COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A, People's Resource Center, Crownsville, Maryland on June 25, 1999.

Members present:

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

Hon. James W. Dryden
Bayard Z. Hochberg, Esq.
Hon. G. R. Hovey Johnson
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Timothy F. Maloney, Esq.
Hon. John F. McAuliffe
Anne C. Ogletree, Esq.
Larry W. Shipley, Clerk
Sen. Norman R. Stone
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Del. Joseph F. Vallario, Jr.
Hon. James N. Vaughan
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Lisa M. Clark, Esq.
Lauren Casey, Esq.
Ken Crocken, Rules Committee Intern

The Chair convened the meeting. He announced that Linda M. Schuett, the Vice Chair, had been appointed to the post of County Attorney of Anne Arundel County by the County Executive. She was sworn in two weeks ago. The Chair commented that the County Executive had made a wise decision in this appointment, and he said that fortunately, Ms. Schuett will be able to continue as the Vice Chair of the Rules Committee.

The Chair stated that the minutes of the April 16, 1999 Rules

Committee meeting had never been approved. Judge Dryden noted that at the bottom of page 53, the word "reign" should be

changed to the word "rein." There being no other changes, Judge Kaplan moved to approve the minutes as amended. The motion was seconded, and it carried unanimously.

Agenda Item 1. Consideration of proposed amendments to Rules 2-415 (Deposition — Procedures) and 2-416 (Deposition — Videotape and Audiotape)

The Vice Chair presented Rule 2-415, Deposition — Procedures, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-415 to provide that the ground for an objection need not be stated unless requested by **[the party against whom the objection is made], or [an opposing party], or [a party]**, to add certain requirements concerning the statement of grounds, and to add a certain Committee note, as follows:

Rule 2-415. Deposition - Procedure

(a) Oath and Record of Testimony

The deponent shall be put on oath by the officer before whom a deposition is taken, and the testimony of the deponent shall be recorded by the officer or by someone acting under the direction and in the presence of the officer. The testimony shall be recorded stenographically or, pursuant to Rule 2-416, by videotape or audiotape. The testimony shall also be transcribed unless the parties agree

otherwise or unless the court orders otherwise to avoid expense, hardship, or injustice. The court may order one or more of the parties to pay the cost of transcription.

(b) Examination and Cross-examination

When a deposition is taken upon oral examination, examination and cross- examination of the deponent may proceed as permitted in the trial of an action in open court. The cross-examination need not be limited to the subject matter of the examination in chief, but its use shall be subject to the provisions of Rule 2-419. Instead of participating in the oral examination, a party served with a notice of deposition may transmit written questions to the officer before whom the deposition is taken, who shall propound them to the deponent.

(c) Materials Produced

Any party may inspect and copy documents and other tangible things produced by a deponent and may require them to be marked for identification and attached to and returned with the transcript. However, if the person producing the materials requests their return, (1) the person producing the materials, upon affording each party an opportunity to verify the copies by comparison with the originals, may substitute copies to be marked for identification and attached to and returned with the transcript, or (2) the person producing the materials may offer the originals to be marked for identification, after affording each party an opportunity to inspect and copy them, in which event the materials may be used in the same manner as if attached to and returned with the transcript. Any party may move for an order that the originals be attached to and returned with the transcript to the court, pending final disposition of the case.

(d) Correction and Signature

The officer shall submit the transcript to the deponent for correction and signing,

unless waived by the deponent and the parties. Any corrections desired by the deponent to conform the transcript to the testimony shall be made on a separate sheet and attached by the officer to the transcript. Corrections made by the deponent become part of the transcript unless the court orders otherwise on a motion to suppress under section (i) of this Rule. If the transcript is not signed by the deponent within 30 days after its submission, the officer shall sign it and state why the deponent has not signed. The transcript may then be used as if signed by the deponent, unless the court finds, on a motion to suppress under section (i) of this Rule, that the reason for refusal to sign requires rejection of all or part of the transcript.

(e) Certification and Notice

The officer shall attach to the transcript a certificate that the deponent was duly sworn and that the transcript is a true record of the testimony given. A transcript prepared from a certified videotape or audiotape may be certified by any person qualified to act as a deposition officer. The officer shall then securely seal the transcript in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of deponent)."

(f) Copy to be Furnished

Upon receiving payment of reasonable charges, the officer shall furnish a copy of the transcript to any party or to the deponent.

(g) Objections

All objections made during a deposition shall be recorded with the testimony. An objection to the manner of taking a deposition, to the form of questions or answers, to the oath or affirmation, to the conduct of the parties, or to any other kind of error or irregularity that might be obviated or removed if objected to at the time of its occurrence is

waived unless a timely objection is made during the deposition. An objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make it before or during a deposition unless the ground of the objection is one that might have been obviated or removed if presented at that time. The grounds of an objection need not be stated unless requested by **[the party against whom the objection is made], or [an opposing party], or [a party].** Where the ground of an objection is stated, it shall be stated specifically, concisely, and in a non-argumentative and non-suggestive manner. Committee note: During the taking of a deposition it is presumptively improper for an attorney to make objections which are not consistent with Rule 4-215 (g). Objections should be stated as simply, concisely and non-argumentatively as possible to avoid coaching or making suggestions to the deponent, and to minimize interruptions in the questioning of the deponent (for example: "objection, leading;" "objection, asked and answered;" "objection, compound question"). If an attorney desires to make an objection for the record during the taking of a deposition that reasonably could have the effect of coaching or suggesting to the deponent how to answer, then the deponent, at the request of any of the attorneys present, or, at the request of a party if unrepresented by an attorney, shall be excused from the deposition during the making of the objection.

(h) Refusals to Answer

When a deponent refuses to answer a question, the proponent of the question shall complete the examination to the extent practicable before filing a motion for an order compelling discovery.

(i) Motions to Suppress

An objection to the manner in which testimony is transcribed, videotaped, or audiotaped, or to the manner in which a

transcript is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer is waived unless a motion to suppress all or part of the deposition is made promptly after the defect is or with due diligence might have been ascertained. An objection to corrections made to the transcript by the deponent is waived unless a motion to suppress all or part of the corrections is filed within sufficient time before trial to allow for a ruling by the court and, if appropriate, further deposition. In ruling on a motion to suppress, the court may grant leave to any party to depose the deponent further on terms and conditions the court deems appropriate.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 409 c.
Section (b) is derived from former Rule 409 a.
Section (c) is derived from former Rule 411 b 3.
Section (d) is derived from former Rule 411 a and 412 e.
Section (e) is derived from former Rule 411 b 1, 2 and 5.
Section (f) is derived from former Rule 411 b 4.
Section (g) is derived from former Rules 409 c 2, and 412 c 1 and 2.
Section (h) is derived from former Rule 422 a 2.
Section (i) is derived from former Rule 412 d and e.

Rule 2-415 was accompanied by the following Reporter's Note.

This amendment to Rule 2-415 (g) is proposed in response to Mayor and City of Council of Baltimore v. Darla J. Theiss, ___ Md. ___ (No. 123, September Term, 1998, filed May 17, 1999). The Discovery Subcommittee was unanimous in its concern about the implications of this decision. The Subcommittee believes

that the proposed amendment accomplishes the policy objectives set forth in the majority opinion, without unnecessarily complicating or prolonging depositions.

Under the proposed amendment, which is derived from Rule 5-103 (a)(1) and the first sentence of Fed.R.Civ.P. 30 (d)(1), a party that makes an objection at a deposition is not required to state the grounds, unless requested to do so by **[the party against whom the objection is made], or [an opposing party], or [a party].** If grounds are stated, they must be stated specifically, concisely, and in a non-argumentative and non-suggestive manner.

A proposed Committee note following section (g) is derived verbatim from Guideline 5 of the Discovery Guidelines of the United States District Court for the District of Maryland, with the exception of (1) the substitution of "Rule 2-415 (g)" for "Fed.R.Civ.P. 30 (d)(1)" and (2) the deletion of "objection, form" from the parenthetical listing of examples. The Subcommittee believes that "objection, form" does not meet the specificity requirement of the second sentence of the proposed amendment to section (g).

