COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judiciary Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on October 5, 2012.

Members present:

Hon. Robert A. Zarnoch, Vice Chair

Albert D. Brault, Esq.
James E. Carbine, Esq.
Christopher R. Dunn, Esq.
Ms. Pamela Q. Harris
Harry S. Johnson, Esq.
J. Brooks Leahy, Esq.
Hon. Thomas J. Love
Timothy F. Maloney, Esq.
Robert R. Michael, Esq.
Hon. Danielle M. Mosley
Hon. John L. Norton, III
Scott G. Patterson, Esq.
Hon. W. Michel Pierson
Kathy P. Smith, Clerk
Steven M. Sullivan, Esq.
Melvin J. Sykes, Esq.
Hon. Julia B. Weatherly

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Cheryl Lyons-Schmidt, Esq., Assistant Reporter
Ms. Mala Malhotra-Ortiz
James F. X. Cosgrove, Esq.
Ms. Tara Lehner
Marjorie Corwin, Esq.
John Ansell, Esq.
Cara Stretch, Esq.
Gretchen C. Reimert, Esq.
Jeffrey Fisher, Esq.
Robert H. Hillman, Esq.
Hon. Peter B. Krauser, Court of Special Appeals
Richard Bohn, Esq.
Barbara L. Gavin, Esq., Director, Character & Fitness, State Board of Law Examiners

The Vice Chair convened the meeting. He explained that he was chairing the meeting, because the Chair had had open heart

surgery about a week before. The Vice Chair noted that the Chair was recovering very well and was able to work from home. The day before, he had been amending some of the Rules proposed for change. The Reporter told the Committee that the first Court of Appeals Conference on the 174th Report had been held on September 20, 2012. The Court had approved all of the Rules that were not controversial. They had deferred the controversial items on which they had taken testimony until October 18, 2012. They are going to decide the controversial items, but they will not take any additional oral presentations unless they specifically invite comments. They are also going to consider the five questions relating to the Maryland Electronic Courts (MDEC) proposed system. The comments relate to e-filing. Written comments answering the five questions have been submitted and are available to anyone who requests them. All of the answers to those questions have been given to the Court of Appeals, who will provide the major answers, so that more work can be done on drafting the MDEC Rules.

Mr. Brault asked if the Rules pertaining to wrongful death had been approved, and the Reporter answered that those Rules were deferred. On October 18, 2012, the Court will address the remaining Rules. Rules 2-521 and 4-326, Jury – Review of Evidence – Communications, pertaining to juror communications, were deferred, because of another case on the same issue that had been decided, *State v. Harris*, 428 Md. 700 (2012). Because of

the case, the recommendation of the Rules Committee that they had made at the meeting in September became obsolete. The Rules will have to be reconsidered in the context of the new case.

Agenda Item 1. Reconsideration of proposed amendments to: Rule 14-207 (Pleadings; Service of Certain Affidavits, Pleadings, and Papers), New Rule 14-208.1 (Challenge of Certificate of Vacancy or Certificate of Property Unfit for Human Habitation), and Rule 14-209 (Service in Actions to Foreclose on Residential Property; Notice)

Judge Pierson explained that the Rules in Agenda Item 1 pertain to the foreclosure of lien instruments. At the last meeting, a set of Rules was presented to the Committee resulting from changes in the last legislative session. One issue relating to some of the Rules had been sent back to the Property Subcommittee. The issue was changes to the statute concerning foreclosures on properties, which have a certificate of vacancy or a certificate of property unfit for human habitation that has been issued by a subdivision or by a governmental agency. The Rules that were before the Committee in September did not specify a procedure for a defendant to challenge the certificate of vacancy or of property unfit for human habitation. The Committee felt that a Rule should be created to specify the procedure for challenging these certificates. This is what has come back before the Committee today.

Judge Pierson presented Rule 14-207, Pleadings; Service of Certain Affidavits, Pleadings, and Papers, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-207 to add certain exhibits to section (b), to add language to subsection (b)(7) referring to certain lien instruments, to correct internal references, and to make stylistic changes, as follows:

Rule 14-207. PLEADINGS; SERVICE OF CERTAIN AFFIDAVITS, PLEADINGS, AND PAPERS

(a) Pleadings Allowed

(1) Power of Sale

An action to foreclose a lien pursuant to a power of sale shall be commenced by filing an order to docket. No process shall issue.

(2) Assent to a Decree or Lien Instrument With No Power of Sale or Assent to a Decree

An action to foreclose a lien pursuant to an assent to a decree or pursuant to a lien instrument that contains neither a power of sale nor an assent to a decree shall be commenced by filing a complaint to foreclose. If the lien instrument contains an assent to a decree, no process shall issue.

(3) Lien Instrument with Both a Power of Sale and Assent to a Decree

If a lien instrument contains both a power of sale and an assent to a decree, the lien may be foreclosed pursuant to either.

(b) Exhibits

A complaint or order to docket shall include or be accompanied by:

(1) a copy of the lien instrument supported by an affidavit that it is a true and accurate copy, or, in an action to foreclose a statutory lien, a copy of a notice of the existence of the lien supported by an affidavit that it is a true and accurate copy;

Cross reference: See Code, Real Property Article, §7-105.1 ~~(d-1)~~ (f) concerning the contents of a lost note affidavit in an action to foreclose a lien on residential property.

(2) an affidavit by the secured party, the plaintiff, or the agent or attorney of either that the plaintiff has the right to foreclose and a statement of the debt remaining due and payable;

(3) a copy of any separate note or other debt instrument supported by an affidavit that it is a true and accurate copy and certifying ownership of the debt instrument;

(4) a copy of any assignment of the lien instrument for purposes of foreclosure or deed of appointment of a substitute trustee supported by an affidavit that it is a true and accurate copy of the assignment or deed of appointment;

(5) with respect to any defendant who is an individual, an affidavit in compliance with §521 of the Servicemembers Civil Relief Act, 50 U.S.C. app. §501 et seq.;

(6) a statement as to whether the property is residential property and, if so, statements in boldface type as to whether (A) the property is owner-occupied residential property, if known, and (B) a final loss mitigation affidavit is attached;

(7) if the property is residential property that is not owner-occupied residential property, and the lien instrument being foreclosed is a mortgage or deed of trust, a final loss mitigation affidavit to that effect;

(8) in an action to foreclose a lien instrument on residential property, to the extent not produced in response to subsections (b)(1) through (b)(7) of this Rule, the information and items required by Code, Real Property Article, §7-105.1 ~~(d)~~ (e), except that (A) if the name and license number of the mortgage originator and mortgage lender is not required in the notice of intent to foreclose, the information is not required in the order to docket or complaint to foreclose; and (B) if the mortgage loan is owned, securitized, insured, or guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration, or if the servicing agent is participating in the federal Making Home Affordable Modification Program (also known as "HAMP"), providing documentation as required by those programs satisfies the requirement to provide a description of the eligibility requirement for the applicable loss mitigation program; ~~and~~

Committee note: Subsection (b)(8) of this Rule does not require the filing of any information or items that are substantially similar to information or items provided in accordance with subsections (b)(1) through (b)(7). For example, if a copy of a deed of appointment of substitute trustee, supported by an affidavit that it is a true and accurate copy, is filed, it is not necessary to file the original or a clerk-certified copy of the deed of appointment.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 ~~(f)(1)~~ (h)(1) and COMAR 09.03.12.01 et seq.

(9) if the property is residential property and the secured party and borrower have elected to participate in prefile mediation, the report of the prefile mediation issued by the Office of Administrative Hearings;

(10) if the property is residential property and the secured party and borrower

have not elected to participate in prefile mediation, a statement that the parties have not elected to participate in prefile mediation;

(11) if the property is residential property and the order to docket or complaint to foreclose was based on a certificate of vacancy or a certificate of property unfit for human habitation, a copy of the certificate; and

Cross reference: See Code, Real Property Article, §7-105.11.

~~(9)~~ (12) in an action to foreclose a land installment contract on property other than residential property, an affidavit that the notice required by Rule 14-205 (c) has been given.

Cross reference: For statutory "notices" relating to liens, see, e.g., Code, Real Property Article, §14-203 (b).

Committee note: Pursuant to subsections (b)(7) and (8) of this Rule, a preliminary or final loss mitigation affidavit must be filed in all actions to foreclose a lien on residential property, even if a loss mitigation analysis is not required.

(c) Service of Certain Affidavits, Pleadings, and Papers

Any affidavit, pleading, or other paper that amends, supplements, or confirms a previously filed affidavit, pleading, or other paper shall be served on each party, attorney of record, borrower, and record owner in accordance with the methods provided by Rule 1-321, regardless of whether service of the original affidavit, pleading, or paper was required.

Committee note: This Rule prevails over the provision in Rule 1-321 (a) or any other Rule that purports, where a party is represented by an attorney, to permit service on only the attorney. This Rule requires service on both.

> Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (a) and (c) and is in part new.

Rule 14-207 was accompanied by the following Reporter's note.

> See the Reporter's note to Rule 14-202 and Rule 14-208.1.
>
> A foreclosure attorney suggested that subsection (b)(7) clarify that a final loss mitigation affidavit is to be submitted with a complaint or order to docket if the lien instrument being foreclosed is a mortgage or deed of trust. He noted that "final loss mitigation affidavit" is a defined term in the statute limited to mortgages and deeds of trust. The Property Subcommittee agreed to this change.

Judge Pierson told the Committee that Rule 14-207 had been modified at the suggestion of the Chair after the meeting materials had been sent out, so a revised version had been handed out at today's meeting. This change is in subsection (b)(7) of Rule 14-207. The Property Subcommittee had proposed some types of lien instruments to be added to the Rule. The Chair's view was that because the statute, Code, Real Property Article, §7-105.1 only applies to mortgages and deeds of trust, other instruments such as a vendor's lien cannot be included. So the language that was in Rule 14-207 in the meeting materials, which reads: "land installment contract, or vendor's lien," has been eliminated. The other changes are in subsections (b)(9), (10), and (11), which were in the Rule in September, except that some of the language that had been in subsection (b)(11) had been

moved to another Rule. Subsection (b)(11) requires that the plaintiff file a copy of the certificate of vacancy or of property unfit for human habitation with the court.

Judge Pierson noted that Baltimore City gets motions to stay that are in the elementary form described by Judge Weatherly at the prior meeting. Mr. Fisher told the Committee that he had not seen the proposed Rules until this morning, so he had not sent in any written comments. A procedure to challenge a certificate of vacancy or a certificate of property unfit for human habitation should not require the filing of a loss mitigation affidavit. Judge Pierson agreed with Mr. Fisher.

Mr. Fisher pointed out that subsection (b)(7) of Rule 14-207 reads as follows: "if the property is residential property that is not owner-occupied residential property, and the lien instrument being foreclosed is a mortgage or deed of trust, a final loss mitigation affidavit to that effect." This should be qualified to provide that it is applicable unless someone is proceeding under a certificate. Judge Pierson agreed, noting that Rule 14-207 should have language added that would indicate that if someone is proceeding under a certificate, he or she would not have to comply with certain provisions of Rule 14-207. Mr. Fisher observed that the way Rule 14-207 is currently written, a final loss mitigation affidavit is necessary in the context of challenges to the certificates, because the Rule requires it in a foreclosure of residential property.

Judge Pierson asked Mr. Fisher if he saw any other

provisions of Rule 14-207 that would need to be similarly amended. Mr. Fisher replied that in a foreclosure, it is necessary to have an affidavit of debt, an affidavit of ownership and the right to foreclose. A similar change would have to be made to subsection (b)(6) of Rule 14-207. Judge Pierson noted that subsection (b)(8) may need to be changed, and Mr. Fisher agreed.

Judge Pierson said that Rule 14-207 should not be redrafted at the meeting, but instead of it being sent back to the Subcommittee, he might be able to talk about it with Ms. Ogletree, Chair of the Property Subcommittee. It would be a good idea to look over the Rule and figure out everywhere that the exclusions for challenges to certificates should be added. It would be important to look at the statute, Code, Real Property Article, §7-105.11, to find out which aspects of the foreclosure procedure are not necessary for someone filing one of these challenges to certificates to do and to make sure that Rule 14-207 tracks this. Mr. Fisher pointed out that subsections (b)(1), (2), (3), and (4) are items that traditionally have been included. They may have been reworded for the new residential foreclosure procedures.

Mr. Fisher referred to subsection (b)(7) of Rule 14-207. He had suggested a change to this provision, which had been accepted by the Subcommittee. He noted that an issue had arisen as to whether land installment contracts and vendor’s liens should be added to subsection (b)(7). He expressed the view that the new

language should read: “and the lien instrument being foreclosed is a mortgage or deed of trust” and should not refer to land installment contracts and vendor’s liens. This was also the suggestion of the Chair as previously stated. Judge Pierson said that this is the way that the Subcommittee proposal ended up, but Ms. Libber, an Assistant Reporter, noted that originally, the Subcommittee had approved adding the other kinds of liens. Judge Pierson remarked that adding the two other kinds of liens would run the risk of missing something else.

The Vice Chair asked if Judge Pierson could suggest some language that the Style Subcommittee could consider. Judge Pierson answered that he would be willing to draft some language, as long as the Committee agreed with the proposed change. By consensus, the Committee approved the new language of subsection (b)(7) as presented. The Reporter asked if Judge Pierson could send her the language, so that she could show it to Mr. Fisher and Ms. Ogletree before it is sent to the Style Subcommittee.

By consensus, the Committee approved Rule 14-207, subject to being amended.

Judge Pierson presented Rule 14-208.1, Challenge of Certificate of Vacancy or Certificate of Property Unfit for Human Habitation, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

ADD new Rule 14-208.1, as follows:

Rule 14-208.1. CHALLENGE OF CERTIFICATE OF VACANCY OR CERTIFICATE OF PROPERTY UNFIT FOR HUMAN HABITATION

(a) Right to Challenge

If the record owner or occupant has been served with an order to docket or complaint to foreclose that does not comply with the requirements of Code, Real Property Article, §7-105.1, and a certificate of vacancy or certificate of property unfit for human habitation issued to a secured party pursuant to Code, Real Property Article, §7-105.11 is relied upon by the secured party to excuse compliance with those requirements, the record owner or occupant of a property may challenge the certificate in accordance with this Rule.

(b) Where Filed

The record owner or occupant shall initiate the challenge by filing a motion in the foreclosure action filed in the circuit court pursuant to Rule 14-203.

(c) Contents of Motion to Challenge

A motion to challenge shall (1) be in writing, (2) identify the property, (3) identify the record owner, if the motion is filed by the occupant, and (4) state the facts upon which the motion is based.

(d) Service

The movant shall serve a copy of the motion to challenge on the secured party pursuant to Rule 1-321.

(e) Stay of Action

Upon the filing and service of a motion to challenge that meets the requirements of this Rule, all proceedings in the action shall be automatically stayed until further order of court.

(f) Response

Within 15 days after being served with a motion to challenge, the secured party may file a written response to the motion. The secured party shall serve a copy of the response and any supporting documents on the movant by first-class mail and shall file proof of such service with the response.

(g) Timely Response Filed

If a timely response is filed, the court shall promptly rule on the motion to challenge with or without a hearing.

(h) Dismissal of Action

If a timely response is not filed, or if the court sustains the challenge, the action shall be dismissed without prejudice to refile in compliance with Code, Real Property Article, §7-105.1.

(i) Rejection of Challenge

If the court rejects the challenge, the stay shall be lifted, and the case shall proceed on the order to docket or complaint to foreclose.

Source: This Rule is new.

Rule 14-208.1 was accompanied by the following Reporter's note.

Chapter 156, Laws of 2012 (HB 1374) added a new procedure to Code, Real Property Article, §7-105.11 allowing a secured party to request that a county or municipal corporation issue a certificate of vacancy or

> certificate of property unfit for human habitation if a mortgage or deed of trust on residential property is in default. The statute also provides that the record owner or occupant of the property may challenge the certificate by notifying the circuit court of the challenge. The Rules Committee suggests that a challenge procedure be added to Title 14 to provide some guidance to occupants, record owners, and to the court as to how an appropriate challenge should be made.

Judge Pierson explained that Rule 14-208.1 is a new Rule that creates the procedure for challenging a certificate of vacancy or a certificate of property unfit for human habitation. It creates a procedure where the defendant, who is the record owner or occupant, can file a motion in the foreclosure action that specifies the contents of the motion to challenge. It requires that the motion to challenge be served on the secured party. It provides that all proceedings are automatically stayed until further order of court. The idea behind this is that the property cannot be advertised for sale or sold while the challenge to the certificate is pending. Then the Rule provides a procedure for adjudication of the motion. If the challenge is sustained, the foreclosure will be dismissed, and the secured party will then have to comply with all of the requirements of Code, Real Property Article, §7-105.1. If the challenge is rejected, then the case goes on.

Judge Norton inquired if there was any time period as to when to file. Judge Pierson answered negatively. Ms. Stretch told the Committee that she was from the Maryland Office of

Financial Regulation. She and her colleagues hoped that they could work with the foreclosure bar to establish a standard form of motion. Judge Weatherly remarked that she would assume that most of these challenges would be filed by *pro se* individuals. Her guess was that these would be communicated by the person sending in a letter to the court. She expressed the view that a form would be helpful, or the courts would be pushed to accept a more informal writing. Judge Pierson commented that he had discussed this issue with Jedd Bellman, Esq., an Assistant Attorney General working with the Department of Labor, Licensing, and Regulation (DLLR). Judge Pierson said that he had heard that it is not the expectation of the foreclosure bar that there would be many challenges to these certificates.

Mr. Fisher, a member of the foreclosure bar, responded that he did not believe that there would be much utilization of this procedure, because of practical problems with it. Judge Pierson agreed that a procedure is necessary, but he expressed the view that it was not likely that a large number of challenges would be filed. He suggested that a form for the challenges to certificates might be something that could be accomplished through the Conference of Circuit Court Judges. The form could be available through the clerks' offices or another way. Ms. Stretch remarked that she was representing Mr. Bellman at today's meeting. The DLLR has hoped for the ability to develop a form.

