Insurance			
Other:			
SUB TOTAL			

TOTAL MONTHLY EXPENSES:			

Number of Dependent Children**, including children who have not attained the age of 19 years and are enrolled in secondary school** _____

INCOME STATEMENT

GROSS MONTHLY WAGES:		$
Deductions:		
Federal	$	
State	$	
Medicare	$	
F.I.C.A	$	
Retirement	$	
Total Deductions:	$	
NET INCOME FROM WAGES:		$
OTHER GROSS INCOME: (alimony, part-time job, rentals etc.)		$
Deductions:		
a.		
b.		
c.		
Total deductions from Other income:	$	
NET OTHER INCOME:		$

TOTAL MONTHLY INCOME		$

ASSETS & LIABILITIES

ASSETS:	
Real Estate	$
Furniture (in the marital home)	$
Bank Accounts/Savings	$
U.S. Bonds	$
Stocks/Investments	$
Personal Property	$
Jewelry	$
Automobiles	$
Boats	$
Other:	$

TOTAL ASSETS:	$

LIABILITIES:	
Mortgage	$
Automobiles	$
Notes payable to relatives	$
Bank Loans	$
Accrued Taxes	$
Balance of Credit Card Accounts	$
a.	
b.	

c.		
Other:		
TOTAL LIABILITIES:		$
TOTAL NET WORTH:		$
SUMMARY:		
TOTAL INCOME:		$
TOTAL EXPENSES:		$
EXCESS OR DEFICIT:		$

I solemnly affirm under the penalties of perjury that the contents of the foregoing Financial Statement, Monthly Expense List, and Assets and Liabilities Statement are true to the best of my knowledge, information, and belief.

_____ _____

Date Signature

(b) Financial Statement — Child Support Guidelines

If the establishment or modification of child support in accordance with the guidelines set forth in Code, Family Law Article, §§12-201 - 12-204 is the only support issue in the action and no party claims an amount of support outside of

the guidelines, the financial statement required by section (f) of Rule 9-202 shall be in substantially the following form:

[caption of case]

FINANCIAL STATEMENT
(Child Support Guidelines)

I, _____, state that:
My name

I am the

_____
State Relationship (for example, mother, father, aunt, grandfather, guardian, etc.)

of the minor child(ren)**, including children who have not attained the age of 19 years and are enrolled in secondary school**:

_____	_____	_____	_____
Name	Date of Birth	Name	Date of Birth
_____	_____	_____	_____
Name	Date of Birth	Name	Date of Birth
_____	_____	_____	_____
Name	Date of Birth	Name	Date of Birth

The following is a list of my income and expenses (see below*):

See definitions on other side before filling out.

Total monthly income (before taxes)
$_____

Child support I am paying for my other child(ren) each month
_____

Alimony I am paying each month to _____
_____
(Name of Person(s))
Alimony I am receiving each month from _____
_____
(Name of Person(s))

For the child or children listed above:

The monthly health insurance premium
_____

Work-related monthly child care expenses
_____

Extraordinary monthly medical expenses
_____

School and transportation expenses
_____

* To figure the monthly amount of expenses, weekly expenses should be multiplied by 4.3 and yearly expenses should be divided by 12. If you do not pay the same amount each month for any of the categories listed, figure what your average monthly expense is.

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

_____ _____
Date Signature

[side 2 of form]

Total Monthly Income: Include income from all sources including self-employment, rent, royalties, business income, salaries, wages, commissions, bonuses, dividends, pensions, interest, trusts, annuities, social security benefits, workers compensation, unemployment benefits, disability benefits, alimony or maintenance received, tips, income from side jobs, severance pay, capital gains, gifts, prizes, lottery

winnings, etc. Do not report benefits from means-tested public assistance programs, such as food stamps or AFDC.

Extraordinary Medical Expenses: Uninsured expenses over $100 for a single illness or condition including orthodontia, dental treatment, asthma treatment, physical therapy, treatment for any chronic health problems, and professional counseling or psychiatric therapy for diagnosed mental disorders.

Child Care Expenses: Actual child care expenses incurred on behalf of a child due to employment or job search of either parent with amount to be determined by actual experience or the level required to provide quality care from a licensed source.

School and Transportation Expenses: Any expenses for attending a special or private elementary or secondary school to meet the particular needs of the child and expenses for transportation of the child between the homes of the parents.

. . .

Rule 9-203 was accompanied by the following Reporter's Note.