The Vice Chair explained that the proposed change to Rule 4-215 is in response to a very surprising, recent Court of Appeals case, Mayor and City Council of Baltimore v. Darla J. Theiss, ___ Md. ___ (No. 123, September Term, 1998, filed May 17, 1999.) The majority held that since 1885, persons making objections in a deposition are required to state the grounds for objecting to the question. The Vice Chair noted that in her 19 years of experience as a lawyer, the only people who state the grounds for objections to depositions are those who do so to obstruct the deposition. In the Theiss case, the

plaintiff sued Baltimore City for injuries. The physician witness was not asked the question appropriate to medical witnesses, which is whether his opinions were based on a reasonable degree of medical probability. The defense objected by either stating "objection" or "objection, form." The case was bypassed to the Court of Appeals which held that the objections were waived for failure to state the grounds of the objection. The Court pointed out that Rule 2-415 is silent as to this issue, but there are a few provisions in the case law pertaining to it.

The Honorable Lawrence F. Rodowsky wrote a persuasive concurring opinion, which held that before such a major change is made to the Rule, there should be input from the Rules Committee and the bar. The Vice Chair said that the majority opinion will give the obstructive attorney more ammunition. It also takes away from the adversary system by telling the opposing party exactly what is wrong with his or her strategy. The Discovery Subcommittee was unanimous in its belief that modifications to the Rule will alleviate the problem. The recommendation is to design the Rule so that if the opposing party or the judge wishes to know the grounds for the objection, he or she can ask for them. The Vice Chair said that her view is that the likelihood of someone asking for the grounds is not very high. Most attorneys do not object during a deposition, except for the obstructing attorneys. Some depositions have as many as 10 attorneys present. If all of them are asking for the grounds for

objections, it could become confusing. The Committee note to section (g) is derived from a Federal guideline.

The Reporter noted that the Subcommittee did not decide as to the exact language in the modified provisions. The Vice Chair suggested that the first issue as to whether to make the amendment should be determined first, and the language can be determined later. The Chair said that the issue in the case was whether a deposition can admitted at trial when the questions asked of the physician at the deposition were not accompanied by the requisite question about the physician's opinion to a reasonable degree of medical certainty, and the objections to the questions were not made specifying the grounds of the objection. The Vice Chair referred to Judge Rodowsky's concurring opinion in which he stated that the failure to ask the appropriate opinion question to the physician is not a problem because the attorney could have asked the physician at the end of his testimony whether all of his stated opinions were to a reasonable degree of medical certainty. Mr. Sykes pointed out that some of the problems with the testimony to which an objection was made can be cured at the time the objection was being made. The Chair suggested that the Rule could provide that if the objection would have resulted in the attorney curing the problem, the objection should be made at the time of the deposition. If the problem is not curable, there is no need to require this.

The Vice Chair questioned whether this is a problem of the form

of the question, which is curable, or whether the person objecting is not prepared. The Chair pointed out that the case of Davis v. Goodman, 117 Md.App. 378 (1997) is consistent with the majority opinion in Theiss. Mr. Sykes remarked that the question is whether the problem can be cured if it is called to the questioner's attention. The Court of Appeals majority referred to avoiding the technique of "sandbagging" an opposing counsel by attempting to defer the issue of the proper form of the question to some later point when correction is necessary, but the witness is no longer available. To accomplish the goal of resolving cases in a substantial way rather than on a technicality, it is important not to increase the likelihood of inadvertance on the part of the questioner. There should be some way to give notice of the problem with the question, which only applies when the problem is curable.

The Chair said that the question is whether the grounds must be stated when an objection is made. Mr. Sykes pointed out that if an attorney makes objections, even when not required, it would inundate the deposition, similar to the attorney who files a mass of documents in document discovery. Asking the grounds for an objection each time could prolong the deposition and would not stop people from making the objection. Judge McAuliffe observed that the Subcommittee's view was that in most instances, it would not be necessary to ask for the grounds of the objection. One caution is to prevent an attorney from stating at the beginning of the deposition, "whenever I object, it is

due to the following grounds," or from repeating the litany each time there is an objection. It makes sense that the burden to ask the grounds of the objection is on the party who wants to know.

The Chair suggested adding in section (g) the language, "unless error or irregularity could be obviated or unless requested by a party," so that the fourth sentence would read as follows: "The grounds of an objection need not be stated unless error or irregularity could be obviated or unless requested by a party." The Vice Chair responded that the general statement made when objecting is "objection, form." It is important to avoid giving ammunition to an attorney who wants to talk endlessly. The Chair pointed out that the sentence is organized so that the grounds are not stated unless error or irregularity could be obviated or unless requested by a party. The idea is that if the opposing party is satisfied with the statement "objection," the deposition can continue. If the person would like to have the grounds stated, because it gives him or her an opportunity to cure the error, then the person can so request. Judge McAuliffe pointed out that this change has a negative implication. The Rule would only allow an objection if it cured the problem, but other objections need not be made. This does not address the Court of Appeals opinion. Judge McAuliffe expressed his preference for the Subcommittee draft.

The Chair suggested that a second sentence be added to section (g) which would read as follows: "An objection to the manner of

taking a deposition, to the form of questions or answers, to the oath or affirmation, to the conduct of the parties, or to any other kind of error or irregularity that might be obviated or removed if objected to at the time of its occurrence is waived unless the grounds of the objection are stated at the time of its occurrence." Once the deposition is used in the trial, there is no opportunity to cure an objection. The Vice Chair suggested that the second sentence provide the time to make the objection, and the next sentence provide that there is no need to state the grounds for an objection, unless it would cure the problem. The Chair pointed out that the clause in the third sentence which reads, "unless the ground of the objection is one that might have been obviated or removed if presented at that time" does not mean that the ground must be stated. The judge determines if the problem could have been cured. The Vice Chair agreed, noting that the intent of the Subcommittee was that the grounds should not be stated unless certain conditions occur.

The Chair suggested that in the third sentence of section (g), the "unless" clause should be moved to the end of the second sentence. The Vice Chair pointed out that the language in the Rule tracks the federal rule, and it would be a mistake to change it. The Chair commented that a timely objection could cure the problem if the grounds for the objection are stated. Otherwise, there could be a problem at trial, because the deposition is technically defective. An attorney could say that the problem could have been corrected if

the grounds for the objection had been stated. Mr. Sykes inquired as to who decides if the problem is curable. The Vice Chair answered that later on in the proceedings, the judge decides. Mr. Sykes remarked that if the problem is curable, the person making the objection should give a clue as to how to cure the problem.

The Chair suggested that in order to strengthen the second sentence, language could be added which would provide that an objection to the manner of taking a deposition is waived unless the grounds are presented at the time of the objection. The Vice Chair suggested that the objection to relevancy should be waived if it is the type of problem which can be cured. The clause at the end of the second sentence, beginning with the word "unless," could be taken out. The way the sentence reads currently, it is not necessary to object even though the objection could cure the problem.

Judge McAuliffe moved that the Committee adopt the first alternative listed in section (g) which is "the party against whom the objection is made," because if many parties are present at the deposition, others could also object. The motion was seconded. The Vice Chair expressed her agreement with this choice. The Court of Appeals opinion was that there should be no "sandbagging." The person taking the deposition can ask the grounds of the objection to fix the problem. If all of the potential adversaries can ask the grounds of the objection, there could be many requests. Mr. Hochberg remarked that only defense attorney #10 may want the matter cured.

Judge McAuliffe questioned whether another attorney can ask for the grounds of the objection. The Vice Chair replied in the negative. Mr. Sykes noted that another attorney at the deposition could ask the same question. Mr. Maloney observed that the burden is on the objector as to whether the problem is curable or not. The Chair said that the idea is that if the trial judge is satisfied that the problem could have been cured by an objection, he or she would admit the evidence. Another rule may be needed to deal with this.

Judge McAuliffe withdrew his motion to choose the first alternative, and the withdrawal was agreed to by the person who seconded the motion. He moved to adopt the third alternative in section (g) which is "The grounds of an objection need not be stated unless requested by a party." This would avoid "sandbagging." The motion was seconded. The Chair commented that the attorney for the deponent could ask for the grounds. The Vice Chair inquired if the Rule should provide that the ground for objection is to be stated upon request or automatically, leaving aside the question of who gets to ask for the ground. Mr. Hochberg cautioned that this could result in many speeches at the deposition. Ms. Ogletree noted that the Committee note provides that the objections should be as short as possible. The Vice Chair added that the Committee note provides that the witness may leave the deposition if the objection would have the effect of coaching the witness. The Chair suggested that there might be separate rules for discovery witnesses and de bene esse witnesses.