Mr. Ansell said that he had a question about section (g) of

Rule 14-208.1, which reads: "If a timely response is filed, the court shall promptly rule on the motion to challenge with or without a hearing." He asked if any consideration had been given to setting a time limit for the court to rule on the motion rather than using the word "promptly." Judge Pierson replied that no consideration had been given to this. The Reporter added that the word "promptly" is used throughout the Rules. It means that the court should act as soon as the court can reasonably do so. Mr. Ansell remarked that this language would be looked at differently in every court. His concern was that if someone sends a simple letter challenging a certificate, and it is open-ended as to what "promptly" means, it can be a low-cost way for someone to indefinitely stretch out the process.

Judge Pierson responded that this is not the only time the word "promptly" is used in the Rules of Procedure. He did not know why this would be singled out as a rule that gets a particular time limit placed in it. Judge Weatherly added that the reality is that the court acts as promptly as it can given the fact that courts have a myriad of items to rule on within a period of time. The decision would be made depending on the number of cases, and the number of people available to help the judge.

The Vice Chair inquired if anyone had a motion to change the time limit in section (g). No motion was forthcoming. By consensus, the Committee approved Rule 14-208.1 as presented.

Judge Pierson presented Rule 14-209, Service in Actions to

Foreclose on Residential Property; Notice, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-209 to add language to section (a) pertaining to certain certificates, to add language to section (d) limiting the local laws requiring notice, and to correct internal references in section (a) and (b), as follows:

Rule 14-209. SERVICE IN ACTIONS TO FORECLOSE ON RESIDENTIAL PROPERTY; NOTICE

(a) Service on Borrower and Record Owner by Personal Delivery

When an action to foreclose a lien on residential property is filed, the plaintiff shall serve on the borrower and the record owner a copy of all papers filed to commence the action, accompanied (1) by the documents required by Code, Real Property Article, §7-105.1 ~~(f)~~ (h) and (2) if the action to foreclose is based on a certificate of vacancy or a certificate of property unfit for human habitation issued pursuant to Code, Real Property Article, §7-105.11, by a copy of the certificate and a description of the procedure to challenge the certificate. Service shall be accomplished by personal delivery of the papers or by leaving the papers with a resident of suitable age and discretion at the borrower's or record owner's dwelling house or usual place of abode.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 ~~(f)(1)~~ (h)(1) and COMAR 09.03.12.01 et seq.

(b) Service on Borrower and Record Owner by Mailing and Posting

If on at least two different days a good faith effort was made to serve a borrower or record owner under section (a) of this Rule and service was not successful, the plaintiff shall effect service by (1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action, accompanied by the documents required by Code, Real Property Article, §7-105.1 ~~(f)~~ (h), to the last known address of each borrower and record owner and, if the person's last known address is not the address of the residential property, also to that person at the address of the property; and (2) posting a copy of the papers in a conspicuous place on the residential property. Service is complete when the property has been posted and the mailings have been made in accordance with this section.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 ~~(f)(1)~~ (h)(1) and COMAR 09.03.12.01 et seq.

(c) Notice to all Occupants by First-class Mail

When an action to foreclose on residential property is filed, the plaintiff shall send by first-class mail addressed to "All Occupants" at the address of the property the notice required by Code, Real Property Article, §7-105.9 (b).

(d) If Notice Required by Local Law

When an action to foreclose on residential property is filed with respect to a property located within a county or a municipal corporation that, under the authority of former Code, Real Property Article, §14-126 (c), has enacted a local law that was in effect as of October 1, 2012 requiring notice of the commencement of a foreclosure action, the plaintiff shall give the notice in the form and manner required by

the local law. If the local law does not provide for the manner of giving notice, the notice shall be sent by first-class mail.

~~(e)~~ (d) Affidavit of Service, Mailing, and Notice

(1) Time for Filing

An affidavit of service under section (a) or (b) of this Rule~~,~~ and mailing under section (c) of this Rule, and notice under section (d) of this Rule shall be filed promptly and in any event before the date of the sale.

(2) Service by an Individual Other than a Sheriff

In addition to other requirements contained in this section, if service is made by an individual other than a sheriff, the affidavit shall include the name, address, and telephone number of the affiant and a statement that the affiant is 18 years of age or older.

(3) Contents of Affidavit of Service by Personal Delivery

An affidavit of service by personal delivery shall set forth the name of the person served and the date and particular place of service. If service was effected on a person other than the borrower or record owner, the affidavit also shall include a description of the individual served (including the individual's name and address, if known) and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

(4) Contents of Affidavit of Service by Mailing and Posting

An affidavit of service by mailing and posting shall (A) describe with particularity the good faith efforts to serve the borrower or record owner by personal delivery; (B) state the date on which the

required papers were mailed by certified and first-class mail and the name and address of the addressee; and (C) include the date of the posting and a description of the location of the posting on the property.

(5) Contents of Affidavit of Notice Required by Local Law

An affidavit of the sending of a notice required by local law shall (A) state (i) the date the notice was given, (ii) the name and business address of the person to whom the notice was given, (iii) the manner of delivery of the notice, and (iv) a reference to the specific local law of the county or municipal corporation, or both, requiring the notice and (B) be accompanied by a copy of the notice that was given.

Cross reference: See the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501 et seq.

Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (b) and is in part new.

Rule 14-209 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 14-202 and 14-208.1.

Chapter 155, Laws of 2012 (HB 1373) repealed Code, Real Property Article, §14-126 (c), which had allowed counties or municipal corporations to enact a local law requiring that notice be given to the county or municipal agency or official when an order to docket or a complaint to foreclose a mortgage or deed of trust is filed on residential property located within the county or municipal corporation. However, at least one local notification law survives, because it was enacted before October 1, 2012, the date the repeal of §14-126 (c) becomes effective. The Committee recommends adding language to section (d) that clarifies that any local law

> that was in effect on October 1, 2012 and that requires notice to be given to a county or municipal corporation when an order to docket or complaint to foreclose is filed on property located within the county or municipal corporation must be complied with.

Judge Pierson explained that language that had been in Rule 14-207 (b)(11) had been added to Rule 14-209. If the action to foreclose is based on a certificate of vacancy or a certificate of property unfit for human habitation, the lender has to serve a copy of the certificate and a description of the procedure to challenge the certificate on the defendant.

By consensus, the Committee approved Rule 14-209 as presented.

Agenda Item 2. Consideration of proposed Title 17 - (Alternative Dispute Resolution) - Chapter 400 (Proceedings in the Court of Special Appeals) and Amendments to: Rule 8-205 (Information Reports), Rule 8-206 (Prehearing and Scheduling Procedure), and Rule 17-101 (Applicability)

The Vice Chair told the Committee that the new Rules for mediation in the Court of Special Appeals would be discussed. Two handouts on this topic were available. Those present today to comment on the Rules were Chief Judge Peter Krauser of the Court of Special Appeals as well as Mala Malhotra-Ortiz and Tara Lehner, who help run the mediation program at the Court of Special Appeals. Chief Judge Krauser thanked the Rules Committee for the hard work they put into drafting the Rules in Chapter 400 of Title 17. A mediation program was started in the Court of Special Appeals several years ago. Because of the efforts of a

superb staff, it has proved to be a very successful program. A recent University of Maryland survey has found that the program is one of the most successful programs of its kind, and at the same time, it does not limit the types of cases that are subject to mediation.

Chief Judge Krauser noted that the Court of Special Appeals is going into other areas that other states are reluctant to tackle. One of these areas is cases involving *pro se* litigants. The program has a very unique structure, which is an attorney plus a judge. A retired judge does the mediation. It works extremely well for a number of reasons. It means that many of the mediations settle, and a week or two later, the cases are followed up by a staff attorney. After reviewing all of the mediation programs around the country, Chief Judge Krauser copied this structure from Arizona, which has the most successful mediation programs.

Chief Judge Krauser commented that the success of a program depends on the personnel who staff it. One of the issues that has arisen is the concern of the judges as to whether they are performing a judicial function in mediating cases. This concern is particularly applicable when one or more of the parties is *pro se*. The judges are concerned about people filing suits against them. The Court of Special Appeals has tried to assure them that mediating a case is a judicial function. To reassure the more than 20 judges who are mediators, the provision regarding

judicial function was included, which is Rule 17-401 (b)(3). Ms. Malhotra-Ortiz, the director of the program, was present to address some other issues.

Ms. Malhotra-Ortiz told the Committee that their program will become well-known in the near future. They are going to leave open section (b) of Rule 8-206, Prehearing and Scheduling Procedure, as far as what the Court does prehearing. Section (b) describes the prehearing conference in the Court of Special Appeals. There is a great amount of follow-up by staff attorneys to the mediations. They make sure that parties, whether they are represented or not, are filing the appropriate consent orders with the Court of Special Appeals in order to tie up any loose ends in cases. Often, without followup, courts do not know how cases are settling.

Ms. Malhotra-Ortiz said that in their mediation program, they keep close contact with the parties, and they keep their own files separate from those in the clerk's office. They are going to change the name of the "ADR Office" to the "ADR Division," which will highlight the boundary between their office and the clerk's office. Confidential mediation statements that are filed with the court prior to a mediation are reviewed by co-mediators, the judge, and the staff attorney prior to going into the mediation. This information should not become part of the court record and open to the public. A large part of the success of the program is the fact that people trust that the mediations are confidential.

The Vice Chair suggested that the Committee go through each of the proposed Rules. Mr. Sykes said that he had a preliminary issue to raise. He expressed the concern about creating immunity from prosecution in a new situation by rule, which concept is set forth in the Committee note after subsection (b)(3) of Rule 17-401. This gets quite far from practice and procedure. Had this issue been presented to the legislature? The Vice Chair replied that the Rules had never gone to the legislature. Mr. Sykes inquired if the idea of immunity had been presented to the legislature. The Vice Chair responded that the language of the Committee note does not create immunity. The only language that would be added to these Rules would indicate that mediators are performing a judicial function. Other states have gone much further and have provided in their rules of procedure that the mediators are absolutely immune. An opinion of the Attorney General, 93 *Op. Atty Gen.* 68 (1993), held that court-ordered mediators are immune. All that is in Rule 17-401 is language recognizing that the mediators are performing a judicial function. It is up to the court to recognize this as a basis of immunity in a subsequent lawsuit. The Rule is not creating immunity *per se* by the language in it.

Mr. Sykes commented that he had a semantic concern about this. What the Rule is providing in effect is that mediation is a judicial function. The Vice Chair clarified that what the Rule means is that mediation by judges in the appellate sphere is a

judicial function. It does not mean mediation in any and all circumstances. The Rule is recognizing the obvious. To the extent that it encourages mediators to participate in the program without fear of lawsuits, the language serves a very useful purpose. Chief Judge Krauser added that the active Court of Special Appeals judges have also participated in the mediation program. It is an important function under the auspices of the Court of Special Appeals, and their active as well as their retired judges participate in the program. It resolves cases very effectively.

Mr. Maloney remarked that as active consumers of the program, he and his colleagues are very happy with it. One of the reasons the program is so successful is that the quality of the judges is first-rate. Another reason is that the staff is also excellent. Even if a case does not settle, the mediation will narrow the issues greatly, and the foundation is often set for a settlement later on. He agreed with the Vice Chair that the mediators are probably immune from suit, but if there is any doubt, the Rule should clarify this. The mediators are performing a judicial function. A certain number of retired judges will not take the risk of being a mediator if they think that there is a chance that they could be sued. Another aspect of this is that if mediation is a judicial function, and someone sues a judge who is a mediatior, the judge may think that he or she is entitled to a defense by the Attorney General as long as the Rule clearly states that mediation is a judicial function.

Judge Pierson commented that when he first read the proposed rules, he had shared Mr. Sykes' concerns about conferring immunity by rule. Then he read the Oregon Law Review article cited in the Vice Chair's e-mail to the Reporter, The Misguided and Inequitable Shifting of Risk, 83 Or. L. Rev. 107, 170-206 (2004), which indicated that 20 or 30 states have rules that expressly confer immunity. Judge Pierson then decided that he may be wrong in his initial reaction. If that number of states have rules explicitly conferring immunity, it might be better to make Rule 17-401 more explicit and go further than the Rule does now.

The Reporter said that she had not researched this particular issue, but it is important to keep in mind that different states have different rulemaking apparatus. In some states, the rulemaking process goes through the legislature, as it does in Congress, but in Maryland, the process is purely judicial. Mr. Michael noted that when he first read the Rule, he had the same concern as Mr. Sykes about the Rule addressing the issue of immunity, which is the province of the legislature. As Mr. Michael read the Rules, it seemed that the purpose is to declare the mediating function of the Court of Special Appeals a judicial function. It is not directly referring to immunity; it means that whatever immunity attaches under common law is relevant. Nothing new is being created. Rule 17-401 recognizes that mediation is a judicial function.

The Vice Chair added that the Rule is a half-step. As he

had initially drafted the Rule, it looked like the provisions in other jurisdictions, which provide that mediation is a judicial function, and the mediators are immune. This was taken out after discussions with the Chair, who prefers that the Committee note referring to the opinion of the Attorney General not be included. The Rule would simply provide that mediation is a judicial function. Mr. Michael asked Chief Judge Krauser if the Court of Special Appeals program uses any private attorneys or if the mediators are all retired judges. Chief Judge Krauser answered that the mediators are all retired judges, which is required by rule. The mediation involves a judge plus one of the staff members. No private attorneys are mediators. Mr. Michael asked if the staff referred to by Chief Judge Krauser is the staff of the Court of Appeals, and he replied affirmatively. Mediation is clearly a court function. Mr. Brault inquired if anyone knew how the United States Court of Appeals for the Fourth Circuit handled the issue of immunity. They have mediations conducted by all private attorneys. The Vice Chair did not know how the Fourth Circuit addresses this.

Judge Weatherly remarked that there is court-ordered mediation in the circuit courts and District Court. Settlement conferences are being handled by sitting judges. Other types of mediation, such as family, custody, and property mediation are handled by attorneys who would like to have immunity. The Vice Chair pointed out that the opinion of the Attorney General recognizes that even private attorneys, who are serving the

particular function of a mediator, are entitled to a measure of immunity.

Mr. Michael expressed the view that the opinion of the Attorney General may no longer hold up, because it refers to mediators who have a special court-designated title for that purpose. This is not how this is handled in Maryland. An attorney gets a court order appointing him or her as a mediator. The attorney is not a court magistrate nor a chancery official as in some other states upon which the opinion relied to hold that there is immunity. Mr. Michael was not sure that private attorneys actually do have immunity when they conduct mediation. They do have malpractice coverage. He was unsure if private mediators do have immunity when they are court-appointed unless the terms designating the mediator are changed. In Maryland, they are referred to as "mediators." The authority relied on by the Attorney General called them "court chancellors" or "masters in settlement" or some other title that made it sound like a judicial function. A privately paid mediator who is charging market prices for his or her time as a mediator may not qualify as a court mediator despite the opinion.

The Vice Chair asked Mr. Michael if he would agree that a retired judge who has been recalled would have immunity. Mr. Michael replied that in the setting of conducting mediation in the Court of Special Appeals, a retired judge absolutely would have immunity. He added that retired judges in Montgomery County, who do private mediations similar to what attorneys do,

may not have immunity. They are charging market prices for their services. Chief Judge Krauser reiterated that the Court of Special Appeals uses active judges as mediators, and they may continue to do so. In addition, the judges who are retired do not receive funds from the parties. It is a free service offered to the parties. Mr. Michael noted that this is a major distinction from those who mediate at the county level on cases. They are designated as mediators in a court order, and they are charging and receiving market prices for their services. This is not part of the Rules being considered today, but it is part of the dialogue.

Mr. Sykes commented that he could understand active judges being immune from suit. Retired judges can be designated under the Constitution by the Chief Judge of the Court of Appeals to come back and sit. However, is there any procedure for getting a retired judge to sit as a mediator? Is it comparable to the judge sitting at a trial? The Vice Chair responded that a recalled judge has all of the powers of a sitting judge. Mr. Sykes inquired how the judges are recalled. The Vice Chair answered that the Chief Judge of the Court of Appeals designates the recall in an order. It may be signed by the whole Court.

Mr. Sykes questioned whether the Chief Judge of the Court of Appeals designates every retired judge to sit as a mediator. Mr. Michael remarked that Mr. Sykes' point was that under the Constitution, a retired judge can be recalled to try a case. Is there a provision allowing the judge to be recalled for

mediation? He did not think that such a provision existed. Judge Pierson observed that in Baltimore City, recalled judges do settlement conferences. Mr. Michael acknowledged this, but he noted that Mr. Sykes' point had been the specific authorization to recall judges to try cases. Judge Pierson explained that judges are not recalled to try cases but to perform judicial duties whatever that might be. Chief Judge Krauser said that judges are not recalled for mediation but to serve on the court.

Mr. Michael remarked that he had no problem with the program in the Court of Special Appeals. It is narrow and defined enough to avoid getting into the issues being raised today. The Rules being considered are narrow enough. They are using a title consistent with common law immunities for a judge being considered a judicial officer and as part of those duties conducting a mediation. Ms. Malhotra-Ortiz observed that this is not a new concept. Rule 8-206 requires a judge to be present for a prehearing conference, and the judge is required to do so without official judicial proceedings even though it is not oral argument. If these Rules are going to take the place of the Rule 8-206 prehearing conference, it is important to make sure that this piece has not changed unless this judicial function is included. Mr. Sykes said that he was satisfied on the issue of immunity.

Mr. Brault asked if anyone had heard of a mediator being sued. Mr. Maloney replied that he had been subpoenaed in a mediator malpractice case. He did not know the outcome of the

case, but this is becoming a big issue. It is an emerging area of liability. The Vice Chair remarked that the author of the article to which Judge Pierson had referred is advocating no immunity for mediators.

The Vice Chair asked if anyone else had a comment on the issue of immunity. None was forthcoming. The Vice Chair noted that the language pertaining to the judicial function is contained on page 2 of the longer version of the Rule handed out at the meeting. The Committee note proposed in the shorter version of the Rule that was handed out will not be retained. Mr. Sykes expressed the view that it would be helpful to have a cross reference to point people to the Attorney General's opinion, which is very informative. The Reporter agreed that a cross reference, as opposed to a detailed explanation, would be helpful.