> The proposed amendments to Rule 9-203 conform the Rule to Chapter ____ (HB 993), Acts of 2002, which provides that a person who has attained the age of 18 years, is enrolled in secondary school, and has not attained the age of 19 years has the right to receive support and maintenance from the person's parents provided that the person is not emancipated or married.

The Reporter explained that the legislature had passed a bill which provides that a person who has attained the age of 18 years, is enrolled in secondary school, and has not attained the age of 19 years can receive support and maintenance from the person's parents, as long as the 18-year old person is not emancipated or married. The proposed changes to the financial statements in Rule 9-203 reflect the change in the statute. Mr. Bowen pointed out that the statutory requirements that the person cannot be married or emancipated have been omitted from the new language proposed to be added to the Rule. He suggested that the new language in both financial statements should read as follows: "including children who have not attained the age of 19 years, are not married or self-supporting, and are enrolled in secondary school." The Committee agreed by consensus to these changes. The Rule was approved as amended.

Agenda Item 5. Consideration of certain proposed rule changes recommended by the Criminal Subcommittee: Amendments to: Rule 4-212 (Issuance, Service, and Executive of Summons or Warrant), Rule 4-245 (Subsequent Offenders), Rule 4-502 (Expungement Definitions), Rule 4-505 (Answer to Application or Petition), Rule 4-512 (Disposition of Expunged Records), and Rule 4-631 (Compelling Testimony on the Condition of Immunity)

Judge Johnson presented Rule 4-212, Issuance, Service, and Execution of Summons or Warrant, for the Committee's

consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-212 (d)(2) to clarify that warrants are issued by judges, as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR WARRANT

. . .

(d) Warrant - Issuance; Inspection

(1) In the District Court

A judicial officer may, and upon request of the State's Attorney shall, issue a warrant for the arrest of the defendant, other than a corporation, upon a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and that (A) the defendant has previously failed to respond to a summons that has been personally served or a citation, or (B) there is a substantial likelihood that the defendant will not respond to a summons, or (C) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court, or (D) the defendant is in custody for another offense, or (E) there is probable cause to believe that the defendant poses a danger to another person or to the community. A copy of the charging document shall be attached to the warrant.

(2) In the Circuit Court

Upon the request of the State's Attorney, the court may order issuance of a warrant ~~shall issue~~ for the arrest of a defendant, other than a corporation, if an information has been filed against the defendant and the circuit court or the District Court has made a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document or if an indictment has been filed against the defendant; and (A) the defendant has not been processed and released pursuant to Rule 4-216, or (B) the court finds there is a substantial likelihood that the defendant will not respond to a summons. A copy of the charging document shall be attached to the warrant. Unless the court finds that there is a substantial likelihood that the defendant will not respond to a criminal summons, a warrant shall not issue for a defendant who has been processed and released pursuant to Rule 4-216 if the circuit court charging document is based on the same alleged acts or transactions. When the defendant has been processed and released pursuant to Rule 4-216, the issuance of a warrant for violation of conditions of release is governed by Rule 4-217.

(3) Inspection of the Warrant and Charging Document

Unless otherwise ordered by the court, files and records of the court pertaining to a warrant issued pursuant to subsection (d)(1) or (d)(2) of this Rule and the charging document upon which the warrant was issued shall not be open to inspection until either (A) the warrant has been served and a return of service has been filed in compliance with section (g) of this Rule or (B) 90 days have elapsed since the warrant was issued. Thereafter, unless sealed pursuant to Rule 4-201 (d),

> the files and records shall be open to inspection.
>
> . . .

Rule 4-212 was accompanied by the following Reporter's Note.

> Julia Andrew, Esq., Assistant Attorney General, pointed out that the wording of subsection (d)(2) does not make clear that only a judge may order the issuance of a warrant if an information has been filed and a circuit court has found probable cause to believe that the defendant committed the offense charged in the charging document. The Criminal Subcommittee is recommending that the changes to subsection (d)(2) proposed by Ms. Andrew be adopted.

Judge Johnson explained that Julia Andrew, Esq., an Assistant Attorney General, had pointed out that subsection (d)(2) does not make clear that only a judge may order that a warrant be issued if an information has been filed and a circuit court has found probable cause to believe that the defendant committed the offense charged in the charging document. In some jurisdictions, the clerk of the court is issuing the warrants without judicial approval. The Committee approved the Rule as presented.

Judge Johnson presented Rule 4-245, Subsequent Offenders, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-245 (b) to add language referring to any other time period provided by law, as follows:

Rule 4-245. SUBSEQUENT OFFENDERS

. . .