The Chair called for a vote on Judge McAuliffe's motion to choose the third alternative in section (g). The motion passed with two opposed.

Judge Vaughan asked if there is a problem when discovery is allowed in District Court. The Chair responded that the District Court rule is tied in by specific reference. The change takes care of the District Court rule.

The Reporter said that the issue of whether stating "objection, form" is sufficient and therefore should be put back into the Committee note has not been determined. She commented that Mr. Klein had wanted this removed, because it conflicts with the reference to specificity in the last sentence of section (g). The Subcommittee was divided as to this recommendation and requested that the issue be brought to the attention of the full Committee.

Mr. Titus moved to put the phrase "objection, form" back into the Committee note. The motion was seconded, and did not carry, on a vote of four to four. The Vice Chair pointed out that the last sentence of the Reporter's note to Rule 4-215 states that the Subcommittee was of the opinion that "objection, form" does not meet the specificity requirement of the second sentence of the proposed amendment to section (g).

The Vice Chair moved to adopt the Rule as amended. The motion was seconded, and it passed unanimously.

The Vice Chair presented Rule 2-416, Deposition — Videotape and

Audiotape, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE — CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 4-216 for conformity with Rule 2-415 (g), as follows:

Rule 2-416. Deposition - Videotape and Audiotape

(a) Permitted

Any deposition may be recorded by videotape or audiotape without a stenographic record, but a party may cause a stenographic record of the deposition to be made at the party's own expense. Except as otherwise provided by this Rule, the rules of this chapter apply to videotape and audiotape depositions.

(b) Deferral

On motion of a party made prior to the deposition, the court may order that a videotape deposition intended for use at trial be postponed or begun subject to being continued, on such terms as are just, if the court finds that the deposition is to be taken before the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent or other means, for cross-examination of the deponent.

(c) Physical Arrangements

The area to be used for recording testimony shall be suitable in size, have adequate lighting, and be reasonably quiet. The physical arrangements shall not be unduly

suggestive or otherwise prejudicial.

(d) Operator

The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in accordance with this Rule. The operator may be an employee of the attorney taking the deposition unless the operator is also the officer before whom the deposition is being taken.

(e) Operation of the Equipment

The operator shall not distort the appearance or demeanor of participants in the deposition by the use of camera or sound recording techniques.

(f) Procedure

The deposition shall begin by the operator stating on camera or on the audiotape: (1) the operator's name and address, (2) the name and address of the operator's employer, (3) the date, time, and place of the deposition, (4) the caption of the case, (5) the name of the deponent, and (6) the name of the party giving notice of the deposition. The officer before whom the deposition is taken shall identify himself or herself and swear the deponent on camera or on the audiotape. At the conclusion of the deposition, the operator shall state on camera or on the audiotape that the deposition is concluded. When more than one tape is used, the operator shall announce the end of each tape and the beginning of the next tape on camera or on the audiotape. A videotape deposition shall be timed by a clock that shall show on camera whenever possible each hour, minute, and second of the deposition.

(g) Objections

The officer shall keep a log of all objections made during the deposition pursuant to Rule 2-415 (g) and shall reference them to the time shown on the clock on camera or to the

videotape or audiotape indicator. Evidence objected to shall be taken subject to the objection. A party intending to offer a videotape or audiotape deposition in evidence shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time to allow for objections to be made and acted upon before the trial or hearing. Objections to all or part of the deposition shall be made in writing within sufficient time to allow for rulings on them and for editing of the tape before the trial or hearing. The court may permit further designations and objections as justice may require. In excluding objectionable testimony or comments or objections of counsel, the court may order that an edited copy of the videotape or audiotape be made or that the person playing the tape at trial suppress the objectionable portions of the tape. In no event, however, shall the original videotape or audiotape be affected by any editing process.

(h) Certification

After the deposition has been taken, the officer shall review the videotape or audiotape promptly and attach to it a certificate that the recording is a correct and complete record of the testimony given by the deponent.

(i) Custody

The attorney for the party taking the deposition or any other person designated by the court or agreed to by the parties represented at the deposition shall take custody of the videotape or audiotape and be responsible for its safeguarding, permit its viewing or hearing by a party or the deponent, and provide a copy of the videotape or its audio portion or of the audiotape, upon the request and at the cost of a party or the deponent. A videotape or audiotape offered or admitted in evidence at a trial or hearing shall be marked and retained as an exhibit.

> Source: This Rule is derived from former Rule 410 with the exception of section (g), which is derived from former Rule 409 c 2 and 413 c.

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

> The proposed amendment to Rule 2-416 adds a reference to the objection procedure of Rule 2-415 (g), for conformity with that Rule.

The Vice Chair explained that the Subcommittee is proposing a minor change to Rule 2-416 to add a reference to section (g) of Rule 2-415. The Style Subcommittee may have to change the location of the new language. It may also be helpful to put the reference to Rule 4-215 (g) in a cross reference or a Committee note. The Reporter suggested a Committee note, and the Committee agreed by consensus with this change. The Vice Chair moved to approve the Rule as amended, the motion was seconded, and it passed unanimously.

Agenda Item 2. Continued consideration of proposed Products Liability Form Interrogatories

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The Chair said that Agenda Item 2 would not be considered, because Mr. Klein, who was scheduled to present this, had to go out of town on an emergency. However, the Reporter told the Committee that there was one housekeeping matter for the Committee to look at. In Form No. 5, the reference to "Rule S72" should be changed to "Rule 9-203 (f)." The Committee agreed by consensus to make this change.

Special Agenda Item

Judge Vaughan presented proposed Rule 3-371, Peace Orders, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE — DISTRICT COURT

CHAPTER 700 - SPECIAL PROCEEDINGS

ADD new Rule 3-731, as follows:

Rule 3-731. PEACE ORDERS

Proceedings for a temporary peace order and a peace order are governed by Code, Courts Article, Title 3, Subtitle 15. A petition for relief under that statute shall be in substantially the following form:

[text of form]

Source: This Rule is new.

Rule 3-731 was accompanied by the following Reporter's Note.

Chapter 404 (H.B. 233), Laws of 1999, effective October 1, 1999, adds Subtitle 15 to Code, Courts Article, Title 3. The new statute provides for the issuance of temporary peace orders and peace orders by the District Court. Code, Courts Article, §3-1509 (b)(1) requires that the "Court of Appeals shall adopt a form for a petition under this Subtitle." The form set forth in this Rule was drafted by the Civil Committee of the District Court to implement the provisions of the statute.

The text of the proposed new form is set out in Appendix 1.

Judge Vaughan explained that during the 1999 Legislative session, an effort was made to expand domestic violence law to dating couples. The legislature was unable to agree on a law to do this. Instead, it passed the peace order law (H.B. 233, Chapter 404), which requires the Court of Appeals to adopt a form for peace order petitions. The Civil Committee of the District Court, at the request of the Honorable Martha F. Rasin, Chief Judge, prepared the peace order petition which is before the Committee today.

Judge Vaughan said that Lauren Casey, Esq., who works in Delegate Vallario's office, had pointed out that the words "of abuse" in the second line of section 1 of the petition should be deleted because this language is not in the law. The Committee agreed by consensus to this deletion. Delegate Vallario added that the idea of the peace order is to keep an abusive person away from the person being abused. The order issued is a "stay away" order. Judge Vaughan observed that the law gives authority to the judge to order someone to stay away from someone else. The petitioner asks for this in the petition. If the respondent does not appear, the judge issues the order, but may not include an order for mediation, because it was not agreed to by both parties. The District Court, in an ex parte proceeding, may issue a temporary peace order, but the law does not provide for counseling, mediation, or costs to be included in that order. Delegate Vallario remarked that the court can order what it wants. Judge Dryden noted that the law allows for the respondent to

be heard before those items are ordered. The Chair said that the relief can be granted at the peace order hearing. Judge Dryden stated that there is an ex parte hearing, and then a later hearing. Delegate Vallario suggested that the last line of section 4 be changed to have one box which would be labeled "other," instead of the current language which includes a box for counseling, mediation, and paying filing fees and court costs. Judge Dryden pointed out that the peace order law specifically provides for mediation and counseling. All of the possibilities for relief should be included in the boxes to be checked in the petition. Judge Vaughan commented that where the issue is a neighborhood squabble, mediation may be the best solution. The ex parte order may not cover mediation. The Chair commented that the way section 4 reads now implies that the court made the determination after hearing from the person served. Having a box entitled "other" is a good way to allow a request to be asserted and a determination made at the peace order hearing.