Mr. Johnson referred to the point made earlier that only retired judges or current judges would be used as mediators. Is there any reason that an attorney could not be used as a mediator? Ms. Malhotra-Ortiz responded that Rule 17-403, Qualifications of Mediators and Settlement Conference Chairs, provides in subsection (a)(1) that incumbent Court of Special Appeals judges, retired judges of the Court of Appeals and the Court of Special Appeals, or circuit court judges approved for recall for service, as well as staff attorneys from the Court of Special Appeals, can be mediators. Section (b) sets out the qualifications for settlement conference chairs. Mr. Michael

said that as a practitioner, he would be concerned about retired judges of the Court of Special Appeals as mediators. He added that he would be interested in their opinion on the law issues of his appeal, but not in their opinion as to the value of the case, because they are somewhat removed from trial practice and the everyday environment under which attorneys evaluate cases.

Chief Judge Krauser responded that the program is mediation and not arbitration. The judge is at the mediation simply to facilitate the discussion. Only if the parties request the value of the case would it result in the change from a mediation to an arbitration or a settlement conference. Many retired circuit court judges are acting as mediators. Mr. Maloney commented that some very good judges are acting as mediators. Chief Judge Krauser added that they have a long list of excellent judges working with them. Mr. Michael inquired whether in the cases where value is part of the mediation process, the program is having a great deal of success. Chief Judge Krauser answered that so far the program has been very successful. The Vice Chair said that the recent Maryland State Bar Association newsletter has an article about the success of this program. The article states that the program is one of the best in the country, if not the best in the country.

The Vice Chair presented Rule 17-401, General Provisions, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

Rule 17-401. GENERAL PROVISIONS

(a) Definitions

The following definitions apply in this Chapter:

(1) Chief Judge

"Chief Judge" means the Chief Judge of the Court of Special Appeals.

(2) **CSA ADR Office [Note: The Court of Special Appeals prefers "Division" rather than "Office."]**

"CSA ADR Office" means the Court of Special Appeals Office of ADR Programs, a unit within the Court of Special Appeals.

(3) Settlement Conference

"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial individual to discuss settlement, dismissal of the appeal, and methods of streamlining the appellate process **with respect to the particular appeal**, including limitation of issues, contents of and times for filing the record and record extract, consolidation of multiple appeals, consolidated briefs, prehearing motions, seeking certiorari in the Court of Appeals, and other procedures under Title 8 of these Rules.

(b) Administration of ADR Programs

(1) CSA ADR Office

Subject to the supervision of the Chief Judge, the CSA ADR Office is responsible for performing the duties assigned to it by the Rules in this Chapter

and generally administering the ADR programs of the Court of Special Appeals. The Chief Judge shall appoint a Director of the Office, who shall serve at the pleasure of the Chief Judge.

(2) Delegation by Chief Judge

The Chief Judge may delegate to another judge of the Court of Special Appeals any of the duties and authority assigned to the Chief Judge by the Rules in this Chapter.

(3) Judicial Function

Court-designated mediators, settlement conference chairs and all court employees involved in the ADR program are performing a judicial function.

Committee note: The Attorney General has concluded that the court-appointed ADR personnel have, at a minimum, a measure of immunity for their acts. 93 Opinions of the Attorney General 68 (2008).

~~**(3)**~~ **(4)** Screening of Information Reports

(A) Recommendation of CSA ADR Office

The CSA ADR Office shall screen all civil appeal information reports filed pursuant to Rule 8-205 and promptly make a recommendation to the Chief Judge as to whether the parties and their attorneys should be directed to participate in a form of ADR in accordance with the Rules in this Chapter.

Cross reference: See Rule 8-206, concerning the entry of an order to participate in ADR.

(B) Screening Communications

As part of the screening process, the CSA ADR Office may engage in discussions with a party's attorney and any self-represented party with respect to referral of the issues in the appeal to ADR. A communication pursuant to this subsection is

not a prohibited ex parte communication. Communications with the CSA ADR Office have the status of mediation communications to which the provisions of Rule 17-105 are applicable, regardless of whether ADR is ordered.

Cross reference: For the confidentiality of information reports and supplemental reports, see Rule 8-205 (f).

~~(4)~~ **(5)** Order by the Chief Judge

The Chief Judge shall consider the recommendation of the CSA ADR Office and, within 30 days after the filing of the appellant's information report, enter an order in accordance with Rule 8-206 (a).

Source: This Rule is new.

The Vice Chair pointed out one change to Rule 17-401 is that the term "settlement conference" also includes the kind of things that used to occur in a prehearing conference under the existing Rule. The word "prehearing conference" will not be in the Rule. The function is still going to be there, but it will be accomplished under the word "settlement conference." Another change indicated in the version that was handed out is that the designation will be the "Court of Special Appeals ADR Division" rather than the "ADR Office." The District Court also has an ADR Office, and the new one is distinct from that.

By consensus, the Committee approved Rule 17-401 as presented.

The Vice Chair presented Rule 17-402, ADR Proceedings, for the Committee's consideration.

Rule 17-402. ADR PROCEEDINGS

(a) Applicability

This Rule applies to an ADR proceeding ordered pursuant to Rule 8-206.

(b) Mediation

(1) Selection of Mediator

If mediation is ordered, the CSA ADR Office shall select one or more mediators approved by the Chief Judge as having the qualifications prescribed by Rule 17-403 (a) to conduct the mediation. In selecting a mediator, the CSA ADR Office is not required to choose at random or in any particular order from among the qualified individuals, and may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available mediators.

(2) If Full Settlement is Not Reached

If a full settlement of the issues in the appeal is not achieved, the mediator and the parties may discuss the prospect of (A) extending the mediation session, (B) further mediation sessions, (C) engaging in other forms of ADR, or (D) a settlement conference to consider appropriate methods of streamlining the appellate process.

(3) If Full or Partial Settlement Achieved

If a full or partial settlement is achieved, the parties shall proceed in accordance with section (d) of this Rule.

(c) Settlement Conference

(1) Chair

If a settlement conference is ordered, the Chief Judge shall select a judge having the qualifications prescribed by Rule 17-403 (b) to serve as the chair of the settlement conference.

(2) If Full Settlement is Not Achieved

If a full settlement of the issues in the appeal is not achieved, the settlement conference chair and the parties may discuss the prospect of (1) another settlement conference, (2) engaging in other forms of alternative dispute resolution, or (3) methods of streamlining the appellate process, including limitation of issues, contents of and times for filing the record and record extract, consolidation of multiple appeals, consolidated briefs, prehearing motions, seeking certiorari in the Court of Appeals, and other procedures under Title 8 of these Rules.

(3) If Full or Partial Settlement Achieved

If a full or partial settlement is achieved, the parties shall proceed in accordance with section (d) of this Rule.

(d) Consent Order

(1) Proposed Order

Within 30 days after the conclusion of a Court-ordered ADR proceeding at which settlement or any other agreement was reached, **if an order is necessary to implement their agreement,** the parties **[may] [shall]** file one or more proposed orders ~~**necessary to implement their agreement**~~.

Committee note: **The provisions of a proposed order may include dismissal of the appeal, proceeding with the appellate process, limiting issues, a remand pursuant to Rule 8-**

602 (e), and implementing other agreements reached by the parties with respect to the appeal.

(2) Action of Chief Judge

The Chief Judge shall sign the order as presented, reject it, or return it to the parties with recommended changes**, but the Chief Judge may not preclude the appellant from dismissing the appeal as permitted by Rule 8-601 or preclude the parties from otherwise proceeding in a manner authorized under the Rules in Title 8**.

(3) Action on Recommended Changes

Subject to subsection (d)(2) of this Rule, if the parties do not accept any recommended changes within 15 days after an order is returned to them, the appeal shall proceed as if no agreement had been reached. If the parties accept the recommended changes, the Chief Judge shall sign the order.

(4) Duties of Clerk

The clerk shall serve a copy of each signed order on each party pursuant to Rule 1-321 and send a copy to the CSA ADR Office.

(e) Sanctions

Upon the failure of a party or attorney to comply with an order issued under this Rule, the Court may (1) dismiss the appeal in part or in full, (2) assess against the failing party or attorney any expenses caused by the failure, including attorney's fees or expenses incurred by the other party and all or a portion of the appellate costs, and (3) impose any other appropriate sanction.

(f) Recusal

A judge who conducts or participates in an ADR proceeding under this Rule shall not sit as a member of a regular or in banc panel assigned to hear the appeal in the action.

Source: This Rule is new.

The Vice Chair commented that Rule 17-402 presents the procedure for choosing the cases for mediation. The existing civil information reports are used as the basis for screening the cases to decide whether mediation is appropriate. The Reporter said that the language pertaining to the judicial function would be added to Rule 17-402. She asked if the cross reference to the Attorney General's opinion suggested by Mr. Sykes should be added here. Judge Weatherly inquired as to where the cross reference would go. The Reporter answered that it would go right after subsection (b)(3) of the handout which is "Judicial Function." By consensus, the Committee agreed to add the cross reference to the opinion of the Attorney General after subsection (b)(3) of Rule 17-402.

Judge Pierson referred to the language in subsection (b)(4)(B) of Rule 17-401 which reads, "Communications with the CSA ADR Office have the status of mediation communications to which the provisions of Rule 17-105 are applicable...". He pointed out the cross reference to Rule 8-205 concerning the confidentiality of information reports. He had not seen any provision that would separate anything that happens at any time during the ADR process from the substantive proceedings on the appeal. He explained that he meant a general provision to the effect of nothing that happens ever gets disclosed or revealed to the file. It may be that the view is that the mediation

privilege in Rule 17-105.1, Neutral Experts, which applies to what goes on at the mediation conference or the settlement conference, is unnecessary.

Judge Pierson said that he was envisioning the papers that are filed, which may be something other than a prehearing report. His view was that there ought to be language that ensures that none of that ever gets out of the ADR Division into the non-ADR Division. Ms. Malhotra-Ortiz responded that she would be happy to add something that is more explicit. For now as to the cross reference to Rule 8-205 (f) that refers to information reports and supplemental reports, the Rule does not necessarily explicitly state that the confidential pre-mediation statement is a supplemental report, but it would be treated as if it were. Judge Pierson commented that this had been his concern. There may be other papers that may not qualify as an information report or a supplemental report. He expressed the opinion that those papers should be confidential as well.

Mr. Sullivan commented that the confidentiality provision in Rule 8-205 is not perfect, because it does not prohibit disclosure. All it provides is that the information contained in an information report or a supplemental report shall not be referred to except at a prehearing or scheduling conference. It is one of the weaker confidentiality provisions that he could recall if it is really intended that the reports not be disclosed. The Vice Chair noted that Rule 17-105.1 is incorporated into this.

Mr. Sullivan inquired if the confidentiality extends to the report itself. Ms. Malhotra-Ortiz answered that it would be a mediation communication, and the confidentiality privilege would extend to the report. A "mediation communication" is defined in Rule 17-102 as "speech, writing, or conduct made as part of a mediation, including communications made for the purpose of considering, initiating, continuing, or reconvening a mediation or retaining a mediator." In the order itself that is sent to parties when the court orders that the parties submit these confidential statements on the top of the form it states that it is not a part of the record. There are several layers to this beyond the Rule, but it would be appropriate and helpful to state explicitly in the Rule that it is a confidential communication.

Chief Judge Krauser noted that ultimately the consent agreement comes to him as Chief Judge or to his designee. He may have questions at that point. It had been agreed to put into the consent agreement that the parties can disclose information to Chief Judge Krauser. This is not a rubberstamp procedure. The Chief Judge may have questions which he is able to ask. There are strict rules. The Chief Judge cannot sit on the panel nor disclose any information about it. This ultimately comes to the court for a court order, and it cannot be just a rubberstamp. It may need to be remanded, or it may need further clarification. The parties would then consent to it in their consent order. The Chief Judge has to be able to independently look at the order and make sure that no problem exists.

Ms. Malhotra-Ortiz remarked that Chief Judge Krauser had referred to the fact that the court would need to review a consent order if there needs to be a remand. In that case, the Chief Judge or his or her designee may need more information. There has to be a balance as to how much confidentiality can be provided. The Reporter asked if the Court of Special Appeals has a form that would enable the Chief Judge to do this. Ms. Malhotra-Ortiz answered that the mediation agreement enables the Chief Judge to do so. Chief Judge Krauser added that the Court of Special Appeals has a superb staff, but he has to anticipate what will happen in the future. He also has to make sure that the staff is functioning well, so he must have some oversight. He has to be able to make inquiries if he needs the information. He has to be able to intervene if a complaint is made about the mediation. Ultimately, he has to make an evaluation to determine whether a problem exists. This is the other instance where the privacy might be compromised.

Mr. Johnson said that he had a question that resulted from the discussion about subsection (b)(4)(A) of Rule 17-401. He thought that Chief Judge Krauser had said that the parties elect to participate in the ADR process. Chief Judge Krauser confirmed this. Mr. Johnson noted that the language in subsection (b)(4)(A) is that the CSA ADR Division screens all civil appeal information reports, and then they make recommendations to Chief Judge Krauser as to whether the parties and attorneys should be directed to participate in a form of ADR. The language “should

be directed" sounds as if they are ordered to do it. If Mr. Johnson, as a practitioner, read this, he would think that he was being ordered to participate, and that he did not have a choice. He wanted to clarify whether this language means that the participation in ADR is an option that is made available to them, or if it means that the parties are ordered to participate. If the latter is the case, Rule 17-401 should state that the parties are being ordered to participate.

Ms. Malhotra-Ortiz responded that the parties are ordered to participate in ADR. If counsel on either side is adamant that they do not want to participate, it will not be ordered. But once the ADR is ordered, it must be attended. Mr. Johnson remarked that the language of the Rule refers to the recommendation of the Court of Special Appeals ADR Division to the Chief Judge. Are the parties free to refuse the ADR, or is the recommendation that in this case, the parties should have to participate in ADR? The Rule does not provide this.

The Vice Chair commented that it is an order to participate, but it is not an order to agree to do anything. Chief Judge Krauser remarked that as a practical matter, they often have cases in which the attorney thinks that mediation would be a good idea, but the attorney is not sure that the client agrees. The attorney prefers that there be mediation and asks the court to order it. For a successful mediation, the parties have to cooperate. There is no point in continuing if party says that he or she does want to mediate. The Rule gives the attorneys the

opportunity to tell their clients that the court has directed them to mediation.

Judge Weatherly asked if the family cases can be screened for domestic violence as is done in the circuit court. Ms. Malhotra-Ortiz replied that the cases are screened for domestic violence. Judge Pierson asked why the word "directed" could not be changed to the word "ordered." This would eliminate the ambiguity. Rule 8-206, Prehearing and Scheduling Procedure, authorizes the Chief Judge to order ADR. Mr. Johnson reiterated that he was not sure what the word "directed" meant. He moved that the word "directed" in subsection (b)(4)(A) of Rule 17-401 be changed to the word "ordered." The motion was seconded, and it passed by a majority vote.

The Vice Chair said that some of the changes to Rule 17-402 had been proposed by the Chair. These appear in the version of the Rule handed out at the meeting. There is an issue to decide in subsection (d)(1) of Rule 17-402 as to whether the parties are required to file a proposed order if one is necessary. Ms. Malhotra-Ortiz explained that her office preferred the word "may," because it is a consent order, and if there is no consent, the court should not require parties to file the order. The word "may" seems somewhat less directed. The word "shall" could work, also.

The Reporter commented that the case for the word "shall" is that if the structure of subsection (d)(1) is revised, then if an order is necessary to implement the agreement, someone has to

draft that order. The agreement could be to just dismiss the case, and in that situation, no order is needed. But if an order is necessary, someone has to draft it. Then the Chief Judge or his or her designee has to look at it. Unless the staff attorneys are drafting it, which may be helpful in *pro se* cases, if the case has two attorneys, they may as well draft the order. This is the case for using the word "shall." One problem would be if both parties are *pro se*. Chief Judge Krauser noted that the *pro se* involvement will be growing. Pro se parties obviously cannot necessarily prepare orders. The word "may" makes more sense. It allows more flexibility.

Mr. Carbine remarked that this is mechanical. If neither party files a proposed order, does the writing of the order default to the staff? If the word "may" is used, it is important to contemplate what should be done if no one files. Ms. Malhotra-Ortiz responded that the appeal would proceed, because if the attorneys were supposed to submit an order or a settlement agreement, and it is not submitted, the court assumes that there was no agreement. Chief Judge Krauser observed that if the Court of Special Appeals prepares the agreement, the parties would sign off. This is why he suggested the word "may," so that their staff can prepare the agreement in the right situation. Ms. Malhotra-Ortiz added that they often provide the parties a form.

Judge Weatherly referred to subsection (d)(1) of Rule 17-402. She asked whether the purpose of this provision is the

process or whether it is the assignment of responsibility for the order. If the reason is the process, the wording of subsection (d)(1) could be: "Within 30 days after the conclusion of a court-ordered ADR proceeding at which settlement or any other agreement was reached, an order will be filed to implement the agreement." This would not provide who does it, it simply refers to the next process. If the purpose of this provision is to state who files the order, the language of that provision should remain. Judge Weatherly reiterated that she was not sure what the purpose of this provision was.

Mr. Carbine commented that subsection (c)(2) of Rule 17-402 creates the default. The Chief Judge signs, rejects, or returns the order to the parties with recommended changes. This gives the staff a chance to fix up the order. He expressed his preference for the word "shall," so that there is an order, and the staff can screen it. The Reporter noted that this would work even if both parties are *pro se.* The staff can shape up the order, and the Chief Judge or designee could recommend any changes. Chief Judge Krauser said that he had consulted his staff, and they did not feel strongly about this. Ms. Malhotra-Ortiz added that the word "shall" explicitly requires that the attorneys have to prepare the order.

Mr. Johnson moved to use the word "shall" in subsection (d)(1). The motion was seconded, and it passed unanimously.

The Vice Chair said that Rule 17-402 explains how the

mediator is selected, what happens if a settlement of the mediation is not reached, what happens at the settlement conference, and what happens there if no settlement is reached. The proposed order and consent order and the action of the Chief Judge had just been discussed. The Chair had suggested a clarifying change to indicate that the parties still are free to take any action that they are presently authorized to take under the Title 8 Rules, including dismissing their appeal. They can also limit issues on their own. This change was presented in the version of Rule 17-402 that had been handed out at the meeting. The Reporter remarked that this change was somewhat inartfully drafted yesterday. A review of the change indicates that it does not read well, so it will be revised by the Style Subcommittee.