(b) Required Notice of Additional Penalties

When the law permits but does not mandate additional penalties because of a specified previous conviction, the court shall not sentence the defendant as a subsequent offender unless the State's Attorney serves notice of the alleged prior conviction on the defendant or counsel (1) before the acceptance of a plea of guilty or nolo contendere, (2) ~~or~~ at least 15 days before trial in circuit court or five days before trial in District Court, whichever is earlier, or (3) pursuant to any other time period provided by law.

. . .

Rule 4-245 was accompanied by the following Reporter's Note.

The General Assembly enacted Chapter ___ (SB 801), Acts of 2002, which provides for an additional penalty of life without the possibility of parole if someone was previously convicted of the crime of rape in the first degree. To sentence someone as a subsequent offender, the State's Attorney shall notify the person in writing

> at least 30 days before trial of the State's intention to do so. Since Rule 4-245 provides a time period of 15 days before trial for notice of additional penalties, the Criminal Subcommittee is recommending the addition of language which points out that other time periods for notice of additional penalties exist. The Subcommittee opted not to reference the statute directly in Rule 4-245, because there may be other similar statutes, or others may be enacted in the future, and it could be difficult to keep track of these for reference in the Rule.

Mr. Dean pointed out that two bills on this same topic had been introduced into the legislature. Senate Bill 801 (Chapter 187) was initially presented and had a different time period for notice of additional penalties than appears in section (b) of the Rule. The Criminal Subcommittee had proposed language to draw attention to this, but House Bill 1147 (Chapter 266), which the Subcommittee had not seen, simply tied the time period to what is already in the Rules of Procedure. The Reporter noted that since House Bill 1147 was signed by the Governor later in time, it is the bill that prevails. Mr. Dean stated that no change to Rule 4-245 is necessary. Judge Johnson withdrew the Rule from consideration.

Judge Johnson presented Rule 4-502, Expungement Definitions, for the Committee's consideration.

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-502 (f) for conformity with Chapter 131 (SB 114), Acts of 2002, as follows:

Rule 4-502. EXPUNGEMENT DEFINITIONS

. . .

(f) Law Enforcement Agency

"Law enforcement agency" means any State, county, and municipal police department or agency, sheriff's office, the State's Attorney's office**, the office of the State Prosecutor**, and the Attorney General's office.

. . .

Rule 4-502 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 4-502 conforms the Rule to Chapter 131 (SB 114), Acts of 2002, which adds the Office of the State Prosecutor to the list of law enforcement units used in statutory provisions relating to expungement.

Judge Johnson explained that the amended language adds the office of the State Prosecutor to the list of law enforcement units used in statutory provisions relating to expungement. This is in response to Chapter 131 (SB 114), Acts of 2002. The Committee agreed by consensus to this

amendment.

Judge Johnson presented Rule 4-505, Answer to Application or Petition, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-505 to add to section (d) new language to include failure to file a notice of denial as constituting a consent to an expungement, as follows:

Rule 4-505. ANSWER TO APPLICATION OR PETITION

(a) Answer to Application

Within 30 days after service of an application for expungement, the law enforcement agency shall file an answer, if it has not previously filed a timely notice of denial or if it wishes to assert additional reasons for denial at the hearing, and serve a copy on the applicant or the attorney of record.

(b) Answer to Petition

Within 30 days after service of a petition for expungement, the State's Attorney shall file an answer, and serve a copy on the petitioner or the attorney of record.

Cross reference: Code, Criminal Procedure Article, §10-105 (d).

(c) Contents

An answer objecting to expungement of records shall state in detail the specific grounds for objection. A law enforcement agency or State's Attorney may by answer consent to the expungement of an applicant's or petitioner's record.

(d) Effect of Failure to Answer

The failure of a law enforcement agency or State's Attorney to file <u>either a notice of denial or</u> an answer within the 30 day period constitutes a consent to the expungement as requested.

> Source: This Rule is derived from former Rule EX4.

Rule 4-505 was accompanied by the following Reporter's Note.

> Julia M. Andrew, Esq., Assistant Attorney General, explained in a letter that a law enforcement agency is not required to file an answer to an application for expungement if the agency previously filed a timely notice of denial. The current language of section (d) of Rule 4-505 is misleading because it does not refer to a filing of a notice of denial, and Ms. Andrew is requesting that this language be added. The Criminal Subcommittee is in agreement with this request.