Judge Johnson moved to change the last line of section 4 so that it consists of one box entitled "other." The motion was seconded, and it passed with one opposed.

Judge McAuliffe asked about using the reverse side of the form, also. Judge Vaughan answered that forms using the front and back are difficult to read. The peace order petition was designed to be one page. Judge McAuliffe commented that it may require more than one page. He asked if most of the petitioners appear before a

Commissioner, and Judge Vaughan replied that they do not. The Reporter said that the petitioner goes to the clerk's office. Judge McAuliffe asked if the District Court clerks will know that cases involving domestic violence law are excluded from these petitions. Judge Dryden responded that this issue has to be resolved. Judge McAuliffe remarked that if the petitioner qualifies for a domestic violence order, the peace order form cannot be used. Judge Dryden observed that more relief is available from the domestic violence law.

Judge McAuliffe suggested that in section 1 in place of the language "on or about" the language "within the past 30 days" should be substituted. The Chair remarked that the respondent needs notice as to the date of the alleged acts. Judge McAuliffe pointed out that the form provides: "Be as specific as you can." A few more lines could be added to section 3 or else on a following page. Judge Vaughan cautioned that four or five pages of narrative can be a problem. Judge McAuliffe commented that the respondent is entitled to know what the charges are against him. Judge Dryden noted that the petitioner can always attach extra pages.

The Reporter asked about including a warning or notice that domestic violence relief may be available under certain circumstances. Judge Vaughan expressed the view that this should not be on the form, but he did have concerns about clerks deciding which form of relief is appropriate. Judge McAuliffe remarked that the on-

call judge could decide which form is applicable. Judge Vaughan responded that not all counties have an on-call judge. Ms. Ogletree added that a county may have only one District Court judge in total. Judge Vaughan said that when the court is not open, there is no way to open a file, and no clerk or bailiff is available. Judge McAuliffe asked how emergency commitments are handled, and Judge Vaughan answered that a judge has to be called. Judge McAuliffe observed that circuit court judges may have to be cross-designated. Judge Dryden commented that in Anne Arundel County, the police are given the names and addresses of available judges.

Judge McAuliffe questioned the language of the oath near the end of the form. The Vice Chair noted that the same oath appearing in the peace order form is found in Rule 1-304 and should be followed. Mr. Karceski expressed the concern that the boxes in section 4 will be checked without any thought given to the question. Judge Vaughan responded that the judge can guard against this possibility by asking questions at the hearing. Mr. Karceski remarked that hopefully, this will be taken care of in every case. If the judge does not ask the appropriate questions, what is the recourse? Someone ordered to stay away from the workplace could lose his or her job.

The Reporter asked if the category entitled "other" should have language telling the petitioner to be specific. The Chair suggested that the category be entitled "other specific relief."

Senator Stone said that a case could involve a man and a woman who work together, and the woman is charging the man with stalking, but she does not inform the judge that the two work together. Judge Dryden remarked that this fact could be missed.

Delegate Vallario questioned as to whether a peace order form is being developed. Judges Dryden and Vaughan answered in the affirmative. Judge Vaughan added that Delegate Vallario had sent a letter to the Civil Committee of the District Court with some excellent ideas for this. The Chair said that under the statute, the Court of Appeals handles the petition only. The Vice Chair commented that the Rules generally use the terms "plaintiff" and "defendant" rather than "petitioner" and "respondent." Judge Vaughan responded that in domestic violence cases, the terms are different. Judge Dryden added that the peace order law uses the same terms as the petition.

The Vice Chair inquired if the petition form will go to the Style Subcommittee. Section 2 should be restyled by changing the language to "I know of the following cases involving the Respondent and me." Judge Dryden pointed out that section 1 was changed from the language "on or about" to "within the past 30 days." Judge Dryden suggested that the language be: "within the past 30 days on or about...". The Chair suggested that the new language be: "within the past 30 days on the dates stated below." The Vice Chair suggested that the word "dates" be changed to the word "date(s)" to

indicate that there may be one or more dates. The Committee agreed by consensus to these changes.

Mr. Karceski noted that the direction in section 1 which states "Be as specific as you can" does not provide that the petitioner should describe what happened, and it only has three lines to be filled out. Judge Vaughan responded that some people fill these forms out with one word, such as "stabbing." Mr. Karceski expressed the opinion that the person who receives one of these orders needs to have more information. The person would have little to go on to defend himself or herself in court. Mr. Titus suggested that the form remain as one page with a direction added to use a continuation sheet, if necessary. The Chair reiterated that the judge will question the individual who fills out the form. Mr. Karceski cautioned against a hearing by ambush.

Judge Dryden pointed out that many people who fill out these forms have little or no ability to write. Mr. Karceski responded that the information should be meaningful, even if someone else has to write the form for the petitioner. Judge Dryden remarked that YWCA domestic violence counselors sometimes help petitioners. The defense bar has argued somewhat persuasively that this amounts to coaching. The petitions are better off to be written in disjointed English; otherwise, one problem is solved, and another is created.

Mr. Titus suggested that language be added to the form which would say "Use a continuation page, if necessary." The Reporter

pointed out that this language would be appropriate in section 3, also. Mr. Sykes proposed that the language on the form which reads, "If you need additional paper, ask the clerk" could be bolded, and the number of lines could be increased. The Reporter added that all of this language could be capitalized. The Committee agreed by consensus to Mr. Sykes' and the Reporter's suggested changes.

The Vice Chair suggested that the form be sent to the Style Subcommittee, but the Chair said that the Court of Appeals should get the form fairly quickly. The Vice Chair disagreed with the suggestion to add language which would direct the petitioner to use more paper, if necessary. The Chair commented that the purpose of the order is simply to ask someone to obey the law. Mr. Karceski argued that the form does not state this. What it does is to provide that someone may not be able to go to work or to school. The Chair noted that the relief requested on the form is only granted if the judge so decides. Mr. Karceski commented that if the act was alleged without the involvement of a form, and the Commissioner issued a warrant, the Commissioner would not take the actions printed on the petition form. The Chair responded that if the petition resulted in automatic relief without judicial intervention, he would agree with Mr. Karceski. However, there is judicial oversight, and the judges will make the correct decisions. Senator Stone pointed out that the judge may not have all the necessary information. Mr. Karceski remarked that the judge may not know where the alleged abuser works.

The Chair noted that the problems with the judge's possible actions may be a result of the ex parte presentation and not with the form. The form puts the ball into play. Senator Stone asked if the form has to have the box referring to school and the work place. They could be included in the category "other." Mr. Maloney pointed out that the statute authorizes these items to be on the petition. Judge Dryden added that the domestic violence statute authorizes more. The Reporter suggested that in place of or in addition to the boxes, the form could provide that the petitioner include, to the best or his or her knowledge, where the respondent works or goes to school. Ms. Ogletree pointed out that when there are boxes on a form to check, the person filling out the form usually checks all of the boxes, regardless of whether they apply. Judge Dryden observed that pro se petitioners often have no idea as to what relief is available. Senator Stone suggested that a brochure could be written to provide this information.

Mr. Titus posed the question that if someone fills out the petition cryptically, and then appears in front of a judge providing more details, should the Rule provide that in the event the court issues an ex parte order and facts are not set forth, the order may set forth additional facts? Judge Vaughan commented that the judge is called upon to decide the petition and specify why it is granted or denied. The suggested addition would generate a lot of extra paper work.

The Chair said that in section 4, a box would be added which is labeled "other specific relief." Judge McAuliffe expressed the preference for putting more specifics in the form so as to put the respondent on notice. Senator Stone observed that the box referring to "NOT to go to the residence" should remain in the Rule, and the boxes which read "NOT to go to school" and "NOT to go to the work place" should be taken out. The Chair pointed out that if the specific request is set forth, the judge knows about it. The questions are keyed in specifically. Delegate Vallario remarked that the person receiving the petition should be put on notice as to the allegations against him or her and the possible order that could result.

Mr. Titus moved that the petition form should be changed to be two pages, each single-sided, with 10 blank lines under section #1 and section #3. The motion was seconded. The Vice Chair expressed the view that increasing the lines for an item on the form will cause that item to stand out as more important than it actually is. The form already provides that one can use more paper, if necessary. Mr. Titus noted that an application for a statement of charges has more lines than the peace order petition. Mr. Maloney remarked that most petitioners are able to get the necessary information onto one page, so there is no problem.