Judge Pierson noted that subsection (b)(3) of Rule 17-402 provides that if a full or partial settlement agreement is achieved, the parties shall proceed in accordance with section (d) of this Rule. Section (d) only refers to consent orders. The new language in the handout is: "...if an order is necessary to implement their agreement, the parties shall file one or more proposed orders." It does not refer to what happens if they reach an agreement, and an order is not necessary. He was not sure what the practical experience is in terms of settlements that are effectuated by something other than an order. Ms. Malhotra-Ortiz responded that it would either be a dismissal or a consent order.

Mr. Michael asked if the court does a memorandum of

agreement between the parties or writes a notation in the file reflecting what agreement was reached. Chief Judge Krauser answered that this is done in the consent order. Ms. Malhotra-Ortiz added that prior to the consent order, there is a memorandum of understanding that is drafted at the settlement table. The original is kept in a confidential file. Judge Pierson remarked that the Rule seems incomplete. However, if the procedure works, then no change may be necessary. The Vice Chair observed that it seems to work. Mr. Carbine noted that the parties can do anything by agreement, so no rule is needed.

Judge Pierson pointed out that the parties proceed in accordance with section (d) if a full or partial settlement is achieved. The Rule could provide that the parties shall proceed in accordance with their agreement, including submitting an order as required by section (d). The Reporter commented that Rule 17-402 was initially drafted with the understanding that there would be an order in every case. She suggested that the language of subsection (b)(3) could be: "If a full or partial settlement is achieved, and an order is necessary, the parties shall proceed in accordance with section (d) of this Rule." This would also go into subsection (c)(3). By consensus, the Committee agreed to these changes.

The Vice Chair told the Committee that the Chair had another clarifying change that appeared in the handout. Language had been added to subsection (d)(3) of Rule 17-402 indicating that the provision is subject to subsection (d)(2).

By consensus, the Committee approved Rule 17-402 as amended.

The Vice Chair presented Rule 17-403, Qualifications of Mediators and Settlement Conference Chairs, for the Committee's consideration.

Rule 17-403. QUALIFICATIONS OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Qualifications of Mediators

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a retired judge of the Court of Appeals, the Court of Special Appeals, or a circuit court approved for recall for service under Maryland Constitution, Article IV, §3A; or (C) a staff attorney from the Court of Special Appeals designated by the CSA ADR Office;

(2) either have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or have conducted at least two Maryland appellate mediations prior to the adoption of this Rule;

(3) have completed advanced appellate mediation training approved by the CSA ADR Office;

(4) unless waived by the CSA ADR Office, have observed at least two Court of Special Appeals mediation sessions and have participated in a debriefing with a staff mediator from the CSA ADR Office after the mediations;

(5) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules;

(6) abide by any mediation standards adopted by **[the Court of Special Appeals or]**

the Court of Appeals;

(7) submit to periodic monitoring by the CSA ADR Office; and

(8) unless waived by the CSA ADR office, in each calendar year complete four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104, or any other advanced mediation training approved by the CSA ADR Office.

(b) Qualifications of Settlement Conference Chair

To be designated by the Chief Judge to serve as the chair of a settlement conference, an individual shall be:

(1) a judge of the Court of Special Appeals; or

(2) a retired judge of the Court of Appeals or the Court of Special Appeals approved for recall for service under Maryland Constitution, Article IV, §3A.
Source: This Rule is new.

The Vice Chair said that the subject of who qualifies to be a mediator had already been discussed. Rule 17-403 sets forth basic training requirements. A decision has to be made as to subsection (a)(6). The Reporter commented that the original draft had the language "mediation standards adopted by the Court of Special Appeals or the Court of Appeals." The Reporter had questioned whether the Court of Special Appeals can actually adopt standards when the Court of Appeals has, in fact, adopted mediation standards. It would be a particular problem if the standards would at all be conflicting. She expressed the view that mediation standards are adopted by the Court of Appeals. If

this refers to mediation procedures, the Court of Special Appeals can adopt those.

Chief Judge Krauser explained that the problem is that this is a new program that has special demands. It is similar to "local rules," which would not conflict with anything in the Court of Appeals. By administrative order, Chief Judge Krauser may indicate that time limits are necessary on certain matters. They would like to be able to adjust the program so that it responds to their needs.

The Reporter suggested that in place of the language "mediation standards," the language "administrative orders" could be substituted. She said that the reason that she had noticed this language was the fact that the Court of Appeals has mediation standards that have been adopted. The term "mediation standards" as it refers to the Court of Special Appeals in subsection (a)(6) should be changed to something else.

Ms. Malhotra-Ortiz commented that mediation standards in terms of the quality of mediation and mediation standards in terms of procedures and the administration of court-annexed mediation programs had been discussed. These two could be parsed out. Ms. Harris noted that this is like the policy and procedures of the program. The Reporter suggested the language "mediation procedures adopted by the Court of Special Appeals" in place of "mediation standards adopted by the Court of Special Appeals." By consensus, the Committee approved this change.

By consensus, the Committee approved Rule 17-403 as amended.

The Vice Chair presented Rule 17-404, No Fee for Court-ordered ADR, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

Rule 17-404. NO FEE FOR COURT-ORDERED ADR

Court of Special Appeals litigants and their attorneys shall not be required to pay a fee or additional court costs for participating in a mediation or settlement conference ordered by the Court.

Source: This Rule is new.

The Vice Chair explained that Rule 17-404 simply indicates that no fee is charged for the ADR in the Court of Special Appeals. There being no discussion, the Committee approved Rule 17-404 by consensus.

The Vice Chair presented Rule 8-205, Information Reports, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-205 by deleting a reference to a prehearing conference; by adding a reference to Alternative Dispute Resolution

under Title 17, Chapter 400; and by adding a cross reference, as follows:

Rule 8-205. INFORMATION REPORTS

. . .

(f) Confidentiality

Information contained in an information report or a supplemental report shall not (1) be treated as admissions, (2) limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a ~~prehearing or~~ scheduling conference or during ADR under Title 17, Chapter 400 of these Rules.

Cross reference: See Rule 17-102 (a) for the definition of ADR and Rule 17-401 concerning the use of information reports by the CSA ADR Office.

. . .

The Vice Chair told the Committee that Rule 8-205 amends the existing Rule pertaining to information reports to eliminate the term “prehearing” and adopt the new language which reads “or during ADR under Title 17, Chapter 400 of these Rules.”

There being no comment, the Committee approved Rule 8-205 as presented.

The Vice Chair presented Rule 8-206, Prehearing and Scheduling Procedure, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 200 - OBTAINING REVIEW IN COURT OF

AMEND Rule 8-206 to change the time for the initial determination under section (a) from 20 days to 30 days, to delete provisions pertaining to a prehearing conference, to add certain provisions pertaining to alternative dispute resolution, and to make stylistic changes, as follows:

Rule 8-206. PREHEARING AND SCHEDULING PROCEDURE

(a) Initial Determination by Court

Within ~~20~~ 30 days after the filing of appellant's information report, the Chief Judge of the Court of Special Appeals ~~shall enter an order~~ or a judge of the Court designated by the Chief Judge shall consider any recommendation of the CSA ADR Office made pursuant to Rule 17-401 (b)(3) and enter an order:

(1) that the appeal proceed without ~~a prehearing~~ mediation, a settlement conference, or a scheduling conference; ~~or~~

(2) that the parties, their attorneys, or both the parties and their attorneys appear ~~before the Chief Judge or a judge of the Court designated by the Chief Judge at a designated time and place for a prehearing conference or a scheduling conference~~ at a designated time and place for one mediation session or one settlement conference session in accordance with the applicable provisions of Rule 17-402; or

(3) upon the written request of the parties, that proceedings be stayed for a period of time stated in the order so that the parties, their attorneys, or both the parties and their attorneys may participate in another form of ADR; or

(4) that the parties, their attorneys, or both the parties and their attorneys appear before the Chief Judge or a judge of the Court designated by the Chief Judge at a

designated time and place for a scheduling conference in accordance with section (b) of this Rule.

Cross reference: For the definition of "ADR," see Rule 17-402 (a) and for the definition of "CSA ADR Office," see Rule 17-401 (a)(2).

~~(b) Prehearing Conference~~

~~The purpose of a prehearing conference is to discuss settlement, dismissal of the appeal, limitation of the issues, contents of the record and record extract, continuance of the appeal, the time or times for filing the record and briefs, and other pertinent matters. Information disclosed at a prehearing conference shall be regarded as disclosed solely for purposes of settlement negotiations and shall not (1) be treated as admissions, (2) limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a prehearing conference.~~

~~(c)~~ (b) Scheduling Conference

(1) Purpose

The purpose of a scheduling conference is to discuss the contents of the record and record extract, the time or times for filing the record and briefs, and other administrative matters that do not relate to the merits of the case.

~~(d)~~ (2) Order

On completion of ~~any conference conducted under this Rule~~ a scheduling conference, the judge shall enter an order reciting the actions taken and any agreements reached by the parties. The judge may order additional conferences and may enter an order of remand pursuant to Rule 8-602 (e). The Clerk shall serve a copy of the order on each party pursuant to Rule 1-321.

~~(e)~~ (c) Sanctions

Upon failure of a party or attorney to

comply with Rule 8-205, this Rule, or an order under this Rule, the Court of Special Appeals may: (1) dismiss the appeal, (2) assess against the party or attorney the reasonable expenses caused by the failure, including attorney's fees, (3) assess against the party or attorney all or a portion of the appellate costs, or (4) impose any other appropriate sanction.

~~(f) Recusal~~

~~A judge who conducts a prehearing conference shall not sit as a member of the panel assigned to hear the appeal in that case.~~

Source: This Rule is in part derived from former Rule 1024 and in part new.

The Reporter remarked that the title of Rule 8-206 has to be changed, because the word "prehearing" has been eliminated from Rule 8-205. There will be no more prehearings. The Reporter also suggested that the language in subsection (a)(1) should not be "that the appeal will proceed without mediation." It should be "that the appeal will proceed without ADR in accordance with Title 17." The Style Subcommittee will take care of redrafting this.

The Reporter inquired if there should be a scheduling conference after mediation fails or if it is done as part of the mediation. Ms. Malhotra-Ortiz answered that they would like the ability to have one after the mediation fails if it is needed. Mr. Brault questioned whether this would prolong the appeal process. The Reporter observed that this was worrisome. Mr. Brault asked how long it takes to get a date for an argument in

the Court of Special Appeals. Chief Judge Krauser replied that it is about four to five months. This does not apply to mediation. The mediation can narrow the issues, and then it becomes a settlement conference. It can end up as a prehearing conference by evolution. The process is flexible. That is the advantage of having a judge involved.

Mr. Brault said that from a defense perspective, some judgments may be held for a year, and the delay in getting an appeal can be very expensive. Chief Judge Krauser responded that they are very concerned about this. One of the issues involved with mediation is that as this program becomes more successful, there may be requests for mediation for the mere purpose of delay. This is why they have a strict rule that if one side does not agree, it does not come in. They will not permit mediation to be used as a delay process. Some courts have already drawn the line as to what cases they will hear. There are appellate mediations which will not hear custody cases or worker's compensation cases. Currently, they have an open door as to the types of cases, and as they go along, they will see if they have to narrow the kinds of cases for ADR. Mediation will not be allowed to be used to delay an appeal.

Judge Weatherly commented that ADR in the circuit court has evolved in a similar way. In Prince George's County, the cases went through the settlement process, and only the cases that did not settle were set in for a hearing. To meet their one-year time standards, they could not wait and had to set the cases

earlier even though they went to a settlement conference or to mediation. Chief Judge Krauser said that they carefully pick the cases to go to mediation. Both sides have to agree to mediation. Judge Weatherly asked what percent of the cases settle, and Chief Judge Krauser replied that 10% settle. Chief Judge Krauser said that they hope to get to a point where 15% of the cases settle. Ms. Malhotra-Ortiz clarified that out of the 10% ordered to mediation, 50 to 60% settle.

By consensus, the Committee approved Rule 8-206 as amended.

The Vice Chair presented Rule 17-101, Applicability, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 17-101 to add section (e) pertaining to the applicability of Chapter 400, as follows:

Rule 17-101. APPLICABILITY

(a) General Applicability of Title

Except as provided in section (b) of this Rule, the Rules in this Title apply when a court refers all or part of a civil action or proceeding to ADR.

Committee note: The Rules is this Title do not apply to an ADR process in which the parties participate without a court order of referral to that process.

(b) Exceptions

Except as otherwise provided by Rule, the Rules in this Title do not apply to:

(1) an action or order to enforce a contractual agreement to submit a dispute to ADR;

(2) an action to foreclose a lien against owner-occupied residential property subject to foreclosure mediation conducted by the Office of Administrative Hearings under Rule 14-209.1;

(3) an action pending in the Health Care Alternative Dispute Resolution Office under Code, Courts Article, Title 3, Subtitle 2A, unless otherwise provided by law; or

(4) a matter referred to a master, examiner, auditor, or parenting coordinator pursuant to Rule 2-541, 2-542, 2-543, or 9-205.2.

(c) Applicability of Chapter 200

The Rules in Chapter 200 apply to actions and proceedings pending in a circuit court.

(d) Applicability of Chapter 300

The Rules in Chapter 300 apply to actions and proceedings pending in the District Court.

(e) Applicability of Chapter 400

The Rules in Chapter 400 apply to civil appeals pending in the Court of Special Appeals.

Source: This Rule is derived from former Rule 17-101 (2011).

The Vice Chair explained that the language added to Rule 17-101 refers to the new Rules in the Court of Special Appeals.

There being no comment, by consensus, the Committee approved

Rule 17-101 as presented. Judge Love noted a typographical error in the Committee note after section (a) -- the word “is” should be changed to the word “in.”

Agenda Item 3. Consideration of proposed Title 19 (Attorneys) - Chapter 100 (State Board of Law Examiners) and Chapter 200 (Admissions to the Bar)

Mr. Brault told the Committee that most of the work the Judges and Attorneys Subcommittee did on the Rules in Title 19 was simply stylistic. He had always been curious as to why the Bar Admission Rules were located after the index in Volume 2 of the Rules of Procedure. The Subcommittee has placed the Title 19 Rules in the body of the rule book, which was a style change. The Rules apply to people who are applying to become attorneys, and to attorneys in other jurisdictions who are applying to become a member of the Maryland Bar. They are distinguished as an “applicant” and a “petitioner.” Another issue that arose was masters degrees in law (LLM’s). Ms. Gavin said that the Court of Appeals had just approved a rule for LLM’s for foreign graduates of American Bar Association - accredited schools in Maryland. Some people were asking why law schools in other states could not be included. The reason is that the State Board of Law Examiners (“State Board”) has a relationship with the law schools in Maryland and can regulate what is going on with them. They have specific types of reporting to the State Board for the waiver to communicate that the person is qualified.

Mr. Brault presented Rule 19-101, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

Rule ~~1.~~ 19-101. DEFINITIONS

In ~~these Rules~~ this Chapter and Chapter 200 of this Title, the following definitions apply, except as expressly otherwise provided or as necessary implication requires:

(a) ADA

"ADA" means the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.

(b) Applicant; Petitioner

"Applicant" means an individual who applies for admission to the Bar of Maryland pursuant to Rule 19-202. "Petitioner" means an applicant who is an out-of-state attorney.

~~(b)~~ (c) Board

"Board" means the Board of Law Examiners of the State of Maryland.

~~(c)~~ (d) Court

"Court" means the Court of Appeals of Maryland.

~~(d) Code, Reference to~~

~~Reference to an article and section of the Code means the article and section of the Annotated Code of Public General Laws of Maryland as from time to time amended.~~

(e) Filed

"Filed" means received in the office of the Secretary of the Board during normal business hours.

(f) MBE

"MBE" means the Multi-state Bar Examination published by the National Conference of Bar Examiners.

(g) MPT

"MPT" means the Multistate Performance Test published by the National Conference of Bar Examiners.

(h) Oath

"Oath" means a declaration or affirmation made under the penalties of perjury that a certain statement ~~or~~ of fact is true.

Cross reference: See Rule 1-304 for a form of oath.

(i) State

"State" means (1) a state, possession, territory, or commonwealth of the United States or (2) the District of Columbia.

Source: This Rule is derived from former Rules Governing Admission to the Bar (RGAB) 1.

Rule 19-101 was accompanied by the following Reporter's note.

This Rule is derived from former RGAB 1, with the addition of a cross reference to Rule 1-304 and other style changes.

Mr. Brault pointed out the definition of "applicant" and "petitioner." This is really a style change. Judge Weatherly inquired why it was necessary to make this distinction. Mr.

Brault answered that the reason was that one files an application and one files a petition. Ms. Gavin added that the new designations reflect exactly what each person files. The people who are just coming out of law school who apply to the bar for admission file an application. The people who are out-of-state attorneys and have the requisite experience, file a petition. Mr. Brault noted that the only change to the rest of the Rule is the addition of a cross reference after section (h).

By consensus, the Committee approved Rule 19-101 as presented.

Mr. Brault presented Rule 19-102, State Board of Law Examiners, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

Rule ~~20.~~ 19-102. ~~THE~~ STATE BOARD OF LAW EXAMINERS

(a) Appointment

There is a State Board of Law Examiners. The Board shall consist of seven members, appointed by the Court, each of whom shall have been admitted to practice law in Maryland. The terms of members shall be as provided in Code, Business Occupations and Professions Article, §10-202 (c).

(b) Quorum

A majority of the authorized

membership of the Board is a quorum.

~~(a)~~ (c) Authority to Adopt Rules

The Board may adopt rules to carry out the requirements of ~~these Rules~~ this Chapter and Chapter 200 of this Title and to facilitate the conduct of examinations. The Rules of the Board shall be published in ~~the Code, Maryland Rules~~ this Chapter, following ~~these Rules~~ Rule 19-105.