Judge Johnson told the Committee that Ms. Andrew had also requested a change to Rule 4-505. Since a law enforcement agency is not required to file an answer to an application for expungement if the agency previously filed a timely notice of denial, the wording of section (d) of Rule 4-505 is misleading, because it does not refer to a filing of a notice of denial. Ms. Andrew is suggesting the addition of language to section (d) referring to the filing of a notice of denial. The Vice Chair inquired as to whether the notice of denial is actually filed. The Chair responded that if the law enforcement agency refuses to expunge the record, a petition for expungement is filed with the court. The agency does not have to file an answer. In order for the court to understand

the situation, the agency should be required to file an answer. Judge Dryden commented that the previous notice of denial could be sent as an objection. The Vice Chair said that the court could construe this as an answer.

The Chair stated that Rule 4-505 refers to two different situations. The first is the application, the second is the petition. The Vice Chair expressed the opinion that the Rule is correct without the proposed amendment. Mr. Sykes observed that the petition and the application are mixed in together. Judge McAuliffe said that the application is filed when no charges have been filed. Mr. Shipley commented that both the application and petition are filed with the court. A hearing is automatically set in when the application is filed. The Reporter suggested that Ms. Andrew's letter and the applicable statute be reviewed. Judge Johnson stated that the Subcommittee is withdrawing the Rule for consideration.

Judge Johnson presented Rule 4-512, Disposition of Expunged Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-512 to provide a specific time from which the three-year time period runs, as follows:

Rule 4-512. DISPOSITION OF EXPUNGED RECORDS

. . .

(f) Minimum Period of Retention

Expunged records shall be retained by the clerk for a minimum period of three years from the date the case was concluded. Expunged case files in multiple defendant cases shall be retained by the clerk until the prison terms, if any, of all co-defendants convicted in the action have been served.

. . .

Rule 4-512 was accompanied by the following Reporter's Note.

Julia Andrew, Esq., Assistant Attorney General, suggested that it would be helpful for the court clerks to have a date or event from which the three-year period for retention of expunged records runs. She proposed three years from the date the case was concluded, which is the period provided for the disposal of records in Rule 16-505 d 4 and 5. The Criminal Subcommittee is in agreement with this change.

Judge Johnson explained that Ms. Andrew had requested that section (f) be amended to add a date or event from which the three-year period for retention of expunged records runs. Ms. Andrew suggested that the new language should be "three years from the date the case was concluded." The Chair inquired as to what that actually means. The Vice Chair suggested that the date be tied to the date of the judgment.

The Chair remarked that the clerks may have problems with compliance. Mr. Shipley noted that the word "concluded" could mean the end of a probation period or the date that a sentence was imposed. Mr. Sykes observed that if the time runs from the end of a probation period, this is not the same as running from the date of the judgment.

The Chair suggested that if the defendant had been acquitted, the time period could run from the date of acquittal; if the defendant had been sentenced, the time period could run from the date the sentence expired. Judge McAuliffe proposed that the new language be: "three years from the date of entry of the order of expungement." The Chair commented that the following language could also be added: "unless the court orders otherwise...". Mr. Bowen pointed out that subsection d 4 of Rule 16-505, Disposition of Records, provides that in criminal cases that have been dismissed or in which a *nolle prosequi* or stet is entered, the clerk shall retain all original papers, exhibits, and electronic recordings of testimony for a period of three years after the case is concluded. Judge McAuliffe commented that records are retained for a certain period of time after disposition.

The Reporter asked Mr. Shipley where the expunged records are kept. He replied that they are retained in a vault. Mr. Karceski noted that section (b) of Rule 4-512 refers to

records being unsealed. He asked if expunged records are unsealed, and Mr. Dean answered that he could not recall any expunged records being unsealed. The Chair said that the unsealing may be necessary in a case such as a lawsuit against a police officer, so that the officer can use the records to defend himself or herself. He told the Committee about two police officers in Montgomery County who had been sued for slander, and the officers needed to see the expunged records. Basic fairness requires that in such a circumstance, the records should be unsealed. Judge Norton added that unsealing may be necessary in a case involving fraud by using false names and identities. Mr. Karceski expressed the view that after the minimum period stated in the Rule, no one should have access to the records, which should be destroyed. Judge Dryden responded that the records should be separated, but not destroyed. Mr. Karceski observed that after three years, expunged records should be destroyed.

Judge McAuliffe commented that there should be an ending date added to the Rule. Mr. Shipley remarked that this would be helpful to the court clerks. Judge Missouri pointed out that the courts may run out of storage space by retaining the expunged records. Mr. Karceski reiterated that he is in favor of destruction of the records after three years. There should not be discretion among the 24 clerks as to how long the

records are kept. Judge Johnson observed that records disposition should be the same for the entire State.