The Chair called for a vote on Mr. Titus' motion which did not pass, with only three in favor. The Vice Chair moved that the

petition form be approved as previously amended. The motion was seconded, and it carried, with two opposed.

Agenda Item 3. Consideration of certain rules changes proposed by the Appellate Subcommittee

Mr. Titus told the Committee that several more rules had been added to Agenda Item 3, as a result of an error in Rule 8-411 (b)(1) discovered by his son.

Mr. Titus presented Rules 8-207, 8-411, and 8-412 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURTS OF APPEAL

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-207 to correct internal references to Rule 8-206, as follows:

Rule 8-207. EXPEDITED APPEAL

(a) By Election of Parties

(1) Election

Within 20 days after the first notice of appeal is filed or within the time specified in an order entered pursuant to Rule 8-206 ~~(c)~~ (d), the parties may file with the Clerk of the Court of Special Appeals a joint election to proceed pursuant to this Rule.

(2) Statement of Case and Facts

Within 15 days after the filing of the joint election, the parties shall file with the Clerk four copies of an agreed statement of the case, including the essential facts, as prescribed by Rule 8-413 (b). By stipulation of counsel filed with the clerk, the time for filing the agreed statement of the case may be extended for no more than an additional 30 days.

Committee note: Rule 8-413 (b) requires that an agreed statement of the case be approved by the lower court.

(3) Withdrawal

The election is withdrawn if (1) within 15 days after its filing the parties file a joint stipulation to that effect or (2) the parties fail to file the agreed statement of the case within the time prescribed by subsection (a)(2) of this Rule. The case shall then proceed as if the first notice of appeal had been filed on the date of the withdrawal.

(4) Appellant's Brief

The appellant shall file a brief within 15 days after the filing of the agreed statement required by subsection (a)(2) of this Rule. The brief need not include statement of facts, shall be limited to two issues, and shall not exceed ten pages in length. Otherwise, the brief shall conform to the requirements of Rule 8-504. The appellant shall attach the agreed statement of the case as an appendix to the brief.

(5) Appellee's Brief

The appellee shall file a brief within 15 days after the filing of the appellant's brief. The brief shall not exceed ten pages in length and shall otherwise conform to the requirements of Rule 8-504.

(6) Reply Brief

A reply brief may be filed only with permission of the Court.

(7) Briefs in Cross-appeals

An appellee who is also a cross-appellant shall include in the brief filed under subsection (a)(5) of this Rule the issue and argument on the cross-appeal as well as the response to the brief of the appellant. The combined brief shall not exceed 15 pages in length. Within ten days after the filing of an appellee/cross- appellant's brief, the appellant/cross- appellee shall file a brief, not exceeding ten pages in length, in response to the issues and argument raised on the cross-appeal.

(8) Oral Argument

Except in extraordinary circumstances, any oral argument shall be held within 45 days after the filing of the appellee's brief or, if the Court is not in session at that time, within 45 days after commencement of the next term of the Court. The oral argument shall be limited to 15 minutes for each side.

(9) Decision

Except in extraordinary circumstances or when a panel of the Court recommends that the opinion be reported, the decision shall be rendered within 20 days after oral argument or, if all parties submitted on brief, within 30 days after the last submission.

(10) Applicability of Other Rules

The Rules of this Title governing appeals to the Court of Special Appeals shall be applicable to expedited appeals except to the extent inconsistent with this Rule.

(b) Adoption, Guardianship, Child Access Cases

(1) This section applies to every appeal

to the Court of Special Appeals (A) from a judgment granting or denying a petition for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, and (B) contesting a judgment granting, denying, or establishing custody of or visitation with a minor child. Unless otherwise provided for good cause by order of the Court of Special Appeals or by order of the Court of Appeals if that Court has assumed jurisdiction over the appeal, the provisions of this section shall prevail over any other rule to the extent of any inconsistency.

(2) In the information report filed pursuant to Rule 8-205, the appellant shall state whether the appeal is subject to this section.

(3) Within five days after entry of an order pursuant to Rule 8-206 (a)(1) or an order pursuant to Rule 8-206 ~~(c)~~ (d) directing preparation of the record, the appellant shall order the transcript and make an agreement for payment to assure its preparation. The court reporter or other person responsible for preparation of the transcript shall give priority to transcripts required for appeals subject to this section and shall complete and file the transcripts with the clerk of the lower court within 20 days after receipt of an order of the party directing their preparation and an agreement for payment of the cost. An extension of time may be granted only for good cause.

(4) The clerk of the lower court shall transmit the record to the Court of Special Appeals within thirty days after the date of the order entered pursuant to Rule 8-206 (a)(1) or Rule 8-206 ~~(c)~~ (d).

(5) The briefing schedule set forth in Rule 8-502 shall apply, except that (A) an appellant's reply brief shall be filed within 15 days after the filing of the appellee's brief, (B) a cross-appellee's brief shall be

filed within 20 days after the filing of a cross-appellant's brief, and (C) a cross-appellant's reply brief shall be filed within 15 days after the filing of a cross-appellee's brief. Unless directed otherwise by the Court, any oral argument shall be held within 120 days after transmission of the record. The decision shall be rendered within 60 days after oral argument or submission of the appeal on the briefs filed.

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

Source: This Rule is derived from former Rule 1029.

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

Roger Titus' son noticed an incorrect reference to Rule 8-206, and a further review revealed the same error in several places in several rules. The reason for the error is that a new section (c) was added to Rule 8-206 in 1997, and former section (c) became section (d). The incorrect references need to be corrected.

AMEND Rule 8-411 to correct internal references to Rule 8-206, as follows:

Rule 8-411. TRANSCRIPT

(a) Ordering of Transcript

Unless a copy of the transcript is already on file, the appellant shall order in writing from the court stenographer a transcript containing:

(1) a transcription of (A) all the testimony or (B) that part of the testimony that the parties agree, by written stipulation filed with the clerk of the lower court, is necessary for the appeal or (C) that part of the testimony ordered by the Court pursuant to Rule 8-206 ~~(c)~~ (d) or directed by the lower court in an order; and

(2) a transcription of any proceeding relevant to the appeal that was recorded pursuant to Rule 16-404 d.

(b) Time for Ordering

The appellant shall order the transcript within ten days after:

(1) the date of an order entered pursuant to Rule 8-206 (a) (1) that the appeal proceed without a prehearing conference, or an order entered pursuant to Rule 8-206 ~~(c)~~ (d) following a prehearing conference, unless a different time is fixed by that order, in all civil actions specified in Rule 8-205 (a), or

(2) the date the first notice of appeal is filed in all other actions.

(c) Filing and Service

The appellant shall (1) file a copy of the written order to the stenographer with the clerk of the lower court for inclusion in the record, (2) cause the original transcript to be

filed promptly by the court reporter with the clerk of the lower court for inclusion in the record, and (3) promptly serve a copy on the appellee.

Source: This Rule is derived from former Rule 1026 a 2 and Rule 826 a 2 (b).

Rule 8-411 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 8-207.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURTS OF APPEAL

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-412 to correct an internal reference to Rule 8-206, as follows:

Rule 8-412. RECORD — TIME FOR TRANSMITTING

(a) To the Court of Special Appeals

Unless a different time is fixed by order entered pursuant to section (d) of this Rule, the clerk of the lower court shall transmit the record to the Court of Special Appeals within sixty days after:

(1) the date of an order entered pursuant to Rule 8-206 (a) (1) that the appeal proceed without a prehearing conference, or an order entered pursuant to Rule 8-206 ~~(c)~~ (d) following a prehearing conference, unless a different time is fixed by that order, in all civil actions specified in Rule 8-205 (a); or

(2) the date the first notice of appeal is filed, in all other actions.

(b) To the Court of Appeals

Unless a different time is fixed by order entered pursuant to section (d) of this Rule, the clerk of the court having possession of the record shall transmit it to the Court of Appeals within 15 days after entry of a writ of certiorari directed to the Court of Special Appeals, or within sixty days after entry of a writ of certiorari directed to a lower court other than the Court of Special Appeals.

(c) When Record is Transmitted

For purposes of this Rule the record is transmitted when it is delivered to the Clerk of the appellate court or when it is sent by certified mail by the clerk of the lower court, addressed to the Clerk of the appellate court.