~~(b)~~ (d) Amendment of Board Rules - Publication

Any amendment of the Board's rules shall be published at least once in a daily newspaper of general circulation in this State. The amendment shall be published at least 45 days before the examination at which it is to become effective, except that an amendment that substantially increases the area of subject-matter knowledge required for any examination shall be published at least one year before the examination. Contemporaneously with the publication, the amendment shall be posted on the Judiciary website.

~~(c)~~ (e) Assistants

The Board may appoint the assistants necessary for the proper conduct of its business. Each assistant shall be an attorney admitted by the Court of Appeals and shall serve at the pleasure of the Board.

~~(d)~~ (f) Compensation of Board Members and Assistants

The members of the Board and assistants shall receive the compensation fixed ~~from time to time~~ by the Court.

~~(e)~~ (g) Secretary to the Board

The Court may appoint a secretary to the Board, to hold office ~~during~~ at the pleasure of the Court. The secretary shall have the administrative powers and duties ~~that~~ prescribed by the Board ~~may prescribe~~.

(h) Fees

The Board shall prescribe the fees, subject to approval by the Court, to be paid by applicants under Rules ~~2~~ 19-202 and ~~7~~ 19-205 and by petitioners under Rule ~~13~~ 19-212.

Cross reference: See Code, Business Occupations and Professions Article, §10-208 (b) for maximum examination fee allowed by law.

Source: This Rule is derived as follows:
Section (a) is ~~derived from former Rule 7 h and 9 a~~ new.
Section (b) is new.
Sections (c) through (g) of the Rule are derived from former RGAB 20.
Section (h) is derived from former RGAB 18.
~~Section (b) is derived from former Rule 7 h and i.~~
~~Section (c) is derived from former Rule 9 c.~~
~~Section (d) is derived from former Rule 16.~~
~~Section (e) is derived from former Rule 17.~~

Rule 19-102 was accompanied by the following Reporter's note.

This Rule is derived from former RGAB 20 and 18, with style changes. Sections (a) and (b) are new and include the provisions of Code, Business Occupations and Professions Article, §10-202 concerning the compliance of the Board and quorum requirements.

Mr. Brault told the Committee that the existing Rules did not establish the State Board of Law Examiners ("State Board"), which was done by statute. The Subcommittee suggested putting the contents of the statute in Rule 19-102. This is consistent with the statute, which is referenced in the Rule. Section (b), providing for a quorum, has been added to the Rule. A reference to the Judiciary Website has been added to section (d). The

question was raised as to whether anything else should be posted on the website. The Vice Chair noted that section (d) provides that any amendment of the Board's rules shall be published in a daily newspaper. Does this still serve a useful purpose? Mr. Brault responded that this is in the existing Rule. Mr. Carbine added that in a few years, this will no longer be applicable. Ms. Gavin commented that publishing amendments to the Board Rules on the Judiciary website is appropriate. Other information should not be put on the website for confidentiality reasons.

Mr. Johnson inquired if the entire State Board system is done through the Judiciary Website. Ms. Gavin answered that it is done that way somewhat. There are two layers of security. A character committee member would log in as a member through the website. Then there is a single sign-on to get into the database. Mr. Johnson asked if the applicants are going to be submitting information electronically through the Board. Ms. Gavin replied that they already do. Mr. Johnson inquired if this is through the Judiciary website. Ms. Gavin responded affirmatively, noting that they have to create their own account with their own single sign-on to put in their information. There is a double security. Mr. Brault remarked that this will be discussed later in the Rules.

By consensus, the Committee approved Rule 19-102 as presented.

Mr. Brault presented Rule 19-103, Character Committees, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS

AND CHARACTER COMMITTEES

Rule ~~17.~~ 19-103. CHARACTER COMMITTEES

The Court shall appoint a Character Committee for each of the seven Appellate Judicial Circuits of the State. Each Character Committee shall consist of not less than five members whose terms shall be five years each, except that in the Sixth Appellate Judicial Circuit the term of each member shall be two years. The terms shall be staggered. The Court shall designate the chair of each Committee, and may provide compensation to the members.

Cross reference: See Rule 19-203 for the Character Review procedure.

Source: This Rule is derived from former ~~Rule 4 a and e~~ RGAB 17.

Rule 19-103 was accompanied by the following Reporter's note.

This Rule is derived from former RGAB 17, with the addition of a cross reference to the Rule concerning the character review procedure itself.

Mr. Brault remarked that the way Rule 19-103 reads sounds as if the Character Committee considers an application before someone passes the bar. Ms. Gavin explained that the Character Committee considers the application at the same time. The applications are filed and processed in Ms. Gavin's office. The applications go out to the Character Committees, and at the same

time, the Character Committee members are sending out references and doing their investigation. During that time, the applicant is studying for and taking the bar examination. If the applicant does not pass the bar examination, because of electronic transmission, the applicant will not have to retain all of the documents involved. The State Board will get a notice that the applicant has reapplied to take the bar examination and then will ask the applicant to update his or her information. The prior procedure was that the Office of the State Board had to hold onto the applications, and many had gotten lost. One of the main reasons that an electronic system is being set up is so that the papers do not leave their office.

Mr. Brault asked how it would work when the Character Committee turns down someone. Would the applicant take the bar examination anyway? Ms. Gavin responded that the person would take the bar examination. Whether the person passed or not has nothing to do with what the Character Committee does. If the Character Committee investigates and finds out that the applicant has many problems, they will not waste their time holding hearings. If the applicant takes the bar examination again, the Character Committee will go through all of the information. A very small percentage of people fall under this category. All of the information about the applicant is gathered together, and it comes back to Ms. Gavin’s office. The Board takes care of it. The Character Committee members will be hearing cases as they always have done.

Mr. Johnson added that he had a slight amendment to this. Some applicants who have issues seek to have their character evaluation done. They may have problems taking the bar examination, but they want to know if they are going to be able to be admitted. The Character Committees do proceed on applications of people who may not have passed the bar examination. Mr. Johnson always tells applicants that they must pass the character evaluation and the bar examination. The two are usually coordinated, but most people, who do not have their applications completed when they receive the letter from the Court of Appeals stating that the applicant has passed the bar exam, suddenly bombard the Character Committee about their application being completed. They are told that it is not the Committee who completes the application but the applicant who completes it. Ms. Gavin noted that in Maryland, the applicant has to pass both the character investigation as well as the bar examination. In other jurisdictions, if the applicant does not pass the character investigation, the person is not allowed to take the bar examination.

Ms. Gavin noted that in Rule 19-103, the last sentence which now reads: "The Court shall designate the chair of each Committee..." should read "...designate the chair or co-chair of each Committee...". This is because in six of the seven character committees, they now have co-chairs in addition to the chairs. Mr. Sykes suggested that the language of the last sentence of Rule 19-103 could read: "The Court shall designate

the chair of each Committee and co-chair, if any,...". By consensus, the Committee approved this change.

By consensus, the Committee approved Rule 19-103 as amended.

Mr. Brault presented Rule 19-104, Subpoena Power, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

Rule ~~22.~~ 19-104. SUBPOENA POWER ~~OF BOARD AND CHARACTER COMMITTEES~~

(a) Subpoena

(1) Issuance

In any proceeding before the Board or a Character Committee pursuant to ~~Bar Admission~~ Rule ~~5~~ 19-203 or ~~Bar Admission~~ Rule ~~13~~ 19-212, the Board or Committee, on its own motion or the motion of an applicant, may cause a subpoena to be issued by a clerk pursuant to Rule 2-510. The subpoena shall issue from the Circuit Court for Anne Arundel County if incident to Board proceedings or from the circuit court in the county in which the Character Committee proceeding~~s~~ ~~are~~ is pending~~, and the~~. The proceedings ~~may~~ shall not be docketed in court.

(2) Name of Applicant

The subpoena shall not divulge the name of the applicant, except to the extent this requirement is impracticable.

(3) Return

The sheriff's return shall be made as directed in the subpoena.

(4) Dockets and Files

The Character Committee or the Board, as applicable, shall maintain dockets and files of all papers filed in the proceedings.

(b) Sanctions

If a person is subpoenaed to appear and give testimony or to produce books, documents, or other tangible things and fails to do so, the party who requested the subpoena, by motion that does not divulge the name of the applicant (except to the extent that this requirement is impracticable), may request the court to issue an attachment pursuant to Rule 2-510 (j), or to cite the person for contempt pursuant to Title 15, Chapter 200 of the Maryland Rules, or both.

(c) Court ~~Rules~~ Costs

All court costs in proceedings under this Rule shall be assessable to and paid by the State.

Source: This Rule is ~~new~~ derived from former RGAB 22.

Rule 19-104 was accompanied by the following Reporter's note.

This Rule is derived from former RGAB 22 with style changes.

Mr. Brault said that the Subcommittee had a question regarding the last sentence in subsection (a)(1) of Rule 19-104, which reads: "The proceedings shall not be docketed in court." How would someone get the subpoena issued if the case is never docketed? Ms. Gavin explained that her office has stamped subpoenas. She did not know why the Rule was initially drafted to provide that the proceedings may not be docketed in court. It

had been drafted many years ago. Mr. Brault inquired how a subpoena could be issued without the proceedings being docketed. Ms. Gavin responded that her office has a docket which she maintains. Judge Weatherly suggested that these proceedings could go on the miscellaneous docket.

Mr. Maloney asked how often this procedure is used. Ms. Gavin answered that it is very rarely used, and it is used more in the Character Committee. Rarely, people on either side are opposed to coming in. Mr. Brault asked what would happen if the Character Committee was informed that an applicant cheated in law school. Would the law school be subpoenaed rather than voluntarily coming in? Ms. Gavin replied that the law school would voluntarily come in. Mr. Brault asked Ms. Harris if Montgomery County had ever had any such cases on its docket. Ms. Harris answered that she was not aware of any, but she could not state that the cases would not be docketed. Ms. Gavin reiterated that when she took the position of Director of Character and Fitness, she had been told that she must keep a docket, and that there were stamped subpoenas from the Circuit Court for Anne Arundel County. She had issued subpoenas, but usually people voluntarily come in to testify.

Mr. Johnson commented that the process of investigating the character of applicants is confidential, and Ms. Gavin agreed. If someone is subpoenaed to testify, Mr. Johnson thought that the subpoena is issued by the Chair of the Character Committee in that jurisdiction. There would be circumstances where the matter

is confidential and should not be on the court's docket. Ms. Harris observed that a problem with docketing is whether the case file should be shielded or sealed. Mr. Brault inquired if the proceedings could be filed under seal. Ms. Gavin responded that her office has never issued the subpoenas through the courts. Judge Mosely pointed out that the Rules in Title 16, Chapter 1000, the Access to Court Records Rules, address this issue.

Mr. Brault questioned whether the language of subsection (a)(1) could be: "The proceedings shall be docketed in court, but sealed." Ms. Harris responded that this would be clearer. Mr. Sykes noted that the "proceedings" to which the Rule refers is a proceeding before the Board of Law Examiners or the Character Committee. He assumed that the subpoena requires attendance by the Board or Character Committee, so that the present system may work. The clerk issues a subpoena in blank, and the Board or Character Committee fills it out. Everything takes place before the Board or Character Committee, and nothing gets into the court file. It may well be that the Rule as interpreted and implemented that way is adequate.

Mr. Michael asked how the case is entered into the computer when it gets docketed. Is the caption "In the Matter of Character Committee Proceedings?" Ms. Gavin answered negatively, explaining that she maintains the docket. The caption is "In the Matter of _____," and it is in a folder in her desk. It does not go into any computer. Mr. Carbine inquired what the caption of the subpoena is. Ms. Gavin answered that it would be "In the

Matter of _____," and the blank would contain the initials of the applicant. Sometimes, the caption has the application number of the Office of the State Board.

Mr. Michael inquired what the circuit court would do if this provision in Rule 19-104 is changed. Ms. Harris replied that it would be filed under a category of "Miscellaneous." Mr. Michael asked if the court would accept a filing captioned "In the Matter of MLK Before the Character Committee." Mr. Maloney commented that unless it is sealed, it is on the public record. The Reporter remarked that subsection (a)(1) seems to work well. Ms. Harris noted that the Access Rules would automatically seal the record.

Mr. Carbine hypothesized a situation where Ms. Gavin fills out the subpoena, and she serves it. The person served does not appear. Ms. Gavin would then have to file this in a court proceeding, and it would now be docketed. If it was not docketed, there is no reason why the clerk would have to fill out the subpoena and send it to the court to get a case number, bring it back, and then mail it to the person. The Reporter observed that this only happens in Anne Arundel County. Ms. Gavin cautioned that the Character Committees can also issue a subpoena anywhere in the State. She added that the Character Committees have very rarely used the subpoena power. The applicant bears the burden of proving good moral character and fitness for admission to the bar.

Mr. Carbine expressed the opinion that another sentence or

two may be needed. The concept is that the proceedings will not be docketed in court, but an action to enforce the subpoena may be docketed. Ms. Gavin agreed, noting that in the future, in addition to what is now in the Rule, it may provide that enforcement action may be docketed in the court. Ms. Harris inquired why the Rule does not give the State Board the authority to docket. The Reporter answered that they cannot be given the authority since they are not judges.

Mr. Carbine said that he had been thinking about subpoenas under the Maryland Uniform Arbitration Act, Code, Courts Article, §3-234, which are valid subpoenas. He assumed that if the subpoenas had to be enforced, an action could be filed in the circuit court and that the subpoenas being discussed today would function in much the same way. Mr. Maloney asked Ms. Gavin if she issued her own subpoena or if she was enforcing the subpoena. Ms. Gavin responded that they had never had to enforce a subpoena in the 14 years she had worked at the job. Mr. Maloney asked if Ms. Gavin starts by going to the circuit court clerk for the subpoena. Ms. Gavin replied that she has a large amount of subpoenas issued by the clerk for Anne Arundel County.

Mr. Johnson commented that Ms. Gavin had said that the applicant has the burden of proving that he or she has the requisite character and fitness to be a member of the bar. What happens though, if the applicant wants someone to testify, but that person is not willing to come in, and the applicant wants a subpoena issued? Does the Board issue the subpoena? Ms. Gavin

responded affirmatively. Mr. Johnson said that the person receiving the subpoena may want to file a motion to quash. What would happen then? Ms. Gavin said that it would be docketed.

Mr. Johnson remarked that he was trying to figure out how the procedure would work. Mr. Carbine commented that this is why he thought that another sentence should be added to the Rule, which would provide that proceedings for the enforcement of a subpoena will be docketed in a confidential manner. Mr. Brault suggested that they should be docketed "as miscellaneous proceedings under seal." Mr. Johnson noted that subsection (a)(1) reads: "The subpoena shall issue from the Circuit Court for Anne Arundel County...or from the circuit court in the county in which the Character proceeding is pending..." . It does not state that the subpoena issues from the Office of the State Board. It provides that it issues from the circuit court. Mr. Carbine said that his office also keeps stamped subpoenas.

Mr. Brault suggested that the language in subsection (a)(1) of Rule 19-104 could be "Any action to enforce a subpoena shall be docketed as a miscellaneous petition under seal." Mr. Leahy inquired if a motion to quash should be added, also. Mr. Brault said that the new language would be "Any action to quash or enforce a subpoena...". Mr. Sykes pointed out that the action would be entered on the miscellaneous docket. The Reporter asked about the concept of filing under seal.

Mr. Sykes suggested that the language could be: "...shall be entered on the miscellaneous docket and filed under seal." Mr.

Carbine expressed the opinion that the new language should be: "...shall be docketed and filed under seal." It is not necessary to refer to the miscellaneous docket in the Rule. Mr. Sykes commented that it is important to refer to the miscellaneous docket, because this filing should not go on the general docket. Judge Pierson pointed out that there is no such thing as a miscellaneous docket. Different courts have different practices. It would be creating a procedure that does not currently exist. The clerks have ways to deal with this. He was not sure what the "general" docket as opposed to the miscellaneous docket meant.

Mr. Brault commented that he thought that when the petition or motion to enforce is filed, it would be called "miscellaneous," so that it has some designation. Mr. Sykes remarked that there should be a way to keep it off the general docket.

Mr. Brault noted that it is important that the action to enforce a subpoena not be public. Judge Pierson responded that this would be accomplished by sealing it or shielding it from public access. Ms. Harris observed that this is covered under Rule 16-1009, Court Order Denying or Permitting Inspection of Case Record. The Reporter suggested that the new language could be "Any action to quash or enforce a subpoena shall be filed under seal and docketed as a miscellaneous action in the court from which the subpoena was issued." Ms. Harris suggested that the wording could be "...shall be filed in accordance with Rule 16-1009." This would allow the clerk's office to file it in

their usual way if they do not use the term "miscellaneous." Ms. Harris said that Montgomery County uses the term "miscellaneous petitions," but other jurisdictions do not. However, all of the jurisdictions should be conforming to Rule 16-1009. Judge Pierson clarified that subsection (a)(1) of Rule 19-104 should refer to "Rule 16-1001 to Rule 16-1009." By consensus, the Committee approved the language suggested by the Reporter with a cross reference added to Rule 16-1006 (e)(3).

Mr. Brault drew the Committee's attention to section (b) of Rule 19-104. He suggested that the language that was added to subsection (a)(1) should be added to section (b) as follows: "Any such motion shall be filed in accordance with Rule 16-1001 to Rule 16-1009." Mr. Sykes suggested that the wording should be: "Any such motion containing the name of the applicant." Mr. Brault said that it may contain the name of the witness. He expressed the view that the entire motion should be under seal. Mr. Sykes noted that the Rule permits divulging the name of the applicant. It would be impractical not to divulge the name.

Ms. Harris referred to subsection (e)(3) of Rule 16-1006, Required Denial of Inspection – Certain Categories of Case Records. This provides that the custodian shall deny inspection of case records relating to bar admission proceedings before the Accommodations Review Committee and its panels, a Character Committee, the State Board of Law Examiners, and the Court of Appeals. Mr. Sykes asked why it would be impractical not to divulge the name. Judge Pierson remarked that the subpoena could

be for bank records, so it would be necessary to have the name of the applicant. Otherwise, how would the bank know whose records are being subpoenaed? Mr. Brault said that putting the motion under seal takes care of the problems. The new language should be "Any such motion shall be filed under seal." This will be put in subsection (a)(1) and section (b). By consensus, the Committee agreed to the new language.

By consensus, the Committee approved Rule 19-104 as amended.