Mr. Karceski agreed with Judge Johnson that there should be uniformity throughout the State for both civil and criminal records. Judge Norton remarked that unserved warrants are later destroyed. There should be some checks and balances in the system. The Reporter asked if access to the records is available once the records are stored, and Mr. Shipley answered that there is no access. The Vice Chair inquired as to whether the name of someone whose records are expunged appears on a list, and Mr. Shipley replied that the name is removed from the index of criminal actions, but it is on the listing maintained pursuant to Rule 4-512 (c). Mr. Maloney questioned as to whether the Federal Bureau of Investigation could subpoena the records kept in a vault, and Mr. Shipley answered that the records could not be accessed. The Vice Chair noted that section (g) of Rule 4-512 provides that once the expunged records have been destroyed, the name of the person whose court records have been destroyed shall be deleted from the listing of persons whose court records have been expunged. Mr. Shipley responded that court personnel can find the records, but there is no public access.

The Chair suggested that the date to be added to the Rule is the date that the order for expungement was entered. The

Committee agreed by consensus to this change. Mr. Shipley commented that this may require the approval of the State archivists. The Reporter said that she will ask Ms. Andrew if the new language is appropriate. The Committee approved the Rule as amended, subject to Ms Andrew's approval.

Judge Johnson presented Rule 4-631, Compelling Testimony on the Condition of Immunity, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

AMEND Rule 4-631 to move a statutory reference within the body of the Rule to a cross reference following the Rule and to update the other cross references following the Rule, as follows:

Rule 4-631. COMPELLING TESTIMONY ON THE CONDITION OF IMMUNITY

(a) Requested by State

In any proceeding under this Title~~,~~ or before a grand jury, ~~or pursuant to Code, Article 10, §39A,~~ if a witness lawfully refuses to answer or to provide other information on the basis of the privilege against self incrimination, the court, when authorized by law, shall compel the witness to answer or otherwise provide information if:

(1) The State's Attorney requests in writing or on the record that the court order the witness to answer or otherwise provide information, notwithstanding the witness' claim of privilege; and

(2) The court informs the witness of the scope of the immunity the witness will receive as provided by the appropriate statute.

(b) Order of Court

The court shall enter its order compelling testimony in writing or on the record.

Cross reference: ~~See Code (1957, 1992 Repl. Vol.), Article 27, §§23, 24, 39, 400 and Article 33, §26 16 (c). See also *Bowie v. State*, 14 Md. App. 567, 287 A.2d 782 (1972).~~ See Code, Article 10, §39A. For examples of statutes that allow the court to issue an order compelling a witness to testify or provide other information on condition of immunity, see Code, Courts Article, §9-123 and Code, Criminal Law Article, §§9-201 and 9-204.

Source: This Rule is derived from former Rule 785 and M.D.R. 785.

Rule 4-631 was accompanied by the following Reporter's Note.

> Chapter 26 (HB 11) passed by the 2002 General Assembly reformulated Article 27 into the Criminal Law Article. The cross references at the end of Rule 4-631 are obsolete and need to be updated. The Criminal Subcommittee also believes that the reference to "Article 10, §39A" in section (a) would be more appropriately placed in the cross references at the end of the Rule.

Judge Johnson explained that the statutory cross references at the end of the Rule have been updated, and the reference to "Article 10, §39A" has been moved from section (a) to the cross reference. Mr. Dean added that in the early to mid-1970's, witnesses could be subpoenaed in a star chamber-like proceeding. This procedure evolved into subpoenas to obtain documents to further criminal investigations. The reference to the statute may be better in the cross reference to the Rule as a matter of style and form. This procedure is no longer testimonial. It is rare to get an objection to the subpoena.

The Reporter suggested that the statutory reference be moved back into the body of the Rule. The subpoena is issued at the investigation stage of the proceedings and not at the grand jury stage. It is misleading to omit the reference from the body of the Rule. Mr. Dean agreed that the statutory

reference should go back into the body of section (a). The Vice Chair asked how this provision works if a person refuses to provide information on the basis of self-incrimination. Mr. Maloney said that the act of producing documents is testimonial. The Vice Chair questioned as to whether it involves testimony if a person does not obey a subpoena issued pursuant to Article 10, §39A to produce documents to further a criminal investigation. Mr. Dean answered that it does not involve testimony. The Vice Chair suggested that reference to document production should come out of the body of the Rule. Judge Johnson disagreed. He said that the State's Attorney has the ability to obtain documents, and it should be in the body of the Rule. Mr. Dean commented that the Rule is working well and should not be changed.