(d) Shortening or Extending the Time

On motion or on its own initiative, the appellate court having jurisdiction of the appeal may shorten or extend the time for transmittal of the record. If the motion is filed after the prescribed time for transmitting the record has expired, the Court will not extend the time unless the Court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court stenographer, or the appellee.

Source: This Rule is derived from former Rules 1025 and 825.

Rule 8-412 was accompanied by the following Reporter's Note.

See the Reporter's Note to Rule 8-207.

Mr. Titus explained that the reference in subsection (b)(1) to "Rule 8-206 (c)" should have been to "Rule 8-206 (d)." A new

provision had been added to Rule 8-206 causing the change in numbering. The same amendment need to be made to Rules 8-207 and 8-412. Mr. Titus moved that all of these Rules be changed to reflect the changed section numbers of Rule 8-206, the motion was seconded, and it carried unanimously.

Mr. Titus presented Rule 2-603, Costs, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-603 (b) to clarify that costs include those incurred in appealing from an administrative agency to the circuit court, as follows:

Rule 2-603. COSTS

(a) Allowance and Allocation

Unless otherwise provided by rule, law, or order of court, the prevailing party is entitled to costs. The court, by order, may allocate costs among the parties.

Cross References: Code, Courts Art., § 7-202.

(b) Assessment by the Clerk

The clerk shall assess as costs all fees of the clerk and sheriff, and statutory fees actually paid to witnesses who testify, and on written request of a party, other costs prescribed by rule or law. Costs shall also include those costs designated under Title 7 when the circuit court is acting in accordance with Title 7, Chapter 200. The clerk shall notify each part of the assessment in writing. On motion of any party filed within five days after the party receives notice of the clerk's assessment, the court shall review the action of the clerk.

(c) Assessment by the Court

When the court orders or requests a transcript or, on its own initiative, appoints an expert or interpreter, the court may assess as costs some or all of the expenses or may order payment of some or all of the expenses

from public funds. On motion of a party and after hearing, if requested, the court may assess as costs any reasonable and necessary expenses, to the extent permitted by rule or law.

(d) Joint Liability

When an action is brought for the use or benefit of another as provided in Rule 2-201, the person for whom the action is brought and the person bringing the action, except the State of Maryland, shall be liable for the payment of any costs assessed against either of them.

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

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

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 604 a.
Section (b) is in part new and in part derived from former Rule 604 a.
Section (c) is new.
Section (d) is derived from former Rule 604 c.
Section (e) is new.

Rule 2-603 was accompanied by the following Reporter's Note.

The Appellate Subcommittee is recommending

a change to Rule 2-603 to clarify that the costs of a proceeding include costs incurred in appealing from an administrative agency to the circuit court.

Mr. Titus said that an Assistant Attorney General brought this issue to the Appellate Subcommittee's attention. There is currently no Rule which provides that the costs of a proceeding include the costs incurred in obtaining circuit court review of an order or action of an administrative agency. The Vice Chair pointed out that the reference in section (b) to "costs designated under Title 7" is very broad. Mr. Sykes asked which sections in Title 7 are applicable. The Vice Chair replied that the applicable section is Rule 7-206 (a). Mr. Titus moved that the proposed language read as follows: "Costs shall also include those costs designated under Rule 7-206 (a) when the circuit court is acting in accordance with Title 7, Chapter 200." The motion was seconded, and it carried unanimously.

Mr. Titus presented Rule 7-108, Record — Time for Transmitting, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

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

AMEND Rule 7-108 to provide that the District Court may shorten or extend the time

for transmittal of the record, as follows:

Rule 7-108. RECORD — TIME FOR TRANSMITTING

(a) Generally

Unless a different time is fixed by order entered pursuant to section (c) of this Rule, the clerk of the District Court shall transmit the record to the circuit court within sixty days after the date the first notice of appeal is filed.

(b) When Record is Transmitted

For purposes of this Rule the record is transmitted when it is delivered to the clerk of the circuit court or when it is sent by certified mail by the clerk of the District Court, addressed to the clerk of the circuit court.

(c) Shortening or Extending the Time

On motion or on its own initiative, the District Court or the circuit court may shorten or extend the time for transmittal of the record. If the motion is filed after the prescribed time for transmitting the record has expired, the court will not extend the time unless it finds that the inability to transmit the record was caused by the act or omission of a judge, a clerk of court, the court stenographer, or a person other than the moving party.

Source: This Rule is derived from former Rule 1325.

Rule 7-108 was accompanied by the following Reporter's Note.

To address a problem with controlling the amount of time it takes to forward the record to the circuit court when a District Court appeal is filed, the Appellate Subcommittee is recommending that the District Court have the ability to authorize an extension of time (or a shortening of the time) for transmitting the record to the circuit court. This will not completely correct the problem of the extreme length of time it is taking to prepare some District Court transcripts, but it will help by taking some of the burden off of the circuit court to deal with requests to extend time when the record is still in the District Court.

Mr. Titus explained the issue being addressed is what happens when the District Court cannot get a transcript prepared in a timely

manner. Some of the District Court clerks are having trouble completing the transcripts on time. In a circuit court case that is appealed to the Court of Special Appeals, a prehearing conference would be held, and this type of problem could be discussed. There is no parallel conference in the circuit court on a District Court appeal. Until the record arrives in the circuit court, nothing happens pertaining to the case. The proposed amendment allows the District Court to enter an order shortening or extending the time.

The Vice Chair inquired if the reference in section (c) to the circuit court should be removed. Mr. Titus replied that this should not be taken out. The concern is that if the District Court would not enter an order, then the circuit court could. It should not be divested of jurisdiction. Judges Johnson and Kaplan expressed their agreement with the proposed change. Mr. Titus moved that the Rule be adopted as amended. The motion was seconded, and it carried unanimously.

Mr. Titus presented Rule 7-202, Method of Securing Review, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-202 to clarify that the

administrative agency named in the caption is the agency which made the decision sought to be reviewed, and the agency which receives a copy of the petition for judicial review, as follows:

Rule 7-202. METHOD OF SECURING REVIEW

(a) By Petition

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

(b) Caption

The Petition shall be captioned as follows:

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

(c) Contents of Petition

The petition shall request judicial review, identify the order or action of which review is sought, and state whether the petitioner was a party to the agency proceeding. If the petitioner was not a party, the petition shall state the basis of the petitioner's standing to seek judicial review. No other allegations are necessary. If judicial review of a decision of the Workers' Compensation Commission is sought, the petitioner shall attach to the petition a certificate that copies of the petition were served pursuant to subsection (d)(2) of this Rule.

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

(d) Copies; Filing; Mailing

(1) Notice to Agency

Upon filing the petition, the petitioner shall deliver to the clerk a copy of the petition for each agency ~~named in the caption~~ whose decision is sought to be reviewed, including the address of the agency. The clerk shall promptly mail a copy of the petition to each agency, informing the agency of the date the petition was filed and the civil action number assigned to the action for judicial review.

(2) Service by Petition in Workers' Compensation Cases

Upon filing a petition for judicial review of a decision of the Workers' Compensation Commission, the petitioner shall serve a copy of the petition by first class mail on the Commission and each other party of record in the proceeding before the Commission.

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

(3) By Agency to Other Parties

Unless otherwise ordered by the court, the agency, upon receiving the copy of the petition from the clerk, shall give written notice promptly by ordinary mail to all parties to the agency proceeding that:

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

(B) a party wishing to oppose the petition must file a response within 30 days after the date the agency's notice was mailed unless the court shortens or extends the time.

(e) Certificate of Compliance

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

Source: This Rule is derived from former Rule B2.

Rule 7-202 was accompanied by the following Reporter's Note.

Because of problems stemming from confusion as to which agency is to be served with a petition for judicial review when more than one agency is involved, the Appellate Subcommittee is recommending both that the caption of the petition as well as subsection (d)(1) be amended to clarify that the agency which made the decision being reviewed is the one to be served with the petition for review.

Mr. Titus explained that this proposed change came about because of some confusion in multi-agency cases. Mr. Zarnoch said that in Maryland Tax Court cases, people get confused between the Comptroller of the Treasury and the Tax Court. The Vice Chair commented that the problem may be in the circuit court as to how to docket cases properly. The petitioner could be tagged as "plaintiff"

and the agency "defendant." Judge Kaplan inquired as to how this is handled, and Mr. Shipley answered that there are variety of ways. The Vice Chair expressed the opinion that the caption in Rule 7-202 is odd. Mr. Titus remarked that the caption has worked well since the inception of the Rule, and there is no reason to tamper with it.