Mr. Brault presented Rule 19-105, Confidentiality, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

Rule ~~19.~~ 19-105. CONFIDENTIALITY

(a) Proceedings Before ~~Committee or Board; General Policy~~ Accommodations Review Committee; Character Committee; or Board

Except as provided in sections (b), (c), and (d) of this Rule, the proceedings before the Accommodations Review Committee and its panels, a Character Committee, and the Board and the related papers, evidence, and information are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

(b) Right of Applicant

(1) Right to Attend Hearings and Inspect Papers

~~Except as provided in paragraph (2)~~

~~of this section, an~~ An applicant has the right to attend all hearings before a panel of the Accommodations Review Committee, a Character Committee, ~~and~~ the Board, and the Court pertaining to his or her application and, except as provided in subsection (b)(2) of this Rule, to be informed of and inspect all papers, evidence, and information received or considered by the panel, Committee or the Board pertaining to the applicant.

(2) Exclusions

This section does not apply to (A) papers or evidence received or considered by the National Conference of Bar Examiners, a Character Committee, ~~of~~ or the Board if the Committee or Board, without a hearing, recommends the applicant's admission; (B) personal memoranda, notes, and work papers of members or staff of the National Conference of Bar Examiners, a Character Committee, or the Board; (C) correspondence between or among members or staff of the National Conference of Bar Examiners, a Character Committee, or the Board; ~~or~~ (D) character reports prepared by the National Conference of Bar Examiners; or ~~(D)~~ (E) an applicant's bar examination grades and answers, except as authorized in Rule ~~8~~ 19-206 and Rule ~~13~~ 19-212.

(c) When Disclosure Authorized

The Board may disclose:

(1) statistical information that does not reveal the identity of an individual applicant;

(2) the fact that an applicant has passed the bar examination and the date of the examination;

(3) any material pertaining to an applicant that the applicant would be entitled to inspect under section (b) of this Rule if the applicant has consented in writing to the disclosure;

(4) any material pertaining to an applicant requested by

(A) a court of this State, another state, or the United States;

(B) Bar Counsel, the Attorney Grievance Commission, or the attorney disciplinary authority in another state;

(C) the authority in another jurisdiction responsible for investigating the character and fitness of an applicant for admission to the bar of that jurisdiction, or

(D) Investigative Counsel, the Commission on Judicial Disabilities, or the judicial disciplinary authority in another jurisdiction for use in:

(i) a pending disciplinary proceeding against the applicant as an attorney or judge;

(ii) a pending proceeding for reinstatement of the applicant as an attorney after disbarment; or

(iii) a pending proceeding for original admission of the applicant to the Bar;

(5) any material pertaining to an applicant requested by a judicial nominating commission or the Governor of this State, a committee of the Senate of Maryland, the President of the United States, or a committee of the United States Senate in connection with an application by or nomination of the applicant for judicial office;

(6) to a law school, the names of persons who graduated from that law school who took a bar examination and whether they passed or failed the examination;

(7) to the Maryland State Bar Association and any other bona fide bar association in the State of Maryland, the name and address of a person recommended for bar admission

pursuant to Rule ~~10~~ 19-209;

(8) to each entity selected to give the course on legal professionalism required by Rule ~~11~~ 19-210, the name and address of a person recommended for bar admission pursuant to Rule ~~10~~ 19-209;

(9) to the National Conference of Bar Examiners, the following information regarding persons who have filed applications for admission pursuant to Rule ~~2~~ 19-202 or petitions to take the attorney's examination pursuant to Rule ~~13~~ 19-212: the applicant's name and aliases, applicant number, birthdate, Law School Admission Council number, law school, date that a juris doctor degree was conferred, bar examination results and pass/fail status, and the number of bar examination attempts;

(10) to any member of a Character Committee, the report of any Character Committee or the Board following a hearing on an application; and

(11) to the Child Support Enforcement Administration, upon its request, the name, Social Security number, and address of a person who has filed an application pursuant to Rule ~~2~~ 19-202 or a petition to take the attorney's examination pursuant to Rule ~~13~~ 19-212.

Unless information disclosed pursuant to ~~paragraphs~~ subsections (4) and (5) of this section is disclosed with the written consent of the applicant, an applicant shall receive a copy of the information and may rebut, in writing, any matter contained in it. Upon receipt of a written rebuttal, the Board shall forward a copy to the person or entity to whom the information was disclosed.

(d) Proceedings and Access to Records in the Court of Appeals

(1) Subject to reasonable regulation by the Court of Appeals, Bar Admission ceremonies shall be open.

(2) Unless the Court otherwise orders in

a particular case:

(A) hearings in the Court of Appeals shall be open, and

(B) if the Court conducts a hearing regarding a bar applicant, any report by the Accommodations Review Committee, a Character Committee, or the Board filed with the Court, but no other part of the applicant's record, shall be subject to public inspection.

(3) The Court of Appeals may make any of the disclosures that the Board may make pursuant to section (c) of this Rule.

(4) Except as provided in ~~paragraphs~~ subsections (1), (2), and (3) of this section or as otherwise required by law, proceedings before the Court of Appeals and the related papers, evidence, and information are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

Source: This Rule is ~~new~~ derived from former RGAB 19.

Rule 19-105 was accompanied by the following Reporter's note.

This Rule is derived from former RGAB 19 with style changes. The State Board of Law Examiners recommends that more references to the National Conference of Bar Examiners be included in the Rule.

Mr. Brault told the Committee that Rule 19-105 contained mainly style changes. In subsection (b)(2), the Subcommittee added language referring to an exclusion for character reports prepared by the National Conference of Bar Examiners. This was not in the existing Rule. Ms. Gavin explained that the National Conference does the character investigations for the out-of-state

attorneys. They average about 100 per exam twice a year. They fill out the National Conference of Bar Examiners Request for Character report with their petition requesting admission to the Maryland bar. It is filed with the State Board with the requisite fees and a number of other documents the State Board requires. The petitioner sends in two checks, one to the State Board and one to the National Conference for their request for character report. The National Conference gets the documentation and does the entire report.

Ms. Gavin pointed out that language referring to "the President of the United States" has been added to subsection (c)(5). Mr. Johnson inquired if subsection (c)(5) should apply to a member of a bar of another state. Members of the Maryland bar may also be members of the bars of Pennsylvania, Virginia, or the District of Columbia. Someone may primarily practice in the other state and may have been nominated to be a judge in that state. Would the governor of that state be able to have access to this information? Ms. Gavin asked Mr. Johnson if subsection (c)(5) should read "...or the Governor of this State or any other state...". Mr. Johnson answered that this would cover the situation of the geographical location of Maryland close to other states. Mr. Brault questioned whether the District of Columbia should be added, also. Ms. Gavin answered that it would not be necessary, because the word "state" is defined in section (i) of Rule 19-101 to include the District of Columbia. By consensus, the Committee approved the change suggested by Mr. Johnson and

Ms. Gavin.

By consensus, the Committee approved Rule 19-105 as amended.

Mr. Brault presented Rule 19-201, Eligibility to Take Bar Examination, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~4.~~ 19-201. ELIGIBILITY TO TAKE BAR EXAMINATION

~~Rule 3. PRE-LEGAL EDUCATION~~

~~An applicant for admission must have completed the pre-legal education necessary to meet the minimum requirements for admission to an American Bar Association approved law school.~~

~~Source: This Rule is new.~~

~~(a) Legal Education~~

~~(1) In order to take the bar examination of this State an individual either shall have graduated or shall be unqualifiedly eligible for graduation from a law school.~~

~~(2) The law school shall be located in a state and shall be approved by the American Bar Association.~~

(a) Educational Requirements

Subject to section (b) of this Rule, in order to take the Maryland bar examination an individual:

(1) shall have completed the pre-legal education necessary to meet the minimum requirements for admission to a law school approved by the American Bar Association; and

(2) shall have graduated or be unqualifiedly eligible for graduation from a law school (A) located in a state and (B) approved by the American Bar Association.

(b) Waiver

The Board ~~shall have discretion to~~ may waive the requirements of subsection (a)(2) of this Rule ~~and of Rule 3~~ for ~~any individual~~ an applicant who ~~in the Board's opinion is qualified by reason of education, experience, or both to take the bar examination; and~~ (1) has passed the bar examination of another state~~,~~ ~~and~~ is a member in good standing of the Bar of that state~~; or~~ , and the Board finds is qualified by reason of education or experience to take the bar examination; or (2) is admitted to practice in a jurisdiction that is not defined as a state by Rule ~~1~~ 19-101 (i) and has obtained an additional degree from an American Bar Association approved law school in Maryland that meets the requirements prescribed by the Board Rules.

(c) Minors

If otherwise qualified, an ~~individual~~ applicant who is under 18 years of age is eligible to take the bar examination but shall not be admitted to the Bar until 18 years of age.

Source: This Rule is derived ~~as follows:~~
~~Section (a) is derived from former Rule 5 b.~~
~~Section (b) is derived from former Rule 5 c.~~
~~Section (c) is derived from former Rule 5 d.~~ from former RGAB 3 and 4.

Rule 19-201 was accompanied by the following Reporter's note.

Section (a) of Rule 19-201 is derived from former RGAB 3. The remainder is derived from former RGAB 4, as amended effective January 1, 2013.

Mr. Brault told the Committee that most of the changes to Rule 19-201 are style changes. He asked if this Rule was involved with the question of foreign education of law graduates. Ms. Gavin replied affirmatively. The issue is the waiver, which is in section (b) of the Rule. Subsection (b)(2) pertains to the foreign graduates. Mr. Brault noted that the additional degree would be the masters in law program that had been discussed. His recollection was that the situation Ms. Gavin had described pertained to someone from a foreign country, who had been a member of the bar in that country. The person obtained their preliminary and graduate education in that country to become an attorney. The person came to Maryland, and he or she qualifies to take a masters degree in law program. Mr. Brault asked where those programs are given. Ms. Gavin said that she did not know about the program at the University of Maryland Law School, but she was familiar with the program at the University of Baltimore Law School. Mr. Brault remarked that the Committee had discussed possibly allowing in the programs at George Washington University, American University, Georgetown, and other law schools close by who may have similar programs. Section (b) of Rule 19-201 relates to that program where an attorneys from foreign countries get a masters degree in law, and to the ability of the State Board to exercise waiver for American pre-legal education to allow the foreign graduates to take the bar in Maryland and become an attorney here.

Mr. Michael questioned whether Rule 19-201 refers to a

masters program in a school in Maryland, and Ms. Gavin responded affirmatively. It does not refer to programs at George Washington University and other nearby schools. Mr. Michael added that the State Board would have no control over those schools. Mr. Johnson inquired if this means that a law graduate who is not in a masters program from the University of Baltimore or the University of Maryland cannot be admitted to the Maryland bar. Ms. Gavin replied affirmatively. She added that Virginia has the same rule. If someone is not in a masters program in Virginia, he or she cannot take the Virginia bar exam. Mr. Johnson commented that this issue had been debated at the American Bar Association. There was a major disagreement about certifying foreign law programs. It is a big question. Ms. Gavin agreed, pointing out that this is the first time the waiver rule has been changed. The State Board has always required that the person has to be a member of the bar of another state of the United States before the person is allowed to take the Maryland bar.

Mr. Brault asked whether the University of Baltimore had strongly requested this. Ms. Gavin replied affirmatively. Mr. Brault said that his understanding was that the University of Baltimore gets many applications from foreign attorneys, who want to get into their masters program to become an attorney in Maryland. Ms. Gavin observed that most of the people who are coming in are from Nigeria with quite a few from England and Canada. Her office has to tell them that they have to take the

bar examination somewhere else, such as in New York. Mr. Brault remarked that his impression was that it is important for the University of Baltimore to tell students that if they get a masters degree there, the person could obtain a waiver and become a member of the Maryland bar. Ms. Gavin pointed out that the Board of Law Examiners had debated this issue. Two members did a big investigation of this. The Board had a rule with some fairly stringent documentation requirements in it, but it is not in the meeting materials.

Judge Weatherly asked if the Board will admit these people who get the masters degree from the University of Baltimore. Ms. Gavin replied that they will be admitted if they pass the bar examination and get through the character and fitness evaluation. Mr. Michael clarified that it is not a waiver to allow these people to become attorneys; it is a waiver to permit them to take the bar examination and go through the Character Committee and all of the other required processes to become an attorney.

Mr. Brault asked if many Canadians are applying. Ms. Gavin replied negatively. She explained that when someone takes the bar examination from Maryland, Pennsylvania, or Virginia and gets a sufficiently high multi-state examination score, the person can waive into the District of Columbia. People often take one of these three bar examinations to do this. Mr. Brault commented that in a large multi-national law practice, much of this goes on when it would not have happened in the past. The American College of Trial Lawyers includes Canada. Ms. Gavin noted that

the Conference of Bar Administration Administrators has Canadian administrators.

By consensus, the Committee approved Rule 19-201 as presented.

Mr. Brault presented Rule 19-202, Application for Admission and Preliminary Determination of Eligibility, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~2.~~ 19-202. APPLICATION FOR ADMISSION AND PRELIMINARY DETERMINATION OF ELIGIBILITY

(a) By Application

~~A person~~ An individual who meets the requirements of ~~Rules 3 and 4~~ Rule 19-201 or had the requirement of Rule 19-201 (a)(2) waived pursuant to Rule 19-201 (b) may apply for admission to the Bar of this State by filing an application for admission, accompanied by the prescribed fee, with the Board.

~~Committee note: The application is the first step in the admission process. These steps include application for admission, proof of character, proof of graduation from an approved law school, application to take a particular bar examination, and passing of that examination.~~

(b) Form of Application

The application shall be on a form prescribed by the Board and shall be under oath. The form shall elicit the information the Board considers appropriate concerning the applicant's character, education, and

eligibility to become a candidate for admission. The application shall include an authorization for release of confidential information pertaining to character and fitness for the practice of law to a Character Committee, the Board, and the Court.

(c) Time for Filing

(1) Without Intent to Take Particular Examination

At any time after the completion of pre-legal studies, ~~a person~~ an individual may file an application for the purpose of determining whether there are any existing impediments, including reasons pertaining to character and sufficiency of pre-legal education, to the applicant's qualifications for admission.
~~Committee note: Subsection (c)(1) of this Rule is particularly intended to encourage persons whose eligibility may be in question for reasons pertaining to character and sufficiency of pre-legal education to seek early review by the Character Committee and Board.~~

(2) With Intent to Take Particular Examination

An applicant who intends to take the examination in July shall file the application no later than the preceding January 16 or, upon payment of the required late fee, no later than the preceding May 20. An applicant who intends to take the examination in February shall file the application no later than the preceding September 15 or, upon payment of the required late fee, no later than the preceding December 20.

Committee note: The deadlines for late filing of an application and for the filing of a petition to take a scheduled examination are now the same –- May 20 and December 20. See Rule 19-204.

(3) Acceptance of Late Application

Upon written request of the applicant and for good cause shown, the Board may accept an application filed after the applicable deadline for a late filing prescribed in subsection (c)(2) of this Rule. If the applicant intends to take a particular bar examination, the applicant shall also show good cause under Rule 19-204 (b) for late filing of a petition. If the Board rejects the application for lack of good cause for the untimeliness, the applicant may file an exception with the Court within five days after notice of the rejection.

(d) Preliminary Determination of Eligibility

On receipt of an application, the Board shall determine whether the applicant has met the pre-legal education requirements set forth in Rule ~~3~~ 19-201 (a) and in Code, Business Occupations and Professions Article, §10-207. If the Board concludes that the requirements have been met, it shall forward the character questionnaire portion of the application to a Character Committee. If the Board concludes that the requirements have not been met, it shall promptly notify the applicant in writing.

(e) Withdrawal of Application

At any time, an applicant may withdraw as a candidate for admission by filing written notice of withdrawal with the Board. No fees will be refunded.

(f) Subsequent Application

~~A person~~ An applicant who reapplies for admission after an earlier application has been withdrawn or rejected pursuant to Rule ~~5~~ 19-203 must retake and pass the bar examination even if the ~~person~~ applicant passed the examination when the earlier application was pending. If the ~~person~~ applicant failed the examination when the earlier application was pending, the failure ~~will~~ shall be counted under Rule ~~9~~ 19-208.

Source: This Rule is derived ~~as follows:~~

~~Section (a) is in part derived from the first sentence of former Rule 2 b and in part new.~~

~~Section (b) is new.~~

~~Section (c) is derived from former Rule 2 a, 2 b, and f.~~

~~Section (d) is in part derived from former Rule 2 g and in part new.~~

~~Section (e) is derived from former Rule 2 h.~~

~~Section (f) is new.~~ from former RGAB 2.

Rule 19-202 was accompanied by the following Reporter's note.

> Rule 19-202 is derived from former RGAB 2 with some changes. The Committee note following former Rule 2 (a) is deleted as superfluous. The Committee note following former Rule 2 (c) is deleted, but the examples of "impediments" are added to the text of the Rule.
>
> A new Committee note is proposed to alert applicants to changes in the deadlines for filing a petition to take a scheduled examination under Rule 19-204. Because of those changes, language is added to make clear that an applicant seeking acceptance of a late application [i.e., one filed after May 20 or December 20] who wants to take a particular examination will have to convince the Board to accept a late petition under Rule 19-204 (b).
>
> The reference to lack of good cause for untimeliness is added to subsection (c)(3) for clarity, and to distinguish this rejection from any other rejection of an application.

Mr. Brault said that the changes to Rule 19-202 were mostly stylistic. Mr. Johnson inquired why the Committee note after subsection (c)(1) was eliminated. He had referred to a situation where someone seeks an evaluation of his or her character,

because the person thinks that there is a problem. The Committee note explains this situation, but it was taken out. Ms. Gavin agreed that the Committee note should be kept in. She does see people who file early for a predetermination of character. Mr. Johnson recommended that the Committee note be retained, because it explains this situation, and it encourages people who have problems to raise them early. Many times this happens at the time of admission to law school. People have told Mr. Johnson that the law school had told the person to seek a character determination early, because although the school had admitted the person, the issue of concern was out there.