The Reporter suggested that the title of the Rule should be changed to refer not only to testimony, but also to the production of documents. The Chair suggested that language could be added to section (a) after the word "or" and before the word "to" as follows: "to produce documents or," so that the language of the Rule would be: "...if a witness lawfully refuses to answer or to produce documents or to provide other information... ." Mr. Dean commented that his reading of the language "other information" includes documents. Judge Johnson said that the reference to "Code, Article 10, §39A"

will be added back in to section (a), and the title of the Rule will be changed to also refer to documents. The Committee agreed by consensus. The Reporter pointed out that Elizabeth Veronis, Esq., had referred to some other statutes that might belong in the cross reference, but the Subcommittee had reviewed them and did not think that it was necessary to add them. The Committee approved the Rule as amended, with a revised title and updated cross reference, and no amendment to section (a).

Agenda Item 6. Consideration of an evidentiary/stylistic issue
concerning Rule 5-101 (b) and (c) (See Appendix 1)

The Chair presented a Memorandum dated May 2, 2002 from the Reporter and Rule 5-101 for the Committee's consideration. (See Appendix 1). The Chair told the Committee that the Style Subcommittee recommends uniform statements to describe the applicability of Title 5. Mr. Maloney questioned the wording of the statement, "Lawful privileges shall be respected." He suggested that in place of the words "be respected" the word "apply" should be substituted. Mr. Titus asked about the language "lawful privileges." The Chair said that when the Evidence Rules were drafted, the term "lawful privilege" meant a privilege that is judicially recognized, statutorily recognized, or created by Rule. Mr. Titus commented that the

minutes should reflect that the language "lawful privilege" means that which is created by statute, case law, or Rule.

The Chair pointed out that when the Rodowsky Committee originally presented an earlier draft of the Evidence Rules, the Rules Committee had approved a privilege section. The Rules Committee could look at the Rodowsky Committee's approach. The Reporter noted that a chapter that would have been Chapter 500, pertaining to privilege, was deliberately left out of Title 5. The Chair said that this was a policy decision, because the Rules Committee felt that it is up to the legislature to establish privilege, other than common law privileges already recognized. Mr. Titus remarked that a well-developed body of statutory and case law privileges exists. The Rules should not codify or supersede the legislature's jurisdiction.

The Reporter asked if the sentence, "Lawful privilege shall apply" should be put into each individual rule that is listed in Rule 5-101, as well as in Rule 5-101 itself, even if it is duplicative. She also inquired whether statements concerning the inapplicability of the Rules in Title 5 in certain categories of proceedings and language that allows the court to decline to require strict application of the Rules in Title 5 in certain proceedings should be retained in each individual Rule, as well as in Rule 5-101. Mr. Sykes

commented that it is more user-friendly to have the language in both places. At the least, each rule could contain a cross reference to Rule 5-101.

Mr. Sykes noted that privilege is a separate category. People generally think that privileges are applicable. However, language could be added to Rule 5-101 to indicate that they apply in all actions and proceedings.

Mr. Klein noted that sections (b) and (c) of Rule 5-101 provide that the rules do not apply to certain proceedings, except for the rules relating to the competency of witnesses. If new section (d) is added to the Rule, an inference could be drawn that since the reference to privilege is now part of a Title 5 rule, privileges do not apply in the types of proceedings listed in sections (b) and (c) of the Rule. Rule 5-101 should state that the rules pertaining to privilege do apply in all proceedings, including those listed in sections (b) and (c). The Reporter said that instead of adding a new section (d), a Committee note could be added stating that privileges apply. The Committee agreed by consensus to this suggestion.

The Vice Chair asked why the concept to which Mr. Klein referred is not equally applicable in the Juvenile Rules. If the Evidence Rules, except for competency of witnesses and privilege, do not apply to certain proceedings, why does

privilege have to be addressed in the Juvenile Rules? Judge McAuliffe responded that this would be user-friendly redundancy. The Vice Chair suggested that there could be a cross reference to the Evidence Rules in the Juvenile Rules.

The Reporter stated that the new language can be added wherever it is appropriate. The Vice Chair said that a cross reference to Rule 5-101 would be sufficient. The Chair commented that section (c) includes waiver hearings, and the language pertaining to privilege should also be put into the waiver rule. The redundancy is user-friendly.

The Chair adjourned the meeting.