Mr. Titus moved to approve the Rule as presented. The motion was seconded, and it passed unanimously.

Mr. Titus presented Rule 8-503, Style and Form of Briefs, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACTS, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 (b) to clarify the citation of references, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

(a) Numbering of Pages; Binding

The pages of a brief shall be consecutively numbered. The brief shall be securely bound along the left margin.

(b) References

~~References to the record shall be indicated as (R.....), to the transcript of testimony contained in the record as (T.....), to the record extract as (E.....), to any other appendix to appellant's brief as~~

~~(App.....), to an appendix to appellee's brief as (Apx.....), and to an appendix to a reply brief as (Rep.App.....).~~ References to the record extract shall be indicated as (E.....), to any appendix to appellant's brief as (App.....), to an appendix to appellee's brief as (Apx.....), and to an appendix to a reply brief as (Rep. App.....). Any references to material not included in the record extract or an appendix shall be indicated as (T.....) for references to the transcript of testimony contained in the record and as (R.....) for other references to the record.

(c) Covers

A brief shall have a back and cover of the following color:

(1) In the Court of Special Appeals:

(A) appellant's brief - yellow;

(B) appellee's brief - green;

(C) reply brief - light red;

(D) amicus curiae brief - gray.

(2) In the Court of Appeals:

(A) appellant's brief - white;

(B) appellee's brief - blue;

(C) reply brief - tan;

(D) amicus curiae brief - gray.

The cover page shall contain the name, address, and telephone number of at least one attorney for a party represented by an attorney or of the party if not represented by an attorney. The name typed or printed on the cover constitutes a signature for purposes of Rule 1-311.

(d) Length

Except as otherwise provided in section (e) of this Rule or with permission of the Court, a brief of the appellant and appellee shall not exceed 35 pages in the Court of Special Appeals or 50 pages in the Court of Appeals. This limitation does not apply to (1) the table of contents and citations required by Rule 8-504 (a)(1); (2) the citation and text required by Rule 8-504 (a)(7); and a motion to dismiss and argument supporting or opposing the motion. Except with permission of the Court, any portion of a brief pertaining to a motion to dismiss shall not exceed an additional ten pages in the Court of Special Appeals or 25 pages in the Court of Appeals. Any reply brief filed by the appellant shall not exceed 15 pages in the Court of Special Appeals or 25 pages in the Court of Appeals.

(e) Briefs of Cross-appellant and Cross-appellee

In cases involving cross-appeals, the brief filed by the appellee/ cross-appellant shall have a back and cover the color of an appellee's brief and shall not exceed 50 pages. The responsive brief filed by the appellant/cross-appellee shall have a back and cover the color of a reply brief and shall not exceed (1) 50 pages in the Court of Appeals or (2) in the Court of Special Appeals (A) 35 pages if no reply to the appellee's answer is included or (B) 50 pages if a reply is included.

(f) Incorporation by Reference

In a case involving more than one appellant or appellee, any appellant or appellee may adopt by reference any part of the brief of another.

(g) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly

prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 831 a and 1031 a.
Section (b) is derived from former Rules 831 a and 1031 a.
Section (c) is derived from former Rules 831 a and 1031 a.
Section (d) is in part derived from Rule 831 b and 1031 b and in part new.
Section (e) is new.
Section (f) is derived from FRAP 28 (i).
Section (g) is derived from former Rules 831 g and 1031 f.

Rule 8-503 was accompanied by the following Reporter's Note.

The Clerk of the Court of Special Appeals is recommending that the order of the references in section (b) be changed because even in cases where a record extract has been filed, attorneys are citing incorrectly to the entire record.

Mr. Titus explained that the proposed change is not a substantive one. The order of the references has been changed, to make the Rule easier to read and to encourage attorneys to cite from the record extract, when one has been filed, rather than the entire record. There being no discussion, Mr. Titus moved to approve the Rule as presented. The motion was seconded, and it passed unanimously.

Mr. Titus presented Rule 8-504, Contents of Brief, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-504 to add a reference to Rule 8-112 in the body of section (a) and to delete the cross reference at the end of section (a), as follows:

Rule 8-504. CONTENTS OF BRIEF

(a) Contents

A brief shall ~~contain~~ comply with the requirements of Rule 8-112 and include the items listed in the following order:

(1) A table of contents and a table of citations of cases, constitutional provisions, statutes, ordinances, rules, and regulations, with cases alphabetically arranged. When a reported Maryland case is cited, the citation shall include a reference to the official Report.

(2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court, except that the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief.

(3) A statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

(4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract supporting the assertions. If pursuant to these rules or by leave of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record.

Cross reference: Rule 8-111 (b).

(5) Argument in support of the party's position.

(6) A short conclusion stating the precise relief sought.

(7) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.

(8) If the brief is prepared with proportionally spaced type, the font used and the type size in points shall be stated on the last page.

~~Cross reference: For requirements concerning the form of a brief, see Rule 8-112.~~

(b) In the Court of Special Appeals -- Extract of Instructions or Opinion in Criminal Cases

In criminal cases in the Court of Special Appeals, the appellant shall reproduce, as an appendix to the brief, the pertinent part of any jury instructions or opinion of the lower court that deals with points raised by the appellant on appeal. If the appellee believes that the part reproduced by the appellant is inadequate, the appellee shall

reproduce, as an appendix to the appellee's brief, any additional part of the instructions or opinion believed necessary by the appellee.

(c) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 831 c and d and 1031 c 1 through 5 and d 1 through 5, with the exception of subsection (a)(6) which is derived from FRAP 28 (a)(5).

Section (b) is derived from former Rule 1031 c 6 and d 6.

Section (c) is derived from former Rules 831 g and 1031 f.

Rule 8-504 was accompanied by the following Reporter's Note.

The Appellate Subcommittee was of the opinion that the reference to Rule 8-112 should be in the body of Rule 8-504 rather than in a cross reference. This would make it clearer that the person filing a brief must also look to Rule 8-112 to find out what the specifications are for a proper brief.

Mr. Titus told the Committee that the change to Rule 8-504 is not substantive. Instead of a cross reference to Rule 8-112, the Subcommittee is recommending that the reference to that Rule be placed in the opening sentence of section (a) of Rule 8-504 to make it clearer that there must be compliance with Rule 8-112 when one is

filing a brief. There being no discussion, Mr. Titus moved to approve the Rule as presented. The motion was seconded, and it passed unanimously.

Mr. Titus presented Rule 8-602, Dismissal by Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 600 - DISPOSITION

AMEND Rule 8-602 to allow an individual judge designated by the Chief Judge to rule on any motion to dismiss, to preclude an individual judge who dismissed an appeal from being on a panel reconsidering the order to dismiss, and to extend the time for filing a motion to reconsider a dismissal, as follows:

Rule 8-602. DISMISSAL BY COURT

(a) Grounds

On motion or on its own initiative, the Court may dismiss an appeal for any of the following reasons:

(1) the appeal is not allowed by these rules or other law;

(2) the appeal was not properly taken pursuant to Rule 8-201;

(3) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202;

(4) an information report was not filed as

required by Rule 8-205;

(5) the record was not transmitted within the time prescribed by Rule 8-412, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court stenographer, or the appellee;

(6) the contents of the record do not comply with Rule 8-413;

(7) a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502;

(8) the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or 8-504;

(9) the proper person was not substituted for the appellant pursuant to Rule 8-401; or

(10) the case has become moot.

Cross reference: Rule 8-501 (m).

(b) Determination by Court

~~Except as otherwise permitted in this section, a~~ A motion to dismiss under section (a) shall be ruled on by ~~the number of judges of the Court required by law to decide an appeal. T~~the Chief Judge or an individual judge of the Court designated by the Chief Judge ~~may rule on a motion to dismiss that is based on any reason set forth in subsections (2), (3), (5), (7), or (8) of section (a) of this Rule or on a motion to dismiss based on subsection (a)(4) of this Rule challenging the timeliness of the information report~~.