Judge Pierson pointed out that this is what subsection (c)(1) provides, and the Committee note repeats it with the addition of the word "encourage." Mr. Michael remarked that this is why the Committee note was taken out, because it does not add anything. It is duplicative. Mr. Sykes commented that there is a difference between stating that someone is able to file an application to determine existing impediments and stating that someone is encouraged to do so.

Mr. Brault said that subsection (c)(1) applies after completion of pre-legal studies. The scenario described by Mr. Johnson of someone not wanting to go to the trouble of applying to law school if he or she would not be admitted is not covered by subsection (c)(1). Mr. Johnson remarked that this raises another question, because it does not address the situation of when someone has completed law school, and the person is not

going to file an application for admission to the bar. Subsection (c)(1) addresses a different situation where someone has finished law school, but the person is not applying for a particular examination. Ms. Gavin explained that what this provision applies to is someone who has finished college who would like to see whether he or she wants to apply to law school. Ms. Gavin has also encouraged people to use this Rule during law school when they have questions. The person may have been admitted to law school without divulging certain information.

By consensus, the Committee approved Rule 19-202 as presented.

Mr. Brault presented Rule 19-203, Character Review, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~5.~~ 19-203. CHARACTER REVIEW

~~(b)~~ (a) Investigation and Report of Character Committee

(1) On receipt of a character questionnaire forwarded by the Board pursuant to Rule ~~2~~ 19-202 (d), the Character Committee shall (A) through one of its members, personally interview the applicant, (B) verify the facts stated in the questionnaire, contact the applicant's references, and make any further investigation it finds necessary or desirable, (C) evaluate the applicant's character and fitness for the practice of law, and (D) transmit to the Board a report of its investigation and a recommendation as

to the approval or denial of the application for admission.

(2) If the Committee concludes that there may be grounds for recommending denial of the application, it shall notify the applicant and schedule a hearing. The hearing shall be conducted on the record and the applicant shall have the right to testify, to present witnesses, and to be represented by counsel. A transcript of the hearing shall be transmitted by the Committee to the Board along with the Committee's report. The Committee's report shall set forth findings of fact on which the recommendation is based and a statement supporting the conclusion. The Committee shall mail a copy of its report to the applicant, and a copy of the hearing transcript shall be furnished to the applicant upon payment of reasonable ~~charges~~ costs.

~~(c)~~ (b) Hearing by Board

If the Board concludes after review of the Character Committee's report and the transcript that there may be grounds for recommending denial of the application, it shall promptly afford the applicant the opportunity for a hearing on the record made before the Committee. The Board shall mail a copy of its report and recommendation to the applicant and the Committee. If the Board decides to recommend denial of the application in its report to the Court, the Board shall first give the applicant an opportunity to withdraw the application. If the applicant withdraws the application, the Board shall retain the records. Otherwise, it shall transmit to the Court a report of its proceedings and a recommendation as to the approval or denial of the application together with all papers relating to the matter.

~~(d)~~ (c) Review by Court

(1) If the applicant elects not to withdraw the application, after the Board submits its report and adverse recommendation

the Court shall require the applicant to show cause why the application should not be denied.

(2) If the Board recommends approval of the application contrary to an adverse recommendation by the Character Committee, within 30 days after the filing of the Board's report, the Committee may file with the Court exceptions to the Board's recommendation. The Committee shall mail copies of its exceptions to the applicant and the Board.

(3) Proceedings in the Court under this section shall be on the records made before the Character Committee and the Board. If the Court denies the application, the Board shall retain the records.

~~(a)~~ (d) Burden of Proof

The applicant bears the burden of proving to the Character Committee, the Board, and the Court the applicant's good moral character and fitness for the practice of law. Failure or refusal to answer fully and candidly any question set forth in the application or any relevant question asked by a member of the Character Committee, the Board, or the Court is sufficient cause for a finding that the applicant has not met this burden.

(e) Continuing Review

All applicants remain subject to further Character Committee and Board review and report until admitted to the Bar.

Source: This Rule is derived ~~as follows:~~
~~Section (a) is in part derived from the first sentence of former Rule 2 d and in part new.~~
~~Section (b) is in part derived from former Rule 4 b and in part new.~~
~~Section (c) is in part derived from former Rule 4 c and in part new.~~
~~Section (d) is in part derived from former Rule 4 c and in part new.~~
~~Section (e) is in part derived from former~~

~~Rule 4 d.~~ from former RGAB 5.

Rule 19-203 was accompanied by the following Reporter's note.

Rule 19-203 is derived from RGAB 5 with style changes.

Mr. Brault told the Committee that Rule 19-203 had only stylistic changes. Judge Pierson said that he had a comment about the language in subsection (a)(2) that reads: "The hearing shall be conducted on the record." The language should be the same as the language in subsection (b)(3) of Rule 19-205, Appeal of Denial of ADA Test Accommodation Request, that reads "The hearing shall be recorded verbatim by shorthand, stenotype, mechanical, or electronic audio recording methods, electronic word or text processing methods, or any combination of these methods." By consensus, the Committee approved this change.

By consensus, the Committee approved Rule 19-203 as amended.

Mr. Brault presented Rule 19-204, Petition to Take a Scheduled Examination, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~6.~~ 19-204. PETITION TO TAKE A SCHEDULED EXAMINATION

(a) Filing

An applicant may file a petition to

take a scheduled bar examination if (1) the applicant ~~(1)~~ is eligible under Rule ~~4~~ 19-201 to take the bar examination, ~~and~~ (2) the applicant has applied for admission pursuant to Rule ~~2~~ 19-202, and (3) the application has not been withdrawn or rejected pursuant to Rule ~~5~~ 19-203. The petition shall be under oath and shall be filed on the form prescribed by the Board.

(b) Request for Test Accommodation

An applicant who seeks a test accommodation under the ADA for the bar examination shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with any supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (c) of this Rule for filing a petition to take a scheduled bar examination.

Committee note: An applicant who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule ~~6.1~~ 19-205 for the procedure to appeal a denial of a request for a test accommodation.

(c) Time for Filing

~~A petitioner~~ An applicant who intends to take the examination in July shall file the petition no later than the preceding May 20. ~~A petitioner~~ An applicant who intends to take the examination in February shall file the petition no later than the preceding December 20. Upon written request of ~~a petitioner~~ an applicant and for good cause shown, the Board may accept a petition filed after that deadline. If the Board rejects the petition for lack of good cause for the untimeliness, the ~~petitioner~~ applicant may file an exception with the Court within five days after notice of the rejection.

(d) Affirmation and Verification of Eligibility

The petition to take an examination shall contain a signed, notarized statement affirming that the ~~petitioner~~ applicant is eligible to take the examination. No later than the first day of September following an examination in July or the fifteenth day of March following an examination in February, the ~~petitioner~~ applicant shall cause to be sent to the Office of the State Board of Law Examiners a transcript that reflects the date of the award of a Juris Doctor or LLM degree to the ~~petitioner~~ applicant.

(e) Voiding of Examination Results for Ineligibility

If an applicant who is not eligible under Rule ~~4~~ 19-201 takes an examination, the applicant's petition ~~will~~ shall be deemed invalid and the applicant's examination results ~~will~~ shall be voided. No fees ~~will~~ shall be refunded.

(f) Certification by Law School

Promptly following each bar examination, the Board shall submit a list of ~~petitioners~~ applicants who identified themselves as graduates of a particular law school and who sat for the most recent bar examination to the law school for certification of graduation and good moral character. Not later than 45 days after each examination, the law school dean or other authorized official shall certify to the Board in writing (1) the date of graduation of each of its graduates on the list or shall state that the ~~petitioner~~ applicant is unqualifiedly eligible for graduation at the next commencement exercise, naming the date; and (2) that each of the ~~petitioners~~ applicants on the list, so far as is known to that official, has not been guilty of any criminal or dishonest conduct other than minor traffic offenses and is of good moral character, except as otherwise noted.

(g) Refunds

If ~~a petitioner~~ an applicant withdraws the petition or fails to attend and take the

examination, the examination fee ~~will~~ shall not be refunded except for good cause shown. The examination fee may not be applied to a subsequent examination unless the ~~petitioner~~ applicant is permitted by the Board to defer taking the examination.

Source: This Rule is ~~new, except that section (a) is derived from former Rule 5 (a)~~ derived from former RGAB 6.

Rule 19-204 was accompanied by the following Reporter's note.

Amendments to former Rules 6 and 9 of the Rules Governing Admission to the Bar of Maryland were proposed at the request of the State Board of Law Examiners.

To allow the Board sufficient time to process a petition to take an examination, in light of increases in the number of candidates and the number of requests for accommodation under the Americans With Disabilities Act, the time for filing the petition was changed from 20 days before the scheduled examination to no later than the preceding May 20th for the July examination or the preceding December 20th for a February examination.

The requirement set forth in former Rule 6 (b) that a certain certification by the applicant's law school be included in the petition was deleted. In its place were added new sections (c) and (d). New section (c) requires the applicant to affirm the applicant's eligibility to take the examination and provide a law school transcript to the Board within a certain time after the examination. New section (d) voids the examination results of any applicant who is found to have been ineligible to take the examination.

Mr. Brault explained that Rule 19-204 addresses a petition to ask for accommodations under the Americans with Disabilities

Act (ADA), 42 U.S.C. §12101, et seq., for taking the bar examination. The major furor has involved Attention Deficit Hyperactivity Disorder (ADHD). One of the requested accommodations was for people with ADHD. Ms. Gavin said that the case was *Application of Kimmer*, 392 Md. 251 (2006). The argument was that the procedure in Board Rule 6 was not due-process friendly for people filing under the ADA. An Accommodations Review Committee had been created to review denials by the Board. This is a very difficult situation. The Accommodations Review Committee had not met since the advent of the ADAAA (ADA Amendments Act of 2008, Pub. Law 110-325). She added that Rule 19-204 has only style changes.

By consensus, the Committee approved Rule 19-204 as presented.

Mr. Brault presented Rule 19-205, Appeal of Denial of ADA Test Accommodation, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~6.1.~~ 19-205. APPEAL OF DENIAL OF ADA TEST ACCOMMODATION REQUEST

~~(a) Definition~~

~~In this Rule, "applicant" includes a petitioner under Rule 13 who seeks a test accommodation under the ADA for the attorney examination.~~

~~(b)~~ (a) Accommodations Review Committee

(1) Creation and Composition

There is an Accommodations Review Committee that shall consist of nine members appointed by the Court of Appeals. Six members shall be ~~lawyers~~ attorneys admitted to practice in Maryland who are not members of the Board. Three members shall not be ~~lawyers~~ attorneys. Each ~~non-lawyer~~ non-attorney member shall be a licensed psychologist or physician, who during the member's term, does not serve the Board as a consultant or in any capacity other than as a member of the Committee. The Court shall designate one ~~lawyer member~~ attorney as Chair of the Committee and one ~~lawyer member~~ attorney as the Vice Chair. In the absence or disability of the Chair or upon express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(2) Term

Subject to subsection ~~(b)(4)~~ (a)(4) of this Rule, the term of each member is five years. A member may serve more than one term.

(3) Reimbursement; Compensation

A member is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations. In addition, the Court may provide compensation for the members.

(4) Removal

The Court of Appeals may remove a member of the Accommodations Review Committee at any time.

~~(c)~~ (b) Procedure for Appeal

(1) Notice of Appeal

An applicant whose request for a

test accommodation pursuant to the ADA is denied in whole or in part by the Board may note an appeal to the Accommodations Review Committee by filing a Notice of Appeal with the Board.

Committee note: It is likely that an appeal may not be resolved before the date of the scheduled bar examination that the applicant has petitioned to take. No applicant "has the right to take a particular bar examination at a particular time, nor to be admitted to the bar at any particular time." *Application of Kimmer*, 392 Md. 251, 272 (2006). After an appeal has been resolved, the applicant may file a timely petition to take a later scheduled bar examination with the accommodation, if any, granted as a result of the appeal process.

(2) Transmittal of Record

Upon receiving a notice of appeal, the Board promptly shall (A) transmit to the Chair of the Accommodations Review Committee a copy of the applicant's request for a test accommodation, all documentation submitted in support of the request, the report of each expert retained by the Board to analyze the applicant's request, and the Board's letter denying the request and (B) mail to the applicant notice of the transmittal and a copy of each report of an expert retained by the Board.

(3) Hearing

The Chair of the Accommodations Review Committee shall appoint a panel of the Committee, consisting of two ~~lawyers~~ attorneys and one ~~non-lawyer~~ non-attorney, to hold a hearing at which the applicant and the Board have the right to present witnesses and documentary evidence and be represented by counsel. In the interest of justice, the panel may decline to require strict application of the Rules in Title 5, other than those relating to the competency of witnesses. Lawful privileges shall be respected. The hearing shall be recorded verbatim by shorthand, stenotype, mechanical,

or electronic audio recording methods, electronic word or text processing methods, or any combination of those methods.

(4) Report

The panel shall (A) file with the Board a report containing its recommendation, the reasons for the recommendation, and findings of fact upon which the recommendation is based, (B) mail a copy of its report to the applicant, and (C) provide a copy of the report to the Chair of the Committee.

~~(d)~~ (c) Exceptions

Within 30 days after the report of the panel is filed with the Board, the applicant or the Board may file with the Chair of the Committee exceptions to the recommendation and shall mail a copy of the exceptions to the other party. Upon receiving the exceptions, the Chair shall cause to be prepared a transcript of the proceedings and transmit to the Court of Appeals the record of the proceedings, which shall include the transcript and the exceptions. The Chair shall notify the applicant and the Board of the transmittal to the Court and provide to each party a copy of the transcript.

~~(e)~~ (d) Proceedings in the Court of Appeals

Proceedings in the Court of Appeals shall be on the record made before the panel. The Court shall require the party who filed exceptions to show cause why the exceptions should not be denied.

~~(f)~~ (e) If No Exceptions Filed

If no exceptions pursuant to section ~~(d)~~ (c) of this Rule are timely filed, no transcript of the proceedings before the panel shall be prepared, the panel shall transmit its record to the Board, and the Board shall provide the test accommodation, if any, recommended by the panel.

Source: This Rule is ~~new~~ derived from former

Rule RGAB 6.1.

Mr. Brault said that Rule 19-205 is the next step after Rule 19-204 if the Accommodations Review Committee denies the right of someone to have special accommodations. He asked what the ADHD accommodation requested in *Kimmer* (392 Md. 251 (2006)was. Ms. Gavin replied that the petitioner had asked for double time to take the examination. The Board refused, and the petitioner went to the Circuit Court for Anne Arundel County and got a preliminary injunction requiring the Board to give him double time. He was given double time, but he was told that his grade on the examination would not be reported until there was an evidentiary hearing on whether he should have gotten the double time. Mr. Brault inquired what the outcome of the matter was, and Ms. Gavin answered that the request for double time was denied. Mr. Brault noted that Rule 19-204 was put in when the problem of people with ADHD arose. The Rule contains only style changes.

Mr. Leahy asked how many applicants are given additional time. Ms. Gavin responded that in July, there are 40 to 60 applicants who are accommodated. Not all of them get additional time. The accommodations are awarded on a case-by-case method. Some of the applicants who are deaf need to have information written on a chalkboard. Some applicants have had problems with their hands, and they get a court reporter to record their essay answers. About one-half to three-quarters of the applicants do

get additional time. It may be 15 minutes off the clock to allow the applicants to stand up and stretch. It is never any more than double time. About one-third of the problems are physical disabilities; the other two-thirds are mental disabilities, which are the ones that are not clear-cut. Opinions differ as to whether these people actually have what they claim to have and yet be able to function to achieve a doctorate level education. Mr. Brault noted that this is why the Accommodations Review Committee includes physicians and psychologists. All of the contents of Rule 19-205 was in the former Rule, RGAB 6.1.

By consensus, the Committee approved Rule 19-205 as presented.

Mr. Brault presented Rule 19-206, Bar Examination, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~7.~~ 19-206. BAR EXAMINATION

(a) Scheduling

The Board shall administer a written examination twice annually, once in February and once in July. The examination shall be held on two successive days. The total duration of the examination shall be not more than 12 hours nor less than nine hours~~,~~ unless extended at the candidate's request under the ADA. At least 30 days before an examination, ~~The~~ the Board shall publish and have posted on the Judiciary website notice of the dates, times, and place or places of

the examination ~~no later than the preceding December 1 for the February examination and no later than the preceding May 1 for the July examination~~.

(b) Purpose of Examination

It is the policy of the Court that no quota of successful ~~examinees~~ applicants be set, but that each ~~examinee~~ applicants be judged for fitness to be a member of the Bar as demonstrated by the examination answers. ~~To this end, the~~ The examination shall be designed to test the ~~examinee's~~ applicant's knowledge of legal principles in the subjects on which examined and the ~~examinee's~~ applicant's ability to recognize, analyze, and intelligibly discuss legal problems and to apply that knowledge in reasoning their solution. The examination ~~will~~ shall not be designed primarily to test information, memory, or experience.

(c) Format and Scope of Examination

The Board shall prepare the examination and may adopt the MBE and the MPT as part of it. The examination shall include an essay test. The Board shall define by rule the subject matter of the essay test, but the essay test shall include at least one question dealing in whole or in part with professional conduct.

(d) Grading

(1) The Board shall grade the examination and shall by rule establish a passing grade~~s~~ for the examination. The Board may provide by rule that an ~~examinee~~ applicant may satisfy the MBE part of the Maryland examination requirement by applying a grade on an MBE taken in another ~~jurisdiction~~ state at the same examination.

(2) At any time before it notifies ~~examinees~~ applicants of the results, the Board, in its discretion and in the interest of fairness, may lower, but not raise, the passing grade~~s~~ it has established for any particular administration of the examination.

Source: This Rule is derived ~~as follows:~~
~~Section (a) is derived from former Rule 7 a, and b.~~
~~Section (b) is derived from former Rule 7 c.~~
~~Section (c) is derived from former Rule 7 d and e.~~
~~Section (d) is derived from former Rule 7 e.~~ from former RGAB 7.

Rule 19-206 was accompanied by the following Reporter's note.

> Rule 19-206 is derived from former RGAB 7 with style changes. The second sentence of section (d) is deleted because it was inconsistent with the provisions of Board Rule 4 (b) and (g).