(c) Reconsideration of Dismissal

(1) When Order Was Entered by Individual Judge

If an appeal was dismissed by the ruling of an individual judge pursuant to section (b) of this Rule, the order dismissing the appeal, on motion filed within ~~ten~~ 30 days after entry of the order, shall be reviewed by the number of judges of the Court required by law to decide an appeal. The individual judge who dismissed the appeal shall not be a member of the panel. The order dismissing the appeal (A) shall be rescinded if a majority of those judges decides that the motion to dismiss should not have been granted, (B) may be rescinded if the appeal was dismissed pursuant to subsection (4), (5), or (7) of section (a) of this Rule, and the Court is satisfied that the failure to file a report, transmit the record, or file a brief or record extract within the time prescribed by these Rules was unavoidable because of sickness or other sufficient cause, and (C) may be rescinded if the appeal was dismissed pursuant to subsection (a)(8) of this Rule and the Court is satisfied that a brief, appendix, or record extract complying with the Rules will be filed within a time prescribed by the Court.

(2) When Order Was Entered by Court

If an appeal has been dismissed by the ruling of the Court or a panel pursuant to subsection (4), (6), (8), or (9) of section (a) of this Rule, the order dismissing the appeal, on motion filed within ~~ten~~ 30 days after entry of the order, may be rescinded if the Court is satisfied that a report, record, brief, appendix, or record extract complying with the Rules will be filed or the proper party will be substituted within a time to be prescribed by the Court.

(3) Reinstatement on Docket

If the order of dismissal is rescinded, the case shall be reinstated on the docket on the terms prescribed by the Court.

(4) No Further Reconsideration by the Court

When an order dismissing an appeal is reviewed by the Court on motion filed pursuant to this section, the moving party may not obtain further reconsideration of the dismissal pursuant to Rule 8-605.

(d) Judgment Entered After Notice Filed

A notice of appeal filed after the announcement or signing by the trial court or a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

(e) Entry of Judgment Not Directed Under Rule 2-602

(1) If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed by that the lower court has discretion to direct the entry of a final judgment pursuant to Rule 2-602 (b), the appellate court may, as it finds appropriate, (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative or (D) if a final judgment was entered by the lower court after the notice of appeal as filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment.

(2) If, upon remand, the lower court decides not to direct entry of a final judgment pursuant to Rule 2-602 (b), the lower court shall promptly notify the appellate court of its decision and the appellate court shall dismiss the appeal. If, upon remand, the lower court determines that there is not just reason for delay and directs the entry of a final judgment pursuant to Rule 2-602 (b), the case shall be returned to the appellate court after entry of the judgment. The appellate court shall treat the notice of appeal as if filed on the date of entry of the judgment.

(3) If the appellate court enters a final judgment on its own initiative, it shall treat the notice of appeal as if filed on the date of the entry of the judgment and proceed with the appeal.

Cross reference: Rule 8-206.

Source: This Rule is in part derived from former Rules 1035 and 835 and in part new.

Rule 8-602 was accompanied by the following Reporter's Note.

The Chief Judge of the Court of Special Appeals has recommended amending Rule 8-602 to allow an individual judge designated by the Chief Judge to rule on any motion to dismiss. That individual judge would be precluded from being on a panel reconsidering the order to dismiss.

The proposed amendment also extends to 30 days the time for filing a motion to reconsider the dismissal of an appeal under this Rule.

Mr. Titus said that the Chair had requested this change to expand the instances where a designee of the Chief Judge may rule on a motion to dismiss.

Judge McAuliffe noted that section (c) does not include the Chief Judge; it only refers to an individual judge. The Chair pointed out that section (c) provides that the appeal is dismissed pursuant to section (b). Judge McAuliffe inquired if the panel ever dismisses a case. The Chair replied that the panel may do so. Judge McAuliffe observed that section (b) provides that a motion to dismiss shall be ruled on by the Chief Judge or an individual judge designated by the Chief Judge. This language would preclude a panel

from dismissing a case. The Chair suggested that the word "shall" in the first sentence of section (b) be changed to the word "may." The Reporter noted that the option of the panel ruling on the motion to dismiss has been lost in section (b), although it is referenced in subsection (c)(2). The Chair pointed out that section (b) is permissive. He commented that the panel rules most often.

Judge McAuliffe suggested that in the first sentence of subsection (c)(1), in place of the language "an individual judge," the language "one judge" should be substituted. This would require a change to the tagline of subsection (c)(1). The Committee agreed by consensus to this change. Judge McAuliffe suggested that the phrase "pursuant to section (b) of this Rule" be deleted from subsection (c)(1). The Committee agreed by consensus to this suggestion. The Reporter suggested that in section (b), the word "shall" should be changed to the word "may." The Committee agreed by consensus to this change.

Mr. Titus moved to approve the Rule as amended. The motion was seconded, and it passed unanimously.

Mr. Titus presented Rule 8-605, Reconsideration, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 600 - DISPOSITION

AMEND Rule 8-605 (a) for consistency with Rule 8-602, as follows:

Rule 8-605. RECONSIDERATION

(a) Motion; Response; No Oral Argument

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

. . .

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

The Appellate Subcommittee is recommending in Rule 8-602 that the 10-day period for filing motions for reconsideration when the Court has dismissed an appeal be changed to 30 days. This would remove the need for the exception in Rule 8-605 (a).

Mr. Titus explained that the Subcommittee recommends changing the Rule, because the changes to Rule 8-602 deleted the exception. Mr. Hochberg remarked that Rule 8-605 provides another chance with respect to dismissals. The Chair said that the dismissal disposes of

an appeal that will not be accompanied by an opinion and not followed up by a mandate. Judge McAuliffe commented that there is always a mandate with the dismissal of an appeal. The Chair responded that there is no mandate when there is a failure to file a transcript. The Vice Chair noted that section (a) extends the time before the appeal is dismissed. The Chair added that this provision is an alert that someone can seek reconsideration of the Court's decision to dispose of the appeal.

The Vice Chair remarked that she thought that a mandate would eventually be issued. The Chair responded that this does not happen in every single dismissal situation. Mr. Titus inquired as to how one would know when a mandate is going to issue. The Chair replied that an order issues. Judge McAuliffe added that Rule 8-606 provides that any dismissal results in a mandate filed 30 days after the filing of the Court's opinion or entry of the Court's order. The Vice Chair expressed the concern that the process may take too long. If no information report has been completed, it may take another 30 days to come in. Currently Rule 8-602 (c) provides ten days from the entry of the order dismissing the appeal for filing a motion for reconsideration. This is being extended to 30 days after the mandate. Judge McAuliffe explained that the proposed time frame is filing within 30 days of the Court filing its opinion. The thirty-day time period is consistent with other 30-day time periods in the Appellate Rules.

There being no motion to amend the Subcommittee's recommendation, Mr. Titus moved that the changes to Rule 8-605 (a) be approved as presented. The motion was seconded, and it passed unanimously.

Mr. Titus remarked that he had another issue to raise. He gave an example of a case in which the Court of Special Appeals issued an unreported per curiam opinion. The appellant disliked the opinion but did not petition for certiorari because the opinion was unreported and does not serve as precedent with respect to other similar pending cases. Then, three months later, the Court issued the opinion as reported because the opposing side had asked for it to be reported. Then it was too late for the appellant to file for certiorari. The Chair said that this is not supposed to happen. The appellate court reissues the mandate, and this provides enough time to file for certiorari. Mr. Titus inquired if there should be a rule change providing that a request for the case to be reported should be made within 30 days of the date the opinion was issued. The Chair responded that this could be stated in the Rules. Judge McAuliffe commented that there is an ongoing question as to the authority of an appellate court to recall a mandate after a period of time has elapsed. The Chair said that this is worth reviewing. Mr. Titus said that the Appellate Subcommittee could discuss this matter.

Mr. Titus told the Committee that he had a second issue to discuss. The issue concerns record extracts. Rule 8-501 (c)

provides that the record extract includes the opinion of the Court of Special Appeals. Should the appellant file a supplement to the record extract to include the Court of Special Appeals opinion, or is it sufficient that the opinion was filed with the petition for certiorari? Judge McAuliffe suggested that the Rule should provide that the opinion be attached to the appellant's brief, since the petition for certiorari is no longer necessarily accessible. Mr. Sykes agreed that the opinion should be required to be attached to the brief. Mr. Titus said that the Subcommittee can develop a rule requiring the opinion to be attached as an appendix.

The Reporter introduced two guests attending the meeting: Lisa Clark, a third-year law student at Catholic University, who is an intern with Judge Johnson, and Ken Crocken, a second-year student at the University of Baltimore, who is an intern with the Rules Committee.

The Chair adjourned the meeting.