Mr. Leahy pointed out a typographical error in section (b) of Rule 19-206. In the first sentence, the word "applicants" should be the word "applicant" the second time it appears. By consensus, the Committee approved this change. Judge Pierson suggested that in section (a) of Rule 19-206, the language that reads: "...unless extended at the candidate's request under the ADA" should be changed to "...unless extended at the candidate's request pursuant to Rules 19-204 and 19-205." This would make it more explicit that this request has to comply with the procedure that is set forth in Rules 19-204 and 19-205. By consensus, the Committee approved this change.

By consensus, the Committee approved Rule 19-206 as amended.

Mr. Brault presented Rule 19-207, Notice of Grades and Review Procedure, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~8.~~ 19-207. NOTICE OF GRADES AND REVIEW PROCEDURE

(a) Notice of Grades; Alteration

~~Notice~~ The Board shall send notice of examination results ~~shall be sent~~ to each ~~examinee~~ applicant by regular mail, postage prepaid. Successful ~~examinees~~ applicant shall be notified only that they have passed. Unsuccessful ~~examinees~~ applicants shall be given their grades in the detail the Board considers appropriate. Thereafter, the Board may not alter any ~~examinee's~~ applicant's grades except when necessary to correct a clerical error.

(b) Review Procedure

On written request filed with the Board within 60 days after the mailing date of examination results, unsuccessful ~~examinees~~ applicants, in accordance with the procedures prescribed by the Board, may (1) review their essay test answer books and the Board's analysis for the essay test, (2) review their MPT answer books, (3) order the National Conference of Bar Examiners' MPT Point Sheet and Grading Guidelines, and (4) upon payment of the required costs, obtain confirmation of their MBE scores. No further review of the MBE ~~will~~ shall be permitted.

Source: This Rule is derived ~~as follows:~~
~~Section (a) is derived in part from former Rule 7 f and in part new.~~
~~Section (b) is derived from former Rule 8 b.~~ from former RGAB 7 and 8.

Rule 19-207 was accompanied by the following Reporter's note.

Rule 19-207 is derived from former RGAB 8 with style changes.

Mr. Leahy pointed out a typographical error in section (a) of Rule 19-207. In the second sentence, the word "applicant" should be the word "applicants." By consensus, the Committee approved this change. Mr. Brault noted that Rule 19-207 has no substantive changes from the prior Rule.

By consensus, the Committee approved Rule 19-207 as amended.

Mr. Brault presented Rule 19-208, Re-examination after Failure, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~9.~~ 19-208. RE-EXAMINATION AFTER FAILURE

(a) Petition for Re-examination

An unsuccessful ~~examinee~~ applicant may file a petition to take another scheduled examination. The petition shall be on the form prescribed by the Board and shall be accompanied by the required examination fee.

(b) Request for Test Accommodation

An applicant who seeks a test accommodation under the ADA for the bar examination shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with any supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (c) of this Rule for filing a petition to take a scheduled bar examination.

Committee note: An applicant who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule ~~6.1~~ 19-205 for the procedure to appeal a denial of a request for a test accommodation.

(c) Time for Filing

~~A petitioner~~ An applicant who intends to take the July examination shall file the petition, together with the prescribed fee, no later than the preceding May 20. ~~A petitioner~~ An applicant who intends to take the examination in February shall file the petition, together with the prescribed fee, no later than the preceding December 20. Upon written request of ~~a petitioner~~ an applicant and for good cause shown, the Board may accept a petition filed after that deadline. If the Board rejects the petition for lack of good cause for the untimeliness, the ~~petitioner~~ applicant may file an exception with the Court within five days after notice of the rejection.

(d) Deferment of Re-examination

To meet scheduling needs at either the July or the February examination, the Board may require ~~a petitioner~~ an applicant to defer re-examination for one setting.

(e) Three or More Failures - Re-examination Conditional

If ~~a person~~ an applicant fails three or more examinations, the Board may condition retaking of the examination on the successful completion of specified additional study.

(f) No Refunds

If ~~a petitioner~~ an applicant withdraws the petition or fails to attend and take the examination, the examination fee ~~will~~ shall not be refunded ~~and~~ except for good cause shown. The examination fee may not be applied to a subsequent examination unless the ~~petitioner~~ applicant is required by the

Board to defer retaking the examination or establishes good cause for the withdrawal or failure to attend.

Source: This Rule is derived ~~as follows: Section (a) is derived from former Rule 8 a. Section (b) is new. Sections (c) and (d) are derived from former Rule 8 c.~~ from former RGAB 9 as amended in 2003.

Rule 19-208 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 19-204. The style of section (f) is conformed to the style of Rule 19-204 (e). Section (c) contains the addition of the "lack of good cause for the untimeliness" standard that also appears in Rules 19-204 and 19-207.

Mr. Brault told the Committee that Rule 19-208 contained only style changes.

By consensus, the Committee approved Rule 19-208 as presented.

Mr. Brault presented Rule 19-209, Report to Court - Order, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

Rule ~~10.~~ 19-209. REPORT TO COURT - ORDER

(a) Report and Recommendations as to Candidates

As soon as practicable after each examination, the Board shall file with the

Court a report of the names of the successful candidates and the Board's recommendation for admission. If proceedings as to the character of a candidate are pending, the Board's recommendation of that candidate shall be conditioned on the outcome of ~~the~~ those proceedings.

(b) Order of Ratification

On receipt of the Board's report, the Court shall enter an order fixing a date at least 30 days after the filing of the report for ratification of the Board's recommendations. The order shall include the names and addresses of all ~~persons~~ applicants who are recommended for admission, including those who are conditionally recommended. The order shall state generally that all recommendations are conditioned on character approval, but shall not identify those ~~persons~~ applicants as to whom proceedings are still pending. The order shall be posted on the Judiciary website and published in the Maryland Register at least once before ratification of the Board's recommendations.

(c) Exceptions

Before ratification of the Board's report, any ~~person~~ individual may file with the Court exceptions relating to any relevant matter. For good cause shown, the Court may permit the filing of exceptions after ratification of the Board's report and before the candidate's admission to the Bar. The Court shall give notice of the filing of exceptions to the candidate, the Board, and the Character Committee that passed on the candidate's application. A hearing on the exceptions shall be held to allow the ~~exceptant and~~ person filing exceptions, the candidate, the Board, and the Character Committee to present evidence in support of or in opposition to the exceptions and the Board and Character Committee to be heard. The Court may hold the hearing or may refer the exceptions to the Board, the Character Committee, or an examiner for hearing. The Board, Character Committee, or examiner hearing the exceptions shall file with the

Court, as soon as practicable after the hearing, a report of the proceedings. The Court may decide the exceptions without further hearing.

(d) Ratification of Board's Report

On expiration of the time fixed in the order entered pursuant to section (b) of this Rule, the Board's report and recommendations shall be ratified subject to the conditions stated in the recommendations and to any exceptions noted under section (c) of this Rule.

Source: This Rule is derived ~~as follows:~~
~~Section (a) is derived from former Rule 11.~~
~~Section (b) is derived from former Rule 12 a.~~
~~Section (c) is derived from former Rule 12 b.~~
~~Section (d) is derived from former Rule 12 c.~~ from former RGAB 10.

Rule 19-209 was accompanied by the following Reporter's note.

Rule 19-209 is derived from former Rule RGAB 10 and contains style changes only.

Ms. Gavin said that she had a problem with the change to section (b) in Rule 19-209 requiring the order of ratification to be posted on the Judiciary website. The second sentence reads: "The order shall include the names and addresses of all applicants who are recommended for admission, including those who are conditionally recommended. The order shall state generally that all recommendations are conditioned on character approval, but shall not identify those applicants as to whom proceedings are still pending. The order shall be posted on the Judiciary

website." The names and addresses of the applicants should not be able to be posted on the Judiciary website. The Rule also states that the order shall be published in the Maryland Register at least once before ratification of the Board's recommendations. She suggested that either the order shall be posted without the addresses, or the addresses should be taken out of the order altogether. It is not necessary to publish the addresses in the Maryland Register, because when people are admitted, their address will be filed with the Client Protection Fund. The address published is likely to be the person's home address, because the Office of the State Board of Law Examiners does not get an office address.

Mr. Brault inquired what would happen if two of the applicants have the same name. Ms. Gavin responded that the only reason for publishing this in the Maryland Register is to give the public 30 days to object to the admission of the person to the bar. The Court of Appeals would have to figure out the identity of the person if someone files a motion to object to his or her admission to the bar. It is not very often that people who are being admitted to the bar have exactly the same name.

Mr. Brault cited a case where someone took the bar and was told that he failed. Someone of the same name had also taken the bar examination. It turned out that one had failed and one had passed, and the two were mixed up. Ms. Gavin remarked that this must have happened a long time ago, because now the computer would pick up the discrepancy with two different social security

numbers. Mr. Brault asked if there is any reason to put an address to identify someone, and Ms. Gavin replied that the address is unnecessary. She added that they are not allowed to post people's addresses on the website. Mr. Brault inquired if they could be posted in the newspaper. Ms. Gavin replied that they do not do that, either.

The Reporter noted that the current Rule clearly provides that the addresses have to be put in the Maryland Register. Ms. Gavin said that currently, they put the address in the Maryland Register, but not in the newspaper. The Reporter commented that if someone read the Maryland Register, the address is publicly disclosed. Ms. Gavin agreed, but she noted that publication in the Maryland Register is not necessary, because when the Court of Appeals gets the report from the State Board, the Court also gets a report that goes to the Professionalism Commission, which has the addresses on it. The Client Protection Fund gets a report, which has the addresses on it.

Mr. Johnson observed that the reports to the Court and Client Protection Fund do not serve the same purpose. The purpose of the publication is so that there is a 30-day period for the public to object if there is a reason to. Ms. Gavin inquired why it would be necessary to give the address of the people who passed the bar examination. Mr. Johnson answered that some people have names that are common, and there may be more than one. If someone, who would like to object to a possible admittee, knows which county the admittee is from, it may help

differentiate two people with the same name. Mr. Johnson expressed the opinion that there is a legitimate reason for listing the addresses of the possible admittees. Ms. Gavin remarked that the order is published that provides that certain people are being recommended for bar admission. The addition of the middle names of the people will help differentiate them.

Mr. Johnson commented that the address should be in the Maryland Register. He asked if the issue about publication on the Judiciary website is related to privacy. Ms. Gavin answered affirmatively. The Reporter asked why Ms. Gavin thought that the Maryland Register was more private than the court website. Ms. Gavin suggested that the Court of Appeals should weigh in on this. The Reporter asked Ms. Gavin if she was in agreement with putting the addresses in the Maryland Register. Ms. Gavin responded that in the past, there has not been a problem with publishing the addresses in the Maryland Register. She expressed the view that it is not necessary. The Vice Chair suggested listing the name and county of residence rather than the address. Ms. Gavin answered that this would be sufficient. Mr. Leahy remarked that he did not think that the address is a matter of confidentiality of information. Ms. Gavin responded that some applicants recently have asked that their addresses not be published in the Maryland Register.

Mr. Johnson commented that once someone's name is published, they can be bothered by people selling insurance. He added that one concern is a domestic violence situation, where it is not a

good idea to publish people's addresses, so that they cannot be tracked down. However, if people want to become a member of the bar, and character is a basic part of how they are judged, there should be no problem with listing the future admittees' addresses. Ms. Gavin said that she granted a non-ADA accommodation a few years ago to a woman who was being stalked by a young man who went to law school with her. She was allowed to take the bar examination at a different site than where the young man was taking the examination. Ms. Gavin pointed out that the Client Protection Fund has to have an address for each person admitted to the bar. After someone becomes an attorney, his or her professional address is on the website, but the home address is not.

Mr. Johnson asked if the words "and addresses" in section (b) of Rule 19-209 can be bracketed, and then the Court of Appeals can be asked to decide this issue. Ms. Gavin replied affirmatively. Mr. Johnson expressed the view that the Court of Appeals should decide about what goes on their website. Mr. Brault noted that if the order is published on the website, then the addresses should not be in the order if the addresses are not to be disclosed. He expressed the view that the words "and addresses" should be stricken from section (b), and then the Court can be informed as to why the Committee recommended it. Mr. Sykes suggested that Rule 19-209 could provide that the order should include the full names, which would address the problem of duplicate names. Ms. Gavin responded that the full names are

used. Mr. Sykes remarked that no harm is done if the Rule provides this.

Mr. Carbine suggested that the Committee should vote on this issue. He moved that the words "and addresses" be deleted from section (b) of Rule 19-209. The motion was seconded, and it carried on a vote of eight to seven, with the Vice Chair casting the vote to remove a tie. However, the Vice Chair expressed the view that the Court should be given the option and should be informed of the close vote.

The Vice Chair told the Committee that the Chair had pointed out a problem with including this material in the Maryland Register. What goes in the Maryland Register is regulated by statute. It would be telling an executive agency by rule to put this into their publication. The Maryland Register is serving less and less of an important function in notifying the public. The Judiciary website is more efficient in providing notice to people. Ms. Gavin remarked that she could not find any statutory requirement that the list of possible admittees has to be put in the Maryland Register. In the past, the Maryland Register had been used by the Court as a means of publication, but now with the electronic world, it is no longer necessary. The Vice Chair asked about striking the words "published in the Maryland Register" and just keeping in the Judiciary website. Mr. Brault moved to strike the words, the motion was seconded, and it passed with only one opposed.

The Reporter inquired how long the list should be posted on

the website. Ms. Gavin noted that Rule 19-209 provides that the list shall be posted at least once before ratification of the Board's recommendations, and ratification does not occur after the report is filed with the Court. The Reporter said that it has to be posted for either a length of time or until ratification. Ms. Gavin said that the Rule states: "...the Court shall enter an order fixing a date at least 30 days after the filing of the report for ratification of the Board's recommendations." She added that the order is to be posted on the Judiciary website at least once before ratification. The Reporter observed that "at least once before ratification" may be for a very short time. For how long should it be posted? Ms. Gavin hypothesized that if report were to go to the court on Friday afternoon, the unofficial pass-fail by seat number report is posted on the Board's website on Friday afternoon. The material for the order is dated for Friday afternoon, but it does not get sent out until Monday. The reason that the Board did the unofficial results on the website is because of possible human error. The official results are sent out Friday, but they will not be received for two to three days.

The Reporter asked if Rule 19-209 could provide that the list is published on the website for at least 30 days prior to the Board's ratification. Ms. Gavin answered negatively, pointing out that this would require that the names be published on the website at the same time the unofficial pass results are published on the website and before the applicants get their test

results in the mail. Mr. Carbine said that the list could be posted until ratification. The Reporter noted that the language about posting at least once should be deleted. The list should be posted until ratification. Ms. Gavin remarked that this would not tell her office when they have to post the list. They have to post it before ratification. The Reporter added that the list would have to be kept up on the website.

Mr. Sykes referred to the 30-day period. Ms. Gavin responded that it is not possible to post for 30 days. The order is dated back to Friday. The unofficial results go on the State Board's website that Friday. The Reporter inquired when the list gets published in the Maryland Register now. Ms. Gavin answered that it is published the next week, but the 30 days runs from Friday. Mr. Carbine commented that what is being suggested is that the list is kept up on the website until ratification. Mr. Sykes recommended that the period of posting have a beginning and an end, and it should consist of 30 days for the public to read it.

The Vice Chair said that the list will be posted until ratification, and the Reporter added that it would be for at least 30 days. Mr. Leahy remarked that the purpose of the Rule is so that the public has 30 days to object to someone who may be unfit to practice law. Ms. Gavin reiterated that the order is signed on a Friday, but it does not go out to the Maryland Register until the next week. This would require the State Board to put the names of the people who passed immediately on the

website. The Reporter noted that the Maryland Register comes out on Friday. How long does it go from that publication date to when the Court signs the ratification? Ms. Gavin explained that it would not get into the Maryland Register the Friday that it goes over to the court. It would get into the Maryland Register the next week.

The Reporter asked when the Court signs off on the list. Ms. Gavin replied that the Court signs off on the list the Friday that it is final, the week before it appears in the Maryland Register. They set a date 30 days from that Friday that it is filed with the Court. Mr. Brault added that the Court signs an order that states that the list is final 30 days from this date. It is published. If it is put in the Maryland Register by the time the public reads it, they only have 20 days to respond. If it is published on the Judiciary website, it is accessible right away.

The Reporter pointed out that Ms. Gavin does not want to put it on the website right away. Ms. Gavin explained that the results that are sent to the applicant in a letter are unofficial. Mr. Leahy asked if the list could be posted within five days of the order. Ms. Gavin replied affirmatively. The Reporter said that the list will be posted on the website within five days of the order, and it will be kept up until ratification. Mr. Brault remarked that this may not solve the problem. Mr. Leahy observed that the public will have at least

25 days to respond, which is more time than they have now. Ms. Gavin explained that currently when the list goes to the Maryland Register the next week, it would be published in the next edition of the Maryland Register. Mr. Brault noted that section (b) of Rule 19-209 should state that the list shall be posted within five days of the order filed in the Court of Appeals. Ms. Gavin agreed with this. It just cannot be posted simultaneously, because the applicants have to be given time to get their mail.

Mr. Leahy asked if anyone has ever successfully opposed the admission of an applicant. Ms. Gavin responded that she had never heard about anyone doing this. Mr. Brault suggested that section (b) should provide that the list shall be posted on the Judiciary website within five days of the order filed in the Court of Appeals and remain on the website until ratification. By consensus, the Committee approved that change to section (b) of Rule 19-209.

By consensus, the Committee approved Rule 19-209 as amended.

The Vice Chair suggested that discussion of the remainder of the Rules Governing Admission to the Bar should be deferred until the November meeting. The Committee agreed with this.

Agenda Item 4. Consideration of a "housekeeping" amendment to Rule 8-503 (Style and Form of Briefs)

The Reporter 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 EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 to correct an internal reference, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

. . .

(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)~~ (a)(8); 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.

. . .

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

The proposed amendment to Rule 8-503 corrects an internal reference in section (d).

The Reporter explained that they had been informed that the reference in section (d) of Rule 8-503 to "Rule 8-504 (a)(7)" should be to "Rule 8-504 (a)(8)." This is a housekeeping amendment.

By consensus, the Committee approved Rule 8-503 as presented.

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